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European Union Committee

29th Report of Session 2007–08

**EUROPOL:
coordinating the
fight against serious
and organised crime**

Report with Evidence

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- (Q) refers to a question in oral evidence
- (p) refers to a page of written evidence

FOREWORD—What this report is about

Europol, the European Police Office responsible for coordinating the fight against serious and organised crime, began operations from its headquarters in The Hague in 1999. In January 2010 it will become an agency of the EU. The Council Decision bringing about this change in its constitution has made some amendments to its objects, powers, working methods and governance. Many of these changes are beneficial, so far as they go; but they do not go very far, and we believe this represents a missed opportunity.

The *raison d'être* of Europol is the exchange of information for law enforcement purposes. It is a matter of particular concern that four fifths of the information exchanged by national liaison officers stationed at Europol is exchanged without actually going through Europol, and hence without being placed on Europol's database and without being accessible to Member States other than those directly involved. The reason is a lack of trust: a reluctance on the part of Member States, especially at the early stages of an investigation, to share sensitive information with all Member States through the Europol channels. One way of improving this would be for Member States to station at Europol only officers and officials with the highest necessary security clearance.

In addition to simply facilitating the exchange of factual information, Europol analyses information to help the investigation of particular categories of crime. This is one of Europol's success stories. Undertaking analysis of information is one of the differences between Europol and Interpol, a difference we explain more fully in Chapter 2.

The United Kingdom has been influential in persuading Europol to base its work on Organised Crime Threat Assessments: planning for future threats rather than reacting to past events. Much however remains to be done to persuade other Member States of the value of this, and of other modern policing methods.

The existing structure for the governance and management of Europol is complex and cumbersome. The new Decision might have improved this, basing itself on the structure of other EU agencies; but it does not. We are making a number of recommendations which, if implemented, would clarify the respective duties of the Director and Management Board, and would make it easier for them to work together. A particular aspect of this which we consider is the responsibility for security in the organisation.

In the United Kingdom the Serious Organised Crime Agency—SOCA—is the body responsible for liaison with Europol. This works well, but the same cannot at present be said for liaison between SOCA and the United Kingdom police forces which provide it with much of its information. We make recommendations for improvement.

Accountability of Europol to the European Parliament and national parliaments would improve if the Treaty of Lisbon came into force; but even without that Treaty, there is scope for improvement.

EUROPOL: coordinating the fight against serious and organised crime

CHAPTER 1: INTRODUCTION

The subject of our inquiry

1. Major criminals are no respecters of frontiers. They treat national borders as at worst an inconvenience, at best an opportunity to commit ever more sophisticated offences and to help in escaping detection, prosecution and conviction. For law enforcers matters are otherwise. Borders represent the operational limits of national units, and differences in operational methods. They throw up language barriers, and problems are caused by different legal systems, different laws and different prosecution processes. It is the task of Europol, the European Police Office, to ensure that, for law enforcers, the national borders of the Member States cause as little hindrance as possible to the fight against serious crime.
2. Contrary to popular misconception, Europol is not a European Police Force; the European Union does not have a police force, and is unlikely to have one in the foreseeable future. Law enforcement remains the responsibility of the Member States. What the EU does have in Europol is an organisation whose task is to help the police forces of the Member States to help each other. Here is one example from December 2007:

BOX 1

Operation Dana

An armed and violent Eastern European gang committed around twenty armed robberies against high quality jewellers in the United Kingdom; there were over 200 similar incidents across the EU. Europol and Eurojust coordinated an operation involving law enforcement authorities in Estonia, Finland and the United Kingdom. Officers from three United Kingdom police forces visited Estonia at the end of 2007. Eight addresses were searched, seven suspects were arrested, and many mobile phones and SIM cards were seized. As a result United Kingdom forces have identified offenders in 16 cases and have brought prosecutions in 11 of them.¹

3. This is our seventh inquiry into aspects of Europol, but our first for six years. In the years leading up to 1 July 1999, when Europol began operations, we conducted four inquiries. The first was a major inquiry into the draft of the Convention between the Member States on the establishing of a European Police Office.² This was followed by brief reports drawing attention to the proposed Confidentiality Regulations,³ to the draft rules of procedure of the Joint Supervisory Body⁴ and to the rules governing cooperation between

¹ Evidence of William Hughes, Director General of the Serious Organised Crime Agency (SOCA), Q 91, and Europol Annual Report for 2007, page 22.

² *Europol* (10th Report, Session 1994–95, HL Paper 51).

³ *Europol: Confidentiality Regulations* (1st Report, Session 1997–98, HL Paper 9).

⁴ *Europol: Joint Supervisory Body* (13th Report, Session 1997–98, HL Paper 71).

Europol and third countries.⁵ Additionally, our 1999 inquiry into computer systems in the field of Justice and Home Affairs considered, among other databases, the Europol Information System.⁶ In 2002, when Europol had been operational for three years, we conducted an inquiry into proposals by the Danish Presidency to extend its remit.⁷

4. Europol is currently a body established by a multilateral Convention between the Member States. On 20 December 2006 the Commission presented a proposal for a Council Decision converting Europol into an agency of the EU, funded from the Community budget. After much discussion and amendment, political agreement was reached on a text at the Justice and Home Affairs Council on 18 April 2008; the Decision is expected to be adopted later in November 2008 and will come into force on 1 January 2010.⁸ This is therefore a good time for us to consider what Europol has achieved under its current constitution, and how it might best progress in future.

Conduct of the inquiry

5. This inquiry has been conducted by Sub-Committee F, a list of whose members is set out in Appendix 1. They issued a call for written evidence in March 2008; this is reproduced in Appendix 2. In reply they received evidence from thirteen persons and bodies. Between May and July 2008 they heard oral evidence from thirty witnesses. They visited the headquarters of Europol and Eurojust in The Hague, and the following day held four evidence sessions in Brussels. The witnesses included representatives of the Commission, a Member of the European Parliament and the EU Counter-terrorism Coordinator. A full list of all the witnesses is in Appendix 3. To all those who helped in the arrangement of these visits, and to all the witnesses, we are most grateful.
6. Throughout the inquiry we have had as our specialist adviser Kevin O'Connell, a former Deputy Director of Europol. His unrivalled knowledge of the subject has been of the greatest assistance to us. We are very grateful for all his help.

Structure of this report

7. In the next chapter we look at the constitution of Europol as it has evolved, and at how it will shortly change. In Chapters 3 and 4 we examine the objectives, structure and working methods of Europol, and in Chapter 5 its governance and accountability. Chapter 6 considers its relations with its partners, and is followed by three chapters looking at security, data protection and a number of other issues. Finally in Chapter 10 we summarise our conclusions and recommendations.
8. **We recommend this report to the House for debate.**

⁵ *Europol: Third Country Rules* (29th Report, Session 1997–98, HL Paper 135).

⁶ *European Union Databases* (23rd report, Session 1998–99, HL Paper 120).

⁷ *Europol's Role in Fighting Crime* (5th report, Session 2002–03, HL Paper 43)

⁸ In EU terminology the date of entry into force of the Decision (as of other legal instruments) is shortly after its publication in the Official Journal, whereas 1 January 2010 is the date from which it is applicable. Here and throughout this report we refer to 1 January 2010 as the date of entry into force, using the clearer terminology which applies to United Kingdom legislation, and indeed to international legal instruments like the Europol Convention and its Protocols.

CHAPTER 2: THE EVOLVING CONSTITUTION

The establishment of Europol

9. The first high level suggestion that the Member States of the European Union had a common interest in the fight against serious crime was an initiative of the German Chancellor Helmut Kohl at the Luxemburg European Council in June 1991. He suggested that one of the aims of the Inter-Governmental Conference in Maastricht in December that year should be to have Treaty commitments on the fight against drug trafficking and organised crime. The minutes record that “The European Council noted with interest the practical proposals submitted by the German delegation,⁹ which supplement the work already carried out in this area. The European Council agreed on the objectives underlying these proposals and instructed the Conference to examine them further with a view to revision of the Union Treaty”.
10. Under the heading DRUGS the minutes continue: “Regarding the fight against international drug trafficking and organized crime, the European Council has agreed on the objectives underlying the German delegation’s proposals ... and requests the Ministers with responsibility for drugs matters to submit proposals before the European Council’s next meeting in Maastricht.”
11. As a result, when the Maastricht Treaty was signed on 7 February 1992 it included in the new Title VI a provision, Article K1(9), that Member States should regard as a matter of common interest “police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs cooperation, in connection with the organization of a Union-wide system for exchanging information within a European Police Office (Europol).”
12. This provision recorded the agreement of the—then twelve—Member States on the setting up of a European Police Office, but it was not a legal basis for establishing such an Office. Article K3(2) required the Council to draw up a Convention and recommend it to the Member States for adoption. The negotiations resulted in the signature on 26 July 1995 of a Convention on the Establishment of a European Police Office—the Europol Convention.¹⁰ This was a document which gave great prominence to easing the exchange of information and to the provision of analysis in support of criminal investigation. But by then there were fifteen Member States whose ratification of the Convention was needed before it could come into force. The ratifications were slow in coming and Belgium, the last State to ratify, did not do so until June 1998. In accordance with Article 45(3) of the Convention, it entered into force on 1 October 1998.¹¹ Europol began

⁹ The initiative is summarised as follows in the Council minutes: “Treaty commitment to full establishment of a Central European Criminal Investigation Office (“Europol”) for these areas by 31.12.1993 at the latest. Details to be laid down by unanimous decision of the Council. Gradual development of Europol functions: first of all relay station for exchange of information and experience (up to 31.12.1992), then in the second phase powers to act also within the Member States would be granted. Rights of initiative for the Commission and also for individual Member States.”

¹⁰ OJ C316 of 27.11.1995, p. 2.

¹¹ At the same time there entered into force a Protocol on the interpretation of the Convention by the Court of Justice, and a second Protocol on the privileges and immunities of Europol and its staff (Protocol of 24 July 1996 on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the establishment of a European Police Office (OJ C 299 of 9.10.1996, p. 2), and Protocol of 19 June 1997 on the privileges and immunities of Europol, the members of its organs, the deputy directors and employees of Europol (OJ C 221 of 19.7.1997, p. 2)).

operations from its headquarters in The Hague on 1 July 1999, at which point it also took over the work of a European Drugs Unit which since 1994 had been in operation without any formal constitution or powers.

13. The Convention is still the instrument governing the constitution of Europol and its work; but, as we record below, it has been significantly amended. In little more than a year it will be replaced by the Council Decision. In the course of this report we consider the changes which this will make to the constitution of Europol and to its work.

The disadvantages of a Convention

14. The Convention, like any other treaty, can only be amended either in accordance with its own provisions, or by another treaty, and therein has lain the problem. An Annex to the Convention contains a list of the crimes to which the Convention can apply, and definitions of them; and Article 43(3) allows the Council to amend them. There has been a Council Decision amending the definition of “traffic in human beings” to include child pornography.¹² However this is the only form of change which the Convention itself has allowed the Council to make. Other and more substantial changes have needed an amendment to the Convention by further Protocols, each of them, like the Convention, subject to ratification by all the Member States which were signatories.¹³
15. In November 2000 a Protocol was signed adding money-laundering to the list of crimes,¹⁴ and two years later a further Protocol was signed allowing Europol staff to participate in Joint Investigation Teams, something we consider in paragraphs 109 to 112.¹⁵ In July 2002 the Danish Presidency published proposals for a much more substantial Protocol,¹⁶ extending Europol’s remit, streamlining its methods of operation, and completely re-writing the nature of the crimes within Europol’s competence (and hence superseding the first of these Protocols). This third Protocol—the Danish Protocol—also gives Europol wider access to personal data, and facilitates data transfers to third countries. The Protocol was signed in November 2003,¹⁷ but over three more years were to elapse before any of these Protocols was ratified. It is hard to know why Member States troubled to

¹² Council Decision of 3 December 1998 supplementing the definition of the form of crime “traffic in human beings” of the Convention on the establishment of a European Police Office (Europol Convention) (OJ C 26 of 30.01.1999, p. 21).

¹³ For the accession to the Europol Convention of the 12 Member States which have joined the EU subsequently, no ratification has been necessary beyond that needed for the respective Treaties of Accession. The ten new Member States which acceded in May 2004 undertook in their Act of Accession to accede to the Europol Convention, and there was no further ratification requirement. Seven of those States acceded on 1 September 2004, Malta and Poland by the end of the year, and Estonia on 1 July 2005. Bulgaria and Romania acceded to the Europol Convention on 1 August 2007 in accordance with Article 3(3) of their Act of Accession and the Council Decision adopted under Article 3(4).

¹⁴ Protocol of 30 November 2000, drawn up on the basis of Article 43(1) of the Convention on the establishment of a European Police Office (Europol Convention) amending Article 2 and the Annex to that Convention (OJ C 358 of 13.12.2000, p. 2).

¹⁵ Protocol of 28 November 2002 amending the Convention on the establishment of a European Police Office (Europol Convention) and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol (OJ C 312 of 16.12.2002, p. 2).

¹⁶ OJ C 172 of 18.7.2002, p. 15.

¹⁷ Protocol of 27 November 2003, drawn up on the basis of Article 43(1) of the Convention on the Establishment of a European Police Office (Europol Convention), amending that Convention (OJ C 2 of 6.1.2004, p. 3).

ratify the first at all. However it duly came into force on 29 March 2007, to be superseded less than three weeks later when the 2003 Protocol came into force on 18 April 2007, nearly five years after the original Danish proposals.

16. These problems arose because, as we have explained in paragraph 11, at the time Europol was set up there was no Treaty base allowing it to be established otherwise than by a Convention between the Member States. No problem would have arisen after the entry into force on 1 May 1999 of the Treaty of Amsterdam, since this completely re-wrote Title VI of the Treaty on European Union, adding a new Article 30(2) which not merely allowed but required the Council to take major steps in the development of Europol, in particular to support investigation in “specific” cases.

BOX 2

Article 30 (2) of the Treaty on European Union

The Council shall promote cooperation through Europol and shall in particular, within a period of five years after the date of entry into force of the Treaty of Amsterdam:

- (a) enable Europol to facilitate and support the preparation, and to encourage the coordination and carrying out, of specific investigative actions by the competent authorities of the Member States, including operational actions of joint teams comprising representatives of Europol in a support capacity;
- (b) adopt measures allowing Europol to ask the competent authorities of the Member States to conduct and coordinate their investigations in specific cases and to develop specific expertise which may be put at the disposal of Member States to assist them in investigating cases of organised crime;
- (c) promote liaison arrangements between prosecuting/investigating officials specialising in the fight against organised crime in close cooperation with Europol;
- (d) establish a research, documentation and statistical network on cross-border crime.

17. Paragraph (c) of Article 30(2) is significant. This is the long-awaited coalescence of law enforcement and justice in the fight against serious crime, which ultimately led to the partnership with Eurojust which we describe in Chapter 6. The contrast between the creation of Europol and Eurojust is instructive. Although the idea of an EU judicial cooperation unit was first suggested by what is now the Article 36 Committee¹⁸ in 1996, it was only after the entry into force of the Treaty of Amsterdam that a decision was taken at the European Council at Tampere in 1999 to set up a body with the task of coordinating the activities of national prosecuting authorities and supporting criminal investigations in organised crime. Eurojust therefore could be, and was, set up by a Council Decision;¹⁹ this Decision could be amended by the Council in the same way, and indeed the budgetary provisions were amended barely a year later by a further Council Decision.²⁰ Eurojust has therefore suffered none of the problems of being established by a Convention which have afflicted Europol from the outset.

¹⁸ The Coordinating Committee of senior officials set up under Article 36 of the TEU to advise on Title VI matters (police and judicial cooperation in criminal matters), also known as CATS from its French acronym.

¹⁹ Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63 of 6.3.2002, p. 1).

²⁰ Council Decision 2003/659/JHA of 18 June 2003 amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 245 of 29.9.2003, p. 44).

The Council Decision

18. In February 2006 the Austrian Presidency set up a “Friends of the Presidency” Group to discuss the future of Europol. When the Group reported in May 2006 it complained that because of Europol’s legal basis “changing provisions of even minor importance has proven to last five years and longer. Particularly in comparison to younger institutions like Eurojust or CEPOL this becomes an obvious and unnecessary disadvantage ... A delay of more than five years for putting a minor change to Europol’s mandate into effect is clearly not tolerable.”²¹ Of the 76 changes to Europol’s constitution and functions suggested by the Group, nearly half would have required amendment of the Convention.
19. This report was discussed on 1–2 June 2006 by the JHA Council, which concluded that work should begin on considering whether and how to replace the Europol Convention by a Council Decision. On 5 January 2007 the Commission brought out a Proposal for a Council Decision establishing the European Police Office.²² Negotiations on the proposal lasted a year, but a political agreement was reached on 18 April 2008. This Committee indicated to the Minister that his agreement on behalf of the United Kingdom need not be withheld despite the fact that the Decision was being kept under scrutiny during the currency of our inquiry. As we have said, the Decision is expected to be adopted later in November 2008 and will enter into force on 1 January 2010—two years after the date optimistically suggested by the Council in June 2006, but well before any amendment to the Convention would have had a chance of entering into force.
20. Peter Storr, the International Director at the Home Office who is also the United Kingdom member of the Article 36 Committee, told us that the United Kingdom was a member of the Friends of the Presidency Group, and thought that “the way in which Europol was originally structured was inflexible and rather bureaucratic. It meant that if there were new developments, new crime trends and new mandates for Europol, it became a rather cumbersome process for Europol to be able to change its priorities in order to take these on board.” The United Kingdom was “very supportive of the idea of changing the constitutional arrangements for Europol to the present Council Decision”. (Q 20)
21. Mr Storr added a note of caution. “I would not want to over-sell the Council Decision but the changes I think are changes in the right direction. They are modest changes and they reflect the fact that there are different approaches among Member States as to how Europol should be run and governed.” (Q 37) We think his caution is justified, since the changes are indeed modest—in our view, too modest. The transition from the Convention to the Decision was an opportunity for making important changes to the constitution and working of Europol. The changes that were made are for the most part in the right direction, but in this report we explain where we believe opportunities were missed.
22. Because amendment of a Decision is not subject to the legal formality of ratification, **we hope that those of our recommendations which require amendment of the Council Decision will meet with the approval of all the**

²¹ Document 9184/1/06 rev 1 of 19 May 2006.

²² Document 5055/07.

Member States, and can be made so that they enter into force, if not with the entry into force of the Decision on 1 January 2010, then soon after.

What Lisbon might do

23. One reason the Member States were anxious to adopt the Decision before the end of 2008 was that, when the Decision was agreed in April 2008, it was thought certain that the Treaty of Lisbon would be ratified and would come into force on 1 January 2009. The Council Decision is currently a third pillar instrument, adopted by unanimity of the Member States and requiring only consultation of the European Parliament. If the Decision had not been adopted by the end of this year, the merging of the first and third pillars meant that adoption of the Decision would have required co-decision of the Council and the Parliament. Although the Treaty of Lisbon does not include transitional provisions showing exactly what would happen to proposals made and agreed but not adopted before its entry into force, the involvement of the Parliament at that stage would certainly have delayed matters, and might have required amendment of the draft Decision.
24. The other consequence of the entry into force of the Lisbon Treaty would be the application of Article 88 of the Treaty on the Functioning of the European Union (TFEU). This Article reads:²³

BOX 3

TFEU Article 88

1. Europol's mission shall be to support and strengthen action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.

2. The European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Europol's structure, operation, field of action and tasks. These tasks may include:

- (a) the collection, storage, processing, analysis and exchange of information, in particular that forwarded by the authorities of the Member States or third countries or bodies;
- (b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.

These regulations shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments.

3. Any operational action by Europol must be carried out in liaison and in agreement with the authorities of the Member State or States whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities

²³ The article was originally Article III-276 of the Constitution Treaty.

Thus the TFEU would give Europol a remit differently expressed and in some respects wider than the Decision. We consider Europol's mandate in detail in the following chapter. The TFEU would also introduce a provision on accountability to the European Parliament and national Parliaments, something we deal with in Chapter 5.

The Future Group

25. In January 2007, at the outset of the German Presidency, the German Minister of the Interior, Dr Wolfgang Schäuble, convened an informal JHA Council in Dresden. One of the purposes was “the creation of an informal Group at ministerial level with the objective to consider the future of the European area of justice, freedom and security”. The members of the Group, which became known as the Future Group, were ministers from what were then the two current trios of Presidencies (Germany, Portugal, Slovenia; France, Czech Republic, Sweden); a representative of the future Presidency trio (Spain, Belgium and Hungary); and an observer from the United Kingdom, representing the common law countries.
26. The Group reported in June 2008,²⁴ and a significant part of their report is devoted to Europol.²⁵ They summarised their conclusions on Europol as follows:

BOX 4

Future Group: Extract from the Executive Summary

Europol is to function as close partner and focal point for national police forces at the European level. Improving data transfers from Member States to Europol is necessary if it is to become a genuine information platform for Member States. The requirement of the so-called “Swedish” framework decision of 18 December 2006,²⁶ aiming at better information sharing, could be fulfilled by means of creating automatic data transfer instruments. Furthermore, Europol should be, within its legal framework, increasingly used and expanded into a competence centre for technical and coordinative support.

27. The proposals of the Future Group show that some of the Member States most supportive of Europol are themselves already considering amendments to the Decision. This confirms us in our view that it is realistic for us to make recommendations which, to be implemented, would also require amendment of the Decision.

Interpol and SitCen

28. We mentioned at the start of the report that Europol is sometimes assumed to be a European police force. It is also often confused in the mind of the public, and indeed in the mind of the police, with Interpol.

²⁴ Freedom, Security, Privacy—European Home Affairs in an open world—Report of the Informal High-Level Advisory Group on the Future of European Home Affairs Policy (“The Future Group”), Document 11657/08.

²⁵ Paragraphs 38–53.

²⁶ Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, OJ L 386 of 29.12.2006, p. 89.

BOX 5**Interpol**

Interpol, based in Lyon, is a world-wide international police organisation divided into global regions, of which Europe is one. It was created in 1923, and now has 187 member countries. Interpol facilitates cross-border police cooperation, and supports and assists all organisations, authorities and services whose mission is to prevent or combat international crime. Interpol and Europol share an interest in categories of crime such as terrorism, drugs and organised crime, trafficking in human beings and financial and high-tech crime. In addition, Interpol supports law enforcement officials in the field with emergency support and operational activities, especially in its priority crime areas, pursuit of fugitives, and assuring public safety.

Interpol's databases include data on criminals such as names, fingerprints and DNA profiles, and stolen property such as passports, vehicles and works of art; this information relates to crimes which have already taken place, and the data are often placed on the databases as a result of legal proceedings which require the identification of criminals or the return of stolen property.

In the event of a disaster or major crime, Interpol can dispatch response teams of officers to the scene to help deal with the crisis. Major events support teams can also help member countries with the policing of high profile conferences or sporting events.²⁷ Europol has no equivalent power.

We discuss in Chapter 6 the relationship between Europol and Interpol.

29. The Council Decision setting up Europol is based on the third pillar of the Treaty on European Union (Justice and Home Affairs). Under the second pillar (Common Foreign and Security Policy) there is a Situation Centre (SitCen) which was established under the aegis of the Council Secretariat in Brussels to undertake a common assessment of particularly critical issues in relation to the Union's foreign policy. The European Council agreed that from January 2005 a counter-terrorism group should be established within SitCen. We explain in paragraph 122 why we believe that SitCen is better adapted than Europol to the exchange of intelligence between security agencies.²⁸

²⁷ In the context of its inquiry following the Madrid bombings of March 2004 the Committee took oral evidence from the Secretary General of Interpol, Mr Ron Noble, and at his invitation visited the Interpol headquarters in Lyon. For further information about Interpol see our report *After Madrid: the EU's response to terrorism* (5th Report, Session 2004–05, HL Paper 53), Chapter 6 and QQ 326–360.

²⁸ In the context of its inquiry following the Madrid bombings of March 2004 the Committee also visited Brussels and took oral evidence from the Director of SitCen: see our report *After Madrid: the EU's response to terrorism* (5th Report, Session 2004–05, HL Paper 53), Chapter 5 and QQ 148–189.

CHAPTER 3: OBJECTIVES AND STRUCTURE

Objectives and competence

30. For Europol, as for many organisations, there is a distinction between its objectives—what it aims to achieve—and its competence—the powers it has to achieve those objectives. In the Convention Article 2, though headed simply “Objective”, deals with competence as well. It sets out the objective of Europol as being “to improve, by means of the measures referred to in this Convention, the effectiveness and cooperation of the competent authorities of the Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime where there are factual indications that an organised criminal structure is involved and two or more Member States are affected.” In other words, any crime which is not organised crime is currently outside Europol’s objectives, and hence its competence.
31. This has for some time been seen as an unnecessary and unsatisfactory restriction. The expression “the fight against organised crime” is used in TEU Article 30(2)(c) and is a useful summary of Europol’s work, but it should not be seen as limiting Europol’s competence. The Austrian Friends of the Presidency Group which, as we explained in the previous chapter, was the spur for the Council Decision, put forward two alternative formulations of Europol’s mandate, neither of which included the expression “organised crime”.
32. There is in our view another reason for avoiding the expression “organised crime”. Rob Wainwright, the Deputy Director for international matters at the Serious Organised Crime Agency (SOCA), explained that “Organised crime does not always carry any definition. In many countries, their definition of organised crime can be different.” He told us that the Serious Organised Crime and Police Act 2005 has no definition of “serious” or “organised” “because it is not a term that is recognised within UK law”. (Q 76)
33. This Committee was highly critical of the use of “organised crime” in the draft Council Framework Decision on the use of the Passenger Name Record (PNR) for law enforcement purposes.²⁹ Like the Friends of the Presidency Group we believe that, so long as those words lack a common definition, it would have been more satisfactory to define Europol’s competence without resorting to that expression.
34. The Friends of the Presidency Group also thought that Europol would benefit from a clearer distinction between its objectives, competences and tasks. This is not a question of semantics, as was made clear to us by David Smith, the Deputy Information Commissioner, who was giving evidence to us as Chairman of the Europol Joint Supervisory Body: “If you are checking on whether there is a legal basis for the processing of data at Europol, where do you go to? To the competences or to the objectives? ... the objectives talked simply about organised crime, whereas we have always been keen that Europol is confined to cross-border crime.” He gave us as an example the

²⁹ *The Passenger Name Record (PNR) Framework Decision* (15th Report, Session 2007–08, HL Paper 106, paragraphs 38–40).

murder of two French students in London. This clearly had cross-border implications simply because they were French students in London, but there was nothing to suggest that this would be a Europol matter and require international cooperation. There was no known connection with any French criminal activity. (Q 429)

35. The expression “organised crime” was however restored by the Commission in its proposal for the Decision, but in a way which makes clear that terrorism and serious crime can fall within Europol’s powers even if not “organised”, however that word is defined. The draftsman of the proposal, Mr Dick Heimans, explained to us the reasons for this. (Q 243) When Article 4 of the Decision is in force it will make clear that the competence of Europol extends to organised crime, to terrorism and to any of a long list of serious crimes, but only if two cross-border conditions are satisfied:

- the crimes affect two or more Member States;
- the scale, significance and consequences of the offences must require a common approach by the Member States.

The second of these conditions is simply an expression of the principle of subsidiarity, which would be breached if a common approach by the Member States was not more effective than action by them individually.

36. Mr Storr welcomed this change; he thought it helpful that Europol would be able to investigate serious crimes involving a number of Member States even though they might not be classed as organised crime. “I would see facilitated illegal immigration, trafficking in human beings, as being issues of the same degree of difficulty as international drugs trafficking because they involve the same element of organisation with a cross-border element to them, and that aspect of bringing either goods or people past the best efforts of law enforcement to tackle them. The distinction I would draw between what is organised crime and what is serious crime really relates more to crimes like murder, where previously the Europol definition of what was organised crime, and the mandate which it had, left serial murders involving a number of different countries, or other crimes (rape, etc) involving activity in a number of different countries unclear as to whether Europol had the mandate to cover them. Yet Europol, we knew, would have in those particular cases, or would be likely to have, information and intelligence which would be extremely useful to facilitate the investigation and detection of those crimes. So we were very much in favour of widening the Europol purpose to allow them to be active in those areas.” (QQ 20, 22)

37. Mr Max-Peter Ratzel, the Director of Europol, gave us a number of examples of matters which at present were outside the competence of Europol, but on which it would be able to help Member States once the Decision was in force: serial killers, child pornographic material distributed in a loose network, and violent demonstrators making a habit of disrupting sports or political events. (Q 177)

38. Mr Tim Wilson, a Visiting Fellow of a joint research institute of Newcastle and Durham Universities, gave us the graphic example of the case of Michel Fourniret, a Frenchman living in Belgium, who has been convicted of seven murders on the Franco-Belgian border and is under investigation for another murder, that of a British student. Until an intended victim escaped, the French and Belgian authorities were not aware that they had a serial killer

on the loose. Mr Wilson thought that in such a case there was a role for Europol to assist on a bilateral or trilateral basis. (p 60, Q 137)

39. At the same time, he was the only one of our witnesses to sound a note of caution about the expansion of Europol's mandate. He told us that if he were writing an open letter to the next Director of Europol or Chairman of the Management Board, he would be fairly modest in what he was expecting the organisation to do. The statistics had in his view to be treated with caution. It had to be remembered that most crime was local, and more than 75% of crime that was investigated forensically occurred and was solved within one police area. The work that Europol and SOCA were doing, though important, concerned only quite a small amount of criminal activity. (Q 134)
40. We do not ourselves share Mr Wilson's concerns. The significance of the crimes seems to us to be paramount. Like Mr Storr, **we believe that where Europol is likely to have information or intelligence which will facilitate the investigation and detection of crimes, those are crimes which should fall within Europol's mandate.**
41. **In our view it is therefore right that Article 4 of the Europol Decision will not limit the mandate of Europol to "organised crime". As drafted, in our view it gives as good a definition of the crimes which should fall within its competence as is likely to be achievable.**

National units and liaison officers

42. Liaison between Europol and the "competent national authorities" takes place through a national unit. In the original Convention the "competent authorities" were undefined. Since the entry into force of the Danish Protocol they are defined as "all public bodies existing in the Member States which are responsible under national law for preventing and combating criminal offences." This definition is adopted in the Decision. Plainly it goes much wider than just police, and will cross ministerial boundaries in the United Kingdom and most other Member States.
43. The national unit is the single point of contact between Europol and each Member State to coordinate its law enforcement activities and interests with Europol. For the United Kingdom SOCA is that national unit.

BOX 6

SOCA

SOCA, the Serious Organised Crime Agency, was set up by the Serious Organised crime and Police Act 2005, and assumed its full functions in April 2006. It is an intelligence-led law enforcement agency with harm reduction responsibilities. The most damaging sectors to the UK are judged to be trafficking of Class A drugs, organised immigration crime and fraud. Other threats within the remit of SOCA include high tech crime, counterfeiting, the use of firearms by serious criminals, serious robbery, organised vehicle crime, and cultural property crime—but, significantly, not terrorism.³⁰

³⁰ When we took oral evidence from the Directors of SOCA we put to them the point that the requirement for banks, estate agents, lawyers and others to make suspicious activity reports was too widely drawn. We were told that there were indeed one million records on the database, but that it was a very useful database enabling SOCA "to identify, for example, very quickly, criminal networks involved in the laundering of money, and the MTIC fraudsters, the so-called carousel VAT fraudsters". We accept that since the making of suspicious activity reports is a requirement under the Proceeds of Crime Act there is no possibility of an immediate change, but we caution against the possibility of SOCA being inundated with enormous volumes of data, much of which might related to matters other than serious crime. (QQ 78–80)

44. Mr Wainwright explained that within SOCA it was the International Department which was responsible not only for Europol but also for the other international channels of police cooperation in the United Kingdom. It was an integrated part of a bureau that also included Interpol, the European Arrest Warrant functions in the European Union, and a very large bilateral network of liaison officers around the world (some 140 in 40 countries). (Q 62) Liaison with Europol originally took place only through the national unit, but since the entry into force of the Danish Protocol Member States may allow direct contact between other “designated competent authorities” and Europol.³¹
45. The only disadvantage of having SOCA as the United Kingdom national unit is that it has no counter-terrorism remit.³² Sir Ronnie Flanagan, the Chief Inspector of Constabulary, told us: “... it is absolutely crucial that we in the UK have a one-stop shop. I cannot think of a better body or a more appropriate body than SOCA in that national sense. Undoubtedly, it does have shortcomings. SOCA, for example, has no remit in relation to counter-terrorism, so suddenly you find our Met colleagues, who have very much an international remit in that regard, deploy representatives to Europol quite outside SOCA ... They [the Met] have one [liaison officer] and have imminent plans for a second one to be embedded.” (QQ 379–380)
46. **While we accept that SOCA is best placed to act as the United Kingdom national unit, the fact that it has no counter-terrorism remit makes it all the more important that it should work very closely with the Metropolitan Police and other forces which do have such a remit.**
47. Each national unit is required to second at least one liaison officer to Europol, and these, having one foot in each of the Europol and national unit camps, are the main source of personal contact. The United Kingdom currently has eight staff at the Liaison Bureau representing SOCA, the Metropolitan Police, HM Revenue and Customs (HMRC) and the Scottish Crime and Drugs Enforcement Agency. The cost is in the region of £150,000 per annum per officer. Other large Member States have similar sized teams.
48. The Home Office saw the liaison bureau as an essential component of supporting Member States’ law enforcement activity, providing as it does a direct link between Europol and the Europol national unit in the home country. (p 3) SOCA was equally enthusiastic: “The unique value offered by the Europol network derives from the co-location of liaison officers from all 27 Member States in one centre, allowing in particular for operational coordination across multiple (i.e. more than two) borders. This works well for the UK in over 500 cases each year. Notable successes in recent years include the disruption of a criminal organisation involved in international drug trafficking and money laundering, operating across six countries, which led in February 2008 to the arrest in London of 22 suspects, the seizure of

³¹ Convention, Article 4; Decision, Article 8.

³² Sir Stephen Lander, the Chairman of SOCA, is a former Director-General of MI5, but this is coincidental. William Hughes, the Director-General of SOCA, is a former Director General of the National Crime Squad, while Rob Wainwright, the International Director of SOCA, was formerly Director of the International Division of the National Criminal Intelligence Service (NCIS).

125kg of cocaine, and the recovery of a substantial amount of cash and firearms.”(p 26)

Bypassing Europol

49. There is however a downside. With every Member State³³ having a number of liaison officers located within the same building it is inevitable, and plainly desirable, that informal contacts should be built up between them, particularly since these can deal with matters outside the competence of Europol. It is also inevitable that some exchanges of information should take place between liaison officers without involving Europol at all, even though dealing with matters within its competence; and a question which has exercised us is the extent to which this takes place, and whether this too is desirable.
50. We were astonished to read in the Home Office written evidence (p 3) that “the vast majority of information exchanges between liaison bureaux occurs outside the formal systems, and thus while providing very significant benefit to the participating countries the main loser is Europol, which is denied the opportunity to access the information. It is reported that up to 80% of bilateral engagement occurs this way”—a figure confirmed by Mr Ratzel. (Q 181)
51. The Home Office evidence explained that the fact that Europol is deprived of a huge amount of intelligence data is a matter of concern to them, and something they feel should be addressed. They told us that the United Kingdom is prepared to take a lead on improving the amount of bilateral exchange material shared with Europol, but that the other partner to the bilateral exchange must be similarly disposed, or else the United Kingdom could find itself frozen out of bilateral engagement. (p 3)
52. We too are concerned that such a very large proportion of information is exchanged without Europol being in any way involved. In our view Europol itself is only one of the losers; the others are all the Member States not party to these bilateral or multilateral exchanges, since they will not have access through Europol to the information, or be able to contribute to it. Their inability to contribute may also be detrimental to the Member States involved in the exchanges. It seems, as Sir Ronnie Flanagan said, that the very success of bilateral approaches can leave the Member States involved in the dialogue happy despite the centre remaining in ignorance of what is going on. (Q 397)
53. We accordingly questioned a number of our witnesses about this, including Mr Storr. He told us that if intelligence suggests that there is a European dimension involving activities of criminal organisations in a number of Member States, SOCA will take a decision as to whether to involve the SOCA liaison officers based at Europol, or whether “if it is a particularly serious case” to involve Europol’s full facilities, including analytical capacity and the ability in particular operations to open an analysis work file. (Q 5) He added: “I do not think the 80 per cent and 20 per cent are necessarily referring to the same type of operational activity. There may be some, in fact a large number, where you would simply have a particular piece of criminal activity that involved two, three or four Member States. If that is possible to

³³ and a number of other States and bodies: see Chapter 6.

solve within the liaison officer arrangements, then that probably is a more efficient way of doing it than inviting Europol formally to take charge of coordination arrangements. I think SOCA and indeed other Member States' competent authorities will constantly be asking themselves: what will get us best value out of those arrangements? Is it using the liaison officer function or is it inviting Europol to open an analytical work file or otherwise to provide assistance of a specialist nature or good quality analysis?" (Q 55)

54. Assistant Chief Constable Nick Gargan thought we had "a very generous and high quality set of arrangements in terms of SOCA liaison officers" for bilateral inquiries. (Q 369) Mr Wainwright told us that the liaison bureau was a "very effective" network of which the United Kingdom was "a good user ... the second or third highest between the 27 Member States". But he thought it "over-simplistic" to compare what was obtained through the liaison officer network with what might be obtained from the main body of Europol itself, adding that "in almost all of those cases there will have been a supporting involvement of Europol, and therefore it is not so easy to separate the two." (Q 69) Even if such a comparison is over-simplistic, it is still the case that 80% of the information is obtained directly through liaison officers at a cost to the United Kingdom of approximately €2 million a year, while the remaining 20% which comes through Europol costs this country €9.6 million. (Q 32)³⁴
55. Our own concerns about the bypassing of Europol were echoed by other witnesses. Sir Ronnie Flanagan thought that "... if [intelligence] is not channelled through the centre, if it is not channelled through the mechanisms and structures we have created, there is a great risk that those gaps result in a less than efficient ability on the part of others, not originally engaged in a particular bilateral." (Q 399) The point was even more forcefully made by Professor Monica den Boer of the Vrije Universiteit (VU) Amsterdam: "I keep emphasising this point, Europol depends on being fed with intelligence from the Member States. As long as the Member States keep the intelligence to themselves it just will not happen, so the culture of change will have to take place there rather than within Europol itself." (Q 155)
56. The Friends of the Presidency Group asked for a Management Board decision allowing the use of Europol's secure ICT infrastructure for bilateral exchanges of information between the Member States, using Europol as service provider; they suggested that where possible information exchanged bilaterally should be included in appropriate Europol databases.³⁵
57. **We agree with the Friends of the Presidency Group that it is highly desirable that bilateral exchanges of information should be recorded on Europol secure databases. The Management Board should give this serious and urgent consideration.**

A question of trust

58. The Home Office thought it was not particularly clear why so much information was not channelled through Europol; it was likely to be a

³⁴ The figures given by Mr Wainwright in answer to Q 103 are rather different, but this does not affect our argument.

³⁵ Recommendation 19.

combination of factors, but “there is the issue that tends to pervade all information exchange between countries and Europol, the issue of “confidence and trust” in handling and protecting the data”. (p 3) Mr Storr amplified this in oral evidence: “I think more needs to be done to convince Member States of the added value that Europol can provide, and indeed the integrity ... and the security of their information systems.”(Q 55)

59. In connection with the analysis work files, which we consider in the following chapter, the Home Office said: “... although there is no evidence of Europol’s systems being insecure, we recognise a reluctance on the part of many Member States to share what is very sensitive information, especially in the early stages of an investigation and the information gathering process, where any leak could compromise the investigation.”(p 5) Where sensitive material was compromised it was not only prosecution cases that were jeopardised; lives which might be put at risk, a point made both by Sir Ronnie Flanagan and by Chief Constable Ken Jones, the President of the Association of Chief Police Officers (ACPO). (QQ 385–386, 392) HMRC said bluntly: “... there is still a strong reluctance from HMRC to share sensitive intelligence with other Member States through Europol channels. The Fiscal Crime Liaison Officer Network is the preferred route.”(p 205)
60. “Confidence”, “security”, “integrity”—these words in our view all point to a lack of trust as being the main reason why the central Europol system is so often bypassed. Any information going into the system goes, potentially, to the national units of 27 Member States, and thence to their “competent authorities”, potentially all their law enforcement authorities. While there is undoubtedly an element of convenience in simply discussing problems and sharing information with only a few other liaison officers, in the case of more sensitive information this may be thought not just desirable but essential and, we would add, entirely understandable. But it entails the major disadvantage that, unless and until that information is shared with Europol and with States other than those known to be involved, it will not be apparent whether there is a benefit to be derived from making it available for analysis by Europol or other Member States.
61. Mr Augustin Diaz de Mera MEP, the member of the LIBE Committee of the European Parliament³⁶ who acted as rapporteur for the draft Council Decision, told us: “Europol was created in 1995, which is almost 13 years ago, and we have not been able to reach the kind of trust level that we wanted ... there has been a problem of not being able to share enough information and intelligence between Member States ... It is not a problem of the Member States, but rather of their special services not being able to trust each other as much as they should. The key is trust.”(Q 273)

Our conclusions

62. **There is a lot to be said for building up bilateral and multilateral contacts between national liaison officers. It is the first and most important step in the development of trust between them.**
63. **However, for Member States to share information in a limited way through liaison officers is the antithesis of the purpose of Europol, which is the enhancement of the already existing combined effort of**

³⁶ The Committee on Civil Liberties, Justice and Home Affairs.

the Member States' competent authorities so that the whole is greater than the sum of its parts. Limited sharing of information will not achieve a common approach to cross-border cooperation against serious crimes.

64. **The Home Office tell us that the United Kingdom is prepared to take a lead in improving the amount of material shared with Europol. (p 3) We look forward to hearing in the Government's response to this report precisely what steps they intend to take to bring this about.**
65. We consider in Chapter 7 how trust might be improved.

CHAPTER 4: WORKING METHODS

Intelligence-led policing

66. Intelligence-led policing has spawned an array of acronyms of which even the police can be proud, but the concept itself is simple: using today's knowledge to shape tomorrow's policing.
67. In this country the expression "intelligence-led policing" was originally used to describe an approach to crime reduction that moved resources away from retrospective crime investigations into pre-emptive operations based on analysed intelligence. Rather than reacting to events as they happen, intelligence-led policing uses the knowledge already acquired to determine crime trends and patterns, and criminal activities in progress, and uses that body of information to influence the directions the police go in targeting particular individuals, activities, geographical locations and the like.
68. This change was implemented within police organisations by the adoption of an "intelligence model" which described the different roles, responsibilities and procedures in an intelligence-led policing environment. When this was adopted nationally in the United Kingdom it became known as the National Intelligence Model (NIM). The ACPO Code of Practice on the NIM, issued in January 2005 by the Home Secretary under the Police Reform Act 2002, provided a statutory basis for the introduction of NIM minimum standards and its basic principles. This "intelligence-led approach" was supported by additional funding and made the subject of time limits for implementation. The process was described to us by Sir Ronnie Flanagan. (Q 364)
69. In November 2004 the Hague Programme adopted the goal of setting up and implementing a methodology for intelligence-led law enforcement at EU level, and introduced a new Organised Crime Threat Assessment (OCTA) as a first step. The United Kingdom held the Presidency of the EU in the second half of 2005, and Mr Storr told us that there were two key objectives: to try to establish intelligence-led policing as a concept within Europe, and to ensure that intelligence and the analysis of that intelligence led to a good quality threat assessment. Two things were achieved: one was the adoption of a new and better Organised Crime Threat Assessment (OCTA), and the other the adoption of a European Criminal Intelligence Model (ECIM), a business model for intelligence-led policing at the international level, based on the NIM. "The idea of actually using intelligence to identify and spot crime trends and to uncover operations of criminal activity in progress and to take necessary pre-emptive action were all interesting changes ... we had to work hard to convince some European partners that it was worth doing, but we managed to get it adopted."(Q 10)
70. Their hard work was rewarded when in October 2005 the JHA Council adopted the Presidency's Conclusions on proposals for intelligence-led policing. This was one of the three main matters listed in the summary of results of the Council. The Conclusions stated:³⁷

³⁷ Document 12645/05, pp 13–15.

BOX 7**Intelligence-led law enforcement: JHA Council Conclusions**

The goal of setting up and implementing a widely used and common methodology for intelligence-led law enforcement at EU level must be further enhanced through concerted and co-ordinated action by all bodies and agencies of the European Union involved in these efforts, as well as the Member States, and must be sustained over a longer period of time. The Council notes and welcomes the Commission's intention to bring forward proposals, prepared in co-operation with the relevant bodies and agencies, as well as the Member States, for further action in this area during 2006.

71. Mr Storr's view was that the concept of intelligence-led policing was now established, but "very much work in progress"; and he conceded that in many Member States it was still "slightly counter-cultural". (Q 10) The Commission were less sanguine, believing—in our view justifiably—that intelligence-led policing had been adopted in only some Member States, and that many Member States were unenthusiastic. The Commission working paper on criminal intelligence-led law enforcement, which the Council expected to be brought forward in 2006, has been delayed, possibly to 2009, and the Commission thought it "premature to work on these issues". (QQ 254–255)
72. We were told by Home Office officials that when the Council Multidisciplinary Group (MDG) on Organised Crime was looking for a new topic for its next round of Member State mutual evaluations the United Kingdom was keen to have intelligence-led policing as the subject. This would have resulted in the collection of clearer information about the extent to which this had been adopted by each Member State. However the suggestion was dismissed because there was no agreed definition of the concept.
73. There seems to us to be a considerable element of circularity involved. In October 2005 Ministers from all the Member States committed themselves to setting up a "common methodology for intelligence-led law enforcement". Presumably they, or at least their officials, understood the meaning of the methodology to which they were committing their law enforcement authorities. Three years later those officials say that they cannot tell whether this result has been achieved, or even to what extent the concept has been adopted, because, in effect, they do not understand what it is they are supposed to be achieving.
74. We share the Commission's doubts as to whether the concept of intelligence-led policing is as well established in the Member States as Mr Storr suggests. We agree with Sir Ronnie Flanagan that such changes require an "unrelenting focus" if they are to be accepted. (Q 364)
75. The Friends of the Presidency Report recommended that Europol and the Heads of Europol National Units (HENU) should draw up an inventory of the methods, skills, and knowledge required for successfully implementing intelligence-led policing. This in their view would result in recommendations on intelligence-led policing for Europol and the Member States. They thought that Europol and CEPOL (the European Police College) should organise training on the subject.³⁸

³⁸ Option 40.

76. **We believe that Europol is uniquely well placed to establish among the police forces of the Member States a common understanding of intelligence-led policing. Europol should work with the Heads of National Units and the European Police College to organise training which will encourage the adoption and use of intelligence-led policing as the common working method.**

The Organised Crime Threat Assessment

77. The Hague Programme instructed Europol to draft the first OCTA for the year 2006. Prior to that there was no Organised Crime Threat Assessment; there was only an Organised Crime Report, looking backwards and mainly based on historical statistical data, unlike the OCTA which looks forward and is based on qualitative data. Europol, strongly supported by the British Presidency, drafted the first OCTA by the end of 2005. OCTAs are now published annually by Europol, informing the JHA Council of the principal threats faced in the EU and allowing Europol to facilitate joint operational responses by Member States.
78. The Europol Work Programme for 2009³⁹ states that the strategic objectives of the organisation have been particularly influenced by the documents from the October 2005 JHA Council on intelligence-led policing and the development of the Organised Crime Threat Assessment,⁴⁰ but no specific mention of the ECIM is made. On the other hand, Europol officials promote the ECIM methodology, for example, in strategic meetings in relation to regional initiatives in the Western Balkans.⁴¹
79. Opinions on the value of the OCTAs differ. Dr Nicholas Ridley believes that “it is a magnificent *tour de force* from an academic, strategic analysis point of view ... [but] the unfortunate thing is that OCTA is not really operationally orientated”. (Q 452) SOCA however believes that “the ECIM/OCTA model is ushering in a new phase in the development of Europol, establishing the agency as a central intelligence base in the EU supporting a range of sub-regional initiatives around the EU. This approach is exactly in line with our aspirations for the organisation.”(p 25) In oral evidence Mr Wainwright told us that the OCTA was now “an embedded, very important part of the Europol machinery ... a direct response to what we did in 2005.” But he added that there was still some way to go, and that the concept of a dedicated intelligence requirement had still not taken root in Europol. (Q 81)
80. SOCA adds that responses to the OCTA now increasingly take the form of regional or sub-regional initiatives in Europe, in which a small number of Member States, sharing a common, localised problem, use Europol’s centralised knowledge base and information systems to help deliver effective operational actions. Sub-regional versions of the OCTA, for example in the Balkans, are now being developed.
81. **We congratulate the Government and officials on their work in exporting to other Member States and to Europol the concept of the Organised Crime Threat Assessment. The continued development of the OCTA should be pursued.**

³⁹ 27 March 2008, Document 7801/08 (though the pagination is numbered 7801/07).

⁴⁰ Document 10180/4/05.

⁴¹ Document 8103/08.

82. **When associated with an intelligence-led approach to policing the OCTA should improve the liaison arrangements between prosecuting and investigating officials required by Article 30(2)(c) of the Treaty on European Union, and lead to better coordination of internal security, improved information exchange, and more accurate communication. We encourage the Government to persevere in their attempts to embed these concepts in the policing culture of all Member States.**

Information Exchange and Analysis

83. The Europol Convention provides a tight legal framework for the exchange and analysis of information about organised crime and terrorism in the EU. Article 6 instructs Europol to maintain a computerised system of collected information consisting of an information system (the Europol Information System or EIS) and analysis work files (AWFs). In this section we consider the context in which they operate before looking at them individually in greater detail.
84. Title IV of the Convention seeks to regulate the respective data management responsibilities of Europol and the Europol National Units by drawing up “Common Provisions On Information Processing”. Article 13 requires Europol to “promptly notify the national units ... of any information concerning their Member State and of connections identified between criminal offences for which Europol is competent ...” This responsibility extends to information received at Europol by virtue of cooperation agreements with third parties under Article 42.
85. Article 17 specifies that the data in the Europol system can be transmitted or utilised only by the competent authorities of the Member States, only to prevent and combat crimes falling within the competence of Europol, and only in compliance with the laws of the receiving Member State. Europol can use the data for its tasks. The data sent to Europol by a Member State can be made subject to “particular restrictions on use to which such data is subject in that Member State or by third parties”. The article goes on to make clear that the restrictions in question are those established by national law—there is no provision for the use of data to be restricted because of their use in Europol.
86. Originally, therefore, the Europol Convention set out the design of a tightly defined network of trustful communication links and data stores between law enforcement officials engaged in combating Europol-type crimes across the European Union. Unfortunately, no entity was made responsible for the maintenance and development of the network; Europol and the Member States remained responsible for their respective parts of the system without there being an operating authority with responsibility for overall coordination. Early on, the development of the information system and the AWFs was divided into two entirely separate and independent programmes called EIS (Europol Information System) and OASIS (Overall Analysis System for Intelligence and Support). From the first days, the Member States drew up the Council rules applicable to Europol Analysis Files⁴² and required themselves to notify Europol of any possible access restrictions to

⁴² Council Act of 3 November 1998 adopting rules applicable to Europol analysis files (OJ C 26 of 30.1.1999, p. 1), Article 3.

their data. These restrictions could be applied retrospectively, and were not limited merely to those to which the data were subject in the Member States.

87. There have been major technological advances since the establishment of Europol, and a doubling in the number of Member States, but this does not excuse the poor delegation of powers in the arena of the computerised system of collected information. From the moment that the Member States decided that they needed the Europol network, the Council should have delegated powers to manage the whole system effectively.
88. We found ourselves wondering whether some Member States have any real interest in what Europol does, or in coordinating the necessary support for Europol. The overall picture we gained, in particular from the evidence of the Commission, was that some Member States have lost the view of what they want Europol to do in terms of information management. Europol is acting in accordance with its best endeavours, but having to make its own rules almost as it goes along. Dick Heimans, a former Europol official who is now Head of Sector for Counter-terrorism at the Commission, thought this painted an excessively bleak picture. He conceded that there would be difficulties in managing an organisation where the main power rested with the Council, working through a Management Board consisting of 27 different Member States which all had individual interests, individual systems of criminal law, individual relations between prosecutors and law enforcement personnel, and different relationships between law enforcement agencies and intelligence agencies. However he thought they were “doing a fairly good job of it”. (QQ 264–266) **We continue to doubt whether all Member States have the necessary commitment to the exchange of information which is Europol’s core function.**
89. The problem of coordination is one that has been identified in other parts of the EU structure. Professor Gilles de Kerchove, the EU Counter-terrorism Coordinator, told us: “... by attending meetings of the LIBE Committee of the European Parliament ... I have had the feeling that Members of the European Parliament do not see the overall picture where the European Union wants to go and where it will stop creating different legislation on data collection and data sharing ... [the Council] did not provide the Parliament with a strong vision of where it wanted to go and where it wanted to stop ... That is why ... I strongly recommended ... the setting up of one single working group within the Council to look at all aspects of the problem.”(Q 358) In reply to our question about segmented development of information systems relating to criminality, Mr Storr said (Q 58): “Frankly, I think if we were starting now with a blank piece of paper, we would not design the systems in quite the way in which they have been designed or developed. As with many things within the European Union, life is not perfect”—a masterly understatement.
90. In the Council Decision, nearly all traces of the tight network for trustful collaboration between competent authorities have been lost. So too has the principle of a single computerised system with a narrow focus of operations. This appears to be simply an acceptance of today’s reality, where the EIS and OASIS (AWF) programmes have been implemented independently of one another. Some Member States seem uncertain about the purpose and usefulness of loading data into the information system automatically, a development which occurred during the implementation of the current system. The OASIS programme has created large databases not originally

foreseen in the Europol Convention, developed text-mining tools and made award-winning innovations.⁴³ But meanwhile, as we have said, Member States continue to regard bilateral data exchanges as the preferred means of maintaining trustful relationships. This failure to implement an EU-wide network to connect competent authorities is a lost opportunity to address the problems of effectiveness.

Europol Information System: current implementation

91. EIS is the name of the programme of work that implements the information system component of the computerised system of collected information. The programme provides a general information exchange service available to all Member States through their liaison officers and the Europol national units. It is used to store personal information about people who, under the national law of that country, are suspected of having committed a crime for which Europol has competence, or where there are serious grounds to believe they will commit such crimes. It allows Member States to search what is in practice a central EU repository for serious organised crime. In January 2007 the EIS held 34,742 data items; by the end of the year this had risen to 62,660 items, and by April 2008 to 87,947 items. (p 87)
92. The small number of references our witnesses made to the information system is testimony to the lack of interest in it, and hence to its low level of use. It was instructive to hear Mr Ratzel on the subject: “When we confront the Member States, for example, [with the fact that] we do not have enough data in the information system, nobody is really receiving the message and putting it into action back home. If I confront the Management Board with that, the answer is ‘We are the Management Board. We are guiding the organisation, but we are not guiding our people back home.’ If I tell it to the Heads of Europol National Units ... they tell me ‘I do not have the resources back home’. If I talk to the [Police Chiefs Task Force]⁴⁴ ... their advice is ‘We are the Police Chiefs Task Force. Go to the other people and try to convince them to insert data into the system’.”(Q 179)
93. In 2007 there was an 80% increase in the number of items of data stored on the EIS, due largely to the introduction of so-called automatic data loaders, but as at May 2008 only five countries were using the automated loading system—Germany, the Netherlands, Denmark, Spain and Belgium. The United Kingdom still needs to double key any data it loads onto the EIS; data systems are not compatible, so that the automated loading system cannot be used. This is one reason why the volume of data this country loads is still very low. Assistant Chief Constable Gargan commented: “In terms of the better use of the Europol Information System, I suppose a start would be to get properly connected to it, which we are not”. (Q 394) The Home Office and SOCA both told us that these problems were being addressed (pp 5 & 26), so that “when [the IT change-out] comes on stream—hopefully within the next year or two—we will be able to update on to the EIS very quickly”. (Q 75)

⁴³ See <http://www.ialeia.org/awards>.

⁴⁴ The Police Chiefs’ Task Force was established at the European Council of Tampere in 1999. Its main purpose is “to exchange, in cooperation with Europol, experience, best practices and information on current trends in cross-border crime and contribute to the planning of operative actions”.

94. **Information capture is an important part of Europol's functions, and the Government should ensure that automatic data loading from SOCA to the Europol Information System is implemented as a matter of urgency.**
95. Across the EU, the Council Multidisciplinary Group on Organised Crime reported that "Although Europol started automatic extraction of data from Member States' national services for the launch of the EIS system, very few Member States are completely ready to operate the system. There are different reasons accounting for this situation. In some Member States the information to be transmitted is not yet defined. Some other Member States can only insert live information in the information system with the prior authorisation of judges. Due to these different levels of preparedness, it will still take time before a fully integrated Europol system is available for the benefit of all police agencies in Europe."⁴⁵
96. The United Kingdom is not a major user of the EIS. One reason is that about 45% of the entries relate to Euro counterfeiting, but there are also concerns about the quality of the data loaded. The United Kingdom aims to input only high quality data relating to serious and organised crime, but data from some other Member States need to be updated, or else have expired and need to be deleted.⁴⁶ Concerns over data quality, and hence over the value of the EIS, are one reason for reluctance to load data onto the EIS; another disincentive is the very success of bilateral engagement to which we have already referred.
97. The Friends of the Presidency Report reveals that "the majority of cross links between data exchanged via Europol are not detected. In addition, information exchanged by the liaison officers via Europol is in many cases not cross-checked against other information available at Europol". The Group recommended that "To make full use of Europol an automated cross-check mechanism should be put in place that automatically checks information in the different Europol systems (e.g. AWF, IS, InfoEx) for cross-references and wherever the handling codes applied allow for this, notify the owners of the information (Europol should be enabled to act as a black-box facilitator for all data exchanged via and processed at Europol)". They described this as a "quick win" which could be achieved by an initiative of the Director, though it might require further resources.⁴⁷
98. **We agree with the Friends of the Presidency Group that the Director should put in place a mechanism which can automatically check the information in the different Europol systems for cross-references, and where possible notify the owners of the data. If further resources are needed, they should be made available.**

Analysis work files: current implementation

99. OASIS is the name of the programme that implements the "work files for the purposes of analysis" component of the computerised system of collected information. The outcome is a group of applications that help analysts to

⁴⁵ Third Round of Mutual Evaluations of the Multidisciplinary Group on Organised Crime (MDG) Concerning the exchange of information and intelligence October 2007 (paragraph 6.2)

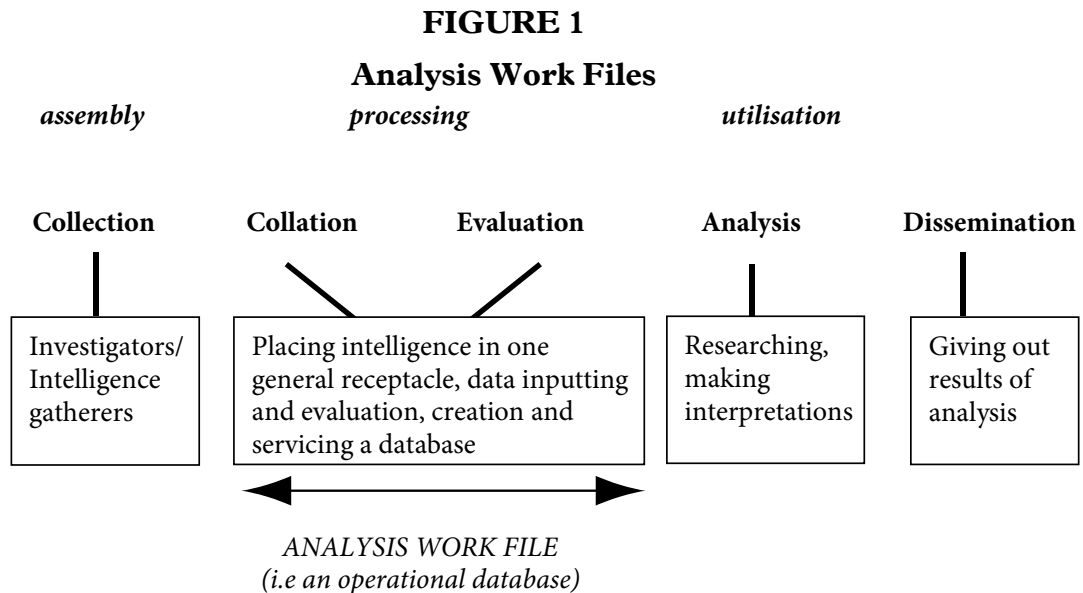
⁴⁶ Letter of 23 July 2007 from Rt Hon Tony McNulty MP, Minister of State, to Lord Grenfell; relevant extracts are printed at p 206.

⁴⁷ Option 29.

organise and present information in the form of results of analysis, data mining components and large databases that store comprehensive information in AWFs. As we have said, our witnesses referred remarkably little to the EIS. They were considerably more vocal about analysis work files, bearing out the views of the Multidisciplinary Group: “Given the current situation [of the EIS], the main tools and resources available to the Member States are still the analyses produced by Europol.”⁴⁸

100. Analysis work files (AWFs) are files in which Europol stores data on criminal offences for the purpose of analysis. Dr Nicholas Ridley explained that “an AWF is nothing more ... than an electronic storage receptacle of intelligence, instantly available to the analyst”. (Q 441) Article 10(2) of the Convention defines the purpose of an AWF as “the assembly, processing or utilisation of data with the aim of helping criminal investigations”,⁴⁹ but Dr Ridley told us that he regarded this as a misnomer. He suggested that this definition was out of date. It was equating and confusing the intelligence process with intelligence analysis. The assembly and processing of data was part of the intelligence process, and was separate from analysis. (QQ 442–443)

101. Subsequent to his oral evidence Dr Ridley sent us the following diagram:



He explained that the three stages of “assembly, processing and utilisation” of data should more accurately be seen as the five stages of intelligence collection, collation, evaluation, analysis and dissemination. The analysis work file itself was simply the database used for collation and evaluation of intelligence; analysis took place subsequently.

102. The procedure for establishment of a work file now leads to the creation of a large database rather than support for an investigation, as was originally intended. Authorisation still occurs through an opening order that states the purpose of and limitations on the collection of personal data for analysis. The order is adopted by the Management Board after being agreed by the Joint Supervisory Body.⁵⁰ Over time, opening orders have been widened to reduce

⁴⁸ paragraph 6.3

⁴⁹ Article 14(2) of the Decision repeats this language, but talks about “use” of data (rather than “utilisation”), and “assisting” criminal investigations (rather than “helping”).

⁵⁰ The Joint Supervisory Body, or JSB, is responsible for data protection; we consider this in Chapter 8.

bureaucracy and they now cover a number of investigations associated with the same theme. In 2006 AWFs covered the following categories of crime (referred to by Europol as “crime areas”):

TABLE 1
AWF Crime Areas

Crime area	Number of operational projects
Drug trafficking	3
Crimes against persons	3
Financial and property crime	4
Organised crime groups	4
Terrorism	2
Forgery of money	2
Total	18

103. Only two files on financial and property crime were operational in 2007, but four are now again operative. Mr Ratzel gave us more details: “... we have two Analysis Work Files dealing with terrorism issues ... one dealing with money laundering ... another one dealing with counterfeiting of products and the counterfeiting of money, mainly counterfeiting of euros but also of the British pound ... another dealing with trafficking in human beings, another one dealing with illegal migration and another dealing with eastern European organised criminals.”(Q 167)
104. The United Kingdom is a member of 16 AWFs and currently applying to join another.⁵¹ HM Revenue and Customs gave us examples of two AWFs in which they participate. Their main area of work with Europol is AWF Smoke, dealing with tobacco fraud. Prior to the secondment of an HMRC officer to Europol in June 2006, HMRC were contributing to AWF Smoke only on a sporadic basis. Since then the United Kingdom has consistently been in the top three, and in the last quarter of 2007 was the largest contributor of tobacco fraud intelligence in Europe with 36 out of 135 contributions. The second AWF, MTIC (Missing Trader Intra Community), opened on 2 April 2008 and is a United Kingdom lead initiative to combat abuse of the tax system by organised criminal groups. The aim is to provide a European platform for collating and analysing data from Member States’ MTIC investigations.
105. Every new AWF must have a link to the Organised Crime Threat Assessment, otherwise it would not be a priority for the Member States. Member States are not obliged to participate in all AWFs; it is up to individual Member States to declare that they are ready and willing to do so. They may not wish to participate in an AWF which specifically concerns only a few Member States, but in fact the majority would like to participate in as many as possible. (Q 176)

⁵¹ AWF Copy, dealing with product piracy ranging from designer clothes to counterfeit medicines and aircraft parts. The United Kingdom’s application was accepted on 15 September 2008.

106. Analysis is the key feature which differentiates AWFs from those databases (like the Police National Computer) which merely store information. Dr Ridley explained: "... the key aspect about analysis is that it gives added value; it gives new information or new lines of inquiry or new interpretations to enhance and move that operational inquiry forward ... the analyst is enhanced by a superb speedy data-mining system". But, he added, while AWFs were "beyond reproach in terms of instant retrieval and instant connections of intelligence", analysis was held back by cumbersome data input procedures, which caused delays in information exchange. (Q 441)
107. Mr Wainwright was enthusiastic about United Kingdom participation in AWFs. He thought the service from Europol was, in the main, a high quality service, particularly in relation to receiving tactical and strategic intelligence from its analysis files. Their importance lay in the fact that they were the only access SOCA had to a pan-European database containing millions of data entries about the most serious forms of organised crime operating in the EU. There were strict controls on how that information was held and who had access to it. Europol was currently the only restricted level for the sharing of confidential information between European law enforcement agencies. (QQ 69, 72)
108. The strict controls on access are of course the reason Member States are prepared to trust sensitive information to the AWFs. As Dr Ridley said, "it helps to assuage Member States' fears or caution about giving over information because each Member State still has sole access and control over its contributions within each work file. Only the analyst can see all the different Member States' contributions and pull them together. In a sense it is an ideal tool for obtaining information, voluntary data capture." (Q 456)

Joint investigation teams

109. The Framework Decision of 13 June 2002 on Joint Investigation Teams (JITs)⁵² allowed the competent authorities of two or more Member States to "set up a joint investigation team for a specific purpose and a limited period ... to carry out criminal investigations in one or more of the Member States setting up the team." JITs may also be set up under the two Conventions on mutual assistance in customs and criminal matters.⁵³ This allows officers of two or more Member States to work together on a criminal investigation, each State allowing officers of the other State to perform certain investigation activities on its territory.
110. The Future Group has described JITs as "an efficient tool in large-scale, complex investigations requiring concerted, coordinated action on the part of the Member States concerned." Since the entry into force on 29 March 2007 of the Protocol of 28 November 2002, Europol staff have been allowed to participate in JITs in a supporting capacity. This will continue under the Decision, allowing the teams to take advantage in particular of the analytical strengths of Europol staff.

⁵² Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams, OJ L 162 of 20 June 2002, p 1.

⁵³ Convention of 18 December 1997 on mutual assistance and cooperation between customs administrations, Article 24 (OJ C 24 of 23.1.1998, p 1), and Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union, Article 13 (OJ C 197 of 12.7. 2000, p 1).

111. The Commission draft proposal for the Decision went further, and suggested that one of Europol's principal tasks should be "the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigation teams."⁵⁴ This would have been a major change in its functions, and it did not survive the negotiations. Mr Storr told us: "We were very happy for Europol to have the role of intelligence coordinator. What we were not happy with was seeing Europol have the right to initiate an investigation, which in our view remains a decision which should be for individual chief officers of police within what the law permits." (Q 23) The President of ACPO, Chief Constable Jones, agreed: "[Europol's] key value-added is in facilitation of Member States' law enforcement activities and if it ever got into the position of initiating investigation, it would probably unravel." (Q 403)
112. Ultimately, only the Member State or States controlling the resources are currently in a position to initiate investigations. Europol can of course request or encourage the initiation of an investigation, but that is as far as it can go, and in our view rightly so. **The role of Europol in relation to joint investigation teams should be to facilitate, support and coordinate investigations, but not directly to initiate them.**

Counter-terrorism

113. When the Europol Convention was signed in 1995, international terrorism did not have the prominence it has today. Terrorist activities were not even among the forms of crime which were Europol's initial priorities.⁵⁵
114. There is no doubt about the importance which the Member States, and Europol, attach today to its counter-terrorism activities. The Analysis Work File on Islamic terrorism is the only one to which all the Member States have agreed to contribute information, and an annual EU Terrorism Situation and Trend Report (TE-SAT) is issued to complement the OCTA. Nevertheless one of our concerns was to see whether Europol's working methods were as well adapted to the fight against terrorism as against other forms of serious crime. Mr Hughes gave us an example. (Q 92)

BOX 8

Europol's role in counter-terrorism

Europol played a key role in an operation led by Greater Manchester Police to prosecute a man for offences related to terrorism. Key evidence was developed from the documents that were seized at his address in Manchester but most of the correspondence between him and his associates in Pakistan and Afghanistan was in Arabic. Europol experts supported that investigation for GMP, translated and analysed the material and found evidence that clearly showed his complicity in supporting terrorism. That man has now been prosecuted, convicted and sentenced.

⁵⁴ Article 88(2)(b) of the TFEU would have had the same effect: see paragraph 24.

⁵⁵ These were unlawful drug trafficking, trafficking in nuclear and radioactive substances, illegal immigrant smuggling, trade in human beings and motor vehicle crime.

115. In September 2005 the Council adopted a Decision⁵⁶ which obliges Member States to provide Europol with comprehensive information relating to investigations in terrorist cases involving two or more Member States. But when we took evidence from Professor de Kerchove he told us: “Europol it seems (and they have confirmed that) does not get systematic information on terrorist cases ... they have identified for the first three months of 2008 six cases, ten per cent of what they have received, where Member States should have sent information. After having asked the Member States to provide information, out of the six cases they received three answers. Out of the other three cases, in two they did not get any information and they got one refusal, based on the fact that it was not police information but linked to an intelligence operation. That means that there is room for improvement for sure”. (Q 352)
116. The 2005 Council Decision was thus adopted under the United Kingdom Presidency, two months after the 7/7 bomb attacks. It states in a recital that it is “without prejudice to essential national security interests, and it should not jeopardise the safety of individuals or the success of a current investigation or specific intelligence activities in the field of State security.” This, presumably, is the basis on which Member States believe they can decline to comply with it. But we believe that where the Governments of the Member States have unanimously adopted legislation requiring their security services to pass intelligence information to Europol, that is what should be done.
117. **The Government must make sure that United Kingdom agencies comply with the 2005 Council Decision on the supply to Europol of information relating to terrorism investigations, subject always to the qualification protecting essential national security interests. We recommend that the Government should persuade other Member States to do likewise.**
118. Professor de Kerchove also pointed out to us that Europol had suggested that the 2005 Council Decision should be amended to delete the requirement of Article 2(3) that at least two Member States must be involved in a terrorist act for that Decision to apply; he explained that when you start an investigation you do not always know if another Member State is involved. (Q 353) He thought, and we agree, that **the Council should consider amending the 2005 Decision to remove this constraint.** However we appreciate that nothing in the Decision prevents a Member State from providing Europol with information even if no other Member State is involved, and we understand that the United Kingdom already does so.
119. Currently Europol is run by the police for the police. In at least some of the larger Member States prevention of terrorism is dealt with, not only by the police, but primarily by the intelligence services through other channels, usually highly confidential bilateral channels. This is the case with the United Kingdom: as we have explained, our national unit is SOCA, which is not responsible for counter-terrorism. They told us that “currently the UK’s CT liaison post is provided through the posting of a Metropolitan Police Counter Terrorism Command (SO15) officer to the UK Liaison Bureau. He oversees the flow of a significant amount of information to Europol from ongoing UK

⁵⁶ Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences, OJ L 253 of 29.9.05, p. 22.

investigations and operations and other sources ... an increasing amount of operational data is also provided by the recently established regional CT Units, most significantly the Greater Manchester Police CTU.”(p 26)

120. We asked Professor de Kerchove whether in his view there should be a more direct link into Europol from Member States’ intelligence agencies. He replied that at the time of 9/11 he had suggested creating at Europol a counter-terrorist task force where Member States could send intelligence and security agents. However the suggestion was not well received. “The intelligence community is not very eager to work with Europol. They could [do so] ... ‘competent authorities’ may provide information to Europol. Nowhere is it said that it is only the police as such.⁵⁷ The security services, MI5 or the DST in France, could be considered as competent authorities and provide information to Europol. I think in the long run it will happen. I am optimistic on that one, but it will take a lot of time.”(Q 357)
121. For as long as communication between a Member State and Europol could only take place through a single national unit, there was no scope for a direct link with intelligence agencies. But since the entry into force of the Danish Protocol in April 2007 there is a provision, which will be carried over into the Decision, allowing Member States to authorise direct contacts between designated competent authorities and Europol. It is thus open to the United Kingdom to designate MI5 as an authority which can have direct bilateral contacts with Europol. Other Member States could of course do likewise. This would implement Professor de Kerchove’s suggestion.
122. We are however mindful of the distinction between sending information on counter-terrorism to Europol for law enforcement purposes, and the exchange of intelligence. We suspect that the reasons for the intelligence community’s reluctance to work with Europol are twofold: the low level of security clearance of many Europol officials, and the fact that intelligence is already exchanged through SitCen, the EU Joint Situation Centre.⁵⁸
123. **We believe the Government should treat with caution any proposal that direct exchanges of intelligence between the security services of the United Kingdom and those of other Member States should take place through Europol.**

⁵⁷ In both the Convention (as amended by the Danish Protocol) and the Decision “competent authorities” are defined as “all public bodies existing in the Member States which are responsible under national law for preventing and combating criminal offences”.

⁵⁸ See paragraph 29 for a fuller explanation of SitCen.

CHAPTER 5: GOVERNANCE AND ACCOUNTABILITY

Governance

124. The Council of Justice and Home Affairs Ministers, the European Parliament, the Management Board and the Director are all involved in the governance of Europol at various stages and in varying degrees. They share the same high objectives, but their aims and time scales are fundamentally different. The role of the Council is to set the overall priorities which are translated into the five-year programme on Freedom, Security and Justice, which includes provisions specific to Europol. The Parliament is involved only in budgetary issues. The responsibility for the governance of Europol rests primarily with the Management Board and the Director. It is vital that their respective roles should be clearly defined, and so arranged that they can complement and support one another. Currently this is not the case, and under the Decision things will be scarcely better.
125. Europol is not alone in having such a structure; Frontex, which apart perhaps from Eurojust is the agency most similar to it, also has a Management Board and a Director. But there the similarities end. The Regulation setting up Frontex dates from 2004,⁵⁹ and a comparison of the provisions on the Management Board and the Director is instructive. Frontex has been operative for only three years, and it may be that with time defects in its governing structure will appear. The fact remains that during our inquiry into Frontex last year we received no evidence suggesting that the structure was inadequate or ineffective.⁶⁰
126. Under both the Europol Convention and the Frontex Regulation each Member State appoints one member of the Management Board. The members of the Frontex Management Board must be appointed “on the basis of their degree of high level experience and expertise”; the Europol Convention contains no equivalent provision, and nor does the Decision. Maybe in practice this makes little difference, but in the case of at least some Member States such a provision might ensure that persons of the right calibre are appointed.
127. The Executive Director of Frontex is appointed by the Management Board for a term of five years, renewable once, and is also dismissible by the Management Board. In the case of Europol the Director is appointed, not by the Management Board, but by the Council for a term of four years, renewable once, and it is also the Council which has the power to dismiss him. This may have the effect that political factors become involved in the appointment. Mr Diaz de Mera was unhappy that the European Parliament’s suggestion that it should be involved in the appointment and dismissal of the Director had not been accepted. (Q 270) We do not ourselves regret this; in our view it would have resulted in the appointment being even more overtly political.

⁵⁹ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation, OJ L 349 of 26 October 2004, p.1.

⁶⁰ *FRONTEX: the EU external borders agency* (9th Report, Session 2007–08, HL Paper 60).

The Chairmanship of the Management Board

128. It is in the case of the chairmanship of the Management Board that the difference is greatest. The Chairman of the Frontex Management Board is elected by the Board from among its members for a term of two years, renewable once,⁶¹ but in the case of Europol the Chairman is the representative of the Member State holding the Presidency. Inevitably therefore there is a new Chairman every six months.
129. In its three years of existence Frontex has had one Executive Director who has worked with one Chairman of the Management Board. By contrast, Mr Ratzel told us that in his three and a half years as Director of Europol he had had “eight or nine different heads of the Management Board”. By now, under the French Presidency, he will have had yet another. “Some of them came new to the function with the Presidency so they had no background in the Management Board; they had no background in Europol. You can imagine that this is not to the advantage of the organisation ... and we have had to learn lessons every time from scratch, both of us, the Chairman of the Management Board and myself and the directorate members.”(Q 177)
130. On 25 June, during the Slovenian Presidency of the EU, we took evidence from the then Chairman of the Management Board, who was of course the Slovene member. Mr Robert Crepinko outlined to us his career in the Slovenian police, beginning as a cadet at the age of 14 and proceeding through rapid promotions to be Deputy Director of the Slovenian Criminal Police, a post he had held since November 2007, i.e. barely two months before he took up the chairmanship of the Management Board. (QQ 294–295) We mean no disrespect to Mr Crepinko, a senior and plainly very able officer, when we question whether a career solely in a national police force, with little or no previous experience of international organisations, is necessarily the best preparation for taking up at short notice the chairmanship of the body responsible for the strategic direction of Europol.
131. The term of the Chairmanship is the single significant change which the Council Decision will make to the constitution of the Management Board. On 7 November 2007, while the draft Decision was in the course of negotiation, Mr Tony McNulty MP, then the Home Office Minister responsible for policing, wrote to the Chairman of this Committee to say: “... it is largely accepted that the Board would benefit from having a longer term arrangement when appointing a Chair. The six month rotating Presidency arrangement allows little time for the Chair to stamp any authority on either the Board or the Director. It is being proposed that the Chair of the Management Board would serve a term of between 18–24 months ...” And in oral evidence to us he agreed that, on one level, four years might be better, but “we are in the rotation world; we are in the sort of demi-world where politics and organisational matters meet ... I am not sure that four-year rotations would garner much support in the hallowed ranks of the European Union”. (QQ 494, 497)
132. The result of the negotiations is that we remain in the rotation world. In the form in which it was agreed the draft Decision provides that the Chairman is to be “selected by and from within” the three Member States holding the incoming Presidency and the two succeeding Presidencies. The Board

⁶¹ In the case of Eurojust the President of the College is the equivalent of the Chairman of the Management Board. He is elected by the College from among its members for a term of three years, renewable once.

member so selected will hold office during those 18 months for a term which will not of course be renewable. The other members of the Management Board will have no say in who is selected to be Chairman; inevitably there will be competition between the three Member States involved, because two of them will not have what Mr Crepinko called “the possibility of enjoying the pleasure of being the Chairman. (Q 301) There can be no guarantee that the person selected will even be the best qualified of the three candidates: “the prize of Chairman of the Management Board then becomes one which the three presidencies in question have to fight over.” (Storr, Q 498)

133. Mr Storr told us: “... we would have been happy to have had a system in which the Chair was elected for a period of two years from within the Management Board as a whole; in other words, the best or the recommended one out of all the twenty-seven Member States. I think the two-year period would have given greater continuity.”(Q 27) This of course, with a renewable two-year term, is the Frontex system.

Our conclusions and recommendations

134. If the aim of those negotiating was to produce the best possible system of governance for Europol, we can only say that they have signally failed. **There is no conceivable logical connection between the nationality of the person best qualified to be Chairman of the Management Board and the identity of the Member States holding the troika Presidency; there is no reason why the other members of the Management Board should be excluded from the selection of their Chairman; and the length of three Presidencies should be irrelevant to the term of office.**
135. The new system is held up by some as a considerable improvement. We regard it simply as a missed opportunity.
136. **We recommend that the Decision should be amended before its entry into force to adopt for Europol a system identical to that of Frontex: a Chairman of the Management Board elected by and from among his colleagues for a term of two years, renewable once.**
137. **We further recommend that the dates of appointment of the Chairman and Director should be such as to give several months of overlap between their respective terms of office.**

The relationship between the Management Board and the Director

138. As we have said, a clear delineation of the respective powers and duties of the Management Board and the Director is vital to the proper functioning of Europol. A good professional and personal relationship between them is more likely if their responsibilities are clearly defined. Here too some comparisons with Frontex are pertinent.
139. The Director is accountable to the Management Board for “his activities” (Frontex) or “in respect of the performance of his duties” (Europol Convention and Decision). We see no significant difference between these formulations. However the Europol Convention and Decision have a further provision: the Management Board “oversees” the Director’s performance. The Frontex Regulation has no equivalent to this. It is not clear whether this second provision is simply the corollary of the first, or whether it implies a closer supervision by the Management Board. Whatever the intentions of the

draftsman, this seems to be how it is interpreted, and a number of witnesses regretted this.

140. Mr Storr felt that the Management Board was becoming “a little bit bogged down in the sort of day-to-day detail which in a police force within this country you would expect the chief officer of police to undertake without reference ... I would hope that the Board would not get so far down into the weeds as seriously to interfere with the ability of the Director to run an efficient organisation.”(QQ 20, 42–43) Both of the SOCA witnesses made the same point, Mr Wainwright concluding that “[the Director] should be allowed to run his organisation as a Chief Executive Officer, running the day-to-day administration of his resources and of the conduct of the operation which Europol are supporting. The Management Board ... should not be concerned with the day-to-day running of the organisation but very much with the strategy of Europol, its external relationships, and ensuring budgetary probity and efficiency.”(QQ 98–100) And Mr McNulty agreed: “There should be the time, space and discretion for the Director to get on with the job.”(Q 490)
141. Victoria Amici, for the Commission, explained that “what the Commission has proposed in its original proposal to bring Europol into the fold of the EU agencies, is precisely to give it a structure which is similar to that of other agencies ... where at least the respective roles of Management Board and Director are more clearly defined ... the Management Board should be responsible for the strategic direction of the organisation, for setting objectives and monitoring their implementation, for monitoring progress and keeping an eye on the operation of the Director, whilst the Director should be concerned with the day-to-day management and with delivering the objectives that are set to him.”(Q 267)
142. We do not ourselves see that this would necessarily have followed from the Commission proposal. However the negotiations have resulted in the draft Decision giving the Management Board a new first task: to “adopt a strategy for Europol, which includes benchmarks to measure whether the objectives set have been reached”. We believe this is a welcome addition, since it makes clear that the Board’s primary duty is strategic.
143. A less welcome change is a new provision in the Decision that a duty of the Director is “supporting the Chairperson of the Management Board in the preparation of Management Board meetings”. This might allow a strong Director with a compliant Chairman to control strategy as well. The Director already has a voice (though not a vote) on the Management Board; that should be enough.
144. The support for the Chairman should come from a Secretariat which, though inevitably it will be staffed by Europol employees under the control of the Director, must have a sufficient degree of independence to allow it to carry out the requirement of the Decision that it should be “closely and continually involved in organising, coordinating and ensuring the coherence of the Management Board’s work”. Mr Crepinko thought that the workload of the Secretariat was already very high, but under the new Decision would be even higher. (Q 309) If he is right, the Secretariat will need to be larger than it currently is. Mr McNulty however told us that the Secretariat had not been expanded, precisely so that they would leave the Director to get on with the job. (Q 490)

145. We agree with Mr Wainwright that “in the end it is going to come down to personal relationships between the Director and members of the Management Board.”(Q 99) Mr Storr told us, diplomatically, that relations between the Director and the Board “have not always been entirely plain sailing in the past”; he hoped to see “a better relationship between whoever is Director and whoever is the Management Board Chair.”(QQ 43, 491)
146. There is no guarantee that this will happen even if our recommendations for the Chairmanship of the Management Board are adopted; if they are not adopted, a good personal relationship built up over a period of time will not be possible.

Our conclusions and recommendations

147. **It should be made clear in the text of the Decision that the Management Board is responsible for the strategic direction of Europol, and the Director for its performance and administration.**
148. **It should also be made clear that the provision that the Board should “oversee the Director’s performance” means no more than that he is accountable to the Board for the performance of his duties.**
149. **However the Management Board will not be inclined to leave the Director free to run the organisation unless they feel they can trust him to do so efficiently and effectively.**
150. **In the end, good governance of Europol depends on having complementary personalities as Director and Chairman of the Management Board. We do not believe it will be possible for them to develop a relationship of mutual respect and trust unless our recommendations on the chairmanship are adopted.**
151. **The Chairman of the Management Board needs a supportive Secretariat whose staff must be allowed a sufficient degree of independence to carry out their task. If the Secretariat needs to be larger than at present, it should be enlarged.**

Budgetary issues

152. Of the changes which the new Council Decision will bring about, none will be more significant than those dealing with the budget. At present Europol is funded directly by contributions from the Member States. The United Kingdom’s proportion of the contribution averages about 15%.

TABLE 2

United Kingdom Contribution to Europol

	2002	2003	2004	2005	2006	2007	2008
€m	7.790	9.101	9.240	8.839	7.355	8.393	9.65 ⁶²
% of total	15	16	16	15	12	13	15

⁶² This table is taken from the evidence submitted by SOCA in April 2008 (p 25), so that the figure for 2008 is what was then anticipated. The United Kingdom contribution for 2008 was in fact €9.34m.

Sir Ronnie Flanagan thought that the United Kingdom's contribution in 2008 of €9.65m towards a total budget of €64m "definitely does represent value for money so far as the United Kingdom is concerned." (Q 408)

153. An audit of the accounts is currently carried out by a Committee of members of the Court of Auditors, but only because the Convention so provides; the Court of Auditors as such has no part to play.
154. The part played by the European Parliament is currently also insignificant. Mr Diaz de Mera explained that the European Parliament had only very limited control over the last Europol budget. Out of a total budget of €64 million, it had no control over the €44 million spent on staff, €3.2 million on administration costs, €2.4 million for buildings, or €2.5 million for the Management Board; it had power to control only €10.6 million for the information system and €100,000 for the operation unit for chiefs of police. (Q 276)
155. When Europol becomes an agency in 2010 it will adhere to the financial and budgetary legislative framework applicable to EU institutions and Community bodies, and will have to comply with the rules for the establishment and implementation of the budget at EU level. The annual accounts will be scrutinised by the Court of Auditors and published. (Q 227) The rules include direct control over the budget by the European Parliament. Professor den Boer thought that the decision was "an improvement from the point of view of budgetary control. It makes the control of Europol more democratic, more transparent. It transposes a lot of the responsibility to the European Parliament, which I regard as a significant step forward." (Q 150) We welcome these changes.

Accountability

156. The Director, as we have said, is accountable to the Management Board for the performance of his activities. The Management Board itself is accountable to no one. The individual members, being nominees of their Member States, can account to them in whatever way they think right, but collectively they have no obligation to appear before the Council or the European Parliament, through their Chairman or otherwise. The annual reports and future work programmes are submitted to the Council, and "forwarded by the Council to the European Parliament for information." The Presidency "may appear before the European Parliament with a view to discuss [sic] general questions relating to Europol", and "may be assisted by the Director" when it does so.⁶³ That is all.
157. No wonder then that Professor den Boer, although believing that Europol was the most mature justice and home affairs agency within the area of police and judicial cooperation in criminal matters, thought accountability was "still minimal, certainly when compared with the public institutions in the realm of national governance ... In the past we have seen several instances when the European Parliament tended to be bypassed even though it had the right to be informed or consulted, especially in terms of the agreement between Europol and the US on the exchange of strategic data on terrorism." (Q 147)

⁶³ Europol Convention, Articles 28(10) and 34(2), as substituted respectively by Articles 14(f) and 18 of the Danish Protocol.

158. The performance of Europol can only be measured against criteria decided in advance. The 2007 annual report contains charts showing an increase in the exchange of operational information, from 35,000 exchanges in 2000 to over a quarter of a million in 2007. We have already referred in paragraph 91 to the increase in the number of entries on the EIS from 34,742 in January 2007 to 87,947 in April 2008. These are impressive figures, but they would be more useful in an evaluation of the work of Europol if there was some measure of the value added by its work.
159. We asked the Minister whether there were key performance indicators that would help judge the performance of Europol on an annual basis. Replying for him, Mr Storr told us that one of the issues which concerned the Home Office during the course of the year was a report by an auditor that identified a number of weaknesses in overall management. He thought they would be looking to the new Director “significantly to try to sharpen up the way in which the performance of Europol and the management information indicating how good was that performance was put together.”(Q 508) The report was commissioned by the Director, and we thought it would be useful for us to see it; however Home Office officials have told us that it was still in draft, and still under the control of the Director. At the date of this report it has not been published.
160. The change to agency status in 2010 will increase accountability in two further ways which we now consider: four-yearly reviews, and accountability to the European Parliament and national parliaments.

Four-yearly reviews

161. Most EU agencies are required to commission an independent audit every few years to evaluate how well the agency is carrying out its tasks. There is no such provision under the Convention, since Europol is not yet an agency, but Article 37(11) of the Decision requires the Management Board to commission an independent external evaluation of the implementation of the Decision within four years of its entry into force, and every four years thereafter. The Management Board issues the terms of reference. The report is made to the Management Board, which is required to forward copies to the Parliament, the Council and the Commission.
162. The Decision contains no further details. In this it contrasts, again adversely, with the Frontex Regulation. Article 33 of that Regulation requires the independent evaluation “to take into account the views of stakeholders at both European and national level”. Maybe the body evaluating Europol will also do so, but it will be under no obligation to seek the views of, for example the national security agencies and police forces whose views on the performance of Europol would be illuminating.
163. The Frontex Management Board, on receiving the results of its evaluation, is required to make recommendations about changes to the Regulation and the working practices of Frontex and to forward them to the Commission, which in turn forwards them to the Council with its own views and proposals, and if necessary an action plan with a timetable. The findings and recommendations of the evaluation are to be made public.
164. The Europol Decision contains no similar provisions. The Commission told us that they were in the course of conducting an “evaluation of evaluations” for all 26 of the EU agencies. They were already in the course of analysing

the differences, and they expected to have the results in 2009 or 2010. (Q 239) This cannot justify the current lack of any provisions which would underpin a serious evaluation. Maybe it has been assumed that the same procedures will be followed as are required to be followed in the case of Frontex; if so, we believe this is an unsafe assumption to make.

165. **If a full and independent evaluation of the work of Europol is to take place only every four years, the Decision should give guidance as to how the evaluation is to be carried out, and what is to be its outcome. We would like to see the Decision amended in line with the Frontex Regulation.**
166. **Whether or not the Decision is amended, it should be clearly understood that the independent evaluation must take fully into account the views of stakeholders, and that the Management Board and the Commission both have parts to play to ensure that any shortcomings shown up by the evaluation are put right within a reasonable time.**
167. **In the end, any organisation will function well only if its staff can work together as one unit in an atmosphere of mutual confidence and trust. We hope that the evaluation will pay particular attention to this issue.**

Democratic accountability

168. Recital (20) of the Decision reads: “It is also desirable to provide for enhanced control over Europol by the European Parliament in order to ensure that Europol remains a fully accountable and transparent organisation”. Aside from the budget, the only provision on these lines is Article 48, requiring the Presidency, the Chairman of the Management Board and the Director to appear before the European Parliament when so requested. The “enhanced control” seems to arise from the fact that under the Convention it is merely permissive for the Presidency and Director to appear before the Parliament.
169. Not surprisingly, some of our witnesses regarded this as inadequate. Professor den Boer thought that “democratic accountability ... could still be improved to the extent that the European Parliament were fully responsible for the democratic control of Europol in combination (and I emphasise ‘in combination’) with the national parliaments.”(Q 149) Professor Juliet Lodge from the University of Leeds also stressed the role of national Parliaments: “I think the parliaments, the national parliaments in particular ... need to become more proactive in stating what they want before technology is adopted ... I think there is a role also for national parliaments in being very vigilant in defining the objectives and the competences of Europol ... In addition to that, the national parliaments might want to have some oversight over the output from joint investigation teams ...”(Q 126)
170. At the time the Decision was agreed, it was assumed that the Treaty of Lisbon would have been in force for a year before Europol became an agency. Had that been the case, then as we explained in paragraph 24, Article 88 of the TFEU would have required the European Parliament and the Council to adopt regulations which, among other things, “shall also lay down the procedures for scrutiny of Europol’s activities by the European Parliament, together with national Parliaments.”

171. Article 85 of the TFEU has a similar but not identical provision for Eurojust. It reads: “These regulations shall also determine arrangements for involving the European Parliament and national Parliaments in the evaluation of Eurojust’s activities.” In the case of Eurojust the national parliaments are placed on a more equal footing with the European Parliament, and are “involved in the evaluation” of Eurojust’s activities, as opposed to “scrutinising” Europol’s. There are differences in other language texts. A deliberately different text normally suggests that a different meaning is intended, but it is not clear what that difference might be in practice.
172. What seems clear is that in the case of Europol it was to have been for the European Parliament to take the initiative. What remains unclear is whether, in the absence of a formal legal base, there will be any part for the European Parliament and national parliaments to play. Clearly there is no way in which the Parliament and Council can adopt a Regulation to lay down the procedures; but we see no reason why the Parliament should not adopt its own procedures, and invite national parliaments to play a role.
173. In our last report on Europol,⁶⁴ looking at the proposals of the Danish Presidency which were the basis of the Danish Protocol, we noted that in February 2002 the Commission had published a Communication on *Democratic Control over Europol*⁶⁵ which proposed a joint committee of the European Parliament and national parliaments meeting twice a year to scrutinise the work of Europol. The Danish Presidency adopted this suggestion in the first draft of the Protocol, but it was withdrawn from subsequent drafts. We thought this a pity, and recommended that the Government should press for the idea of a joint committee to be reinstated.⁶⁶ We do not repeat that recommendation today; a committee which might have been merely cumbersome when there were only 15 Member States would surely be almost unworkable with 27.
174. **It must be for the European Parliament to decide whether it wishes to adopt, in the spirit of the Treaty of Lisbon, a formal procedure for the scrutiny of Europol’s activities, and whether, and if so how, to involve the national parliaments of the Member States. We hope however that the Parliament will give this serious consideration.**
175. The change in Europol’s status which will be brought about in 2010 will not of course in any way affect the ability of this Parliament, through its Select Committees, to continue to hold the Government to account for their part in the activities of Europol.

⁶⁴ *Europol’s Role in Fighting Crime* (5th report, Session 2002–03, HL Paper 43)

⁶⁵ COM(2002)95 final.

⁶⁶ Report, paragraph 40.

CHAPTER 6: RELATIONS WITH PARTNERS

Eurojust

176. The Danish Protocol added to the Europol Convention a provision requiring Europol to “establish and maintain close cooperation with Eurojust, in so far as it is relevant for the performance of the tasks of Europol and for achieving its objectives, taking into account the need to avoid duplication of effort”—this despite the fact that common law countries have in the past shown a degree of nervousness about there being too close a relationship between evidence-gatherers and prosecutors. The Decision setting up Eurojust contains a provision in the same terms; and both require the two agencies to enter into a cooperation agreement.

BOX 9

Eurojust

Eurojust was established in 2002 to enhance the effectiveness of the competent judicial authorities of the Member States when dealing with the investigation and prosecution of serious cross-border and organised crime. Like Europol, it has its headquarters in The Hague. It aims to improve co-operation between those authorities in investigations and prosecutions, at strategic level, in individual cases, and looking at specific types of criminality. In particular Eurojust facilitates international mutual legal assistance and the implementation of extradition requests. The College of Eurojust is composed of a member nominated by each Member State. The members are senior and experienced prosecutors or judges.

177. The President of Eurojust, Mr José Luis Lopes da Mota, described Europol as “our privileged partner,” dealing with police cooperation while Eurojust deals with judicial cooperation. The aim, he said, was to have police cooperation and judicial cooperation working together from an early stage of investigations, to produce a common overall approach to criminal activity affecting two or more jurisdictions. (Q 200)
178. We were told that in 2007 the agencies worked together very successfully in 27 cases. One of these dealt with a major child abuse network.⁶⁷

BOX 10

Cooperation between Europol and Eurojust

Operation Koala began in 2006 when a child abuse video was discovered in Australia. It had been produced in Belgium, and the information from Australia was routed via Interpol to Belgium and Europol. The producer of the material, a 42-year-old Italian, was arrested. He was running a website on which he sold over 150 self-made, sexually explicit videos of underage girls. After his arrest the Italian authorities forwarded all the digitalised material, including customer details, to Europol. The material was analysed and disseminated to the countries in which customers were identified. Eurojust and Europol, working in close cooperation, invited representatives from 28 countries to several operational meetings in The Hague, resulting in simultaneous and coordinated actions in 19 countries in the EU and beyond. 2,500 customers in 19 countries were identified; thousands of computers, videos and photographs were seized, and more than a million files and pictures were found.

⁶⁷ Europol Annual Report for 2007, p 19.

179. As required by the instruments setting them up, the two organisations signed a cooperation agreement in 2004, and approved a memorandum of understanding to implement the agreement. The heads of the two organisations each stressed the importance they attached to good relations with the other body. Mr Lopes da Mota told us that Eurojust's relations with Europol were "developing in a very positive way". (Q 200) Mr Ratzel gave us more details. In addition to his periodical meetings with Mr Lopes da Mota, there were for example meetings of experts from the IT departments to establish a secure technical link between the two organisations, and meetings of Eurojust prosecutors and Europol analysts involved in crime analysis and in investigations. (Q 192)
180. A secure communication link between the two organisations was established in 2007, but the extent to which sensitive data in analysis work files can be passed by Europol to Eurojust still causes problems. At the meeting of the Article 36 Committee in April the two organisations were invited to submit their views. Eurojust did so on 8 May 2008,⁶⁸ regretting that the Council had not inserted in the Europol Decision a provision to mirror Article 7(f) of the Eurojust Decision, which provides for Eurojust to assist Europol by providing it with opinions based on the analysis carried out by Europol. Currently the cooperation agreement requires Europol to supply analysis data and results to Eurojust only "as far as allowed under its legal framework and this Agreement," and even then only "when appropriate".
181. Eurojust is frustrated by the limits on its access to AWFs, and would like to see the cooperation agreement amended to allow a freer flow of information. Professor de Kerchove, looking at the counter-terrorism aspect, thought that in that field it made sense that Eurojust should get access, if not to 100 per cent of the AWFs on Islamic terrorism, at least to the main findings, and that conversely Eurojust should feed information to the AWFs. (Q 354) SOCA also took the view that there was "an insufficient flow of information between the two organisations". (p 25)
182. But the problems are mainly caused by the Member States. The Home Office told us that the Government "recognises certain practical difficulties about extending access to Europol's data systems, and especially some of the particularly sensitive material, such as contained in some of the Analytical [sic] Work Files ... Europol relies on Member States for the supply of its base data, and given some concerns about how securely Europol will store and use that data, which already limits the amount of information exchange, an extension could result in the 'tap being turned down', rather than opened up, which is what we feel must happen."(p 3)

Co-location

183. All of our many witnesses who addressed the issue agreed that close cooperation between Europol and Eurojust required geographical proximity. Ms Michèle Coninsx, the Vice-President of Eurojust, explained that in 2001 the Heads of State decided that Eurojust should be sent to The Hague to be able to cooperate with Europol, and so in 2002 they moved to The Hague. They were not however in the same part of the city, and this could not have been what the Heads of State had in mind "because we operate in exactly the same areas, covering exactly the same phenomena without any exception and

⁶⁸ Document 9086/08.

our goals are exactly the same ... to dismantle criminal networks, to stop organised crime and terrorism.”(Q 206)

184. Europol has outgrown its existing building, and is shortly to move to a new building on a new site. Everyone involved thought this an excellent opportunity for the organisations to be located, not just close to each other, but on the same site and in the same building. Mr Ratzel said: “... we advocated strongly that Eurojust and Europol should be co-located as closely as possible, if possible under one roof with separate areas of competence.” (Q 192)
185. The Ambassador of the Netherlands to the United Kingdom assured us that neither the Dutch Government nor the Municipality of The Hague at any stage opposed co-location; on the contrary, they agreed that co-location would be very beneficial.⁶⁹ Nevertheless this will not take place. The organisations will be in two separate buildings but at walking distance from each other. Mr Jacques Vos, the acting Administrative Director of Eurojust, explained: “The unfortunate thing is that the site chosen already for the Europol location was too limited in scope, with the additional expansion that would be required for the growth of both Eurojust and Europol over the next 10 to 15 years, to allow both organisations to cohabit in one facility. All our efforts are currently geared to cohabiting in the same area ... Certain services like security services could have been combined, and so we really regret it and Eurojust expressed its dismay also that that option was not considered when it was decided for Eurojust to come to The Hague. It was a missed opportunity for all parties concerned.”(Q 210)
186. Professor de Kerchove said: “I have always thought that the two agencies should be in the same building. To me it is very unfortunate that that has not been decided.”(Q 355) When we put this to Mr McNulty he replied: “I visited both [organisations] in The Hague and I do know and appreciate that co-location helps enormously in terms of the two working together in partnership.”(Q 477)
187. **We believe that for Europol and Eurojust to be located and working together in the same building could have resulted in a partnership which was easier, more productive and above all more secure. We share the disappointment of our witnesses that this will not now take place.**

Other EU agencies

188. Europol has, and needs, particularly close relations with Eurojust, but it also needs to maintain good relations with the European Anti-Fraud Office (OLAF), Frontex, the European Police College (CEPOL), the European Central Bank (ECB) and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA).⁷⁰ Once the Decision is in force, Article 22 will require Europol to conclude agreements with these bodies which will set out the circumstances in which it can pass personal data and classified information to them.

⁶⁹ Letter of 5 August 2008 from the Netherlands Ambassador to the Chairman of Sub-Committee F, p 208.

⁷⁰ The headquarters of these organisations are spread widely in the EU. While Eurojust, like Europol, is based in The Hague, OLAF is based in Brussels, Frontex in Warsaw, CEPOL in Bramshill, Hampshire, the ECB (with its interest in the counterfeiting of Euros) in Frankfurt, and EMCDDA in Lisbon.

189. The most important of these organisations is Frontex. The two have worked together informally since 2006, and SOCA thought the early signs of cooperation between them were encouraging. (p 25) The Home Office explained that the delay in establishing a formal agreement had been caused by the need for Frontex to change its systems to meet the necessary data protection and data sharing compliance standards. However there was a good operational engagement, with Frontex providing valuable information concerning serious and organised criminality; this had allowed the two organisations to produce an assessment of the high-risk routes for illegal immigration through the Western Balkans. (p 2)
190. Isabelle Pérignon, the Head of Sector for police cooperation at the Commission, told us that the heads of agencies in the JHA field, CEPOL, Eurojust, Europol and Frontex, had just held their third annual meeting to exchange best practice and ideas on how to improve relations among them; the Commission supported this initiative. (Q 244)

Interpol

191. We have explained in paragraph 28 some of the similarities and differences between Europol and Interpol. The two bodies signed a Joint Initiative in 2001, and Interpol has a liaison officer permanently stationed at Europol, and an arrangement for participating in two AWFs. Mr Ratzel told us that the policy of the two bodies was to complement one another, so that the Member States would not be paying twice for the same services. (Q 192) This is important, since many of the services they offer are not dissimilar. However Interpol concentrates on the exchange of information in relation to crimes which have already taken place. It is not forward looking, and does not carry out analysis or threat assessments.
192. SOCA regards Europol's cooperation levels with Interpol as "patchy", with some issues concerning shared responsibilities over the provision of certain police services still unresolved. (p 25)

Third countries

193. Europol has two classes of agreements with third countries. In the first category are those countries where the Council has given its approval to the transfer to that country of classified information and personal data, because it is satisfied that the country has adequate arrangements for handling and protecting such data.⁷¹ In this category there are organisational agreements with Australia, Canada, Croatia, Iceland, Norway, Switzerland and the United States. Australia, Iceland, Norway and Switzerland have liaison officers stationed at Europol, and there is one from each of the US Secret Service, the US Department of Justice (Drug Enforcement Administration), the US Postal Inspection Service, and the FBI.
194. In the second category there are strategic agreements, which do not allow the transfer of data, with Albania, Bosnia and Herzegovina, Colombia, Moldova, the Russian Federation and Turkey. Of these, only Colombia has liaison officers stationed at Europol, but this is a fruitful partnership.

⁷¹ We deal in Chapter 8 with the procedure for deciding on the adequacy of a data protection regime.

BOX 11**Operation Euro Tree⁷²**

Europol successfully supported the Spanish and Colombian authorities and the US Secret Service in a joint police action against a Colombian criminal network producing and distributing counterfeit euros and US\$ Dollars. In the final stage 10 house searches took place simultaneously in Bogotá. Specialists from Europol's forgery of money unit provided analytical and technical support to the investigators from the beginning of the operation. Nine persons were arrested and the following amounts of counterfeit currency were seized (face value):

- 400,000 counterfeit euro (50 and 100 denomination)
- 1 million counterfeit US\$ (20 and 100 denomination)
- 4.4 million counterfeit US\$ in preparation
- 550 million counterfeit Colombian Pesos
- 63 million Venezuelan Bolivar (to be used as raw material)
- 533 Colombian lottery tickets.

All technical equipment required for the production of the counterfeit notes was seized. This was the largest criminal organisation involved in the production and trafficking of counterfeit US\$, euros, and Colombian pesos. During this eight month investigation the different techniques used by the counterfeiters were identified, as well as the routes used to distribute in Europe, the United States, Panama, Costa Rica, Venezuela and Ecuador.

195. In August this year there was another spectacular operation in Bogotá, when as a result of cooperation between Spain and Colombia, organised by Europol, counterfeit Euro notes to a record value of €11 million were seized. The equipment used to make the notes was also seized, and arrests made.⁷³
196. There was a divergence of views between the Home Office and SOCA on the value of these agreements. Mr Storr said: "As far as wider partnerships are concerned, we are fully behind Europol's efforts to establish working relationships with third countries outside the European Union, with European and other bodies involved in law enforcement. We think that partnership approach is very much the way to go."(Q 20)
197. SOCA pointed out the limitations following from the data protection requirements. It did not challenge the need for these, but complained that "many of these agreements are restricted to 'strategic' matters only and have delivered little by way of tangible benefits. The experience suggests Europol should spend less time pursuing such external agreements and focus on delivering its goals within the EU."(p 25) In oral evidence Mr Wainwright told us that the amount of legal and political effort needed to get such strategic agreements signed was such that very often the dividend that followed was not great; "the cooperation agreements that Europol has with Russia, for example, and other countries is limited to the exchange of strategic information only, threat assessment papers and so on, which sometimes is helpful but has a natural limit in terms of how useful it can be."(Q 93)

⁷² Europol Annual Report for 2007, p 25.

⁷³ Europol press notice of 29 August 2008.

CHAPTER 7: SECURITY

Enhanced security

198. We referred in Chapter 3 to the importance of developing the trust Member States have in the integrity and security of Europol's information systems, so that they can be confident of entrusting to Europol even their most sensitive intelligence information. The trust is of two kinds: trust by Member States in the security of each others' intelligence services, and trust in the technology of the data systems.
199. Professor Lodge emphasised that Europol needed to maintain the right balance between automation and analysis by the individual. In answer to our question about the increase of bilateral information exchanges foreseen by the Council Decision, she said: "I think, firstly, that ad hoc-ism can be very valuable, but, as you are pointing out, it is based on mutual trust, and the more that Europol, Eurojust and all the associated agencies move towards automated information exchange, the more they are relying on the technology rather than the analysis by the individual. If you cannot trust technology—and you cannot trust the technology—then this issue of trust has further ramifications for political accountability and legitimacy of the whole system which then impacts on the citizen."(Q 155)

Responsibility for security

200. Europol's rules for monitoring security issues are governed by a Council Act which came into force on 1 July 1999, the day Europol began operations.⁷⁴ The Act provides that one of the Deputy Directors appointed by the Council acts as Europol Security Coordinator; he is the Deputy Director to whom the Director assigns, as one of his duties, "the function of coordination and control in matters of security". The Act also sets up a Security Committee consisting of representatives of the Member States and of Europol. The Committee is chaired by the Security Coordinator, and its task is to "advise the Management Board and Director of Europol on issues relating to security".
201. Because of the critical importance of security, one of the first questions we put to the Director was to ask him if he was satisfied with the level of security at Europol. In reply, the Director described the various aspects of security involved: "physical security, technical security, vetting of people, screening of people, handling of data, safeguarding of data". He was confident that Europol had achieved "a considerable level of security", and that it was improving. (Q 168)
202. When Mr Ratzel explained to us the relationship between the Director and his deputy when acting as Security Coordinator, he told us that the Security Coordinator was, in that capacity, "not under my governance". He added that "The Security Committee, in which all the Member States participate, advises the person in charge of security and in that security coordinating function he is independent from my tasking."

⁷⁴ Council Act of 3 November 1998 adopting rules on the confidentiality of Europol information, OJ C 26 of 30.1.1999, p 10, as amended by the Council Act of 5 June 2003, OJ C 152 of 28.6.2003, p 1.

203. Mr Ratzel further explained to us that “If the Security Coordinator decides that something is wrong with security within Europol he informs me and advises me what to do. If I do not follow the advice, if I am not able to follow it, if I am not willing to follow it or if I am not successful in following it, this person informs the Management Board what was the advice, what has been done by the Director and what nevertheless has not been achieved so far. That gives you a clear indication of the strong role of the security coordinator.”
204. From this evidence it seemed that the Security Coordinator was not responsible to the Director for security matters, and indeed for some purposes bypassed him and went straight to the Management Board. We thought it inconceivable that the Director should not have overall responsibility for security; moreover it seemed to follow unequivocally from the words of Article 4(2) of the Council Act that he should have this responsibility: “The Security Coordinator shall be directly answerable to the Director of Europol”.
205. Accordingly, after we had completed taking evidence we asked Europol officials to clarify the situation. They submitted to us a supplementary memorandum, specifically approved by the Director (p 78). From this it seems that, despite the wording of Article 4(2) of the Council Act, when acting as chairman of the Security Committee the Security Coordinator is indeed “independent from the Director’s governance and tasking”. The memorandum explains that the Security Committee “can thus be considered as a sub-committee of the Management Board” and that “it is thus self-evident that the chairman of a sub-committee of the Management Board acts independently from the Director of Europol.”
206. Nor is that all. Mr Ratzel also told us that there was an additional internal unit dedicated to dealing with security for data protection, data security and confidentiality, “and at the same time this unit serves the security coordinator as a secretariat in his role of having the Security Committee guided ... In addition, we have a security officer in the organisation who is in charge of looking for security issues every day in practical terms and also, as far as necessary, of dealing with internal inquiries. These internal inquiries are then done under my command.” The head of the unit was thus also in charge of data protection, data security and confidentiality, and was at the same time the data protection officer of the organisation. However as data protection officer he was not under the Director’s command, but nevertheless had direct access to him and advised him what to do on data protection issues.
207. We asked Mr Ratzel how much of a worry security was to him on a scale of one to ten, “one” meaning that he did not worry about it at all. His reply was “close to two”. (QQ 169–170) We do not suggest that he was not concerned about security; we hope he is, for in our view a lack of concern about security rapidly breeds complacency. An organisation which is not proactive about security is one which puts itself at risk of security breaches; good security is a matter of constant vigilance.
208. Nevertheless we think there are a number of reasons why Mr Ratzel should be worried. It seems to us that the mechanisms set up for handling security issues are extraordinarily and unnecessarily complex—so complex that the Director’s oral evidence to us needed considerable clarification. We can well understand that the Management Board, which has oversight of the proper

performance of all the Director's duties, including those relating to security, should want independent advice on these matters. The Director too needs advice, and for this he has a deputy who is security coordinator, and who in turn has a security officer and a security unit. That seems logical. What is wholly illogical is that the Security Committee should advise not just the Management Board but also the Director, and should be chaired by the Director's senior security adviser who, in his capacity as chairman, is not responsible to the Director.

209. Moreover we doubt whether, other perhaps than in the case of institutional matters, advice to the Management Board on security is best provided by a sub-committee which, like the Management Board itself, consists of representatives of all the Member States. Security issues should be dealt with on a need to know basis. Member States whose security services are directly affected by a breach or potential breach of security must be informed, but we see no reason why any other Member State need be involved at all, let alone twice over.
210. The first draft of the Council Act—then known as the Confidentiality Regulations—included in Article 3, establishing the Europol Security Committee, a paragraph (4) providing that “The members of the Europol Security Committee shall have appropriate experience in security and law enforcement.”⁷⁵ Inexplicably, this was deleted before the Council Act was adopted, the implication being that there is no need for the members of the Committee to have any such experience. It seems to us self-evident that whatever body it is that provides advice to the Management Board on security matters must consist of, or at least include, security experts.
211. Although security of course plays a part in data protection, there is a major difference between, on the one hand, safeguarding intelligence so that it does not leak to criminals and jeopardise operations against them, and on the other preventing information about individuals from leaking into the public domain. Only the first of these is truly a security issue. Yet it seems that the same security officer who, when dealing with internal security inquiries, works to the Director, is also the data protection officer, and as such not under the Director's command.⁷⁶

Our conclusions and recommendations

212. It is not for us to suggest a detailed structure for managing security at Europol. However we believe there is a case for a radical re-think. In our view the following basic principles should be adhered to.
213. **The Director of Europol should have overall responsibility for security in the organisation he directs. There is no case for the responsibility lying with a deputy whose responsibility bypasses the Director.**
214. **Advice to the Director on security issues must come from within the organisation: from the deputy he appoints to deal with such matters, and from the security officer and other officials responsible.**

⁷⁵ Document (P) 11143/96. See *Europol: Confidentiality Regulations* (1st Report, Session 1997–98, HL Paper 9), page 10.

⁷⁶ We deal with data protection in the following chapter.

215. **Whatever body it is that advises the Management Board on security issues must be small, must consist of security experts, and must work on a need to know basis. Except perhaps in the case of institutional matters there is no need for all Member States to be involved, or indeed for any Member States to be involved unless the security issues directly involve them or their national units or liaison officers.**
216. **There must be clear demarcation between safeguarding security and data protection.**
217. **Changes to the security structure can be made by amendment of the Council Act. The Council can make such amendments at any time; there is no need to wait for the Europol Decision to come into force.**⁷⁷

Individual security

218. Mr Ratzel gave evidence to us in person on security issues, so that we did not have an opportunity to question directly the Europol Security Coordinator or Security Officer. However when we took evidence from Eurojust the President was accompanied by Jacques Vos, the acting Administrative Director of Eurojust, who explained to us the problems about vetting the security of individuals from 27 different Member States: “There is no consistency whatsoever and this needs to be redressed in the future Europe-wide because there is a big disparity now between the vetting procedures applied in a NATO context, for example, where the military systems are well equipped to handle this, and agencies like ours ... We are now in the process of identifying those sensitive posts ... They should be cleared at the highest level.”(Q 223) We agree, though we would qualify this by saying that clearance should be to the highest level required by the particular post in question.
219. Clearly there will continue to be a lack of trust between the Member States and Europol, and a continuing failure to communicate to Europol sensitive intelligence, if they cannot be sure that all those working at Europol, whether directly for Europol or in the national units, are cleared up to the highest necessary security levels.
220. Article 31(2) of the Europol Convention provides: “Where Europol has entrusted persons with a sensitive activity, Member States shall undertake to arrange, at the request of the Director of Europol, for security screening of their own nationals to be carried out in accordance with their national provisions and to provide each other with mutual assistance for the purpose.” In Article 40(2) of the Decision the opening words have been changed to “Where Europol intends to entrust persons with a sensitive activity ...” making clear that an individual must have security clearance before receiving any Europol classified information.
221. We agree with Mr Vos that, in organisations like Europol or Eurojust, security clearance must routinely be to the highest level required for a particular post. A person who cannot be cleared to that level has no reason to be at Europol, nor to be receiving information from Europol in a Member State. Security clearance is an expensive exercise, but **if Member States are prepared to devote the necessary resources to clearing all individuals involved to the highest security levels required for their work, this alone should do much to enhance trust.**

⁷⁷ Currently a Council Act adopted under Article 31(1) of the Convention needs unanimity, but no other body is involved. Once the Decision is in force, Article 40 will require consultation of the European Parliament, but QMV rather than unanimity.

CHAPTER 8: DATA PROTECTION

222. Europol, like any other body handling sensitive personal data, needs rules for protecting those data, and these rules have to balance the needs of crime analysis with those of data protection in a situation where the volume of data is growing exponentially.

Data Protection under the Europol Convention

223. Under Article 14 of the Convention, Member States are required to have in force data protection provisions at least of the standard required by the 1981 Council of Europe Convention.⁷⁸ Europol itself is required to take account of the principles of the Convention.
224. Europol has a data protection officer, though this is not a requirement of the Convention. Monitoring of data protection at Europol is ultimately the responsibility of the Joint Supervisory Body (JSB), an independent body set up under Article 24 “to ensure that the rights of the individual are not violated by the storage, processing and utilization of the data held by Europol.” The members of the JSB are drawn from the data protection authorities of the Member States. David Smith, the Deputy Information Commissioner who is the United Kingdom representative on the JSB, and currently its Chairman, explained that “The role of the Joint Supervisory Body is essentially independent supervision. It is to take an independent view of whether Europol is complying with the data protection requirements in the Europol Convention and in the legal instruments which sit above that ... The Joint Supervisory Body is primarily concerned with processing by Europol and, when bilateral channels are used, that essentially is not a Joint Supervisory Body matter.” (QQ 411–412)
225. These last words illustrate the tension arising between the respective responsibilities of the Member States and of Europol. The JSB is concerned only with data held and used by Europol. Data used on Europol’s premises for bilateral exchanges belong to the Member States involved and not to Europol; they are therefore not subject to Europol’s rules on data protection, or to supervision by the JSB, but they will be subject to the data protection rules of the Member States. Likewise, all the data on Europol’s databases come from a Member State. Until inputted into Europol’s databases they are the sole responsibility of the Member State, and even after they have been inputted the Member State retains a responsibility.
226. Mr Smith gave us an example of the problem (Q 416):

⁷⁸ Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, and Recommendation No R (87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987.

BOX 12

The ownership of data

The Deputy Information Commissioner explained that information on a group of 33 young women was in the Europol information system. They were a ring of prostitutes and the information indicated that they were suspects of criminal activity. When we traced it back to the Member State, it appeared that actually they were probably victims of people trafficking, though it was possible that amongst the 33 one or two were part of the criminal ring behind the people trafficking. There was not sufficient evidence to hold them in the Europol system as suspects. Our report asked for those data to be deleted. When we came to do the inspection this year, those data were still in the system. We wrote to the data protection authority for the Member State, because the inputting of data is a matter for the Member State rather than Europol, and we also wrote to the Director reminding him that Europol have some responsibility as well. We set a time limit and those data were then quickly removed from the system.

Agreements with third States

227. We explained in Chapter 6 that there is one category of agreements between Europol and third countries which deal only with strategic matters and other generalities. Before Europol can communicate personal data to a third country or body the Council must be satisfied that “an adequate level of data protection is ensured” in the State or body in question. It reaches its conclusions on the advice of the Management Board, which in turn consults the JSB.⁷⁹
228. The adequacy is assessed taking into account the nature of the data, the intended use, and the duration of the intended data processing. Mr Smith explained that an “adequate” level of protection did not necessarily have to be equivalent to the level of protection offered by the Member States themselves, but he thought the adequacy requirement was entirely justified.
229. When he gave evidence to us on 9 July 2008 the JSB had on its agenda agreements with Russia and Israel, on the basis that Europol wanted to exchange personal information with Russia and Israel and could not do so because an agreement was not yet in place. (Q 434)
230. Eurojust too can communicate data to the competent authorities of third States, but again only if it is satisfied that “an adequate level of data protection is ensured” in those States.⁸⁰ However in the case of Eurojust its own Joint Supervisory Body assesses the adequacy of these arrangements, and there is no guidance at all on the matters it should take into account. Mr Smith thought it “slightly odd” that the adequacy of the level of data protection was assessed by separate bodies, and that the same applied to other organisations; in his view “a slightly more joined-up system would be of benefit to everybody.”(Q 434)
231. We agree. Where organisations can share much of their information it is in our view more than slightly odd that different bodies can make potentially different assessments of the adequacy of the data protection arrangements in

⁷⁹ Article 18 of the Europol Convention.

⁸⁰ Article 27 of the Decision establishing Eurojust.

a third country.⁸¹ Although in the case of Europol the opinion of the JSB is advisory only, that is no reason why the JSBs of Europol and Eurojust should reach different conclusions without any justification. The same is true in the case of the other European agencies with which Europol will be required to have cooperation agreements once the Decision is in force.

Data Protection under the Decision

232. The Decision establishing Europol as an agency is, as we explained in Chapter 2, a third pillar instrument. Any general data protection provisions applying to the third pillar would therefore apply to Europol.
233. In October 2005 the Commission brought out a proposal for just such an instrument, a draft Data Protection Framework Decision (DPFD) to apply to all third pillar instruments.⁸² Negotiations on this were taking place when, in January 2007, the Commission brought out its proposal for the Europol Decision. Chapter V of that proposal included seven articles on data protection issues specific to Europol, but they were prefaced by Article 26, which set out the standard of data protection to be applied, and based this on the assumption that the DPFD would enter into force substantially unchanged.

BOX 13

Europol Decision, Commission proposal: Article 26

Without prejudice to specific provisions of this Decision, Europol shall apply the principles of the Council Framework Decision 2007/XX/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters in the collection, processing and usage of personal data. Europol shall observe these principles in the collection, processing and utilisation of personal data, included in respect of non-automated data held in the form of data files, i.e. any structured set of personal data accessible in accordance with specific criteria.

234. In his formal Opinion on the Commission proposal of 16 February 2007 the European Data Protection Supervisor (EDPS) noted that Chapter V “contains specific rules on data protection and data security, that can be considered as *lex specialis* providing for additional rules on top of a *lex generalis*, a general legal framework on data protection. However, this general legal framework for the third pillar has not yet been adopted.” He recommended that the Europol Decision should not be adopted before the Council adopted a DPFD “guaranteeing an appropriate level of data protection in conformity with the conclusions of the EDPS in his two opinions on the Commission proposal for a Council Framework Decision.”⁸³

⁸¹ It is even more strange that, under Article 25 of the first pillar Data Protection Directive (Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data—OJ L 281 of 23.11.1995, p 31), and under the proposed Data Protection Framework Decision (draft of 11 December 2007, document 16069/07, Article 14) it is for individual Member States transmitting data to a third country or international body to assess the adequacy of that country’s or body’s data protection arrangements, giving scope for a potentially large number of different and conflicting assessments.

⁸² Proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, document 13019/05.

⁸³ Opinion of the European Data Protection Supervisor on the Proposal for a Council Decision establishing the European Police Office (Europol) COM(2006) 817 final (OJ C255 of 27.10.2007, p 13) (EDPS Opinion), paragraphs 4, 39 and 66.

235. This Committee has followed closely the depressing lack of progress of the negotiations on the DPF. In March 2007 the German Presidency put forward a revised proposal⁸⁴ which greatly weakened the original draft. In December 2007 a general approach was agreed on a draft which, so far from providing a *lex generalis* on which the *lex specialis* provisions of the Europol Decision could build, explained that “the data protection provisions ... governing the functioning of Europol ... will not be affected by the present Framework Decision”.⁸⁵
236. The draft of the Europol Decision agreed in April 2008 therefore explains that the DPF is applicable to the transfer of personal data by Member States to Europol, but does not affect the specific data protection provisions in the Europol Decision.⁸⁶ Under Article 27 the general standard of data protection has reverted to that of the Council of Europe Data Protection Convention,⁸⁷ as it now is under the Europol Convention.
237. **We express our regret, not for the first time, that the negotiations for a Data Protection Framework Decision, which could and should have resulted in an instrument setting a high general standard of protection for third pillar data exchanges, have instead produced an anodyne and toothless document which the Europol Decision does not trouble to apply to Europol’s work.**

The Data Protection Officer

238. The Decision does include one provision which is a distinct improvement on the Convention. The data protection officer is put on a statutory basis as an independent member of staff responsible for ensuring compliance with the data protection provisions of the Decision. The EDPS welcomed this, but pointed out that in the case of similar officials in other EU institutions there were provisions giving him the necessary staff and budget, and allowing him to be dismissed only in very exceptional circumstances.⁸⁸
239. Mr Smith also welcomed this provision: “We are very supportive of the principle of setting up this quasi-independent data protection officer. It is a system which Eurojust has adopted and works well under the Eurojust Decision. We are particularly pleased that it emphasises the importance of data protection within Europol, emphasises that the responsibilities there go straight to the Director and that data protection has to be taken seriously. There is also a very clear duty to cooperate with the Joint Supervisory Body.” (Q 433)

⁸⁴ Document 7315/07.

⁸⁵ Document 16069/07, recital 24a.

⁸⁶ Recital 12.

⁸⁷ Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, and Recommendation, and Recommendation No R (87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987.

⁸⁸ EDPS Opinion, paragraphs 58 to 63.

CHAPTER 9: OTHER ISSUES

Privileges and Immunities

240. Currently, since Europol is not yet a Community body and its staff are not staff of the Community, their privileges and immunities are dealt with in a Protocol to the Convention.⁸⁹ From 1 January 2010 the Protocol on the Privileges and Immunities of the European Communities will apply directly to Europol, its Director, Deputy Directors and staff.
241. When the draft Decision was agreed on 18 April there was still outstanding one issue on which agreement had not been reached. In the Member States, police officers and others taking part in investigations have no general privileges or immunities under domestic law. It was thought by many Member States, including the United Kingdom, that Europol staff taking part in joint investigation teams should be in the same position, and should not have any immunity from prosecution for any criminal acts they might commit in the course of such investigations. The matter was resolved by the agreement of a Regulation derogating from Article 12(a) of the Protocol on Privileges and Immunities in the case of Europol staff participating in JITs. This Regulation will enter into force at the same time as the Europol Decision. The result will be that Europol staff taking part in joint investigation teams will, like national officers, have no immunity from prosecution. **We believe that this is a satisfactory outcome**, and so informed the Minister in July.⁹⁰

Linguistic and legal difficulties

242. We have explained in paragraphs 100 to 101 the problems of finding a common understanding of the term “analysis work files”. This is only one symptom of a linguistic problem which afflicts all international organisations operating in more than one language. Although English is the *lingua franca* of Europol, there is still ample scope for misunderstanding. “Intelligence” seems to cause particular problems. Both Chief Constable Jones (Q 377) and Mr Wainwright told us of the confusion between “intelligence” and “information”, the latter explaining that they were sometimes used interchangeably: “In some European languages there is not a term at all for ‘intelligence’, I think.”(Q 76)⁹¹
243. In our discussion of intelligence-led policing⁹² we explained that this expression was interpreted in different ways. Mr Ratzel said: “This is one of the words which is understood in very different ways by different persons. Some investigators feel tortured by intelligence-led investigations as they misunderstand the concept ...” “Operational effectiveness” was another

⁸⁹ Protocol of 19 June 1997 on the privileges and immunities of Europol, the members of its organs, the deputy directors and employees of Europol (OJ C 221 of 19.7.1997, p. 2).

⁹⁰ Letter of 9 July 2008 from the Chairman of the Select Committee to the Rt Hon Tony McNulty MP, Minister of State, p 207.

⁹¹ This appears from the Conclusions of the JHA Council in October 2005, where “intelligence-led policing” becomes in French “activités de police fondées sur le renseignement”, and in German “erkenntnisgestützten Strafverfolgung”.

⁹² Paragraphs 66–76.

expression which caused problems, the confusion here being between effectiveness and efficiency. (QQ 172, 180)

244. Ultimately of course the purpose of both Europol and Eurojust, if crimes are not prevented, is to bring the criminals to court for trial, conviction and sentence. Here additional confusion is caused by the differences between the legal systems involved, and in particular by the differences between the prosecuting authorities and the procedures involved. In England and Wales the system is adversarial: the evidence is handed by the police to the Crown Prosecution Service, who decide whether a prosecution is justified and, if they conclude that it is, undertake it. France and most (but by no means all) countries governed by the Napoleonic Code use the inquisitorial system.
245. This causes great problems to Europol, and perhaps even more to Eurojust, which has to deal not just with national members seconded by each of the 27 Member States, but with 30 different legal systems. The members can be prosecutors, judges or police officers, depending on their legal system. Mr Lopes da Mota explained: “Sometimes we use the same words but with different meanings. Take, for instance, the word ‘prosecutor’. What is a prosecutor? We cannot define exactly because it is a different concept for example for the Portuguese or the Spanish or the French systems.”(Q 216) And Assistant Chief Constable Gargan told us that he had personal experience of working with the French, and when a British investigator made a request their language was not understood by the French examining magistrate, not because of any linguistic difficulty, but because of very different operating systems in the two countries. (Q 375)
246. Mr Lopes da Mota gave us an example of problems that can be caused by even minor differences in national laws. (Q 217)

BOX 14

Differences in national laws

A crucial document was needed to be used as evidence in a trial in Portugal. The document was in another country, so a letter rogatory was sent. The document was obtained in the context of a home search that took place during the night in accordance with the legislation of the requested state, and sent to Portugal. However Portuguese law provides that in that type of crime it is not permissible to make such searches between midnight and six in the morning, so the document could not be used at the trial and the defendant could not be convicted.

247. Professor Bigo pointed out that “people jump from their preliminary logic, the one they have in mind in their national country as if the others have the same, and it is especially the case when we discuss [the differences] between accusatory and inquisitorial procedures.” He thought the key element was legal certainty. (Q 123) Professor Lodge agreed. She explained that in the case of automated information exchange relying on a tight definition of a particular term, a lack of precision in understanding a term might mean that an item would not be properly indexed, so that an investigating officer trying to find out about the existence of a file might not be able to do so. (Q 114) We would add that, even if the item has been properly indexed, an investigating officer might not be able to find it if he was searching for the wrong term.

248. Explaining the problem is easier than finding a solution. In the particular case of AWFs there is something to be said for Assistant Chief Constable Gargan's suggestion that a review should be commissioned to clarify the language used. (Q 376)
249. **If analysis work files are to live up to expectations there must be a common understanding of the language used. We believe that a review should be commissioned to bring the terminology up to date. Once this is done, a small group should be appointed to make sure that the terminology remains clear and consistent.**
250. One of the activities listed in Europol's 2009 Work Programme is a multilingual European law enforcement dictionary, intended to be a "facilitation of search tool for Europol officials on law enforcement words and expressions, with additional comments on the translation." **This is an initiative we applaud.**

Quality of officers seconded to Europol

251. The quality of national officers posted on secondment to Europol is variable. As Professor den Boer told us, "I do think that it depends on the priority within the national law enforcement organisation that is attached to European police cooperation whether or not the best people are sent to Europol. In some countries this may lead to, 'Well, this is your last job in your career', and in other countries it may amount to, 'This is the best job you can get and this is your best way to the top back in the national law enforcement organisation', so I think you have a mixed representation of quality within the Europol body." (Q 157)
252. In the particular case of the United Kingdom, Mr Storr thought the difficulty was creating the conditions in which a period of service in Europol was of benefit to the career of the best sorts of officers. "At the moment, certainly the ACPO international representative, Paul Kernaghan, would claim that more needs to be done, and I think that is probably true." (Q 34)
253. Mr McNulty told us: "[Going to The Hague] is not seen as a downward move, but there are inordinate difficulties that go to human resources, pension arrangements and a whole range of other issues that are a complete nightmare, but I am doing my level best to correct ... [it should be] an absolute benefit to go and get some experience in Europol, Interpol or with other international forces." (Q 519)
254. We believe it is important that only highly qualified officers should be posted to Europol. This will not happen if police officers believe that their career prospects will be damaged if they are away from their forces, especially given the disruption a posting abroad can cause to family life. This would change if it became clear that a posting to Europol—or indeed to other international agencies—normally took place on promotion. **We believe that the Director of SOCA and Chief Constables should make it the norm that a secondment to Europol takes place on promotion.**

The profile of Europol among United Kingdom police forces

255. We explained in Chapter 3 that Europol communicates with each Member State only through a single national unit, and that SOCA is the national unit for the United Kingdom. It is also the national unit for other international organisations; in the words of Chief Constable Ian Johnston of the British

Transport Police, “SOCA is the gateway for ACPO into Europe, and all ACPO forces connect to SOCA in terms of all of their international work at a variety of different levels through programmes of activity, through our international liaison officers [ILOs] who are attached to each force.”⁹³ (Q 363)

The link with SOCA

256. Communication between SOCA and Europol is very effective, but we wondered whether the same could be said of communication between SOCA and police forces in the United Kingdom which feed intelligence and information to it and hope to receive feedback from it. We agree with Mr Storr that the burden is on SOCA to make this a two-way relationship which works. (Q 54) Yet the President of ACPO, Chief Constable Ken Jones, thought there were “real difficulties” in the relationship between SOCA and the 52 police forces; there was a feeling that communication tended to be a bit one-way at times. (QQ 406, 382)
257. We did not take formal evidence from any of the police forces, but from informal contacts with some of them it is plain that these difficulties are only too real. The Chief Constable of Suffolk told us that his force had this year had about 80 foreign cases covering drugs, people trafficking, paedophiles, international fraud and scams, national security and terrorism issues, involving countries in Europe, Asia, Africa, USA and Latin America; but when his force needed action or information in relation to any other country, whether in the EU or outside it, they always used Interpol. He found Interpol useful and his force had, through Interpol, built up contacts with various police authorities in many countries. In his view the way in which SOCA fed information to his force left much to be desired. Information from the Yorkshire and Gloucestershire Constabularies was to the same effect.
258. Lancashire Constabulary gave us a note which we print with the written evidence (p 207). It shows that there has been some direct contact between Lancashire’s ILO and Europol officials in connection with human trafficking enquiries but that, as we would expect, most contact is through SOCA. But the main conclusion is that “the activities of Europol have little effect on the policing of Lancashire”.
259. Chief Constable Jones also thought that Europol had poor visibility amongst law enforcement agencies; in his view Eurojust had a much higher profile, and made more effort to communicate with criminal justice professionals across the EU. (QQ 378, 402) It also appears that the dissemination of Europol documents is patchy. In answer to a question about gaps in the current information exchange mechanisms within the EU justice and law enforcement communities, Sir Ronnie Flanagan said “I just wonder how many chief constables would be familiar with the document Ken has. [Chief Constable Ken Jones was holding a copy of the Europol TE-SAT report]. We could not say with 100% certainty that 100% of chief constables would be familiar with that assessment document.”(Q 397)
260. This is a regrettable state of affairs. It is likely that the true position is not so much that Europol has little effect on local policing; it is rather that, as the Lancashire Constabulary told us, “it may be that SOCA utilise Europol on

⁹³ These are not to be confused with the liaison officers seconded to Europol.

our behalf to deal with some of our Interpol enquiries and we are therefore unaware of the Europol contribution”. **It is essential that, when local police forces seek the help of SOCA over crimes with an international element, they should be told whether SOCA intend to seek help from Europol, Interpol or some other agency, and be kept fully informed of the outcome of their query and the source of any information from international agencies. If information from Europol reaches them re-branded as SOCA information, this will hinder their evaluation of it.**

261. **Similarly, if SOCA requests information for Europol from police forces, they should be told that this is the purpose of the request.**

Raising awareness

262. Paragraph 3.2 of Europol’s written evidence sets out Europol’s role in training. (p 85) This includes training of senior police officers at the European Police College following the cooperation agreement with CEPOL, and involvement in national training courses. Nevertheless Mr Ratzel confirmed what is plain to us from other evidence, that there is only limited awareness of Europol and its role among the police forces of the EU. He felt that young police officers should nowadays learn about Europol from the very beginning of their training. (Q 175)
263. While Europol does itself have a part to play in raising its profile among United Kingdom forces, we believe that the main responsibility lies elsewhere, and specifically with SOCA. Other large Member States organise visits to Europol for ILOs from local forces; we believe that United Kingdom forces should do this too, and that **it should be the responsibility of SOCA to arrange such visits and to encourage senior officers to have a better understanding of Europol’s work.**

CHAPTER 10: SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Objectives and structure

Objectives and competence

264. We believe that where Europol is likely to have information or intelligence which will facilitate the investigation and detection of crimes, those are crimes which should fall within Europol's mandate. (paragraph 40)
265. In our view it is therefore right that Article 4 of the Europol Decision will not limit the mandate of Europol to "organised crime". As drafted, in our view it gives as good a definition of the crimes which should fall within its competence as is likely to be achievable. (paragraph 41)

National units and liaison officers

266. While we accept that SOCA is best placed to act as the United Kingdom national unit, the fact that it has no counter-terrorism remit makes it all the more important that it should work very closely with the Metropolitan Police and other forces which do have such a remit. (paragraph 46)

Bypassing Europol

267. We agree with the Friends of the Presidency Group that it is highly desirable that bilateral exchanges of information should be recorded on Europol secure databases. The Management Board should give this serious and urgent consideration. (paragraph 57)
268. There is a lot to be said for building up bilateral and multilateral contacts between national liaison officers. It is the first and most important step in the development of trust between them. (paragraph 62)
269. However, for Member States to share information in a limited way through liaison officers is the antithesis of the purpose of Europol, which is the enhancement of the already existing combined effort of the Member States' competent authorities so that the whole is greater than the sum of its parts. Limited sharing of information will not achieve a common approach to cross-border cooperation against serious crimes. (paragraph 63)
270. The Home Office tell us that the United Kingdom is prepared to take a lead in improving the amount of material shared with Europol. We look forward to hearing in the Government's response to this report precisely what steps they intend to take to bring this about. (paragraph 64)

Working methods

Intelligence-led policing

271. We believe that Europol is uniquely well placed to establish among the police forces of the Member States a common understanding of intelligence-led policing. Europol should work with the Heads of National Units and the European Police College to organise training which will encourage the adoption and use of intelligence-led policing as the common working method. (paragraph 76)

The Organised Crime Threat Assessment

272. We congratulate the Government and officials on their work in exporting to other Member States and to Europol the concept of the Organised Crime Threat Assessment. The continued development of the OCTA should be pursued. (paragraph 81)
273. When associated with an intelligence-led approach to policing the OCTA should improve the liaison arrangements between prosecuting and investigating officials required by Article 30(2)(c) of the Treaty on European Union, and lead to better coordination of internal security, improved information exchange, and more accurate communication. We encourage the Government to persevere in their attempts to embed these concepts in the policing culture of all Member States. (paragraph 82)

Information exchange and analysis

274. We continue to doubt whether all Member States have the necessary commitment to the exchange of information which is Europol's core function. (paragraph 88)
275. Information capture is an important part of Europol's functions, and the Government should ensure that automatic data loading from SOCA to the Europol Information System is implemented as a matter of urgency. (paragraph 94)
276. We agree with the Friends of the Presidency Group that the Director should put in place a mechanism which can automatically check the information in the different Europol systems for cross-references, and where possible notify the owners of the data. If further resources are needed, they should be made available. (paragraph 98)

Joint investigation teams

277. The role of Europol in relation to joint investigation teams should be to facilitate, support and coordinate investigations, but not directly to initiate them. (paragraph 112)

Counter-terrorism

278. The Government must make sure that United Kingdom agencies comply with the 2005 Council Decision on the supply to Europol of information relating to terrorism investigations, subject always to the qualification protecting essential national security interests. We recommend that the Government should persuade other Member States to do likewise. (paragraph 117)
279. Member States should consider amending the 2005 Council Decision to delete the requirement that at least two Member States must be involved in a terrorist act for the Decision to apply. (paragraph 118)
280. We believe the Government should treat with caution any proposal that direct exchanges of intelligence between the security services of the United Kingdom and those of other Member States should take place through Europol. (paragraph 123)

Governance and accountability

The chairmanship of the Management Board

281. There is no conceivable logical connection between the nationality of the person best qualified to be Chairman of the Management Board and the identity of the Member States holding the troika Presidency; there is no reason why the other members of the Management Board should be excluded from the selection of their Chairman; and the length of three Presidencies should be irrelevant to the term of office. (paragraph 134)
282. We recommend that the Decision should be amended before its entry into force to adopt for Europol a system identical to that of Frontex: a Chairman of the Management Board elected by and from among his colleagues for a term of two years, renewable once. (paragraph 136)
283. We further recommend that the dates of appointment of the Chairman and Director should be such as to give several months of overlap between their respective terms of office. (paragraph 137)

The relationship between the Management Board and the Director

284. It should be made clear in the text of the Decision that the Management Board is responsible for the strategic direction of Europol, and the Director for its performance and administration. (paragraph 147)
285. It should also be made clear that the provision that the Board should “oversee the Director’s performance” means no more than that he is accountable to the Board for the performance of his duties. (paragraph 148)
286. However the Management Board will not be inclined to leave the Director free to run the organisation unless they feel they can trust him to do so efficiently and effectively. (paragraph 149)
287. In the end, good governance of Europol depends on having the right personalities as Director and Chairman of the Management Board. We do not believe it will be possible for them to develop a relationship of mutual respect and trust unless our recommendations on the chairmanship are adopted. (paragraph 150)
288. The Chairman of the Management Board needs a supportive Secretariat whose staff must be allowed a sufficient degree of independence to carry out their task. If the Secretariat needs to be larger than at present, it should be enlarged. (paragraph 151)

Four-yearly reviews

289. If a full and independent evaluation of the work of Europol is to take place only every four years, the Decision should give guidance as to how the evaluation is to be carried out, and what is to be its outcome. We would like to see the Decision amended in line with the Frontex Regulation. (paragraph 165)
290. Whether or not the Decision is amended, it should be clearly understood that the independent evaluation must take fully into account the views of stakeholders, and that the Management Board and the Commission both have parts to play to ensure that any shortcomings shown up by the evaluation are put right within a reasonable time. (paragraph 166)

291. In the end, any organisation will function well only if its staff can work together as one unit in an atmosphere of mutual confidence and trust. We hope that the evaluation will pay particular attention to this issue. (paragraph 167)

Democratic accountability

292. It must be for the European Parliament to decide whether it wishes to adopt, in the spirit of the Treaty of Lisbon, a formal procedure for the scrutiny of Europol's activities, and whether, and if so how, to involve the national parliaments of the Member States. We hope however that the Parliament will give this serious consideration. (paragraph 174)

Relations with partners

293. We believe that for Europol and Eurojust to be located and working together in the same building could have resulted in a partnership which was easier, more productive and above all more secure. We share the disappointment of our witnesses that this will not now take place. (paragraph 187)

Security

Responsibility for security

294. The Director of Europol should have overall responsibility for security in the organisation he directs. There is no case for the responsibility lying with a deputy whose responsibility bypasses the Director. (paragraph 213)

295. Advice to the Director on security issues must come from within the organisation: from the deputy he appoints to deal with such matters, and from the security officer and other officials responsible. (paragraph 214)

296. Whatever body it is that advises the Management Board on security issues must be small, must consist of security experts, and must work on a need to know basis. Except perhaps in the case of institutional matters there is no need for all Member States to be involved, or indeed for any Member States to be involved unless the security issues directly involve them or their national units or liaison officers. (paragraph 215)

297. There must be clear demarcation between safeguarding security and data protection. (paragraph 216)

298. Changes to the security structure can be made by amendment of the Council Act. The Council can make such amendments at any time; there is no need to wait for the Europol Decision to come into force. (paragraph 217)

Individual security

299. If Member States are prepared to devote the necessary resources to clearing all individuals involved to the highest security levels required for their work, this alone should do much to enhance trust. (paragraph 221)

Data protection

300. We express our regret, not for the first time, that the negotiations for a Data Protection Framework Decision, which could and should have resulted in an instrument setting a high general standard of protection for third pillar data

exchanges, have instead produced an anodyne and toothless document which the Europol Decision does not trouble to apply to Europol's work. (paragraph 237)

Other issues

Privileges and immunities

301. The Regulation removing the privileges and immunities of Europol staff taking part in joint investigation teams will enter into force at the same time as the Europol Decision. We believe that this is a satisfactory outcome. (paragraph 241)

Linguistic and legal difficulties

302. If analysis work files are to live up to expectations there must be a common understanding of the language used. We believe that a review should be commissioned to bring the terminology up to date. Once this is done, a small group should be appointed to make sure that the terminology remains clear and consistent. (paragraph 249)
303. One of the activities listed in Europol's 2009 Work Programme is a multilingual European law enforcement dictionary, intended to facilitate searches by Europol officials for law enforcement words and expressions. This is an initiative we applaud. (paragraph 250)

Quality of officers seconded to Europol

304. We believe that the Director of SOCA and Chief Constables should make it the norm that a secondment to Europol takes place on promotion. (paragraph 254)

The profile of Europol among United Kingdom police forces

305. It is essential that, when local police forces seek the help of SOCA over crimes with an international element, they should be told whether SOCA intend to seek help from Europol, Interpol or some other agency, and be kept fully informed of the outcome of their query and the source of any information from international agencies. If information from Europol reaches them re-branded as SOCA information, this will hinder their evaluation of it. (paragraph 260)
306. Similarly, if SOCA requests information for Europol from police forces, they should be told that this is the purpose of the request. (paragraph 261)
307. It should be the responsibility of SOCA to arrange visits to Europol by officers from United Kingdom forces, and to encourage senior officers to have a better understanding of Europol's work. (paragraph 263)

Conclusion

308. We hope that those of our recommendations which require amendment of the Council Decision will meet with the approval of all the Member States, and can be made so that they enter into force, if not with the entry into force of the Decision on 1 January 2010, then soon after. (paragraph 22)
309. We recommend this report to the House for debate. (paragraph 8)

APPENDIX 1: SUB-COMMITTEE F (HOME AFFAIRS)

The members of the Sub-Committee which conducted this inquiry were:

Lord Dear
Baroness Garden of Frognal
Lord Harrison
Baroness Henig
Lord Hodgson of Astley Abbotts
Lord Jopling (Chairman)
Lord Marlesford
Lord Mawson
Lord Teverson

Lord Young of Norwood Green was a member of the Sub-Committee from the start of the inquiry until 6 October 2008.

Mr Kevin O'Connell was appointed Specialist Adviser for the inquiry.

Declarations of Interests:

A full list of Members' interests can be found in the Register of Lords Interests:

<http://www.publications.parliament.uk/pa/ld/ldreg.htm>

Interests declared by Members relevant to the inquiry:

Lord Dear
Former Chief Constable, West Midlands Police
Former HM Inspector of Constabulary

Baroness Henig
Chair of the Security Industry Authority
President of the Association of Police Authorities

APPENDIX 2: CALL FOR EVIDENCE

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union is conducting an inquiry into Europol, the European Police Office. Europol was established by an international Convention signed in 1995 and has been operational since 1 July 1999. Its task is to facilitate the exchange of information between Member States' law enforcement authorities and to support Member States' investigations by providing high quality analysis of criminal intelligence.

At present, Europol is governed by the 1995 Convention, and by three Protocols which entered into force in the spring of 2007. In December 2006 the Commission published a proposal to replace the Europol Convention and its Protocols by a Council Decision establishing Europol as an Agency under the EU Treaty. While changing Europol's legal framework, the Council Decision is also designed to strengthen Europol and the operational support it provides to national police authorities. The negotiations on the Council Decision establishing the European Police Office have been completed and the proposal is likely to be agreed at the Justice and Home Affairs Council meeting on 17/18 April 2008.

This inquiry will examine Europol's current role and operating environment and how these will change under the new legal framework and the under the wider process designed to modernise Europol's structures and improve its functioning and effectiveness.

The Sub-Committee would welcome evidence on any aspects of Europol's current role and its future development. We would particularly welcome comments on:

- Strategic Coordination
 - the development of an EU Architecture of Internal Security,⁹⁴ intelligence led policing and the European Criminal Intelligence Model
 - Europol's relationship with other EU/EC Agencies such as Eurojust and Frontex, and the extent to which there is cooperation between these Agencies, especially in the preparation of the Organised Crime Threat Assessment (OCTA), the Terrorism Situation Report (TSR), and Analysis Work Files (AWF);
 - the distribution of tasks between Europol and the Police Chiefs' Task Force (PCTF) and other EU level institutions;
- Bilateral information exchange
 - the extent to which Europol Liaison Officers (ELOs) make use of Europol's information exchange network rather than operating bilaterally;
- Combating Organised Crime
 - the extent to which Member States' law enforcement agencies are involved in Europol's organised crime tasks, including the Europol National Unit (ENU);
 - Europol's role in training

⁹⁴ Architecture of Internal Security, Council Secretariat document 9596/1/06 JAI 271, approved by the Justice and Home Affairs Council of 1–2 June 2006.

- **Combating Terrorism**
 - the extent to which Member States' law enforcement agencies are involved in Europol's counter-terrorism tasks, including the Europol National Unit (ENU);
- **Europol's Information Exchange Network**
 - the use that is being made by Member States' law enforcement authorities of the Europol Information System;
- **Europol's Information Exchange with Third Parties**
 - the extent to which information is exchanged by Europol with third countries with which it has cooperation agreements;
- **Governance and Methodologies**
 - the extent to which Europol's objectives and governance structure are open to wide interpretation;
 - the value attributed by Member States and other customers to the OCTA, TSR, AWF and other products and services offered by Europol;
 - the inspection mechanisms used by the Joint Supervisory Body on data protection for ensuring quality of data and lawful use of data;
 - Definition of analysis in the Europol framework;
- how the provisions of the Council Decision amend the current rules and have the potential to change all of these matters.

APPENDIX 3: LIST OF WITNESSES

The following witnesses gave evidence. Those marked * gave oral evidence.

- * Association of Chief Police Officers (ACPO)
Association of Chief Police Officers in Scotland (ACPOS)
- * Professor Didier Bigo, Visiting Professor of War Studies, King's College London
- * Professor Gilles de Kerchove, EU Counter-terrorism Coordinator
- * Mr Agustin Diaz de Mera Garcia Consuegra, MEP
- * Professor Dr Monica G W den Boer, Faculty of Social Science, Department of Public Administration and Organisation Science, Vrije Universiteit (VU) Amsterdam
- * Eurojust
- * European Commission
- * Europol
- * Europol Management Board
- * Sir Ronnie Flanagan, HM Chief Inspector of Constabulary
HM Revenue & Customs
- * Home Office
Lancashire Constabulary
- * Professor Juliet Lodge, Jean Monnet European Centre of Excellence, University of Leeds
Office of the Information Commissioner
- * Dr Nicholas Ridley, John Grieve Centre, London Metropolitan University
- * Serious Organised Crime Agency (SOCA)
Letter from His Excellency Mr P.W. Waldeck, Ambassador of the Kingdom of the Netherlands to the United Kingdom, to the Chairman of Sub-Committee F
- * Mr Tim Wilson, Visiting Fellow, PEALS (Policy, Ethics and Life Sciences; an institute of Newcastle and Durham Universities with the Centre for Life, Newcastle

APPENDIX 4: LIST OF ACRONYMS AND ABBREVIATIONS

ACPO	Association of Chief Police Officers
Article 36 Committee	The Coordinating Committee of senior officials set up under Article 36 of the TEU to advise on Title VI matters (see also CATS)
AWF	Analysis Work File
CATS	The French acronym for the Article 36 Committee
CEPOL	European Police College
COSPOL	Comprehensive Operational Strategic Planning for the Police
CTC	EU Counter-terrorism Coordinator
CTU	Counter-terrorism Unit
Danish Protocol	Protocol of 27 November 2003 amending the Europol Convention (OJ C 2 of 6.1.2004, p. 3)
DG JLS	Directorate-General Justice Freedom and Security of the Commission
DPFD	Data Protection Framework Decision (Proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters)
EC	European Community
ECB	European Central Bank
ECIM	European Criminal Intelligence Model
ECJ	European Court of Justice
EDPS	European Data Protection Supervisor
EIS	Europol Information System (see also IS)
ELO	Europol Liaison Officer
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
ENU	Europol National Unit
EU	European Union
Eurojust	The body set up by Council Decision 2002/187/JHA of 28 February 2002 “with a view to reinforcing the fight against serious crime”
Europol	European Police Office
Europol Convention	Convention on the Establishment of a European Police Office (OJ C316 of 27.11.1995, p. 2)
Europol Decision	Proposal for a Council Decision establishing the European Police Office (Europol)
FBI	(United States) Federal Bureau of Investigation
FCLO	Fiscal Crime Liaison Officer
FIS	Frontex Information System
Frontex	European Agency for the Management of Operational Cooperation at the External Borders of the Member States

FSJ	Freedom, Security and Justice—establishing an area of FSJ is the objective of Title VI of the TEU (The Commission Directorate-General dealing with FSJ matters is called Justice, Freedom and Security)
HENU	Head of Europol National Unit
HMRC	Her Majesty's Revenue and Customs
ICT	Information & Communications Technology
ILO	International Liaison Officer
ILP	Intelligence-led policing
IMT	Information Management and Technology
InfoEx	Europol secure information exchange tool
IS	Information System (see also EIS)
JHA	Justice and Home Affairs
JIT	Joint Investigation Team
JSB	Joint Supervisory Board
LB	Liaison Bureau
LEA	Law Enforcement Authority
LIBE Committee	Committee on Civil Liberties, Justice and Home Affairs of the European Parliament
Lisbon	See 'Treaty of Lisbon'
MB	Management Board
MDG	Multidisciplinary Group
MI5	The Security Service
MS	Member State
MTIC	Missing Trader Intra Community
NATO	North Atlantic Treaty Organisation
NCIS	National Criminal Intelligence Service
NIM	National Intelligence Model
OASIS	Overall Analysis System for Intelligence and Support
OC	Organised Crime
OCTA	Organised Crime Threat Assessment
OLAF	European Anti-Fraud Office
PCTF	Police Chiefs Task Force
PNR	Passenger Name Record
QMV	Qualified Majority Voting
SitCen	EU Joint Situation Centre
SIENA	Secure Information Exchange Network Application
SIS	Schengen Information System

SIS II	Second generation Schengen Information System
SOCA	Serious Organised Crime Agency
STR	Suspicious transaction report
TEC	Treaty establishing the European Community
TEU	Treaty on European Union
TE-SAT	Terrorism Situation and Trend Report
TFEU	Treaty on the Functioning of the European Union
Treaty of Lisbon	The Treaty between the Member States, signed in Lisbon on 13 December 2007, amending the TEU, and amending the TEC and re-naming it the TFEU
UNODC	United Nations Office on Drugs and Crime
WP	Work Programme

APPENDIX 5: LIST OF RELEVANT REPORTS

Recent Reports from the Select Committee

The Treaty of Lisbon: an impact assessment (10th Report, Session 2007–08, HL Paper 62)

Relevant Reports prepared by Sub-Committee E (Law and Institutions)

Session 1994–95

Europol (10th Report, HL Paper 51)

Session 1997–98

Europol: Confidentiality Regulations (1st Report, HL Paper 9)

Europol: Joint Supervisory Body (13th Report, HL Paper 71)

Europol: Third Country Rules (29th Report, HL Paper 135)

Relevant Reports prepared by Sub-Committee F (Home Affairs)

Session 1998–99

European Union Databases (23rd Report, HL Paper 120)

Session 2002–03

Europol's role in fighting crime (5th Report, HL Paper 43)

Proposals for a European Border Guard (29th Report, HL Paper 133)

Session 2004–05

After Madrid: the EU's response to terrorism (5th Report, HL Paper 53)

The Hague Programme: a five year agenda for EU justice and home affairs (10th Report, HL Paper 84)

Session 2006–07

Prüm: an effective weapon against terrorism and crime? (18th Report, HL Paper 90)

The EU/US Passenger Name Record (PNR) Agreement (21st Report, HL Paper 108)

Session 2007–08

FRONTEX: the EU external borders agency (9th Report, HL Paper 60)

The Passenger Name Record (PNR) Framework Decision (15th Report, HL Paper 106)

Minutes of Evidence

TAKEN BEFORE THE SELECT COMMITTEE ON THE EUROPEAN UNION
(SUB-COMMITTEE F)

WEDNESDAY 21 MAY 2008

Present	Dear, L	Jopling, L (Chairman)
	Garden of Frogal, B	Marlesford, L
	Harrison, L	Mawson, L
	Henig, B	Teverson, L
	Hodgson of Astley Abbots, L	Young of Norwood Green, L

Memorandum by the Home Office

1. INTRODUCTION

On behalf of the Home Office and under the powers conferred by Serious Organised Crime and Police Act 2005, which established the organisation, the responsibility for an effective strategic and operational engagement between the United Kingdom and Europol rests with the Serious Organised Crime Agency (SOCA). Through its International Multilateral Department SOCA provides the home for the Europol National Unit in this country and is thus the gateway for the exchange of information both to and from UK law enforcement authorities.

2. EUROPOL BACKGROUND

Europol's development as an effective agent in the fight against serious and organised crime has been quite rapid in the period since the Europol Convention of 1995, which came into force in 1998. That legal base considerably extended Europol's original remit of 1994, where it operated as the Europol Drugs Unit.

Three Protocols amending the Europol Convention, which were introduced in 2000, 2002 and 2003 added to Europol's mandate to support Member State law enforcement activity. Of particular relevance was the extension of Europol's competence to tackle money laundering, and the opportunity for Europol officials to act in a support capacity in Member State Joint Investigation Teams. These Protocols only entered into force in 2007, exemplifying the extended timescales required to amend Europol's legal base.

At the end of 2006 the European Commission brought forward a proposal to replace the Europol Convention with a Council Decision on the grounds that this legal base would be easier to amend and any amendments would be more speedily introduced. The Europol Council Decision is expected to be adopted before the end of 2008, and would come into affect in January 2010, allowing the necessary time for internal procedural changes. Although the new legal base has not extended the range of crimes for which Europol would have competence it has introduced some flexibility, with appropriate controls, to allow Europol to support criminal investigations into the most serious of crimes that may not obviously be linked to organised criminal gangs.

In reflecting on Europol's development the Government believes it has been sensibly measured and that its mandate and scope of operations (as reflected in the new Europol Council Decision) is correctly pitched.

3. SUMMARY

In general terms the Government recognises the significant contribution made by Europol to combating serious and organised crime and the threat posed by global and domestic terrorism. There is good evidence of the benefits to the United Kingdom of a positive engagement with Europol with a number of high profile criminal cases being brought to justice.

- We see very real benefits emerging from the production of the annual Organised Crime Threat Assessment and the EU Terrorism Situation and Trend Report and expect their value to increase over time;

- Bilateral information exchanges through the Liaison Bureaux network are seen as a particularly effective way of doing business, but Europol tends to be a “loser” in that much of the information is not made available to Europol;
- There is an underlying concern from Member States about data security and how it is used once it is loaded onto Europol’s systems. This general unwillingness to share data reduces Europol’s ability to support Member State law enforcement as well as it might;
- The Europol Information System has the potential to be a significant intelligence data source but as yet is under utilised by the majority of Member States ;
- The role of and interaction between the Management Board and the Director would benefit from a clearer separation of strategic development and oversight on the one hand and the authority to manage day to day activity on the other;
- We are pleased with the outcome of the negotiations on the new legal base for Europol, and believe this will provide an improved framework for Europol to support Member State law enforcement activity against serious and organised crime and terrorism.

4. STRATEGIC CO-ORDINATION

Internal security

We see Europol as being central to the success of the concept of the EU architecture of internal security and believe it has the potential to fulfil that ambition without necessarily having to radically change what it does, in terms of extending its operational capability. Europol’s influence is growing as Member States’ confidence that it can supply a secure platform for the exchange of operational and strategic information increases. We expect to see this influence growing further as Europol’s technical and infrastructure systems are developed.

It is recognised that Europol has strongly embraced the UK concept of a National Intelligence Model (NIM), which supports the adoption of an intelligence led policing approach. The effective collection of intelligence material which can be fed into preparing a comprehensive Organised Crime Threat Assessment (OCTA) is essential to the formulation of coherent and effective plans to combat the identified threats by targeting those criminal groups involved in such criminality. The United Kingdom’s role in the development of the OCTA is well documented and as more Member States recognise the benefits of the NIM approach their input to the EU OCTA should improve in terms of both quantity and quality. A good start has been made on the development of a European Criminal Intelligence Model (ECIM) but there are suggestions that not all Member States are yet taking it seriously enough.

Given the recognition of the Western Balkans as a priority for the EU in terms of it being both a source and transit area of serious organised crime, the Government views with satisfaction recent work in the Republic of Croatia, supported by EU funding under a twinning project, to establish a National Intelligence Model and intelligence led policing. Croatia has subsequently produced its first OCTA, which has been shared with Europol. The Commission views this work as a model which it would like to see rolled out across the region. We believe this will add further emphasis to the ECIM and the intelligence led policing approach.

Relationship with EU Agencies and other bodies

Europol’s relationship with EU/EC bodies is strictly enforced through the development of agreements on information exchange between the organisations. Of particular interest is the need for Europol’s partners to have data protection systems compliant with Europol’s own high standards. This can and does limit data exchange and introduces sometimes significant delays before agreements can be concluded.

A good example is Frontex, which has worked informally with Europol since 2006. The delay in establishing a formal agreement has been caused by the need for Frontex to change its systems to meet the necessary data protection/data sharing compliance standards. That said it has been reported there is good operational engagement with Frontex providing valuable information concerning serious and organised criminality. For example Europol and Frontex have produced an assessment of the high-risk routes for illegal immigration through the Western Balkans.

The situation with a key partner organisation—Eurojust—is rather different. A formal agreement has existed since 2004 and while the relationship is working well there is, we believe, an opportunity for developing it. It is noted that a secure communication link between the two organisations was established last year which will allow the secure transmission of information. The Government supports the recent undertaking to review the formal agreement between Europol and Eurojust, but recognises certain practical difficulties about extending

access to Europol's data systems, and especially some of the particularly sensitive material, such as contained in some of the Analytical Work Files. It cannot be ignored that Europol relies on Member States for the supply of its base data, and given some concerns about how securely Europol will store and use that data, which already limits the amount of information exchange, an extension could result in the "tap being turned down", rather than opened up, which is what we feel must happen.

We are pleased to see a more direct link now between the threat assessment reports emanating from Europol and influential organisations such as the Police Chiefs Task Force (PCTF). It is becoming clear that the PCTF-inspired COSPOL projects, such as those dealing with drug smuggling, child abuse and human trafficking, are becoming specifically aligned to Europol activity and its analytical work files. This provides a good example of bringing together the intelligence gathering and analytical capability of Europol on the one hand and the operational policing drive from police chiefs on the other.

Threat assessment

It is clear, after just two years, that the annual OCTA is emerging as a vital Europol product and we are confident that it will continue to improve in direct proportion to the increased engagement in the process by Member States, and others such as Eurojust. There are indications that this engagement is developing a momentum and this is likely to be due in part to the improving intelligence gathering and analytical capabilities within Member States, and as a result of the growing realisation of the benefits of the OCTA.

Europol has recently produced its second EU Terrorism Situation and Trend Report (TE-SAT) which provides an overview of terrorism-related incidents occurring within the EU as well as outside the EU but where the activity could impact on the EU, and a review of related trends. This is a welcome Europol product which will, we believe, develop in similar vein to the OCTA as contributors to the report recognise the value and provide more input.

5. BILATERAL INFORMATION EXCHANGE

Europol has a liaison bureau network operating on its premises at The Hague with a bureau for each of the 27 EU Member States, as well as offices representing those countries and international organisations with which Europol has co-operation agreements. For instance Australia, Colombia, Interpol and the United States all have liaison officers located within Europol.

We see the liaison bureau as an essential component of supporting Member States' law enforcement activity providing as it does a direct link between Europol and the Europol National Unit in the home country.

Bilateral information exchange is supported by the Europol "Info-Ex" system, shortly to be upgraded and the United Kingdom is one of the main users of the facility, which supports bilateral and multilateral data exchange. In the last five years the amount of information exchanges on Info-Ex has increased by around 170%, with the number of messages in 2007 being around 260,000. These messages are linked to criminal investigations and over the same period the number of cases has increased by about 42% (7618 case in 2007).

However the vast majority of information exchange between liaison bureaux occurs outside the formal systems and thus while providing very significant benefit to the participating countries the main loser is Europol, which is denied the opportunity to access the information. It is reported that up to 80% of bilateral engagement occurs this way.

The reasons are not particularly clear but it can be assumed that there is likely to be a combination of factors including that there is no requirement to log such bilateral exchanges on the Info-Ex system. Also, and although it is not a particular matter of concern for the UK, there is the issue that tends to pervade all information exchange between countries and Europol, the issue of "confidence and trust" in handling and protecting the data.

The fact that Europol is deprived of a huge amount of intelligence data is a matter of concern and is something we feel should be addressed. But this is a sensitive issue and while the United Kingdom is prepared to take a lead on improving the amount of bilateral exchange material shared with Europol it must be borne in mind that the other partner to the bilateral exchange must be similarly disposed, or else we could find ourselves in the position of being frozen out of bilateral engagement.

6. CO-OPERATION WITH THIRD PARTIES

Notwithstanding the information exchange between Europol and the national competent authorities in the Member States, we recognise the significant benefit to be derived from Europol establishing co-operation arrangements for exchanging information with other organisations and countries outside the EU.

Europol has established two types of co-operation agreement. Operational agreements allow the exchange of personal data between the parties to the agreement, while strategic agreements are limited to the exchange of technical and strategic information.

The procedures for negotiating these instruments can take years and technology issues aside one of the key difficulties to be overcome is the need for organisations to be able to meet the stringent data protection standards required by the European Union. Although not a particular concern to the UK, as long as the data protection standards can be complied with, one cannot ignore the concerns already prevalent in Member States with regard to mutual confidence and trust. Already information is not supplied to Europol because the potential providers in the Member States do not know what will happen to the information at Europol, or how secure it will be. If this concern exists about exchanging personal information with and between Member States it can only be exacerbated by the possibility of the information exchange going wider.

Although there are indications that trust is being built and confidence is improving, as evidenced by the growing contribution to the preparation of threat assessments we sense there is still a long way to go and a delicate balance to be achieved.

Europol has established organisational agreements with Eurojust and Interpol, and along with the new agreement with Australia, organisational agreements are in place with Canada, Croatia, Iceland, Norway, Switzerland and the United States.

Strategic agreements exist with Albania, Bosnia and Herzegovina, Colombia, Moldova, the Russian Federation and Turkey. In addition strategic agreements are in place with the European Anti-Fraud Office, European Central Bank, European Commission, European monitoring Centre for Drugs and Drug Addiction, European Police College, United Nations Office on Drugs and Crime, and the World Customs Organisation.

7. COMBATING ORGANISED CRIME

Based on the OCTA 2007 Europol's priorities are:

- Drugs trafficking;
- Fraud—financial and property crime;
- Money laundering and Euro counterfeiting;
- Illegal immigration, trafficking in human beings and child abuse.

SOCA is best placed to comment on the detailed involvement of UK law enforcement authorities with Europol, but one specific advantage we feel we have over other countries is the brigading together of the various offices dealing with EU law enforcement activity exchange. So the Europol National Unit is co-located in SOCA with the National Interpol Bureau and the UK Central Authority for the European Arrest Warrant, as well as the “embryo” Schengen bureau.

This arrangement provides the opportunity for co-ordinated and comprehensive access at all times to Europol for UK law enforcement, supported by highly skilled officers.

There is good evidence to support the view that the United Kingdom's close co-operation with Europol at the operational level brings its rewards. In 2007, for instance a combined operation with Spain led to the seizure of significant quantities of drugs and cash in the UK. Europol provided specialist support to Cambridgeshire Constabulary which led to the apprehension of an individual who was convicted of sending explosive devices through the post. And with a joint operation involving Estonia, Europol was influential in bringing to justice a violent international gang responsible for a large number of high class jeweller shop robberies in the UK.

At the strategic level the Heads of Europol National Units (HENU) are directly involved in helping to formulate Europol's strategy, taking into account the operational and strategic aspects and monitoring systems to ensure delivery of agreed objectives. Of interest is the proposal for HENU's to develop models for the “ideal” Liaison Bureau and Europol National Unit. In addition National Units are closely involved in developing proposals for improving mechanisms for sharing good practice among Member States as well as enhancing Europol's information exchange systems.

The close working relationships established between the SOCA Europol National Unit and the UK Liaison Bureau which together represents all aspects of UK law enforcement provides in our view the best possible opportunity for feeding ideas into Europol that will develop the organisation and enhance the benefits it can provide the UK.

Last year Europol supported Member State law enforcement into organised crime with 14 operational projects—or Analysis Work Files (AWF). They focussed on priority crime areas identified for 2007, so covered drug trafficking (3), crimes against persons (3), financial and property crime (2), organised crime groups (4) and forgery of money (2). Each of the projects supported live investigations taking place in specific Member States, or issues linked to COSPOL projects being driven under the auspices of the Police Chiefs Task Force.

The United Kingdom was involved in almost all of these projects and we have found them to be an extremely effective way of running cross border investigations. That said we see a clear benefit of Europol moving further towards “generic” AWFs as opposed to opening files on specific operations. The administrative procedures required to establish an AWF are considerable and time consuming, and we believe it would be more efficient to have an AWF which was a “folder” for a specific subject area into which discrete projects could be inserted. Member States would still only have access to information for those projects for which they were members and contributing data.

8. COMBATING TERRORISM

The fight against terrorism is a top priority for Europol, which provides operational and strategic analysis to Member States in support of their investigations. We are pleased to see that Europol has taken over production of the annual Terrorism Situation and Trend report (TE-SAT) previously undertaken by the EU Presidency. TE-SAT is a useful tool in analysing trends in Islamist terrorism in the EU. However Europol recognises that improvements need to be made to the data in order for comparisons to be usefully made between Member States.

Europol’s anti-terrorism activity is contained within two Europol Analytical Work Files, one of which deals with Islamic terrorism. This is the only AWF to which all Member States have agreed to contribute information. That said although there is no evidence of Europol’s systems being insecure, we recognise a reluctance on the part of many Member States to share what is very sensitive information, especially in the early stages of an investigation and the information gathering process, where any leak could compromise the investigation, and so there must be a presumption that the amount and quality of data submitted to the AWF is likely to be of less value than it otherwise might. The UK is a substantial contributor to this AWF and only contributes information after an investigation has taken place.

SOCA is best placed to comment on this issue in detail but in general terms we are satisfied that Europol provides a good service and takes on the responsibility for such projects as Check the Web. Check the Web provides an EU central database of open source websites that operational police officers can use in their investigations. The UK is one of the most significant contributors to Check the Web.

The UK supports the creation of a European Bomb database that will be based at Europol as a means to have 24/7 access to relevant information on incidents involving explosive devices.

Europol produces assessment models from open sources on criminal investigations known as their Knowledge Banks. Recent studies on returning jihadists and on Pakistan have proved very useful.

9. EUROPOL INFORMATION SYSTEM

The Europol Information System (EIS) provides a general information exchange service, as opposed to the specificity of the Analytical Work Files. It is available to all Member States through their Liaison Officers and the Europol National Units. It is used to store personal information about people who, under the national law of that country, are suspected of having committed a crime or having taken part in a crime for which Europol has competence, or where there are serious grounds to believe they will commit such crimes.

At the end of 2007 the EIS held 62,260 data objects an increase of 80% over the year. A majority of the data held on the EIS is related to Euro counterfeiting. The significant increase was largely due to the introduction of so-called automatic data loaders. At the moment only five countries are using the automated loading system—Germany and the Netherlands; and last year Denmark; Spain and Belgium started using auto-loaders.

The United Kingdom needs to double key any data its loads onto the EIS because our data systems are not compatible and so we cannot use the auto loading system. That said the volume of data we do load is still very low and while this is in common with the majority of Member States, it is not a situation we would wish to see prevail, and we are reviewing our procedures to ensure an increase in the amount of data we send to Europol.

We are aware that concerns raised by some Member States over data quality and the resulting question marks it places over the value of the EIS are being used as one reason for reluctance to load data onto the EIS. Data entry is clearly an issue and the fact that bilateral engagement is so successful is also quite likely to be a disincentive to treat as a priority the loading of data onto the EIS.

The Management Board recognises the problem and has determined to take steps to increase the amount of data loaded onto the EIS.

10. EUROPOL ORGANS AND SYSTEMS

Management Board & Director

From the discussion during the negotiation of the new Europol Council Decision it was clear that a number of Member States were frustrated by the overarching sense of bureaucracy and general speed of reaction by Europol to new ideas. It was clear also that other Member States share our concern over the working relations between Europol and the Management Board.

Our view is that the Europol's general approach is quite conservative and we see a tendency to only do something where the governing rules are explicit and quite unambiguous. This quite legalistic approach is pretty much the opposite we would prefer to see adopted, that anything could be done as long as it is clearly not prohibited. This leaves Europol looking cumbersome and slow to react, and leads to a tendency to refer too much back to the Management Board for advice and guidance.

We would hope that changes brought about by the new Europol Council Decision will help address a number of these issues. We would prefer to see a rebalancing of responsibilities with the Management Board getting less bogged down in detail and providing more strategic direction for Europol, while allowing the Director to take more responsibility for delivering the objectives set by the Management Board. It is hoped that changes to the appointment and term of the Management Board Chair will provide more consistency and continuity to the relationship between Europol and its Management Board.

Joint Supervisory Body

The Joint Supervisory Body (JSB) is composed of two representatives of each of the national data protection Supervisory Bodies. It is charged with ensuring that the data protection and data storage standards established for Europol are fully complied with, and that the rights of the individual are not violated and it monitors the permissibility of the transmission of data originating from Europol. Any individual has the right to request the Joint Supervisory Body to ensure that the manner in which his personal data have been collected, stored, processed and utilized by Europol is lawful and accurate.

The manner in which the JSB conducts its work is not something on which we can comment in any detail, but in our view it provides a vital function and there is no suggestion that it is anything but an effective body. The introduction of the role of Europol Data Protection Officer through the new Europol Council Decision will provide an important oversight function of the day to activity of Europol's data handling and a bridge to the JSB when the need arises to escalate any problem.

Staffing

The total headcount for Europol is currently 621 posts, but taking into account vacancies which are being filled or left vacant the headcount at the end of 2007 was 592.

The majority of staff is Europol officials (363) with the next highest category being Liaison Officers (114), the remainder being security guards, local staff, contractors and seconded national experts. The United Kingdom provides 36 of the total of Europol officials which compares favourably in numerical terms to all countries other than the Netherlands (70).

Europol's Serious Crime Department employs approximately twice the number of staff than the other two departments, Corporate Governance and Information Management and Technology. Eleven United Kingdom police officers and other law enforcement officers work for this department in specialist posts reserved for subject experts from Member State law enforcement authorities—so-called "bold posts". These posts are filled as fixed term appointments to allow a steady rotation of staff bringing new expertise into Europol and then returning new ideas to their forces at the end of their employment.

We are strong supporters of this approach and would like to get more of our policing experts into Europol, and especially into the senior posts. There is interest amongst UK law enforcement in applying for Europol vacancies but opportunities are limited because of two particular factors. There is a clear sense amongst some Chief Police Officers that international engagement does not add much value to domestic policing and that the loss to the force of a talented officer for a number of years is not worth the “sacrifice”. But the more pertinent issue relates to contractual issues since anyone working at Europol has to become an employee, and this compromises the officer’s pension rights with the home force. This is an issue we are currently seeking to resolve.

Finance

Europol is currently funded by direct financing from Member States on the basis of national GDP. This arrangement will change in 2010 when the new Europol Council Decision takes effect, when Europol will be funded from the Community Budget.

In the last five years Europol’s budget has increased from €57.8m—€67.9m, an increase of 17.5%. A concern for the UK has been the budget surplus which has grown over recent years because the allocated budget was invariably under spent, quite often by a considerable amount. UK intervention at the Management Board has been effective and reduced the problem and the budget for 2008 is €63.9m. The UK’s contribution under the current arrangements will be around €9.65m, although this could be reduced if the budget is under spent during the year.

Some concern has been expressed that Europol’s budget could be allowed to run out of control following the move to Community Funding, given that the Management Board which directly represents the “funding providers” at the moment will lose some influence. And that since Europol’s budget is small in overall terms when considered at the level of the general budget negotiation there will be a tendency to increase it beyond what is needed. We believe this is a situation that can be managed. The Management Board will still be responsible for drafting the personnel plan, the work plan and the budget required to deliver Europol’s objectives, in conjunction with Europol. The OCTA will still be the driving force to inform Europol’s direction, and we can expect both the European Parliament and the Council to exert its influence to arrive at a practical outcome. Put together this can all be fed into the EU budget negotiation process, so that any proposed increase can be properly justified.

11. EUROPOL COUNCIL DECISION

After 15 months of detailed negotiation in the Europol Working Group a new legal base for Europol has been agreed that will replace the Europol Convention at the beginning of 2010.

The two primary objectives which led the European Commission to introduce its proposal at the end of 2006 have been achieved. In replacing the Convention with a Council Decision any future amendments to Europol’s legal base could be accommodated much quicker than the current situation having to spend years ratifying amending Protocols. Europol’s current funding mechanism will be changed so that from 2010 it will be financed from the Community Budget, as opposed to direct Member State funding. This will bring Europol into line with other EU Bodies.

From an operational perspective the new legal base introduces a number of beneficial amendments but in general terms Europol’s role and functions remain unchanged. The overarching function is that Europol exists to support Member State law enforcement activity in the fight against serious and organised crime and terrorism.

A summary of the more important outcomes of the negotiation of the new Council Decision follows:

- There has been an extension of Europol’s mandate so that it may, subject to resource constraints, support Member State investigations into serious crimes that are not necessarily thought to be carried out by organised gangs. However this extension is limited by the requirement that any such investigation must affect at least two Member States and thus be cross border in nature;
- There has been no change in the list of crimes for which Europol has competence;
- The rules for the exchange of data, and particularly personal data have been clarified and codified, which will benefit both Europol and data subjects. It is now set out in specific detail how Europol will conduct its relations with its various partners, the need to establish agreements and the arrangements for exchanging data with each type of partner.

- The role of a Data Protection Officer has been formalised to ensure that the provisions of the new legislation in terms of the processing of personal data and protection of the rights of the data subject are complied with;
- More emphasis is put on the need for the Management Board to adopt a more strategic role and the appointment procedures for the Chair have been changed so instead of rotating every six months with the Presidency the Chair will hold the seat for the 18 months.
- In terms of oversight there is now a welcome provision that enables the European Parliament to call the Director and Management Board Chair to account for their actions;
- The introduction of Community Financing brings with it the application of the EC Staff Regulation and the EC Protocol on Privileges and Immunities. This has required some additional internal regulation to preserve the principle of staff rotation and the selection of subject matter experts just from Member State law enforcement authorities (as opposed to open competition in its widest sense). In addition the Commission has had to introduce a Regulation to maintain the current immunity arrangements for Europol officials supporting Member States as a member of a Joint Investigation Team.

In conclusion there is nothing about the new legal instrument which causes any particular concern. Indeed we welcome it. We do not believe that the introduction of community funding, and with it the EC Staff Regulation brings any particular operational benefit to Europol, but equally it does not impact on Europol's ability to function. Apart from the specific changes identified above there have been myriad small textual changes throughout the document. These have added clarity that will enable Europol to operate with more certainty which in turn should reduce reliance on the Management Board for direction.

28 April 2008

Examination of Witnesses

Witnesses: MR PETER STORR, International Director, and MR BEN JUDAH, Head of Police Co-Operation and Crime Section, International Directorate, Home Office, examined.

Q1 Chairman: Mr Storr and Mr Judah, welcome. It is most kind of you to come. You will understand that this is the first session that this Committee has had with regard to our new inquiry into Europol. We expect to carry on with evidence sessions and visits between now and some period in July. We are hoping that we shall be able to report to the House of Lords some time in the overspill, which will be October or November, some time of that sort. It is helpful that you should both be here for this first session. I think you have seen the outline of the questions we wish to ask you. You know you are on the record. Let us begin with me asking the first question. Could you give the Committee a brief overview of the current UK policy arrangements for combating international organised crime? Could you clarify who holds the UK's responsibilities for developing law enforcement co-operation policy in the European Union?

Mr Storr: I should start by saying that the lead role in developing policy falls to the Serious Organised Crime Agency (SOCA) which every year prepares an Organised Crime Threat Assessment based on the analysis of information and intelligence that it receives from a number of sources. From that Organised Crime Threat Assessment, it develops a list of priorities for action, identifying which are the key threats to UK interests, both domestically and internationally.

Q2 Chairman: You will be aware that we are having an evidence session with SOCA on 4 June.

Mr Storr: Yes, and I am sure that the Director of SOCA will be able to provide greater detail. From the threat assessment, as I said, the priorities are identified, and those priorities are agreed with ministers. The SOCA budget is shaped around those priorities. A key part of SOCA activity is fighting crime at the European Union level and more widely internationally. We co-operate very closely in the Home Office with SOCA in its international business. SOCA provides the UK member on the Europol Management Board, which is the body that controls the UK's Europol budget, so SOCA has a direct influence over the budget in the overall direction of Europol as an organisation. Home Office Ministers are represented at the Justice and Homes Affairs Council, which is the senior European body to which the final decision relating to Europol's budget, its overall direction, as well as most recently the Council Decision to set up a new constitutional arrangement for Europol, are referred to for ministerial decision. That, broadly, is how things work. In addition, at the more operational level, SOCA has a network of SOCA liaison officers in the countries which have been identified as priorities for UK action as well as in organisations such as Europol itself.

Q3 Lord Marlesford: Which of the countries that have been prioritised for UK action?

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Mr Storr: It varies quite a bit. There are very good relations with most of our European partners, but, broadly speaking, if you look at the issue of drug trafficking, you will find that SOCA is particularly active in areas like the Western Balkan countries, Afghanistan obviously. That is mostly to do with heroin trafficking. As far as trafficking in cocaine is concerned, SOCA is active in certain countries in South America, which are either countries of origin of cocaine or countries of transit.

Q4 Lord Harrison: Could I ask if the liaison officers have language skills?

Mr Storr: Most of them do have language skills. I think in fact probably when you see the Director of SOCA he will be able to provide you with chapter and verse on exactly what those language skills are.

Q5 Lord Marlesford: Europol is an agency for co-operation on information and intelligence matters. What is the policy for managing operational co-operation within the EU and particularly how are operational decisions further to information and intelligence received arrived at? If I could expand a particular concern that I have, if I were running an international organised crime syndicate, one of the things that I would want to do is to know what the enemy, i.e. the forces of law and order, were going to do about me. I would therefore be seeking to penetrate through Europol that information, to obtain that information. There would be certain countries, for example Romania, I would think I had a jolly good chance of using. What do you do to make sure that this whole Europol operation does not leak like a sieve?

Mr Storr: Could I start by describing how information or intelligence might be turned into operational action? If we go back to the way in which SOCA operates on the basis of intelligence received, it will then identify a number of threats and other intelligence will enable it to identify particular criminal activities that are planned. If that intelligence suggests that there is a European dimension, which in many cases it does, involving activities of criminal organisations or people in a number of Member States, then SOCA will take a decision as to whether it either involves the SOCA liaison officer network, for example, or the SOCA liaison officers based at Europol, or whether, if it is a particularly serious case, it wants to involve Europol's full facilities, which include analytical capacity and ability in particular operations to open an analytical work file. Structurally, that is how the decision is taken, but it is largely controlled by the Member State, in our case it would be SOCA, which originates the intelligence and brings the particular problem to the Europol table. The question of how you stop information falling into the wrong hands is

one that traditionally troubles law enforcement, whether it is in the UK or elsewhere. Within the UK, SOCA has very carefully developed handling procedures designed to ensure that information relating to UK activities does not fall into the wrong hands. There is no denying that the standards that apply in the UK are not met universally in other countries, and so in that particular case SOCA officers will decide whether there is a need to know the information, for example. At the Europol level, I am assured by the SOCA experts that there are handling arrangements for information held on Europol's systems that are actually robust and which allow the Member State providing the information to impose certain qualifications and restrictions on who might have access to that information.

Chairman: I think that because of the long history of leakages from EU organisations over the years, Lord Teverson will wish to return to this later in our session. He wants to come in now.

Q6 Lord Teverson: I want to come in on the general section, my Lord Chairman. Is Europol a significant point of discussion in G6 meetings?

Mr Storr: I am just trying to remember whether it has come up. Certainly the organised crime issue has come up at the G6, which I am sure you are familiar with, where ministers of the six largest European countries get together to discuss common interests. There have been discussions mostly aimed at trying to identify which are the key problems for those countries and for Europe more widely and how we deal with them. I can remember at recent meetings there have been discussions on how we might best get together to decide the arrangements for tackling drug trafficking through the Mediterranean. While that would not directly involve Europol, Europol would no doubt have an interest in it, but there have been no discussions to my recollection which have directly impinged on Europol's direction, future or key priorities.

Q7 Lord Teverson: Do you think there is a temptation that that could become the case in that the G6 meeting could become a kitchen cabinet of European decision-making on Europol after it becomes an institution?

Mr Storr: It is a question which you might want to pose to our Minister Tony McNulty if the Committee wants him to give evidence. I am very happy to give you my view, which is that we have regarded the G6 group of countries not as being a kitchen cabinet, not as being the driving engine for the wider 27, but simply as being an opportunity for the ministers who deal frequently with each other on, for example, terrorism, which affects many of those countries very

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deeply, just to exchange information, to exchange best practice.

Q8 Lord Mawson: I understand there was an article recently in *The Times* which suggested that SOCA was quite a bureaucratic organisation and that there were real questions about what it was really delivering. I would be interested in having your comments on that just to get a feel for it.

Mr Storr: My overview of SOCA is primarily concentrated on its international work, rather than its national work. What I can say at the international level, particularly within the EU, is that SOCA is highly regarded. It is highly regarded for its professionalism; it is highly regarded for the way in which it co-operates with other law-enforcement bodies within the European Union; and it is highly regarded for the competence and professionalism of its officers. It can point to a number of successes working with European partners and working more widely with other partners. So from my perspective, SOCA is well regarded. I do not think it is perceived within Europe as being overly bureaucratic and, as I have said, it has a number of successes to which it can point.

Q9 Lord Dear: I would like to ask a couple of questions around the business of intelligence. Those who have watched policing over the last 15 or 18 years have seen intelligence move from something which was isolated to something that sits between an art and a science and certainly it has been developed in this country, or has it tried to be developed in this country, in a meaningful way. I wonder, first of all, if you could help us with the Home Office view on intelligence-led policing in the context of Europol and the interface with the UK and whether you are satisfied that in Europe what we have seen as something that we have led policing thinking about is in fact a reality or have we in fact been following on the best practice elsewhere?

Mr Storr: I think the intelligence-led policing concept is one which the United Kingdom pioneered, and certainly within Europe there was intense interest in exactly those developments to which you have referred in the last 15 or so years.

Q10 Lord Dear: That would be the National Intelligence Model within this country.

Mr Storr: The National Intelligence Model was the outcome of that thinking. When we took over the Presidency of the European Union in 2005, it was one of our key objectives to do two things; one, to try to establish intelligence-led policing as a concept within Europe; and, two, to ensure that intelligence and the analysis of that intelligence led to a very good quality threat assessment. In that context, we achieved two things: one was the adoption of a new revised and

better Organised Crime Threat Assessment; and the other was the adoption of a European Criminal Intelligence Model, a sort of business model for intelligence-led policing. We managed, in the six months that we held the Presidency of the European Union, to get that adopted. I think it is fair to say that in many European Union Member States the idea of intelligence-led policing was, and probably still is, slightly counter-cultural. The investigative model in some Member States involves a reported crime, which is then investigated under the jurisdiction of an investigating magistrate, and a lot of Member States still think of crime simply in those terms, that once it is committed, it will be investigated thoroughly. The idea of actually using intelligence to identify and spot crime trends and to uncover operations of criminal activity in progress and to take necessary pre-emptive action were all interesting changes which we had to work hard to convince some European partners that it was worth doing, but we managed to get it adopted. My own view is that at the moment both the Organised Crime Threat Assessment compiled by Europol and the concept of intelligence-led policing are established but very much work in progress. I think it is certainly a priority for us to keep emphasising the importance of this because I suspect there will always be a tendency to go back to arrangements with which some Member States are rather more familiar and comfortable. So we will keep pushing the intelligence-led policing concept. I think we are reasonably satisfied that since the new threat assessment process was introduced within Europol there has been a gradual increase in the quality of the assessment. We think what you are now seeing is a link between the analytical process through the Organised Crime Threat Assessment and a more proactive approach to policing those threats.

Q11 Lord Dear: Is this the migration from NIM, the National Intelligence Model we understand in this country, into what is known as the European Criminal Intelligence Model (ECIM)?

Mr Storr: That is it.

Q12 Lord Dear: In other words, they have taken one model and hopefully upgraded and improved it. Do you think there has been an upgrade and an improvement in that migration?

Mr Storr: It is broadly the same concept. I think the improvement will come when all Member States are convinced that it is in their interests to provide really good quality information and intelligence to Europol to allow them to produce the sort of threat assessment that I was talking about, and once the concept of intelligence-led policing is established. As I said, I think there is still some way to go, but progress is being made.

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Q13 Lord Dear: Indeed, the problem with intelligence or information as it used to be called is that he who holds the information as got the power and does not want to give the information because if you give it out, you lose the power base. I am overstating it to make the point, as I am sure you understand. At an operational level it is very difficult but essential to get people to divest themselves of information that they know into some sort of central point, a database perhaps, where others can share it and others can analyse it. That is a problem at an operational level with individuals. Of course it becomes a bigger problem between agencies and countries, agencies within one country and then country to country. We will probably touch upon this when colleagues talk later on about databases and how they are handled. Have you a view at all about how one begins to solve that rather basic problem of getting people, organisations or countries, to share the information, and whether that is moving along at a pace and in a direction that you would applaud?

Mr Storr: It is certainly improving, and in many cases I think SOCA when it gives evidence will be able to point specifically to operations where intelligence has been shared between its own officers and other countries, either bilaterally or through SOCA liaison officers at Europol, but there is a number of factors that will influence any officer in sharing information. One is the point which was raised earlier about the processes under which information and intelligence are held and made available. The other is simply a question of working with colleagues who can be trusted. Others include things like the language issue, which was mentioned earlier. I have seen a trend over the last 10 years or so very much towards trusting and sharing. Once an operation is established and successful with a particular country or group of countries, then that, as it were, sets the tone for future co-operation along those lines. There is more work to be done, as with many aspects of public policy. I think this is moving very much in the right direction.

Q14 Lord Dear: In short, priorities are rising rather falling on that point?

Mr Storr: Yes. I think there is a tendency and a trend in favour of sharing more information within law enforcement communities across the European Union, matched indeed by some parallel experience amongst policy makers or, under the Swedish initiative in recent years, the principle of availability, the idea that unless there are good reasons not to, the bias should be in favour of sharing your information with Member States, obviously subject to handling conditions.

Q15 Chairman: Can I just follow that up? You said you thought that the development of ECIM would speed up when more Member States became

convinced of the value. Can I ask you whether it is the relatively slow speed of take-up has been caused by Member States not fully understanding it or positively obstructing it?

Mr Storr: I do not think there has been positive obstruction.

Q16 Chairman: Or resistance, if you like, which is not quite such a strong word.

Mr Storr: I think there is a need to overcome the tendency to keep information within national structures in some Member States. If you look at the history of some Member States, the culture has not been one of sharing information all that widely within the Member State, let alone outside the Member State. In some cases you are starting from an understanding of the value of information and the value of sharing information that is rather different from that within the United Kingdom. I think it is actually a task for Europol, its Management Board and indeed for officials and ministers to push constantly the need for countries to populate the Europol database to provide quality information to it and to use Europol's facilities. I think what I am saying is that there is still some way to go in advertising to Member States the services which Europol can provide.

Q17 Lord Mawson: You say it is different to what happens in the United Kingdom. It does not sound very different to what my experience of large parts of the public sector in this country has been about. They are perhaps not very good at communicating outside their silos and something else has to happen to enable that to happen. We talk a great deal about partnership but in reality it does not happen to a very great degree. I just wondered what investment has been made in terms of building relationships and the types of partnerships and trust between these various bodies where communication and partnership working can begin to develop to a level that makes it real. I think it is a very difficult thing to do, even in this country.

Mr Storr: I think it is rather different, and again I am sure the experts from SOCA will be able to give you a much better answer than I can, but my impression, having worked closely with law enforcement over a number of years, is that you do find that when there is a particular task in mind or a particular operational activity—investigating a murder with implications in a number of countries, or tackling terrorism with cells in a number of countries, or indeed international drug trafficking—where those Member States' law enforcement authorities working together can identify a common interest and a common purpose, barriers tend to come down and silos tend to be broken down. As far as wider partnerships are concerned, we are fully behind Europol's efforts to

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establish working relationships with third countries outside the European Union, with European and other bodies involved in law enforcement. We think that partnership approach is very much the way to go.

Q18 Baroness Henig: I want to follow up on the Chairman's point. Clearly across Europe both the model of policing and the role the police play within countries domestically is very different and it varies a lot. I was trying to get a handle on whether the difficulties to which you were alluding earlier arise from the differences in the way policing actually operates or whether it is more about cultural issues.

Mr Storr: There are some difficulties caused by the different nature of the way in which police and law-enforcement is established in various Member States and some that are cultural. That leads you down a number of possible paths. In recent years, we have moved away, certainly the UK has moved away, from the idea of harmonising everything. In my view it would be unproductive if we were to try to establish any sort of harmonised system of policing or any sort of harmonised system of legislation because attempts to do so in the past have really got nowhere. I think the better route is mutual legal assistance and mutual recognition of the differences in each other's structures and laws. I think as Europol establishes itself and its systems start working and it shows what value it can add to the work of individual Member States, those barriers to co-operation, whether they be legal, constitutional, police arrangements or cultural, will gradually be overcome. I think I am fairly positive that we are moving in the right direction in overcoming them.

Q19 Lord Young of Norwood Green: I was looking at your report on threat assessment on page 3. Notwithstanding all the complexities and the difficulties, it seems quite an optimistic assessment really. One can detect the green shoots of progress because you say that the annual Organised Crime Threat Assessment is becoming, in your words, a vital Europol product. That seems to me an example of good progress. Then over the page you talk about the EU Terrorism Situation and the Trend Report, which gives an overview, as another very useful product, both of those combining to encourage development of intelligence-gathering and sharing of information in the Member States. Do you stand by that? When I read that I thought that that seems to me a positive assessment of what is happening and real progress being made.

Mr Storr: Yes, I think it is encouraging. If you compare where we were before we launched our 2005 initiative, we used to have a threat assessment that was not really all that much more than 27 separate national reports on threats, some of it anecdotal,

some of it intelligence-based and properly analysed, but it was all stitched together in a rather large document. You really did not see any coherent or cohesive overview. I think what you are seeing emerge now from Europol is a rather more useful product. It still bears some signs of being stitched together, but it is a work in progress, as I said, and it is more recognisably similar to the sort of product that the Serious Organised Crime Agency produces by way of a threat assessment than it was a few years ago. In that sense, there is progress being made. Some of the analysts that Europol has recruited to work on this assessment are of very high quality. I think the role of Member States is constantly to push Europol to produce more and better and to keep moving in this direction of travel, and that is what we are doing.

Q20 Chairman: Can I ask a last question on what has arisen from Lord Dear's questions? Could you tell us what the UK Government is doing positively to manage change both within Europol and with bilateral or multilateral conversations and discussions outside the Europol arena?

Mr Storr: Yes. We were very supportive of the idea of changing the constitutional arrangements for Europol to the present Council Decision, which we are expecting to be adopted in 2008. Our view was that the way in which Europol was originally structured was inflexible and rather bureaucratic. It meant that if there were new developments, new crime trends and new mandates for Europol, it became a rather cumbersome process for Europol to be able to change its priorities in order to take these on board. So we contributed to a group called the Friends of the Presidency on Europol, which identified a number of areas in which Europol's constitutional and oversight arrangements could be changed. As with many negotiations, there are aspects on which we would have wanted to go further than some of our European partners. What we came up with was something which will help Europol to grow and develop in the immediate future. Amongst those I include the decision to have the Chair of the Europol Management Board with an 18-month term rather than simply having the Chair change every time there is a change of EU Presidency; in other words, every six months. Also, what is helpful is having the change within Europol so that it can now investigate serious crime involving a number of Member States, which does not meet the definition of organised crime. I think that is important from the UK's perspective. The other aspect which will help is the emphasis in the new arrangement for the Europol Management Board to exercise a strategic role. In the past we had felt that the Management Board was becoming a little bit bogged down in the sort of day-to-day detail which in a police force within this country you would expect the chief officer of police to

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undertake without reference. We are hoping that the combination of those three things and a number of other changes might lead to a better delineation of responsibilities between the Europol Management Board on the one hand and the Director on the other and indeed that having the overall Management Board Chair there for a reasonable period of time will enable the sort of personal and professional relationship between Board Chair and Director, which we think would benefit Europol greatly.

Q21 Lord Dear: Pursuing much the same point and give a practical illustration, and it really points towards a question of whether there is some sort of sympathy running between conflicting or competing legal arrangements. I can remember way back I suppose 15 years ago when things were a good deal less structured than they are now, and I give a hypothetical example. A lorry load of cannabis would cross the Mediterranean into Spain. A British operation would want to see that lorry load of cannabis delivered into a warehouse somewhere in the Midlands. It would have to run through Spain, hypothetically through France, through Belgium, through Holland, across on the ferry and all the way through in order to take out a complete organisation. If it was interceded at any point in one of those countries, all you would get was a lorry load of cannabis and a driver, which was fine because you would have a degree of disruption but you would not take out an organisation. The co-operation that one would seek in all those counties was not necessarily forthcoming because they did to see things in the same way, and so all sorts of alternatives were made which I guess you know about. I wonder whether that hypothetical path has been cleared not only in drug trafficking but in all the other things that Europol is concerned with and whether there is a greater sympathy, a greater number perhaps, in competing or enforcing agencies and in conflicting legal frameworks?

Mr Storr: There is progress in the right direction. I think there has been a lot of progress since the time that you have described. The Europol liaison officers actually have a vital role to play in this. Having representatives of law enforcement all present working in many cases in the same corridor or in the room next door in The Hague enables for example SOCA to plan exactly that sort of good controlled delivery in a way which I do not think would have been possible 10 years or so ago, before Europol got up and running. As far as the sympathy and understanding of each other's systems is concerned, the other point to make is that we in the UK, and indeed in a number of other Member States, have invested a lot of effort over the last five to 10 years in training and designing infrastructures, particularly in the Member States that joined in 2005 and since, and

in trying to bring them up to the same level of competence and the same degree of reliable systems and the same concept of working together through things like the European Union PHARE twinning programme. There is a better arrangement within Europol, better liaison and I think probably steps towards establishing a better understanding of each other's systems. All that moves in the right direction. If you wanted an answer chapter and verse on the degree of difference in terms of operational successes over the last few years, that would probably be a question which you might want to pose to the Director of SOCA and his team when they are called to give evidence.

Q22 Lord Marlesford: Could I follow up one or two of the points you have made? You talked a moment ago about the distinction between serious and organised crime. In many ways one would imagine that the bigger the scale of crime, the easier it ought to be to deal with it through the sort of organisation we are discussing this morning. Looking at your excellent paper, on page 5 where you put the Europol priorities in paragraph 7, you have the four priorities of: drug trafficking; fraud covering financial and property crime; money laundering and euro counterfeiting; and illegal immigration, trafficking in human beings and child abuse. I do not know if you can give us any feel for the extent to which, as far as the UK is concerned at least, these forms of crime are organised. They are all serious. In a way, one would have thought that the drugs one, as Lord Dear was explaining, can be very difficult to deal with. I would have thought that fraud (financial and property crime) was less likely to be organised in that sense, and ditto possibly money laundering. In as far as illegal immigration and trafficking in human beings and child abuse is organised, it really ought, I should have thought, to be possible to put an end to it. Therefore, I wondered whether you feel that in general, in as far as it is still active in this country, it is not so organised?

Mr Storr: Most of the list would probably be covered by most Member States' definitions of what is organised crime, with in my view the possible exception of child abuse where some of it is organised; some of it is simply opportunistic crime, but the internet enables child abusers to swap images and in that sense it becomes if not exactly organised, but certainly something which involves individuals with a shared interest working together. I would see facilitated illegal immigration, trafficking in human beings, as being issues of the same degree of difficulty as international drugs trafficking because they involve the same element of organisation with a cross-border element to them and that aspect of bringing either goods or people past the best efforts of law enforcement to tackle them. The distinction I

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would draw between what is organised crime and what is serious crime really relates more to crimes like murder, where previously the Europol definition of what was organised crime and the mandate which it had, left serial murders involving a number of different countries, or other crimes (rape, et cetera) involving activity in a number of different countries unclear as to whether Europol had the mandate to cover them. Yet Europol, we knew, would have in those particular cases, or would be likely to have, information and intelligence which would be extremely useful to facilitate the investigation and detection of those crimes. So we were very much in favour of widening the Europol purpose to allow them to be active in those areas. As an illustration of why we were worried about that, you can look at the trial of the model pilot project for something called the Prüm agreement where, when it was trialled between Austria and Germany, revealed a fairly large number of serious crimes of a non-organised nature involving criminals moving between those two countries. Theoretically, you would think that if you were investigating those sorts of crimes across border you would want to see what Europol would have to offer in the detection of those crimes. I am glad that we have now established fairly firmly that in future those sorts of serious crimes will be within the Europol mandate. I think that will come.

Chairman: Before we move on, I say what I ought to have said earlier, which is that If Mr Judah at any moment wishes to contribute, we would be delighted to hear from him.

Q23 Lord Mawson: Moving on to change of Europol's mandate, what criteria were used for determining what should be Europol's new mandate and scope of operations?

Mr Storr: I have made my main point about wanting the Management Board to have a slightly more strategic role and wanting Europol to have the ability to widen its mandate, not to cover the sort of crime that was more appropriate to national police forces, for example street crime, volume crime; we did not want to get into that area but equally we did not want it to be hampered, as I said, by an overly legal definition of what constituted organised crime. The compromise we reached whereby it is able to tackle and involve itself in serious crime is a very good one. The rest of the criteria in deciding what should be in the new mandate and strength of operations was, I think, a classic example of a negotiation. In the original draft of new Council decision, Article 5(1)(b) proposed that Europol should have the role of coordinating, organising and implementing investigative action. We were very happy for Europol to have the role of intelligence coordinator. What we were not happy with was seeing Europol have the right to initiate an investigation, which in our view

remains a decision which should be for individual chief officers of police within what the law permits. During the course of the negotiation, some Member States were advocating that and others were advocating other roles. For example, some Member States wanted Europol to be able to support simply national investigations. We were keen that it should not, as it were, take the place of national police forces or do the job which national police forces should do. I think our ambitions were moving in a positive direction as far as widening its mandate to include serious crime, reforming to a small extent the way in which the Europol Management Board worked, and also in protecting the UK interests, making sure that it did not develop into something that looked like a quasi operational European police force.

Q24 Lord Mawson: As the Council decision introduces more flexibility to allow Europol to support criminal investigations into the most serious of crimes that may not obviously be linked to organised criminal gangs will the configuration of the UK's EU co-operation need to be changed at agency level?

Mr Storr: Our view is that it will not need to change because the key role in all this is the role of the Serious Organised Crime Agency. As its title indicates, it has a mandate which covers both serious and organised crime. It involves itself in both those sorts of activities. I think we would still see SOCA as being the organisation which plays the key role in liaising with Europol, and we would still see SOCA as occupying the key position on the Europol Management Board.

Q25 Lord Teverson: Could I come back to your earlier answer to Lord Mawson? I understand entirely why you would be against Europol becoming involved in crimes that just were about one state. Clearly national sovereignty says that should clearly be the Member State's responsibility. I am more interested in your answer about Europol being able to initiate itself. Is that not in a way contradictory to some degree to the idea that you were advocating earlier that there should be a mental move from crime happens, therefore we investigate, to trying to look ahead and anticipate? Surely one of Europol's big added values should be that if it moves into that mode, it should try to initiate investigations from patterns that it uniquely can see from the information it gets from national authorities?

Mr Storr: I think it is a question of how it does it, really. My answer is one in which I do not think, from a British policing constitutional point of view, we would want anybody other than the chief officer of police deciding to initiate the investigation in the UK. Having said that, if Europol identifies a particular series of crimes which have implications for a number

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of Member States and expresses its view that that should lead to the initiation of investigation and has the evidence and intelligence to back up that point of view, then I am absolutely certain that the Director of SOCA and his officers would take that very seriously indeed. I think what we would stop short of would be having a specific power allowing the Director of Europol to initiate an investigation in each of a number of Member States. Our view is that that remains the prerogative of the chief officer of police, as I have said,

Q26 Lord Teverson: In your evidence, one of the things around organisational changes is that I think you welcome the way that the Management Board should be structured so that the Director can get on with more operational matters and you do not get detailed interference at Management Board level. To me, that is a cultural problem, not necessarily a legislative problem. Do you think the new procedures will get over that problem or is that not just really someone telling the Management Board to pay attention to the strategic position and get on with it? Why would what is happening at the moment change that?

Mr Storr: The changes are modest. I think you are probably right in identifying it as being a cultural problem. Many Member States have arrangements in which the police operate under fairly close control, as indeed they do in the UK. In the UK there is a recognition of a wider delineation of responsibilities. I do not think that is an arrangement that is replicated in all other 26 Member States. I think the change towards a more strategic approach will help. As I have said, having a Europol board whose Chair is there for a decent length of time and long enough to establish a good working relationship with the Director will help. The changes are modest. You will have an opportunity to ask SOCA about this as they represent the UK, that it is very much in SOCA's interests to try, through our position on the Management Board, to push the board to take that strategic role seriously.

Q27 Lord Hodgson of Astley Abbotts: On that point, could you just tell us if the Chairman can be reappointed and if so for how long? You have talked about the importance of the Chairman having a longer term of office. I think the proposal here is for 18 months. Can they then be reappointed at the end of a term and, if so, what is the maximum period they can serve?

Mr Storr: I think we would have been happy to have had a system in which the Chair was elected for a period of two years from within the Management Board as a whole; in other words, the best or the recommended one out of all the 27 Member States. I think the two-year period would have given greater

continuity. What we ended up with was the election of the Chair for an 18-month period from the three Member States that are occupying, as it were, a team presidency. The three presidencies, the incoming presidency and two thereafter, get together and decide which of them will have the role of the Chair. I think in that sense, you would not be able to reappoint the Chair of the Management Board after he or she concluded that 18-month period.

Q28 Lord Hodgson of Astley Abbotts: You have been talking about cultural change very much in response to the questions here today and 18 months is quite a short period of time to change culture. If then somebody starts again at the beginning, scrambling up the learning curve, trying to deal with national interests and everything else and trying to get some strategic sense, do you feel this is a weakness, that first of all they should have some period slightly longer than that to try and stamp a strategic non-nationally oriented process on it?

Mr Storr: Yes, I think that is certainly better than having a rotating Chair of the Management Board changing every six months. In the past, that has meant that it has been very difficult on occasions to make the sort of progress that you would get if the Chair was strategically engaged with the Europol Director. I think 18 months would be better but, as I have said, the UK would have settled for a longer period, so you could have a real partnership developed.

Q29 Lord Harrison: Mr Storr, you might remind your colleagues that there is the Treaty that the presidency of the Council be 30 months and renewable for a further 30 months, which I think has enormous benefits attached to it. Mr Storr, so far you have given us a very welcome report of the deepening engagement that we have with Europol, but inevitably that brings in its train the need for resources and finance. My two questions turn to that aspect. Given that the Council decision has now extended the mandate for Europol and the Home Office has the ambition to keep finances under tight control, what do you actually see as the problem? Is it making sure that we get value for money or is it to ensure that the budget does not rise unnecessarily? What is the approach specific to the Europol budget?

Mr Storr: As with many European Community or European Union institutions, it is principally to ensure that the UK taxpayers' value is protected. We are investing heavily in Europol. This year our contribution to the budget will be between €8 million and €9.5 million. That is a significant sum of UK taxpayers' money. Our intention is that this should represent value-added to the efforts of national law enforcement. That is our overall approach. Within that overall approach, I do not see any reason why

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the Europol Director should not be subject to the same value-for-money and accountability requirements which we ask of our chief officers of police in this country. Having said that, if the Europol Director produces a well made out business case for more money and proves that this is an area where Europol can add value, then the UK will look at that very constructively. What I do not think we want to see is the automatic assumption that a change of mandate necessarily leads to more staff and more money to pay for those staff. As with many public institutions, the Director of Europol should be constantly reviewing his priorities and looking to see whether there are savings made within the organisations that can be used either partly or wholly to fund those new products. Those are really the principles that we bring to looking at the Europol budget both within the Home Office and I think also within SOCA in the way that it looks at the budget within the Europol Management Board and ultimately when the budget comes up for examination at the Justice and Home Affairs Council of Ministers.

Q30 Lord Harrison: Thank you for that. To turn on to something more specific, SOCA tells us that further costs are incurred for maintaining a large UK Liaison Bureau, which we touched on earlier, at Europol. Have you quantified those costs and how will you keep a good weather eye on those as well?

Mr Storr: In terms of quantification, as I understand it, there are eight staff at the Liaison Bureau. They represent a number of agencies: SOCA, the Metropolitan Police, HM Revenue and Customs and the Scottish Crime and Drugs Enforcement Agency. Our quantification of the costs indicates broadly that the cost is in the region of £150,000 per annum per officer, but we are not alone in having a sizeable liaison team there. Large Member States have similar sized teams. As far as keeping an eye on the cost is concerned, the decision where to place SOCA liaison offices is rightly an operational decision for SOCA itself, and I do not think we would second-guess that. All I would say is that SOCA examines very carefully where it puts its liaison officers and if it did not believe that it was a worthwhile investment to have that degree of resource in The Hague, then it would think carefully about deploying them elsewhere. I think the conclusion is that the view of SOCA and the other agencies which I have mentioned is that those officers, in terms of the liaison function, provide good value for money.

Q31 Lord Harrison: Are they external to the €9.5 million that you mentioned as the top of the envelope? Are they inside that envelope or are they external to that envelope?

Mr Storr: I think I am right in saying that they are not part of the formal Europol budget. They are financed directly by the UK agencies concerned.

Q32 Lord Hodgson of Astley Abbots: I would like to pursue the bang for the buck further, if we may. In paragraph 7 of your evidence you mention the importance and the value of the United Kingdom's close co-operation with Europol, but then in paragraph 5 you say that 80 per cent of the information comes in bilateral arrangements with the bureaux. We are spending, as I reckon, with eight officers at £150,000, €2 million to get 80 per cent and we are paying €9.6 million to get 20 per cent. Am I playing down the right alley or have I got it completely wrong?

Mr Storr: The figures are probably right. I do not think what it quite covers is the quality, or indeed the change that is happening within Europe. As our evidence makes reasonably clear, we would want to see a situation develop in which there is a greater degree of trust in Europol itself, and a greater degree of information would actually be passed to Europol. As it develops its systems, as it gets over a slight problem to which our evidence refers, which is that of Member States trusting Europol with information, I think we would very much want to see that percentage change. At the moment, I think the UK is one of the largest, if not the largest, user of the Europol Liaison Bureau. We do that because it represents extremely good value for money, but we would want to see greater use being made, as Europol develops, of the facilities which it provides in terms of analysis and the analytical work files.

Q33 Lord Mawson: I am really interested in this whole culture change question because I know from experience elsewhere that you can have lots of representatives and all that and it all looks fine on paper but in reality it might not actually be happening very well and that culture change can really affect an organisation. It takes time to build and develop. It also takes investment. You have to invest in people and relationships that build trust that allow all these other things. You can create whatever structures you want but if the people and the relationships are not happening, the structures will not work. In terms of the numbers, I wonder what investment is actually going to be made into culture change and new ways of working to start to move this forward.

Mr Storr: Within Europol, I think that is probably a question which the Director of Europol will be able to answer. The example of cultural change which I would quote is that we have managed to sell to Europol and to the European Union as a whole a pretty profound cultural change, which is the whole move towards having top quality, properly analysed

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threat assessments, which I think is not to be underestimated in terms of changing the culture. Likewise, the move to try to establish the concept of intelligence-led policing. As I have said, that is something that we cannot sit back and expect to have sustainability without continuing to invest effort in making sure that it sticks, which is what, through the Management Board, we are doing and through the Council of Ministers we are doing. I entirely accept your point. If you want to change the culture, you have to do it in terms of establishing trust and making sure that people work together.

Q34 Lord Hodgson of Astley Abbotts: Just staying on this change issue, change comes best when you have very good quality people because they are confident enough to accept change. Is it a tick in the box for a career to go to Europol? Is it a good thing to have on your CV or is it somewhere you are parked?
Mr Storr: I think it is a very good thing to have on your CV to be the Director of Europol. That is a key role because the Director sets the tone and the culture of the organisation. There is a good number of UK officers in Europol itself, but I think you have put your finger on one of the difficulties: that is actually trying to create the conditions in which a period of service in Europol or in other relevant international organisations actually is of benefit to the career of the best sorts of officers. At the moment, certainly the ACPO international representative, Paul Kernaghan, would claim that more needs to be done, and I think that is probably true.

Q35 Lord Dear: I was going to ask you the same question when we get to SOCA because their recruiting patterns are very poor. I could almost answer the question for you from another angle and that is that it depends on the organisation from which the representative comes. Using the police as an example, there is a culture that says you have to be in the public eye quite a bit if your promotional prospects are going to continue. If you go off abroad, by definition you are not necessarily in the public eye and you could be forgotten. That would be a fear that many people would, first, apply in the first place and, secondly, whilst they are out there. You would need another organisation that recognises what you are doing and embraces it when you come back and that will vary across the 52 police forces, Revenue and Customs and a whole host of others, and so it becomes cultural within the home base. I want, if I may, my Lord Chairman, to ask the same question of SOCA later.

Mr Storr: I certainly would not disagree with that analysis. I think it does vary. There is a move afoot within the Home Office to look again at the international policing arrangements. That will enable

us to examine to what extent we can do something about that particular difficulty.

Q36 Lord Marlesford: Following up Lord Dear's point, there have been press reports recently indicating that a considerable outflow from SOCA at quite senior levels for various reasons. Would you like to say anything about that?

Mr Storr: It is probably better that you put that point to the SOCA Director. All I would say is that SOCA is a new organisation; it brought together a number of constituent organisations and it represented a transformational change. It was not simply stitching three or four pieces together; it was approaching it in a different way. As with any organisation that goes through that transformational change, you are bound to have people who like the direction of travel and those who do not. Anything over and above that is probably a question best put to the SOCA people who give evidence.

Q37 Baroness Garden of Frognal: Mr Storr, in terms of Europol's insistence, and I am conscious that you have already talked quite a bit about the relationship between the Management Board and the Director and the Council decisions affecting that and making it a more strategic role for the Management Board, perhaps I could press you to confirm quite how you see that that Council decision will take a difference. The Management Board does already have a responsibility for the five-year financial plan, does it not, and for approving Europol's annual report and future work pattern? Perhaps you could clarify how the Council decision will make a difference.

Mr Storr: I would not want to over-sell the Council decision but the changes I think are changes in the right direction. They are modest changes and they reflect the fact that there are different approaches among Member States as to how Europol should be run and governed. At the risk of repetition, one of the key changes is having a Management Board Chair who will be there for a period of time. The more strategic focus is another one. That is probably what will make a difference.

Q38 Baroness Garden of Frognal: To what extent do you feel that the Management Board may be responsible for Europol's lack of flexibility, given that it is responsible for drafting the personnel plan, the work plan and the budget? Does the Management Board itself have some blame in the lack of flexibility which you highlight in your report?

Mr Storr: It is a balance. You have to have for European and international institutions in my view—this is borne of experience not only of working within the Home Office but working for the United Nations—a system of governance and financial accountability that is rigorous. To that extent I think

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the role of the board in overseeing the budget and in making sure that Europol's priorities are where the budget is placed is very important. It is easy for organisations to drift if they are not firmly managed. To that extent I think it is right that the Europol Management Board should have a powerful role. Where I think we were a little bit concerned was that they were interfering too much in day-to-day business. This is going back a few years. That is why we were very keen on emphasising that they should have a strategic role. We would be prepared when we see how the new arrangements bed down to look again to see whether more could be delegated from the board level to the Director. That would be the direction that I would see us moving in from the UK's point of view.

Q39 Baroness Garden of Frognal: Might the longer term of the Chair actually have an impact on that too?

Mr Storr: I would hope so, if you get the right Chair and if you have a Director who is able and willing to work constructively with the Chair.

Q40 Lord Dear: There are a couple of points you may be able to help us with and they are interrelated I suppose. Looking at the respective roles of the three key players, and you have made that forewarning of this, we are interested in getting a greater degree of clarity if you can help us on this: first of all, the UK SOCA representative on the Europol Management Board; you have a UK official in the Article 36 Committee; and a UK minister in the Council, all of whom one hopes should, and the question is can they, make a significant impact to the benefit of the UK? Can you help us tease out what the respective roles are because to some of us they appear to overlap?

Mr Storr: I should declare an interest because I am the UK's representative on the Article 36 Committee, so you must weigh my evidence carefully against that declaration of interest! The ministers clearly have the key role because it is at the point of the Justice and Home Affairs Council where you have the recommendations of the Management Board for example on the Europol Director appointments coming for a decision. The Article 36 Committee also reports to ministers. For example, most of the negotiations for the new Council decision on Europol were conducted within the Article 36 Committee and within the working groups working to the Article 36 Committee. In terms of overlapping of responsibilities, yes, you will find that the budget goes to the Europol Management Board, and it also comes from the Management Board to the Council, and the Article 36 Committee has a role also in determining it. As in many things that happen within the European Union, there are different bodies looking at similar issues. The way we try to avoid

duplication of effort is to have a fairly close working relationship between the UK representative on the Article 36 Committee and the UK representative on the SOCA board. I would say probably I am in contact several times a week with the UK representative on the board, not only on board duties but on SOCA's wider international business as well. Certainly before key discussions in both the Article 36 Committee and the Management Board, I will be in very close contact with the SOCA representative because both he and I recognise that there is a common interest between the Home Office and SOCA in making the Management Board work and in trying to persuade it to come to the right decision.

Q41 Lord Dear: Would you see any need for changing the parameters of the roles? Is there an overlap or are there gaps?

Mr Storr: I do not think so. I have not been conscious in my consultations with the International Director of SOCA that we have identified gaps. What we mostly look for when we plan what we are saying on issues in which the Home Office and SOCA have a common interest, are opportunities to advance the United Kingdom interest, but on things like for example discussions of key appointments to Europol, whether that is the Deputy Directors or the Director, SOCA will want to have a Home Office view on what sort of person we might look for or which candidates particularly ought to be favoured. I am not sure we see the parameters of the role changing all that much. To the extent that they do overlap, I think we manage that by constant contact between my own office and that of the relevant SOCA Director.

Q42 Lord Dear: Much more importantly of course is the role of the Management Board and the Director on the other and there is some emerging evidence that we have seen, on which we have not formed a view let me say, that the Director is being cramped in style to some extent by the Management Board. I suppose roughly parallel would be the governors of a school who would be the management board and the headmaster would be the director. One is involved in the direction day to day and the other is involved in the strategy, or so one would conclude. Do you see from the Home Office perspective that the Management Board has got itself into the position where it is over-bureaucratic or overbearing and overweening *vis-à-vis* the Director and should that be changed?

Mr Storr: I am hoping that the Council decision when it comes into effect will lead to a change. As I have said, I would hope that the board would not get so far down into the weeds as seriously to interfere with the ability of the Director to run an efficient organisation.

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Q43 Lord Dear: Do you believe it doing that at the moment?

Mr Storr: I think there is some evidence that the board has on occasions involved itself in a degree of detail which, from a personal point of view I would see as being more for the Director and his staff to go and sort out, quite frankly. As I always do, if I make a parallel between that and what applies in the United Kingdom, if I were a chief officer of police working to a police authority that got down to that degree of detail, then I would want to change it in some way. You can change it in a number of ways. One way in which it could be changed is not by delineating responsibilities but by simply having a better relationship between whoever is Director and whoever is the Management Board Chair. I think a lot of it does come down to personal relationships, which is why the UK welcomes the 18 month period.

Q44 Lord Dear: The police authority example in the UK has, as Baroness Henig knows only too well, is laid out by statute. There is a very clear statutory demarcation between the two. In something as complicated or complex as Europol, I can see it might be quite difficult to lay it down, though I suppose my question on this point is: should one attempt to be more specific?

Mr Storr: The Council decision takes it about as far as it was possible to take it, bearing in mind that round the table you have 27 slightly different perspectives on what that relationship should be. Much as one would like to design European institutions and arrangements around what the UK perceives as being an efficient model, it is not always possible to do so. In the same way that you would use the analogy of a legal relationship between the chief officer of police and the chairman of the relevant police authority, I would also say that maybe not quite as important but nevertheless very important is the personal chemistry and relationship between the chief officer and the chair of the police authority. If it is not possible to achieve a perfect legal delineation in the way the Director might want, then the lesson for whoever is Director is that you have to establish the sort of working relationship with the board which will get round the problem in a different way.

Q45 Lord Hodgson of Astley Abbotts: You referred to your bilateral discussions with your SOCA opposite number. Maybe it is somewhere in the papers but I have not seen it. How often do the Europol Management Board and the Article 36 Committee meet formally?

Mr Storr: They will not meet together. The Article 36 Committee meets roughly every five to six weeks, usually for either a one-day or a two-day meeting. I do not have specific information on the Management Board.

Mr Judah: It meets roughly four times a year.

Lord Hodgson of Astley Abbotts: So they cannot share that much if they only meet four times a year.

Q46 Baroness Henig: Last year this Committee did an investigation into Frontex. I think many of us are interested in the relationship between Frontex and Europol. I was interested that SOCA's view was that early signs were encouraging that the two bodies were working closely together. You yourself in your report talk about Europol as having good operational engagement on this. One of the things that was told to us very clearly when we were over in Poland was that Frontex itself is developing all sorts of data capacity and analytical ability. I am interested to know how that sort of operation works and how what Frontex are doing is going to be incorporated into the European Criminal Intelligence Model.

Mr Storr: We would go along with the SOCA view that the progress so far is good. Frontex, as you all know from your previous inquiry, is a pretty new organisation. As I understand it, and I think the Europol evidence itself to this Committee touches on the point, there is good co-operation but I think full information exchange is not possible at the moment because Frontex does not have in place the sorts of data protection and data security arrangements which would allow full transfer of the personal information held. Once the Frontex systems are established and pass muster from those data security and data protection points of view, then the way will be clearer for even closer co-operation. Certainly from our perspective we would see value in exchange of information between Frontex and Europol.

Q47 Baroness Henig: What timescale are we looking at in terms of making that interchange?

Mr Storr: I do not know. I think it largely depends on how quickly Frontex can put in hand the work to make those changes to its systems. While I do not have the answer at the moment, I am very happy to go back and provide further information to the Committee.

Q48 Baroness Henig: Secondly, I must confess that before this morning I had never heard of the Police Chiefs Task Force, but maybe that is my ignorance. This is a new body to me. I wondered what their role was in the European Criminal Intelligence Model. I would be interested if you could tell us something about the Police Chiefs Task Force, where it comes from, under what legal basis it was established and how it relates to Europol's Management Board.

Mr Storr: The Police Chiefs Task Force was something invented at the Justice and Home Affairs Summit of Heads of State and Government at Tampere in Finland in 1999. It was established at that point but there was some disagreement among its

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Member States as to exactly what its status should be. So it is not formally a working group of the Justice and Home Affairs Council, but it was established I think by a Council conclusion. It does not have the same sort of legal base or treaty base as for example the Article 36 Committee we were discussing earlier or indeed the Europol Management Board. It is a meeting of either chief officers of police or senior level representatives of the law enforcement authorities of Member States who get together, usually once or sometimes twice during each presidency, to discuss how best to put into operational action some of the priorities that have been identified as being European Union priorities. That is basically what it does. It has no formal relationship either with Europol or with the Europol Management Board.

Q49 Baroness Henig: Would Paul Kernaghan be our person on that?

Mr Storr: No. I think, as with the Management Board, the representative from the Police Chiefs Task Force comes from the Serious Organised Crime Agency.

Q50 Baroness Henig: Would that person not be a serving police officer?

Mr Storr: He would be a serving SOCA officer. To give you an example, I think I am right in saying that during the UK's presidency in 2005, Bill Hughes, the Director of SOCA, was the UK Chair of that particular committee.

Q51 Baroness Henig: But it would vary; is there much continuity? It seems that the Police Chiefs Task Force is an interesting innovation if there was some continuity of personnel and it really contained people who knew what they were doing with practical experience all coming together. I can see that could be quite useful. On the other hand, I could also see such a body as jollyng around Europe. I am trying to work out which it is.

Mr Storr: That is an interesting question. In my view the Police Chiefs Task Force suffers from not being established properly within Council structures. That means that it does not have the sort of clout and status that you would have if it were a formal body reporting to ministers. Again, without wishing in any way to anticipate the Lisbon Treaty, the Lisbon Treaty will establish a committee on internal security. Depending on the mandate of that group, it may have a role to play in terms of co-operation in tackling organised crime, pretty similar to that which the Police Chiefs Task Force was established to do in Tampere in 1999. If it gets to the point where we are planning what to do under that particular Article of the Lisbon Treaty, I think we will have to have a look at the overall architecture of Council working groups and other bodies like the Chief Police Officers Task

Force to make sure that we do not have duplication and overlap.

Q52 Chairman: Let me follow that up. If you take a county police force or regional police force in the UK, what contact or knowledge do you think most of them have with Europol? Would they say, "Oh, yes, we know it exists but it does not actually cross our path"? What connection is there between the two?

Mr Storr: I do not think you would find that there was a direct connection between your county police force and Europol other than that in certain circumstances Europol has provided specialist support to individual police forces in the UK in detecting and investigating organised crime. What there is, as I understand it, within each police force is an international liaison officer who links in with, in this case, the Europol Liaison Bureau housed in SOCA, so that SOCA has an outreach into the police forces of the UK to people who look after their international interests. Certainly those liaison points would be well aware of what Europol does and what it has to offer. Quite what the extent of knowledge within police forces about Europol and its services is, I do not have knowledge of, but again that may be something that you would want the Committee to explore when the SOCA officers give evidence to you.

Q53 Chairman: At what level would that liaison officer be in the average police force?

Mr Storr: I would need to look into that and let the Committee know. I would say probably at the desk officer or operational officer level, not at a senior command level.

Q54 Baroness Henig: To follow that up, I understand you want us to ask SOCA various questions and that is very reasonable. You are, after all, representing the Home Office, which has a pivotal role, to put it that way, in terms of the way policing operates. One of the people who has given evidence to us has suggested that maybe policing is not as well represented as it might be because everything goes through SOCA. I can understand where they are coming from but nonetheless they do raise quite an important issue. If however many police forces are not actually engaging directly, if they are going via SOCA and that is perhaps perceived as being therefore something that they do not have direct control over, is that not a problem? Does that not mean in a way that there is a danger that some of the really important anti-terrorism work that goes on in forces, and after all it goes on in a lot of localities, is going to be missed?

Mr Storr: I think Europol is all about co-ordination, and indeed SOCA has a major co-ordinating role in the UK. If you have a situation in which each of the

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police forces had a separate relationship with Europol, Europol would find that very difficult to manage, and you would have duplication of effort or overlapping of effort. You may even find Europol pointing out that something that was of interest to one UK police force was also of interest to another. I think the problem would be greater if you had completely unfettered and unsupervised access from all police forces in this country to Europol. I think SOCA's liaison function adds value for the benefit of individual chief officers of police. Equally, it is for SOCA to let individual forces know what is happening, what Europol can offer. I would see that very much as being a two-way relationship.

Q55 Lord Teverson: One of the areas in your written evidence that stood out was this area of information on which you put a statistic of 80 per cent of communication that is bilateral. I almost read that as being off the record. There are two points on that. One is, first of all, how that can be improved. Is it a question of confidence that is the reason and how might we contribute towards helping that situation? I would like to ask: is that as unhealthy as it sounds? Does it mean that the forum makes it work, that the other 80 per cent, if you formalised it more, would not ever happen, whatever you did? Is this therefore a means whereby, because of personal relationships and the overlapping that happens, a lot more goes on outside this rather bureaucratic, as you called it in other areas, process or should, for accountability and recording, we make sure it all does go through the systems? Is it as negative as this makes it sound?

Mr Storr: By way of clarification, I should say that my points about bureaucracy were mostly directed towards the way in which the Management Board has operated in the past, not necessarily Europol's rather more operational side. With that qualification, as I said I think earlier, we would hope that gradually, as Europol establishes confidence in its systems amongst Member States in the security of its systems, that you would see that percentage changing. A lot of it depends on the nature of the work which is being done. I do not think the 80 per cent and 20 per cent are necessarily referring to the same type of operational activity. There may be some, in fact a large number, where you would simply have a particular piece of criminal activity that involved two, three or four Member States. If that is possible to solve within the liaison officer arrangements, then that probably is a more efficient way of doing it than inviting Europol formally to take charge of co-ordination arrangements. I think SOCA and indeed other Member States' competent authorities will constantly be asking themselves: what will get us best value out of those arrangements? Is it using the liaison officer function or is it inviting Europol to open an analytical work file or otherwise

to provide assistance of a specialist nature or good quality analysis? That really is a judgment for SOCA to make; it is an operational judgment. As I have said earlier, I would hope the percentages would change. To some extent, as we have said in our evidence, there is a feeling amongst some Member States that the Europol handling of data needs improvement. Our information from experts, as I have said earlier, is that there are handling arrangements applying to Europol data systems which are pretty rigorous. Again, I think this is something for the Director of Europol to add to the list of services that he advertises because I think more needs to be done to convince Member States of the added value that Europol can provide, and indeed the integrity of their information systems and the security of their information systems.

Q56 Lord Teverson: Do I take it from that that some of that 80 per cent might be, for instance, practical cross-border policing work that would not technically come under organised crime and it acts as a channel for things which are not necessary Europol's direct responsibility?

Mr Storr: It is more to do with the nature of not necessarily whether it serious crime or organised crime; it is simply the complexity. The tendency amongst law enforcement officers is to try to keep things as simple as possible. If you can solve the problem simply through getting liaison officers together to identify commonalities and joint approaches, then you probably do not need to avail yourself of Europol's full services. Amongst those 80 per cent there will be operations which develop to the point where a decision will be taken by the originating Member State: let us call in Europol, let us get their analysts working on it, and let us see whether there are links with other countries that our information has not yet revealed.

Q57 Lord Teverson: The next point is whether as the Home Office you are satisfied that the Europol National Unit connects the relevant parties in the exchange of information about organised crime within the UK? This comes back to the question about co-ordination.

Mr Storr: We are satisfied with that. SOCA, as I have said before, brought together a number of different organisations: the National Crime Squad, the National Criminal Intelligence Service and HM Revenue and Customs. The third round of mutual evaluations of Europol which the European Union conducted in 2007, the Europol Information Exchange, regarded the SOCA arrangements as being a model arrangement for fighting organised crime. That is the sort of independent clean bill of health which I think gives us some confidence. The arrangements within SOCA link out to individual

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forces and link up fairly effectively with Europol. From that point of view, I think things are moving very much in the right direction.

Q58 Lord Teverson: Partly at the risk of showing my own ignorance here, a similar question at the European level to get the Home Office view: we have the Schengen Information System; we have an information exchange system under Prüm with all sort of DNA factors and then we have a Europol system. Is that satisfactory or should we have this segmentation of those things which are often all related to criminal activity?

Mr Storr: They are all related to criminal activity to a greater or lesser extent. Frankly, I think if we were starting now with a blank sheet of paper, we would not design the systems in quite the way in which they have been designed or developed. As with many things within the European Union, life is not perfect. What we have been pressing for very strongly over the last two years or so is the establishment within the Justice and Home Affairs Council structures of a body of experts which will look at the overlapping information systems, their interdependence, what exactly each one does, and to try and come up with an information strategy across those systems. We are continuing to push for that and, being an optimistic sort of person, I think it is moving in the right direction.

Q59 Chairman: Finally, can I ask you this. You have referred to a significant intelligence data source with regard to the Europol Information System. Could you clarify what you mean by that?

Mr Storr: Yes. The Europol Information System would be able to store a wide range of information on criminals subject to investigation, things like personal details, identity documents, communications data and the means by which the

offence was committed; for example, things like use of firearms and car registrations. To that extent, it has the potential to be an extremely useful system. It is very new; it was implemented in October 2005. We refer to it as having potential rather than the actuality because there is work to be done to ensure that Member States link up to it in an effective way. For example, to do so, individual Member State systems would need automatic data loaders to connect with that system. At the moment, the great majority of Member States do not have systems in place which will allow that to happen. That indeed is the position in the UK. SOCA, having inherited a large number of separate and incompatible data systems when it was set up from its originating constituent organisations, has a programme to review its own knowledge management and its data system. When that is done, I think the UK will be in a position automatically to connect up to the system and we will benefit from that.

Q60 Chairman: Mr Storr and Mr Judah, thank you both very much for coming. I hope you do not feel that we put you through the mangle in the same way as maybe the Prime Minister is being put through the mangle in another part of the building. If I may say so, you have been admirably concise and helpful. If I can enter a word of conceit, I think your evidence has made us rather congratulate ourselves that we have embarked on such an intriguing subject for an inquiry. We are most grateful to you. Thank you both very much. If there is any follow-up you think would be useful to the Committee, perhaps you would care to write to us or email us. We would be grateful to receive any back-up information which you think may be helpful to the Committee.

Mr Storr: We will certainly do so. May I say that we welcome your Committee's examination of Europol. I think it is very timely and necessary.

Supplementary evidence by the Home Office

Question 45—*Europol Management Board*

With regard to the question about the number of times the Europol Management Board meets, our response still stands, but some additional information might interest the Committee. Article 28(9) of the Europol Convention states that the Management Board “shall meet at least twice a year”. This provision has been carried forward in the new Europol Council Decision (article 36(5)) but a further proposal by the Commission in the original text of the draft Council Decision—to limit the number of Management Board meetings to “no more than four times each year” was rejected by Member States as being too limiting (notwithstanding the extra provision proposed for the Chair of the MB to be able to call extraordinary meetings).

Question 47—*Frontex*

We have been advised that there are no current plans for Frontex to deal with personal data, but that said, a secure Frontex Information System (FIS) will be developed which will allow effective exchange with Europol of classified, strategic information and intelligence related to illegal immigration. Frontex's remit does not

permit the Agency to store, develop, analyse or disseminate personal data and it does not deal with operational intelligence but only with strategic information and intelligence. Any tactical intelligence, obtained for example during the course of a Frontex coordinated joint operation and relevant to Europol's remit, would be passed on to Europol through the Europol National Unit in the relevant country.

FIS is part of the establishment of a much wider ICT programme within the Agency and is in the early stages of development with a feasibility study still under preparation. We are not able to get any idea of a timescale for completion of the FIS development, but we are advised that potential contractors are being identified against which a procurement competition will be run "some time this year".

Ben Judah

Head—Police Co-operation and Crime Section, International Directorate, Home Office

13 June 2008

WEDNESDAY 4 JUNE 2008

Present	Dear, L Garden of Frogna, B Harrison, L Henig, B Hodgson of Astley Abbots, L	Jopling, L (Chairman) Marlesford, L Mawson, L Teverson, L Young of Norwood Green, L
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Memorandum by the Serious Organised Crime Agency (SOCA)

SUMMARY OF KEY POINTS

- Europol is playing an increasingly important role in facilitating law enforcement cooperation in the EU. Its value to UK law enforcement agencies is growing, although it has not yet reached an optimum level.
- It is an expensive institution, claiming €9.6 million in UK subscription costs and running to an overall budget of some €64 million in 2008.
- As it enters an important stage in its development, with significant statutory changes imminent, leveraging significant UK influence over its future direction will be important to our interests.

BACKGROUND

1. Europol is a EU law enforcement agency established to improve the cooperation between Member States in preventing and combating serious organised crime and terrorism. Its primary functions are to facilitate the exchange of criminal information between Member States through the provision of a “liaison bureau” cooperation platform; to provide analytical support to Member States of tactical and strategic value; and to provide law enforcement expertise and technical support in its field of competence. Europol’s priority threat sectors are terrorism, international drug trafficking, organised immigration crime, money laundering, and fiscal and non-fiscal fraud.

2. The current headcount at Europol is 621 posts, 114 of which are liaison officers representing the 27 Member States. Its current Director is Max-Peter Ratzel, a career police officer from the federal police agency of Germany (BKA). He is supported by three deputies, one each from Italy, Spain, and France. The current budget of Europol is €63.92 million.

UK CONTRIBUTION

3. SOCA acts as the UK national unit for Europol, maintaining an operational gateway to Europol’s services on behalf of UK law enforcement agencies. Nine officers staff the UK Liaison Bureau at Europol. This team is led by a senior manager from SOCA and also includes officers seconded from the Metropolitan Police Service, HMRC, and the Scottish Drugs Enforcement Agency, reflecting the breadth of UK’s operational engagement with Europol. The work of the UK Liaison Bureau is supported by a team within the International Department of SOCA, based in London.

4. In 2007 the UK initiated 568 cases through Europol, leading to operational results in all the major fields of Europol’s competence. This represents a 20% increase in caseload over the last two years, reflecting a growth in Europol’s capabilities and in the understanding of its value within the UK community. HMRC, in particular, in the field of missing trader intra-community (MTIC) fraud and tobacco smuggling, are recent, worthwhile beneficiaries of Europol’s assistance.

5. UK subscription costs run to around 15% of the Europol budget, which in 2008 amounts to €9.65 million. In addition to the running costs of maintaining a large UK Liaison Bureau at Europol this represents a significant financial commitment to the organisation. Maintaining a tight grip on the growth of this budget is a key UK priority, given the experience of above-inflation increases over most recent years (see table below).

	2002	2003	2004	2005	2006	2007	2008
UK €m	7.790	9.101	9.240	8.839	7.355	8.393	9.65 ¹
% of total	15	16	16	15	12	13	15

6. UK influence over the governance of Europol is delivered mainly through its participation in the Europol Management Board, the UK delegate to which is a Deputy Director of SOCA. Within the staff of Europol itself UK nationals occupy a relatively high number of posts (36 in total) but none in the most senior positions. There will be a competition later this year to appoint the next Director of Europol. SOCA and the Home Office regard it as important that Europol has strong, effective leadership. The UK will consider nearer the time whether to put forward a UK candidate for the position.

STRATEGIC COORDINATION

7. In 2005 the UK Presidency of the EU launched an initiative to develop a European Criminal Intelligence Model (ECIM), based on the UK's experience of the National Intelligence Model in UK policing and the development of methodology that now underpins the work of SOCA. ECIM was adopted by EU Ministers and immediately implemented at Europol. Its chief instrument is the EU Organised Crime Threat Assessment (OCTA), modelled directly on the UK Threat Assessment (UKTA). The OCTA is now published annually by Europol, informing JHA Council of the principal threats faced in the EU and allowing Europol to facilitate joint operational responses by Member States. Increasingly these responses take the form of regional or sub-regional initiatives in Europe, in which a small number of Member States, sharing a common, localised problem, use Europol's centralised knowledge base and information systems to help deliver effective operational actions. Sub-regional versions of the OCTA, for example in the Balkans, are now being developed. So the ECIM/OCTA model is ushering in a new phase in the development of Europol, establishing the agency as a central intelligence base in the EU supporting a range of sub-regional initiatives around the EU. This approach is exactly in line with our aspirations for the organisation.

8. Europol's cooperation levels with other key international bodies are patchy. They are fitful with Interpol, with some issues concerning shared responsibilities over the provision of certain police services still unresolved. The relationship with Eurojust has also yet to be fully formed, with an insufficient flow of information between the two organisations. But the early signs of cooperation between Europol and FRONTEX, the new EU border agency, are encouraging. Meanwhile Europol delivers an important supporting role to the agenda of the European Police Chiefs Task Force (EPCTF), particularly in regard to the latter's operational projects (so-called COSPOL initiatives), for which the Analysis Work Files of Europol are critical. Further afield Europol has signed over 20 cooperation agreements with countries and bodies outside the EU, including the US, Australia, Canada, and Turkey. Due to EU data protection requirements, limiting the extent to which Europol can exchange personal data with third parties, many of these agreements are restricted to "strategic" matters only and have delivered little by way of tangible benefits. The experience suggests Europol should spend less time pursuing such external agreements and focus on delivering its goals within the EU.

9. As to the strategic value of Europol in the future its role and effectiveness in information handling is likely to feature significantly. As it grows its own data holdings the ability to cross match those with the information held by other EU agencies and on other systems, such as the Schengen Information System and EURODAC, could have a significant bearing on Europol's functions and capabilities. Managing this opportunity will be a very important part of its immediate future, particularly within the context of recent or emerging EU initiatives, on the principle of availability and the "Swedish Initiative" etc. Europol is well placed to deliver a central analytical capability bridging these data sets and identifying operational leads that would otherwise be lost. This could be a key part of the future internal security architecture of the EU, although significant issues around data protection and security would need to be overcome first. Certain cultural and other impediments, which currently limit the supply of information from some Member States to Europol, would also need to be lifted.

¹ As at 1 May 2008 €8 million of this total has been called up by Europol under an arrangement in which 85% of subscription costs are paid at the start of the year by Member States and the balance later depending on the implementation rate of the budget

OPERATIONAL VALUE

10. The two greatest operational assets of Europol are its liaison bureau platform and its collection of analysis files. All 27 Member States use the former regularly to expedite cross-border casework, with over 7,600 cases handled via this channel in 2007. This platform is due for an IT refresh with a new system (SIENA) under development. For many Member States this platform is the only substantial means they have to conduct their operational work with EU partner agencies, with the new EU Member States from the east making good use of the capability especially. In the case of the UK the use of this cooperation platform is set alongside others available, including the large network of bilateral SOCA Liaison Officers around the world. The unique value offered by the Europol network derives from the co-location of liaison officers from all 27 Member States in one centre, allowing in particular for operational coordination across multiple (ie more than two) borders. This works well for the UK in over 500 cases each year. Notable successes in recent years include the disruption of a criminal organisation involved in international drug trafficking and money laundering, operating across six countries, which led in February 2008 to the arrest in London of 22 suspects, the seizure of 125kg of cocaine, and the recovery of a substantial amount of cash and firearms.

11. Member States also derive significant benefit from 18 Analytical Work Files (AWFs) currently run by Europol. These are major strategic projects in Europol's areas of competence, which Member States support through the provision of national intelligence contributions. The UK is a member of 16 of these projects and is currently applying to join another. The construct and outputs of the projects lend themselves well to supporting the requirements of the UK Control Strategy to combat serious organised crime, a process led by SOCA. As in the case of these AWFs the UK Control Strategy functions through the management of a number of sector-based programmes (eg "upstream heroin", "proceeds of crime"), most of which have a parallel at Europol. Although the benefits have not yet been fully realised SOCA is working urgently to exploit these synergies.

12. Alongside these analysis files Europol maintains an Information System containing over 62,000 entries regarding suspects, vehicles and other objects. It allows Member States to search what is a central EU repository for serious organised crime. Technical difficulties currently restrict the extent to which the UK contributes and retrieves data from the system. These are being addressed urgently by SOCA.

13. Two of Europol's analysis projects concern terrorism, one of which is the only project at Europol supported by all Member States. These projects help Europol to produce the annual EU Terrorism Situation and Trend (TESAT) Report, the 2008 edition of which has just been published. Though a little less advanced in methodology than the OCTA it is, nonetheless, a useful report. The UK has consistently supported Europol's remit in respect of terrorism with a UK counter terrorist liaison officer providing expert support since 1998. Currently the UK's CT liaison post is provided through the posting of a Metropolitan Police Counter Terrorism Command (SO15) officer to the UK Liaison Bureau. He oversees the flow of a significant amount of information to Europol from ongoing UK investigations and operations and other sources. While the MPS/SO15 provides much of this data, an increasing amount of operational data is also provided by the recently established regional CT Units, most significantly the Greater Manchester Police CTU.

14. In addition the UK is increasingly taking advantage of the analytical resources offered by Europol to the extent that a number of ongoing CT investigations and operations are now directly supported by Europol analysts working closely with UK colleagues. This level of support and cooperation has recently seen Europol analysts deploy to the UK during the search and arrest phase of an operation to provide direct "live time" support to the investigation.

GOVERNANCE

15. In terms of its governance and the development of new thinking our experience is that Europol tends to be conservative, rules-based and anxious to consult the Management Board at every turn. Given the bureaucratic drag of this last point, in particular, the levels of responsibility shared between the Director and the Management Board ought to be rebalanced more in favour of the former. We think the Draft Council Decision has not gone far enough to address this point, although some of the changes envisaged for the Management Board will make a helpful difference.

16. The leadership of Europol was recently heavily criticised in an independent audit of the organisation, which reported on significant levels of dissatisfaction among staff members and some Member States. With the advice of the Management Board this is being urgently addressed through an appropriate action plan.

17. The current chairman of the Europol Joint Supervisory Body (JSB) is Mr David Smith formerly a Deputy Commissioner in the UK's Information Commissioner's office. SOCA generally welcomes the influence of the JSB—because it is a driver for high data handling standards and helps to guarantee Europol's data integrity

which is vital to maintaining credibility when dealing with the most sensitive personal data. The UK Liaison Bureau at Europol is subject to inspection under the UK regime as part of SOCA—and this is carried out on a regular basis.

FUTURE DEVELOPMENTS

18. Under the terms of a draft Council Decision a new legal base for Europol will be established in 2010, replacing the Europol Convention. It is designed to consolidate the legal basis for Europol (incorporating some amendments to the Convention including the Three Protocols in a primary text) and to establish different arrangements in regard to funding and tasking. The main changes are as follows:

- a. Europol will be funded from the general budget of the EU;
- b. Europol staff will be subject to Community Staff Regulations;
- c. The Council, acting by qualified majority after consulting the European Parliament, may amend existing rules or introduce new ones;
- d. The Management Board Chair will be elected for 18 months (rather than following the six months of the EU Presidency as at present).

19. Although Europol funding will be drawn from the general budget of the EU the Management Board will still be the primary debating instrument in setting annual amounts. It remains to be seen how much influence will be retained at this level, rather than through the normal apparatus in Brussels, but in light of the above-inflation increases in Europol's budget in recent years this is a very important issue for the UK.

20. Allied to that is the prospect of what increased budgetary influence in the European Commission may bring in terms of setting new tasks for Europol. Commission influence will certainly increase after the implementation of the Decision in 2010, even if the Director and the Management Board will still be the primary actors. Meanwhile the Council Decision has been drafted to define carefully Europol's role and to curtail any operational aspirations it may have. The decision envisages that Europol should be able to widen its data collection and analysis systems subject to a specific and strictly implemented data protection regime to ensure it remains fit for service in supporting Member States in the fight against organised crime and terrorism. SOCA judges that the influence of Europol will continue to grow—so long as its professionalism and integrity remains undamaged. The latter depends on it demonstrating increased value for money over the next few years.

Examination of Witnesses

Witnesses: MR WILLIAM HUGHES, Director General, and MR ROB WAINWRIGHT, Deputy Director, Serious Organised Crime Agency (SOCA), examined.

Q61 Chairman: Mr Wainwright, Mr Hughes, welcome. Thank you very much indeed for coming. We very much appreciate it. As you will know, this Committee is a sub-committee of the main European Union Select Committee of the House of Lords and we are currently conducting an inquiry into Europol. We have had evidence from the Home Office; we shall have visited The Hague and Brussels towards the end of the month and had other witnesses to see us. You will realise that this is on the record. We are most grateful for your evidence to the Committee. If there is anything you want to add at the end of the meeting, the Committee would be most grateful to hear from you in writing. I do not know if you would like to make an opening statement or go straight into the questions which I think you have had warning about.

Mr Hughes: My Lord Chairman, perhaps I could start by saying thank you very much for inviting us. Rob Wainwright is the Deputy Director for our international side. Europol is his day-to-day business, as well as Interpol and other international issues, so on technical matters he is well placed to

answer those questions. On issues around the strategy and direction of SOCA and our relationship at a more senior level in terms of the European sub-committees, I will take those questions. I hope that is fine with you.

Q62 Chairman: Absolutely fine. Please do not hesitate, either of you, to chip in, to underline what has been said. Let me start. I wonder if you would give the Committee a brief overview of the current UK arrangements under the Europol Convention for connecting the United Kingdom competent authorities to Europol through the UK Europol National Unit.

Mr Wainwright: SOCA is the Europol National Unit for the United Kingdom under the terms of the Europol Convention, whereby each Member State establishes a central point of contact, a single point of contact, to co-ordinate its law enforcement activities and interests in regard to Europol. Here in the UK that National Unit is located within the International Department of SOCA and deliberately so, co-located

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with the other international channels of police co-operation that we have in the United Kingdom. It is an integrated part of a bureau that also includes Interpol, the European Arrest Warrant functions in the European Union, and also a very large bilateral network of liaison officers that we have around the world (some 140 now in 40 countries). Our International Department will also be the home, in a UK Central Bureau, for the Schengen Information System when the UK connects to that in 2010 or 2011. My Lord Chairman, in one part of our department we are the UK centre for UK law enforcement co-operation worldwide. Europol is a very important part of that. From that central base we are able to provide support services to UK police forces and other law enforcement agencies and offer to them, therefore, the full range of Europol's capabilities through our central co-ordinating function. That National Unit provides specialist advice to our UK partners. Also, on behalf of the UK community as a whole, we carry forward the UK's interests at Europol, as a single voice representing the UK community over a range of operational matters and policy matters as well. It is my responsibility, for example, to represent the United Kingdom on the Europol Management Board.

Mr Hughes: To add to Rob's very full answer: we have about nine officers, but that includes three officers, one from the Metropolitan Police, one from HMRC (Revenue and Customs), and one from the Scottish Crime and Drugs Enforcement Agency, who work as a team and are The Hague end of the unit Rob has just described.

Q63 Chairman: You say in paragraph 10 of your paper: "... the large network of SOCA Liaison Officers around the world". Could you say something about that?

Mr Wainwright: Yes, of course I can. These are regular SOCA officers experienced in the full range of our operational activity who have been appointed overseas—as I have said, in some 40 countries now—to roles which involve them being normally diplomatically accredited, so working in most cases out of British Embassies. Their job is to manage our operational relationships with the bilateral agencies, the agencies within the countries in which they are located. We have many, many officers in countries outside Europe and in large stations in Afghanistan, in Colombia, in parts of the Caribbean and so on. Within that network of 140 officers, approximately 30 or so are located within Europe. That gives us, therefore, an alternative channel of communication for the conduct of our operation with Spain, with France, with Germany and our other partners in Europe. Of course, on a case-by-case basis, therefore, we have a choice of which channel to use in the conduct of our operations. Over a period, certainly,

of two years under SOCA and many years before that through our precursor agencies, we have developed a habit that works very well, I think, in terms of which of those channels of communication we should use in any particular case.

Q64 Lord Hodgson of Astley Abbotts: You have described officers serving overseas. How long do they go for?

Mr Wainwright: The tour length is a maximum of four years. In Afghanistan it is two years because of the unique operating circumstance there.

Q65 Lord Hodgson of Astley Abbotts: That is long enough for them to get bedded in, to achieve what is presumably a pretty trusting relationship.

Mr Wainwright: That is a good question. In some cases we have extended our officers beyond that four year period to capitalise on the impact they have made in understanding, if nothing else, the cultural dynamics of co-operation in that country. We think in most cases four years is about right, because we have to balance that with their future as well and the need for them to be reintegrated into the UK structures here in SOCA. Also, for us to take advantage of their unique experience of working overseas, we can bring that back into the main body of SOCA's work here.

Q66 Lord Hodgson of Astley Abbotts: In addition to that, language is a key to understanding cultural differences. Do those officers who go out for that four year period have sufficiently good linguistic skills or is that something they come back with?

Mr Hughes: When they are allocated, we give them language training to a very high standard as much as we can. For most of the languages that we are learning now in the various more exotic parts of the world it is survival skills that they need. We then employ locally employed individuals who have language skills who can act as translators and interpreters. Also, because we are working with embassies abroad, we have access to their linguistic backup as well. Some in this room will be familiar with the old drug liaison officers that Customs used to have around the world and the National Criminal Intelligence Service (NCIS) had some crime liaison officers. We inherited them when we formed SOCA and brought them all together, but we have rationalised that type of approach, so that they are no longer simply liaison officers who pop in on occasions to various agencies that we work with overseas but we are seeking, wherever we can, to embed them in the enforcement agencies that we work with operationally. That is another difference: SOCA now operates operationally overseas as well as in the UK. On the issue around the SLOs, we have moved away from the situation of having single liaison officer

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posts to where we have double or more, supported by regional networks, so the continuity is maintained with people who rotate at different times and have a regional back-up and a support network back in the UK in the international side and at the regional level.

Q67 Lord Mawson: My experience in this country is that there has been a lot of talk about partnership and joined-up thinking with agencies working in Europe. You obviously have to develop a whole range of quite complicated partnerships and relationships. My experience in this country is that, whilst there is a lot of talk about it, when you examine under the detail of a lot of this it is not happening on the ground and things are not moving on. In the modern world, it is all about relationships and senior relationships, and often the top, middle and bottom beginning to build those personal relationships. What financial investment and personal time are you investing in that whole area, so that, as a modern organisation, you can interface with other organisations in the modern world with the demands that that makes?

Mr Hughes: The answer to that question could be quite long, so I apologise in advance. If you go back to the basic issue, which is maintaining relationships and partnerships, that is what we have been doing for the last two years at a very high level and at a tactical level with our operational colleagues in police forces and HMRC, and now the UK Borders Agency as it is starting up. As an agency of around 4,150 individuals, we are relatively small in those regards, so the leverage that we look for in partners is very important to us. Partnership, as you say, does not always work: it is absolutely crucial that it does work for us if we are going to be successful. There are some copies for the clerk of our annual report which highlights the partnership working that we have been doing operationally around the world and in the United Kingdom. In order to put it on a more strategic and, if you like, coherent footing, the UK Threat Assessment is something that we produce as well, the idea of which is to highlight those threats of serious organised crime impacting on the United Kingdom in a real sense. The old document used to be a bit historic. This is about trends: where it is now and where it is going. From that we have developed the UK Control Strategy, which picks up on the main 16 programmes of activity that we think we need to combat that. That is a multi-agency approach, where other agencies beside SOCA lead on taking those programmes forward. We are attempting at every level to build up that partnership approach: at the intelligence and strategic level; at the tactical level working with our operational partners; at the top level (where I am still a member of the ACPO Council of Chief Constables, so I have an opportunity therefore to influence the strategic direction that policing is taking in the United Kingdom); in

bilaterals we have with our senior colleagues in HMRC; with ACPOS; with the Northern Ireland Office; and with the Organised Crime Taskforce in Scotland and Northern Ireland. It is hard work, you are right, and in the past it has sometimes been less than complete, but we are trying in every way we can to ensure a partnership approach on this.

Mr Wainwright: In our international work, partnership is our lifeblood. We do nothing of any substance overseas without working with at least one other partner. It is the way we do our business. To reflect that, the organisation has invested about 10 per cent of its budget and its people in its international programme of work—which is a sizeable investment, to reflect the point you have made. We have some examples we can give, if the Committee is interested, in how we have developed partnership arrangements to operational effect around the world.

Chairman: Thank you. Let us move on.

Q68 Lord Mawson: How does the UK make its independence requirements for organised crime and terrorism known to other European partners in the Europol framework?

Mr Wainwright: Mr Hughes has already outlined to you the national intelligence framework that we have developed for SOCA here in the UK. It is to exert an interagency response to organised crime. We have the instruments of what we call the UK Control Strategy, the UK Threat Assessment, and something we call the National Intelligence Requirement. That last document is the principal and national means by which we make clear to our partners where our priority intelligence gaps are and the priority collection process which would follow thereafter. Although that was framed principally with domestic partners in mind, it does work very well overseas for us as well. We use, therefore, the requirements that we have established here as those that reflect our priorities, to share that with our partners around the world through our bilateral network of officers that I was talking about, but, in particular, through institutions like Europol as well. We are pleased, of course—and I think the Committee has noted this in previous evidence—that in the last few years Europol has developed a similar approach, following a successful campaign in the UK Presidency in 2005 to promote UK best practice on intelligence-led policing, so we have the principles of what we now call the European intelligence model, embedded more or less in Europol and the European partners. That has been designed very much with the UK experience in mind and we are using instruments of that, in a similar way that we are using instruments at a national level, to connect the two. Our success, therefore, in reflecting the UK requirements in that European framework is quite high. I think there is

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still some way to go to develop it in a more coherent way at the European level, but we are pleased with the progress in the last couple of years.

Q69 Lord Hodgson of Astley Abbotts: I would like to go back to the role of SOCA as the UK's National Unit at Europol. We had inferences in previous evidence that quite a lot of the most valuable part of the Europol organisation is from the bilateral International and National Unit contacts, as opposed to the central unit itself. As we understand it, we do not have a harmonisation of what each individual Member State chooses as its National Unit. Would you like to tell us how this process works, what the consequences have been, and what the impact has been on the effectiveness of the organisation both at a cohesive and a bilateral level.

Mr Wainwright: Like in so many aspects of work within the European Union, harmonisation of precise structures/procedures across 27 Member States is very difficult to achieve. Instead, the architects of the Europol Convention got it right 10 years ago by agreeing some common principles so that there would be a single point of contact, a National Unit in each country, so that there would be a single interface there. The National Unit would operate in a certain way without being overly prescriptive, because it was recognised, of course, that the national policing arrangements in those 27 Member States are different, unique in each case, and to impose, therefore, a very rigid prescribed model that might work for one or maybe two countries certainly would not work for 27. We take a general framework of some common strategic principles and seek to apply that according to the unique domestic circumstances of each country. I think that has survived. It has passed the test of time over those 10 years. The network of National Units has survived and, indeed, strengthened—very much so—and there are no Member States—certainly not the UK—that are calling for any reform there. The first part of your question was about the extent to which the Liaison Bureau perhaps consumes more of our interest. That is true. It is a very effective Liaison Bureau network. Last year the UK processed something like 560 operational cases through that bureau. That is the second or third highest between the 27 Member States, so we are a good user of that network. I think, however, it is oversimplistic for us to compare that with what we might get from the main body of Europol itself. The two are co-located, certainly, in the same building, but, also, in almost all of those cases there will have been a supporting involvement of Europol and therefore it is not so easy to separate the two. Perhaps my most important point with regard to that is that the service we get from Europol is, in the main, a high quality service. It is one of receiving tactical and strategic intelligence from its

analysis files in particular. These are very important to us because they represent the only access we have to a pan-European database for organised crime, containing millions of data entries about the most serious forms of organised crime operating in the EU, and it is at Europol only that this information and database and technical capability exists. That is the principal capability of Europol that we are interested in.

Mr Hughes: This is a crucial aspect. The Council of Europe in 2007 held up the way that we are structured in the UK as the best type of model. We are very pleased with that. The other aspect is having access to what Europol provides. When the Europol Information System comes online, that will give us phenomenal results, because the vast majority of the issues we are dealing with in terms of serious organised crime are either at a global level or certainly start outside the borders of the United Kingdom. If we are not able to pick up the intelligence in that, then we are hamstringing ourselves to only being able to work within the UK and we need to work outside.

Q70 Lord Marlesford: I can see how valuable this immense amount of information is. Does that mean that you will have realtime access shortly, for example, to the names of individuals which are on the Europol computer system?

Mr Wainwright: We have realtime access to that now.

Q71 Lord Marlesford: Would all the names on the British police computer be on the Europol system, so that other countries who want to check a name can check whether there is a Brit who is regarded as serious enough to have on the Police National Computer?

Mr Wainwright: There is no direct connection between the Police National Computer and Europol's database.

Q72 Lord Marlesford: What is the source of the names in the Europol database?

Mr Wainwright: In the main they are drawn from the national police investigations of serious organised crime within the 27 Member States. It, therefore, in that sense, gives a more restricted view of criminality. The Police National Computer, and equivalents around Europe, is a much larger database and is connected around Europe, in the main, by a differently used system, the Schengen Information System in particular. In Europol, therefore, we have a different kind of database. It is smaller but it contains information about a higher level of criminality. In particular, it contains information that is of a higher level of sensitivity, because very often it is about major organised crime suspects connected to live police investigations, so the levels of confidentiality

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have to be much higher—which is why there is controlled secure access through a central point of contact in each Member State.

Mr Hughes: Europol and Interpol are different in this regard. Interpol is very much a fact-based post office, in effect, for looking at data which has provenance and records back in the home countries. Europol is much more intelligence-based. The Analytical Work Files that we have referred to are the database for operations that are ongoing. That is where sensitive information is stored. That will be built up by relevant countries, Member States, giving that information. There are very strict controls on how that information is held and who has access to it. One of the benefits that we have of Europol at the moment is that it provides the only restricted level, in terms of confidential information to be shared, around Europe between law enforcement agencies that exist. We have that in the United Kingdom but the only way we can communicate with other countries' law enforcements is through what Europol does in that regard. So we have access to very high quality intelligence about actual operations. A database which just gives a summary of all those who are known or wanted is on the PNC, and, as Rob has said, in due course, when the United Kingdom signs up to Schengen, there will be a sharing of information. When countries indicate that a UK national has committed crimes abroad, that information is then put through on to the PNC by us, but there is no direct linkage in terms of being able to do that between the PNC and the European databases at the moment.

Q73 Lord Marlesford: When that happens, obviously there will be a big step forward, because there has been a lot of criticism recently about people who are found, foreign nationals, for example, employed at Heathrow who have criminal records, a fact unknown to the people employing them in the UK. Will that be something which the linkage will deal with in the future?

Mr Hughes: It should be. The CRB as well will be able to link into that information and intelligence again. This is where we have a disconnect at the moment.

Q74 Chairman: Mr Hughes, you said when the UK signs up to Schengen. There will be some people in this building who would rather say “if the UK ever signs up to Schengen” being an island. But I will leave that point.

Mr Hughes: That is more practical than political, My Lord Chairman.

Q75 Chairman: We are talking about data and I want to intersperse another point here. You say in paragraph 8 of your paper, “Due to EU data protection requirements limiting the extent to which

Europol can exchange personal data with third parties . . . ” and, then, in paragraph 9, “significant issues around data protection would need to be overcome first.” You have talked to us about the structure of data information but I think we must ask you about the effect of it. How serious is the limitation created by EU data protection requirements on to the effective work of Europol? How are you proposing to “overcome” it? Then, over the page, at paragraph 12, you say, “Technical difficulties currently restrict the extent to which the UK contributes and retrieves data from the system.” Is that the same technical difficulties you have referred to in paragraphs 8 and 9? Perhaps you could tell us how you would like to see changes made so that a more effective use can be made of the relevant data.

Mr Hughes: My Lord Chairman, taking paragraph 12 first, if I may, this is a technical issue on the basis that at the moment we do not have an automated data transfer system in SOCA in order to do this. We will have it very soon as part of our IT change-out, so that when that comes on stream—hopefully within the next year or two—we will be able to update on to the EIS very quickly. That is a technical issue. On the other two, I would ask Rob to go through the particular issues. Of course, you will be well aware of the constitutional issues for different countries, so, to an extent, what happens at Europol is that to take account of that you end up with not the lowest common denominator but you go to the most severe level of confidentiality.

Mr Wainwright: We do not wish to imply in either our written or spoken evidence that we are dissatisfied with current data protection safeguards that operate in the EU. Indeed, we welcome data protection. Of course it is a very, very important part of police work. We recognise that both domestically, in the work that SOCA does, and in our international collaboration, but, as Bill says, to a certain extent they impose—rightly, in my view—certain restrictions in the way that we can operate. In the particular example that is quoted in paragraph 8, I am referring to the co-operation agreements that Europol has made with third countries. It is a statutory requirement in Europol that it may only exchange personal data (that is, the most sensitive of its data holdings) with those partners where it has concluded agreement that is consistent with the data protection principles and requirements of EU legislation. The data protection standards in the EU by world standards are very high, and we have found, therefore, that it is not always possible to find similar levels of data protection standards in other countries. That is why Europol has not been in a position, for statutory reasons, to conclude agreements with some countries, at least, outside Europe. In relation to the extent to which that inhibits police-to-police co-operation, I guess it does, but there is a balance

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always between allowing police officers the most open playing field perhaps in which to conduct their inquiries and the very important need for data protection and safeguards. I think the current arrangements in the Europol Convention are about right. They certainly do not reflect EU values and requirements in the main and we are not seeking to change them.

Q76 Baroness Garden of Frognal: We have observed that there seem to be differences of interpretation in terms such as “intelligence”, “personal data”, “information”, terrorism”, “organised crime”, “serious crime” and so on. Could you comment on this apparent lack of clarity in definition and say what the implications are for the work of Europol and for national member agencies?

Mr Hughes: This is not just limited to Europe, of course. It is also the case that in any other mix of law enforcement agencies you will have different terms. Part of the arrangements we will be doing to answer the question just now about partnership is to set protocols and SLAs with our partners as to what we mean by this and what we are going to do about it, et cetera. Whenever we set up a bilateral with another country in Europe or elsewhere, that is part of our first operation. On the specific issues around personal data, there are definitions in the Europol Convention which pick up on the contents of what will be put in the information system and how they are put in there, in both Article 8 and Article 10, and that also includes witnesses, potential witnesses, and other people as well. So there are references to personal data. Organised crime does not always carry any definition. In many countries, their definition of organised crime can be different. One of the things when we set up SOCA and you will have noticed from the SOCPA legislation, the Serious Organised Crime and Police Act 2005, is that we make no definition of “serious” or “organised” in there because it is not a term that is recognised within UK law as such, it is more a practice within a type of criminality. We are looking at organised criminals who engage in very serious levels of crime where there is an organisational aspect to what they are doing. It is that type of approach. If you were to try to define that too tightly it would restrict our ability to be able to support partners; for example, when we assisted Suffolk when they were dealing with the murders of the five women in Suffolk. That was not an organised crime but it was certainly serious crime. We try not to get into definitions like that, or one is constrained. But, then, you may find when you operate across Europe that certain types of criminality which are defined in countries as organised may not even be a crime as far as other countries are concerned.

Mr Wainwright: In my view, it is not a serious handicap. The terms “intelligence” and “information”, for example, and even “personal data”, are used interchangeably. There is always the language, of course. In some European languages there is not a term at all for “intelligence” I think. So these are used interchangeably but they have become such a natural part of the policing lexicon in Europe that all practitioners understand what we mean when we may use these interchangeable terms. Although there is a danger perhaps, particularly with regards to some of the more precise legal definitions of these terms, my experience is that this is not a serious issue.

Q77 Lord Marlesford: My recollection is there is a fairly recent definition of legislation which requires the reporting by professionals of any suspicions of tax avoidance or evasion and so on, which, as one reads in the press, has resulted in thousands or hundreds of thousands of reports to your organisation. Is that correct?

Mr Hughes: Are you talking about suspicious activity reports?

Q78 Lord Marlesford: Yes.

Mr Hughes: That is a different issue. The suspicious activity reports are a requirement of the Proceeds of Crime Act to deal with money laundering and asset hiding. If banks, financial institutions, estate agents, lawyers, anybody who engages in transactions of large amounts of cash, high-value traders (who are defined as people who would sell high-value motor vehicles and things like this) consider that the transaction or the person or the individual or the cash itself is perhaps concerned in crime and therefore they have suspicions, they are required by law to report it to what was NCIS before and is now SOCA, and that forms the suspicious activity reports regime. That is held on a separate database that we have access to, and it is used and available to all police forces in the UK and to our partners in the HMRC and Border Agency. It is a very useful database in order to very quickly identify fraudulent activity. We have been doing work around data mining of the database, and we now have one million records on that database. It enables us to identify, for example, very quickly, criminal networks involved in the laundering of money, and the MTIC fraudsters, the so-called carousel VAT fraudsters, become quite apparent. We still require more transactions and more suspicious activity reports to be reported to us, however, because there are parts of the industry that are not doing so and they need to be aware that there is an imprisonment penalty if they fail to do so.

Q79 Lord Hodgson of Astley Abbotts: In my life outside the House I was formerly responsible for reporting circumstances to NCIS and SOCA on the

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part of a building society. It seemed to me that three-quarters of what we sent you was completely useless and would end up nowhere but in the wastepaper basket or blocking up somebody's filing cabinet or somebody's computer. Would you not agree that there would be a serious case for a de minimis limit of, say, £500?

Mr Hughes: Just before SOCA started, the Chairman now of SOCA, Sir Stephen Lander, was asked by the then Chancellor of the Exchequer and the Home Secretary to carry out a review of the suspicious activity report regime, as you are probably aware. As a result of that, he made quite a few recommendations as to how it could be improved. All of those recommendations were accepted and we have addressed all of those. We had quite a few complaints, as you will be aware. A lot of people sent a report in, which then disappeared into what they saw as some sort of Bermuda Triangle and never emerged again. This happens. I am sure other people around this table will be well aware that this is a complaint that is often made: "We report things to the police and we never hear any more about it." We have sought to bring into our agency what we call a vetting unit, people representing banks, financial institutions, other trading areas, who are then given the very sensitive details of what we have done with that information. As with all information, when you accumulate it, the power of the ability to analyse that is greater than the single report that comes in. As to a de minimis rule, that is perhaps not for me to comment upon. We have already had changes in the Proceeds of Crime Act which brought down the amount that you could carry or have about your person from, I think, £10,000 to £5,000. If you are carrying more than £5,000, you can have that money taken off you by a police officer if there are suspicious circumstances and you would then have to apply to a magistrates' court to get it back. There are already changes afoot, but it is a question of how far down you want to go in the de minimis rule.

Q80 Lord Hodgson of Astley Abbotts: This is a serious imposition on the position of the financial sector in this country. The fact is that, because you are not prepared to speak out, it is necessary to get clearance to open a savings account for your child who is aged six years old. Somebody like you needs to be clear about whether there is a valid need here or not.

Mr Hughes: You will probably be aware from your background as well that there is an issue called smurfing. You are familiar with the term "smurfing". This is where lots and lots of small accounts are opened in order to get round the asset recovery and proceeds of crime legislation, whereby small amounts that do not figure on this are then all channelled to the same location, usually overseas, so that is a way

of laundering money out of the United Kingdom. There are always arguments for what is the right approach to take on this. This was examined very closely by Sir Stephen Lander in his report and no recommendations were made or changes.

Chairman: We must move on.

Q81 Lord Dear: I would like to move on to strategic co-ordination. The European Criminal Intelligence Model I think was implemented by Europol almost as soon as it was born in the middle of this decade. Could you fill us in generally around that. Has it been implemented elsewhere? Does the Europol Decision build upon the ECIM?

Mr Hughes: Perhaps I could say something first of all, probably to spare some blushes in the room. At the United Kingdom Presidency in 2005 we were concerned that there was what we thought a pretty good solution to deal with intelligence analysis. It is something that we brought in in the United Kingdom—and you will be familiar with this—the National Intelligence Model. We thought this could perhaps provide some traction for Europe also. We made the business case to our European colleagues for a European Crime Intelligence Model based very much on the National Intelligence Model. They took that very quickly, because they could see the benefits of it. Out of that came the Organised Crime Threat Assessment which is very much based on the UK Threat Assessment Approach that we have made in the United Kingdom. During the Dutch Presidency that followed, we moved down a more operational route, to the COSPOL approaches, which are specific operations that at the moment are supported through the Analytical Work Files of Europol: child pornography; Western Balkan organised crime; synthetic drugs; the trafficking of human beings; research on illegal immigration; and heroin trafficking. These are big issues that impact across the whole of Europe. The Dutch and other colleagues when we were working with them tried to find common issues across the whole of Europe, or most of Europe, that we could then focus on in an operational route but this was through the mechanism of the European Police Chiefs' Taskforce which was set up under the Tampere Meeting in 1999. This has now given a very structured place for intelligence-led law enforcement across Europe which the European Crime Intelligence Model I think has helped enormously with.

Mr Wainwright: It is a business model for police co-operation at this level, drawing on what we thought was British best practice of intelligence-led policing. More to the point, we recognised a significant appetite for sharing best practice with our European colleagues. It is a simple business model and was accepted in principle in 2005 by our European partners. Its framework has been implemented, in

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part, so far, most notably in the form of the Organised Crime Threat Assessment which is now an embedded, very important part of the Europol machinery. That certainly was a direct response to what we did in 2005. I say in part: there is still some way to go. The concept of a dedicated intelligence requirement, in particular, has still not taken root in Europol and we need to do more to promote that.

Q82 Lord Dear: Is there any particular reason for that? Is that cultural, or technical, or financial?

Mr Wainwright: It is not technical. It is not financial. So it must be cultural. The powers of a detective!

Q83 Lord Dear: Without naming the suspects, can you give us any examples?

Mr Wainwright: We have found, also, in our bilateral exchanges with partners, that we have had a lot of success with the Dutch, in particular, in transporting our case and learning from them as well. That is fine. There are other countries as well. In other parts of Europe policing at this level tends to be based more on reactive activity and policing rather than proactive. This is very much a business model to be proactive in the fight against organised crime, so the idea of an intelligence requirement is that at the start of your planning cycle you establish what your priorities are, and you make a concerted effort to go out and acquire more information about those priorities rather than respond to criminal activity as it waves over you. It reflects the change that the UK policing community has gone through over the last 15 years. That same change has not happened in other countries in Europe. We will not criticise them for that because they have their own unique domestic circumstances but I think it is a cultural issue.

Mr Hughes: Within the Police Chiefs' Taskforce there has been the advantage that we have been able—and I was the UK delegate on that up until very recently—to influence some of the accession countries coming through and changing their styles of policing. Particularly the European Crime Intelligence Model has been picked up by Croatia and we had an approach from the South Eastern European police chiefs to join the Police Chiefs' Taskforce in Europe. These are the countries that are very much new accession members and they picked up on the European Crime Intelligence Model as well. There is quite an appetite now to move away from that old style of policing. It was not really policing, it was very much a totalitarian type approach. As Rob has quite rightly said, the focus was not on intelligence in law enforcement, it was on intelligence in other agencies.

Q84 Lord Dear: There are two threat assessment models, the EU model and the UK model. It would be helpful to us to understand what the differences

are in how they operate in generality and hopefully work in parallel.

Mr Wainwright: Not to be too pedantic, it is only one model. That is the point: they share—

Q85 Lord Dear: There are two acronyms though.

Mr Wainwright: I am sorry, what I should say is that they are two different products. One is a threat assessment of organised crime across Europe and one is based here in the United Kingdom, but they are underpinned by the same methodology and by the same intelligence network principles.

Q86 Lord Dear: Which was going to be a supplementary question.

Mr Wainwright: The Europol Director, I am sure, would say himself that the development of the EU equivalent was directly as a result of the UK initiative a few years ago. We are lucky in that, therefore, our assessment domestically has a cousin, if you like, a European cousin. They have a symbiotic relationship. They feed each other in terms of the information flows, so our threat assessment will reflect what Europol is telling us about their pan-European view of trends in cocaine trafficking, for example. That is reflected in their UK assessment. It is helping to inform their UK assessment. At the same time the pan-European picture is supported by our domestic understanding of what the threat is. There is this symbiotic relationship and on a day-to-day basis they work really through the functioning of Analysis Work Files at Europol. There are 18 of these in total. As I said, they contain many, many, many intelligence entries and they are of significant strategic value. More to the point, they have their equivalents here in SOCA as well. We have national programmes of activity that we work with our domestic partners on in our top priority areas of cocaine trafficking, of heroin trafficking, of money laundering, for instance. As it happens, there is an equivalent SOCA analysis project to our domestic programme of activity in a majority of those cases, so we are in a privileged position to feed off each other and that is how it has worked.

Q87 Lord Dear: What you have given is a very full answer and I am grateful to you for that. To clear my own mind absolutely, what I am seeing is a model with exactly the same common understanding of terminology, common acceptance of terminology; the same model which almost produced, machine-like, a UK assessment at one level and a European at another but using exactly the same machine to do it, if I might use that expression.

Mr Wainwright: Different instruments, of course, because one is managed by SOCA and one by Europol, but the way in which the machine works, the way in which it has been built, is largely the same.

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There are European modifications, as you might expect, but the principles are the same. The architecture of the European model, I think, is still underdeveloped but then it is bound to be because it is a newer and more complex project spanning 27 countries.

Q88 Lord Dear: With more players involved and feeding into it.

Mr Wainwright: Yes.

Mr Hughes: For Europol, they do not produce the OCTA, as they call it, on an annual basis. They are more keen on the Analytical Work Files being the main structure. The OCTA is produced at regular intervals as an overarching picture of where they are approaching, but the AWFs are their day-to-day practical business of taking it forward. They are similar, therefore, in what we are doing with the UK Control Strategy Programmes, but, as Rob said, each one of those programmes or almost all of our programmes slot neatly into one of the AWFs in Europol, so there is a linkage there.

Q89 Lord Dear: There is a threat assessment on the enunciator behind you. It sits there and is updated presumably every day at that level for the House of Lords. Is your threat assessment something which is updated on a daily, weekly, monthly or annual basis? I am not too sure.

Mr Hughes: We do it on an annual basis. You will be familiar with the old NCIS threat assessment that was produced which tended to be, as I said earlier, a bit of a historical document which was very interesting but was not a lot of use in terms of taking things forward. We have moved that on and we now produce two versions. One is a restricted version which is available for law enforcement and the other is the unclassified version which is available for public consumption. The unclassified version is scheduled to go out via our website on 6 June. OCTA is produced annually. I have just been corrected by Rob. That shows I am a little out of date, because last time I was at the European Police Chiefs' Taskforce there was some debate over whether it should be produced annually or not. My argument was that it should. Other people said, "No, only every two or five years." It would appear that I have won the argument and I did not know it. The UK Threat Assessment now, I would suggest, because the restricted version has the sensitive sources listed in there—and that is obviously why it cannot be in the unclassified—is taking us towards the route of our Control Strategy as well, bringing partners into line there, so they have something to work on rather than being a very interesting document which you put on your shelf and ignore until next year. It is produced on an annual basis.

Q90 Chairman: Could I ask a question about how this all works out in practical terms. Where you have the number plate recognition arrangements which many police forces have, where a vehicle sits on a motorway bridge and analyses number plates and somebody is down the road in order to stop a vehicle if there is either somebody or a vehicle which in which the police are interested. Is that computer which is used attached only to the UK database or does it also make use of a Europol database?

Mr Hughes: This is probably a question you are going to have to ask Mr Frank Whiteley, who is the Chief Constable of Hertfordshire who leads for ACPO on ANPR. As I understand it there are quite a few ANPR systems, some operated by private or other public sectors. There is not, as far as I am aware, any common linkage. Within SOCA we use ANPR facilities and if we had a vehicle that we were interested in we would enter it onto the PNC, which is where the ANPR will pick up those details, but there would have to be a clear criterion on why that vehicle went up there. If we had a European linkage that came into us, then, as far as I can see, we would be able to put it on to a specific ANPR system. As I say, there are lots of ANPR systems, so we would have to be careful as to which ones are being used. We would use the ones that are operated by police.

Mr Wainwright: My colleague has just confirmed that ANPR would be automatically connected to the Schengen Information System—if and when that arrives.

Mr Hughes: It links into the PNC and the PNC would be linked with the Schengen Information System, so therefore the same details would be on there.

Q91 Lord Dear: The UK National Intelligence Model had a child called the UK Control Strategy. I wonder if you could expand on the latter in terms of controlling organised crime. How does it work within Europe itself? What is the benefit to the UK?

Mr Hughes: The UK Control Strategy, as I say, picks up from the UK Threat Assessment and is a multi-agency approach. I have not brought the documentation with me but in our SOCA annual plan we refer to the UK Control Strategy and it shows the particular agencies that are leading. Some of the agencies might surprise you. The Home Office lead in one. The UK Border Agency. HMRC on fiscal fraud, as you would expect. All of those are picked up and then other agencies work together on that. When you link that into Europe, as I have said, the UK Control Strategy's programme of activities relates straight into the subject areas of key Europol Analytical Work Files, so there is a direct read-across. The Analytical Work Files are a source of intelligence that feeds the UK Threat Assessment, so it is a continual process by which we are building up what we know about the individuals and the type of

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crime threats that we are looking at. Perhaps I could give you a couple of examples where Europol has added value as a result of those work files. First, there was an operation—and I will not go into details in relation to the individuals—where an Eastern European gang was armed and violent and committed around 20 armed robberies against high quality jewellery shops in the UK and over 200 similar incidents across the EU. At the end of 2007, officers from three United Kingdom forces, visited Estonia, an action co-ordinated by Europol, searched eight addresses, arrested seven suspects, and with the support of Europol the police in the UK have identified offenders in 16 out of 24 cases and have brought prosecutions in 11 cases.

Q92 Lord Dear: Sixteen in the UK?

Mr Hughes: Yes. The offenders have been identified and prosecuted in 11 cases. It may be that some of the offenders may be prosecuted in other countries in the EU. In counterterrorism Europol have played a key role in an operation led by Greater Manchester Police to prosecute a man for offences related to terrorism. That key evidence was developed from the documents that were seized at his address in Manchester but most of the correspondence between him and his associates in Pakistan and Afghanistan was in Arabic. This is perhaps picking up on the linguistic issue. Europol experts supported that investigation for GMP, translated and analysed the material and found evidence that clearly showed his complicity in supporting terrorism. That man has now been prosecuted and convicted and sentenced. Europol does add value. It is linked in with our threat assessment. It is a continual operation which I would support. I think we get good value from it.

Q93 Lord Young of Norwood Green: On your evidence paper, paragraph 8, you say, “Europol has signed 20 co-operation agreements with countries and bodies outside the EU” but you then go on to damn it with a bit of faint praise at the end, where you say, “Experience suggests Europol should spend less time pursuing such external agreements and focus on delivering its goals . . .” I can understand there is a balance to be struck but, even listening to what you have described, given the global nature of organised crime and counterterrorism activities, would you like to expand on that a bit as to why you have reached that conclusion?

Mr Wainwright: Yes, of course. I would refer to my previous answer regarding the data protection problems we had. In many of those cases, as I said, where Europol has co-operation with third countries, it is forbidden from exchanging personal data because of the data protection safeguards. We are unable to realise the kind of operational benefits that Bill has just talked about with those other countries

because we cannot exchange data about other countries’ investigations. Therefore, the co-operation agreements that Europol has with Russia, for example, and other countries is limited to the exchange of strategic information only, threat assessment papers and so on, which sometimes is helpful but has a natural limit in terms of how useful it can be. The amount of legal and other effort, political effort, to get them signed is such that very often the dividend that then follows in those terms is not great. People would argue that Europol has a big enough job on its hands to help Member States within the EU before pursuing an endless number of these. Where it is targeted at the right partner, absolutely yes.

Q94 Lord Young of Norwood Green: Thank you. That is helpful.

Mr Hughes: The answer is exactly as Rob says.

Q95 Lord Marlesford: Going back to Lord Dear’s questions about the threat assessments, I think there is the danger of confusion for ordinary people like me in the phrase “threat assessment” because to the ordinary people a threat assessment would normally be in relation to terrorism. Of the two examples you gave, obviously the Greater Manchester terrorism matter comes into that type, but the gang in Lithuania is a threat assessment for jewellers, if you like, in London. Is there some way in which we can get a clearer distinction between, as it were, a threat assessment crime which would not normally affect most people, except that somebody might say that in this area there are a lot of pickpockets but that is a very minor threat assessment, and the terrorist threat assessment. Perhaps the phrase is unfortunately the same.

Mr Hughes: I understand. The UK Threat Assessment does refer to terrorism but our remit is not terrorism so we have not majored in that area. That said, there is a Metropolitan Police counterterrorism officer who is at Europol and we support our colleagues in that area of work. I suppose it is back again to the lexicon and what you mean by “a threat” and all the rest of it. The threat to the United Kingdom of serious organised crime is very much underestimated. That is what we tried to highlight in the threat assessment in previous years, but, as you say, many people associate threat with terrorism. The threat to the United Kingdom is quite significant, and not just in financial terms. I think the Home Office did some research about four years ago now which estimated the cost of organised crime to the United Kingdom was in the region of about £20 billion a year in terms of the harms caused, but then you look at the other real personal harms that come from that; for example, from drugs; the use of violence; the importation of firearms; organised

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immigration crime, where we are not talking simply about people being smuggled into the country but of them being placed in debt bondage, the exploitation of those individuals when they arrive in the United Kingdom, whether from prostitution or in working for very poor wages in sweat shops, and so on and so forth. There are real threats in there which are identified in here. Many people will be unaware of the activity. Acquisitive crime generally is carried out to provide funds so people can either buy drugs or are required to pay back debts to other people who have been threatening them with some criminality, particularly organised immigration crime and other areas. There is a lot more in terms of the organised type of crime that is impacting on the UK. We are also talking there about, for example, issues where major frauds and scams are perpetrated in the United Kingdom by serious organised crime gangs. These go from the classic old 419 scams that most people are aware of, the ones that usually emanate from West Africa: “If you’ll allow me to use your bank account to launder this money . . .” I work on the basis, if you fall for that one, that if it is too good to be true then the answer is that it probably is, but there are other scams which are more insidious now. We have been working with the Office of Fair Trading to deal with some of these, where vulnerable people in society are targeted over and over again with scams such as, “Congratulations! You have won the Spanish lottery. Send a £10 administration fee and we will organise the prize.” This is high volume/low value but, when you add it all up, people are making millions out of the people who respond. More dangerous and more nasty, in my view, is that, if you do respond—and often it is the more vulnerable people in society—they put you on a suckers’ list which they then sell to other people so that they can target you as well. The effects of serious organised crime are underplayed in terms of the threat that it applies to everybody in society. I could make the statement, of course, that not many people die from terrorism on an annual basis, though every one is a tragedy, but there are a lot of people who die or others whose lives or ruined by organised crime every year. You would expect the head of the Serious Organised Crime Agency perhaps to say that but that is the reality. That is what we are trying to identify in that threat assessment.

Q96 Lord Harrison: I am pleased to learn that I am probably not on the suckers’ list, as I had one invitation that I put in the wastepaper bin without opening it. I would like to come on to changes to the Europol mandate. The Council Decision introduces more flexibility to allow Europol to support criminal investigations into the most serious of crimes that may not obviously be linked to organised criminal gangs. Does this signal move towards traditional

investigations and away from policing measures as a way of compensating for the removal of the EU internal borders? I wonder whether that was in part touched upon when the reference was given to the Suffolk murders.

Mr Wainwright: I do not see significance to this move in these terms. I think this is a tidying up of the arrangements based on the first 10 years or so of Europol’s experience. Even after the adoption of the new Council Decision, Europol’s activities will still be focused on its existing priorities: drug trafficking, terrorism, money laundering, and so on. The tidying up I referred to really is where on a relatively few occasions Europol could provide some added value in the case of some very high-profile, serious crimes that do not involve an onwards crime check: multiple murders, perhaps across borders; or a child sex offender travelling around Europe; or a serial rapist. In these circumstances Europol could provide added value but at the moment is prevented from doing so by the way in which the Europol Convention is termed. The Council Decision helpfully provides a bit more flexibility for Europol to provide support in those exceptional cases, but I think in five years time, looking back, perhaps I would anticipate that the nature of Europol’s work and the areas in which it is delivered will not change significantly.

Mr Hughes: Perhaps I could add one thing to something the Chairman said recently when I was talking about Schengen. I will not go down that road again but there is an issue to this which is that this allows Europol to support the national law enforcement agencies investigate serious crimes in the European Union without giving the investigators cross-border powers, which is another issue on that. We have a European Directive around joint investigation teams, so, as Rob said, it is a tidying up without going further than that into wider pan-European policing agencies.

Q97 Lord Harrison: To follow that up: if there is this new mandate in dealing with serious crime, does that fundamentally require a different set of skills or a wider or broader knowledge in order to accomplish that from that which you have already used in combating organised crime?

Mr Hughes: No, I do not think so, because the same basic gathering of the evidence—the intelligence, the analysis, the investigative powers and investigative tools and techniques—are similar. Sometimes it requires a different approach. For example, a lot of SOCA work is very much proactive, going after people who are plotting to do something, rather than investigating after it has occurred. We have our own forensic capability which is based on the same forensic type capacity you would have in any police force investigating and reacting to a crime that has occurred, but we are applying those principles now to

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proactive work. DNA sampling enables us to identify who was at the scene and that is the case whether the crime has been committed there or whether we are looking at surveillance and identifying who has been meeting and coming together. It is all these areas. This is an area where, as Rob said, it is very much tidying up and the same skills will be used. I think it is very good that we are using the capabilities of Europol to support what would in the past have been considered as more local policing issues.

Q98 Chairman: Your paper gave me the impression—although you did not actually say it, I gained the feeling from reading between the lines—that if there was a United Kingdom person in the top echelon of Europol management—which there is not, and you say you are considering putting somebody up next year—what particular gifts do you think that person could give to Europol which would create added value?

Mr Hughes: You are either operating on very good intelligence or you are very astute, My Lord Chairman. I must answer this one, to spare Rob. It is not framed that way, but you are right. Rob Wainwright is on the Europol Management Board. We have ministerial support now and Rob is going to apply for that particular post of Director of Europol when it becomes available. This is not our manifesto for improvement but it is very much a case where we support Europol and always have and Rob has the skills, I believe, to make a very good job of being Director and taking that role forward. I think we had better be careful on how much we sell him at this stage.

Mr Wainwright: I think it is right that we declare that interest. I notice some of the questions that may follow are about how the governance of Europol could be improved, and you will want to bear that in mind when you listen to my answers, I guess.

Mr Hughes: We were intending to say that. We were not going to be disingenuous and wait until later for you to find out.

Chairman: Thank you.

Q99 Lord Young of Norwood Green: I think my two questions could be rolled into one. Helpfully in your evidence paper in paragraphs 15 and 16 you go part way to addressing them. The Council Decision has addressed that interaction between the Management Board and the Director by giving the Management Board responsibility for strategy. How does that differ fundamentally from the current situation? If the Council Decision has not gone far enough to giving more control, if you like, to the Director, which areas of responsibility would you recommend?

Mr Wainwright: I think the changes are important but fairly modest. The Management Board already has codified responsibility to manage the strategic

functioning of the organisation, so it already has responsibility for adopting the annual work programme, the annual plan, the budget, the five-year financing plan as well. It already operates in that way. Over the last few years, it has acquired other more de facto responsibilities; for example, developing the Europol vision which we now have and the Europol strategy itself. Those last two instruments, the vision and the strategy, are not codified in the Europol Convention; they will be in the Council Decision. That is another example of very sensible tidying up of practice that has become an embedded part of the way in which the organisation operates. During the negotiation stage, between SOCA and the Home Office, we wished perhaps for the Council Decision to go a bit further in delineating a different level of responsibility between the Director and the Management Board. In the end, having compromised across 27 Member States, the final result is quite a good one and we are happy with it. If you were to press me on what more we want to do, it is really around the extent to which the Director should be allowed to get on with his job. He should be allowed to run his organisation as a Chief Executive Officer, running the day-to-day administration of his resources and of the conduct of the operation which Europol are supporting. The Management Board, for me at least—and I have been a member of the board now for some eight years—should not be concerned with the day-to-day running of the organisation but very much with the strategy of Europol, its external relationships, and ensuring budgetary probity and efficiency. That last point is a very important one for us. I do not think the Council Decision has gone quite far enough in delineating those two responsibilities but it is a not a bad start. In the end it is going to come down to personal relationships between the Director and members of the Management Board. Like in so many other walks of life, it is how the individuals themselves enact the legislation and operate on a day-to-day basis that will be the difference between success and failure.

Q100 Lord Young of Norwood Green: You have anticipated my thinking: that it must be a bit to do with personalities and it is a question of establishing trust. If you do not get that, then you tend to get what I feel is micro-management by the board rather than focusing on strategy.

Mr Wainwright: That is right because it leads to issues of confidence as well, and . . . I had best not go any further perhaps.

Mr Hughes: That was certainly the case before, unfortunately. There was too much micro-management by the Management Board. Rather than sticking to the business they should be dealing with (the strategy and the budgetary issues), they

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were getting into day-to-day operational work and that is not the right place for that.

Q101 Lord Teverson: In your summary you mentioned a system called SIENA. I was not sure whether that was European or yours and I would like to understand a little bit about that. What is the value, if any, of the Europol Information System, particularly in relation to the tie up with other European cities as well? Where do you see all that going and how do we make that work without moving into the area of ever larger IT budgets that deliver later and later?

Mr Wainwright: The opposite principle is a point: we need to bring more coherence to the information architecture in the EU policing. We have had a constant proliferation of databases over the past few years and it is time to draw breath and co-ordinate that. I think Europol has a unique opportunity here. Its mandate is to be an information manager on behalf of EU policing and it has responsibility, by holding a pan-European database—an index, if you like, of all serious organised crime investigations around Europe—to deliver that coherence as part of the internal security architecture of the future of the EU. I think we could strengthen that, in particular, by giving Europol the technical means by which to cross-refer its own databases with those of those other EU databases: the Schengen Information System, the Visa Information System, and so on, those that we have listed. It is a great opportunity to bring coherence in the management of information. As we have found here in SOCA, the future of policing really is about making best use of datasets and information. It is very much the order of the day now in our counterterrorist work and in our counter organised crime work as well. To answer your specific question about SIENA: that is code for the new generation system for the transfer of our operations across the Liaison Bureau. We mentioned in our paper the 568 cases that we did last year. SIENA is the all-singing and all-dancing new network for that.

Q102 Lord Teverson: The figure of 568 that you gave, could you give us an idea of how that breaks down. Is it money laundering or the other areas?

Mr Wainwright: I am afraid I do not have that information to hand. We have that information and we can provide it to the Committee and we can also provide a breakdown of which countries we have mostly dealt with as well across those cases.

Chairman: That is very helpful.

Q103 Baroness Henig: You said in your evidence that the two greatest operational assets of Europol

are its Liaison Bureau platform and its collection of analysis files. You have referred to those this morning and how important they were. How much of Europol's budget do these two assets take up?

Mr Wainwright: This is a difficult one. I am afraid I cannot give you the information. We know the Europol budget is €64 million. How much of that is given to supporting the AWF? It would include all the very high costs associated in the IT development of the systems and the refresher of that and the maintenance and support. It would include the employment of all the analysts—and I forget the number, but it is a considerable amount: 100 plus, I think—at Europol, and the linguistic support as well. The budget is not broken down within Europol, as far as I can see, for me to answer that. You might ask that question of the Director of Europol. Behind the question I detect an issue about relative added value, between how much we pay for the bureau and how much we contribute to Europol. Our contributions are in the order of £6 million a year subscription to Europol and our own internal running costs for our own Liaison Bureau team at Europol are something approaching £1 million a year, and that includes the salary costs that are borne by those other agencies. The Metropolitan Police, for example, attach staff to us. There is a difference, therefore, quite a sizeable difference, between the two. I have already talked about how the main Europol body provides us with significant analytical capability, and I would not make a case, therefore, that there is a significant disconnect, even though it appears so at first glance.

Q104 Lord Teverson: I was just seeking assurance that you were satisfied that the focus of activities there reflected your assessment of the added value.

Mr Hughes: You picked up, as well, on Rob's answer, that we would want to see far more budgetary probity. That is not just about people making sure it is handled properly, but about how it is split up and used around Europol. There have been some changes that have been brought already, one of which the UK brought in, which is to make sure that only 85 per cent of the budget of Europol is used initially, at the beginning of the year, to see how things are progressing as we go towards the end of the year. Rather than saying, "Here is the wedge of cash. Get on with it," there is trying to be some control exercised over that.

Q105 Baroness Henig: To what extent is the annual endorsement of Europol's report by the Management Board an indication of overall satisfaction with its performance?

Mr Wainwright: The Management Board is broadly content with the progress. I think the current

4 June 2008

Mr William Hughes and Mr Rob Wainwright

Director has taken the organisation in the kind of direction that we have supported, but in successive annual reports, if you read them carefully—and that is certainly between the lines, and on specific issues that were brought before the board at specific meetings—we have identified areas of weakness as well. As in the administration of any public sector organisation one can never find a 100 per cent clean bill of health, of course, and it is the responsibility of the Management Board to make sure that where weaknesses are identified they are dealt with in the right way. The picture is one of general contentment but with some concern in one or two areas.

Q106 Baroness Henig: Suitably discreet, as one who perhaps has some ambitions in this area.

Mr Wainwright: Quite.

Q107 Chairman: I think you have pre-empted the last question we were going to put to you and there is no need to go any further. The two of you have been hugely helpful. It has been very clear and you have been admirably succinct in your answers, which is always a great job to committees of this sort. We very much appreciate it. It will certainly give us a very helpful base indeed when we go to The Hague and to Brussels towards the end of the month. Thank you for coming.

Mr Hughes: Thank you, My Lord Chairman. If you require any more information we are more than happy to provide it to the clerk.

Chairman: Thank you.

Supplementary evidence by the Serious Organised Crime Agency

Thank you for the opportunity to give evidence to the Select Committee of the European Union (Sub-Committee F) inquiry into Europol. As agreed at our evidence session on 4 June, I am writing to provide further detail around the statement contained in paragraph 4 of our written evidence:

“In 2007 the UK initiated 568 cases through Europol, leading to operational results in all the major fields of Europol’s competence”.

The tables annexed below provide a comprehensive breakdown of both the subject of these cases and the partner countries involved. You will note that 450 of the 568 cases referred to were bi-lateral in nature, while 118 were multi-lateral.

While our traditional partners—Spain, Netherlands, France, Germany, Belgium (1–5)—all feature as our main Europol partners, it is interesting to note that three of the new member states—Lithuania, Poland and Czech Republic (8–10)—also feature in the 10 bureaux with whom we do most business. Italy and Ireland (6 & 7) complete the list of 10.

In respect of the main areas of work, I can confirm that Drugs Trafficking remains our main area of common interest with our Europol partners. This is followed by money laundering which reflects the emphasis SOCA places on addressing the issue of criminal assets. Terrorism features next and confirms the high degree of support that the UK gives to Europol in its two Analytical Work Files in this important area. Trafficking in Human Beings, Fraud and Swindling, Counterfeiting currency, Illegal Immigration, Firearms and weapons trafficking, Crimes against the person (including Murder and Robbery) and I T enabled crime are the other main areas of criminality that the UK Bureau dealt with in 2007.

I trust that this additional information will prove useful to the Committee.

William F Hughes
Director General

12 June 2008

Annex A

<i>Cases Initiated</i>	568
Subject	
Bodily Injury	5
Child Pornography	3
Computer Crime	1
Corruption	
Cultural Property Crime	
Drugs	257
Environmental Crime	1

<i>Cases Initiated</i>	568
Forgery of Administrative Documents	4
Forgery of Money	26
Fraud and Swindling	41
Illegal Immigration	25
Kidnapping and Hostage Taking	4
Money Laundering	67
Murder	4
Nuclear	6
Other Means of Payment	11
Product Piracy	1
Racism and Xenophobia	
Racketeering and Extortion	1
Robbery	7
Terrorism	47
Trade in Endangered Species	
Trade in Hormonal Substances	
Trade in Human Organs	
Trafficking in Human Beings	45
Vehicle crimes	2
Weapons and Explosives	10
Bi Lateral	450
Multi Lateral	118

Annex B**COUNTRIES INVOLVED**

In addition to the Member States of the European Union, Europol also hosts third countries with whom they have signed co-operation agreements.

<i>Involved</i>	
Austria (AT)	18
Belgium (BE)	63
Bulgaria (BG)	10
Cyprus (CY)	14
Czech Republic (CZ)	26
Denmark (DK)	23
Estonia (EE)	9
Finland (FI)	12
France (FR)	81
Germany (DE)	66
Greece (GR)	18
Hungary (HU)	18
Ireland (IE)	41
Italy (IT)	51
Latvia (LV)	11
Lithuania (LT)	38
Luxembourg (LU)	6
Malta (MT)	8
Netherlands (NL)	118
Poland (PL)	33
Portugal (PT)	20
Romania (RO)	23
Slovak Republic (SK)	20
Slovenia (SI)	8
Spain (ES)	137
Sweden (SE)	20

Involved

United Kingdom (UK)	
Australia (AU) via Europol	3
Canada (CA) via Europol	6
Croatia (HR) via Europol	1
Iceland (IS) via Europol	1
Norway (NO) via Europol	19
Switzerland (CH) via Europol	12
Colombia (CO) via Europol	2

WEDNESDAY 18 JUNE 2008

Present	Dear, L Garden of Frogal, B Harrison, L Hodgson of Astley Abbots, L	Jopling, L (Chairman) Marlesford, L Mawson, L Teverson, L
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**Memorandum by Professor Juliet Lodge, Jean Monnet European Centre of Excellence,
University of Leeds**

Europol's future development: the implications of information sharing

INTRODUCTORY REMARKS

1. The proposal to modernise Europol is a welcome recognition of the operational requirements for effective supranational action to realise an area of freedom, security and justice. Europol is the increasingly visible spider in a web of many supranational and national agencies¹. How they will share and exchange information with Europol raises many issues that are problematic for Europol and also result from the realisation of the Information society itself and i2015.
2. The tasks given to Europol associated with assisting in combating crime and border management highlight dissolving administrative boundaries. This demands that attention be given to how good governance may be effected in the light of procedures introduced by the Decision which impact on and may alter practice within the member states' agencies. Information sharing is not neutral in its impact.
3. Europol's role and potential role in combating international organised crime in all its guises means that the organisation is developing in response to external problems at a time when the issue of effective cooperation among the various relevant national and EU level agencies is compromised by: mutual distrust, different national and agency administrative codes, practices and traditions, variable and inadequately secure information communication technology (ICT) architectures for information storage, processing and exchange. It is increasingly benefiting, however, from cross border cooperation² reinforced by cooperation agreements, such as that concluded with Frontex.³
4. Political and structural problems within the member states' law enforcement systems also inhibit Europol from contributing as effectively as it might wish to combating and prosecuting organised crime and terrorism. Problems encountered by Europol in relation to information sharing with member states' police agencies differ from state to state, and within the states themselves. This problem exists in all EU agencies fed by national and regional members and can seriously compromise Europol's effectiveness operationally whether on a bilateral or multilateral, multi-agency basis (as with exchange possibilities regarding trafficking, border crossings, for instance, with SIRENE, Frontex⁴, VIS and SIS II).
5. Cooperative arrangements in information sharing (such as within Eurojust) have led to important operational successes. These do not detract from the many unresolved issues within the detail of the Council Decision that need clarifying.
6. Ambiguous or loose terminology in the various protocols and Council Decision make for confusion, aggravate the possibility of differential implementation of its provisions in the member states, and raise questions about the gap between operational expectations and aspirations among all concerned. For example, there is no single or common definition or understanding of basic terms like the "personal data"⁵, "information" and "intelligence". Common understanding is key and needs revisiting even though Europol

¹ Detailed in Europol, *Work Programme 2008* sent to Article 36 Committee, 7911/07, Brussels, 16 April 2007.

² Europol supported the LKA Brandenburg (State level Criminal Investigation) and the Public Prosecutor's Office in Frankfurt / Oder in Germany in dismantling a world wide drug trafficking ring. Close cooperation between the law enforcement authorities in Germany, including the BKA, the Europol Liaison Bureau Germany, and Interpol were vital. www.europol.europa.eu April 2008

³ On 28 March 2008 Frontex and Europol signed a cooperation agreement is to boost cooperation between Europol and Frontex, in particular through the exchange of strategic and technical information. The agreement entered into force on the first day following its signature.

⁴ EuroSUR border surveillance system to exchange information with, inter alia, Frontex has been proposed in a recent Commission communication.

⁵ The Article 29 Data Protection Working Party Opinion 4/2007 on the concept of personal data [01248/07/EN] was adopted on 20 June 2007.

has a series of documents defining terms dating back to 1998⁶. The distinctions and ambiguities could prove problematic in decisions determining their exchange and automated access to them (as well as in rules determining the deadlines by which information has to be made available to counterparts/requesting bodies). Variable interpretation and practice will impact on catch-all terms used in the Decision, such as “associated expert” and member states’ veto right over who can be one. Creeping securitisation implicit in Arts3–5; weak or absent time frames allowing too much discretionary interpretation (arts 7,11(f), 13(2), 20) and ambiguity increases the potential for delays to be politically engineered (Art 28(2)).

Automated exchange of information and its impact on magnifying the accountability and democratic deficits

7. Automatic information sharing is to be facilitated by identity management systems as the gateways to partial or full information disclosure. Data is to be available for remote interrogation, access, and updating by specified agencies on role specified bases. Such systems are central to the effective implementation of e-government for mundane purposes (like renewing television licences, commercial transactions, etc) and at the heart of the envisaged cross-border exchange of information for policing and law enforcement purposes. RFID and ambient intelligence use is not limited to policing and security purposes and is vulnerable to malevolent intrusion. How Europol will deal the implications of this is unclear.

8. Information sharing, categorisation of data, judicial cooperation, uncoordinated implementation of the principle of availability, inconsistency across and within agencies and special investigative methods⁷pose serious problems that need to be addressed in a coherent way to avoid duplication and contradictory practices and outcomes. Differences in accountability among EU states are likely to persist.

9. Making those who exchange information accountable in an open, respected, reliable and just way is problematic. The principle of institutional accountability, for example, through the Joint Supervisory Body, European Data Protection Supervisor and European Parliament, needs to be supplemented by robust legislation to strengthen open, visible parliamentary accountability and democratic control at all levels. This requires a critical reappraisal of the terminology of legislation and codes of good practice offering peer review audits in place of stringent parliamentary scrutiny and control. Mere “consultation”, for example, of the European Parliament is not sufficient to ensure the effective exercise of political control.

10. National parliaments’ roles needs to be revisited and strengthened individually vis-à-vis their domestic law enforcement agencies and all those other agencies who are and will be increasingly engaged in bilateral and, multilateral information exchange and intelligence exchange. Desirable as increasing closer and more frequent cooperation and information sharing is between them and the European Parliament, attention must be paid to what an appropriate joint role might be for them in respect of the public-private partnerships on which the provision of ICTs to enable data sharing for Europol’s purposes are based.

11. A common intelligence framework may imply a need for a single database. How could the Decision reflect the need to align Europol’s existing and emergent technical architectures with other relevant ones?

12. Technological capabilities (that vary greatly among EU27) define agendas in ways which allow bureaucrats greater input than elected politicians and heightens the known tendencies of groupthink. The blurring of administrative boundaries impacts on accountability at all levels. This needs addressing : controls on Europol may be tighter than on other levels and encourage reliance on “softer” bilateral channels with EU members and third states’ agencies.

13. Accountability is not just an audit trail. Best practice and audits are essential preconditions for data protection but are not substitutes for political accountability. The duty of care and vigilance of government (outside the sphere of state security exceptions) needs re-visiting. Politico-legal controls are not (yet) up to the task of ensuring effective accountability by themselves. The EDPS’ vigilance remains vital but insufficient⁸. Attention must also be paid to the technologies and associated processing (“backroom”) operations designed to expedite and facilitate information exchange for Europol’s purposes. Liability for ICT failures needs clarifying. Currently, getting redress and amending errors by compromised citizens is prohibitive in terms of time and resources.

⁶ See for example, the Council Act of 3 November 1998 adopting rules on the confidentiality of Europol information, Official Journal C26/1 30 Jan 1999. Article 1 states: (a) “processing of information” (“processing”) means any operation or set of operations which is performed on personal or non-personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction; (b) “third party” means a third State or body as referred to in Article 10(4) of the Convention;

⁷ Council of the EU, *Implementation of the EU Counter-terrorism strategy*—Discussion Paper, 15448/07, Brussels, 23 Nov 2007.

⁸ http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Comments/2008/08-03-03_Comments_border_package_EN.pdf

14. The tendency to visualise information exchange purely as a function and operational requirement for law enforcement agencies working with Europol perpetuates the artificial and unsustainable boundaries between “internal” and “external” security. It is especially problematic when tied to automatic information sharing and exchange.

15. The known risks of inefficient and imperfect information sharing and exchanges on a bilateral basis in paper-based systems will not disappear by having automated information exchange. High standards that Europol and Eurojust may devise need to be higher and set the gold standard in terms of their technical architectures, codes of access and exchange, documentary formats and public accountability mechanisms.

16. It is important that political principles (like data and purpose minimisation, codes on data re-use in full or part, information exchange, file exchange, data subject privacy, and baked-in security) rather than simply technical feasibility define architectures to prevent malevolent intrusion, data mis or re-use, sale, fraud and theft. Baked-in security and implementation of high data protection provisions are essential. The political reality is based on reliance on subsidiarity, bilateral understandings and mutual recognition. This results in patchy safeguards for citizens and all concerned. Citizens are not equal in EU territorial or digi-space.

17. Different understandings of common terms (eg Council Decision (COM(2006)0817) references to criminality, organised crime, serious (Art 4.2) criminal offences (Art 4.3) crime, criminal justice) in the member states have serious consequences as to how information and intelligence are managed, processed, communicated and subject to exchange and sharing with other public and private or semi-private agencies within the state and across borders, and in— and with—third states. This includes, for examples, consulates regarding visas and, under the envisaged common consular space, evisas and enrolment of biometric data such as fingerprints. If individual security is not necessarily enhanced by them, is collective security also at risk?

INVISIBLE IMPLICATIONS OF AUTOMATED INFORMATION EXCHANGE

18. A number of issues need to be addressed in the broad context of information exchange.⁹ Who operates the ICT systems outside the controlled environments of Europol and, for example, Eurojust? How are systems selected and funded (this will be a growing drain on the EU budget and matter for the European Parliament as part of the Budgetary Authority. Automatic information sharing and exchange even short of interoperable systems are costly. Elements of the systems (like common preferred formats for documents, indexing and archiving) have uncoded financial consequences for Europol and its contributing bodies and those with whom information is to be “shared” and/or exchanged.

19. How are data inputters screened at local and supranational levels and in all those third state agencies with whom data exchange and sharing are envisaged?

20. What rules cover system obsolescence, out-sourcing, data coupling, data mining and tracking, digi-footprints, data storage and deletion (eg of DNA), data re-use, access (hard for citizens, relatively easy for member state agencies, commerce) insider and outsider fraud, corruption, data ownership, degradation, the updating of communication protocols? How are different categories of data subject defined?

21. There is little doubt that genuine inter-operability will boost the speedy response needed to enhance effectiveness. That is operationally necessary. Automated information sharing and exchange leads to the creation of “new information” files and intelligence. ICTs commodify data. Outsourcing to third states and parties, growing fraud (all too close and visible to the citizen), information trading for unclear purposes without the direct consent of the data subject are generally problematic but especially sensitive in the area of home affairs. Law enforcement information and intelligence derives from many sources (not necessarily universally shared or trusted, that may skew or claim ownership over them).

22. Access by public and private third parties must be reviewed in the light of i2015 and securitisation of hitherto “domestic” areas. While biometrics may enhance identity verification their indiscriminate deployment and outsourced handing and sale may compromise individual liberty and collective security. There is a public duty to ensure that the systems envisaged for say Europol-Eurojust are genuinely models of public systems that are as robust-against-fraud from data collection to inputting, access, storage and retrieval as possible.

The ostrich-like approach of allowing technical providers decide how automated information sharing and exchange/interoperability will work in practice technically risks allowing others to present what is available as the “solution” instead of creating what is needed. Specificity and clarity are essential. Reliance on mutual recognition is tempting but ducks the need for uniformity or basic commonality, especially in defining terms

⁹ J.Lodge(ed) Are you who you say you are? The EU and biometric Borders, Wolf Legal Publishers, Nijmegen, 2007.

like secrecy, confidentiality, rights of access. The principle of availability is contingent. However, the Decision of March 2008 (para 10) states : Europol National Units should have direct access to all data in the Europol Information System to avoid unnecessary procedures¹⁰.

CONCLUSIONS

23. Automated systems underpinning information sharing as envisaged for Europol and contributing/cooperating agencies are probably as yet not quite fit-for-purpose (even allowing for respect for ethical principles, data minimisation, purpose limitation, and so on).

24. Automated data sharing, access and exchange magnify the problem of trust in private and public sector personnel, technology, administrators, officers, and politicians both inside the EU and where third parties in third states or NGOs and international organisations are concerned. Communication to and from third parties and non-EU interests needs to be rigorously examined. It would be foolhardy to allow a “tick box” approach to verifying the “adequacy” (however that term is defined) or otherwise of, for instance, robust data protection¹¹.

25. There is a need for consistency and tight specifications on access rights, standards, system integrity, reference architectures, etc. There is an urgent need for an EU law on ID theft, possibly complementary to or a part of the Decision.

26. Effective action by the law enforcement agencies relies on bilateral agreements, bilateral trust and bilateral cooperation. Effective “inter-operability” implies a higher degree of automated information sharing and eventually mutual access to centralised, agency specific data bases (such as Eurojust, Frontex etc) and to those in the member states. This is likely to be informed by experience in the preparation of EU papers like the Organised Crime Threat Assessment, Terrorism Situation Report, and Analysis Work Files.

27. The Decision highlights the need for a cross-pillar, universalised EU model of information exchange.

28. Governments’ tendency to consider policing in isolation from the tools of policing exacerbate a trust, communications and accountability gap. There is a need to consider over-arching legislation in respect of e-governance and information and data-sharing as territorial boundaries are increasingly irrelevant in digi-space and a future of enhanced nano and ambient technological capabilities.

29. The question is whether the Decision on Europol can inspire and set the highest standards, and whether my careful review of practice and the application of secure architectures agencies that cooperate with Europol can build the mutual trust in the technology and practice that facilitate mutual endeavour towards realising common goals.

Submitted in a personal capacity and informed by research conducted in the JMCE on the EU Framework 6 programmes “Challenge” (CITI-CT-2004-506255) and “R4eGov”(IST-2004-026650

April 2008

Memorandum by Professor Didier Bigo with the help of Richard M. Spooner for the Centre d’Etudes sur les Conflits—C&C, April 2008

INSTITUTIONAL SETTING AND LEGAL BASES

Europol’s creation was mandated by the Maastricht Treaty in 1992, with the aim of preventing and combating terrorism, unlawful drug trafficking, and other serious forms of international crime through the creation of “a Union-wide system for exchanging information”.¹² It was formally established as an intergovernmental body through a Convention signed in 1995, which entered into force in 1998.

The Justice and Home Affairs Council is responsible for the guidance and control of Europol, the appointment of the Director and the Deputy-Directors, and approval of the budget. A Management Board comprising one representative from each Member State supervises its activities, and there is a Joint Supervisory Body with two data protection experts from each MS.¹³

¹⁰ Council secretariat to Europol Working Party/Art 36 Committee Proposal for a Council Decision establishing the European Police Office(EUROPOL)—consolidated text, 7744/08, Europol 29, Brussels 29 March 2008.

¹¹ For discussion of national data protection authorities, see E.Brouwer, *Digital Borders and Real Rights*, Wolf Legal Publishers,Nijmegen,2006,pp192ff

¹² Maastricht Treaty, Article K.1 (9), 7 February 1992

¹³ <http://www.europol.europa.eu/index.asp?page=facts>

The difficulty of adapting the European Convention to changing circumstances led to agreement on 18th April 2008 to change its legal basis to that of a Council Decision, and transform it into a Community Agency. It is planned that Europol will be funded from the Community budget (from 1st January 2010), and that in consequence the European Parliament will have an increased role in its control.

ISSUES RAISED BY THE CALL FOR EVIDENCE OF THE HOUSE OF LORDS SELECT COMMITTEE ON THE EUROPEAN UNION

Strategic Coordination

(i) *The Development of an EU “Architecture of Internal Security”, intelligence-led policing, and the European Criminal Intelligence Model*

The European Council, Commission, and Parliament have all consistently called for greater coordination in the field of JHA. The 2006 Presidency note on the “Architecture of Internal Security”¹⁴ is typical in this respect; it calls for a comprehensive threat assessment and definition of priorities at the EU level, and the means for ensuring that these priorities are implemented, and their results evaluated.

Major progress has been achieved in the Europeanisation of security cooperation, and will be reinforced by the ratification of the Lisbon Treaty. However, MS remain suspicious of too integrative an approach,¹⁵ and inter-institutional cooperation does not always function as envisaged (see below). Furthermore, procedural rights and the rights of the defence appear to remain “stuck” at the national level.

Europol has embraced intelligence-led policing. Data is collected and compiled, in the belief that once it has been appropriately treated and analysed—through the production of reports such as the Organised Crime Threat Assessment (OCTA)—it will allow for an efficient assessment of future threats, and the groups of population from which they are likely to emanate.

Central to this process is The Europol Computer System (TECS), which has three principal components:¹⁶

- (i) an information system (MS directly input data, third-party data input via Europol);
- (ii) an analysis system (by analysts, designated Europol officials, ELOs, MS experts);
- (iii) an index system (to determine whether data is relevant).

It is important to emphasise that, like any institution, Europol is not an entirely homogeneous entity, and that its different departments do not share an identical approach. In particular, the Europol Liaison Officers (ELOs) are closer to the “traditional” criminal justice approach than the Analysis Unit of its Serious Crime Department, which favours the intelligence rationale.

As emphasised in the Challenge report on EU internal security agencies the pro-active and preventive dimension depending on a risk based logic and an intelligence logic of anticipation may lead to a destabilisation of good exchange in criminal justice logic based on specific individuals, and may create difficulties by mixing too much police and intelligence on one side, fact, information and risk anticipation on the other side¹⁷.

(ii) *Europol’s relationship with other EU/EC Agencies such as Sitcen, Eurojust and Frontex, and the extent to which there is cooperation between these Agencies, especially in the preparation of the Organised Crime Threat Assessment (OCTA), the Terrorism Situation Report (TSR), and Analysis Work Files (AWF)*

The necessary distinction between formal and informal relations

Useful though an understanding of the formal relationship between institutions is, it does not necessarily provide an accurate guide into actual practices, alliances, and relations. Informal relationships based on “trust” may compensate for the absence of an official relationship, and the existence of “distrust” may render an official relationship meaningless.

¹⁴ Architecture of Internal Security, Note from Presidency to the Article 36 Committee, 20 April 2006, accessed through: <http://register.consilium.europa.eu/pdf/en/06/st07/st07039-re02.en06.pdf>

¹⁵ Mitsilegas, V., “What are the main obstacles to police cooperation in the EU?”, *Briefing Note for the LIBE Committee*, January 2006, p.2 in Controlling security

¹⁶ <http://www.europol.europa.eu/index.asp?page=facts>

¹⁷ The field of the EU internal security agencies

This is particularly true in respect of Europol, whose legal basis is currently a Convention, which must be modified in order for a formal relationship to be established with other EU agencies. The lengthy ratification process required for this procedure has led to Europol tending towards the establishment of informal relationships, which also allow for greater flexibility and autonomy.

The Council Decision of 18th April 2008, once put into practice, will allow Europol “insofar as it is relevant for the performance of its tasks [...] to establish and maintain cooperative relations”¹⁸ with other EU/EC institutions and bodies subject to the approval of the Management Board, which must have previously obtained the opinion of the Joint Advisory Body. How effective this change will be remains to be seen.

Relationship with Sitcen

Europol has been pushed after 11 September 2001 and even more after Madrid and London bombings to develop preventive “tools” in order to prevent terrorism, but the uncertainty of who has to be checked and the development of check at random or along profiles which are not always accurate, has generated a need for information sharing and competition about who is in charge of the definition of the threat. The division between second and third pillar has created uncertainty about the respective roles of the different structures, and the cross pillar meetings have not been so successful. Military intelligence in Sitcen has been re-focused on terrorist threat (including home grown?) and the relations with Europol are not clear enough, despite the claims of the main responsible of the two institutions. How far military and police intelligence can be usefully mixed together or used by the other agency with a different purpose? It is certainly important to understand better the merging of internal and external security information, especially when they mixed personal and non personal data in order to build risk based categories¹⁹.

Relationship with Eurojust

Although some actors hoped, upon its creation, that Eurojust would control Europol, this has not occurred. In fact, attempts to facilitate the exchange of information and build trust between the two bodies have not been entirely successful. Eurojust members have sometimes the impression that the justice dimension they represent is an appendices of the police dimension represented by Europol and that it is a specific problem linked also to the structure of the DG JLS which, to the contrary of many member states where justice and police are separated, favours policing over freedom and justice

April’s Council Decision places particular emphasis on cooperation with Eurojust, through stating that Europol will inform Eurojust prior to making a request to initiate criminal investigations,²⁰ and cooperate with Eurojust in ensuring an adequate level of data protection.²¹ It is arguable that as Europol gains new operational capabilities a legality check from Eurojust will become indispensable.²²

Relationship with Frontex

At present there is no formal relationship between Europol and Frontex, which has been gaining in importance as a focal point in the field of border controls for the EU.²³ Despite this, sources have confirmed that there is an exchange of non-personal data and risk analyses between the two agencies, and Frontex also contributed to Europol’s “Organised Crime Threat Assessment” (OCTA). As frontex is gaining such a role with the Eurosur project, it is not clear how the network of border guards, customs and agents at the borders concerning migration, asylum ... co-ordinated by and with Frontex will accept to share or not information with the network of the different police (and intelligence services ?) which are connected by and through Europol. Long rivalries exist at the national levels and they risk to be reproduced at the EU level. The so-called division between first pillar and third pillar makes no sense if one is looking in details about the tasks of Frontex.

¹⁸ Council Decision on Europol, Article 22 (1), 18 April 2008

¹⁹ The field of the EU internal security agencies, Bigo, Bonelli, Chi, Olsson : mapping the field of the EU internal security agencies

²⁰ Council Decision on Europol, Article 7 (1a), 18 April 2008

²¹ Council Decision on Europol, Preamble, 18 April 2008

²² Bruggeman, W., “What are the options for improving democratic control of Europol and for providing it with adequate operational capabilities?” August 2005, p.3 in Controlling security

²³ Bruggeman, “What are the options for improving democratic control of Europol and for providing it with adequate operational capabilities?”, p.3 in Controlling security

Relationship with Olaf

The sharing of responsibility for the suppression of Euro counterfeiting led to fierce struggles between Europol and Olaf, which were settled by a Council Decision in July 2005 designating Europol as the Central Office. This official agreement on the issue only masks the continuing tension between the two bodies, and information exchange remains sporadic, leading to the possible duplication of effort.²⁴

EUROPOL'S INFORMATION EXCHANGE WITH THIRD PARTIES

(i) *The extent to which information is exchanged by Europol with third countries with which it has cooperation agreements*

The field of European security is increasingly interlinked with transatlantic security dynamics. Europol's eagerness to engage in transatlantic data exchange resulted in its signing an agreement to exchange data and information with the US less than three months after 11 September 2001, and without the sanction of its Joint Supervisory Board. At the time Eurojust had no transatlantic dimension whatsoever.

Europol has since signed an agreement that has the approval of its Joint Supervisory Board, but concerns remain about data-protection standards in the US²⁵—see the controversy over the Passenger Name Record Agreement—and the accuracy of the data provided by the FBI. The Council Decision of April 2008 allows agreements with Third Parties to be signed only with the approval of the Council.

If Europol as well as the anti terrorist coordinator are seen in the US as their European counterpart, it may be useful, but if they are seen by the different national services as a US eye at the EU level, by too much compliance, and even eagerness to collaborate with police and intelligence services of the US, it may create difficulties at the level of trust and legitimacy of the EU level.

Annexe

The answers are based upon the research done in the last three years for the Challenge integrated programme 6eme PCRD <http://www.libertysecurity.org> and published in :

- (1) Bigo and als, the field of the EU internal security agencies, Centre d'études sur les Conflits. Collection Cultures et Conflits, a multilingual series. Paris. L'Harmattan 132 pages + chart of the EU internal security agencies.
- (2) Bigo and als, controlling security, Centre d'études sur les Conflits. Collection Cultures et Conflits, a multilingual series. Paris. L'Harmattan 132 pages

Examination of Witnesses

Witnesses: PROFESSOR JULIET LODGE, Jean Monnet European Centre of Excellence, University of Leeds, and PROFESSOR DIDIER BIGO, Visiting Professor of War Studies, King's College London, Maître de conférences des universités à Sciences-Po, Paris, examined.

Q108 Chairman: Two professors; we are honoured, welcome. It is very good of you to come. As you know, this Committee, which is a Sub-Committee of the main European Union Committee of the House of Lords, is doing an investigation currently on Europol. You may realise that you are on the record. You have sent us written evidence, for which we are grateful. If, at a later stage, you want to supplement anything, we shall be delighted to receive any extra evidence or thoughts in writing; that would be very helpful. I do not know if either of you wants to make an opening statement. We are a little bit against the clock, but, if you would wish to, either of you, you would be welcome. No? Well, let us start. You have both highlighted in your evidence that Europol's potential role is compromised by mistrust, different

administrative practices, and variable and inadequately secure information communication technology. I wonder if you could give us an overview of the kind of work that you believe is necessary for effective supranational action in the EU law enforcement and justice domains. I realise that is a broad question, but it would be most helpful if you would start with that one.

Professor Lodge: Thank you, my Lord Chairman, for the opportunity to comment and make an input. I will try and be brief. I think one of the biggest issues that this raises is the question of having an effective information management system or regime at all levels, not just the supranational, but at all those levels below that because the supranational, particularly where Europol is concerned, depends on

²⁴ Bruggeman, "What are the options for improving democratic control of Europol and for providing it with adequate operational capabilities?", p.3

²⁵ Mitsilegas, "What are the main obstacles to police cooperation in the EU?", p.6

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Member State input from regional levels, so the supranational level to set standards for technology and policy direction and strategic issues is very important. Very briefly on the technology, I think there is a whole range of issues that needs to be addressed on handling, data-mining, data re-use, in particular, and data degradation, issues surrounding the information management of exchange of information, training and vetting of personnel and again setting standards, privacy and data protection, information acquisition, and the exchange and co-operation within the EU and with third States, particularly where public-private partnerships are concerned, and I think that is an area that seems to be very vague and eludes proper accountability. There are also issues about the outsourcing of information by people who may be providing information, handling it or storing it on behalf of supranational agencies or the participants within them, and trying to establish that there should be an approach towards this regarding justice and home affairs communication technology use based on the first principle of “baking in” security and not then saying, “Well, we’re a little bit unsure about how effectively security is going to be guaranteed for data subjects and data-handling”, and then adding the idea that there should be privacy-enhancement technologies almost as an afterthought. I think at the political strategy level there is a need to recognise that law enforcement encroaches on domestic policy and that there are linkages of databases, and one has only to think of motor-licensing in the UK and the way in which that is accessible, not just to insurance agencies, but also to the police, and various other law enforcement issues. There is a huge issue of policy trust and trust in personnel, including issues of accountability at the European level and the national parliamentary level, which has to be addressed supranationally, I think, if we are going to have compliance on behalf of all the Member States. We must also deal with another issue which seems to have dropped from the radar which is how one is going to deal with the next generation of information exchange technologies, not just the ambient intelligence and the nano-technological applications, but the way in which mobile phones are going to be used and whether or not information taken from them is going to be admissible, and how automated information exchange, which is not mediated by personnel, is going to be dealt with. That is something again which has to be addressed at the supranational level so that one does not just accept off-the-shelf solutions that the producers already have and which are going to be obsolete, but so that one does not compromise the need for accountability by having rather vague arrangements, given that there is open recognition now of the level of corruption, distrust and compromised security, so I think one needs a

very firm steer politically and a very firm steer vis-à-vis the technological applications that are adopted.

Q109 Chairman: Professor Bigo?

Professor Bigo: Thank you, my Lord Chairman. I share a lot of what Professor Lodge has said, but maybe I would insist more on the notion of mistrust and why do we have such a mistrust between the different administrations. I think, firstly, it is the difference between the criminal justice approaches and intelligence approaches which is central. The more Europol is trained to bridge or plug the intelligence approach into its criminal justice approach in search of better information and efficiency, the more it will create trouble as the notion of information has not the same meaning in the two different logics, so that is the first point. We need to ask more about the notion of information when policemen discuss between different traditions, different cultures and different professions together because they use the same terminology, but they do not put the same facts into this terminology, and that is central. The second element is certainly the lack of a clear European approach as to what is relevant information, who has collected the information, for what purpose and with what level of accuracy. Evidence from the judge is different from grounds of suspicion about a specific individual from the police and is clearly far from suspicion towards a risk category created by analysis and applied to an unknown individual which may fit the criteria of a preventative approach and inquiry. The third element is: who is entering this information into the system and for what purpose, especially when you have analysts on one side and European police officers on the other side. It is as crucial as the information itself. The apparent paradox is that the segmentation of information may be a better solution if it creates less uncertainty and less numbers and focuses on a smaller, but more accurate, target. I know that I am challenging a lot of discourse here because all the main discourse is about sharing more and more data in order to have more relevant intelligence. From the interviews we have done, it is not what is said by a large majority of the people who are involved in intelligence, so the idea that the bigger is better is perhaps a mistake and we need to have a better evaluation of the quality of the information which is processed before going on. I think that mistrust is emerging from the idea that people who have different professions do not exactly share the way they receive the information and what is relevant. They receive data, but they do not receive information

Q110 Lord Mawson: Your map shows a highly complex landscape of EU security agencies, and your written evidence speaks of competition, control

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issues, rivalries and fierce struggles in Europol's relationships with other EU agencies in the field of justice and home affairs. Are such power struggles inevitable in the current institutional landscape?

Professor Bigo: I would say that, yes, the struggles are inevitable, but they are also a sign of a lively democracy with divergence of opinion and analysis even with the same evidence or grounds of suspicion at the beginning. However, if it exists in any case at the national level, it is nevertheless aggravated at the transnational level—so I am not saying that it is bad to have struggles, because it can give to the professional and to the politician a different view on the same subject by different organisations, and we have to remember that. When you have only unique information coming from all the police and intelligence services, it may be misleading. So the idea that we have diversity and struggle is not bad in itself, but of course it is aggravated at the transnational EU level as the national interests of the States, the cultural and bureaucratic culture of the different services and the way they pride their relationship on law and law enforcement is slightly different, the UK from the Continent, for example, and different also inside the Continent between federal Germany and unitary France. Only the non-democratic regimes have, at least at the surface, a unanimous point of view often organised around what they want more than around the possible rationale of action and behaviour of the target of their research. Nevertheless, we have to try to reduce it, and I suppose it was the sense of your question, by a better articulation of task between the agencies. We have seen that it was possible after discussion to find agreements, for example, on counterfeiting the euro, an agreement was found between OLAF and Europol which had both good claims. Both agencies may pretend to deal with counterfeiting of the euro, but, nevertheless, they succeeded to define clearly who would be in charge. What we have seen from the US is that the notion of lead agency is not a real solution. We have done some research in the US and we have seen that the notion of lead agency has created more competition in fact than it has reduced the level of competition, and maybe we need to be aware of not going too easily with this solution and saying, “We will have a pool of agencies with one lead agency”. It is perhaps better to have a clear mark of one agency only and not to have a pooling of competence without a clear definition of who is in charge, and then maybe can reduce the level of struggle. It will not disappear, but at least it will be more clear.

Q111 Lord Mawson: If you have been involved in running a business, you will know that it is not just about the structure that you create, but it is about the people and relationships, and senior people in

government seem to think that, if they get the structure right, something will magically happen, but my experience is that it does not. When we listened to Europol, we were told that about 10 per cent of their budget investment was in training and how you actually enabled staff to operate in complex environments. Do you think there is enough investment going in actually in enabling staff in organisations to operate in this complex world that they have to operate in? Do you think that they are understanding what the complex partnership is actually about or what the relationship is or is there not enough investment in that?

Professor Bigo: It is difficult to answer with accuracy because we do not have enough elements about the different allocations of budget and value for money of the different agencies inside the agency itself. For example, in Europol, what is the part of the allocation of the budget for analysts and what is the part of the allocation of the budget for the liaison officers? Maybe you have here the elements, but we did not get these elements. We were surprised that a lot of work seems to be done by the police liaison officers both at the headquarters and in the different national Member States; they are in charge of a high level of current information, on the contrary you have a lot of analysts with not so many work files, but, as we did not have of course access to these work files, maybe they are huge, maybe they are very important, very interesting, but it is quite difficult to know, so I would say that it is very important to look at this allocation of resources inside the agencies. The second element is that we need to be aware, and I think it will be part of other questions, of the relation between putting a lot of money into software and providing results. It is said that because of the large amount of information, you need to have expert software, but sometimes maybe the human mind could be just as efficient as some expert software. Replacing human beings by so-called “advanced technology”, which may cost a lot of money, will not always create more efficiency, so we have to be very aware that of course it is a case-by-case study and we cannot answer in general.

Q112 Chairman: Professor, I looked at your map and you have various out-of-Europe organisations, particularly in the United States, on it. I could not find where you had Interpol in all of this. Did I miss it or where does it fit in, if it is not in?

Professor Bigo: Next year, we will develop the map and you will have Interpol in it and you will have also the Police Chief Task Force, but we tried first to map the European Union internal security agencies: Europol, Eurojust, Frontex and to have not only their formal agreement, but interviews with the people inside both agencies at their headquarters and at some Member State levels. For the moment, we

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have investigated their relations with third parties in the US, Norway, and Switzerland, but not their relations with other institutions such as Interpol, United Nations agencies, and NATO. That is why this mapping is still a preliminary mapping, but the idea was just to show that, if you look at one agency, you lose the point of what is a European information system.

Q113 *Baroness Garden of Frognal:* Professor Lodge, you welcome the proposal to modernise Europol in your evidence, but you are concerned about the impact on good governance of dissolving administrative boundaries. I wondered what procedures introduced by the Decision may, in your view, impact on, or alter, practices within Member States' agencies?

Professor Lodge: I think there are some critical issues surrounding the work files and the management of the work files and the information that goes into the work files, and part of this would come out of what Didier has just said. The information exchange processes and the ability to co-opt parties to input intelligence, I think, will have a significant impact at all different levels on how this is managed and the accountability for it. I think there are also results that will occur as a consequence of implementing the principle of data availability and that requires both legal minds and personal trust. There are also arrangements which permit the continuation of the bilateral accords instead of having commonality within the Decision, and bilateral accords are often a very effective way for police forces to liaise and take steps forward, but, if one is going to respect the principle of equality of treatment of citizens or suspects and the equality of personnel in the individual forces, then that is eroded by the lack of commonality, and I think different States with different resources are going to be more adept or more influential as a result and this will have implications for the process management in individual Member States. I think overall there is the danger of a weakening of political accountability which will aggravate distrust. There is also a lack of legal certainty as to what definition of a biometric is going to be used for identity management and for verification and authentication. Now we accept it as a measurement of a particular feature, an iris or a fingerprint or whatever, but other States, and certainly the United States, associate it with behaviour and with profiling. When one is exchanging information and creating a work file or recreating a work file, which definition is being applied and how can we rely on it? If it is a hunch and the definition is of vague, loose intelligence and we are not sure of the agency who has provided it, what are the implications of that as opposed to information and its classification and, crucially, its

indexation? Furthermore, the role of the Europol Director and Chair in defining strategy and the supposition of the claim that this will not necessarily have much implication for operational activities, I think, is likely to be challenged because of the intelligence-led policing model that is embedded within this Decision, so that is a further problem. I think also that the issue over a lack of common terms, which we have already touched on, will be problematic in creating the indices, regarding where you put the information, how you exchange it, whether it is legitimate or cannot be exchanged and in the development of a European criminal records information system. Again, we have got a multiplicity of different systems, a multiplicity of codes and rules for accessing those systems and I think that is bound to have myriad consequences for personnel, for work practices, for audit trails and for everything associated with proper information management within the agencies.

Q114 *Baroness Garden of Frognal:* Do you see a way forward for getting a common understanding of these things and a common interpretation of the definitions?

Professor Lodge: With common definitions and common terms, I think one has almost got to insist on a single language, and this runs counter to everything, but, without that precision, the term is not going to appear in the index and, if it does not appear in the index, then the investigating officer who is trying to find out about the existence of a certain section of a file when he has access to a certain portion of it is not going to be able to find it is there, even though it is, because it has not been indexed and classified, and we have all the political, administrative and cultural problems that we have already alluded to which, I think, will make these even more difficult. Whilst I would not normally want to be an advocate of one language, I think here there is a very strong case for arguing for possibly making that a universal language.

Q115 *Lord Dear:* Could I pose a short question to each of you, and perhaps to Professor Lodge first of all, but the question is the same. When Europol was set up, there was envisaged, I think, a fairly rigid structure of the traffic of information and who did what and it was all envisaged to be fairly well-compartmentalised and on well-trodden routes. There has been a decision, as I understand it, recently to encourage a policy of ad hoc bilateral exchanges on a needs-must basis, I suppose, between some of the EU law enforcement agencies based on judicial investigation. I can see that there is a way forward to speed things up on that, but it does throw into disarray what the original model envisaged. I wonder if you would both like to address that point and tell

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us what you think the longer-term effects of that might be.

Professor Lodge: I think, firstly, that the ad hoc-ism can be very valuable, but, as you are pointing out, it is based on mutual trust and, the more that Europol, Eurojust and all the associated agencies move towards automated information exchange, the more they are relying on the technology rather than analysis by the individual. If you cannot trust technology, and we cannot trust technology, then this issue of trust has further ramifications for the political accountability and legitimacy of the whole system which then impacts on the citizen. I think too rigid rules within the Decision will make certain States opt for bilateralism and ad hoc-ism because it is the soft route, the easy route to circumvent some delays which may be inherent in the system and some delays which may be a consequence of not being able to understand the language, not being able to access the work file and so on because it is done more on an automated basis. I think it implies in the longer term that there must be much closer co-operation between Europol and Eurojust, and they are establishing automated information exchange systems between the two of them to ensure that there is greater operational effectiveness. Now, that has implications for this concept of Europol basically being a forum where there is high-quality analytical material, and what we are saying really is that you cannot separate, in the longer term, the analytical function from the repercussions it may have on operational strategies and operational steps that are taken along with the financing that has to be associated with making this efficient.

Q116 Lord Dear: Do I understand what you are saying correctly, which is, in a nutshell, that you appreciate that there will always be people seeking to take a quick route to a solution, they know somebody or they know a system at the other end of the telephone and they would use that ad hoc basis, that informal basis, and that is all right, in your view, is it, so long as the information that is exchanged eventually gets fed through to the databank? Is that what you are saying?

Professor Lodge: I think what I am saying is possibly slightly subtler in that operationally people often need information very fast, and it may be that they can obtain sufficient general information by their bilateral exchanges face-to-face through humanly trusted relationships to enable them to be very effective in the prosecution of serious organised crime and, on that basis, one can see there is a role for that. It is where you then say, "This does not matter" and one can do it because it eludes accountability, that is not adequate.

Q117 Lord Dear: Professor Bigo?

Professor Bigo: I agree with what Professor Lodge has just said, but just one caveat is that of course it works to have an ad hoc information system if you have already a network of trusted people, therefore, it is an advantage for the oldest Member States in comparison to the other ones. So, maybe it is also a strategy by the oldest EU member states to go on an ad hoc information system in a way to restrict the others member states access to some level of intelligence or information that they prefer not to spread too much. So maybe the preference for an ad hoc system is not just a functional question of what it is more efficient and has a better speed, but it is a question of politics.

Q118 Lord Hodgson of Astley Abbotts: Could I just come back to mutual trust, you use the phrase "high-quality analytical material", and the interplay. In your memoranda, which are most interesting, I read about the importance of proper input, proper control and proper safeguards, but what are we going to do about making sure that information, when put in, is accurate? I am much involved with the Rendition Programme and certain people have been picked up on the basis that the information is wrong. The approach was fine, the analysis was fine, but the fundamental information database was inaccurate. How are we going to ensure, as the database gets bigger and bigger and bilateral exchanges and Europol operate to a greater extent, that the information that goes in is accurate and remains accurate through the passage of time?

Professor Lodge: I suppose at one level, assuming that the information that is provided to the data-inputter is accurate, there is a big issue, I think, on the vetting and training of the data-inputters who may be outsourced to countries anywhere, who may not have had the kind of training that one would hope they have had and who may have different objectives in having sometimes jobs which are very poorly paid. There are issues, I know from talking to people about this, about who is sitting there doing the typing or managing the system and the upkeep of the system, so, in that sense, I think there is a real issue at that level, but it is also one that comes back to these problems of definition, terminology, what is information, how we classify it, what is intelligence and the reliability of that source and maybe whether or not there has been a group discussing it, and I am not really sure how one gets round that.

Q119 Lord Marlesford: Can I just follow up because there seems to be a theme which has come through from your answers to all the questions and I just want to check whether I am right in identifying the theme. It is that, whilst you have no problem with the sort of database approach to the identity of people, there is

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a serious question as to forming very big databases on very limited information, almost like having, as it were, too many suspects with insufficient discipline as to who is on the list. For example, last week we had the Serious Organised Crime Agency come to see us and they have a database which has been formed from the suspicious activity reports which are filed, many of which have been shown in the press to be totally trivial, and we assumed that these had been ignored, but we were told no, they have now got over a million on that database alone. Are you saying really it would be much better to have a better discipline on who is on a database, a suspect of any sort rather than where none of us minds being on the database as to who we are?

Professor Bigo: Yes it is my view, and this point is a central one. Perhaps to come back to the previous question, each time we have information, it is important to know who has given the information. And, if I may, in this period of Euro football, I have proposed as a policy recommendation about four years ago to give a kind of yellow card or red card to those providing incorrect information. If you want to improve the quality of information, you can perhaps have a review of who has given inaccurate information at the level of the individual and at the level of the services in order to diminish their ranking of valuable information and then, not immediately, but in the future, they will think twice about sending dubious information. If we do not have that, we will continue to have trouble, but, if we have that, we can change the behaviour of the organisation so that they will send less information, but more accurate information, and maybe that is not a perfect solution, but it will resolve perhaps part of the problem.

Q120 Lord Dear: I have just one aside on that, and I agree with your premise. Certainly in the UK, information was always graded on a 16-point scale and it went from rumour to absolute rock-solid fact and by the lettering, and it went from A1 to 4, B1 to 4, arithmetically 16 points, you could tell immediately the value of the source and the perceived value of the information, and A1 was obviously the top. I do not know whether that is followed in The Hague. We go to The Hague next week and I want to pose that very question there because it is one thing to capture a mass of information ungraded, but it is a very different thing to put a grading on it because, when you grade, you also are evaluating the source and sooner or later a bad source will be dropped off and not even recognised at all, so I really put that in for the record as an observation. Professor Bigo, you have shown some caution, I know, about mixing up, as you see it, the professional criminal justice approach with one which involves risk anticipation, and I wondered if you could detect, or have detected, a preference for either one of those two approaches

within the Europol Decision which has been made recently?

Professor Bigo: First, we did not have from the research a complete overview of the people in Europol, so, by definition, my answer is partial concerning the amount of data that we have, and the quality of the interview, it was not systematic, so it is always dangerous to over-estimate what came from a couple of interviews. Nevertheless, what we have seen is a tension inside Europol itself. We have the analysts, especially the ones on threat assessment and especially on terrorism, who insist on the role of profiles, the importance of the technology of the database and software which processes raw data into refined data. Their views differ from those of the liaison officers at the headquarters, but also mainly from the Europol officers in the national units. The latter ones insist more on operational measures, on criminal justice necessities and on the importance of information to be processed in order to serve as evidence in a trial, so they are a little bit doubtful about risk-profiling. They are also more often interested in cross-border crime, in serious crime, in corruption, in money-laundering and less in terrorism, and maybe the UK is specific here, so it is very difficult to generalise. We have too small a number of interviews, but I would say that this tension, nevertheless, exists and it is quite coherent to a sociologist, as you see, for example, for the analyst to insist that the role is centred around the software expertise that they have. That they do not have operational capacity is not surprising and, on the contrary, the policeman insists on operational measures and not so much on analytical skills in computing, which is not so surprising either, so maybe what we have discovered is trivial, but sometimes it is not openly said and maybe it is good to know about that.

Q121 Lord Harrison: Professor Lodge, you say in your evidence, para 27, that the Europol Decision highlights the need for a cross-pillar model of information exchange. Could you explain why this is the case and what form it might take, how it might be achieved?

Professor Lodge: I think cross-pillar law enforcement means that we are not just talking about policing, and it is too easy to say that policing stops in the organised international crime arena when in fact the JHA pillar deals, as you know, with border management, illegal immigration, trafficking and the associated issues and, therefore, it deals with the identification of individuals and identity documents that may be used for those individuals, and those documents are often the same documents that are used for civil purposes, so we have got a crossover immediately. That means that there is the danger of compromising the principle of purpose limitation,

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why people enrol their biometrics and all the database issues that we are familiar with. It raises the issue again of the public-private partnership in the outsourcing of data, data management, sale or re-use and the linkage of data, how it is linked, who links it and the legitimacy of linking it. We have incompatible and differential practices on information-processing, whether it is for e-commerce or for e-justice-type issues, and at the same time there is a lot of discussion of having interoperable systems which are not really feasible at the moment, so there is almost a morass of different issues being pulled together without there being a clear understanding of what the implications are for accountability, and what the implications are, not simply for data protection of the individual and the sanctity of that and suddenly insisting that citizens are going to be obliged to access basic local government services as well as at the Passport Office or whatever, but that these systems are being accessed for very different purposes. Since those systems, in principle, will be dealt with according to different decision-making mechanisms under the pillars, as you know, this raises issues about whether there should be one universal rule or accountability which would be applicable to all because it is not really feasible to make a distinction of territoriality when one is talking about digital information that flows around in territorially unbounded digital space. I think that is what I am trying to get at and, if we are looking for a solution, then I think at the supranational level one has to come back to the idea of universal co-decision to make sure there is parliamentary accountability and scrutiny and effectiveness and to stop making these false distinctions between what is internal security, external security and e-business or e-commerce because they all seem to be merged as a result of the application of the subsequent technologies.

Q122 Lord Harrison: I take it from your answer that you think it is right and proper to explore the opportunity to find that model, that template?

Professor Lodge: Yes, I think one has to make sure that there is proper political accountability in order to ensure legitimacy and to overcome citizen distrust which may be very well-founded, but, if one has this morass, then I do not think one is going to attain it. Also, I think it is detrimental overall to the whole political legitimacy of the Member States and the national systems as well as the supranational system, and it does not really do a service to the citizen who is supposed to be being brought closer to the EU or to government or to feel more consulted and involved and participate in the decision-making and in trusting government and good governance.

Q123 Lord Harrison: My Lord Chairman, while I have the floor, could I just return to an item that Professor Lodge, I think it was, spoke about earlier, and I will perhaps ask Professor Bigo to answer this as well, but I think you said that we may have to contemplate exceptionally moving into one language in dealing with this specific area which, I think, most people would assume would be English rather than French. Would you like to say a bit more as to why you think that is the case and whether, in your conversations that you both have with those who are involved in all this panoply of interest, there is a build-up of a feeling that really it is common sense at the end of the day?

Professor Lodge: I think people have very different viewpoints on that and some will be very assertive in insisting on every language being used, but it is not financially viable. If we are talking about automated information exchange which relies on a very tight definition of a particular term, then we have to have precision in understanding that term, otherwise, we are not sure that the information is there. As I said, I am not an advocate normally of a single language, but I think one needs to find one which is precise and universally understood. That again would lead to other training issues for personnel as well. Without that, I think it is going to be very difficult to get the legal certainty and the precision that is often essential if one is going to be successful in prosecuting international organised crime.

Professor Bigo: I think that the key element is certainly the legal certainty, so I will go further and say that in cultural anthropology and sociology what is essential is to be sure that the meaning of the terminology is captured. Very often it is not the case because people jump from their preliminary logic, the one they have in mind in their national country as if the others have the same, and it is especially the case when we discuss between accusatory and inquisitorial procedures. Each time we are discussing between French magistrates and English magistrates, and you know that better than me, there is a common misunderstanding about, "What does that mean?", and we have seen that even with the notion of what is indefinite detention, and the parallel with *détention provisoire*, for example. I would say that it is not the language, as such, which is the problem, it is to capture what is the meaning we want at the European level and what is the coherence between one terminology and the other one, so it is to have the relations between the concept which is central and, if we have that, then I think the language will not be so much of a problem if we have accurate translation, and be aware that, if it is only in one language, you will not solve the problem because you will have 27 versions of English!

Q124 Lord Harrison: So few!

Professor Bigo: And, just listening to me, you can understand what could be the problem!

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Chairman: I am conscious of the clock and I am conscious that we have another witness to appear before us, so I am afraid I must ask for brevity because we must give our next witness a fair chance.

Q125 Lord Hodgson of Astley Abbotts: Professor Bigo, could we return to the pillars. I think in your evidence you suggest that the cross-pillar approach has posed particular issues because of the internal and external security questions. Perhaps you could give us some examples of this and how they might be addressed. It may be, and this is a question for you both really, that the whole issue would fall away if the Lisbon Treaty were to come about and the pillars were to disappear. Presumably that would provide an answer and is that what you think would be a desirable outcome?

Professor Bigo: Clearly, what we have seen from 2001 and especially 2004 is in any case a trans-pillarisation of the different groups of experts, but nevertheless, the legal basis of the different agencies differs and are grown into different pillars and now it may be the case for quite a while, so it does not matter so much if the missions and the pillars are coherent. If you think about Europol, it is quite clear why Europol is on the third pillar. My thoughts are that, on the contrary, if Frontex, which is on the first pillar, has more and more capacity about policing and surveillance, and even with the future of Frontex, some capacity which is going through the second pillar in some way—in the way that they are treating raw data, military intelligence and so on—then we have to be very aware about what are the legal bases and how they fit or not with the missions. The discrepancy is dangerous. I have kept that very brief, but of course we can develop more than that the capacity of the different organisations. I just want to add one word on the relationship between Europol and Sitcen, it is clearly something central to ask in The Hague, and it is not because the two organisations say that now they find agreement that it is clear how they deal with the question of threat assessment on terrorism.

Professor Lodge: Yes, I agree with that entirely. I think there is a big issue surrounding the different objectives and the different competencies of the various organisations that have to feed each other with information in order to have a satisfactory and efficient outcome.

Q126 Lord Marlesford: I really want, if I may, to ask Professor Lodge on this question of the technological capabilities defining agendas which give the bureaucrats more influence than the elected politicians, how do you see that parliamentary oversight and scrutiny can improve that situation?

Professor Lodge: I think the parliaments, the national parliaments in particular, but the national parliaments together, possibly through a

development within COSAC, need to become more proactive in stating what they want before technology is adopted and to see technology as the tool and not the answer. I think at the moment things are inverted, so that implies that parliaments need to be better organised in relation to making inputs on proportionality checks, insisting on them having control, insisting on the Chairman of Europol, for example, appearing publicly possibly before the European Parliament's Civil Liberties Committee or at the same time as the relevant Minister from the JHA and the Commissioner, and also the national parliaments or COSAC taking on the role of looking for proportionality in the solutions that are being advanced so that they effect a proportionality check on the implementation of the political strategy. The way in which the support operations are supposed to run within Europol and national forces can very easily become a way by which certain States start to initiate investigating roles which have implications for strategy and the political leadership. Political accountability then becomes rather muddy, so there is a role there for national parliaments. I think there is a role also for national parliaments in being very vigilant in defining the objectives and the competencies of Europol relative to the other agencies that we have mentioned, and the role of Eurojust, which national parliaments might look at because it may just be the precursor to having a specific role for the European Public Prosecutor and, in relation to Europol's operational remit, there are things which national parliaments might want to investigate. In addition to that, the national parliaments might want to have some oversight over the output from joint investigation teams, so I think what the national parliaments' primary role has to be is to be very critical and indeed to launch investigations into, and establish rules for, what the role of technology is in all these operations which are associated with the remit that Europol has.

Q127 Chairman: Professor, you have more confidence in COSAC than very many of us in this room.

Professor Lodge: Not necessarily. I just think that logically, if the national parliaments are to have any impact outside of those parliaments which are known to be very effective in the quality of the information they provide, such as the Lords in particular, then they have to be better organised and they are going to have to be organised among themselves, among the 27, in a way that they are not accustomed to being.

Chairman: We shall see.

Q128 Lord Mawson: You say that the principles of data protection and data security in international information exchange are implemented in a political reality that relies on bilateral understanding and

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mutual recognition. This, you believe, results in patchy safeguards for citizens and all concerned. Do you know of any other areas of e-governance where a more coherent approach has led to improved efficiency and accountability?

Professor Lodge: I think the big problem is that there is ad hoc-ism which is pervasive across e-government services and it is because one has this very patchy, piecemeal approach which creates difficulties, which means that we have got a proliferation of incompatible technological systems quite often with very different rules on “need to know” principles and caveats on data protection, very imprecise terms which bar legitimate access by the data subject sometimes, whether it is to do with paying one’s council tax or whether it is to do with accessing other information, but other people have that kind of access. I think there are a couple of examples in countries that I do not know in detail, but where I think their political approach is somewhat different, which would be France with the model on identity documents being used for tracking purposes where people have a loyalty card or an Oyster card, those sorts of things, and Scandinavia where the model that, I understand, they adopt is much more based around the principle of purpose limitation, so, if one has a particular ID or a particular electronic document used for one purpose, it cannot be linked or used for other purposes. I think what we are seeing across the board here is that they are linked to all kinds of purposes for which they were not originally intended and additional data is collected which is irrelevant for the particular purpose. My impression is that in Austria, to some extent, and certainly in the Scandinavian countries they seem to be more dogmatic on trying to insist that that principle is applied. The political culture and the acceptability of this sort of technology is based within their own political cultures of transparency and openness which seem to be far more concerned with ensuring that the technological and the semantic aspects of e-governance do not lead them down the path of adopting whatever happens to be the generic solution to a particular problem which the industry wants to provide, but saying, “No, wait a minute. What is the purpose that we are trying to achieve? What do we need on that document?” and then limiting it to that and not going down the route of too many linked-up databases and systems which are vulnerable to a level of attack as well as to function creep.

Q129 Lord Mawson: There was only one other issue I wanted to raise about whether you feel there need to be more market forces within some of this, that actually the outcomes need to be specified, but maybe the actual forces needed to drive to that conclusion need to be more business-led?

Professor Lodge: I think, possibly, within government, but the first principle, before any system is ever bought or any additional part of a system is bought, should be that there should be baked-in security, not that the suppliers who supply the same system to countries all around the world say: “This is what we have got; you can use; you can use it for this purpose”—it should be round the other way. We want security of access and security for the identity of the individual and security for the data. That is our first principle. Then we want the system to deliver certain types of operations that we want to perform, whereas, I think, at the moment, it is much more the case that the industry is saying: “We have got all these things, we have sold it to country X, Y and Z—you can have it.” That is not value for money and it is not efficient because it means that one is getting an obsolete system to start with and then one is constantly having to upgrade it, if one wants to do something else with it, and it costs more and it costs more time as well.

Q130 Lord Teverson: If I could put two questions together. Professor Lodge, in many ways we have asked a lot of questions about systems. My question was that Europol and Eurojust need to set gold standards in terms of their technical architecture. We have talked about that a fair bit, so if there is anything you want to sweep up on that I am sure we would like to hear it. Professor Bigo, in terms of Europol gaining new operational capabilities, a legality check from Eurojust may become indispensable, was part of your argument. I am particularly interested in that relationship, if you could develop that slightly.

Professor Bigo: I think we need to come back to the notion of Eurojust. At the very beginning Eurojust was considered by some as a justice counterpart at the EU level of Europol, which was police orientated. In this vision Eurojust has also to be correlated with the *corpus juris*, creating a legal base on Euro crime for the European prosecutor, but we know that Eurojust has evolved along different lines, especially with the influence of those Schengen magistrates and with the success of mutual recognition as a model for Justice and Home Affairs or the area of Freedom, Security and Justice. This intergovernmental trend has been welcomed by some Member States (and I see UK as one of them). It has limited Europol for taking too much autonomy from sovereign states, but the mutual recognition has also limited the idea that some agencies may control other agencies, and that justice agencies may have their say on what police agencies are doing. I think we need to draw the analogy with the continental model of the supervision by investigating magistrates of the role of the police but at the EU level. Now Eurojust is more (and perhaps I am a little bit harsh in saying that) the

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auxiliary of Europol than the reverse. Eurojust is on prosecution, and it has created a disequilibrium in the idea of justice in Europe especially if we look at the rights of defense that occur at EU level and the place of magistrates coming from the Courts and their absence in the functioning of Eurojust. Judges are sovereign in European courts (ECJ, ECHR) but they are not present in Eurojust: why? Maybe if some judges were involved in the earlier routine of policing through investigations—especially when the role of Europol is expanding—it may be a good idea in that case to really re-discuss the relation between Europol and Eurojust with a different quality of judges coming into Eurojust. I think there will also be a question about the organisation of the EU Commission itself, and we have a unique DG for JLS, which is Justice, Liberty and Security. It has to be remembered that is not the way national governments function, and therefore you have at the national level a division between the work on security and police in one ministry and in another ministry the question of justice and freedom. Maybe to have only one commissioner for the three activities has created destabilisation, and there, maybe also, the role of the different parliaments to discuss a little bit more about that and to see if a solution cannot be there, lying at the heart of the organisation, in order to split the DG and to reframe the organisation of the Commission, as it would have many effects on the new balance between the two concepts: security and liberty.

Professor Lodge: Yes, I would endorse the idea that really one ought to have a commissioner responsible for justice. Eurojust is very much the poor relation in the link between Europol and Eurojust, but perhaps I can provide a bit more technical material separately.

Q131 Lord Dear: I think I know the answer to this, so I am sure we can be brief. There is a need for Europol to exchange data with third parties, as it were, outside the system. I wonder whether you thought that was a good or a bad thing and whether it enhances or impedes their operations. It is something we have to look at.

Professor Lodge: Yes. I think at one level it will enhance it but it depends, again, as we have been saying all the way through, on the reliability and, also, on the definitions, whether one is taking intelligence—

Q132 Lord Dear: It is about data and material coming in and whether one can take it at face value or one needs to check.

Professor Lodge: Yes, because there is a risk of group think in the determination and the analysis of the data that has come in. One may be prone to rely on certain outside or third states because of traditional

patterns, and so on, and to doubt contrary evidence. The objective would surely be to improve efficiency and to add value to what Europol is doing. So it is a fine judgment and one that needs to be, really, very seriously probed by those who engage in it already.

Professor Bigo: I think the relevant question is how you circulate information concerning a specific individual from one dot—i.e. one agency—to another dot—i.e. another agency, either inside the EU or related to third parties, and how the citizen can trace where their data is and who has processed that and for what reason. It raises the question of to whom the information and personal data pertains. In the EU it is quite clear: to the citizen. In other countries, including the US, the information pertains to the service which has processed the information through the personal data. So it is a commercial product. Protection exists, but along different bases. When we send data beyond the EU, or where we have more and more, even, construction through raw data to information, together we have a very serious problem of conception which needs to be addressed, because if we discuss about the US relation with the EU we have seen that they want to impose their point of view with a very strong asymmetry of relation. If I may, we will have the colloquium in Paris on 10/11 October especially about this question of exchange of data. It will be about the asymmetry of relations between the EU and the US; the role of companies in processing the data and the relation to the data protection. I think that what has been done until now is that we have too much separation between data protection by lawyers and discussion about sovereignty by political scientists, and discussion about economic competition by economists. What we want to do is to connect the three elements together because we will never have a good answer if we are not doing that.

Professor Lodge: May I come back on that because when we have talked to the ICT providers about what they understand about the commodification of their data. They say it is legitimate commerce, as I am sure you know, but there is a rider to that when one is talking about accountability. They always seem to say it is satisfied because one has an audit trail or because one sets up a manual of best practice, but they do not seem to realise precisely the point that comes out here, which is, ultimately, political accountability and legal certainty.

Q133 Chairman: That is very helpful. Thank you both very much for coming. We have enjoyed enormously hearing your views. As I said at the beginning, if there is something that either of you would like to add which you think would be helpful to us we would welcome that very much indeed. I have given a note to our Clerk during the proceedings to ensure that when the Committee visits The Hague

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and Brussels next week we shall have the transcript, hopefully, of the evidence that you have given us because I think if we have that beside us as we have

our meetings in those two cities it will be a great help. Thank you very much.
Professor Bigo: Thank you.

Memorandum by Tim Wilson, Visiting Fellow, PEALS (Policy, Ethics and Life Sciences: a joint research institute of Newcastle and Durham universities with the Centre for Life, Newcastle) Robin Williams, Professor of Sociology, School of Applied Social Sciences, University of Durham

INTRODUCTION

This memorandum covers an analysis of some current law enforcement issues relating to Europol's role in:

- the exchange of information that could prevent serious harm and save lives
- supporting the improvement of law enforcement capabilities within the EU (including forensic science)
- the need for additional funding and, if this is to be made available, how to ensure it is used effectively
- translating improved threat analyses into effective preventative action by a wide range of bodies outside the sphere of law enforcement

It welcomes the changes in Europol's legal status, but concentrates on the necessity for the development of future strategies for achieving Europol's revised objectives once the changes have taken effect.

STRATEGIC COORDINATION: TRANSNATIONAL CRIME IN PERSPECTIVE

The term "transnational crime" is used in this memorandum to refer any crime undertaken within a single state and for all intents and purposes is domestic crime, except for the fact that the offender is a citizen of another state. It may be unclear until the point of detection whether the offender was a resident or even held dual nationality of the host state (ie where the crime was committed), or was there temporarily either for the express purpose of committing crime, or for other reasons. Initially there may also be no indication of whether such offending is organised or serial in nature. The nature of such offending will vary greatly from low level violence associated with some sporting events and stag nights, to prowling sexual predators and highly organised criminal activity that mimics the logistical and marketing processes of legitimate businesses.

It is important not to exaggerate the significance of transnational crime (including internationally organised crime and acts of terrorism) or its potential harm to UK citizens and residents. It is likely to account for a relatively small proportion of both recorded crime and criminal activity. Nevertheless, despite the necessary caveats about measuring crime, it is generally accepted that transnational crimes have increased greatly over the last 20 years (Lewis 2007).

English and Welsh penal statistics, as a very approximate reflection of medium and more serious detected crime, indicate a rise from 8% to 14% of foreign nationals as a proportion of the total prison population between 1996 and 2006. During this time the overall penal population rose by 41%. Available data indicate that the impact within the UK varies considerably. For instance, despite a very similar recourse to imprisonment in Scotland, the proportion of foreign prisoners is 1.2%. Although not available for all police forces, arrest data suggest that some of the challenges (including scale) to law enforcement posed by transnational offending in London, Cambridgeshire and Kent may be shared more closely with foreign colleagues in an arc stretching from Flanders to Catalonia (including Switzerland) rather than national colleagues in Edinburgh and Cardiff (Wilson 2008a).

Geography, social influences in both home and host countries, economic activity and logistics all appear to have an impact on the scale and nature of transnational offending. The recent expansion of the EU post-dates the development of trans-European criminal networks. The disintegration of the "Soviet Block" and the disparity of wealth between Northern Europe (the issues are probably no different in Switzerland) are of much greater significance (Glenny 2008). The EU, together with EEA/EFTA, is likely (for reasons of physical proximity and economic interdependence) to be the prime focus for UK international cooperation. However, there are many other countries, particularly within the Commonwealth, where cooperation is important for the UK, but are likely to be far less so for other EU members.

Where EU policy may be more significant is in promoting the Trans-European Transport Networks (TEN-T). By 2020 these will enhance European infrastructure by adding 55,900 miles of high speed roads and 58,000 miles of railways, including 12,500 miles of high speed lines. It has been estimated that the investment will result in 0.23% additional growth (European Commission 2005) from the improved movement of goods and people within the EU and neighbouring countries. The downside to this is that better communications will inevitably also further boost the growth of transnational crime.

BILATERAL AND THIRD PARTY INFORMATION EXCHANGE

The Chairman of Europol's Data Protection Supervisory Body (also UK Deputy Information Commissioner), Mr David Smith, has given evidence to this Committee about a failure generally to share law enforcement intelligence (Smith 2007). We cannot say whether the degree of cooperation involving DNA information is typical of this failure, but it is clear that experts consider that the present scale of international cooperation is inadequate and this may not be appreciated by Parliament (Wilson 2008a).

The latter point was illustrated at PMQs on 20 February (Hansard 2008) when the Leader of the Opposition asked the Prime Minister about an Anglo-Dutch initiative to seek intelligence relating to 4,000 DNA crime stains from unsolved crimes in each country. Neither acknowledged that this exercise with a single country resulted in a number of matches equivalent to 70% of total international matches with the UK NDNAD (National DNA Database) in 2004–2005. Even when forensic cooperation does take place to identify offenders, it may be the result of chance rather than routine (Dickinson and Pierce 2006).

The exchange of information about DNA is an example of where international cooperation should be relatively easy and quick. It is based on exchanging a set of numerical genetic data (profiles) that do not reveal information about health or any genetically inherited characteristics. A match between any such genetic profiles may need to be interpreted by a forensic scientist because several different marker or profiling systems are used in various countries that affect the probability of international matches being reliable. If the match is sufficiently reliable, it will also require police work to link genetic profiles obtained from DNA to separately established and validated personal identities (Williams and Johnson 2008). This does not detract from the fact that such important links in an investigation can be made quickly, thus concentrating police resources on action most likely to apprehend the offender and prevent further harm. Even if an individual or individuals cannot be identified, at least the nature of the activity can be ascertained and investigative or other actions initiated.

This can be illustrated by the example of a modest project that linked a number of serious crimes or offenders at locations in France, Belgium, the Netherlands and Germany (Van Renterghem 2006):

- A robbery in Amsterdam linked to similar crime in Belgium;
- A robbery in Mill, North Brabant, with two separate crime stains linked to a convicted offender (robbery) and crime stains left by the second offender at a burglary in Belgium;
- A murder in Cologne linked to arson in Belgium;
- A robbery in Lille linked to a convicted offender in Belgium.

The tragic consequences of not engaging in such practical cooperation appear to be apparent from the trial of Alain Fourniret. He is standing trial in Charleville-Mézières for the murder of seven young women between 1987 and 2001 in the Franco-Belgian border area. There may be another three victims (BBC 2006 and 2008) and until a potential victim escaped from him these crimes were being investigated (if not they had not been already closed) as separate offences (Lichfield 2008).

It might be thought that the key to success engaging in such cooperation is an expensive IT project. (At least one of us—Wilson—has made this mistake in the past.) What is much more critical is to have devised an effective business process for requesting assistance from states that might hold information relating to DNA obtained from a crime scene. The Home Office, ACPO, Europol, the Commission, Interpol, and several members of the ENFSI (European Network of Forensic Science Institutions) DNA Working Party have designed such a process for exchanging DNA (ENFSI 2007). Parallel work under the auspices of G8 Lyon-Roma enabled the concept to be successfully pilot tested between the UK, Canada and USA via Interpol's I 24/7 secure messaging service in June 2007 (Interpol 2007).

This project—to devise a SRN (search request network)—required experts to identify technical (eg different marker systems), legal (eg different regimes for the use and retention of DNA profiles on databases) and data protection issues that needed to be addressed to enable cooperation to take place lawfully, quickly and inexpensively. They demonstrated what can be achieved without either interfering with the consensus in each member state about the use of DNA for law enforcement purposes or the time that legal harmonization (if at all possible) would entail. The SRN principles are capable of implementation as an automated system, but

could be introduced initially as exchanges of information via standardised e-mails. This would create the operational experience and understanding needed to deliver an ICT project to time and budget. Within the EU itself such a system may not be needed once the Prüm arrangements are up and running, but it would be needed for cooperation with third countries, especially those where uploading personal profiles to the Interpol global DNA database may not be an option. The SRN principles might also help to provide benchmarks for ensuring accountability and transparency in the operation of Prüm.

Deciding on and implementing the mechanisms for information exchange is a relatively easy matter compared with ensuring there is information to exchange. It has been pointed out by the Secretary General of Interpol that DNA profiling is “a discovery that has benefited mostly the wealthiest of countries” (Noble 2007). While national investment in forensic science will primarily assist domestic law enforcement, other countries clearly rely on other states having the ability to upload sufficient data from both crime scenes and suspects if worthwhile information is to be available internationally.

While poorer countries spend less (even allowing for purchasing power parities) in absolute terms than wealthier ones on criminal justice, it is still likely to consume a larger proportion of their national wealth. This means that there is little realistic prospect of technical enhancement, such as through the improved use of forensic science, without external financial assistance. Indeed, even in the UK and USA such a strategy has been possible only by meeting much of the cost from outside normal investigative and policing budgets.

Estimates (unpublished) produced for the Home Office in 2005 for discussion at an EU presidency seminar discussed options for the cost of the new EU member states achieving the same DNA profile coverage (as percentage of population) at that date in Austria (0.6%) and the UK (4.8%). They ranged from €14 to €427 millions spread over a period of up to 10 years. These are significant sums, but delegates noted that the estimated cost of such forensic expenditure was equivalent to between 0.25 and 1% of the money allocated by the Commission to TEN-T over a five year period. It was agreed that the gains from better communications would be balanced by extra costs for law enforcement as a result of the technological externality of criminals exploiting their improved mobility (Home Office 2006). An alternative, and more contemporary comparison, is with the targets for annual expenditure in the UK alone on counter terrorism (£2.5 billion now and rising to £3.5 billion by 2011) (Cabinet Office 2008) and the estimated security costs of the 2012 Olympics (€0.78 billion) (The Independent 2008). The kind of sums involved, therefore, are relatively modest both in relation to the potential benefits, other related programmes and the scale of existing pooled funding arrangements within the EU.

Funding is an essential pre condition for making the benefits of forensic science available throughout the EU, but it is not the only issue. Controls over the use of DNA—sampling/recovery, speculative searching and profile retention will reflect normative values and political debates that have shaped national or, in a federal system, state criminal law. (There is for, example a small, but significant political difference on the last of these regulators between Scotland and the rest of the UK.). It is likely that the use of DNA for criminal justice purposes will be more restricted where either there is less legislative confidence in the political impartiality or competence of the police, or there is significant division of investigative responsibility between judicial officials and the police (Wilson 2008b).

Effective use of the money is another matter. DNA is now processed in the UK on an industrial scale in contrast to traditional forensic casework, with which it now happily coexists in providers such as the FSS and LGC Forensics. This latter quite different forensic scientific work appears to dominate the thinking of traditional public sector forensic providers. \$1 billion of federal funding during 2005–09 is being provided in the USA to reduce DNA analysis backlogs (Zedlewski and Murphy 2006). As recently as 2008, however, the National Institute of Justice referred to a 500,000 backlog in 2002 in the publicly funded laboratories. The USA is still falling short of the improvements in turnaround times and volume growth achieved in the genuinely contestable UK market. Indeed, some laboratories are reported to have resorted to limiting the inflow of samples for processing, even returning them to the police on reaching full capacity (NIJ 2008). The USA is not unique. Public sector provision “is almost universally characterised by backlogs” (Fraser 2006). Without a similar approach to the UK contestable forensic science market and the police recognising their role needs to include acting as an intelligent customer, pooled funding within the EU would either be unlikely to be spent or may result in poor value for money.

COMBATING ORGANISED CRIME

Turning briefly to this specific form of criminal activity, Europol potentially has a major role in alerting a wider range of public and private bodies about threats from a shadow economy that some commentators estimate may account for between 15 and 20% of global GDP (Glenny 2008).

An example of this arises from the significance of Europol’s analysis that “real estate is also reported as the preferred means for investing laundered money” and that organised crime groups integrated within the EU “besides owning an increasing portfolio of immovable property, are also involved in construction and

property development”. It has been known for a considerable time that much of the profits of international crime and mafia type activity in less stable regions has resulted in the transfer of cash into Western banks and real estate. Such integration will result in organised crime groups seeking to “influence relatively-low level administrative ...contacts, as well as initiating corruption within the business community” (Europol 2007).

Within the UK developers frequently seek to negotiate derogations from locally adopted and planning national policies, such as the provision of a minimum number of units of affordable housing and requirements to generate a proportion of energy on site in a sustainable manner. Such derogations will have a high value. Hitherto, the major concern with such negotiations is that the results are demonstrably fair and transparent to the local community and other developers, or that the resulting economic benefit is not unlawful as a state aid.

The Europol report is insufficiently specific about the immediacy of any risks to the UK and it is clear that the threat of corruption and intimidation is directed primarily at law enforcement. Given the scale and value of likely future property development, particularly in the South East, this is potentially a development that could result in harm to planning authority members, officials, members of the local business community, property developers and the planning inspectorate. Hence, now is the time to ensure that effective countermeasures are put in place, particularly when these will also serve other purposes. In most cases the best defence may be to simply ensure transparency and accountability in such negotiations.

It is not at all clear that there is any mechanism for providing country or regional specific briefing to national police forces, together with government departments and the local authority associations outside the law enforcement sphere. Such analyses will be of little value if they do not result in actions, sometimes with pan-European, or at least regional, co-ordination, to reduce the risk of future corruption and intimidation.

GOVERNANCE AND METHODOLOGIES: EUROPOL’S CURRENT ROLE AND FUTURE DEVELOPMENTS, INCLUDING THE NEW LEGAL FRAMEWORK

The changes in Europol’s legal status are to be commended, particularly a greater accountability to the European Parliament, the removal of the operationally artificial restriction on the kind of serious crimes with which Europol could become engaged, the ability to support capability development (including forensic science). Enhanced data protection (through a proper Third Pillar framework) is still needed and urgently with the forthcoming application of Prüm for information sharing.

The new legal framework is clearly only a starting point for change and there is a pressing need for the fullest Parliamentary, academic and public engagement with Europol about the development of strategic priorities and proposals to support improvements in law enforcement capability within the EU, particularly in terms of:

- Rapidly and efficiently improving the exchange of information that could prevent harm and save lives;
- Adequate resources (including from First Pillar funding) to genuinely improve law enforcement capabilities (including forensic science) and open debate about the options to do this in a way that additional funding is used effectively;
- Translating improved threat analysis into effective preventative action by bodies outside the law enforcement sphere.

REFERENCES

- BBC (2006 and 2008), *Widening the EU’s criminal justice net, Serial killer main murder suspect and French “serial killer” on trial* news reports published on 5.10.06, 3.11.08 and 27.3.08 at www.bbc.co.uk
- Cabinet Office (2008) *The National Security Strategy of the United Kingdom* (London: The Stationery Office).
- Dickinson, J. and Pierce A. (2006) “Why the international exchange of DNA information is important”, in *Maximising the Opportunities for Sharing DNA Information across Europe* (London: Home Office).
- ENSFI (2007) ENSFI, Search Request Network Study: Final Report, 2007 www.enfsi.org/ewg/dnawg/documents/Annex/20F/20AGIS/Final/20Report, last accessed on 15 April 2007.
- Europol (2007) *OCTA: EU Organised Crime Threat Assessment 2007* (The Hague: Europol), pages 11–16.
- Fraser, J. (2006) “The application of forensic science to criminal investigation” in (eds.) Newburn, T., Williamson, T. and Wright, A. *Handbook of Criminal Investigation* (Cullompton: Willan).
- Glenny, M. (2008) *McMafia* (London: The Bodley Head).
- Hansard (2008) House of Commons Hansard Debates, 20.2.08, cols. 340–341.

- Home Office (2006) *Maximising the Opportunities for Sharing DNA Information across Europe* (London: Home Office), pages 40–42.
- The Independent (2008) “Mobile fingerprint checks”, 19.3.08.
- Interpol (2007) Press Notice: *Interpol network links forensic laboratories in G8 countries*, 06.7.07 (Lyon, Interpol).
- Lewis, C. (2007) “International structures and transnational crime” in (eds.) Newburn, T., Williamson, T. and Wright, A. *Handbook of Criminal Investigation* (Cullompton: Willan).
- Lichfield, J. “”Ogre of Ardennes” stands trial for girls’ murders” *The Independent*, 26.3.08.
- NIJ (2008) “Increasing Efficiency in Crime Laboratories” In Short: Towards Criminal Justice Solutions, January 08 (Washington DC: National Institute of Justice).
- Noble, R.K. (2007) *Opening Remarks at 5th International DNA users’ conference for investigative officers*, 14.11.07 (Lyon, Interpol) published at www.interpol.int.
- Van Renterghem, P. (2006) from a presentation entitled “Belgium and International Exchanges of DNA Data”, at a conference held by the Institute National de Criminologie et de Criminologie Justice, 9 October 2006 (unpublished), but described in Wilson (2008a).
- Smith, D. (2007) Uncorrected Transcript of Oral Evidence to House of Commons Home Affairs Committee, 23.1.07.
- Williams, R. and Johnson, P. (2008) *Genetic Policing* (Cullompton: Willan).
- Wilson, T. (2008a) “The Internationalisation of Policing” in Fraser, J. and Williams, R. (eds), *Handbook of Forensic Science* (Cullompton: Willan), scheduled for publication in October 2008.
- Wilson, T. (2008b) “Applying the Science” in Brown, S. (Ed) *Combating International Crime: The Longer Arm of the Law* (Abingdon: Routledge-Cavendish), scheduled for publication in June 2008.
- Zedlewski, E. and Murphy, M.B. (2006) “DNA Analysis for “Minor” Crimes: A Major Benefit for Law Enforcement”, NIJ Journal No. 253, January 2006 (Washington DC: US Department of Justice).

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Examination of Witness

Witness: MR TIM WILSON, Visiting Fellow, PEALS (Policy, Ethics and Life Sciences; a joint research institute of Newcastle and Durham Universities with the Centre for Life, Newcastle), examined.

Q134 Chairman: Mr Wilson, you have been extremely patient, sitting at the back listening to our earlier deliberations. You are most welcome. I think you have heard the comments I made at the beginning about this being on the record and that we are grateful for written evidence, particularly if, after, you feel you have not said as much as you would like to. So let me begin. In your view, what is needed to support improvements in law enforcement capability within the EU, particularly in terms of the exchange of information, building capacity and translating analysis into effective preventative action?

Mr Wilson: My Lord Chairman, if I may, I would rather like to quote Professor Lodge where she referred to Europol as an “increasingly visible spider in the web of many supranational and national agencies”. However, I would caution two issues around resources and time. It is a fairly small budget in the scale of law and order criminal justice expenditure, and you have heard a lot in the previous session about cultural differences. It will take time to begin to ensure more effective co-operation. So, I guess, if I was writing an open letter to the next Director General of Europol or the Chairman of the Management Board, I would be fairly modest in

what I was expecting the organisation to do. I think, reading the transcripts, there has been quite a lot of discussion about the top end of international crime, and the important work that Europol and SOCA are doing in engaging with quite a small amount of the criminal activity that is out there. I think this is a case where the statistics have to be treated with great caution. One can never rely on criminological or criminal justice data giving a real impression of what is going on, but I think we have to kind of fit this top end of criminal activity in the wider market. Most crime is extremely local. When we look at crime that is investigated forensically, particularly the use of DNA, probably about 75 per cent—it is a bit more than that—actually occurs and is solved around people who all live in one police area. Then you have about 25 per cent or so where there is movement across an internal English and Welsh police area. We know we have about 10 per cent of prison places occupied currently by foreign citizens. There is a huge amount of activity going on out there, and I think that while you have discussed organised and serious crime quite a lot so far in your proceedings, I think that I would one must put a lot of emphasis on continuing Europol’s facilitation of bilateral and

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Mr Tim Wilson

multilateral exchanges between forces¹, where I agree that it is actually harder to establish governance. The kind of work that Europol does, which is quite a small injection of its resource, in areas such as providing, training, secretariat and meeting facilities for the European Police Chiefs' Task Force, is perhaps a kind of activity that might be expanded. I think, also, within the European Union there are opportunities to expand the arrangements for exchanging data, particularly so that people know the reliability for robustness of data by, perhaps, forming working groups and training. Another thing I refer to in my evidence was engagement with the wider community. Transparency, accountability and corruption are very, very big issues, clearly, for us all and it is something that we do need to look at in the context of the increasing power of organised crime to penetrate legitimate businesses and for Europol, perhaps, to brief legitimate businesses, perhaps through its exchange with parliamentarians and with broader public engagement—all of which I think will improve governance, transparency and accountability—particularly with the European Parliament, through the Lisbon Treaty and under the new constitution for Europol, and perhaps increasingly working with joint committees with national parliaments, because the bulk of trans-national offending is, I think, going to be a matter for national police on a bilateral or multilateral basis, rather than on a pan-European basis. So I think there is an awful lot to do but the resources are limited and we must expect proportionate results from that. I do not think it is a question of piling more and more resources in because to use resources effectively is going to take time because of the kind of cultural issues—not necessarily national identities but issues such as the different structures for criminal justice criminal investigation (the different roles of investigating magistrates compared with our own Crown Prosecution Service)—that people have to get their heads round if we are talking about co-operation even within the European Union. Then there is a whole issue, particularly for a country like the UK, about third party countries where I think Europol needs to be engaged but also needs to be engaged quite equally with Interpol.

Q135 Lord Dear: Mr Wilson, thank you for coming. Picking up on your earlier remarks about most crime being local (but you then went on, quite rightly, to refer to national cross-border crime), I wonder if we

¹ *Note by the witness:* This, as described with specific examples in our memorandum, is international cooperation between local, regional and national police forces, but excluding specialist serious and organised crime agencies like SOCA. Such cooperation by non-specialist police forces and agencies will be the only possible response to by far the greater part of transnational offending, including many activities that if the perpetrators can be detected may be discovered to be organised as well as serious in nature.

could ask you for your views on, first, the definition in terms of trans-national crime, on the one hand, and international, organised crime on the other, and the fact that, I think, if I understand your evidence correctly, you think Europol has not focused enough on the heavy, organised international crime, and has focused on simply that which crosses borders, and maybe at a lower level. Can we have your views?

Mr Wilson: I am sorry if I have given that impression. I think that there is an important focus on organised and serious crime within Europol as one of its main tasks, but I think that if it is going to have a major impact on the lives of ordinary citizens, particularly in terms of acquisitive crime, it does need to provide support to national police forces, regional and local police forces in order to facilitate more effective international co-operation. In some cases it may just be a question of ensuring that a senior investigating officer with a problem is put in touch with someone who can assist in a relevant force in another country. I think that is very much the bread and butter work of the national units at The Hague. I think there is a great danger that that kind of work may be overlooked, whereas I think the majority of Europol's more operational activity (the work in the AWFs) is going to be focused on the upper end of criminal activity—serious and organised. I think I may have given you a slightly misleading impression.

Q136 Lord Dear: We both recognise cross-border international crime of varying levels—some of it very serious indeed. Are you saying that Europol should or could have a role in addressing a problem which resides within the boundaries of one particular country?

Mr Wilson: No. It is in assisting a problem that has materialised in one particular country but where there is a trans-national element in the materialisation. It is probably a bilateral issue or it is a multilateral issue.

Q137 Lord Dear: Could you give a theoretical or hypothetical example?

Mr Wilson: I think the Fourniret case is a good example, where a Frenchman living in Belgium committed seven murders on the French and German border and, until an intended victim escaped, the French and Belgian authorities were not aware that they had a serial killer on the loose. I think there is a role for Europol to assist co-operation across boundaries perhaps on a bilateral/trilateral basis. Similarly, there was an exercise in Belgium that illustrated, through the use of DNA, close connections between people undertaking robberies in Germany, Belgium, France and the Netherlands, in order to identify and co-ordinate national police investigations.

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Lord Dear: I now understand. Thank you for that.

Chairman: We will not enlarge on DNA at this stage because we will come to it later.

Q138 Lord Mawson: Why should we invest in large-scale information processing when we can beat serious criminals on a case-by-case basis using bilateral channels?

Mr Wilson: I partly put this down to improving notoriously unreliable statistics, but we do need to have some idea of what is happening out there, just as important achievements are certainly documented for the solving of major crimes on a case-by-case basis. What happens after a particular organisation has been taken out? There is an interesting case from the Lithuanian border in about 2004 where there was major disruption of cigarette smuggling from Kaliningrad into the European Union via Lithuania, and suddenly people detected there was a change in the number of Lithuanian smugglers who were being arrested on the border because there had been success in taking out the bigger organisation, and local criminals had kind of filled the gap. The thing about supply and demand is, if there is an opportunity, removing a serious threat on a successful case operation may leave a void that will be filled by other criminals, and I think that one has to balance the activity that is taking place in terms of serious individual investigations with trying to keep an idea of what is happening generally in terms of criminal activity on a spatial basis.

Q139 Lord Hodgson of Astley Abbots: I was very interested in your phrase “effective business processes” which you use on page 3 of your evidence to us, because as we have already discussed this morning, gathering more and more data without the means to use it effectively, obviously, has its drawbacks. You went on to talk here about the DNA exchange, and then raised, further on, some of the difficulties—technical, legal, etc—that are faced. Could you tell us a bit more about where we are with this, how these problems were addressed, whether we have got past the pilot stage, and perhaps also, if this project is going to be successful, can it be extended to other areas or is it confined to DNA?

Mr Wilson: I think the key lesson from this was the process of trying to understand the business process necessary to effectively co-operate using DNA across international borders, which meant bringing together forensic scientists, police officers and various lawyers in order to reach agreement on the objectives. This was very much influenced by Mr John Dickinson. You will remember the death of his daughter, and how DNA was instrumental in finding her killer, but, as he put it in a number of lectures he has given, that was by “accident rather than routine”, and what we wanted to address was how could we make the use of

DNA, where it maybe relevant to solving a serious crime like that, take place as a matter of routine rather than by accident. DNA has a global database². I think there is one big reservation about a global database: if you populate a database in Lyon you are putting quite sensitive material (it is not quite so sensitive as it may seem but I think there is an issue of public confidence) into the control of an entity outside the national government that has been responsible for authorising the collection of that information. As I said earlier, if you take the view that most crime is local why are going to put it in Lyon in the first place? It is much better to keep it close to where it is going to enable you to solve crimes. Also, and this reflects the different structures of investigative responsibilities in different jurisdictions, the report by Mr Peter Lewis on the lost Dutch Disk³ explained that one of the reasons for that particular exercise was a very clear statement by the Dutch Government that they could not exchange data through Interpol because Interpol is a police body and yet the DNA database in the Netherlands—which is a very good database—is actually owned and controlled by the Ministry of Justice, and it is quite complicated to move information around. So within those parameters the group came together and said: “How can you exchange information in a way that is likely to speedily assist investigations when there are reasons to think, in a serious crime, that DNA may be helpful and how do you ensure that the process is reliable and robust and also complies with a quite different range of laws governing the use of DNA in different jurisdictions?” Basically, it came down to a quite simple process of a standardised request for information that could be sent in the form of a quite simple, quite short email from a single national point to another single national point, and there would be a fairly quick response to say the request for information has been received, so that whoever was waiting for information helpful to the investigation would know that something was happening out there, and the aim was to get information back within a matter of days and give a very simple basic message to say: “Yes, we have a DNA profile on our database which may be able to assist your investigation”, at which point it would be possible to decide in terms of operational priorities, priorities within the individual investigation, whether it is appropriate to investigate that possible lead. That is where the single national contact point, I think, is important because each contact team, if everyone is talking about automated systems, will contain a forensic scientist who is giving advice on the basis of a fairly good knowledge of the

² *Note by the witness:* The DNA Gateway run by Interpol at its Headquarters in Lyon.

³ *Note by the witness:* “DNA Profiles Disk Inquiry”, a report dated 14 May 2008 by Mr Peter Lewis, Chief Executive, Crown Prosecution Service,

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countries it is dealing with about the quality and reliability of the DNA system used, including issues such as the quality of forensic material recovery from scenes, DNA processing, the processing system they use (which can quite considerably affect the reliability of any matches or not) and the significance of a match which depends on how many alleles match⁴. So there is quite a lot of forensic interpretation needed to ensure that although DNA looks like quite hard information, when you get information about a match it may be, actually, not quite so hard as you think, depending on that kind of factor. Then, obviously, there needs to be advice to the investigating teams to think about the context in which it is acquired when it comes to the MLA stage of the investigation.

Q140 Lord Marlesford: To follow up on the DNA, you have answered, to some extent, the question, but do you believe that a European level DNA database is both desirable, practical and useful?

Mr Wilson: No. I think that it would raise huge problems in terms of effective governance. I think it is quite unnecessary. I think that biometric information needs to be kept close to the place where it is going to be used in the course of investigations. What you need is the ability to find out if people can help you.⁵ I think that will work in a search request system because, basically, it is indicating: "Have you got a string of numbers in a certain sequence on your database that corresponds to what we are trying to search for"; you are actually not uploading information from another country's database. It is possible, I think, to have a reasonable robustness in the audit trail, and it is also something that I think is an approach that you can use with third countries, given that, clearly, a lot of trans-national crime is not going to be confined to the EU but it avoids all the problems of depositing information on third country databases. The fact that you have got a single point of expertise that is handling the transaction between countries means that they should be able to undertake a risk assessment of the forensic robustness of the information you may get back but, also, the ways in which confidentiality and privacy

⁴ *Note by the witness:* For example, within the UK a match based on the analysis of samples using the SGM Plus® marker system indicates that there is a probability of no less than one in a billion that, unless the samples were obtained from family members, the two DNA profiles came from different individuals. A match between a UK profile and one held outside the UK based on a different marker system, involving only some of the alleles used for SGM Plus®, will necessarily reflect a lower level of probability than this and in some cases could result in multiple candidate matches with the profiles of a number of different individuals.

⁵ *Note by the witness:* what appears to be the best evidence of the effectiveness of this approach produced to date is an indication that the introduction of Prüm enabled 710 hitherto unidentified DNA profiles recovered from German crime scenes to be linked with persons known to the Austrian authorities (quoted in the Committee's 18th Report of Session 2006–07 at paragraph 36).

may be respected. I have got slight reservations about being able to impose a European model of data privacy on third countries. We seem to be having enough trouble trying to get the data protection framework for the Third Pillar in force in any case, even within the European Union. Now, the FBI has a quite different approach to ensuring privacy, ensuring that information is not misused within their database, which is basically a kind of internal audit process. My view on that is fine, they are not going to have external data protection supervisors; therefore, our experts who are advising on the exchange of information with the FBI need to go to Quantico on a regular basis, and need to understand how the US is operating, and need to consider, on a pragmatic view, whether the safeguards are adequate for co-operation or not.

Q141 Lord Marlesford: Is there any difference, for this purpose, in the context of what you have been saying, between a DNA database and a fingerprint database?

Mr Wilson: I think, on the whole, it is very close because both sources of information appear quite hard but they do depend on the way in which the information is taken, the quality within which the information is initially processed and then how that is interpreted. You can do a lot with machines; the police in the UK now use a system called LiveScan which means that someone coming into a police station can have their fingerprints taken and it can be checked against about six million fingerprints within about half-an-hour. That is done by machine but, basically, the machines are coming up with a list of candidate matches. I think they provide 10. At the same time, within the 24/7 fingerprint bureau in Scotland Yard, there is a team of people checking the matches visually to ensure that the machine has got it right.⁶ I think this is a rather significant cost element, because you can make the process work more efficiently, faster, more effectively, through modern ICT but you need to ensure that you have dedicated expert people always looking at the results coming out, always providing quality assurance. You cannot, in an area like criminal justice, abandon yourself to reliance solely on machines.

Q142 Lord Hodgson of Astley Abbotts: Surely, if the business process is robust enough we should not necessarily be concerned about the information being held in Lyon, so long as access to it is properly controlled. All our Criminal Records Bureau checks are done from India now—if you wish to be a school governor you talk to someone in Mumbai; they ask

⁶ *Note by the witness:* That is in predicting the candidate match most likely to be accepted as a valid match in the opinion of several experts. The experts may decide that another candidate match or none should be accepted as a valid match.

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you about your background and everything else. That is where the form goes.

Mr Wilson: That may be where the form goes and it may be decided that that is quite acceptable in terms of that particular activity, but if you download the entire UK DNA database to Lyon you are duplicating the amount of stored data. If you are weeding records for various purposes there is always the risk that some may be missed at the weeding stage. In the UK we have very extensive powers to take and retain DNA. It is theoretically possible that you could duplicate the database in Lyon and you could use that as a back-up database. In a country with very complex DNA retention rules⁷ I think that that would be extremely difficult to achieve.

Q143 Lord Harrison: Mr Wilson, in your evidence you comment on different national patterns of investment in DNA profile coverage. Can you describe the extent of the effects that poor infrastructures abroad have on UK investments in forensic technologies?

Mr Wilson: It is a factor, I think, that affects—if I take the example of a DNA database—the match rate. If a DNA profile is obtained at a crime scene and then loaded on the national database and, let us say, a profile is found in England and Wales, the chance of matching it with the profile of a known individual is about 52 per cent. In Scotland, if you go through the same exercise, you are likely to get a match rate in about 68 per cent of cases, despite the fact that the Scottish law is slightly more restrictive in terms of DNA profiles that may be retained, compared with England and Wales. If you look at Austria, which is probably the second highest proportionate size of database in the European Union, the match rate is 39 per cent. I think that is partly a reflection of different retention rules, it is partly a reflection of different sizes of databases, but I think it is also a reflection of greater mobility and greater trans-national offending. When you look at the number of people imprisoned in England and Wales compared with Scotland, for foreign citizens, you are looking at about 10 per cent in England and Wales under 2 per cent in Scotland. Scottish crime tends to be much more local than English crime, particularly if you live somewhere like Kent, where, I believe, at one time Kent Police were talking about 40 per cent of offenders actually not being UK citizens. There is some arrest data, from nineteen police forces in the UK that indicate that about 12 per cent of people arrested are foreign citizens, but when you compare that with the Austria situation about 26 per cent of

⁷ *Note by the witness:* For example, unlike England, Wales and Northern Ireland, and for many offences also Scotland, in other jurisdictions a person's fingerprint and DNA profile records may have to be removed from the national database if he or she is not convicted of the offence for which that person was arrested, if the conviction is quashed, or after a period of time since conviction specified for certain offences has elapsed.

arrestees are foreign citizens. I think that mobility itself limits the effectiveness of the way in which you might be able to use forensic science and national databases to detect crime, but there are a lot of factors that come into it, and I think that is only one of them. Clearly, retention is likely to be a factor as well—the legal rules on retention.⁸

Q144 Baroness Garden of Frognal: Mr Wilson, I think you have touched on this, but do you believe that there are any immediate benefits for Europol in the current configuration of forensic science co-ordination?

Mr Wilson: I certainly have been very grateful to Europol for assisting with the Search Request Network project. I think that it does provide a source of information that will assist in their work with national police forces in dealing with serious crime. I think it also can be used for trying to analyse what is happening out there, in terms of the Belgian example I mentioned, in looking at patterns of offending across borders and trying to assess within the UK the level to which offending is undertaken by non-UK citizens who our databases may not be able to reach. So it has an analytical power which I would hope to see joined up with Europol support for the Police Chiefs' Task Force, for training and for encouraging other countries to think seriously about the use of forensics in general, as I think that it is not just a matter of investing in fingerprint and DNA databases. I think it is equally important to encourage good practice at the crime scene in order that valuable material is not missed, that it is handled professionally and that there is a safe element of continuity in removing whatever is recovered from the crime scene to laboratories and, in due course, as evidence that appears in court.

Q145 Lord Teverson: Mr Wilson, coming back on something really on a broader scale, about engagement with Europol in some of the areas that you think about there, really to ask you what national parliaments should do to be fully engaged with the work of Europol. Before you answer that, I notice from your job title, you are a Visiting Fellow in Policy, Ethics and Life Sciences, which is a broad

⁸ *Note by the witness:* once a method or methods for effectively sharing internationally the forensic information that the law in each jurisdiction allows to be held on a national data base has been resolved, as indicated in some detail in our memorandum, the contribution this can make to detecting crime will depend on whether comparatively modest resources are available in all the countries concerned to take advantage of the contribution forensic science can make to detecting offenders. Community financial assistance to poorer member states in this area is likely to have a greater impact on a wide range of crime (including some that would be found to be serious and organised) in the EU than a similar increase in Europol's budget, although the Agency could make a major contribution to ensuring that any programme to deliver improved forensic science facilities is managed and supported effectively through the modest injection of extra resources proposed in reply to Question 134.

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canvas which I am interested in, particularly in this area. In terms of Europol, if we look at it from the other end of the telescope—the main organised crimes are things like carousel fraud, money laundering, people trafficking and drugs trafficking—are there ways in which the European Union could reorganise so that those crimes are not such a problem, if you like. Carousel fraud, I presume is one. I do not want to go into this in great depth, and not that I am saying we should get rid of the need for Europol, but is there a supply side answer to some of this, as well as the other side, if you like?

Mr Wilson: A couple of years ago I thought there was possibly a way of simplifying the tax system to make carousel fraud less viable. I cannot now remember what I thought through at that time, but I think there is certainly a role for Europol to provide advice by way of risk assessment in terms of fraud against community institutions and national governments within that kind of fiscal structure, and, also, cohesion and structural funding⁹. I am rather diffident to offer solutions to parliamentarians in terms of greater governance, but what struck me (and I do not quite know how the changes under the Treaty of Lisbon—if it takes place—will work), with a Director General and a Management Board Chairman for 18 months, and possibly also the Chairman of the Joint Supervisory Committee for Data Protection, is that fairly irregular sessions with the European Parliament, particularly if this could be

joint sessions with representatives from national parliaments, might be extremely valuable in order to examine to what extent Europol should have the opportunity to feed in suggestions about how the VAT system might be improved to reduce the prospect of carousel fraud, and also to contribute to thinking about how other aspects of European Union activity might benefit from some engagement from operational police forces that are seeing the consequences of that, particularly in areas such as corruption in funding programmes that has resulted in the suspension of funding to Bulgaria for infrastructure funds. I think that would be extremely valuable. May I say, while talking about data protection, I think that Europol has the advantage of an arrangement for data protection involving independent inspections as well as an audit trail, which is something, perhaps, we might reflect on in the UK. A great deal of discussion this morning has been about governance and our concerns with protecting privacy and ensuring that data collected in the course of Europol's work is safeguarded. I think the same considerations apply within the UK, and it may be that we are reaching the point, rather like the precedent of the Exchequer and Audit Act of 1866 in recognising how piece of legislation changed nominal control by Parliament over money to practical control over money. Increasingly the information held by agencies is a vital factor in public confidence in the quality and honesty of governments, and it may be that we need to move to a greater proactive, external inspection approach to the whole range of data protection. I think we need that in the UK just as much as within Europol. I think, increasingly, that data that government bureaucracies hold about individuals, in some respects, is equivalent to the way in which in the 19th century governments and local governments were extracting more money from individuals.

Chairman: Thank you. Are there any other points that any of my colleagues would like to raise before we come to an end? I see none. Mr Wilson, thank you very much. We have had a very full and very fascinating morning, to which you have contributed fully. Thank you very much indeed.

⁹ *Note by the witness:* Of the Commission's 2006 proposals the more extensive use of reverse charges seemed attractive, but having read since giving evidence the Committee's Report on Carousel Fraud (20th Report of Session 2006–07), I would like to comment that the concerns expressed there about the risk that this would result in migration to other areas and mutation into other forms adds to the case for more general analytical work by Europol on crime trends, including the destination of the proceeds and whether they have an effect on other types of criminal activity or corruption within government. Ultimately more public use of such an analysis may result in greater urgency in responding to the Committee's proposal that a more effective supply side solution meriting further study would be tax harmonisation, a possible longer-term solution that has also been proposed recently by Mrs Sharon Bowles MEP as rapporteur for the European Parliament's Economic and Monetary Affairs Committee.

TUESDAY 24 JUNE 2008

Present	Dear, L Garden of Frogal, B Harrison, L	Jopling, L (Chairman) Marlesford, L Young of Norwood Green, L
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Memorandum by Professor Dr Monica G W den Boer

1. BACKGROUND

In 2003, the Department of Public Administration and Organisation Science at the *VU Amsterdam* initiated the *research programme "Dynamics of Governance"*.

The research programme undertakes multidisciplinary research on dynamics of governance of organisations primarily in the public sector. The core aim is to contribute to the development of scientific knowledge about governance, integrity and security, which is also meant to lead to improvements in governance and its foundation in society.

Against this background, written evidence is put forward as set out in this document.

2. GOVERNANCE AS PART OF AN EU ARCHITECTURE OF INTERNAL SECURITY

The guidelines given by the European Council of 16–17 June 2005 on Justice and Home Affairs (JHA) cooperation¹ and the Council of 1–2 June 2006 which call for an EU architecture of internal security² underpin the importance of the call for evidence circulated by the House of Lords Select Committee on the European Union on 20 March 2008.

It is apparent that the initiative from the House of Lords supports the concept of active citizenship, engaging citizens in decision-making processes (bottom-up) in order to allow them to participate in the planning and delivery of public services, as a mechanism to improve product and service achievements.

From the founding instruments of the respective authorities it becomes clear that the purpose of these stakeholders in the JHA domain can be compartmentalised into the following, shared, core business service and product delivery functions: *strategic, operational, support (in general) and policy advice*.

Considering this perspective of shared functions and taking into account the coordinating entities in place (referred to in the current and future legal frameworks of EU cooperation regarding Freedom, Security and Justice) the question arises how these authorities are *managed or, in other words, governed at EU level*.

The core question therefore is: *What is the status of governance in the JHA domain nearly three years after the above mentioned political guidelines?*

In order to assess the current situation it is necessary to look at the past and to identify current developments from a broad perspective.

An important attempt to define governance in the EU was the communication from the Commission of the EC: "European Governance—A White Paper" in 2001.³ According to this document, governance means: *"rules, processes and behaviour that affect the way in which powers are exercised at European level, particularly as regards openness, participation, accountability, effectiveness and coherence."*

Following this description of governance, there are five principles that denominate governance: Openness, participation, accountability, effectiveness and coherence.

In the years following the initiative from the Commission in 2001, documented evidence on the implementation and further development of governance in the EU is difficult to trace.

The European Parliament (EP) has recently demonstrated—in the context of the parliamentary discussions on the discharge of the yearly budget of EU community financed agencies—a clear interest to gauge the status of governance developments. The Committee on Budgetary Control of the EP commissioned a study on best

¹ "The European Council invites the Council to step up coordination both amongst these various actors and between them and the competent authorities of the Member States"—Council Secretariat file n°: CONCL2 REV1 10255/1/05

² "Architecture of Internal Security", Council Secretariat file n°: JAI 271 REV1 9596/1/06

³ Commission of the European Communities (2001), "European Governance—A White Paper", Commission publication file n°: 428 final

practice in governance of agencies which was released in January 2008. The report⁴ comes to the conclusion that there are in general three governance dimensions: Institutional design and the set-up of agencies, the day-to-day management and steering of the agencies and finally agency accountability combined with transparency.

Eventually, the study provides the assessment (with a particular focus on EU Member States) that “*governance frameworks are under constant change—but only rarely are these changes and adjustments (or even the initial creation) of agency governance frameworks at the core interests of the actors involved ...*”

Deriving from this assessment, the report makes recommendations on the way forward in each of the three governance dimensions: clearly defined functions and governance structure, planning, evaluation and performance measurement.

Following these developments, the Commission, at the beginning of March 2008, issued a communication in which it is suggested “*to re-launch a debate on the role of agencies and their place in the governance of the EU. A consistent political handling of the approach to agencies would promote the transparency and effectiveness of an important part of the EU’s institutional machinery*”.⁵

Furthermore, the Commission states that “*as all public bodies of the EU, all agencies must be organised in the right way to respect basic principles of accountability and sound financial management*”. The Commission suggests an overall set of six elements for a future common approach to the governance of the concerned agencies at EU level, to be delivered by the Commission by the end of 2009 and has proposed to not to suggest new regulatory agencies until the work of the evaluation is completed.⁶

The European Court of Auditors (ECA), responsible for carrying out the audit of the EU finances as an external entity⁷, has now planned to prepare a special report on the application of *sound financial management of EU agencies* and bodies in 2008. It can be expected that this exercise will address aspects of performance measurement as well as business and budget planning.

In conclusion, it remains to be seen how the recent communication from the Commission, the activities of the ECA and the discourse in the EP Committee on Budgetary Control will shape governance at EU level, for instance with the EP putting forward interrelated requirements for discharging budgets of EU Community financed agencies.

The recent developments underline in any case that governance at EU level needs to be developed further. A preliminary analysis of public information available leads to the supposition (to be confirmed by research) that a follow-up or implementation to the request of the Council made in June 2006 has not been documented and reported back to the Council. Thus, there is *reason to assume that an overall governance architecture at EU level is not yet put in place to ensure consistent policy implementation*.

One example for this assumption can be identified in the “Development of an EU strategy towards the Western Balkan region”⁸ which was endorsed by the JHA Council of 12 October 2005. The Council in this strategy confirmed that SECI should have a sound legal basis⁹ with EU support and an operational cooperation agreement between SECI and Europol in the mid term (2–4 years).¹⁰ When looking at the agenda of the meeting of the Article 36 Committee (CATS) of 2–3 April 2008¹¹ and the draft Council Conclusions tabled for discussion¹², it is noteworthy that the draft Council Conclusions discussed in CATS in April 2008 contain objectives which were already formulated and endorsed by the JHA Council of 12 October 2005.

It can be expected that the issue of governance will be a core concern for Member States when considering the Lisbon Treaty ratification and its subsequent implementation.

⁴ European Parliament, Directorate General Internal Policies of the Union, Policy Department on Budgetary Affairs (2008), “Best practice in governance of agencies—A comparative study in view of identifying best practice for governing agencies carrying out activities on behalf of the European Union”

⁵ Commission of the European Communities (2008), “Communication from the Commission to the European Parliament and the Council—European agencies—The way forward”, Commission publication file n°: 135 final, page 2

⁶ Ibid, pages 7–8, 10: “The tasks of regulatory agencies”, “The structure and working of agencies”, “Accountability and regulatory agencies’ relationship with the other institutions”, “Better regulation and the work of the agencies”, “The process for establishing and ending regulatory agencies”, “Communication strategy”

⁷ European Court of Auditors—ECA (2008), “Work Programme 2008”, page 8 of the main document and page 5 of the annex, www.eca.europa.eu

⁸ “Development of an EU strategy towards the Western Balkan region”, Council Secretariat file n°: EUROPOL 25 11087/05

⁹ Ibid, page 8: “the SECI Regional Centre should be assisted to reach international legal personality and data protection instruments (legal and logistical) to allow for adequate handling of law enforcement information and intelligence”.

¹⁰ Ibid, page 8: “By means of an operational cooperation agreement, an operative link between Europol as the central EU law enforcement authority of all EU Member States and the SECI Centre is created, encompassing all third states in the Eastern European region.”

¹¹ “Provisional agenda—Article 36 Committee”, Council Secretariat file n°: OJ CATS 3 REV1 7847/1/08

¹² “Note from Presidency to the Article 36 Committee—Council Conclusions on the further development of the SECI Centre”, Council Secretariat file n°: JAI 138 7711/08

3. THE WAY FORWARD

There is a need for a concerted approach between all stakeholders, including academia, to *continue developing and implementing a governance architecture in the JHA field, especially with the Lisbon Treaty in sight*.

The Department of Public Administration at the VU University Amsterdam is about to commission further research with Europol into this area in order to validate the assumptions at hand (as also outlined in this document) and to contribute to the discourse with concrete proposals.

30 April 2008

Examination of Witness

Witness: PROFESSOR DR MONICA G W DEN BOER, Faculty of Social Science, Department of Public Administration and Organisation Science, VU University Amsterdam, examined.

Q146 Chairman: Professor, many thanks. We are starting four minutes late and I apologise for that. It is very good of you to find time to come and see us. You have probably been told already that we are a Sub-Committee for Home Affairs of the principal European Union Committee of the House of Lords in London which looks after European legislation. We are carrying out, as you will know, an investigation on Europol, which is why we are here. In your evidence, for which thank you very much, you say that the Department of Public Administration at the VU University Amsterdam is commissioning further research with Europol into the governance architecture of the justice and home affairs field. Could you tell us why the university chose Europol as a partner? What is the background to all this, please?

Professor den Boer: Thank you very much, my Lord Chairman, for your introduction and thank you very much for inviting me to your committee. Your first question relates to the relationship between Europol and the VU University Amsterdam. My Chair is a Police Academy Chair on the internationalisation of policing and Europol is a dossier which I have been following for many years. Basically, since the inception of Europol I have been writing about it, and also at the University of Edinburgh where we did a research project on European police co-operation in the early nineties. We have a research programme at the VU University Amsterdam called The Dynamics of Governance. We are soon going to transform that into a research programme on good governance of public institutions, and obviously a lot of your questions revolve around good governance of justice and home affairs institutions, in particular Europol. We are in the process also of establishing what we call a security laboratory in which a few professors who are experts on policing and security congregate and define joint lines of research, if you like. I think Europol and the VU University are the perfect match, simply because we have that experience and Europol itself can be considered as a very innovative law enforcement agency. It is a truly international agency which is developing a lot of new and very exciting new products. That is basically the angle from which I will take it. We have a few

research projects on Europol but also comparative research on the governance of national police organisations.

Q147 Lord Dear: Professor, welcome, and thank you for coming today. Can I ask a strategic question about the institutional design, leadership and accountability, the whole overview and inter-relationship of the various EU policing and criminal justice organisations as you see it? This is a very general question. It could take a very long time to answer but perhaps you could give us something in two or three minutes on how you see them inter-relating with one another and whether improvements could be made.

Professor den Boer: Thank you very much for that question. I have prepared for the questions so I have tried to pre-structure my answers. First of all, on the question of institutional design, I do not think there is an institutional design. There was no overall plan when, for instance, the Maastricht Treaty was agreed in the early nineties, and actually you can see the justice and home affairs policy domain as characterised by incremental growth, step-by-step gradual development and also, for instance, an expansion of the mandate by means of recommendations which were agreed by the Justice and Home Affairs Council and, of course, sometimes without the possibility for parliaments to scrutinise those recommendations before they are entered into force. Therefore, first of all the characteristic has been a gradual maturation of justice and home affairs governance which could not always be predicted and sometimes came as a surprise to the parliaments in particular. Secondly, another very important characteristic is that this is a governance structure which allows 27 Member States to be in the driver's seat, and that obviously makes driving very difficult. The result of that, I would say, is a rather weak compromise or an agenda which drifts in many different directions, so that is another important characteristic if you compare it to Community decision-making and Community agencies. Thirdly, I would emphasise that much of the justice and home affairs agenda has been ushered in by Council Presidencies. Every six months you have the rotating

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EU Presidency and the priorities which they have set out have not always been part of an overall or long term agreed strategy, and I think security crisis in particular has been pivotal to the development of justice and home affairs co-operation. Look, for instance, at the impact of 9/11. That has been very considerable—200 justice and home affairs measures in the area of counter-terrorism were announced after that terrible event. I think there is also a leadership question. The leadership must be awfully difficult for the Director of Europol who is accountable to a Management Board which comprises 27 delegates from the Member States, and the decision about the appointment still tends to be very much a politicised decision, so that is something else to look at. Accountability is another part of your question. It is still minimal, certainly when compared with the public institutions in the realm of national governance. However, I think Europol is the most mature justice and home affairs agency within the area of police and judicial co-operation in criminal matters. That should also be emphasised. It comes out as the most accountable of those agencies within the EU sector. The accountability certainly applies to external democratic accountability. In the past we have seen several instances when the European Parliament tended to be bypassed even though it had the right to be informed or consulted, especially in terms of the agreement between Europol and the US on the exchange of strategic data on terrorism. As far as legal accountability is concerned, the change of the regime on privileges and immunities I think should be considered as a positive step but Europol itself is still not subject to the jurisdiction of the European Court of Justice. Finally, I think it should be emphasised that an organisation like Europol is very cautious about public acclaim of its success because the core of law enforcement intervention in serious and organised crime lies within the national realm. Hence, the supportive and co-ordinating capacity of Europol is meant to be complementary to the law enforcement efforts of the EU Member States, which is of course dictated by the subsidiarity principle. It is very difficult to claim social legitimacy, if you like, support from the citizens, because it should not be at the expense of national law enforcement pride or efforts.

Q148 Lord Dear: That was admirably concise, if I may say so. If you were writing our report for us and were tasked with coming up with three recommendations to improve Europol from your standpoint, off the top of your head could you give us three, in no order of priority?

Professor den Boer: External accountability is extremely important and external accountability would, for me at least, be divided into three main sectors—democratic accountability, legal

accountability and what I would call social accountability: the explanation to citizens or communication to civil society about what this agency is producing, starting with the latter, social accountability.

Q149 Lord Dear: That is the most difficult one.

Professor den Boer: An organisation can start explaining what it does. It is output legitimacy, as political scientists call it. Just try and advertise the success of your law enforcement efforts or your intervention, if you like. Democratic accountability is beginning to change. It is improving. However, it could still be improved to the extent that the European Parliament were fully responsible for the democratic control of Europol in combination (and I emphasise “in combination”) with the national parliaments. My evidence for today is also that we look back to an initiative that was proposed many years ago, the initiative of creating a Parlopol, an inter-parliamentary accountability body for the control of Europol and perhaps also extending to the other justice and home affairs bodies. Legal accountability is a very difficult issue. The European Court of Justice is only minimally responsible for Europol matters. That could be extended in the future, but the most important thing is that there should also be a role for the European Court of Human Rights, and this would be possible through the Lisbon Treaty, but, of course, now we do not know whether it will ever be fully ratified. Those three dimensions could certainly be improved and obviously one has to develop an action plan, so one has to prioritise the one thing to the other. I think democratic accountability comes first.

Q150 Baroness Garden of Frognal: In your view does the new Council Decision improve these qualities in Europol and how do you see Europol being affected?

Professor den Boer: My initial reaction to the Europol Convention being replaced by a Council Decision was one of disappointment. The reason why I was disappointed was because the Europol Convention is obviously a much stronger legal instrument than a Council Decision. The main difference is that a Convention requires explicit ratification in all the Member States. We know, however, that the last time this happened, between 1995 and 1998, it took about two or three years before all the Member States (and there were even fewer at the time) ratified it. Obviously, one has made a choice for a less lengthy approval procedure, if you like, and a lighter Council instrument. The similarity between the Council Decision and the Convention is that they are both binding for national law, so Member States have to follow suit. They are forced to implement the consequences and embed the legal text within their own national environment and legislation. However,

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when the implementation of a Council Decision is going to be slow the European Commission cannot take a Member State to the European Court of Justice for failure of implementation, for instance, but there will be a soft machinery, the peer review machinery, the Scoreboard mechanism, which will call Member States to account and say, "Hey, guys, why haven't you implemented this yet?". It is a soft implementation pressure on the Member States and it remains to be seen when the Council Decision is fully ratified in all the 27 Member States. The new Council Decision is an improvement from the point of view of budgetary control. It makes the control of Europol more democratic, more transparent. It transposes a lot of the responsibility to the European Parliament, which I regard as a significant step forward, and furthermore the Europol officials will be appointed as Community officials and that will subject them to the same selection and integrity regime as their fellow officials in, for instance, the Organisation for the Fight Against Fraud (OLAF) which I think is a very comparable agency in terms of remit. And, of course, it will be easier for the Director of Europol (or I guess at least) to manage this agency instead of having to make 27 separate deals with the Member States.

Q151 Lord Harrison: Professor, welcome. My questions are about the management of complexity. The Commission has mentioned the ambition and complexity of the projects in the JHA area, and not just the complexity but also the ambition of the aims. Do you believe that the difficulties of managing that complexity are properly understood at the policy level when people are making these decisions and asking for these things to be done? Is it fully taken into account that you are working in a very difficult area?

Professor den Boer: Yes. In the beginning I tried to follow the whole Justice and Home Affairs Chapter but I have had to let go of some specific areas like asylum and migration and so on. I am currently trying to focus on police co-operation, security co-operation only, but even that is difficult enough. However, I doubt whether within the European arena there is much more complexity than within the national arena.

Q152 Lord Harrison: You doubt it?

Professor den Boer: I doubt that. I do not know. I really do not know what the yardstick should be here. If you look at the Netherlands, for instance, I was on a committee looking at internal security organisations and we counted 120 different organisations holding some sort of responsibility for security. Sixty of them, half, were executive/operational, and the other half were policy/co-ordinating/strategic/supportive, that kind of role, so

they held each other in balance. I would regard that as a very complex environment in which to operate, so even within the realm of national governance we are constantly looking at refurbishments, if you like, at rebalancing and seeing whether organisations could fuse information systems, whether they could be more closely attached and so on. However, I do share your observation that the justice and home affairs arena has become more complex throughout the years. When you look at the role of the European Commission, yes, the European Commission obviously could not intervene in this process. They have been put in the role of participant observer. That is the role they have had to take. They could not intervene but they could try and steer from the side. It is a kind of coaching role, if you compare it to football. From the lines you can try and steer the process a little bit, especially when it concerns the quality of legislation. I think the Member States primarily are responsible for organising this complexity because of a series of steps that were taken throughout the process. First of all, they are responsible because they allowed the segregation between three legislative and policy pillars within the Treaty on the European Union, thereby causing the differentiation in policy-making, decision-making and the legislative regime. That is the first dimension of that complexity. Secondly, they allowed, with the Maastricht Treaty and the Amsterdam Treaty, and lately, of course, also with the Lisbon Treaty, the creation of a completely different set of legal instruments (not the Directives and Regulations that apply in the Community sector but the Council Decisions and the Conventions in the intergovernmental realm of decision-making), so that is a second dimension of that complexity. Thirdly, a dimension that makes the complexity perhaps even worse is the intergenerational changes throughout the treaties and running through those the various action programmes. We saw, for instance, in 1997 an action plan on organised crime which demanded from all the Member States in the European Union that they create a national intelligence agency for the processing and co-ordination of national and international intelligence gathering. We have also seen the Tampere programme, we have seen the Hague Programme. We see various anti-drugs programmes, et cetera, which all provide an impetus to this agency, to Europol, for further organisation, so of course this means a hectic policy environment for this agency and it is very difficult to discern a very clear line into the future.

Q153 Lord Harrison: If they are guilty of introducing this complexity do they better understand it now and are there remedies to it?

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Professor den Boer: They certainly do not better understand it. By the way, I do not think they are necessarily guilty but I think the Member States have allowed this to happen, obviously because they wanted to protect what they call the last bulwark of their sovereignty—policing matters. No, Member States have lost control, I think. When I try to explain the police environment to my police students, what the situation is like in Brussels, after half an hour they just begin to loose interest. Of course, they listen to me but they are not necessarily interested in participating in the institutional set-up of the European Union. What that creates is more space for them to pioneer. What you see a lot within the European Union is bottom-up constructions—law enforcement, co-operation across borders, et cetera. The positive thing about Europol is that it has at least some form of official governance, some form of accountability, in great contrast to, as I said, the more spontaneous, bottom-up law enforcement co-operation in the European Union border areas. I would advocate that Europol closely co-operates also with these law enforcement pioneers in the European regions.

Q154 Lord Harrison: I turn to Europol itself now and the management of complexity. It delivers 93 products and services. Is it overloaded? Can they do anything about it or are they necessary and they just have to get on with it?

Professor den Boer: I do not have a view or a judgment about the quantity of products and services. I really do not know whether 93 is a lot or a little. It depends for me on the quality of the products and the way in which Europol is successful in advocating those products to the Member States or co-producing them. I am of the opinion that Europol co-produces some very interesting products, in particular OCTA, the Organised Crime Threat Assessment, and the European Crime Intelligence Model, which I am absolutely convinced will help to bring forward intelligence-led policing in general. I have some other PhD candidates and one of them is working on law enforcement cultures in the Member States. What he is currently establishing is that not every Member State in the European Union is ready for intelligence-led policing yet, so it must be awfully difficult for Europol to come across and work itself through those layers of the national law enforcement bodies and propagate that new model of intelligence-led policing. The success of the implementation of these models depends strongly on the national law enforcement leadership, vision and support. The future for Europol in my view lies predominantly in the development of law enforcement excellence, best practices, and translation of those best practices across the Member States because they are the wider European Union law enforcement community, with

the emphasis on inter-disciplinary co-operation, so not just police but also customs, immigration, et cetera. Professionalism is very important and strategic support by means of top-quality intelligence-gathering. Those products I would say stand out for the future.

Q155 Lord Harrison: You have identified two particular services to illustrate how useful Europol can be, but of those 93 I suppose there may be some services or products which are of lesser importance.

Professor den Boer: For me the difficulty is that of course I am not a law enforcement official, so I am looking at this from an academic perspective. The only other product I would perhaps have questions about is the Analysis Work File. In 2007 or maybe 2006 Europol ran 18 Analysis Work Files, so you think, is 18 a lot or is it far too little? I would say that Europol could potentially be more productive but, and I keep emphasising this point, Europol depends on being fed with intelligence from the Member States. As long as the Member States keep the intelligence to themselves it just will not happen, so the culture of change will have to take place there rather than within Europol itself.

Q156 Lord Young of Norwood Green: Professor, you said that some of them are not ready for intelligence-led policing. Why not and what would it take to get them ready? That is an obvious question but, given the importance of this issue, I ask it anyway.

Professor den Boer: I wish I had my PhD candidate with me. He is an expert on crime analysis and has written several books on this, mind you, in Dutch, so I guess they are a little bit inaccessible to you. There is a theoretician called Hofstede who has performed cross-cultural comparisons between the Member States but also outside the European Union he has looked at cultural variables. What you see is that Anglo-Saxon countries, but also the north-western countries like The Netherlands and the Scandinavian countries, have a much flatter model, ie, they are not as hierarchical as the more Mediterranean countries, Latin countries, Italy, Spain, Portugal and so on, and you can see this in the law enforcement organisation as more a hierarchical style of management and direction and so on. It seems to be the case, although this still needs to be worked out and more research has to be done on it, that intelligence-led policing works better in a more horizontal, network style of environment than in a hierarchical style. The other point in this is that in southern European countries, for instance, Italy, you have three main police organisations that all have their own intelligence cultures, and, of course, the difficulty is to bring the intelligence together. Mind you, a country like Italy is reasonably successful. They started the Anti-Mafia

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Directorate many years ago and they were pioneers in this sense.

Q157 Chairman: Professor, you keep using the word “quality”. You have talked about the quality of the products and Lord Harrison mentioned that, and then you talked about quality of intelligence. What about the quality of the people within Europol? Do you think—and this follows a conversation we had over lunch—Europol suffers because of the threats to a career structure, people coming into it, that it may suffer because there is no returns policy? Do you think changes could be made which might ensure that the quality of people within Europol was improved?

Professor den Boer: With the new Council Decision regime, which will probably enter into force on 1 January 2010, all the Europol officials will be Community officials so the selection of the quality of the officials will change anyway, but yes, I think your question speculates on the national career patterns within the national law enforcement organisations. I have not done research on this, I have to say, but I do think that it depends on the priority within the national law enforcement organisation that is attached to European police co-operation whether or not the best people are sent to Europol. In some countries this may lead to, “Well, this is your last job in your career”, and in other countries it may amount to, “This is the best job you can get and this is your best way to the top back in the national law enforcement organisation”, so I think you have a mixed representation of quality within the Europol body.

Q158 Chairman: Of course, Europol does not really cross the horizon of most individual police forces—and I am speaking about the United Kingdom. I spoke only yesterday to the police force in the area in the north of England where I live, and they told me that ever since Europol has been set up they have only had contact once, and therefore Europol does not really come over the horizon very much at all. Is that a problem and could it be improved, do you think?

Professor den Boer: I do not think it is a problem. I do not think every police officer, even if he or she is a top police officer within the national realm, has to have daily or even frequent contact with Europol, but I think the right people have to have the right contact with Europol. We know that Europol still works with the Europol national units. They are the main interlocutors within the Member States for Europol, and as long as they are well qualified I am sure that the line of intelligence runs very well. It is a different thing whether Europol is a well-known institution and whether it is a well supported institution. In The Netherlands I think Europol is a well-known institution, also because we now train our police officers on international police co-operation even

within the initial curriculum. We are also a close partner with CEPOL, the European Police Academy, which obviously can help to advocate the name and fame of Europol, but the other thing is that within crime investigation milieu Europol is still not very well supported. This is because in the national crime investigation scene you have, let us say, a cocooning of intelligence. One breeds his or her intelligence egg and one has great difficulty sharing that intelligence with Europol. As I claimed in one of my publications, Europol runs the danger of being dehydrated.

Q159 Lord Marlesford: My question is really on the basis of the remit to Europol. Operational agencies have to implement the policies they are given and policies derive from information, evaluation and analysis, and ultimately legislation to implement the policies. In Britain we have had a terrible record in this field. We have a Criminal Justice Bill virtually every year and each Bill is often adjusting or changing the law in every sort of way—and this is not only under the last decade of the present Government but previously as well. To take an incredible striking example from the previous administration, the previous Conservative Government at one moment introduced a law which said that in sentencing previous convictions were not to be taken into account. Of course, it did not last long; it had to be changed. What I am really asking you is, do you think that there is any way in which you could suggest that the European Commission in particular can improve the remit which ultimately makes Europol function more efficiently?

Professor den Boer: To the extent that the European Commission can influence this process, which it can effectively only do after the entry into force of the Lisbon Treaty, let us be realistic about this, I think the European Commission should try and take up the Corpus Juris project again. The Corpus Juris project tries to harmonise the criminal laws within the Member States to the extent that obviously there is something like Euro crime so they have to work out the subsidiarity principle. There is no harmonisation necessary across the whole spectrum of European or national criminal law but there is, let us say, a fragment, for instance, environmental crime or the trafficking of human beings. There are several serious and organised crime forms which would fall within the scope of a European criminal law. I also think that the European justice and home affairs arena could be further furnished, if you like, with other institutions, for instance, a European Prosecution Service. Again, for that we will need the full ratification of the Lisbon Treaty. That would allow a gradual growth of Eurojust into the European Prosecution Service. These are the two elementary necessities to build a good quality justice and home affairs arena.

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Q160 Lord Marlesford: Do you think that the reason this has taken so long is that there has not been treaty provision for it? After all, in theory countries can instruct Europol collectively without the EU and without European legislation on treaties.

Professor den Boer: I would use two words to qualify the reasons, which are (a) intergovernmental, (b) veto. For instance, under the current political circumstances some Member States might consider vetoing the elaboration of the clause on the European Prosecution Service, which is currently within the Lisbon Treaty. Under a former drafting exercise this clause was almost kept out, so that is how you see how important the role of national governance is in the drafting process of treaty revisions and so on. The primary responsibility in the current situation still lies with the Member States.

Q161 Chairman: Referring again to your written evidence, could you say something more about the implications of the European Parliament “putting forward interrelated requirements for discharging budgets of EU Community financed agencies”? How do you think this is likely to shape governance at EU level in the future?

Professor den Boer: First of all, there is obviously a normative aspect to this point of view which is: should we really have an overall architecture for justice and home affairs governance? I think to begin with it is desirable if we try and create a framework with criteria for good governance, and good governance, of course, stands for accountability, transparency, legitimacy, external control, internal control and so on. With so many actors in this crowded policy space, as I would call it, it is difficult for those agencies to get their act together and I think that the Article 36 Committee, helped by the European Commission and possibly also the Council Secretariat, could play a very significant role here. They could even be backed up by the EU Anti-Terrorism Co-ordinator because, if you try and look at all this from his perspective, he tries to concert efforts on anti-terrorism in the European Union. It is awfully difficult to bring all those actors together so he will only benefit from a more overall architecture, or at least a framework for governance. Governance architecture is desirable from the point of view of transparency and accountability but I also think we should try and avoid the creation of a Justice and Home Affairs monster that you cannot control any more because it has become too strong and it has been supplied with a remit which is too big for us and which walks away from the national control and the national parliamentary scrutiny. As an interim arrangement, and in terms of improving the democratic accountability of Europol in particular, I do not see a reason why we should not go back to this idea of creating Parpol which comes close to the

lines of what the Lisbon Treaty proposes, ie, an early warning mechanism, so that the national parliaments will be in a position to impose early scrutiny of pre-policy proposals, if you like, when texts are still in the drafting process. That should allow parliaments to look at proposals early and also jointly so that they can inform each other about what is going on. It has been very difficult, even for our parliament in the Netherlands, to get hold of the documents on time, especially also in their mother tongue, which makes scrutiny awfully difficult. Timing is important, the language is important, and co-ordination of information is very important, between the European Parliament and the national parliaments. Mind you, I think the European parliamentary elections for 2009 offer a very good moment to put this back on the agenda. Obviously, the national political parties will prepare the papers in view of the European Parliament elections but they could definitely try and call for more attention to this issue.

Q162 Lord Harrison: Do you have a view about the lingua franca that should be used by Europol? Is it that English *de facto* has become that common language? If there were to be a move towards a situation where *de jure* in effect it was laid down that English was the language, what do you see would be the problems and what would be the benefits?

Professor den Boer: I am not sure I have a view but I can perhaps say something about it to the extent that, obviously, working with many different Community languages is too laborious, too costly, et cetera, so in a working environment I would allow English and French as the main working languages. However, when you move up the hierarchy, so you have, for instance, a Ministerial Council, you will have to allow the official languages which are being used within the European Union, and that has everything to do with what I said before, the scrutiny regime. You cannot really exercise sufficient scrutiny on a paper or a legislative proposal if you cannot do that in your mother tongue. For pragmatic reasons, therefore, I think at the working level it should be English and French, but at the political level the official languages of the Member States.

Q163 Lord Young of Norwood Green: Professor, I would like to come back to intelligence-led policing and it depending upon exchange of information. When you think about the wealth of information out there, it is not the amount of information; it is really the quality. How do you strike that balance so that you do not suffer from information overload and at the same time there is that scepticism about the security of exchange of information anyway, so you have a number of facets to it? The overload thing seems to me counter-productive in trying to achieve what you want to achieve. It is like panning for gold,

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is it not? There is an awful lot of dross before you find a minute speck, so is less more?

Professor den Boer: I also would like an emphasis on quality rather than quantity, but within the national law enforcement environment I still see a very strong preference for gathering as many data as possible. Obviously, this is enhanced and facilitated by the many new regimes which we have recently introduced, such as PNR, Passenger Name Retention. We also have, of course, the EU Telecommunication Directive. We have many national ways in which we can gather and collect data on individuals, so we have stocks and stocks of personal data. It has been suggested that the Schengen Information System currently contains 20 million data and we do not know whether they are polluted or contaminated. We do not really know whether the quality is good or not. That is a very important aspect because otherwise you make mistakes in your enforcement chain, I would say. If you do not start with good quality information then obviously you are going to run up against a problem somewhere in the process. I would suggest that here we also need a culture shift. We have to move from quantity-oriented intelligence gathering to quality-oriented intelligence-gathering, but we will need some efforts and we need again visionary leadership within the national police bodies for that to happen.

Q164 Chairman: Could I end with two short questions? First of all, you mentioned the possibility of the Italians vetoing various proposals. What sort of veto are you talking about, because I ought to know this and I do not? Is it a veto based on the fact that there has to be unanimity over something or is it the other one under QMV where, if a nation claims a vital national interest, you have to get a blocking minority to support you in that to apply what is called the veto? The veto in QMV terms is an extremely loose definition which people use without understanding how it works. Secondly, how would you improve Europol's image from the perspective of your students?

Professor den Boer: I will take first of all the question about Member States and their use of veto powers. The example I gave you was not a veto-related context. Obviously it is very important even in a drafting process to reach consensus, because when you know that you are going to be vetoed later on you might as well just try and create a compromise text. Yes, the position of the Member States, I think, is extremely important as long as the Justice and Home Affairs Council votes by unanimity. Vetoes do not always happen. I know from cases that Coreper, the Permanent Representatives' Committee in Brussels, will try and prevent these things from happening

within the Justice and Home Affairs Council, so again this happens in political preparation of the final decision-making process. In the future, of course, it may still happen, but when it happened in the past the "salami" tactic was very popular. The salami tactic happened when the Financial Interest Convention was going to be adopted by the Justice and Home Affairs Council. They could not agree on the whole text so they salami-d the whole text in pieces and achieved agreement on the heart of the instrument and left the other parts of the instrument to protocols. This is what happens in the daily reality of unanimous decision-making.

Q165 Chairman: But you said that in certain circumstances if there was one proposal made some Member States would veto it.

Professor den Boer: Yes, but the political representatives in Brussels would do everything to prevent that from happening, because obviously it would be embarrassing to the relevant Minister would lose his good image.

Q166 Chairman: I know exactly what goes on because I can remember the Germans applying the veto when I was President of the Agriculture Council. I remember all the shenanigans that went on around it but that was a veto where they had to acquire a blocking minority from other countries to support their claim for vital national interest; otherwise the things falls, and the British were rolled over back in 1978 or 1979 when they said this was a vital national interest. They could not get the blocking minority and they were rolled over.

Professor den Boer: But, of course, what the Member States will do is find other ways to circumvent unanimous decision-making. Look at the Prüm Treaty. This is a form of enhanced co-operation. It is a snowball effect and later on you try and make more Member States a member of your partnership or whatever. Enhanced co-operation will be the future bypass construction, I think, as long as the veto regime prevails. On your other question, Europol's image, I think making students responsible for, let us say, assignments about Europol, making them familiar with the products of Europol (and many of my students do so already) will mean they become increasingly familiar and also more and more enthusiastic about the agency, but the most important thing is that they will all become truly international police officers themselves.

Chairman: Thank you. You have been most interesting and most helpful to our inquiry. We have, very rudely, kept you five minutes later than your deadline, and wherever it is you are going will you make our apologies for your lateness? Thank you so much. We have really enjoyed it.

Memorandum by EUROPOL

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1. STRATEGIC COORDINATION

1.1. *EU Architecture of Internal Security,¹³ intelligence-led policing and the European Criminal Intelligence Model*

The European Union (EU) Architecture of Internal Security is the reference framework under which the EU intends to develop all activities relating to its internal security, starting with organised crime. In the longer term, subject to a review of its success in the field of organised crime, the objective is to expand this framework to other fields of internal security (including terrorism, illegal immigration, cross-border crime, risk and crime

¹³ Architecture of Internal Security, Council Secretariat doc. n° 9596/1/06 JAI 271, approved by the Justice and Home Affairs Council of 1–2 June 2006.

assessment connected to major events), in order for it to gradually become a global approach encompassing other subjects and relevant actors to internal security.

Europol plays an important role in this EU Architecture of Internal Security. The various threat assessments produced by the organisation, on the basis of information and intelligence sent by the Member States, constitute the cornerstone of a European intelligence-led policing system for the fight against organised crime. Europol's analytical input sets in motion the execution of the European Criminal Intelligence Model (ECIM). Based on the experience of the National Intelligence Model (NIM) currently in use in the UK, the ECIM is a four-step cyclical process which starts by an assessment of the threat at European level from which political priorities in internal security are drawn. By anticipating better the criminal developments, the intelligence-led policing approach enables the political level to decide about the priorities while the operational level use resources more effectively.

Europol actively participates to the first stage of this European intelligence cycle, by collecting, storing and analysing data received from the Member States and other parties, and by producing the Organised Crime Threat Assessment (OCTA). Europol's analytical and assessment role provides a unique operational support by identifying criminal trends under development at European level.

In the second phase of the ECIM, Ministers in the Council use Europol's threat assessments, together with those from SitCen and Frontex, to set out political and regional priorities for EU internal security.

In the third phase, the priorities set by the Council provide the reference framework for both the work of the different EU agencies and the plans of the Member States' competent authorities. These priorities should be reflected in their strategic planning, working programmes, budgets, annual reporting and external relations. With the support of the Police Chiefs' Task Force (PCTF), EU agencies and Member States' law enforcement authorities implement the priorities by means of the COSPOL¹⁴ projects and by using Joint Investigation Teams (JITs) if needed. The intelligence generated by the investigations are reported—as early as possible—to Europol and then “recycled” and used by Europol to produce enlarged and actual analysis for ongoing investigations and other analytical products. The responsibility for implementing the EU internal security priorities mainly remains at national level.

In the fourth phase of the ECIM, an evaluation is conducted in order to feed the next cycle of the ECIM. Reflections are currently taking place in the Council on how best to conduct this evaluation phase.¹⁵

To summarize, Europol's responsibilities in the ECIM mainly lie in the first phase of the process, that is to say assessing the threat Europe-wide (OCTA). The organisation also plays an important role in the implementation phase by providing an operational support to the PCTF and, generally speaking, by producing intelligence in the framework of its AWFs, based on the contribution of the Member States.

In addition, it should be born in mind that the EU Internal Security Architecture is still being further developed under the auspices of the Council of Ministers, in particular in light of the new provisions of the Lisbon Treaty with regards to internal security, establishing the internal security committee (COSI).

1.2. *Europol's relationship with other EU/EC Agencies*

House of Lords' requested information

Europol's relationship with other EU/EC Agencies such as Eurojust an Frontex, and the extent to which there is cooperation between these Agencies, especially in the preparation of the Organised Crime Threat Assessment (OCTA), the Terrorism Situation and Trend Report (TE-SAT),¹⁶ and Analysis Work Files (AWFs).

Europol cooperates extensively with other Justice and Home Affairs (JHA) EU/EC agencies and bodies (Frontex, Eurojust, SitCen, OLAF and CEPOL). The first type of cooperation relates to horizontal coordination and alignment of planning activities between agencies with a view to implement the Council's priorities on internal security in a coherent and consistent way. Furthermore, Europol fosters more specific relationships with some of these EU/EC agencies either in the framework of its threat assessment activities or in habitual exchange of information.

It is worth mentioning the novelties created by the so-called Danish protocol amending the Europol Convention.¹⁷ This protocol adds a new paragraph 9 to article 10 of the Europol Convention, which provides for the possibility, for Europol, to invite third parties/bodies to be associated with the activities of an analytical

¹⁴ Comprehensive Operational Strategy Plan.

¹⁵ The Council Working Groups are currently reflecting on two options to strengthen the evaluation exercise. These options are described in the following document: Council of the European Union, Orientation debate on the fifth round of Mutual evaluation, 65846/1/08, 10 April 2008.

¹⁶ TSR is not a Europol product. We assume the Committee meant the EU Terrorism Situation and Trend Report (TE-SAT).

¹⁷ Council Act of 27 November 2003 drawing up, on the basis of Article 43(1) of the Convention on the establishment of a European Police Office (Europol Convention), of a Protocol amending that Convention (Danish Protocol), OJEU, 2004/C2/01.

work file (AWF). The association of third parties experts is nonetheless subject to two conditions: firstly the existence of an operational agreement between Europol and the third party concerned and secondly an explicit consent from the participating Member States to that specific AWF (that can further specific aspects of the participation). Eurojust is the only EU body with which an operational cooperation agreement is in place. Eurojust currently participates to six Analysis Work Files and has been formally invited to participate to six more.

Horizontal coordination and planning

First and foremost with regards to horizontal coordination and planning of activities, Europol initiated in December 2007 a round of meetings with EU/EC agencies and bodies active in the field of JHA. It is the intention that the planning teams from the above mentioned agencies discuss the ways in which they can improve the cross-horizontal coordination of their respective work programmes and take into account the priorities set out by the Council for EU internal security. The standardisation of the actual format and layout of the respective work programmes, and their alignment, where possible, of terminology and supporting methodologies will also be addressed in a meeting planned to be held in September 2008. Europol's objective is to "institutionalise" these "horizontal coordination meetings".

Participation of EU/EC agencies in the preparation of the OCTA and TE-SAT

Regarding the OCTA, both Eurojust and Frontex are consulted by means of a questionnaire (intelligence requirements). For the 2008 OCTA, both agencies have sent constructive contributions. In addition to Eurojust and Frontex, other EU bodies and agencies were consulted including the European Monitoring Centre for Drugs and Drugs Addiction (EMCDDA), the European Central Bank (ECB) and the European Anti-Fraud Office (OLAF). Moreover, Europol also uses input from international organisations such as Interpol, the United Nations Office on Drugs and Crime (UNODC) and the World Bank. A questionnaire is equally sent to third countries with which Europol has an information exchange agreement.

Concerning the TE-SAT, Europol's cooperation with EU/EC agencies is limited to SitCen and Eurojust. Europol has set up an advisory board consisting of representatives from these two agencies and from the Member States holding the EU Presidency at the time of the production of the report—namely the Portuguese and Slovenian Presidency for the 2008 TE-SAT. The advisory board meets three to four times during the production period and provides Europol's officials with advice on proposed intelligence requirement, collection procedures and Europol's draft report. It must be noted that Eurojust's contribution to the TE-SAT is very substantial since it collects data on convictions and penalties.

Europol's cooperation with Eurojust

Eurojust and Europol signed an operational agreement in 2004 (allowing the exchange of personal data). A "Europol-Eurojust Steering Committee" was established and meets every three months in order to discuss cooperation between the two institutions. In addition, the President of the College of Eurojust and the Director of Europol meet on a regular basis.

Eurojust is currently associated to six Analysis Work Files (see above). Two concomitant policy initiatives recently called for a more systematic access of Eurojust to Europol's AWFs, by the Council Working Group reviewing the Council Decision establishing Eurojust and by the Counter-Terrorism Coordinator (CTC). The matter is still being discussed in the Council working groups.

Eurojust and Europol have cooperated on the implementation of the legislation on the JIT. Firstly they have jointly developed a legislative guide on JIT legislation on the basis of questionnaire sent to all Member States where they were asked how they dealt with the JIT legislation. Secondly Europol and Eurojust jointly established a common website on the issue. Thirdly they have drafted a JIT manual, for the practitioners on the establishment of JIT, with the help of national prosecutors. Lastly, they organise an annual meeting for the network of national JIT experts. The meeting takes place in turn at Europol and Eurojust. There have been three so far.

Europol's cooperation with Frontex

A strategic cooperation agreement was signed in 2008 (excluding the exchange of personal data because Frontex does not process personal data). Since the establishment of Frontex in 2006, the cooperation with Europol has been very productive. Meetings are held frequently at Directorate's level and are complemented by frequent visits at "technical level". Furthermore, Europol and Frontex regularly conduct joint assessments and operations. These activities have included: a joint strategic intelligence project to determine the high-risk migration routes regarding illegal immigration in the Western Balkans, the planning of a joint operation focusing on smuggling or trafficking of minors into the EU, or a joint operation on Chinese illegal migration arriving at the EU external borders by air.

As Frontex is planning to establish a Frontex Information System in 2008, Europol will also support Frontex in setting its information system to make it compatible with the Europol Information System and allow data sharing between the two organisations.

1.3. *Europol and the Police Chiefs' Task Force (PCTF)*

House of Lords requested information:

Distribution of tasks between Europol and the Police Chiefs' Task Force (PCTF) and other EU level institutions.

The Police Chiefs' Task Force was established at the European Council of Tampere in 1999. Its main purpose is "to exchange, in cooperation with Europol, experience, best practices and information on current trends in cross-border crime and contribute to the planning of operative actions."¹⁸ However, the Member States could not agree on the institutional positioning of the PCTF within the Council structures until May 2004. In the wake of the Madrid terrorist attacks, a compromise was found respecting the will of those Member States which favoured a policy-making role and those who favoured a more operational role.¹⁹

The agreement established the current distinction between on the one hand, the operational tasks of the PCTF, which requires that it is brought closer to Europol in order to get functional support (eg threat analysis, specialist crime investigation support, expert support on operational debriefing etc.), and on the other hand, the strategic tasks with regards to European police co-operation. The second aspect requires that the "highest representatives of the police of the Member States meet within the Council structures. This will allow them to discuss strategies and issues related to structural problems as well as provide a clear operational point of view in the Council's proceedings. Moreover, it will ensure the accountability of the European operational co-operation."²⁰ The agreement thereof established that PCTF strategic meetings would be held in Brussels within the Council's premises, as a "Council Committee", while operational meetings would take place at Europol.

In addition, the PCTF was asked to present the Council with a Comprehensive Operational Strategy Plan (COSPOL). COSPOL projects seek to identify criminal targets to be monitored by law enforcement agencies of the Member States. The idea is to set up "frontrunner groups" of Member States to concretely implement PCTF's decisions. COSPOL can be summarised as the appliance of project management to ensure intelligence led law enforcement policing. It also contributes to the implementation of the Council working priorities in the framework of the ECIM (see above).

Europol actively supports the PCTF by several means. Europol supports the organisation of the PCTF operational meetings in The Hague and hosts the PCTF Support Unit (composed by representatives of the Troika Member States) in its premises. A Europol staff member is fully dedicated to working as a link to the PCTF Support Unit. Europol also supports the operational activities of the PCTF by aligning its AWFs on the COSPOL Projects. Europol also contributes to specific projects of the PCTF (eg support to the "Atlas network" gathering the special intervention units of the MS) and to the strategic discussions of the PCTF (eg concerning the inter-operability of the various information systems across the EU).

Furthermore, Europol interacts with the EU political institutions (Council of Ministers, European Commission and European Parliament). Due to the inter-governmental character of the Justice and Home Affairs domain at EU level, a hierarchical relationship exists with the Council while the contacts with the Commission and the Parliament are limited to consultations and exchanges of views. This institutional setting will change with the entry into force of the Europol Council Decision. Europol will be financed on the Community budget²¹ proposed by the Commission and co-decided by the Council and the Parliament. Changes would also occur with the possible entry into force of the Lisbon Treaty.²²

¹⁸ Recommendation No.44, Presidency Conclusions, Tampere European Council, 15 and 16 October 1999.

¹⁹ Council of the European Union, Role and positioning of the Police Chiefs' Task Force (PCTF) with a view to strengthening the EU operational police co-operation, 14938/04, 18 November 2004.

²⁰ *Confer supra*

²¹ Presently Europol is directly financed by contributions from the Member States.

²² New decision-making procedures concerning JHA matters: co-decision and qualified majority voting in the Council

2. BILATERAL INFORMATION EXCHANGE

House of Lords' requested information

Bilateral information exchange: the extent to which Europol Liaison Officers (ELOs) make use of Europol's information exchange network rather than operating bilaterally.

This section presents statistical information on Europol, Member States and third party activity from 2003 until 2007. Following the EU and consequently the Europol enlargement developments which have been taken place since 2004, the number of Europol MS (and by consequence the number of third party) changed during the last years (details in Table 1). For Member States which joined Europol after 2003 the annual figures of the year of accession were used.²³

One of the tasks of Europol is to facilitate the exchange of operational information between the Member States. In addition to the Europol Information System and the information exchange taking place in the framework of the Analysis Work Files, a secure information exchange tool (InfoEx) was established to connect all the Member States (via the Europol National Units and the Europol Liaison Bureaux) without necessarily involving Europol (ie the organisation) to the specific information exchanges.

At present Europol is investing in its communication channel by replacing the current Information Exchange application by a more advanced tool (SIENA) which meets the requirements of the revised Europol Convention, the Council Framework Decision on simplifying the exchange of information (2006/960/JHA) and the future requirements of the Europol Council Decision. Meanwhile, the Member States are exploring the possibilities to increase their use of the Europol channel in the context of the strategic objective to make Europol the first platform of choice for the exchange of information through a strengthened ENU/ELO network. It should also be further explored what could be the role of Europol in supporting new initiative aiming at increasing bilateral information exchange between Member States (eg Prüm Treaty).

Regarding the bilateral exchange of information, Europol can only report on the use of the InfoEx. These statistics do not include direct contacts between Member States performed via other tools or networks (eg National liaison officers posted abroad, Interpol network, Schengen network). It is estimated that, out of the total volume of information exchange taking place via the Europol network, approximately 80% is done among the Member States (ie via the Info-Ex) without sharing the content of the information exchange with the organisation.

It should also be noted that the InfoEx is a tool based on cases. Every case initiated with the InfoEx receives a reference number. All messages exchanged in the frame of a case contain the same reference plus an extension indicating the order of creation. The following statistics are only based on the number of cases initiated. Therefore, they do not reflect the total number of messages exchanged.

Table 1

OVERVIEW OF EU MEMBER STATES' MEMBERSHIP TO EUROPOL

2003	2004	2005	2006	2007
Austria	Austria	Austria	Austria	Austria
Belgium	Belgium	Belgium	Belgium	Belgium
Denmark	Cyprus	Cyprus	Cyprus	Bulgaria
Finland	Czech Republic	Czech Republic	Czech Republic	Cyprus
France	Denmark	Denmark	Denmark	Czech Republic
Germany	Finland	Estonia	Estonia	Denmark
Greece	France	Finland	Finland	Estonia
Ireland	Germany	France	France	Finland
Italy	Greece	Germany	Germany	France
Luxembourg	Hungary	Greece	Greece	Germany
Netherlands	Ireland	Hungary	Hungary	Greece
Portugal	Italy	Ireland	Ireland	Hungary
Spain	Latvia	Italy	Italy	Ireland
Sweden	Lithuania	Latvia	Latvia	Italy
United Kingdom	Luxembourg	Lithuania	Lithuania	Latvia
	Malta	Luxembourg	Luxembourg	Lithuania
	Netherlands	Malta	Malta	Luxembourg
	Poland	Netherlands	Netherlands	Malta

²³ This also applies to the answer on Europol Information System (Point 5).

Portugal	Poland	Poland	Netherlands
Slovak Republic	Portugal	Portugal	Poland
Slovenia	Slovak Republic	Slovak Republic	Portugal
Spain	Slovenia	Slovenia	Romania
Sweden	Spain	Spain	Slovak Republic
United Kingdom	Sweden	Sweden	Slovenia
	United Kingdom	United Kingdom	Spain
			Sweden
			United Kingdom

Member States which joined Europol after 2003 appear in bold.

2.1. Overall MS bi/multilateral exchanges

Since 2003 a total of 25,674 cases were initiated by the Member States via Europol (See Table 2). From these cases 53.95% were bilateral cases and 46.05% were multilateral cases. The total number of messages exchanged by the Member States during the same period of time in the frame of these 25,674 cases is 622,831 messages.

Table 2

OVERVIEW OF BI/MULTILATERAL INFORMATION EXCHANGES

	2003	2004	2005	2006	2007
Number of bilateral cases	2,151	2,052	2,492	3,876	3,412
Number of Multilateral cases	1,858	2,756	2,945	1,901	2,231
TOTAL NUMBER OF CASES INITIATED BY THE EUROPOL MEMBER STATES	4,009	4,808	5,437	5,777	5,643

2.2. *Bi/multilateral exchanges per Member State*

Table 3
BI/MULTILATERAL EXCHANGES PER MEMBER STATE

MS	2003		2004		2005		2006		2007	
	MULTI	BI	MULTI	BI	MULTI	BI	MULTI	BI	MULTI	BI
Austria	217	249	292	179	235	244	123	259	246	254
Belgium	91	98	261	163	238	121	92	836	86	265
Bulgaria									16	25
Cyprus			20	1	60	18	79	63	134	62
Czech Republic			23	6	67	21	45	51	37	33
Denmark	101	143	154	125	132	110	98	134	51	113
Estonia					7	15	16	38	16	34
Finland	37	32	41	40	57	42	28	61	32	56
France	296	203	581	87	544	201	330	369	301	377
Germany	351	304	408	496	436	481	255	376	283	279
Greece	99	41	66	62	45	64	54	62	51	108
Hungary			16	13	65	70	66	135	92	245
Ireland	22	36	22	29	11	40	18	59	24	45
Italy	45	122	144	107	104	90	56	69	87	52
Latvia			4	0	21	7	30	16	24	17
Lithuania			21	5	76	43	54	89	80	59
Luxembourg	13	2	15	4	4	8	7	7	7	15
Malta			0	0	11	13	16	23	12	13
Netherlands	31	135	53	128	79	165	63	253	63	224
Poland			1	0	20	65	14	59	23	64
Portugal	62	162	83	173	50	223	55	202	74	192
Romania									44	8
Slovak Republic			9	1	74	13	39	24	20	27
Slovenia			11	4	54	23	39	12	65	20
Spain	101	82	138	91	191	143	132	249	122	228
Sweden	129	2	173	9	160	10	81	141	123	147
United Kingdom	263	540	220	329	204	262	111	289	118	450
Total	1,858	2,151	2,756	2,052	2,945	2,492	1,901	3,876	2,231	3412

3. COMBATING ORGANISED CRIME

House of Lords' requested information

- The extent to which Member States' law enforcement agencies are involved in Europol's organised crime tasks, including the Europol National Unit (ENU).
- Europol's role in training.

3.1. Involvement of Member States' law enforcement agencies in Europol's organised crime tasks

The priorities for Europol are laid down in the Annual Work Programme approved by the Council. The programme covers all forms of serious and organised crime and terrorism within Europol's mandate.

In relation to forms of serious and organised crime, the Council defined the following priorities:

- Drugs trafficking, especially in synthetic drugs;
- Smuggling and trafficking in human beings, especially linked to illegal immigration;
- Fraud, especially in the area of highly taxed goods and Value Added Tax carousels;
- Euro counterfeiting;
- Commodity counterfeiting and intellectual property theft;
- Money laundering.

These priorities are based on the OCTA 2007 while the OCTA 2008 is currently still being discussed within the Council structures.

With reference to article 4 and 5 of the Europol convention Europol National Units (ENUs) and their liaison offices (function as the extended arm of the ENU at Europol headquarters) shall be the sole liaison body between the MS competent law enforcement agencies and Europol. The principle has been slightly amended by the entering into force of the three protocols to the Europol convention in spring 2007, which now allows direct contact between Europol and Member States law enforcement agencies provided the contacts have been approved by the ENU and the ENU is kept informed about the communications between Europol and the competent authorities. The concept of Europol National Unit is not defined in a harmonised way. It is the responsibility of each Member State to identify the competent authorities to work with Europol and to organise their work with the organisation via the Europol National Unit. The Heads of Europol National Units (HENUs) meet regularly at Europol in order to discuss the operational activities of the organisation.

Europol has established an annual Client Survey, which gives the EU member states law enforcement organisations the possibility to express their satisfaction of the Europol products and services, respectively to propose future products and services. The annual client survey and results which were obtained from a questionnaire sent to the Heads of ENUs show satisfying results. These results are taken into consideration in the future planning cycles of the work programmes in as far as they meet the requirements of the priorities set by the council.

3.2. Europol's role in training

The strategic cooperation agreement between Europol and CEPOL was signed in 2007. The aim is to enhance training activities for senior police officers through close cooperation on training courses and the development of training material, also for the benefit of Europol (awareness and sharing of expertise).

The Europol training curriculum has been developed and rolled out via the national training centres of the EU Member States. In 2007 Europol supported 25 courses. In 2008 so far five courses have been conducted with the support of Europol.

With regard to in-house expertise and courses developed for analysis (operational-, strategic- and financial-analysis) Europol delivered training at the request of several Member States and to one non-Member States. In 2007 Europol supported three operational analysis courses, four strategic analysis courses and two financial analysis courses. In 2008 one operational analysis course has been delivered until now.

4. COMBATING TERRORISM

House of Lords' requested information:

The extent to which Member States' law enforcement agencies are involved in Europol's counter-terrorism tasks, including the Europol National Unit (ENU).

With respect to terrorism, Europol places particular emphasis on supporting the Member States in identifying Islamist terrorism networks and other terrorist groups or networks posing a specific threat to the EU.

Europol develop working relationships with all law enforcement authorities competent for the fight against terrorism in the Member States and, to some extent, has also developed contacts with the security/secret services community. The definition of "terrorism competent authority" is defined by each Member State individually. All exchanges of information with Europol take place via the Europol National Units in compliance with the Europol Convention.

Europol supports investigations in Member States by providing operational and strategic analysis and assistance on site, which helps building capacity in this field. Generally speaking, there is today an increased commitment of the Member States to exchange sensitive intelligence in terrorist investigations via Europol databases and exchange systems. The current situation is in sharp contrast with the situation that prevailed a few years ago.

Europol has two Analysis Work Files focusing on terrorist activities. In addition, specific products are developed in relation to terrorism: the EU Terrorism Situation and Trend Report, the "Check The Web" project (information sharing on the use of the Internet by Islamist terrorists), support to major international events (threat assessments and seconding of Liaison Officers), the Counter-Proliferation Programme (explosives). A "First Response Network" is also in place that allows a flexible support to Member States investigations immediately after terrorist incidents and consists of a network of more than 50 anti-terror experts from all Member States.

5. EUROPOL INFORMATION SYSTEM

House of Lords' requested information:

Europol's information exchange network: the use that is being made by MS' law enforcement authorities of the Europol Information System.

5.1. *Progression of the IS content*

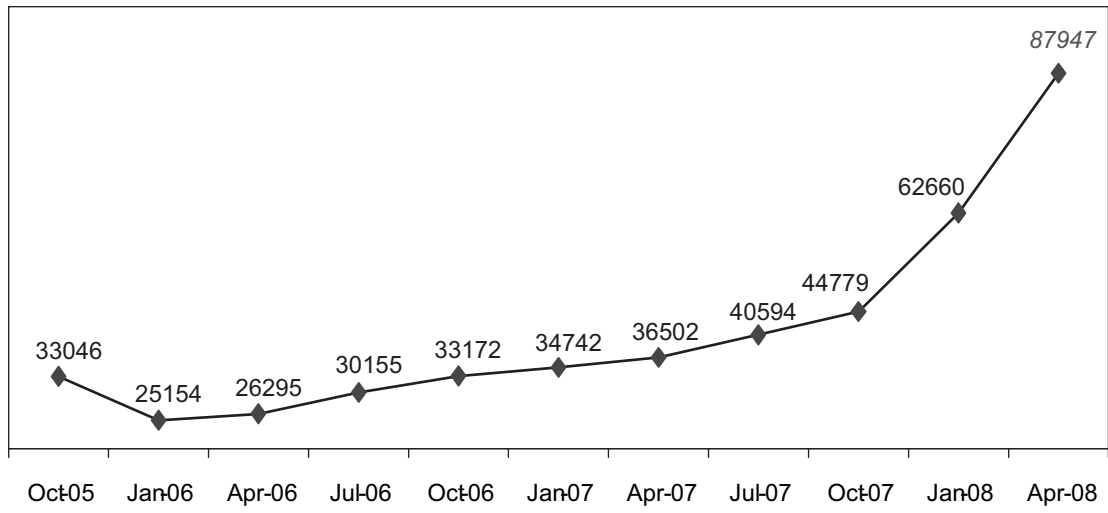
The Europol Information System (IS) was declared operational on 10 October 2005. From this date on, Member States were able to connect to the system and started using it. The Europol Secure Network was accredited by the Security Committee on 15 January 2008.

Criminal information is stored in the IS by creating data objects and relationships between these data objects. A data object is a folder clustering all relevant information on a particular entity, event or device relevant for the description of the criminal case (suspect, crime, weapon, car, passport, etc.).

The chart below (Chart 1) presents the quarterly progression of the IS content (total number of objects stored in the system) from October 2005 until April 2008.

Chart 1

QUARTERLY PROGRESSION OF THE IS CONTENT (10/05 TILL 04/08)

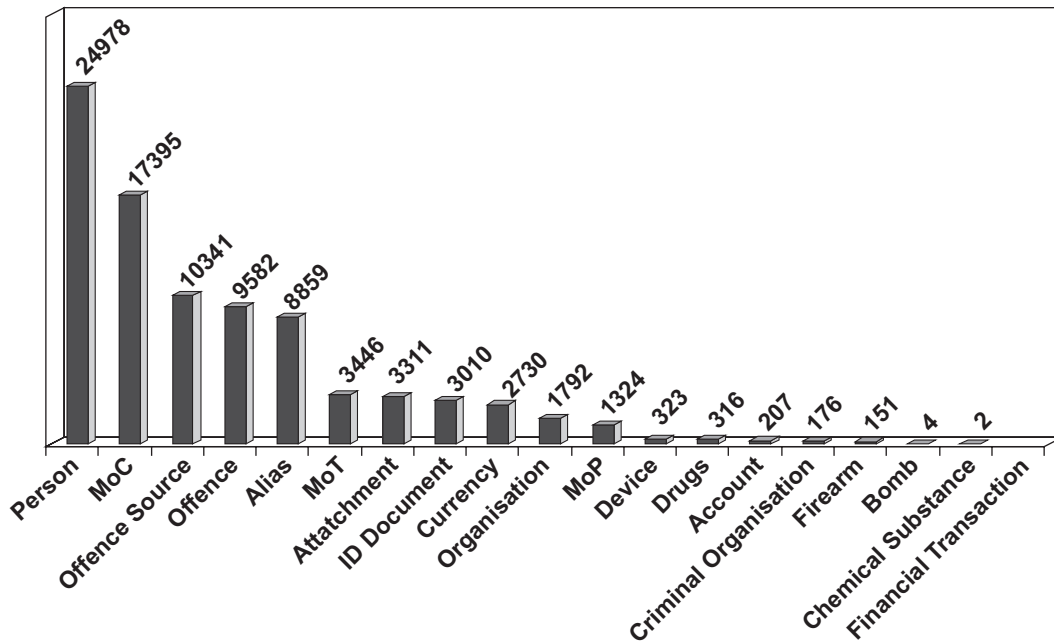


5.1.1. IS content on 1 April 2008

The chart below presents the total number of objects stored in the IS on 1 April 2008 per object type.

Chart 2

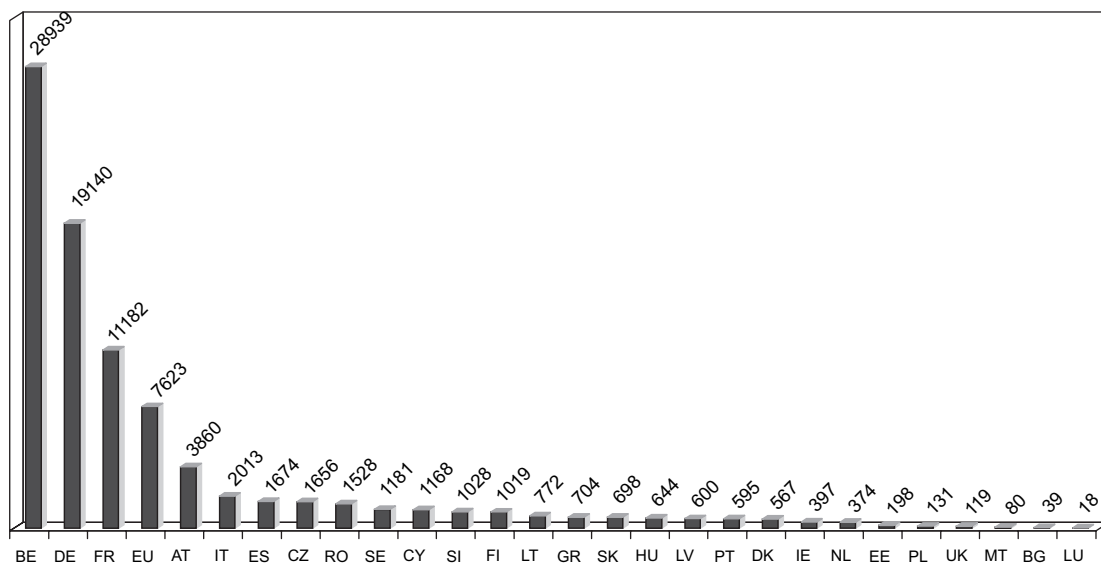
IS CONTENT PER OBJECT TYPE



The chart below presents the number of objects contributed to the IS per owner.

Chart 3

IS CONTENT PER MEMBER STATES



5.1.2. Number of IS users per Member State

An IS user is a person who, by reason of his (her) duties or obligations, needs to be acquainted with such information or to handle it. Persons entrusted with the processing of information shall have undergone any necessary security clearance and shall have received special training.

The table below (Table 4) presents the total number of IS users per Member State on 1 April 2008. Member State figures include the number of users making use of the system at national level and Member State users working in the Europol premises as Member State Liaison Officers in the Liaison bureaux.

Table 4

NUMBER OF IS USERS PER MEMBER STATE

	<i>Total</i>
AT	102
BE	150
BG	6
CY	6
CZ	15
DE	502
DK	101
EE	13
FI	45
FR	62
GR	22
HU	11
IE	16
IT	24
LT	24
LU	2
LV	9
MT	3
NL	15
PL	10
PT	5
RO	5
SE	95
SI	15
ES	4
SK	19
UK	9
EU ²⁴	189
Total	1,479

5.1.3. IS searches

The IS was technically ready to be used by the Member States at national level in October 2005. However, each Member State had to sign a bilateral agreement for the interconnection of the computer networks between Europol and the competent services at national level. The deployment of the system in the Member States was progressive and completed for all Member States in February 2008.

The table below (Table 5) shows the progression of the IS use at Member States level per Member State.

²⁴ EU: Europol staff members.

Table 5

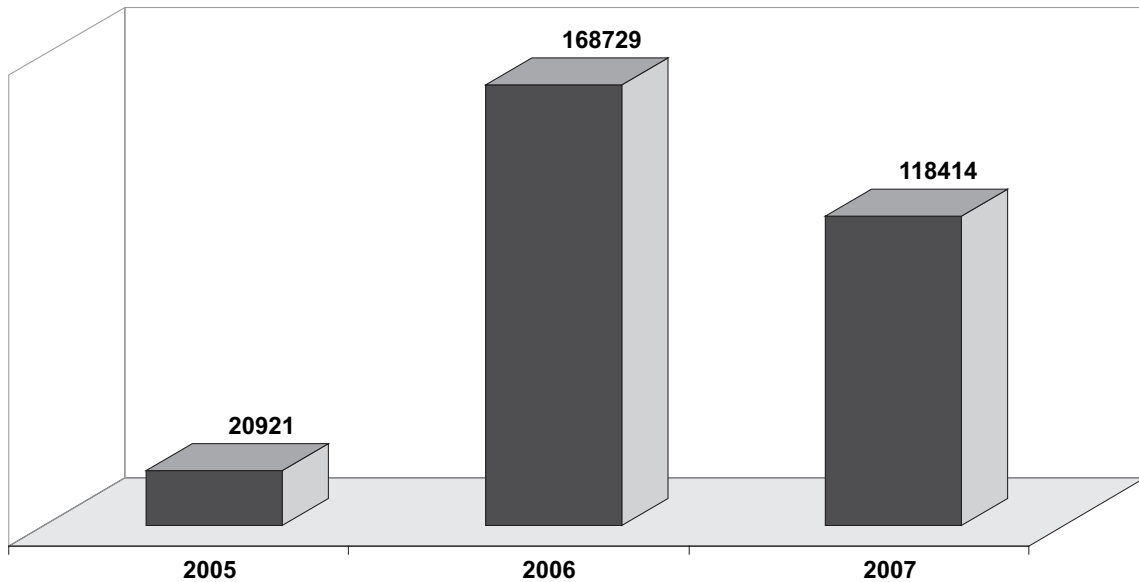
USE OF THE IS PER MEMBER STATE, AT MEMBER STATES LEVEL

2005	2006	2007	2008
France	France	France	France
Germany	Germany	Germany	Germany
Portugal	Portugal	Portugal	Portugal
Sweden	Sweden	Sweden	Sweden
United Kingdom	United Kingdom	United Kingdom	United Kingdom
	February	Italy	Italy
	Italy	Hungary	Hungary
	March	Austria	Austria
	Hungary	Lithuania	Lithuania
	April	Cyprus	Cyprus
	Austria	Czech Republic	Czech Republic
	Lithuania	Greece	Greece
	May	Slovenia	Slovenia
	Cyprus	Finland	Finland
	Czech Republic	Slovak Republic	Slovak republic
	June	Denmark	Denmark
	Greece	Latvia	Latvia
	Slovenia	The Netherlands	The Netherlands
	July	Poland	Poland
	Finland	February	Ireland
	Slovak Republic	Ireland	Estonia
	December	April	Spain
	Denmark	Estonia	Luxembourg
	Latvia	May	Belgium
	Netherlands	Spain	Malta
	Poland	Luxembourg	Bulgaria
		Belgium	February
		September	Romania
		Malta	
		October	
		Bulgaria	

The chart below presents the total number of searches ran in the IS by Member State users (at national level and from the Member State liaison bureaus) from 2005 until 2007.

Chart 4

TOTAL NUMBER OF SEARCHES IN THE IS



5.1.4. Matches between IS objects

The IS Cross Check (CC) functionality is an automatic detection of potential identical objects across multiple Member States (Cross Border Crime Check, CBCC). This functionality is available for four object types: Person, Means of Communication, Means of Transportations and Criminal Organisation. When data inserted triggers a CC event, the parties involved must communicate to confirm the match and allow investigation units to exchange further details.

97 cross-border matches on cases contributed by Member States and Third Parties were available in the IS on 1 April 2008 by the CC functionality. 88 matches on person objects, six on means of communication objects and three on means of Transportation objects.

6. EUROPOL'S INFORMATION EXCHANGE WITH THIRD PARTIES

House of Lords requested information:

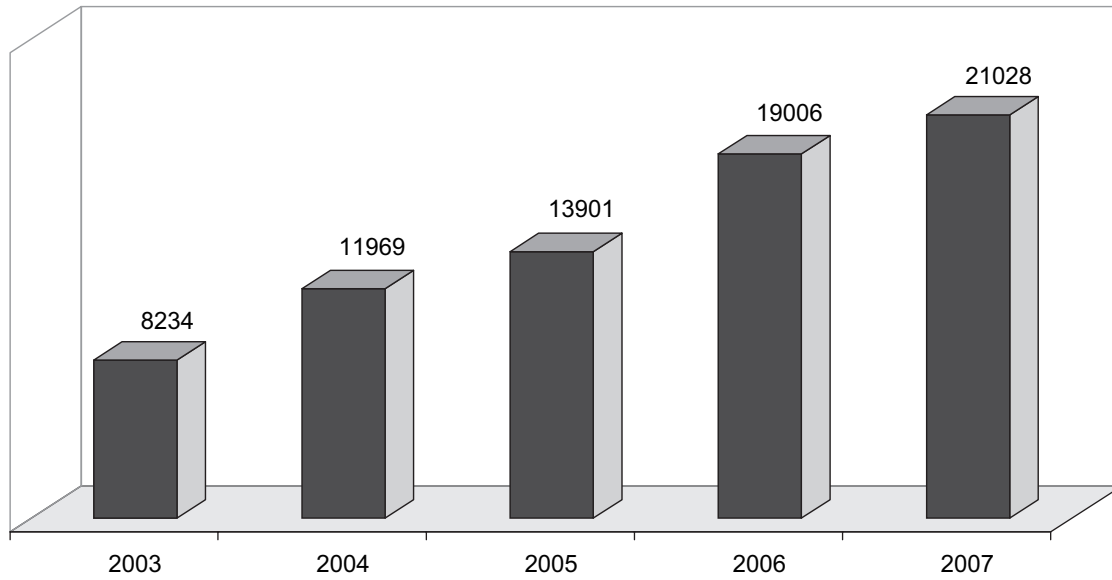
The extent to which information is exchanged by Europol with third countries with which it has cooperation agreements.

6.1. *Operational information exchange with Third Parties*

The chart below presents the total number of messages exchanged with Europol Third Parties using the InfoEx from 2003 until 2007. The list of Europol Third Parties and figures used to create this chart are available in Table 6 below.

Chart 5

TOTAL NUMBER OF MESSAGES EXCHANGED WITH THIRD PARTIES



It should be noted that the success of cooperation with a Third Partner is not only reflected by the volume of information exchange. Europol conducts in-depth evaluation of its cooperation agreement that take into account all relevant factors by means of specific questionnaires and interviews of all stakeholders.

Table 6
EXCHANGE OF OPERATIONAL INFORMATION WITH EUROPOL THIRD PARTIES

This table shows the total number of messages exchanged with Europol Third Parties from 2003 until 2007 per Third Party.

	2003	2004	2005	2006	2007
Bulgaria (BG)	174	Bulgaria (BG)	1,257	Bulgaria (BG)	1,844
Cyprus (CY)	132	Estonia (EE)	1,420	Romania (RO)	2,519
Czech Republic (CZ)	784	IM1 Co-operation Unit*	33	Canada (CA)	631
Estonia (EE)	650	Romania (RO)	379	Croatia (HR)	4,732
Hungary (HU)	872	Iceland (IS)	624	Iceland (IS)	2,169
IM1 Co-operation Unit*	1,974	Norway (NO)	4,819	Norway (NO)	290
Poland (PL)	809	Colombia (CO)	1,349	Switzerland (CH)	1,258
Slovak Republic (SK)	63	Turkey (TR)	104	Colombia (CO)	118
Slovenia (SI)	486	LO Europol (Washington)	1,440	Turkey (TR)	340
Iceland (IS)	302	Eurojust	12	LO Europol (Washington)	LO Europol (Washington)
Norway (NO)	1,065	LO Europol (Interpol)	532	LO FBI	61
LO Europol (Washington)	569			LO Europol (Interpol)	292
LO Europol (Interpol)	354			LO US Secret Service	372
				LO US Postal Inspection Service	2
				Eurojust	121
				LO US Drugs Enforcement	22
				Agency (DEA)	Agency (DEA)
				LO US Secret Service	LO US Secret Service
				LO FBI	LO FBI
				Eurojust via Europol	Eurojust via Europol
				LO Europol (Interpol)	LO Europol (Interpol)
Total	8,234	11,969	13,901	19,006	21,028

* IM1 Co-operation Unit: Europol unit (currently called IMT4) processing the exchange of information with Third Parties. During the period of time between the signature of a cooperation agreement with a Third Party and the moment when an information exchange account is created for this Third Party, the exchange of information is processed through this Europol unit account.

7. GOVERNANCE AND METHODOLOGIES

7.1. *The extent to which Europol's objectives and governance structure are open to wide interpretation.*

The activities of Europol are regulated by the Europol Convention as amended by the three protocols to the Convention. Most likely as from 1 January 2010, a Council Decision will be the new legal basis of the organisation.

Both the Convention and the future Council Decision clearly outline the mandate of the organisation (ie support to the competent authorities of the Member States in the fight against terrorism and serious forms of international crime).

The legal framework also delimitates the roles and responsibilities of the Director and of the Management Board (MB), where all Member States are represented. The Convention and the Council Decision regulates which areas of responsibility belong to the Director (eg staff matters), to the MB (eg approval of cooperation agreements with other EU bodies) and to the Council (eg appointment of the Director & Deputy Directors and approval of the annual Work Programme and Budget).

7.2. *Member States' appreciation of Europol's products.*

House of Lords' requested information

The value attributed by Member States and other customers to the OCTA, TE-SAT, AWF and other products and services offered by Europol.

7.2.1. Value attributed to the AWF and OCTA

As a key component of the evaluation process Europol commissions client satisfaction surveys annually. The client survey is designed to measure Image, Customer Expectations, Customer Perceived Product Quality, Customer Perceived Service Quality, Customer Perceived Value, Customer Satisfaction and Customer Loyalty. It also measures satisfaction with particular products and services. Participation in the survey is by Member State and latterly other partners.

Table 7

RESULTS OF CLIENT SURVEY OF EUROPOL'S PRODUCTS

<i>Result</i>	<i>Image</i>	<i>Expectations</i>	<i>Product Quality</i>	<i>Service Quality</i>	<i>Perceived Value</i>	<i>Loyalty</i>
2005	61.8	68.6	65.8	66.1	58.5	72.2
2006	63.5	69.5	68.3	68.0	62.5	73.9
2007	67.6	69.8	72.5	72.4	67.5	75.3

The general findings are as follows:

- A positive trend is evident across all quality dimensions over the last three years.
- The users in the Member State perceived that the products they received from Europol largely met their expectations.
- Service quality refers to the extent to which services are experienced as positive and the perceived level of willingness by staff to deliver services to customers. The values indicate clear positive assessment.
- Perceived value (value for money) is devised in order to capture the relationship between what is obtained (delivered) and the price/cost of obtaining this. This trend indicates increased perception of value for Europol's customers.
- In relation to specific products and services, in 2007 all products and services received scores indicating positive or satisfactory assessment.

Table 8

ASSESSMENT OF EUROPOL'S PRODUCTS

<i>Scores</i>	<i>No. of products/services 2007</i>
7.3–8.0 (positive assessment)	26
6.4–7.2 (satisfactory)	40
less than 6.4 (requires attention)	0

- Specifically, both the OCTA and Te-SAT received high satisfactory scores of 7.2
- Operational and analytical support (AWFs) in the areas of forgery of money, payment card fraud and precursor chemicals and synthetic drugs received the highest customer satisfaction scores.

7.2.2. Value attributed to the TE-SAT

The EU Terrorism Situation and Trend Report (TE-SAT) was established in the aftermath of the 11 September 2001 attacks in the United States as a reporting mechanism from the EU Council's Terrorism Working Party (TWP) to the European Parliament. Initially, the TE-SAT was issued by the respective Presidency of the Council based on a file and analysis supplied by Europol. In 2006 the TE-SAT became a Europol product, and a new methodology was introduced to enhance the quality of the report. This meant, among other things, that Europol was able to set the intelligence requirements and widen the data collection for the TE-SAT. Since this change, Europol has presented two reports to the European Parliament, TE-SAT 2007 in March 2007 and TE-SAT 2008 in March 2008.

The TE-SAT is the only official report which, based on contributions from law enforcement agencies in the member states, provides a statistical overview of the number of terrorist attacks, arrests and activities at EU level. The contributed information mainly derives from criminal investigations into terrorist offences. Member States are asked to provide Europol with both a quantitative and a qualitative contribution. The quantitative part highlights the number of attacks and arrests that have occurred during the previous year. The qualitative contribution provides a general description of the situation regarding terrorism in each member states.

The data contributed by the member states to the TE-SAT 2008 was generally of good quality with a high level of details. In addition to the quantitative contribution all Member States also provided Europol with a qualitative contribution. This is a clear improvement from the TE-SAT 2007, when only 13 Member States contributed qualitative data. For the TE-SAT 2008, 85% of all data used in the report came from the Member States contribution. However, as in 2006, UK authorities were not able to provide Europol with comprehensive quantitative data for the TE-SAT 2008.

The increase in the quantity and quality of contributed data indicates an increased interest from the Member States in relation to the TE-SAT. The report has also become an important awareness tool for decision makers at European level. The TE-SAT receives a fair amount of attention from the media. As the TE-SAT 2008 has just been released it is not possible to report on the impact it will have. However, it can be noted that the TE-SAT 2007 was frequently used as a reference document, both in media and in academic reports. Europol has also received requests from institutions and universities, including UK based, to use the TE-SAT as course literature.

7.3. *Joint Supervisory Body and data protection**House of Lords' requested information*

The inspection mechanisms used by the Joint Supervisory Body on data protection for ensuring quality of data and lawful use of data.

Pursuant to Article 24 of the Europol Convention, the Joint Supervisory Body (JSB) has the task of reviewing the activities of Europol in order to ensure that the rights of the data subject are not violated by the storage, processing and utilisation of the data held by Europol. In this framework the JSB conducts an inspection visit at Europol on an annual basis. The most recent inspection took place from the 11 to 14 March 2008.

The JSB Inspection Team has access to all information stored in Europol's computerised systems as well as to all documents and paper files. Europol must supply the JSB Inspection Team with all requested information.

The Inspection Team performs its tasks by combining document review sessions with interviewing Europol staff, each year covering specific areas of main interest. To facilitate their work, Europol provides the team with a comprehensive set of all relevant policies, standards and procedures on the handling of personal data.

The findings of the JSB Inspection Team are summarised in an inspection report. During each inspection the JSB Inspection Team is initially informed by Europol about the implementation status of the recommendations made in the previous inspection report.

The JSB Inspection Team checks the Logbook of the Europol Data Protection Officer who conducts frequent checks on all systems. The Data Protection Officer acts in close co-operation with the AWF teams and the SC Units where the Europol information is processed.

Furthermore, the JSB Team, inspects the handling of Article 19 requests and makes additional checks related to the requests of citizens who appealed against the decision of Europol to refuse the communication of data.

The Europol Analysis System is—each year—subject to thorough inspection. The Inspection Team selects particular AWFs and inspects their content in the presence of the respective Project Managers and Lead Analysts who are available for questions on the spot. The inspectors eg check link charts, compliance with the opening orders, evaluate whether specific entries are covered by Europol's mandate and which results have been achieved so far.

The JSB finally also inspects the Europol Information System processing data stemming from all 27 Member States to evaluate whether the inclusion of the respective data into the database is covered by the underlying legal framework.

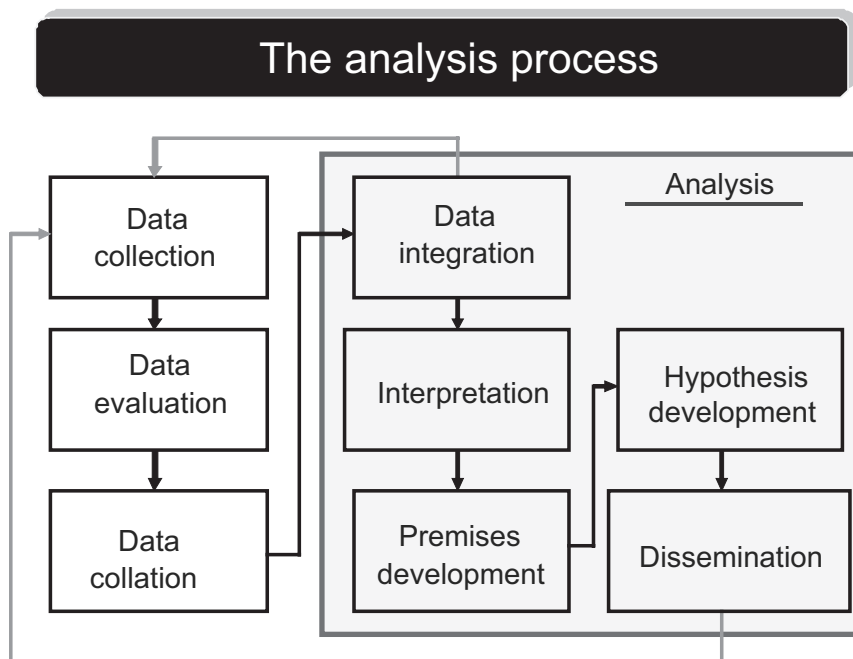
7.4. Definition of analysis in the Europol framework

The methodological aspects of Europol's analytical activities are not defined in the Europol Convention.

Analysis

Analysis can be defined as the careful examination of information to discover its meaning and essential features. Analysis highlights information gaps, the strengths, the weaknesses and pinpoints the way forward.

The analytical process is the development of intelligence to direct law enforcement objectives, both for short-term operational aims and for long term strategic reasons. The scope for analysis and its overall credibility is dependent on the level and accuracy of the information supplied combined with the skills of the analyst. Analysis is a cyclical process, which can be performed on all types of law enforcement objectives. Different types of crimes and operations require different scenarios, but to enable effective analysis the type of information which is used should not be pre-set by artificial measures, but by the availability of the information and the legal restrictions of each country.



Data integration

Data integration is the first phase of the analytical process combining various types of information from different sources to establish areas of weakness in order to draw inferences for law enforcement action. Various techniques are used to display this information, the most commonly accepted being the use of charting techniques to show links.

The next step in the analytical process is interpretation which frequently means going beyond the facts, asking the “what if” questions. Indeed this should be a prerequisite requirement for any analytical project. For this to be successful the previous stages must be accurate and complete, to minimise the risk that the analyst takes in making an informed judgement on the information available. The hypotheses or inferences made can be tested by the operational teams and feedback is then essential.

The disciplined approach of analysis requires the maximum amount of information to be assessed at the time of integration to determine its relevance. Excluding information at the beginning of the process can lead to the significance of a vital piece of information being overlooked resulting in the analysis being incorrect, and more importantly jeopardising an inquiry.

It is acceptable to collect, evaluate and analyse information, but all these activities should lead to increased knowledge of, and insight into, criminal activities that can be put to operational use. To really contribute to investigations the analyst’s aim should be to produce hypotheses and inferences that lead to additional clues for fact finding. In hypotheses and inferences indications should be given to questions related to:

- Who are the key persons and accomplices?
- What are their (criminal) activities?
- Why are they doing what they are doing in the way they are doing it?
- Where are those activities located?
- When do they take place?
- How are those activities carried out?

Hypotheses

Hypotheses are “conclusions or assumptions you may reach about anything at all”. Hypotheses contain a great deal of speculation and need to be confirmed, modified or rejected by the findings that come out of investigation.

Hypotheses point into directions in which the investigation could be further developed. They are working ideas for the investigative team and need to be the product of inductive logic to surpass the obvious picture that emerges from data conveniently being available. It is creative thinking that produces the results that are of value to investigative teams, not merely the bookkeeping of results coming out of investigations. Hypotheses and inferences are an integral part of all analyses both operational and strategic.

Inference

In strategic intelligence analysis hypotheses and inferences concentrate upon questions related to intentions, possibilities, limitations and vulnerabilities of criminal adversaries, answering the who, what, when, why, where and how questions in as much detail as possible and speculate about future events, to allow for planning and preparing effective long term action. The main difference between hypotheses and inferences in operational intelligence analysis is that the latter deals with specific case related issues that can be put to immediate operational use.

Conclusions and recommendations

The development and testing of hypotheses, in the context and with the benefit of all the research done in the analysis process should finally result in the drafting of conclusions and recommendations. Conclusions and recommendations are a vital element of any analysis in communicating the essence of the work done and the insights resulting from it to the parties with operational or managerial responsibilities.

8. IMPACTS OF THE COUNCIL DECISION

House of Lords requested information:

How the provisions of the Council Decision amend the current rules and have the potential to change all of these matters?

— *Strategic Coordination*²⁵

— *the development of an EU Architecture of Internal Security*²⁶, *intelligence led policing and the European Criminal Intelligence Model.*

The Council Decision (hereafter CD) does not alter the EU Architecture of Internal Security nor the European Criminal Intelligence Model.

— *Europol's relationship with other EU/EC Agencies such as Eurojust and Frontex, and the extent to which there is cooperation between these Agencies, especially in the preparation of the Organised Crime Threat Assessment (OCTA), the EU Terrorism Situation and Trend Report (TE-SAT), and Analysis Work Files (AWF);*

Article 22 CD reiterates the provisions stated in article 42 of the Europol Convention with regards to Europol's relationship with other EC/EU Agencies. However, the article is more specific as it includes a list of agencies and bodies concerned, namely: Eurojust, the European Anti-Fraud Office (OLAF), the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), the European Police College (CEPOL), the European Central Bank and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA).

In addition, article 22.3 CD allows Europol to directly receive, use and transmit information including personal data and classified information prior to the entry into force of an agreement with Community and Union related institutions, bodies and agencies included in the list referred to in article 22.

This new provision is justified by the fact that all agencies of the European Union share the same data protection regime. With the exception of OLAF (with which an operational cooperation agreement is not yet concluded), this new provision will not fundamentally impact Europol's relation with other EU bodies as all necessary cooperation agreements are already in place.

Other than that, Europol's relation with other EU/EC agencies will not be altered by the CD.

— *the distribution of tasks between Europol and the Police Chiefs' Task Force (PCTF) and other EU level institutions;*

The CD does not amend the distribution of task between Europol and the Police Chiefs' Task Force (PCTF) and other EU level institutions.

— *Bilateral information exchange*

— *the extent to which Europol Liaison Officers (ELOs) make use of Europol's information exchange network rather than operating bilaterally;*

The competences and role of Liaison Officers will not be affected by the CD apart from article 9.3 (d) which provides that Liaison Officers may "assist in the exchange of information from their national Unit with the Liaison Officers of other Member States" using the Information Exchange network and these "bilateral exchanges may also cover crimes outside of the competence of Europol, as far as allowed under national law".

Following this change, an increased use of the Europol channel by Member States' Liaison Offices is expected. This is due to the fact that information exchanges outside the competence of Europol will be formally allowed. Europol is aware that this is already taking place, to an unknown extent.

— *Combating Organised Crime*

— *the extent to which Member States' law enforcement agencies are involved in Europol's organised crime tasks, including the Europol National Unit (ENU);*

Europol's slightly extended competences will no longer exclusively cover organised crime and terrorism but also other serious forms of crime, especially crimes committed in a "non-organised fashion". Furthermore, article 4.1 offers the possibility to the Member States (without any obligation) to provide information on crimes falling outside Europol's competences. However, these provisions do not alter the role of the Europol National Units (ENUs) since the information provided shall in principle still be exclusively routed via the ENU unless the national authorities decide otherwise (as already allowed by the so-called Danish protocol to the Europol Convention). In addition, article 8.7 defines the role of ENUs in greater details. Europol National

²⁵ The structure and questions are taken from the call for evidence issued by the Sub-Committee (written in italic).

²⁶ Architecture of Internal Security, Council Secretariat doc. n° 9596/1/06 JAI 271, approved by the Justice and Home Affairs Council of 1–2 June 2006

Units are given the opportunity to meet at their own will and their tasks will be slightly increased without deviating from their original task.

Although the access and retrieval rights for the Europol Information System remain unchanged; article 13.6 CD offers the possibility for “authorities designated to this effect by the Member States” to query the Information System on a “hit-no hit” basis.

— *Europol's role in training*

The role of Europol in training activities remains the same, ie Europol may assist Member States through the support, advice and research in the training of Member States' competent authorities. However, article 5.5 (a) confirms the need for cooperating with the European Police College (CEPOL).

— *Combating Terrorism*

— *the extent to which Member States' law enforcement agencies are involved in Europol's counter-terrorism tasks, including the Europol National Unit (ENU);*

The competences of Europol to support action of the Member States in combating terrorism remain unchanged (see article 3), as does the role of the ENU in this respect.

— *Europol's Information Exchange Network*

— *the use that is being made by Member States' law enforcement authorities of the Europol Information System;*

Although the access and retrieval rights for the Europol Information System remain unchanged, article 13.6 CD offers the possibility for “authorities designated to this effect by the Member States” to query the Information System on a “hit-no hit” basis.

— *Europol's Information Exchange with Third Parties*

— *the extent to which information is exchanged by Europol with third countries with which it has cooperation agreements;*

Due to its slightly changed mandate (crimes committed in a “non-organised fashion”), Europol will also be able to exchange information on these types of crime with third parties.

Also, Chapter IV of the Council Decision allows Europol to directly receive and use information, including personal data, prior to the entry into force of an agreement with third states and organisations as referred to in article 23.2 and article 23.3. In the case of Community and Union related institutions bodies and agencies (article 22.3) the exchange of personal data is already permissible prior to the conclusion of an agreement.

However, Europol is not allowed to transmit personal data and classified information to third states and organisations prior to the entry into force of the agreement (article 23.4).

Article 23bis reiterates that Europol shall solely transmit information to third parties with the Member States' consent.

Article 24 provides a detailed framework for handling information received from private parties and exclude the exchange of information with these private entities (only receipt).

— *Governance and Methodologies*

— *the extent to which Europol's objectives and governance structure are open to wide interpretation;*

Europol's objectives:

This provision underwent editorial changes aimed at removing those parts which were meant to regulate Europol first years of existence but which are now obsolete (old Article 2.1 of the Europol Convention). The link between the competence of Europol and the crime areas is made in article 4.1 of the CD.

Article 3 spells out Europol's objectives, however a separation is made between Europol's objectives on the one hand and Europol's competences and tasks on the other hand, which are outlined more clearly in article 4 and article 5. By doing so, a clearer and thus better separation between objectives, competences and tasks has been achieved. The definitions and principles remain however identical.

Europol's governance structure:

Europol's governance structure is defined in details in articles 35, 36 and 37. The Management Board and the Director continue to be organs of Europol. However, the Financial Controller and the Financial Committee will cease to be organs of Europol. Under the new legal framework Europol will be financed by the Community budget, which implies that Europol's budget will be jointly decided by the Council of Ministers and the European Parliament. Its implementation will ultimately be scrutinized by the European Court of Auditors. The day to day control of the implementation of Europol's budget will be undertaken by the Internal Audit Function as laid down in article 36.8 (ebis).

- *the inspection mechanisms used by the Joint Supervisory Body on data protection for ensuring quality of data and lawful use of data;*

The Council Decision on Europol does not have any considerable impact on the mechanisms used by the JSB Inspection Team for ensuring quality and lawful use of personal data. The most significant innovation to be mentioned, however, is that Europol may under the framework of the Council Decision also establish “other systems processing personal data” besides the AWFs/Index System and the Information System. Such decision is to be made by the Management Board and approved by the Council. The JSB has to be consulted before such new databases are setup (see article 10.1 and 10.2 CD). The above described inspection mechanisms will also apply to any further databases operated by Europol.

- *Definition of analysis in the Europol framework;*

As in the Europol Convention, the Member States have not specifically defined the word “Analysis” in Europol’s new legal framework.

9. TABLES, CHARTS AND ACRONYMS

Table 1:	Overview of EU Member States’ membership of Europol.
Table 2:	Overview of bi/multilateral information exchanges.
Table 3:	Bi/multilateral exchanges per Member State.
Table 4:	Number of IS users per Member State.
Table 5:	Use of the IS per Member State, at Member States level.
Table 6:	Exchange of operational information with Europol Third Parties.
Table 7:	Results of client survey of Europol’s products.
Table 8:	Assessment of Europol’s products.
Chart 1:	Quarterly progression of the IS content (10/05 till 04/08).
Chart 2:	IS content per object type.
Chart 3:	IS content per Member States.
Chart 4:	Total number of searches in the IS.
Chart 5:	Total number of messages exchanged with Third Parties.

CEPOL	European Police College
COSI	Standing Committee on Internal Security
COSPOL	Comprehensive Operational Strategy Plan
CTC	EU Counter Terrorism Coordinator
ECB	European Central Bank
ECIM	European Crime Intelligence Model
ELO	Europol Liaison Officer
EMCDDA	European Monitoring Centre for Drugs and Drugs Addiction
ENU	Europol National Unit
EU	European Union
HENU	Head of Europol National Unit
InfoEx	Europol secure information exchange tool
JHA	Justice and Home Affairs
JIT	Joint Investigation Team
NIM	National Intelligence model
OCTA	Organised Crime Threat Assessment
OLAF	European Anti-Fraud Office
PCTF	Police Chiefs Task Force
SitCen	EU Joint Situation Centre
TE-SAT	EU Terrorism Situation and Trend Report
UNODC	United Nations Office on Drugs and Crime

Examination of Witness

Witness: MR MAX-PETER RATZEL, Director of Europol, examined.

Q167 Chairman: Director, good afternoon. Thank you again for entertaining us in a way we had not expected and which we much appreciate. We have a lot of questions we would like to ask you. You realise you are on the record and I do not need to repeat what I said earlier at lunch about the work of the Committee. Director, it seems to me that you did say a number of extremely interesting things to us over lunch, and if a moment came where you thought it was appropriate to repeat them during the session we have with you we would welcome that enormously. As far as politicians are concerned, there are some politicians who think if they have said something once there is no need ever to say it again, which is an absolute myth because in politics you have to say it time and time again. Can I begin by thanking you for your helpful evidence, but you say that Europol plays an important role in the EU Architecture of Internal Security by assessing EU-wide organised crime threats and by producing intelligence in the framework of its Analysis Work Files. What exactly is an Analysis Work File? Would you like to explain in detail what that is?

Mr Ratzel: Thank you, my Lord Chairman. First of all I would like to express Europol's gratitude for the opportunity to provide you with answers to your questions. We see this as an opportunity. We regard it as an acknowledgement of our work here, and on behalf of the staff members of Europol and the Directorate I really would like to express our appreciation. Having been invited to give testimony I have also to tell you that I will give you testimony as Director of Europol headquarters. Sometimes it is necessary to make people aware that the word "Europol" has to be understood in different ways. Europol itself can be seen either as the headquarters, which is represented by me as the Director, or it can be seen in a wider understanding as representing all competent authorities in the Member States, including all governing bodies, and, of course, I would not feel entitled to speak on behalf of Europol in the wider understanding. You would have to ask the Council, the Management Board and all the other fora but also the competent authorities in the Member States, but I guess that you are aware that I represent the headquarters and I speak on behalf of the organisation; I am not speaking on behalf of the liaison officers who are part of our local environment here but are not part of Europol as headquarters under my control and supervision. Having said this, let me come to your questions in more detail. Analysis Work Files are quite sophisticated databases. You may remember what I said earlier today, that Europol has three major functions. We support Member States with three functionalities. One is that we are an information facilitator. That means we provide a technical platform where

Member States can communicate with each other. This technical platform is called an information exchange system. In the future it will be replaced by a new platform which will be called SIENA. This platform is accompanied, supplemented and supported by a human factor, which is the liaison officers' network. Together the liaison officers and the technical platform provide the information facilitating role. The second functionality is that we provide analysis to Member States, strategic analysis for strategic purposes and operational analysis for very concrete operational purposes. For that analysis we use our information system but especially the Analysis Work Files and I will come to that later on. The third functionality is that we provide operational support. A pre-condition for operational support is that Member States invite us to provide operational support and then we can go on the spot and follow the demand and the invitation by the Member States. However, it is necessary to mention that even when they are on the spot our staff members do not have any coercive powers. We do not arrest people, we do not seize drugs, we do not search houses, but we can participate in these actions being taken by responsible staff of the Member States, and also, of course, we provide training and expertise on the spot when requested. Let me come back to the Analysis Work Files. As I told you, this is a very sophisticated type of database for supporting investigations and providing various types of analysis to the operations and investigations of Member States. As the intelligence-led policing concept was introduced during the last few years, based on a decision of the European Council taken in The Hague programme in November 2004, one of the elements was for Europol to gather information from ongoing investigations, undergo crime analysis and feed back the results. The information system itself mainly holds factual so-called hard data on crimes, means of communication and means of transportation, but the Analysis Work Files are more sophisticated and more detailed. In the Analysis Work Files we can hold factual hard data but also soft data. These Analysis Work Files (and at the moment we are running 18 of them) can be dedicated to specific crime phenomena, they can be dedicated to an ethnic approach, they can be dedicated to a regional approach. It depends on the setting of priorities, and, always adopting that approach, we collect data in a systematic way from those Member States which participate in the Analysis Work Files and provide them with an analysis of those data. Unlike the information system, where all the Member States are duty bound to participate, it is up to the individual Member State to explain and declare their willingness and readiness to participate in up to all 18 Analysis Work Files. Of course, if you have an Analysis Work File which is

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Mr Max-Peter Ratzel

very specific for three or four or five Member States not all 27 Member States may participate, but, as we can see now, the majority of the Member States would like to participate in as many Analysis Work Files as possible. To give you a short overview, we have two Analysis Work Files dealing with terrorism issues. We have another one dealing with money laundering. We have another one dealing with counterfeiting of products and the counterfeiting of money, mainly counterfeiting of euros but also of the British pound. We have another Analysis Work File dealing with trafficking in human beings, another one dealing with illegal migration and another dealing with eastern European organised criminals. You see there is a big variety of Analysis Work Files. The data holder and the data owner is still the Member State which provided the information to us, so we strictly regard the ownership principle. The Member States can provide us with various so-called handling codes to determine what should be happening with the data once it is provided to Europol. Is it only to be used at Europol for analysis purposes? Can it be shared with another Member State participating in Analysis Work Files? Can it be shared with third partners? Can it be used for police purposes only or can it be used for judicial purposes, or can it not be transferred to somebody else without prior consultation? This handling code provides the data owner with a very high safeguard so they know that the data may be analysed but it will not be transferred to somebody else unless there is a reconfirmation with the data owner. In practice the Analysis Work Files are very well established and very well appreciated. These Analysis Work Files are run by so-called project managers at Europol, persons with specific training and specific skills. The data are stored in the English language only and all the data insertion and data retrieval has to go via the specific data project manager, so we have a really high safeguarding institution for data protection and data security but also for confidentiality. As I said, these Analysis Work Files mainly serve operational purposes leading to operational analysis.

Q168 Chairman: You talk about security. My previous experience with the EEC, as it used to be, and with NATO, where I have an involvement now, is that the level of security is pretty poor on the whole. Are you satisfied that the level of security here is more closely controlled and more secure, if I may put it that way, than in some other organisations?

Mr Ratzel:¹ I do not really feel entitled to compare the level of security at our organisation with the level of security at other organisations. I do not have benchmarks for that but I can tell you how we have

implemented security here at Europol and I am confident to tell you that the level of security is improving step by step and meanwhile we have achieved a considerable level of security. When we talk about security we take into consideration various aspects—physical security, technical security, vetting of people, screening of people, handling of data, safeguarding of data, etc. Security is a rather wide term. We have established at Europol a Security coordinator who is in charge of security. This must be, following the Council Decision, a Deputy Director, so even the appointment of the person in charge of security indicates that it must be a person who is appointed by the Council. That demonstrates that security issues are considered of very high importance. This is the first step. For that purpose that person is not under my governance, so he is independent and chairs the Security Committee. The Security Committee, in which all the Member States participate, advises the person in charge of security and in that security co-ordinating function he is independent from my tasking. If the security co-ordinator decides that something is wrong with security within Europol he informs me and advises me what to do. If I do not follow the advice, if I am not able to follow it, if I am not willing to follow it or if I am not successful in following it, this person informs the Management Board what was the advice, what has been done by the Director and what nevertheless has not been achieved so far. That gives you a clear indication of the strong role of the security co-ordinator. Internally in the organisation we have in addition a unit which is dedicated to dealing with security in the wider understanding for data protection, data security and confidentiality, and at the same time this unit serves the security co-ordinator as a secretariat in his role of having the Security Committee guided. In addition, we have a security officer in the organisation who is in charge of looking for security issues every day in practical terms and also, as far as necessary, of dealing with internal inquiries. These internal inquiries are then done under my command. The head of the unit, who is in charge of data protection, data security and confidentiality is at the same time the data protection officer of the organisation. Working in that function as data protection officer he is not under the line of command. He has direct access to me and he advises me what to do on data protection issues. He is also my liaison person to the Joint Supervisory Body which is looking after data protection issues at Europol. Our aim in the last three to five years has been to introduce a holistic view on security into the organisation. That has been quite a challenge as our staff members come from 27 different Member States with 27 different cultures and understandings in relation to security. What we see as a challenge overall but also in security is that we have to establish

¹ The Director's reply to this question is the subject of a Supplementary Memorandum from Europol printed at page 114.

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a common understanding when we use certain terminology, a common understanding of how to apply that terminology and what has to be done in order to achieve the necessary level of security. In addition we have to ensure that the Member States which are dealing with our products have the same understanding of security and the same or similar procedures in place as we cannot ensure the security of documents once they are handed out, for example, as hard copy. At the moment when they are handed out as a hard copy they are under the responsibility of the Member State concerned even if the person is sitting in Europol premises, so the moment we hand out the hard copies the responsibility is transferred. But this has to be discussed and debated with the Member States every day and from time to time, when security incidents happen, we make a clear analysis of what has happened and the major issue is to learn from these mistakes and these incidents and avoid them in the future. This is done in a joint exercise with the security co-ordinator and myself with the involvement of the Security Committee. I have to inform the Management Board Chairman in case of a serious breach of security and we have to learn the lessons and we do this as far as possible.

Q169 Chairman: Just let me try and encapsulate this. On a scale of one to ten how much of a worry is security to you?

Mr Ratzel: To be really clear, I am not 100% sure that I get your question.

Q170 Chairman: Ten meaning you rarely sleep at night and one meaning that you really do not worry about it at all.

Mr Ratzel: I would say we are close to two.

Q171 Lord Marlesford: Director, I would like to ask you about the linkage between Analysis Work Files and Organised Crime Threat Assessments, but I would like first if I may to get slightly more detail on the Analysis Work Files. First of all, am I right in thinking you said there were 18 in total?

Mr Ratzel: Yes.

Q172 Lord Marlesford: Each of these is presumably a live file, is it? It is not a report which is then put away in a pigeonhole, and it is presumably mainly held on computers. Is it something you can print out a hard copy of, or is it so massive that it would not be possible? Some of the subjects you mentioned—money laundering, counterfeiting, et cetera, presumably mean that these files are huge databases in themselves. Is that correct?

Mr Ratzel: You are correct. These are living files so they are on the computer. Of course, whatever is on the computer in principle you can print out, but that would not make much sense. The work file gets well

used, not by just having the data. The value of the work file is in, let us say, two or three components. One component is the collection of the data itself, which is the database. The second component is to have the proper software established to investigate or mine the database, and the third component is to have a very skilled and very professional analyst to do the crime analysis on these data. The analyst has first to study the case and has to learn, together with the investigators, what the investigators are looking for and how far can he support them. That would be one approach or, if the investigators do not have a clear picture, his approach would be, “What is my feeling from the work file? What can I offer to the investigator to do as an analysis?”. Crime analysis can be done in various different ways. What you can do is for example, a profiling analysis. You can also do linkage analysis. You can do crime scene analysis as well. You can analyse the *modus operandi*, you can analyse the dates of the events, you can analyse the places of the events, et cetera, and you can mix up the various approaches, so a close interaction is needed between the people who do the analysis and those people who are investigating the case. That is exactly one of the triggering points with intelligence-led policing. This is one of the words which is understood in very different ways by different persons. Some investigators feel tortured by intelligence-led investigations as they misunderstand the concept, while others, understanding the concept differently, see the advantage that they provide the data to an analyst and the analyst gives them a feedback on what could be done with the data, what could be the result of the data analysis. When we print out the Analysis Work File that will not support an investigator, so what we print out is the result of the analysis, and the result of the analysis can be printed out in lists, it can be printed out in charts, it can be printed out in drawings; it depends very much on the purpose for which you need it. We have established and introduced software to do that. We have also introduced now a new system to support the analysts in the insertion process of the data, so with the new software which was recently introduced we have now minimised the workload for the analyst in introducing the data and inserting it into the database, which gives more space for the analysts to do the crime analysis. We have shifted the workload from pure typing in data to doing more crime analysis.

Q173 Lord Marlesford: That is very helpful. Can I take it that each of the Analysis Work Files has a manager responsible for it? Do I gather from what you said that the analysts and the manager, the in-house Europol staff running the Analysis Work Files, are not the same as the investigators and that the

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investigators are likely to be from national police forces? Is that correct?

Mr Ratzel: It is a little bit more complicated. When we talk about the investigators, at least as I understand the word now, and I have to admit that I am not a native English speaker so there may be slightly different understandings, but even in my mother tongue—

Q174 Chairman: You are doing very well.

Mr Ratzel: Thank you, but even in my mother tongue I see that sometimes we use the same word and we have a different meaning for that. When I speak about an investigator I have in mind the person who is really investigating the case. People doing crime analysis should be people with a professional knowledge on investigations and people with knowledge in crime analysis. We try to achieve this, as we have done in our professional units which deal, for example, with counterfeiting of euro currency, terrorism, organised crime. We have a mixture of people with a professional background in counterfeiting of euro currency, terrorism or organised crime. We call them experts. As a standard they have a law enforcement background. They may have been or are still police officers, customs officers, border guard officers, whatever is their background, or they may have more specific skills in crime analysis. Some of them have been police officers in the past and have achieved additional analytical skills or are people who have been educated and skilled as analysts. Even in these specialised units, let us say, SC5 for terrorism, we always look from two viewpoints in the crime analysis—from the pure analytical viewpoint and from the expert viewpoint. In addition we link these viewpoints with the investigators in the various Member States who participate in this Analysis Work File. We establish meetings, we invite people to meetings and the people from the Member States come here. This is one of the reasons why we need meeting rooms. We sit together round a table and very often it requires some time to open the mind and introduce the relevant knowledge on the ongoing crime situation and then to understand what could be introduced into the database from country A, B or C, and what would be expected to be retrieved from the database from the same countries or from other countries. This would be the platform for the next step, and in regular repeated actions meanwhile the participating countries and the participating Analysis Work File members come here and exchange best practice experience but also give a feedback to us on whether our products fit their expectations or if we have to adjust the products to the expectations. This happens either by meetings, when we invite people from the Member States to come here, or they are represented by their people from the liaison desk. It depends on

the nature of the meeting, on the availability of people, on the availability of money to provide people with funds to travel to Europol, et cetera.

Q175 Lord Marlesford: I can see it is a hugely valuable asset. What I am not clear about, and you can, I am sure, reassure me, is this. If you have 18 AWF presumably all police forces in Member States have a list of the subjects so they are aware of the Analysis Work Files you maintain, just in outline, just the headings maybe, which may merely say “Money Laundering”. If you take a country like the United Kingdom, where there are over 40 separate police forces, would each of those police forces have such a list so that they know that if, for example, the Suffolk police (from the part of England I come from) are looking at people trafficking through Felixstowe, which is our biggest port, would they immediately be coming and talking to you or discussing the contents of your people trafficking Analysis Work File?

Mr Ratzel: There are various elements in your question which lead me to the conclusion that I should give you a clear indication that we have a very structured system of co-operation. The system foresees that our contact points are the Europol National Units. On purpose Europol has been established with, until now, 27 antennas in the Member States, so for the time being we are not entitled to directly contact people in the field and people in the field are not entitled to directly contact us. This has been done on purpose and there are also some good reasons for that, to be honest, as we could not survive being contacted by, let us say, a thousand different police organisations throughout the Continent, but, as always, if you have a certain advantage you have also a disadvantage in that it is always via the Europol National Unit. By the way, we recently established a third protocol on Europol amending our Convention which will allow us to have direct contact with the field officers in the Member States in particular cases when the Europol National Units allow us to do so, but even here some Europol National Units are rather reluctant. They would like to have control of the traffic of information. The second point in your question was, is it known all over the Continent what the Europol platform is offering to all of you? Here also I would have a differentiated views. I raised the question some time ago in a meeting and the representative of one Member State immediately said, “Yes, in my country everybody knows exactly about Europol and all the offers you have available”. I contested that but he was very firm in his assessment. Another representative at the same level from another Member State said, “No, you are right. In my Member State the awareness is not yet that far developed”. My experience tells me the second one was right. I see a lot of colleagues when I go to the

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national meetings who afterwards contact me and say, “That was very interesting. Where can we learn more about Europol?” so the question of awareness is an ongoing issue. I see a lot of reports from my staff members coming back from meetings in the field and even they experience that a lot of the opportunities and offers by Europol are not really known to everybody. My point is that very often, when we have here ministers to visit us or police chiefs or people from the training institutions, I advocate establishing Europol modules even in basic training. Young police officers should nowadays learn about Europol from the very beginning. They do not necessarily have to be experts in Europol co-operation but they should know about it. They should know about the differences and the complementary ways of using Europol, Interpol, bilateral relations, Schengen Information System, the Prüm Treaty, whatever is on the market, but there is still a long way to go and therefore I would strongly advocate starting with the training. It is much easier to put it in the training sessions for young police officers or customs officers to make them aware of Europol and all the opportunities we offer for them as we are established to support the Member States. Our single task is to support Member States’ investigations.

Q176 Lord Marlesford: Going on from that, the Analysis Work Files, which are really an agenda for your work, are based on the Organised Crime Threat Assessments, and you are attempting to align these very closely. Is that a satisfactory way of doing it or are you limited in your Work Programme by what another organisation, the EU Council, lays down in the form of the Organised Crime Threat Assessments?

Mr Ratzel: To answer the question I would like to go back in history a little bit. As I said before, the Council took a decision at the Hague Council in November 2004 to introduce intelligence-led law enforcement as a concept in Europe and at the same time they tasked Europol to draft the first Organised Crime Threat Assessment for the year 2006. Prior to that there was no Organised Crime Threat Assessment; there was only an Organised Crime Report. There is a huge difference between these two products as the Organised Crime Report was looking backwards, was mainly based on historical statistical data, was not looking forward and was not based on qualitative data. As a logical consequence, until the year 2007 all our work plans could not have been based on an OCTA as the OCTA as such did not exist. Following that Council decision we did our utmost—and we were very much supported by the British Presidency in the second semester of 2005—to draft the Organised Crime Threat Assessment by the end of the year 2005 and to make it ready for the Council to be endorsed in the first semester of 2006.

This was quite a complicated and heavy exercise as we had overcome a lot of difficulties in the Member States. For many Member States it was the first time that they had been tasked and entitled at the same time together to collect data centrally. Some of them did not even have any central data collection plan, so we provided them with a data collection plan. We provided them with a questionnaire and we got feedback which was quite different from Member State to Member State. To give you a short overview, the smallest feedback was one page; the largest more than 300 pages, and everything in between. About ten different languages were offered, so we had to translate them, with all the complications that brings, and it was quite complicated to draft at the end the first Organised Crime Threat Assessment. Based on the Organised Crime Threat Assessment in 2006 and later on in 2007, the Council took conclusions on the priorities to be followed at the European level but (and this is sometimes forgotten) to be followed also at the national level, so for each minister who is part of the Council and at the same time is a minister back home to introduce the priorities in the police and the judiciary. On the other hand, the European institutions are also tasked to follow the priorities—Europol, Eurojust, Frontex, OLAF, SitCen, whoever is in charge. In the year 2007 we made a comparison between the Analysis Work Files, which had been established until then, and the priorities set by the Council and we found out that our setting of priorities by the Analysis Work Files was to a very high level in cohesion with the priorities set by the Council, and since then we have seen that whenever we have to establish a new Analysis Work File there must be a link to the Organised Crime Threat Assessment; otherwise it would not be a priority for the Member States, so there is a natural cohesion between the two instruments and for the time being all of our 18 Analysis Work Files fit into these priorities. I would not exclude the possibility of opening new Analysis Work Files if there was an urgent need which had not been foreseen in the last Organised Crime Threat Assessment, but I am quite confident that that would lead to a new priority for the next Organised Crime Threat Assessment, so there should be a rather close link between the two instruments and, for example, last time the Organised Crime Threat Assessment 2007 led to the conclusion that we had to establish a new Analysis Work File on MTIC fraud which has recently been opened.

Q177 Baroness Garden of Frognal: Director, could I turn to Europol’s operational role? When you spoke to the European Parliament in October 2006 you called for a more operational role for Europol. Does the new Council Decision on Europol fulfil your wish?

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Mr Ratzel: “Operational” is one of the really complicated words in police terminology. Many people have a completely different understanding of what is meant by “operational”. When I use the word “operational” I mean that Europol should be more linked to operations in the Member States rather than be linked too much to the administrative burden. Although I accept governance but I am still of the opinion that the major task for Europol should be to be more operational, to support the investigations in Member States. Some of these expectations have been fulfilled by the new Council Decision. For others there is still room for improvement, and let me try to give you some indications of that. One of the points where we clearly see progress is that our mandate was slightly amended. Until now we have been in charge of supporting Member States in fighting terrorism and organised crime. That requires that we have clear indications and evidence almost that there is an organised crime structure behind the crime in order to be in charge of that. With the new Council Decision our mandate is slightly amended to terrorism and serious international crime. That sounds very close to organised crime but it is quite different. For the time being there are three case examples where we cannot really support the Member States. One of them is a serial killer. The serial killer is not part of an organised crime structure, so for the time being it is not part of the Europol mandate. If child pornographic material is distributed in a loose network which cannot be considered to be an organised crime structure we cannot support the Member States. That is the second case example, and the third case example is if we have travelling violent perpetrators, for example, determined to disturb sports events, political events or economic events. For the time being we cannot support Member States with that. As these case examples will be included in our future task this is clearly a way in which we can be more involved in operational matters. Also, on the administrative side, we see some progress. For the time being, the Management Board, for example, is guided by the Presidency, so every six months we have a new person as the chairperson of the Management Board. That leads to different behaviour of the Board, it leads to a different governing situation, it leads to limitations in operational issues. I have been here now for nearly three and a half years. If I am not mistaken I have now had eight or nine different heads of the Management Board. Some of them came new to the function with the Presidency so they had no background in the Management Board; they had no background in Europol. You can imagine that this is not to the advantage of the organisation and it is not to the advantage of the operational branch, and we have had to learn lessons every time from scratch,

both of us, the Chairman of the Management Board and myself and the directorate members. This is now a new situation. In future there will be the Management Board Chairman for 18 months, which will give us certainly streamlining without neglecting the responsibility of the Board as such, but if we have a chairperson for 18 months that will give us some more streamlining and some more operational opportunities.

Q178 Baroness Garden of Frognal: Yes, it has gone from six months to 18 months, has it not?

Mr Ratzel: Yes.

Q179 Baroness Garden of Frognal: The Decision also puts responsibility on the Heads of National Units to discuss proposals that will improve Europol’s operational effectiveness, encourage commitment from Member States and evaluate the reports and analyses drafted by Europol. Are they well-placed for this operational oversight?

Mr Ratzel: It is quite complicated and difficult to give that answer. As far as I can see some of the heads of the Europol National Units are well placed. Some others I would have question marks about, but, of course, I do not know in detail the national structures of all security agencies in the national environment. What I can see is that some Heads of Europol National Units have influence on what is to be done operationally back home. Some others do not have a strong influence. This depends on their rank, it depends on the operational structure and it also depends on the national security structure. Let me give you two different examples. If you go to a state like Germany there will be the CID police, the federal police, and on the federal level the customs and on the state level 16 police forces. That is quite a complicated structure, and the Head of the Europol National Unit who is sitting in the federal CID structure can only ask the others; he cannot task somebody. If you go to a state like France everything is centralised but you have the Police Nationale, the Gendarmerie and customs, which are quite independent from each other, and also there it is difficult to find a common approach. In addition we have to say that the Heads of the Europol National Units are our major link to the operational branches in the Member States, so they are decisive for us. They have to advise us what we should do but at the same time we expect them to commit themselves to do what has been agreed next door to here. Once they go back home and they have committed themselves that we should insert more data into that Analysis Work File, we should insert more data in the information system, we should go for that approach, we should have that priority, I would expect them to do so back home. But some of the Heads of the Europol National Units are not even represented

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here at the meetings. They have no time, there is no money available, and they send the liaison officers here and then it becomes complicated as in reality the liaison officers are part of the Europol National Units, so then I am not 100% sure if all the commitment is then transferred back home and if it is shared back home and if it is distributed into the Member States. This is one of the complicated issues I face every day. When we confront the Member States, for example, with the situation that for the time being we do not have the relevant data in the information system, that we do not have enough data in the information system, nobody is really receiving the message and putting it into action back home. If I confront the Management Board with that the answer is, "We are the Management Board. We are guiding the organisation but we are not guiding our people back home". If I tell it to the Heads of Europol National Units they share my concerns but they tell me, "I do not have the resources back home. I cannot task an IT department to do something so I cannot do something to insert data". If I talk to the police chiefs, where I am only one of the observers in the group as I am not part of the Police Chief Task Force, their advice is, "We are the Police Chief Task Force. Go to the other people and try to convince them to insert data in the system". This Information System is a very good example that we are still in progress but we have to speed up. The system was established some years ago. It was decided on 14 December 2004 to go for a specific system after a long debate where there were two solutions, one more sophisticated and one less sophisticated. The decision was to go for the less sophisticated system. That decision was taken on 14 December 2004 and the task for Europol was to establish the system by 10 October 2005. We were ready and I informed the British Presidency by phone on 7 October, "The system is ready and it works", and still until now the insertion of data and the contribution of data is not as it could be and as it should be. For example, only a minority of Member States have developed data loaders and in these cases, of course, we have a lot of data in the system, but the majority of the Member States did not develop data loaders and from these Member States, of course, we do not have as many data in the system as we should have. That goes back to your question, "Who is then in charge?". The Head of a Europol National Unit should be entitled at least to start the process to put pressure on an IT department, if it is outside his area of competence, to develop an automated data loader. The argument which was raised recently, "We did not know the technical details", I would contest. The first data loader was developed by the end of 2005, so in parallel to the system, and it worked from the beginning. That shows that the Heads of the Europol National Units are placed to a certain extent at the right level but it is a question of whether they have the

right power to really enforce and enhance things back home.

Q180 Baroness Garden of Frognal: You mentioned in one or two previous answers the matter of language or differences of interpretation and I wondered what the impact was on operational effectiveness, the fact that different Member States may interpret terminology in different ways.

Mr Ratzel: "Operational effectiveness"—then you have two words which can be interpreted quite differently. It makes it even more difficult. I try to understand words in the first instance literally. If I look at the word "effectiveness" I look at how strong the outcome is. I do not first look at the money I have to pay for that. Then I would speak about efficiency. If I looked at the operational effectiveness I would look at in how many cases did we, for example, support Member States in arresting people, in leading them to track seizures, in bringing them into a position to prosecute people, et cetera. That would be for me one element by which to assess operational effectiveness. To look into that we have a lot of good case examples and I would like to provide you with one as it comes from your country, but nevertheless I will tell it in an anonymous way. The specific situation was that the police organisation got information that a person might be financing terrorism. All the investigations which could take place back home did not lead to convincing results, to real evidence, so they could not prosecute the person, but they found out that there were a lot of suspicious elements around the person. That regional police force contacted the Europol National Unit and their national desk here. They came to Europol. We had one of these analytical meetings. They opened their file and we provided them with some expertise and we offered them, "If you present your data to us and we put it into an Analysis Work File, although we cannot guarantee a result we can guarantee there will be some outcome that will be helpful for you". At the end, by comparing these data which had been inserted into the Analysis Work File up to three years ago we were able to link that specific case to two other ongoing cases in a second Member State and to a fourth ongoing case in a third Member State. These cases could not have been linked together without the bridge of Europol. As a consequence we invited the two other Member States in addition. We brought all of them together here, we set up a team with analysts, linguists, experts in terrorism and in that case experts in financing, and at the end the person was able to be prosecuted and sentenced to more than ten years in prison. This is a clear operational effective measure. Only by amalgamating the data and linking them to each other by finding out the cross-checks could these investigations be successful and this is from my

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viewpoint a very clear example that we can be very operational without having any coercive powers.

Q181 Lord Young of Norwood Green: Director, Article 9(3)(d) of the Council Decision establishing Europol allows bilateral exchanges to cover crimes outside the competence of Europol. What will be the impact of this change in your opinion?

Mr Ratzel: As the Council Decision is not yet established I can only assume what will be the impact. Our expectation is that this will provide Member States with an additional opportunity to use the Europol building and the Europol environment for something else which is not part of Europol's internal work but will introduce the use of Europol in the community. If we limit it, as it is the case now, to a very narrow focus, as was done in the start-up phase of the organisation on purpose and to a certain extent justifiably from my viewpoint, we cannot survive in the long run as Member States also expect Europol, at least via the liaison officers, to give them more support. What we have seen in the past is that whenever we told the Member States, "We cannot support here, we cannot support there", many people have been disappointed by that, but by offering them at least the opportunity to use the channel via the liaison officers at Europol we can raise the interest in Europol and we can also guide them, "In that particular case you can only go via the liaison officers but if you have a case which is within our mandate then you should also involve Europol as an organisation". This is also another issue which is of interest to us. For the time being 75–80% of the information flow is mainly between the Member States and the Member States and third partners, and only 20–25% involves Europol. From our viewpoint there should be the involvement of Europol in the system more often in order to give feedback to the Member States but also in order to give us more data in order to find out more cross-matches in the database, which is based on the contributions from the Member States. You will see in our work plan, in our benchmarking, that this is one of the points where we would like an increase in the participation of Europol in the information transfer from Member State to Member State and from Member States to third partners.

Q182 Lord Dear: Director, you are being very helpful; I am grateful to you. Can I move you on to organised crime? The Organised Crime Threat Assessment of last year picked up a point which was really to do with putting Europol into a position of knowing what had happened to actions that had been taken and it was recommending specifically that actions should wherever possible concentrate on the upper end of organised crime and that the results of operations amongst organised crime outside in the

Member States and the difficulties they experience should be fed back to you so that you understood what was happening to the product of your work. I wonder if you can tell us how many notifications like that, of that outcome, so to speak, you have received.

Mr Ratzel: We have made quite interesting progress in the last year and I would like to describe it from two sides to make clear where we have more problems and where we have fewer problems. We have had fewer problems in the last years in the area of terrorism. In terrorism people realised after 9/11, especially after the Madrid bombings but especially after the first and second London bombings, that we had to do a lot to prevent crime and that meant we had to exchange information much more spontaneously instead of waiting too long. But that was guided by the principle of preventing attacks or stopping ongoing planning. That was a good experience so we got more and more information, the information was more relevant and the information was more fresh. It is a little bit similar in the field of organised crime. In organised crime many investigators are still guided by the principle of camouflaging the investigation, trying not to jeopardise the investigation and so not all of them have built up a multilateral basis of trust. They do not have confidence in all the other people who could share the information. It is not necessarily the organisation; it is the possible access by others to the database. They had to learn, and they have learned meanwhile, that this information can be very well protected in Europol Analysis Work Files. We have drafted the first documents for the Organised Crime Threat Assessment. We have clearly indicated that instead of a collection plan we will go across Member States once a year to collect data on a certain date for a certain purpose but nevertheless we invited Member States to provide us with data spontaneously, so in the early stages of investigations after certain steps have been achieved, after people have been arrested. This has been learned quite well also in the field of organised crime. People have felt that organised crime networks especially cannot be dismantled and disrupted if you are not co-operating internationally. Just yesterday we were able to tackle another group in illegal immigration with a lot of arrests and a lot of seizures, which was based on a very recent, ongoing exchange of information. People are now reporting to us much earlier than they did in the past and we try to find out if this information can only be taken for an Analysis Work File, so for a very limited purpose, or as soon as possible if the data can be transferred from the Analysis Work File to the information system which has then a wider use so everybody can retrieve the data from the information system in the Member States, or if we can take the data also for the Organised Crime Threat Assessment for the next

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year. In the first instance people were very careful not to transfer too many data from Analysis Work Files to the information system and that readiness has now been developed, and especially by the codes in the Analysis Work Files people could see that we do not jeopardise investigations. Instead, we clearly support the straight guidance, let us say, of the Member States to safeguard their sources.

Q183 Lord Dear: One of the thrusts of my question was whether you are put in a position of knowing what has happened once the work file has been completed, the product is given to a Member State and they carry out an operation, and whether the work that you were doing was useful or not and whether it was used or not. It is feedback really. Feedback is important; otherwise you are working completely in the dark or in a vacuum, and I wondered whether you were getting that feedback when the operation was completed.

Mr Ratzel: We get the feedback in various ways. We get it back directly as many of the people give feedback in writing, in meetings. We get very good feedback via the liaison officers and when we make internal assessments on the Analysis Work Files, for example, there is a special column to ask for and evaluate the feedback from the Member States, how is the feedback with the liaison officers and how is the co-operation with the liaison officers on that particular issue. And we even have another column on how is the participation and the involvement of Eurojust. It is not enough to have good co-operation with the police. Good co-operation with justice is also needed. In addition, we get a second level of feedback by letters of appreciation which are sent to us. Quite regularly I get letters of appreciation from ministers, chiefs of police, local chiefs of police, expressing in that particular case, "Europol supported us with this issue and that issue and we really would like to express our gratitude". I get letters of appreciation from judges, from prosecutors, and I really appreciate that as it gives us the feedback which we need. We get feedback by having common press conferences. I was invited to go to Paris today to a press conference. Of course I could not go, but it entitled one of my staff members to be present to represent Europol in the press conference. We are invited to make common press releases where Europol and Eurojust, for example, are mentioned, and the last level is that we get feedback at the end of the year and we have clear indicators that the level of satisfaction is increasing from year to year and this is also expressing that the products are very well appreciated and meet the expectations of the Member States.

Q184 Lord Dear: You are obviously well satisfied with the way things are going at the moment.

Mr Ratzel: I would say I am not perfectly satisfied but we are on the right track. It is a long way to get the highest level of satisfaction but we are on the right track.

Q185 Lord Dear: Could I move you on but stay with the Organised Crime Threat Assessment, which again last year made a recommendation that there should be a new intelligence-led control strategy to cover the entire national territory? I wonder if you have any vision at all of whether those control strategies are being put into place by a Member State. I know it is early days yet but your view on what the progress has been would be helpful to us.

Mr Ratzel: That is quite a challenging issue. I am not aware whether all Member States have national crime control strategies. I have asked at various times. I never saw them in the whole bunch of documents.

Q186 Lord Dear: You do not think there are any of them?

Mr Ratzel: No; I know definitely that there are in some Member States quite robust ones. But there are, let us say, also some question marks on my side on control strategies. Even the word "control strategy" is contested. It indicates that you can control something where other people say you cannot control it at all, and we had an interesting debate in the Management Board some time ago where we had a debate on the strategy. The outcome was that the strategy was established and endorsed and the logical point would have been to endorse some priorities. That was a long debate, what should be the priorities, and then at the end one delegate on the Management Board said, "All of us know that the priorities are set by the criminals so it is not up to us to set priorities". I was wondering if the Management Board could follow that proposal and afterwards I contacted some of them bilaterally and told them, "To be honest, I am a little disappointed. I would have expected that we at least try to set priorities. Even if we fail in the first year and the second year, in the third or fourth year let us come to the point", but this is a cultural issue. "Crime control", "counteracting crime", "war on criminals", "war on drugs", different words mean different approaches and the culture in crime fighting is quite different all over the Continent, between Ireland and Cyprus, between Portugal and Finland and everything in between. "Crime control strategies" are far from being unified, but we are on the right track again. With the OCTA we have now an instrument in hand and therefore I was really grateful when I saw that the Council had defined the OCTA to be Europol owned. It is a very decisive element as the Member States in the end do not decide what is in the OCTA. At the end it is the organisation. Even that was heavily contested the

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first time we published the OCTA. One Member States wanted to step in at the very last moment. That showed that they did not really support strongly that an independent institution was drafting the Organised Crime Threat Assessment. Even there we have improved in the last few years but there are still more steps to be achieved in the next few years.

Q187 Chairman: If I could just interrupt, I think it would be helpful if you could give us some broad indication as to the extent this has been taken up by Member States. Lord Dear got the impression and so did I that there were not any Member States who had taken it up and you said, “Oh, no, some have”. Could you give us in broad terms—is it less than five, less than ten?

Mr Ratzel: I would say it is at least ten Member States that have control strategies. What I can see now is that those who perhaps do not have an overall strategy develop sub-strategies, for example, for fighting drugs, for fighting illegal immigration, for fighting counterfeiting of currency, and at the end you can always have a top-down or bottom-up approach. It does not matter that much from my viewpoint as long as you start at least to have control strategies.

Q188 Lord Dear: You said around ten, so roughly half of the Member States have a policy and half have not?

Mr Ratzel: Yes, half of the Member States may have a “control strategy”.

Q189 Lord Dear: Could I move quickly on to terrorism? As we all know, Europol spends more than €2 million on being the support centre in counter-terrorism, supporting the Member States’ preparedness and their ability to carry out investigations. I wondered whether you had an overall view of how well that is going, in other words how well is Europol being able to support the pan-European thrust against international terrorism.

Mr Ratzel: I am really confident in saying that the area of counter-terrorism has developed best in the last years.

Q190 Lord Dear: Better than against organised crime?

Mr Ratzel: Yes, better than organised crime, as obviously there was a higher pressure and there was a higher readiness of Member States and the relevant persons in the Member States to open their boxes and share information. We have made a lot of progress and what I would like to introduce—and it is quite complicated to understand—is the whole concept of Europol in the European Union. One can be very focused on the advantage which you have back home with Europol but you can also look in a much wider

perspective and the terrorism area is one of the areas. If people look at the threat by terrorism they may be misled that small Member States or new Member States would or could not be affected by terrorism at all. I would say it is a very risky enterprise to make that assessment. We saw it just recently and I would like to give you that example. After the cartoon cases in Denmark you could see immediately all Danish institutions throughout the world were endangered, but then something happened which was not really understood in the first instance, that the Austrian Embassy in Lebanon was attacked. The first assessment was that the terrorists mixed up the different flags, as by coincidence both countries have red and white in their flags. But that was not the point. The Austrian Embassy was attacked on purpose as Austria held the EU Presidency at that time. So I advised now the Slovenians, after the recent threats, “Please be aware that Slovenia is now representing the European Union. Even if you are a small country you may be attacked”, and they were very satisfied with that and Slovenia raised its readiness. But also, when I have been to the Baltic States, they told me, “We are not really in the focus”. I said, “Maybe, but are you aware how many people you have in your country who may offer shelter for others who may support financing, who may be involved in radicalising?”. “Oh, we never thought about that”. By raising their awareness you profit in the end also in the UK but it is complicated to measure this. That was a clear increase. For example, after the first and second attacks in 2005 and 2007 in the UK we had extremely good co-operation from the Metropolitan Police, supported and guided by SOCA and by the British desk, and we had access to their data. We analysed the data and it was much more important from my viewpoint that at the end of the investigations, by the autumn of that year, the team of the Metropolitan Police, higher level, medium level and working level, offered to make best practice exchanges and we used our main conference hall. We invited only vetted people. The same exercise was done in the afternoon in Eurojust and the people from the Metropolitan Police opened their experience box and told the others what had been challenged by them prior to the event, during the event and after the event. This had a very strong influence on all these experts from the Member States and they took a lot of profit from that, and we have since done this exercise after all the relevant events. By that we increased the capacity of those Member States who had not got the experience and they were much more alerted. Step by step we also get relevant information and we can counter-check the information against the information from your country, for example, so in the terrorism case we recently increased the co-operation.

Q191 Lord Dear: And you would be the only organisation that does that debriefing, as we would

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call it?

Mr Ratzel: I am not sure we are the only one but this is a very good way to do it, debriefing and trusting other people to learn from that. We did it, as I said, at Europol and at Eurojust so it is necessary to do it with police officers and with judiciary people and also to understand how these things are interlinked with each other. We also invited, for example, people from the press offices in the police to learn how to handle any crisis like this. The press and the media work is not that easy. If you are not prepared at all you may have difficulties afterwards. There is an increase in abilities all over Europe, but of course a stronger Member State, a more advanced Member State, is always more on the giving side than on the receiving side. But this is well established and money well spent from my viewpoint as you raise the level of awareness and expertise all over the Continent.

Chairman: I just have a comment before I call Lord Harrison. You mentioned smaller states and you mentioned the Baltic States, but was it not Latvia which had a major cyber attack which nearly crippled the whole country? They are very vulnerable.

Q192 Lord Harrison: Mr Ratzel, can we pass on to co-operation with EU agencies and other partners? You have already mentioned Eurojust and Interpol and it is also a question about the optimum frequency of meetings. Could you tell us a little bit about the relationship with Interpol? I understand, according to the 2009 Work Programme, that you are going to meet on an annual basis at head of organisation, head of department and working level. Is that sufficient or do you need to meet more often, and in the case of Eurojust I think it is envisaged that you meet every three months. Again, is that the best frequency? Are you able to get work done or would you like to stretch it or shorten it?

Mr Ratzel: First, if I may give you the feedback, it was Estonia which was attacked but that was a specific situation. It was attacked by its big brother east of it but it demonstrates the vulnerability as the attack could have been done by criminals or by terrorism-motivated people; you are completely right, and they learned that lesson too at the time. Coming back to your question, let me first look at the co-operation with Interpol. It is a little bit confusing for some people as the word sounds similar and people think Europol is a daughter enterprise of Interpol or Interpol is our father. This is not the case. The institutions are quite different from each other and I can say this as I have worked for and with Interpol as well as for and with Europol for a long time. I have worked my whole career internationally and I see the advantages and the limitations of both systems at the same time. When I started here one of my first steps was to pick up the phone and call the Secretary-General at Interpol and liaise with him to

find out what could be done in order to find a suitable solution so that you, as Member States of Europol and of Interpol, should not pay twice for the same service. Our approach sounds very simple, but in reality it is a little complicated. We are following an approach to complement each other. Europol has the advantage to have been created within the European Union with a strong mandate on organised crime, or in future serious international crime and terrorism, mainly focusing on the European Union and on some specifically vetted third partners. Interpol has a network of 186 (in future 187) Member States, mainly looking backwards after a crime has happened, exchanging information on this particular crime, not looking forward as much as we do, not doing this kind of crime analysis and threat assessment but being a very good platform for exchanging very fast information which can be easily handled. But having 186 partners one can doubt how far you can fully trust all of them. This is different in the European Union. We have had an agreement to complement each other. Whenever something is under the authority of Europol we are supported by Interpol and vice versa. This is guaranteed by a lot of various mechanisms. You mentioned that we have to meet at least once; we have to say "at least". It means once per year we have at least a formal meeting, so once a year I go to Interpol or Mr Noble comes here, but in addition we meet on various occasions. We pick up the phone, inform each other, we consult each other whenever necessary, as do the heads of departments, so Mr Simancas goes twice a year to meet his counterpart at Interpol. In addition, the heads of unit meet whenever necessary, bilaterally, multilaterally, in meetings, in congresses, in international events. Also, do not forget we have established liaison officers from both organisations. When I started here, Europol had a liaison officer in Lyon but there was no liaison officer from Interpol at Europol. I convinced Mr Noble also to put a liaison officer here. To make the picture complete, we visit each other at international conferences, so I go to the Interpol General Assembly once year, Mr Simancas goes to the Interpol European Regional Conference, and we invite Mr Noble if we have important conferences here at Europol and it is up to him to come on his own or to send one of his delegates. The last issue is that we send people to each other's organisations for a two-week internship to learn in their own field of experience what can be done by Europol, what can be done by Interpol, how can we complement each other.

The situation with Eurojust is rather different from the situation with Interpol as we have no overlapping with Eurojust and even no risk of overlapping. Eurojust is co-ordinating judicial work in Europe by national representatives to Eurojust and we are supporting the Member States. Very often people do not understand the

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very different concepts of Eurojust and Europol, so when you compare the co-operation between police and judiciary in the Member States it is different from the co-operation between Europol and Eurojust. When, for example, I contact the UK desk at Eurojust it is not Eurojust; it is the UK desk at Eurojust, and for Mr Brian Donald, the head of the UK desk, to contact the UK desk it is not a Europol/Eurojust contact; it is an internal UK contact. That is not understood by everybody correctly. When we go and meet Eurojust, we try to find out where we can bridge the organisational link and where can we make that as close as possible. That is done in periodical meetings. We have a specific group of people dedicated to that work. It is under the guidance of the Deputy Director Corporate Governance. They meet also at least once a quarter, if necessary more often. In addition they meet at the level of experts from the Legal Service, for example, to find out what can be done to closely link to each other. Or we meet people from the IT department to establish a secure technical link between the two organisations and also describe the procedures which are necessary to be established to guarantee this secure link to be used. Independent from that, we have ongoing visits of prosecutors of Eurojust at Europol who are involved in crime analysis, who are involved in investigations, and of analysts at Europol who are involved in investigations which are co-ordinated with Eurojust prosecutors, so this is on the working level an everyday experience. Therefore, we advocated strongly that Eurojust and Europol should be co-located as closely as possible, if possible under one roof with separate areas of competence. Now, we will be posted in two separate buildings but at walking distance from each other. We do everything to meet each other as often as possible, and, of course, I also meet the President of Eurojust as often as possible and when we go to international meetings we always take the opportunity to have a bilateral meeting in the margins. Yesterday, for example, I met the Vice-President of Eurojust in Brussels and, of course, besides the official meeting we had two or three issues to be discussed and debated and we did that in the margins, so it is really very close and very open and trustful co-operation.

Chairman: Now we move to the various more technical issues of performance objectives and indicators. We will try and make it reasonably brief because we would like to try and fit in a visit to the liaison office before we move on to Eurojust if we could. Perhaps Lord Young would like to put two questions together.

Q193 Lord Young of Norwood Green: To enhance trust and confidence of Europol's stakeholders and partners the key performance indicator of the 2009 Work Programme is to maintain at least an 80% level of organisational compliance with the Europol Security Policy and Data Protection Principles and Requirements. Why only 80%? That sounds to me quite a challenging target. My second question is that

there is a business performance objective which is an overall improvement in customer satisfaction as reported in the results of the annual Corporate Client Survey. Are these results heading in the right direction? It sounds to me from your previous contribution as though they are but I await your comments.

Mr Ratzel: The first question is quite interesting to be understood in the right way. What we want to express is that we would like to deal with these issues in our reports and we would appreciate it if 80% of the issues could be part of the report with the result very positively achieved. That does not mean that in the other 20% the result was negative but it was not as positive as in the other 80%. We would like to deal with all these issues in our yearly reports and our key performance indicator is that we should have 80% of them in the report mentioned in a positive way, that we have achieved the goals set so far. In the past we have only had a very limited number of security incidents. If I compare this very limited number to the everyday workload and everyday business, as I said prior to your question, I am really very satisfied that within the last few years we have achieved a quite robust system and understanding and implementation of security measures in general terms. The second question was answered in principle, I think, in one of my previous comments. The client survey gives you an indication that the results achieved are improving from year to year in a very constant way upwards. We are still on that way and I am very confident that also in the future we will move in the same direction. The feedback from the Member States is that we are on the right track, but that we still have to improve. We are still quite a young organisation, not even nine years old. By the way, we have also had a certain difficulty in getting a streamlined management. Until now we have had, if I am not mistaken, more than 10 directors and deputy directors, which is of course quite complicated. We have had, including myself, three directors and I guess 10 deputy directors, so 13 people at the top level. On that level, only one person, Mr Simancas, who was with us at lunch, had a prolongation of his contract. That gives also a certain view of how complex the issue is. We have had directors and deputy directors from Germany, the UK, France, Luxembourg, Belgium, Spain, Italy at least, so seven or eight different nationalities, different personal backgrounds, which also indicates that we are not on our way now to streamlining the organisation.

Q194 Lord Young of Norwood Green: If I could pursue something on the first question, it was interesting the way you put the 80%/20% in context. That is against a background of the variability of 27 Member States, shall we say, or the conditions that apply in 27 Member States?

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Mr Ratzel: You are perfectly right. As I said, when we talk about Europol we must always be aware whether we are talking about the organisation, the headquarters, or whether we are talking about the organisation in the wider understanding. Until now I have had no clear figure but I guess, and we have made some estimations, that if we speak about Europol in the wider understanding there may be two million people. To ensure that two million people are following a very strict, very rigid, very complex security regime is quite a challenge. Just recently we became aware when we had a security incident that people mix up things and that was exactly the case I mentioned. When we are in a meeting and we transfer a document it is not even understood that after the transfer of the document to all representatives, sorry to say so, it is the UK responsibility; it is no longer Europol's responsibility. When we go to Eurojust, for example, we are not entitled to transfer a document to Eurojust but we are entitled to transfer a document to a liaison officer of a Member State. If this liaison officer then transfers the document to his national prosecutor that is then an intra-national transfer of information following the national law. This is quite complicated and if somebody loses the document on the way back home it is no longer our responsibility. It is quite complicated to make everybody aware of the various steps and so far it is a real challenge. I cannot ensure everything for 27 Member States and two million people but we are really trying to do our utmost. What we also try to do is take on board in the Security Committee those people from the Member States, not only to guide us and give us the rules, so to speak, but also to introduce the same rules to be applied back home at the same time and in the same way. For example, people have to report if a security incident occurs, but they think once it occurs back home they should not inform me. Of course they should inform me as it is a Europol document. Just recently I saw in the newspapers that in two cases security incidents happened in the UK when documents were lost, on the train in one case. If this happened to a Europol document nobody would complain about the UK authorities. Everybody would complain about Europol although it was not under my control any more. This is the natural situation, that if somebody has lost a document he should inform me, not as a person but as a post-holder, and then I can take appropriate steps.

Chairman: Director, it sounds a bit more than two out of ten to me.

Q195 Lord Marlesford: A quick question on the Strategic Threat Assessments. I am not absolutely clear of the difference between them and the Organised Crime Threat Assessments. You give them after nine months. Why nine months? How many of

these do you give each year and how many countries can have them?

Mr Ratzel: This was a rule and a proposal which was endorsed by the Management Board but also here I would like to stress that this is the minimum, so we have to deliver it in nine months at the latest. In reality the situation is quite different. We provide the Member States with regular threat assessments, not only Organised Crime Threat Assessments but also sectorial threat assessments. We provide them on a regular basis with threat assessments on illegal immigration, trafficking human beings, child pornography, counterfeiting of euro currency, motorcycle gangs. Until now it was exceptionally the case that the Member States asked us to provide them with another threat assessment. From our expertise and from our analysis background, we feel there may come a need to provide a threat assessment. So we are rather proactively providing Member States with threat assessments then waiting for them to ask us to provide them. This is more a theoretical exercise. In reality, there is never a waiting period of nine months for one of these threat assessments.

Q196 Lord Harrison: Mr Ratzel, we come to the wonderful acronym of OASIS now. According to the 2009 Work Programme one of your objectives is to establish the Overall Analysis System for Intelligence and Support (OASIS) as a best practice standard for Member States. Can you explain how you have validated this claim of best practice? Did you consult and chat about it? How do you intend to establish it?

Mr Ratzel: For quite some time we have been able to see that we need a lot of energy and a lot of resources to insert data in the Analysis Work Files as the data have been delivered to us very often in ways which were not very structured. We needed to invest a lot of staff members and a lot of energy to prepare the data for insertion. As our staff is limited we try to find out how we could overcome the problem. In the end the proposal was to develop OASIS as a toolbox in order to prepare the data and make it easier to transfer them automatically into the system. During the development of the system we also liaised with a lot of experts in the Member States and we tried to find out if in any of the Member States a similar system existed which could be for us a kind of template or blueprint for co-operation. My people informed me that a blueprint for that could not be found as the problem was quite different in the Member States than it was in Europol. Over time we have gained a lot of experience and a lot of expertise in that field. We were able to identify that no other system is available which would be more fit for practice, and therefore we are quite confident that this is the best practice experience and the best practice example. For the time being at least no other system could have been identified by us. The second point is how do we

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intend to establish it? The question is a little bit outdated now as we have started to establish it since last winter. The system has been accepted by the Management Board and we have established it step-by-step so the system was put from the development platform to the practical platform. By doing, so we have transferred one Analysis Work File after another into the system and we have carefully considered not to have any data corruption, not to have any data loss, and a guarantee that the full functionality of the Analysis Work File will also be available after the transfer to OASIS. During that process we realised that there was a need for some fine-tuning and the fine-tuning was done in order to guarantee the smooth running not only in the development environment but also in the real environment.

Q197 Lord Harrison: It is good news to hear that it is up and running, but did you meet any resistance because so often Member States can be reluctant to be forced into a straitjacket, as they might see it, in terms of the presentation of material?

Mr Ratzel: In that respect I did not see resistance. It took a long time to achieve the results so it was long hard work, and to some extent we also had to ask for prolongation of deadlines as it was more complicated and more sophisticated than expected. But once it was established there was no reluctance at all by the Member States to introduce it after the security clarification for the network was given, et cetera.

Q198 Chairman: Director, as we come towards the end, returning to the evidence that you kindly sent us, you discussed in that evidence the Comprehensive Operational Strategy Plan. We were somewhat puzzled to see that there was no reference to that plan in the 2009 Work Programme. Could you explain to us why that was and are you rather setting aside that plan, and why, if that is the case?

Mr Ratzel: Certainly I can do so. The COSPOL approach, as it is called, is an approach which has been developed by the Police Chief Task Force. As I said, the Police Chief Task Force is an independent body which is not directly linked to Europol. As Director I have an observer and supporter role at the

Police Chief Task Force, but nevertheless we could convince the Police Chief Task Force and our governing bodies that everything which is done under the umbrella of the Police Chief Task Force should be in line with Europol approaches and should be supported by Europol tools. One of the reasons to develop the COSPOL approach was to find a parallel, supportive development from Europol to the Police Chief Task Force. Under the Dutch Presidency, in the second semester of 2004, this COSPOL approach was developed in order to define the operational work of the Police Chief Task Force to be concentrated in various projects under the COSPOL umbrella. For each of these projects there should be a supportive element from Europol. So far, the COSPOL approach is not part of the Europol environment but part of the Police Chief Task Force. What we have assured is that for all COSPOL projects we will have relevant Analysis Work Files to support the COSPOL approach under the precondition that from these COSPOL participants we get data delivered to the Analysis Work Files. Once again, I have to go back to the Organised Crime Threat Assessment. After the first Organised Crime Threat Assessment was drafted and endorsed, and after the second one was endorsed, we also advised the Police Chief Task Force via the Council to clearly identify if the COSPOL projects were in line with the OCTA as otherwise we could not support them any more as our Analysis Work Files should be in line with the priorities of the OCTA. As a logical consequence one or two of the COSPOL projects were closed as they were no longer in line with these priorities or they had come to an end. Each time a new COSPOL project is identified there must be either a link to an existing Analysis Work File or to a priority OCTA. As a logical consequence, Europol will establish an Analysis Work File. Although it is not mentioned they are linked to each other horizontally.

Chairman: Thank you. Director, you have been extremely interesting and direct and clear and we are very grateful. You have also been very generous with your time and you have been most hospitable, which I think I said three times earlier because you surprised us particularly with that. Thank you very much indeed.

Supplementary evidence by Europol

The following supplementary evidence has been received from Europol to clarify the Director's oral evidence on the monitoring of security at Europol (Q 168).

BACKGROUND ON THE STATUS OF THE SECURITY COORDINATOR IN RELATION TO THE DIRECTOR OF EUROPOL

Even though Article 6 Security Manual as well as Article 4.1 Rules on Confidentiality state that the Security Coordinator shall have general responsibility for all issues relating to security, this does not entail an exclusive responsibility of the Security Coordinator for security related matters. It does, furthermore, not mean that

the Security Coordinator would generally act independently from the Director in the performance of his or her duties.

In fact, Article 4.2 stipulates the Security Coordinator shall be directly answerable to the Director of Europol which implies that the overall responsibility for security related matters remains with the Director. This is also in line with Article 29.3 (1) and (2) Europol Convention stipulating the Director's responsibility—inter alia—for the performance of the tasks assigned to Europol and the day-to-day administration.

Article 1(d) Rules of Confidentiality defining the role of the Security Coordinator confirms this finding: "Europol Security Coordinator" means the Deputy Director to whom the Director of Europol—in pursuance of Article 29.2 Europol Convention—assigns, alongside his other tasks, the function of coordination and control in matters of security. Article 29.2 Europol Convention codifies the Director shall be assisted by a number of Deputy Directors. An assignment in pursuance of Art. 29.2 Europol Convention can thus not lead to a complete shift of responsibilities.

However, the Security Coordinator is independent from the Director's governance and tasking whenever he acts in his or her function as chair of the Security Committee. The Chairmanship of the Security Committee is regulated in Art 3.3 Rules on Confidentiality. It lies with the Security Coordinator. Even though his or her independence is not explicitly mentioned, it derives from the setup and the tasks of the Security Committee. Pursuant to Art 3.1 Rules on Confidentiality the Security Committee shall consist of representatives of the Member States and of Europol. Its task is to advise the Management Board and the Director of Europol on issues relating to security policy including the application of the Security Manual. The Security Committee can thus be considered as a sub-committee of the Management Board.

The Management Board has—among other things—the task to oversee the proper performance of the Director's duties, see Article 28.1(12) Europol Convention. It can be described as the main governing body of Europol (below Council level). It is thus self-evident that the chairman of a sub-committee of the Management Board acts independently from the Director of Europol.

In addition, it should be noted that three ordinary meetings of the Security Committee are organised during the year (beyond the legal obligation of one meeting per year) that can also be supplemented by extraordinary meetings as necessary (on average up to three meetings a year also).

Against this backdrop, the answer provided by the Director to question 168 demonstrates an acknowledgement of the independence of the Security Coordinator in his or her function as chair of the Security Committee. However, it might raise doubts on the awareness of the limits of that independence and—more important—on awareness that the overall responsibility in security related matters remains with the Director. The information provided by the Director on 24 June 2008 should thus be clarified taking into account the above.

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Examination of Witnesses

Witnesses: MR JOSE LUIS LOPES DA MOTA, President of Eurojust and national member for Portugal, Ms MICHÈLE CONINXS, Vice-President of Eurojust, national member for Belgium and Chair of the Terrorism Team, MR ALED WILLIAMS, national member for the UK and Chair of the Europol team at Eurojust, MR JACQUES VOS, Acting Administrative Director, Ms FREDERICA CURTOL, Case Management Legal Analyst, and Ms MURIEL VAN DER KLOOSTER, Assistant to the President, Eurojust, examined.

Q199 Chairman: President, thank you for having us here. I am sorry that we are starting rather later than was scheduled. You may know that this is a Sub-Committee of the principal European Select Committee of the House of Lords in London. The principal Committee has a series of Sub-Committees of which this is one. We concern ourselves with issues which are covered by the Home Office in London. We did a report very recently on Frontex. We have published one within the last couple of weeks on PNR, Passenger Name Records, and we are delighted to be with you today to pursue further our current investigation on Europol. We are hoping to complete our evidence sessions some time in July and then put together a report when our Parliament

reconvenes after the summer in October, and to publish it some time towards the end of the year. I wonder if I might begin, unless, President, you would like to make some remarks to begin with.

Mr Lopes da Mota: I would just like to welcome you, my Lord Chairman. My Lords and my Lady, welcome to Eurojust. We are very pleased to be able to meet you in our building and to provide you with all the answers and information you need for your inquiry. I am the President of the College of Eurojust. On my left is Michèle Coninx, who is Vice-President and national member for Belgium. Michèle also deals with terrorist matters and is the Chair of our terrorism college team. On my right is Aled Williams, the national member for the United Kingdom and also

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Mr Jose Luis Lopes da Mota, Ms Michèle Coninsx, Mr Aled Williams,
Mr Jacques Vos, Ms Frederica Curtol and Ms Muriel van der Klooster

Chair of the Europol college team specifically dealing with issues concerning Europol. Jacques Vos is our acting Administrative Director, Frederica Curtol is our Case Management Legal Analyst and is working directly with national members and supporting our operational work and also those matters related to the operations of Europol, and Muriel is my Assistant and Assistant to the Presidency Team. Thank you very much for your visit and for coming to Eurojust for this inquiry. We are very pleased to meet you and we are happy to provide you with all the information you need.

Q200 Chairman: President, you say you can provide us with all the information we need. If by chance there is an odd piece of information—I think it is very doubtful—which you are not able to provide we shall be delighted to receive it later, either by email or in hard copy. That would be most helpful. I am not going to introduce my team. I do not know whether you have had all our CVs but I think it is probably unnecessary. I wonder if I could begin by asking you to explain the role of Eurojust within the Architecture of Internal Security and if you could give us some assessment of this reference framework both now and in the future.

Mr Lopes da Mota: Thank you for offering us the possibility of sending further information. We have some documents we can provide to you on specific aspects and you can find in them more detailed information which will confirm what we say during this meeting. Regarding your first question, my answer is that Eurojust is already playing a crucial role in this area. We are a judicial co-operation body. We deal with investigations and prosecutions. Our role is to support our national authorities when they have to deal with these types of cases. Co-ordination is a very difficult task in practice. It is work that involves police, prosecutors and even judges in the systems which have the so-called investigating judge, the *juge d'instruction*. That means we are a very flexible body. We have to adapt to the different national legal systems. In Europe at this moment we are 27 Member States but we have 29 or even 30 different legal systems and 23 different languages, so co-ordination is a very complex task in practice and we have to work always on the basis of our national legislation and on the basis of our differences and making things happen in spite of the differences and respecting these differences. That means that different actors play different roles, the police, prosecutors and judges, according to the national legal systems, and this is also the reason why Eurojust is composed of members coming from different bodies. National members may be prosecutors, judges or police officers of equivalent competences. It is then up to Member States to implement and adapt this Decision to the national legal system.

After five years of experience we can say that we have already provided real added value to our investigations and prosecutions. Our role is to promote co-ordination in the framework of judicial co-operation. That means addressing this activity from a judicial point of view. When we have to collect evidence we need to send letters of request. We need to act on the basis of the national legislation and then we have to be sure that investigations will lead to successful prosecutions and this means that they should lead to convictions in trial. That means that we have to continue the work that is being done, starting with the police bodies at national level and also working on the basis of police co-operation in Europe. Europol is our privileged partner. That means that Europol deals with police co-operation and we deal with judicial co-operation. Our aim is to have police co-operation and judicial co-operation working together from an early stage of the investigations in order to have a common overall approach to criminal phenomena affecting two or more jurisdictions. We can then organise the work in such a way that we can gather evidence and co-ordinate the different players in the different Member States, and at the end maybe we also have to discuss problems related to competition between jurisdictions, for instance. If it is a cross-border crime that means that we should have parallel investigations in different countries and lots of problems arise when we have to apply different legal systems and then see which legislation we have to apply when gathering evidence, and in the end (and this is also an important role for Eurojust) see which is the jurisdiction that is in the best position to deal with the case, the best place to prosecute in the most efficient way. This is also a challenge for Eurojust. Experience shows that we have already put in place very fruitful co-operation. Our relations with Europol are developing in a very positive way. We have worked together in concrete cases, in the last year at least 27 cases, and very successfully. Of course, there are still pending and open issues more related to the exchange of information. You know that here we have to take into consideration national legislation, not only on criminal matters but also in data processing, data protection and security, and then you have a very complex combination of different regimes. We signed an agreement with Europol in 2004. We have already approved a memorandum of understanding in order to implement the agreement. Now we are working on a table of equivalences because we need to offer the same level of security classification and we have created a strong basis for continuing this successful work.

Q201 Chairman: You did in passing just now mention security of information. I personally have some experience of some of these things. I was years ago President of one of the European Union Councils of

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Ministers and I am currently involved with NATO through the NATO Parliamentary Assembly, and I take a pretty dim view in both those organisations of the security of information, and I can say that a lot of people are very wary of giving either of those organisations certain information. My suspicion would be that there is a problem in Europol over this too with 27 members. How serious a problem do you see this being?

Mr Lopes da Mota: Do you mean on the exchange of information?

Q202 Chairman: Yes, the sanctity of information and the fact that it should not leak but does.

Mr Lopes da Mota: I think that in these matters of security, exchange of information and protection of information there are some common standards that we have to observe and that by developing those standards we can always find a balanced solution. Of course, in order to be effective we need to exchange at least some basic information; otherwise we cannot work. We are not an investigative body so we do not generate information ourselves. We have to work on the basis of the information that comes from our colleagues, from the national authorities, from the 27 Member States, and also information we can exchange with other European bodies. The principle in this matter regarding the organisation and function of Eurojust is that the information which we receive and which is sent by our authorities to Eurojust is received and processed by the national member of that state. That means, for example, that information coming from the UK comes to the UK national member and information that comes from Belgium comes to the Belgian national member. The information also comes to me if my country is involved and then it is up to us to decide, on the basis of the principle of need to know, which information we have to share in order to work together in specific cases. That means that at Eurojust at the end of the day we have 27 different databases that are organised in a very complex technical way and also have very strong legal basis because we have to comply with all requirements on security. We have different levels of exchange of information. The principle is that all the information has an owner, so that means national members are the owners of the information they receive from the Member States and then all the processing of that information at Eurojust is dealt with by the owner of that information. The same happens with the information we have to receive from and send to our partners. That means that with Europol the rules and principles are the same, the principle of need to know and the principles relating to security. Then we have an additional point that is related to the classification of information. We have different levels of classification—restricted, confidential,

secret and top secret –, and we also have to take into account the legal requirements for people to deal with that specific information, which apply to the members of the national desks and the staff. That means that from that point of view we have a basis for working. At Eurojust we deal mainly with so-called judicial information, in other words, information related to concrete investigations and prosecutions when we need to put in place judicial co-operation between Member States. Judicial co-operation can involve different players—judges, prosecutors or even police officers; it depends on the national legal systems, and they can provide information that is needed to create the basis for successful prosecutions and to take evidence. In general terms, taking into account that the national members are the controllers, the owners of the information, and taking into account the rules of security, we are in a condition to ensure appropriate protection of all the information we deal with.

Q203 Chairman: Forgive me, but what I am really after is this. Europol is an organisation with whom you do business?

Mr Lopes da Mota: Yes.

Q204 Chairman: As an observer of the scene to what extent do you think that within Europol information which you legitimately get, or other information which has nothing to do with you maybe, leaks out of Europol which should not leak?

Mr Lopes da Mota: From the Eurojust point of view what we need from Europol is information on cross-border investigations and prosecutions that have to be followed up at a judicial level. Once Europol provides that information to Eurojust our concern is that this information should be transmitted to Eurojust in a more systematic way so we can ensure from this side at Eurojust that that information is protected and is only disseminated to the national members of the countries that are really involved in the investigations and prosecutions because Europol also works on the basis of information it receives from Member States.
Chairman: All right; let us leave that there.

Q205 Lord Harrison: President, we have just had the opportunity to meet your counterpart, Mr Ratzel, in Europol, and I asked him this question about the relations between Eurojust and Europol which our Chairman has broached. I wonder whether you would like to expand on that. I understand the 2009 Agreement foresees meeting on a quarterly basis, but certainly from what Mr Ratzel said there are many not only formal links but informal links as well. I would like to ask you how you see matters between the two institutions developing, and, if I can perhaps put it in context, I believe there was an idea that the two of you should be under the same roof at one time.

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Would that be too close and too cosy an arrangement? I know you are going to be very close to each other, but does it imply that there is the necessity to demarcate between Eurojust and what it does and Europol and what it does? Could you talk a little bit about that and how you foresee what obviously seems to have been a good start for Mr Ratzel in the relations might be developed over the years to the benefit of all of us?

Mr Lopes da Mota: Regarding relations with Europol, I have to say that we have excellent relations between the President of Eurojust and the Director of Europol. We meet regularly, we meet informally, we call each other, so things move excellently. We also have a steering committee composed of Europol representatives and Eurojust representatives. Aled is the head of our representation on that steering committee which has to monitor the implementation of the co-operation agreement we have with Europol which we signed in 2004. The relations we have in our work, as I said, are very positive and in fact we work in complementary areas. That means that Europol deals with police co-operation as it is defined in the legal texts. They are a body that processes criminal information. The information they receive and they are able to process is essential in order to find links with cases, to find links with countries and then to have a broader picture on these criminal activities. The information they receive comes basically from the police side. We deal with judicial co-operation. In some countries judicial co-operation is also part of the police co-operation. In other countries it is separated. We have different players. That is why Eurojust has also the possibility of different combinations. We have police officers working at Eurojust, we have prosecutors and we have judges. What is important is to ensure that all this work that is done at police level and the judicial co-operation level is consistent and leads to successful prosecutions and investigations. We have to develop a more consistent basis for us to be able to act on the basis of the analytical work done by Europol. As you know, the Eurojust Decision says clearly that one of the tasks of Eurojust is to provide assistance to national authorities on the basis of the analytical work of Europol and our other competence is to support Europol in its analytical work, but we mainly deal with the law, if I may simplify it in that way. That means we have to address all this work from a legal and judicial perspective and then we are in a position to provide advice in order to develop all this work at prosecutorial and judicial level. The basis of the creation of Europol and Eurojust is the idea of complementarity of roles.

Q206 Lord Harrison: I think what you are saying is that you have to exercise a degree of flexibility on a case-by-case basis in your relations with Europol

because it depends a little bit on the jurisdictions and the relationships that the prosecuting authorities have with the police in each country, but, of course, that may stretch over a number of countries on the European scene as well. It is really quite a complex dance that you have to do from time to time. Is that right? Is that fair, to discuss it in that way?

Mr Lopes da Mota: Yes, that is the idea, the idea of flexibility. You are right: this is not easy. I will ask Michèle if she wants to add something because she has interesting cases that she has dealt with with Europol and the different Member States and different political systems and also Aled may want to be more precise in relation to this question, just taking some examples perhaps.

Ms Coninsx: Coming back to your very down-to-earth question, do we need to be together in the same building, I think that in 2001 the heads of states in Laeken decided that we had to be sent to The Hague so that we would be able to co-operate with Europol there. In 2002 we moved to The Hague and we are still not in the same area. We are split up by a distance of 15 minutes between the two institutions and this is not what the heads of state had in mind, I presume. Why? Because we operate in exactly the same areas, covering exactly the same phenomena without any exception and our goals are exactly the same, and those are to dismantle criminal networks, to stop organised crime and terrorism, and indeed in terrorism to be as preventive as possible because we are talking also about prevention of terrorism. Hence, we are still split up and we are working to be together. Why? Because there is no such thing as police co-operation without judicial co-operation. When we talk about the launching of EAWs (European Arrest Warrants) and the co-ordination of the execution of EAWs, especially on the Continent, we are working in the judicial area. If we are working on a simultaneous synchronised execution of house searches in four or five different countries we are talking about judicial monitoring. Of course, this is linked to operations which start from criminal investigations where we should work hand in hand together in a structured way to stop organised crime. We have some examples, like the operation we led yesterday, about which Aled was being interviewed today by Dutch television, with ten Member States in a human smuggling and illegal immigrants case. We mounted the whole co-ordination together with Europol thanks to the Analysis Work File, in this case Checkpoint. Thanks to the helicopter view offered by the Analysis Work Files we manage to have an overview of who is concerned, who should be meeting, not in the later stages but in the early stages, because from the beginning we have to stipulate what is present, who is present and at what stage, where exactly we have good evidence and what we have to do to bring better evidence in front of the leading country. This is the

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whole work, to mount the co-ordination, and hence we need to work in the very early stages together with the police and that is exactly what we have been doing, not only in Operation Baghdad but also in Operation Koala, and each time we were successful because we made good use of the Analysis Work Files.

Q207 Lord Harrison: Chairman, could I just pursue that from Ms Coninsx, because that is a very interesting answer? I sense a degree of frustration from what you are saying, that you do a very good job but you could perhaps do an even better one. Is the reason for the non-co-location of the two institutions a practical problem or is it that someone from higher up has frowned on it for some reason?

Ms Coninsx: Co-location would be the ideal situation. The proximity is, of course, leading to a better relationship. It is for each couple the same; also for the couple Europol and Eurojust. If you split you tend to forget each other and not get along with each other. There is room for improvement, especially when talking about added value, the real added value of the 18 Analysis Work Files. We have been associated so far with 12 Analysis Work Files but they are running 18. With regard to AWF Dolphin, the one which is related to terrorism, and to AWF Hydra, which is related to Islamist extremist terrorism, we are not so far associated with them. The reason why is not Europol; it is the Member States, so we have a political problem, a problem of sovereignty. Hence, if we want to be proactive, if we want to be more effective in fighting organised crime, we should have this helicopter view in time and not have to be waiting for requests from one or another Member State to help them. If we can, together with Europol, hand in hand, have an overview of the situation together with the processing and analysis of information, in other words be one step ahead, we will be more effective and stop further developments in the area of organised crime. There is room for improvement and hence there is indeed at our level, at the level of the practitioners, a lot of frustration.

Q208 Chairman: Will there still be a disadvantage then when you both move into the juxtaposed buildings in two or three years' time, whenever it is?

Mr Lopes da Mota: We are already working with the Dutch Government and the municipality of The Hague on different scenarios, so our intention is to be as close as possible to Europol.

Q209 Chairman: Sorry; that is not what I meant. What I meant was, you are going into adjacent buildings as I understand it. Is that a significant disadvantage compared with being in one building?

Mr Lopes da Mota: Of course, if we were in the same building we would use the same facilities and be in direct contact in our daily work, so that would be the ideal solution, but it was not possible so we have to be in different buildings. That is already decided in what concerns Europol.

Q210 Lord Harrison: Why was it not possible?

Mr Lopes da Mota: At this stage it would be difficult as far as I know but Jacques is dealing specifically with this matter of the buildings.

Mr Vos: My Lord Chairman, following the situation in 2005 Europol and Eurojust came together to study actively and pursue the option of what the host state at the time called a no-regret option, one facility for two organisations with a clear separation within the building for the two organisations. The unfortunate thing is that the site chosen already for the Europol location was too limited in scope, with the additional expansion that would be required for the growth of both Eurojust and Europol over the next ten to 15 years, to allow both organisations to cohabit in one facility. All our efforts are currently geared to cohabiting in the same area. The College of Eurojust has decided that a proximity of one kilometre maximum would be the acceptable distance that would still allow for, give or take if it rains or not, walking distance between the two organisations and allow for the counterparts of each organisation to meet on a regular basis. Hence we are working currently very arduously to reach a point where we are going to be, as I say, 200 metres or maybe smack next to each other, if that is possible, because there is a lot of synergy to be gained from two agencies of this kind cohabiting, in cost savings, in sharing facilities that we both need. Certain services like security services could have been combined, and so we really regret it and Eurojust expressed its dismay also that that option was not considered when it was decided for Eurojust to come to The Hague. It was a missed opportunity for all parties concerned, and currently we are struggling to find a house near the new Europol site that will meet our needs for the coming 15 to 20 years, and that is proving to be very challenging.

Chairman: I have to tell you that British Governments make just as absurd decisions. My thought is, "Oh, dear", which takes me to Lord Dear.

Q211 Lord Dear: Just to sweep up on that, I guess what you will do on a needs basis, a case-by-case basis, if you do need a joint team working together is put them together either in your building or their building for so long as that case lasts. That is the sort of thing that practical people do, but I take the point, which everyone agrees with, which is that ideally you would be under one roof or on the same campus. President, thank you very much for your time and the

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time of your colleagues. I want to continue, if I may, the theme of working together. As I understand it, only a few days ago the Justice and Home Affairs Council were talking about the need for mutual co-operation and they were particularly interested in mutual exchange of information. That, of course, is brand new and I wondered what you had in mind and what you could help us with as to how that exchange of information might be better in the future. Do you have plans or will you be making plans that you could share with us in that regard?

Mr Williams: So far as that is concerned, there are plans, yes. As you know, following the Council's Statement on 6 June a task force is going to be established involving the Commission, Europol and Eurojust, and we are looking precisely at how information exchange can be improved. The idea is that we should be in a position to report back, I think by the end of the year, on the progress on that. It is true that there remain issues. Co-operation is good but it could be better. I think that is the main message which came from that Council Statement.

Q212 Lord Dear: I take it from the rather guarded nature of your reply, which I understand, that you are not in a position yet to share with us exactly what will happen but you are working on it.

Mr Williams: That is right. There are already, as you know from the Council Statement, indications of where the attention should be concentrated, where the task force should be centring its interest, in particular on the relationship of Europol and Eurojust in Analysis Work Files, so that is clearly going to be the main focus of interest.

Q213 Lord Dear: If you were writing our report for us on this topic how far would you go? I think we want to get something into the report but I do not want to push you too far on things which clearly are as yet unformed. Would it be possible to give us a steer on the sorts of areas you would be looking at? Is it just on that illustration or are there other things as well?

Mr Williams: I think it is primarily from the Council Statement, at least on Analysis Work Files. From our point of view, if at all possible, and I stand to be corrected by the President if I am going too far on this, we would like Eurojust to have the status of privileged partner so far as our relationship with Europol is concerned. I do not think we do have that at present and very often it works to our disadvantage in that we are seen, as it were, as not only a third party but almost a third state, which is perhaps the wrong way of conceiving our role which is clearly to be complementary.

Q214 Lord Dear: Thank you. Could I move on, and I guess I know what your answer is going to be to this? We are looking also at the structural links between the two organisations and we have covered a lot of that already. What would you like to tell us on the record about the improvements that might be made on the structures between the two agencies, particularly on the core business? I think probably you have covered it but is there anything formally you wanted to say to us on that?

Mr Williams: I think in general terms, and you have obviously seen that I am being fairly guarded, an opportunity was probably missed from our point of view in that there were not provisions for exchange of information on a better basis than currently exists when the Europol decision was finalised. We would have welcomed the opportunity to have some kind of automaticity or at least some kind of systematic exchange of information between the two organisations. What we are looking for in the amendments to the co-operation agreement is moving at least some way to ensuring that information flows between our two organisations are improved.

Q215 Lord Dear: I do not want to pursue this because time is short and the example I am going to give is perhaps not altogether relevant, but I had a career in policing at one stage and I remember way back the Crown Prosecution Service, which very generally would equate with your own organisation, were a thousand miles away from the police in Great Britain. The police, I think, wanted to speak to the CPS. The CPS did not want to speak to them because they did not want to compromise their judicial independence. Would I be right in surmising that that is perhaps one of the problems that you are having to overcome? Certainly, the two sides, recognising their respective roles and protecting the essential independence of both, now work very closely together but I have seen that sort of reluctance myself on a much smaller scale within one country and I wondered if it was the same model here.

Mr Williams: My own view would be that I do not think that is the problem, to be honest, so far as the relationship between Europol and Eurojust as organisations is concerned. I think the greater difficulty is the one which was identified previously, and that is perhaps the reluctance in some Member States to provide information to Europol, for example, which can then be adequately shared. I can quite understand the parallel you draw, I was a prosecutor for the Crown Prosecution Service, but I do not think it quite reflects the position so far as the relationship between Europol and Eurojust is concerned.

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Q216 Baroness Garden of Frognal: On a slightly different tack, we have discussed in various places the issues around language and terminology and I wonder whether in your particular work there are difficulties in either the common language that is used or in the interpretations in law in the different countries and different legal systems.

Mr Lopes da Mota: That is an interesting issue. Part of our role is just to understand each other, so what does a particular concept mean according to different legal systems? We are developing what we might call a common language at Eurojust, a common approach from a legal point of view. Sometimes we use the same words but with different meanings. Take, for instance, the word “prosecutor”. What is a prosecutor? We cannot define exactly because it is a different concept for example for the Portuguese or the Spanish or the French systems. Even on the Continent we have different positions, different roles, different tasks, different types of relations between the different players, and even the definition of some legal concepts is different because legal systems are creations of the States. Now what we can observe in practice is that in spite of the differences we are able just in this communication to understand exactly what we are expected or asked to do, and this is important as well from our side in this area.

Ms Coninsx: I am very grateful for this question because it has been following us since the start, especially in the field of terrorism. We started in 2001 and we managed to have our first operational meetings in June 2001 but we did not understand each other because terrorist groups did not exist in all the concerned countries dealing with Islamist extremist terrorism. Then we had the 9/11 atrocity and we had lots of initiatives at the legal legislative level and we have seen the impact of the Council Framework Decision giving us for the first time in history a common approximated so-called harmonised approach, and now in the 27 we have the same comprehension of what is a terrorist group, and now we know what we are talking about. Of course, the UK, France, Spain, the most experienced countries have had a law, they knew what they were talking about. We are talking about the 24 other countries which are not so much involved in terrorism and this is what we have tried to do throughout our annual reports, and also to influence decision makers in other matters, like paedophilia on the internet. We have seen that there are different levels of sexual age which are leading to different approaches. The viewing of pornographic images on the internet is not an offence in all the Member States. This is what we will put in our next report, “Please work on this”. We need more than an approximation because it is not only about communication and 23 languages. It is also about translating the physical fact with the criminal intent into a provision which is understandable by all. We have had

other meetings where we were stuck between two countries, France and the UK, where the French asked for *une confrontation de témoins* whereas the UK representative was speaking as if he was falling out of heaven because it does not exist in your system. It is also not only about harmonisation of legislation but also about criminal procedure law. That is what we are working on. Let us have a common basis, a common denominator, and then we will be able to be more effective. We can already work at this point because that is our added value. That is what we are doing during co-ordination meetings, making it possible that the participants around the table understand one another.

Q217 Lord Marlesford: I would like to go back if I may, President, to the linkage, particularly as it relates to the Analysis Work Files. I would like to know specifically what the benefits of Eurojust access to the Analysis Work Files are in practical terms, and perhaps you would take terrorism because it is an easy one to describe. For example, we have had a lot of evidence about the fact that you are physically separated, but nowadays with computers you are not separated really. For example, can you log directly into the Analysis Work File or would you like to be able to? Would it help you in following leads in other countries or other situations to see what is in them? We had a description from Europol that they have a mass of information and they distil that for their particular purposes but perhaps you could distil it if you had access to it for your purposes.

Mr Lopes da Mota: We do not need to have access to the database itself. What we need is to work on the basis of the analytical work that is done by Europol and that is the core activity of Europol. Then if you have the result of the analysis you have a full picture and you know at that moment that there is a criminal organisation that is acting in different countries and they have committed different acts that constitute criminal offences. Then we have to say, okay, here we have a basis for undertaking an investigation or prosecution in this area, and that is the time for Eurojust to act. The most intense power of Eurojust is to ask national authorities to undertake an investigation or prosecution, to co-ordinate between themselves, to accept that one state is in a better position than another one to prosecute. The work done by Europol in providing this basis could be an excellent start in order to be more effective, to have an overall approach, the co-operative approach that Michèle mentioned before, and then to involve different bodies, different jurisdictions, which can co-ordinate among themselves, and then to define common strategies and help to develop successful investigations, to exchange letters of request complying with the legal requirements. This is an important point which

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Michèle has already mentioned but I would like to underline this point because there may be difficulties at this moment that are not so much related to the definition of types of crimes. They are mostly related to the procedural criminal law, the formalities we have to observe, and then, when Member States say, "Okay, I cannot accept this evidence because in the requested country you are dealing with your legislation and this is not acceptable from the point of view of our legislation". This is very important from the point of view of our tasks in order to prevent these types of problem. I will give you an example. We had an investigation in my country and we needed a document that was crucial to be used as evidence in trial. That document was in another country, we organised everything, we put the prosecutors and judges in communication and a letter rogatory was sent. Everything was agreed. But then the document was obtained in the context of a home search that took place during the night. It was gathered in accordance with the legislation of the requested state, it was sent to my country, and then it could not be used in trial because the Portuguese legislation says that in that type of crime it is not possible to make these searches during the night, between midnight and six in the morning, so that document could not be used in trial and the person could not be convicted. This is a very small example that shows how difficult it sometimes is just to take into consideration all the procedural requirements and formalities, and this is a main problem we have to address in our work. In relation to the main types of crime we have more or less common legal definitions. They come from international conventions, international instruments that have already defined them and then it is a matter of implementation of these conventions in domestic legislation. I do not know if Aled wants to add something to this point.

Mr Williams: No, that seems a very full answer from the President. What we do not want to do at Eurojust is try to duplicate the analytical work of Europol for which they are far better equipped. That is not really our role.

Q218 Lord Young of Norwood Green: I think we have touched on this area anyway but the statement at the June 2008 Justice and Home Affairs Council envisages changes to the procedure for Eurojust's participation in an Analysis Work File. What specific changes are envisaged and how will they improve Europol/Eurojust co-ordination?

Mr Lopes da Mota: This is the main point and it is one of the reasons for setting up this task force that is of course in the declaration of the Council. The point is that currently we are participating in six Analysis

Work Files and we are about to participate in another six, so that means 12 this month. We are considered experts by third parties so we are invited by Europol on a case-by-case basis to provide our expertise. This is the starting point, and the point is what is expertise from a body which also has to deal with criminal investigations and prosecutions? We can assist by giving legal advice but for that we need to know what the case is about. That means we need information on the content of the criminal information itself. Otherwise we cannot provide it because our business is judicial co-operation, so we need to know the facts and then we can see what the law is and what is to be done on this basis. That means the legal instrument of Europol, the Convention, and the new Decision do not have mirror provisions. That means we have provisions in the Eurojust Decision saying that Eurojust shall assist the competent authorities of Member States at their request in ensuring co-ordination in particular on the basis of Europol's analysis, and we do not have an equivalent provision in the Europol instrument, and it also says that we may assist Europol in particular by providing opinions based on the analysis carried out by Europol, and you do not have a similar provision. That was the point that was discussed in Brussels in the Article 36 Committee and we have provided our contribution regarding the need to find a better basis for co-operation on this point. Last year Eurojust used the powers of Article 7 of the Eurojust Decision once. We have dealt with 1,085 cases. We are convinced that if we have this result from the work of Europol that enables Eurojust on a more systematic basis to take more and more initiatives. That means being more efficient in prosecution and judicial co-operation and better co-ordination. From our point of view this is crucial for being effective against crime in Europe. What happens currently is that the Danish Protocol that allows Europol to invite Eurojust to be associated is not a sufficient basis for exchanging information, that is the point, in order to allow Eurojust to exercise these functions. We intervened. We proposed that the Europol Decision should have a similar provision but it was not possible and then we insisted on the need to work on the co-operation agreement and this was accepted by the Council. That means we now have six months to identify the points of our co-operation agreement in order to provide this basis. We have sent this contribution to Brussels and we are very happy to send a copy to you on our point specifically because this is crucial.

Q219 Lord Young of Norwood Green: So in summary if I said you were breaking down the barriers to improve your ability to co-operate and improve your

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successful prosecutions, et cetera, based on the availability of information, is that a reasonable summary?

Mr Lopes da Mota: Yes.

Q220 Lord Young of Norwood Green: Will the greater freedom of Europol liaison officers to exchange information under Article 9(3)(d) of the Council Decision establishing Europol benefit Eurojust in any way? We did meet with the liaison officers, an interesting scenario for co-operation, all those cultures working together.

Mr Lopes da Mota: This question is related to Article 9(3)(d) of the Europol Decision, which is about assisting in the exchange of information from national units with the liaison officers of the other Member States and their responsibility under the national law, so co-operation with third states basically. These are important and very sensitive issues. Cross-border crime is not only related to the borders of the European Union and so we need more and more co-operation with third states. Of course, the basis for that is a co-operation agreement. We are also at Eurojust negotiating co-operation agreements with other states and we are defining our priorities in line with the priorities of the Council in Brussels. That means that even now we are already working with third states and last year we co-operated with Switzerland in 37 cases. We have a co-operation agreement with Norway. We have cases with the Balkan countries and those cases relate to trafficking in human beings and trafficking in drugs. All these have originated in these third countries and we know where the problems are. That means we need to work with them. We are speaking about co-operation. We need to identify prosecutors, police officers, partners to work with. I think that this possibility for a national unit to work with liaison officers of third countries is also very important in finding a basis for better co-operation with third countries and then the same at the Eurojust level. If the result of this work provides us with a basis for this continuation at prosecutorial and judicial level I think this could be a very important development in fighting cross-border crime involving third countries.

Q221 Lord Marlesford: If the Treaty of Lisbon does enter into force will Eurojust, and indeed Europol, be bound by the provisions of Regulation (EC) 45/2001 protecting individuals with regard to data processing by Community institutions and bodies?

Mr Lopes da Mota: That is a very interesting point and raises some legal questions. At the current stage this Regulation 45 does not apply to the so-called Third Pillar matters, that is, police and judicial co-operation in criminal matters. It applies to the Community bodies and the basis for it is the Treaty on the

European Communities, not the Treaty on the European Union, so it does not apply to Third Pillar matters. This is the current situation. With the new developments I think that the consequence cannot be the automatic application to Third Pillar matters. We have a strong legal regime on data protection at Eurojust and Europol, and the basic principles and rules are exactly the same. There are two main points that have to be considered when we speak about co-operation in criminal matters and the processing of data in this area. These points are related to the right to information and the right to access to the information. In the First Pillar matters there are no specific restrictions on these rights but in criminal matters there are specific restrictions. That means that if a prosecutor or police officer is investigating a criminal the investigator or prosecutor has not to let the criminal know that he is being investigated. Of course, this makes no sense. That means that the right to the information has to be limited because there is a basis for this, and this is the European Convention on Human Rights, Article 8, paragraph 2. There is a need to protect the democratic society when investigating criminal activities and then there will be a moment during the normal development of the procedure when all the information of course is provided and the person has access to, but not at the moment when the person is being investigated. So, if we need to set up a telephone tapping we cannot say to the suspect, "Please, tomorrow I will set up a phone tapping, if you agree". We are speaking about basic things like this. But this matter of course is already protected by other types of legislation, mainly the procedural criminal law in this area. This is what happens currently with the Europol Decision and the Eurojust Decision. We have these rules in this area that already provide for this type of restriction because we have to find the right balance between security and protection of individual rights. If we apply Regulation 45/2001 that means that no limitations will be found there, but I think that the so-called abolition of pillars does not lead to the conclusion that Regulation 45/2001 applies to Third Pillar matters. Then, instead of Third Pillar matters, we have the so-called shared competences between the Member States and the European Union, so we have another chapter with its own rules and these basic rules have to be kept and maintained in the future.

Q222 Chairman: Thank you very much. Can I ask one very final question, which is the Chairman's prerogative, I think? Returning to security, you have many people working in your organisation in exactly the same way that Europol do where the security of information is very important, and presumably people who come and work here at the higher levels are subjected to positive vetting in their own countries

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and maybe here as well; I am not sure. I have been told that there are wide variations between the standards of positive vetting in various countries. Is there a move that you are making, or Europol that you are aware of is making, but particularly you are making, to try to move towards a standardisation of positive vetting procedures and effectiveness in all the countries in the Union?

Mr Lopes da Mota: Thank you very much for this question because it is a very important point. What happens today in the Third Pillar area is that each state has its own law, its own regulation in regard to security. For instance, we are negotiating with Europol a table of equivalences to protect information, and we are in agreement that we should offer the same level of security that Europol is offering, and the same to Europol in relation to information to Eurojust, and then we have these four levels of classification—restricted, confidential, secret and top secret. The point is, what is confidential information? What is restricted information? We have these concepts for Europol. Now we are developing these concepts at Eurojust, but at national level in the Member States what does it mean? We do not have a common language, common standards and common rules and legislation on this issue. I think there is a need in this area for legislative initiatives in order to find common standards within the Member States. We know that in some Member States we use this type of classification for the so called judicial information, but in other Member States we only have the rules of procedure in criminal law, but there is no distinction between these different levels and no criteria to identify, “Okay, this is confidential”. I think that work has to be done in this area.

Q223 Chairman: President, I am sorry. I am not talking about information. I am talking about people, to ensure that people have been properly examined as to security vetting, as to whether they are suitable for handling this material.

Mr Lopes da Mota: This is connected already, and we have that in our security rules. Jacques Vos is the Chair of our Security Committee that we have set up at Eurojust.

Mr Vos: My Lord Chairman, discussion was raised very recently at a meeting both the President and I attended of the Justice and Home Affairs agencies in Brussels, where this issue came up as well. There is a lack of consistency among all the players around the table when it comes to security vetting. Also, the assistance that agencies like ours get while requesting security vetting for personnel varies greatly from country to country. In some countries we get a negative response in that people associated with the judiciary in those countries are typically not cleared due to their own rules or procedures, and so there is a lack

of consistency across the board. We made an intervention last week requesting that also from the EU side efforts are undertaken to centralise some of these processes of positive vetting EU-wide so that there is a consistent level of vetting and that the vetting exercises we conduct here on our own, let us say, with the host country or vis-à-vis the UK Government at any point in time are exactly the same as when Europol request those same kinds of clearance procedures for its personnel, and we see deviations there. There is no consistency whatsoever and this needs to be redressed in the future Europe-wide because there is a big disparity now between the vetting procedures applied in a NATO context, for example, where the military systems are well equipped to handle this, and agencies like ours which have not even come to comprehend what the human resource implications are of vetting, so we do a defensive form of vetting in screening applicants and scrutinising their applications. We are now in the process of identifying those sensitive posts, those people working with those files, and seeking security clearance, but it makes no sense if I process a national member of a certain country, let us say, to be cleared and I get a clearance result back, “Sorry, but in our country this person can only be cleared up to the level of restricted”, or the equivalent of restricted, our lowest classification. Really the issue is that people should be cleared at any level. They should be cleared at the highest level because you never know what the national authority will apply to classify their information, so you will end up going for top secret clearances and you know from the UK system that these are very lengthy and very expensive procedures to go through. This is something we are currently negotiating even with the host state to come up with a memorandum of understanding to facilitate it at least for the Dutch nationals in this country. They were willing two years ago to provide this free of charge and now they are coming up with price tags and they have actually done some costing and what it costs to get a top secret clearance, and so this is not a foregone conclusion. We need to address this and we need to address it at a European level in my opinion.

Chairman: That is exactly what I was getting at.

Q224 Lord Harrison: Following the Chairman’s very interesting question, perhaps not for answer now but maybe you would write to us: do you experience equal difficulties of the kind you have described in terms of recruitment? That is, because the people who work here come from different countries, are differently rewarded, Eurojust itself will be differently viewed by different countries, some of you have to interrupt your careers and go back to a country which may be positive or negative about a period in Eurojust? If you have any views on that we would

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be grateful to hear them but perhaps we have not got time to hear the answer now.

Mr Lopes da Mota: Very shortly, in regard to the composition of the national desks in regard to national members' deputies and assistants, of course this is a responsibility for the Member States to appoint and decide, and in that area it is also for the Member States to define their status. Okay, we have national members appointed from the 27 Member States, most of the representations have deputies and assistants and this is also developing. In principle operational information is limited to the national desks. That means national members and assistants appointed by national authorities. Then we have the staff side. In relation to the staff Jacques, as he is the Administrative Director, has more experience on this point.

Mr Vos: There is great disparity. The Netherlands is a nice country and has a high standard of living but also a high cost of living, and so we do see a disproportionate push, I would say, from certain countries more than others to apply for the lower end administrative positions. If you want to talk about geographical balance in some areas, you get some countries that are really right now in the forefront of the recruitment procedures where we see certain countries applying for positions and taking up 50% of the applicants, whereas the rest of the Member States are hardly represented at all. There is an interesting dynamic going on right now as far as recruitment is concerned and we also find in the European setting, especially with the administrative positions, that we are competing with other agencies. This is something that is being raised in the joint heads of agencies meetings that we have. We discussed this recently and we

are trying to come up with common application and selection criteria as much as possible, but clearly countries like the south of Spain have an added benefit for a lot of people—the sun shines, and in this country we have a lot less of it, as you are well aware. There are other factors as well that will skew the recruitment procedures in general. At the higher levels, however, we see a good, well balanced proportionality of all countries participating more or less equally in competing for senior posts. It is at the lower echelons that we have more difficulty.

Q225 Chairman: President, we have overrun by 20 minutes. This is entirely due to your generosity with your time and the kindness which you have all extended towards us in what has been a fascinating session. I want you to know how much we appreciate what you have told us. You said at the beginning that you would answer all our questions and I think you have. Thank you. We are most appreciative to all of you.

Mr Lopes da Mota: Thank you very much. There are two points, if you allow me to take your time, that I think are also important which are related to our co-operation with Europol. This is our contribution to the OCTA report because we have worked with Europol in this area, and also, on terrorism, the TE-SAT report. We can submit a written contribution to you on these two specific points. They are good examples of excellent co-operation we are developing with Europol specifically in these areas.

Q226 Chairman: Thank you very much.

Mr Lopes da Mota: And thank you very much for your kind words and for coming.

Supplementary evidence by Eurojust

1. INTRODUCTION

The present note follows the visit to Eurojust by the House of Lords European Union Committee (Subcommittee F Home Affairs). In particular, background documents and information are provided on the extent of co-operation between Eurojust and Europol in the following topics: AWFs, OCTA and TE-SAT. Additionally, there is mention of the physical co-location of Europol and Eurojust in The Hague, and of staffing issues.

2. AWFs

The analytical work carried out by Europol (especially in the context of AWFs) constitutes an excellent platform for launching judicial co-ordination. Accordingly, Eurojust's main role in the context of AWFs is the promotion of a "judicial follow-up" of Europol's analyses, ie identification of the competent judicial authorities, organization of co-ordination meetings with national authorities, solving issues regarding the execution of European Arrest Warrants, organizing synchronized activities to retrieve evidence in several countries (eg simultaneous house searches and other intrusive measures that often requires an authorisation

from prosecutors or judges), stimulating the initiation or re-opening of investigation at national level, and, in general, using its mandate as expressed in the Eurojust Decision.

These judicial co-ordination and co-operation activities are complementary to the criminal analysis and police co-operation activities carried out by Europol, as it is well illustrated by the SKANDERBERG, KOALA and BAGHDAD operations.²⁷ In these cases, Europol's criminal analyses have allowed the identification of targets and the links among them. On this basis, Eurojust acted in a proactive way by inviting the involved judicial and police authorities to co-ordination meetings. During these meetings, the involved authorities could safely exchange information, identify the best place to prosecute and where to collect evidence. Finally, an action plan was tabled and discussed, which led to the simultaneous execution of European Arrest Warrants, the retrieval of the evidence and the dismantling of cross-border criminal networks.

Against this background, the importance of Eurojust's more systematic involvement in AWFs is clear. Eurojust is currently associated with 12 AWFs out of the current 18 (namely AWFs COLA, COPPER, TERMINAL, SYNERGY, FURTUM, SMOKE, COPY, SUSTRANS, MTIC, TWINS, CHECK POINT, SOYA). However, Eurojust is not yet associated with terrorist related files DOLPHIN (domestic extremism), HYDRA (Islamic Terrorism) and other AWFs of strategic importance for the fight against serious crime (eg AWF MUSTARD on heroin trafficking).

Following the Council Statement approved in the June 2008 JHA Council, a task force is to be set up by the incoming EU Presidency to further improve the co-operation between Eurojust and Europol, especially in the AWF context.

3. OCTA

Eurojust has contributed for the past three years to the OCTA report with a progressively sophisticated analysis of Eurojust cases that are relevant to the OCTA Intelligence Requirements. The analysis draws on all 27 Eurojust desks. Quantitative information is extracted from the CMS, and qualitative inputs are retrieved through interviews with National Members.

At Europol's invitation, Eurojust has also participated in the sub-groups of experts set up by Europol to improve OCTA methodology. Furthermore, the questionnaire submitted to Eurojust and the data collection plan at Eurojust have been tailored to Eurojust's role and case-based approach, which makes it possible to retrieve more accurate information on judicial co-operation issues.

The Council Conclusions setting the EU priorities for the fight against organised crime based on the 2007 OCTA and the related action plan (doc. 7547/3/07) invited Eurojust to organise a strategic meeting for prosecutors on this topic. Eurojust organised this meeting on 21–22 February this year. The general conclusions of the meeting are particularly useful in illustrating how the relationship between Europol and Eurojust (including exchange of information) can be useful in the fight against cross-border crime and also illustrate some areas where improvements can be made:

4. TE-SAT

Eurojust and Europol co-operate on the EU Terrorism Situation and Trend Report (TE-SAT), which was established as a reporting mechanism from the EU Council's Terrorism Working Party (TWP) to the European Parliament following the 11 September 2001 attacks in the United States. In the course of 2007 Europol invited Eurojust to participate in the Advisory Board meetings concerning the TE-SAT 2008 aiming at revising the scope of the report.

Eurojust provides expertise in judicial data collection, with case illustrations from prosecutions and convictions for terrorist offences sent to Eurojust by the national terrorist correspondents according to Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and co-operation concerning terrorist offences.

In order to facilitate the exchange of information in this field EJ organises on a yearly basis a Strategic Meeting on terrorism with the National Correspondents on terrorism. Each year they are reminded of the obligation for the Member States, as set out in the 2005 Council Decision, to submit respective information on terrorism-related prosecutions and convictions to Eurojust.

²⁷ For more details about the three joint operations please see:

- OP. SKANDERBERG http://www.eurojust.europa.eu/press_releases/2007/13-06-2007.htm
- OP. KOALA http://www.eurojust.europa.eu/press_releases/2007/05-11-2007.htm
- OP. BAGHDAD http://www.eurojust.europa.eu/press_releases/2008/23-06-2008.htm

5. PERMANENT HOUSING AND STAFFING ISSUES

Since June 2006 Eurojust and Europol have been working closely together on the issue of permanent housing for each institution in The Hague. A serious attempt was made to assess whether both could co-locate on the site selected for Europol. After an intense few months in which Eurojust produced its Programme of Requirements (POR) it became apparent that the site chosen for Europol was not large enough for both organisations to co-locate. The Eurojust College then inserted a specific reference in its POR for “close proximity” to Europol to be understood as meaning within a radius of 1 km. Both Europol and Eurojust remain in close contact on this issue, as it is in our mutual interest to develop the advantages from being based in the same city.

Staffing Issues

It was noted during the meeting with the Sub- Committee that Eurojust did have some problems attracting some staff in assistant grades, essentially because the cost of living in The Netherlands for this category of staff is high in comparison to the wages earned. It is apparent that some staff members have chosen to leave Eurojust for this reason, and move to agencies in countries where the general cost of living is lower. Connected to this issue, there is a trend for Eurojust staff applications in certain grades to come from the less affluent regions of Europe.

2 July 2008

WEDNESDAY 25 JUNE 2008

Present	Dear, L Garden of Frognal, B Harrison, L Jopling, L (Chairman)	Marlesford, L Mawson, L Young of Norwood Green, L
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Examination of Witnesses

Witnesses: MR FABIO MARINI, Deputy Head of Unit, MRS ISABELLE PÉRIGNON, Head of Sector for Police Cooperation, MR DICK HEIMANS, Head of Sector for Counter-Terrorism, and MRS VICTORIA AMICI, Principal Administrator, Desk Officer in charge of Europol, European Commission, examined.

Q227 Chairman: Thank you for coming and thank you for bringing your colleagues with you. You will, I am sure, have been told that this is a part of the Sub-Committee which covers what we call Home Affairs. It is a Sub-Committee of our European Committee, of which there are several Sub-Committees covering a whole range of issues. This Committee is conducting an inquiry on Europol. We have come this morning from Den Haag after spending yesterday talking to officials in Europol and Eurojust. We have a good many questions which have arisen both from the written evidence we have received, from the evidence we had orally yesterday, and also, of course, from various witnesses who have appeared before us in London over the last few weeks. I wonder in the broader sense if you could explain to us how the budget management procedures of the Council Decision will change in future the governance of Europol.

Mr Marini: My Lord Chairman, first of all I would like to thank you for inviting us to this hearing today. My name is Fabio Marini. I am the Deputy Head of Unit in the Fight Against Organised Crime, Police and Customs Co-operation. I am here today with a few colleagues who are involved in the Europol dossier and I would like to introduce them. Mrs Isabelle Pérignon is the Head of Sector for Police and Customs Co-operation and has followed since September last year the discussion in the Council on the Europol Decision. Dick Heimans is Head of Sector for Counter-Terrorism who drafted the Commission proposal transforming Europol into an agency, which was adopted in 2006. Mrs Victoria Amici is the Principal Administrator in charge of the Europol file following the implementation measures that need to be adopted by 2010. Coming to your first question, Europol, by becoming a new agency, will adhere to the financial and budgetary legislative framework applicable to EU institutions and Community bodies. Europol will have to comply *inter alia* with the rules for the establishment and implementation of the budget at EU level. The principles laid down in the financial regulation represent safeguards towards increased coherence

and accountability and participation. We would also like to underline two of the budgetary principles governing the financial regulation, on the one hand the principle of sound financial management which requires effective and efficient internal control, and on the other hand the principle of transparency. A practical example of the application of this principle is the obligation to publish the annual accounts in the official journal of the European Union. The EU budget procedure has two immediately significant consequences, first of all, the involvement of two branches of the budget authorities, the Council and the European Parliament, in the adoption of Europol's budget which increases its accountability and transparency, and, secondly, the obligation to submit an annual activity report. This will make Europol more open and accountable to European citizens. The annual activity report will be endorsed by the Council and transmitted to the European Parliament and the annual accounts will be scrutinised by the Court of Auditors and published. Finally, it is the European Parliament which is responsible for granting the discharge to the Director.

Q228 Chairman: Thank you. Can I add to that? It has been suggested to us over our inquiry that the Commission has only limited competence to coordinate policy implementation in the area of justice and home affairs. I wonder if you would like to comment on this. If there is this gap in the Commission's competence what are you doing to try to correct that situation by changing the arrangements which exist at the moment?

Mr Marini: Talking about the limited competence, the Commission generally speaking works with Member States in developing policies, of course, and we try to negotiate our proposals every day by ad hoc meetings with representatives of Member States based also on the public/private partnership, and we try to have common concerns in developing these policies.

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Q229 Chairman: Sorry—I am not talking about the agreement of Member States. I am talking about the whole rules which govern the activities of the Commission. It has been suggested to us that there is a gap in what you are competent to do under the arrangements which are laid down. Our specialist adviser reminds me that this came from a witness that we heard yesterday who suggested that the implementation of policy in the Third Pillar was something for which the Commission was bravely trying to carry out work in that area but had limited powers to co-ordinate the various actors on the Third Pillar scene.

Mr Marini: I have not understood your question very well. Do you mean in the sense of the Treaty of Lisbon or in the future? Could you be more precise?

Q230 Chairman: The question related to the situation now in terms of the expression of policy at Council level and how policy can be translated into co-ordinated action within the Third Pillar and the role of the Commission in trying to facilitate that translation of policy into implemented activity.

Mr Marini: As I said in my previous answer, we have a sort of facilitator role. A facilitator role means trying to organise ideas and pushing, in co-operation with Member States, possible initiatives to develop specific issues in the Third Pillar, in the police co-operation field, for example. Of course, in the current situation we have, as you know, limited powers. A framework decision, for example, is a useful legal tool but the problem in comparison with what our colleagues in the First Pillar feel they can do with a country is that we cannot force the implementation of a Framework decision. We have only limited powers in the sense that we can only publish reports where we indicate the state of implementation of a third pillar instruments by Member States but we cannot do more than that. We are confident that in the future, in a different legal scenario, we could improve our activities.

Q231 Lord Harrison: I suppose the question in a novel way is, are there things that you would like to do in the present position that you feel frustrated from doing because of the limited competence?

Mr Marini: We cannot say “frustrated”. Even if we do not have infringement procedures we try to cope with the situation, as I said. We try to develop our ideas in co-operation with Member States rather than impose them because, of course, we do not have any power to impose them. The key to being successful, I think, is to start a discussion from the beginning on a specific issue with representatives of Member States developing ideas, for example, to judge how to develop best practice in different scenarios, to have a clear view of the situation in the different areas of

competence and to act as facilitators of national needs. This is what we can do now and this is, I would say, our first course in our activities.

Q232 Chairman: I think we must get on. I realise that I have jumped this question on you and maybe you would like to ponder and reflect on the question and then perhaps in the next week or so we could further enlarge on what we are talking about and you could write to us within the next month if you would so that you can think a little more about what the problem is.
Mr Marini: Of course.

Q233 Lord Dear: Can I continue the thrust on the budgets? We all appreciate that every organisation that spends money has to have very sound financial management. That goes across the globe. I wondered if you had a view about Europol’s planning documents, whether you think they are appropriate and proper for the purpose of working up their budget. In other words, can they work out a proper budget given the constraints and the procedures that they have to work by?

Mr Marini: In talking about the present situation it should be noted that so far Member States have evaluated Europol’s current planning documents, for example, the year plan, the annual budget and the accounts, after these documents have each time been discussed and adopted by the Council, but in becoming an EU agency Europol will have to comply with and also benefit from the provisions of the financial and budgetary frameworks which are applicable to all EU bodies. We consider that the documents foreseen by the different legal instruments governing the budgetary management applicable, as I say, to all EU budgets and which Europol would have to comply with, are appropriate means for giving a reasonable assessment of the budget in accordance with the budget principles as I mentioned before. An accounting officer function will also be created within the agency building in the spirit of the existing financial controller.

Q234 Lord Dear: The reason we ask the question is that there has been some suggestion that the budget is inadequate, and maybe you will comment on that, but, of course, everyone wants more money and one appreciates that, and, secondly, in particular the procedures that have to be followed in order to construct the budget before you even spend the money are not really suited to an organisation like Europol which has unusual demands. I wondered if you were satisfied with the procedures as they exist or whether you see them being changed in some way in the future, not necessarily to spend more but to manage the budget better.

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Mr Marini: Talking about the additional resources to Europol, for example, the European Parliament can grant additional resources to Europol, but within the total amount of the corresponding "chapter". The European Parliament can also put credits in reserve pending fulfilment of the additional conditions. This is also important.

Mrs Pérignon: We need to make a clear distinction between what is the situation today without any Community financing and what will be the situation when Europol becomes an agency as of 1 January 2010, and that is one of the reasons why the Commission decided to draft the proposal. Then the role of the European Parliament will be increased and there will be the possibility to grant additional money to Europol. For example, the Commission has already planned in its financial perspectives to increase the budget, so in 2010 we will have €82 million available to Europol and then it increases every year, in 2011 to 83 million, and then to €84 million in 2012 and €85 million in 2013, so the Commission can propose additional money in comparison to what is the situation today with €64 million. Then, of course, the European Parliament, as Fabio Marini has told you, can increase these figures but they should respect the total envelope of the rubrique 3A. We think that it will be beneficial to Europol.

Q235 Lord Dear: I am grateful to you for that. That deals with whether the money is adequate in total, but I am also interested, and perhaps you can help me with this as well, in not only the total amount, which may well grow in future, but also in whether the budgetary management mechanisms within that sum, today or later, are proper to help an organisation like Europol to grow. You have got the money on the one hand, the total. Put that to one side. You have then got the mechanisms in which you allocate the money and then spend it within any budget and I wondered if you thought that mechanism was appropriate for Europol or whether it should be changed.

Mrs Pérignon: For us today the Commission is not in a position to judge the situation that existed in the past because it is the Member States, as you know, who discuss and then decide, and so far we have never heard about any complaint when it was discussed in the Council about anything that should be changed.

Q236 Lord Dear: Nothing has come from the Management Board of Europol to you, because it is really the Management Board's function to lay the money out and spend the money within Europol?

Mrs Pérignon: Yes, exactly.

Q237 Lord Dear: They have not made any representation to you?

Mrs Pérignon: As you know, the Commission is only an observer to this Management Board, and on this Management Board you also have the financial controller who has a key function because he checks the validity of all the financial decisions which are made by the Management Board, but once this decision is taken by the Management Board the final decision is presented to the Council, and so far we have never heard about that.

Mr Heimans: I want to add one additional element perhaps that may not yet be clear, and that is the fact that even in the current situation Europol is working to a financial regulation which is very close to the financial regulation of the European Union, so in regard to the actual conditions for spending the money in terms of procurement, allocated money, the rules are not going to be all that different. In the past we have not had any problems at Europol that I have heard of in terms of spending the money for a new operational task, if that is your concern, that the procedures will stand in the way of quickly and adequately allocating resources.

Q238 Lord Mawson: Can I add to what Lord Dear was saying? It seems to me one would only want to put more money into an organisation that was effective in what it was doing, and what you need to be very sure about is that it is being effective. One of the things we are picking up (or I am picking up) is that the governance of the organisation is particularly difficult because of the constant demand for innovation in the services delivered, but the organisation is divided into these rigid vertical structures and the relationship between the Management Board and the Director is difficult. If that is true can such an organisation engage efficiently with the modern world we now live in when there is a need for innovation and being fleet of foot and where it is pretty essential to do that? What needs to be done to modernise this organisation so that when you put the money in it is effectively used and delivers something at the end?

Mrs Pérignon: In the draft Council Decision on which we had the political agreement, as you know, on 18 April, there are some changes which are very important concerning the Management Board structure. There are also, as my colleagues have said, all the new budgetary procedures that will be applicable in the future. As for us, we are in a difficult position now to tell you exactly if there are any difficulties with the Management Board and the Director and it is one of the questions I am sure you can ask this afternoon to the Chairman of the Management Board.

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Chairman: It does seem to me that in the answer you gave a few seconds ago you did graphically illustrate the limited competence I was talking about a few minutes earlier.

Q239 Lord Dear: I think we are already halfway to the question I was going to pose to you, which is, moving away from the totality of the budget which we have explored with you and the way in which the budget is managed once it gets into Europol, I wonder if you consider that the Commission itself has got any role at all in setting the objectives of any of the agencies, particularly Eurojust and Europol. We are particularly interested in Europol but there is a liaison with Eurojust. The setting and measuring of objectives in detail will obviously flow down through the Management Board and into Europol or Eurojust, but I wonder if you see a role for yourself. Should the role you have at the moment be enhanced? Should you not have such a great role? It would help us to understand your thinking on that issue as well. Do I make myself clear?

Mrs Pérignon: Yes. Your question is in fact two-fold because first of all there is the objectives issue and then the measurement of the indicators. As you know, the objectives of the agencies are determined in the legal basis of the different agencies and so the legal basis is adopted by the Council—and then the Parliament when we have co-decision—and in the case of the proposal for a Council Decision on Europol, Article 3 of the draft Council Decision sets out the objectives clearly and it was something that was discussed in the Council. Generally, in fact, Europol is considered as a regulatory agency and it falls into the category of agencies fulfilling operational activities. These agencies are normally managed by a Management Board, as we have in Europol, which is responsible for adopting the Annual Work Programme, and the work programme has to respect the legal framework which is also set out in the legal basis, ie, the draft Council Decision, so the Commission must give an opinion on the work programme prior to its adoption by the Management Board and that is exactly the case we have with Europol. According to Article 37(10)(b) of the draft Council Decision the Management Board prepares the Annual Work Programme where it sets objectives and then before adopting it the Commission must give an opinion on it. Concerning the evaluation during which the results are measured the legal basis, so also the Council Decision, determines how we can evaluate the work of the agencies. Here again there is no fixed rule so we have differences between the agencies in the Union. It depends on the agency but the agency has the possibility to launch its own evaluation or it is launched by the Commission with or without the help of an external evaluator. In

general terms there is always an obligation for agencies which are financed through Community funding to be evaluated at regular periods and this is determined by our financial regulation. In the specific case of Europol you can see that in Article 37(11) it provides that within four years of the date of application of this Decision there will be an evaluation and thereafter every four years. Every four years we will have an evaluation and the Management Board will show the Commission an independent external evaluation. That is something that was decided during the discussions in the Council, that it should be external, so then we carefully analyse how we can evaluate Europol activities. It is also important to note that in the draft Council Decision we have Article 38(4) which says that the Director of Europol shall be responsible for establishing and implementing, in co-operation with the Management Board, an effective and efficient monitoring and evaluation procedure relating to Europol's performance in terms of the achievement of its objectives—that is the wording of Article 38—and the Director shall report regularly to the Management Board on the results of that monitoring. Therefore, since the Commission will be a full member of the Management Board as of 1 January 2010, which is not the case today because we are only an observer, we will have one voting right. Then the Commission will have the possibility of saying a word on this monitoring and evaluation procedure. Finally, I would like to insist on the fact that Europol is one of the agencies we have in this field of JHA issues but we also have other agencies. Altogether throughout the Commission we have 26 agencies and the Commission is now in the process of evaluating these agencies. The Commission published in March this year a communication explaining what the different agencies are and what types of agency they are, and it will be followed by an evaluation which will be launched at the end of this year/beginning of next year, and we will have the results in 2009/2010, evaluating all the evaluations of the different agencies. We are already in the process of analysing the differences between these evaluations because we have already what we call a meta-study survey, which is a survey on all the different systems of evaluation. It will be a first assessment and we expect the results by the end of this year.

Q240 Lord Dear: That is very helpful. One final question, which I suppose goes to the root of everything you said. Theoretically, if you were to find that one of the agencies—Europol or any of the others—was not performing in a way that satisfied you would you be able in the new procedure, as it were, to reach into that and effect change? To

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evaluate is one thing. To do something with the evaluation means that you have the power to react. Would you have such a power?

Mrs Pérignon: Thank you for your very interesting question. Indeed, that is something we could raise because we are, for example, for Europol and other agencies part of the Management Board, so that is something we could raise in the Management Board and discuss with other members. That is also something that we can then discuss at the level of the Member States and ultimately the Commission has the power to initiate and propose legislation, so we also have the possibility to adopt an amending legislation if it helps to improve and change.

Q241 Lord Mawson: Can I ask how long that is all going to take because we are living in a very fast-moving world here?

Mrs Pérignon: I cannot pre-judge how long the discussions with the Member States will take but, of course, as you know, it is something that is not incumbent on the Commission. It is something that needs to be discussed with the Member States and if Member States consider that there is the necessity to respond quickly then I hope they will act in the same way.

Lord Harrison: I think the Committee is experiencing some difficulty, and if I ask myself what it is, I think it is this. To most of the questions that have been put to you this morning you have described the situation in terms of documents presented and so on. We also understand that until 2010 you have no active role, no voting role, but what we would find valuable is to get some sense from you, even in that status as observer, of what you observe and say about the various questions that are being put to you, whether it is the one on the sound financial management or another. Do you have any views, even though you may not be in a position particularly to intervene and say? It is the purpose and right and proper business of the Commission to look hard and say, "Is this right?", and, "Is that right?". We are not getting a sense from you of whether you think this evolving process is going to be beneficial in the long run and that you welcome not what is happening but the process, the road, that has been embarked upon by, in this case, Europol and others. We would like some opinions from you, not just the law.

Q242 Chairman: This is a fundamental question which is concerning all of us. I do hope that you will be able to elaborate on what Lord Harrison has asked you. If I can put it as well in this way, in the experience you have had so far, because so many of you are involved with Europol in one way or another, and Victoria Amici is, as I understand it, the desk officer in charge of Europol, in your observations of

Europol up to this point where are the areas where you think there might be the need for change? That is what we are after knowing. It is a fundamental question, quite frankly. If I can be very rude, if you do not know, if you do not mind my saying, we think you ought to know.

Mr Heimans: Can I try and give you some first elements of response but maybe my colleagues will add to this? The first thing to realise is that obviously we are civil servants here. We are not here to give political judgments on the organisation.

Q243 Chairman: We are not asking for that.

Mr Heimans: If you are asking us what have we observed at Europol and we have responded, I think history shows what we have done. We have looked at the situation as it was, we have co-operated quite closely with the Austrian Presidency, for example, to try to find ways of improving Europol that would meet the consent of the Member States. These are the limits of the role that we have and we have, I think, succeeded in putting forward a proposal which means that there is more flexibility for the legal basis of Europol, so that if there is an issue that has been noted by the Member States there can be quicker action at the level of legislation. We have said we feel that the mandate of Europol is too limited because it is only limited to organised crime at this stage. We think that it should be all serious crime, which is a very important point to make. If there is a killer who operates in different Member States of the European Union but he operates by himself it should be Europol which should be able to analyse the situation and give advice to the Member States authorities, and, thirdly, we said that Europol should be more operational. There was a request from the Member States that Europol should be more involved in the actual police work. It should not be strategic; it should be operational work that they are involved in. At the same time Member States told us that Europol officials should not go out and arrest people all across Europe, so how do you make an organisation more operational? You focus on its main characteristics, which are the exchange of information, the support of the exchange of information and the central analysis of that information. I think that in all these key areas the proposal which has been put forward by the Commission has made some significant changes.

Q244 Lord Marlesford: What are your views on the future co-ordination of Europol and Eurojust? I would like you please to put the arguments in favour of them getting closer together and the arguments against that.

Mrs Pérignon: I am pleased to tell you that the Commission supports the idea of improving the co-operation between Europol and Eurojust and that we

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welcomed the adoption of a statement concerning the co-operation between the two which was adopted at the JHA Council on 5 June in Luxembourg. In this statement the Council urged Europol and Eurojust to prepare amendments to the co-operation agreement that they signed in 2004. They are supposed to prepare by the end of this year, amendments to this co-operation agreement. These amendments need to enhance the mutual exchange of information necessary for the achievements of the tasks of both Eurojust and Europol. These amendments will be done without changing the legal framework, so there will not be any change to the draft Council Decision on Europol on which there was a political agreement in April and there will not be any changes on this respect to the Eurojust Decision that is now being discussed in the Council and which, as you know, ought to be adopted by the end of this year. The Council also agreed on 5 June that a task force would be set up by the Presidency under the responsibility of the Presidency to assist Europol and Eurojust in preparing amendments to this co-operation agreement. The Commission will be part of this task force and we will therefore contribute to the work of the task force. Since the signature of this co-operation agreement of 2004, which allows the exchange of personal data, both organisations have improved their links and, as you know because you visited Eurojust and you met Mr Jose Luis Lopes da Mota, they have worked together to establish a manual, for example, on the joint investigation teams. They have drafted a practical manual to help the practitioners in this field and Eurojust is so far associated with six Analysis Work Files. There was also a secure communication line which was signed in June 2007 to help improve this co-operation. We are pleased to see that there will be improvements in the co-ordination between Eurojust and Europol. We are planning to participate in the task force and elaborate on ideas about how to improve the situation. The Commission is also trying to co-ordinate the action between Europol and Eurojust by playing a role in the EU JHA heads of agencies, so every year—and now it is the third year and there was a meeting last week—the heads of agencies in the JHA field, that is, CEPOL, Eurojust, Europol, Frontex, meet and exchange best practice and ideas on how to improve relations among them and the Commission supports such initiatives so that we can really see how they can better co-operate together and exchange best practice. In summary, we consider that there are ways in which we could improve this co-operation and we will do our utmost to facilitate these improvements.

Q245 Lord Marlesford: But they are separate organisations and there is an argument presumably for them remaining such and an argument in favour

of them getting closer together. What I am trying to get from you is your thinking as to the limiting factors of both those sides of the argument—the argument in favour of them getting closer and equally the need for them to remain separate and the reasons for that. It is very helpful to know what is actually happening and how it has all been handled administratively but it is really your thinking that I am after.

Mrs Pérignon: Because you have the police co-operation side with Europol and the judicial co-operation side with Eurojust it makes sense that they try together to collaborate and co-operate as much as possible.

Q246 Lord Harrison: Yes, but what is your opinion? Can I dive into this most simple of questions that Lord Marlesford is pursuing? We understood from the organisations involved that Eurojust was sent to set up at The Hague. It was separated physically from Europol. Europol itself is now moving into new premises and we understand that Eurojust will move but will still be separated by something like 200 metres. We heard of the virtues of Europol and Eurojust being co-located, brought under the same roof, not only in terms of security but also in terms of the fact that they will be talking to each other on a regular basis. Do you, the Commission, have an opinion on that? Would you favour and press for the co-location or, in giving an answer to Lord Marlesford, are there theoretical and practical reasons for making sure that the two remain wholly independent and separated? What we would like you to do as observers of the scene is give a view on this.

Mrs Pérignon: For the Commission it is really important that they both work together and we always favour the fact that they should be located at the same place. As they might have explained to you, they are having difficulties with the housing but it is important that they try to the best extent possible to be physically at the same place. In any case, and on all the aspects, technically and politically, the Commission really favours the fact that they should work together.

Q247 Lord Dear: Sorry—I missed that: they should not work together or they should?

Mrs Pérignon: They should work together. We really favour this.

Chairman: I am concerned that the clock is working against us and we have a lot more questions to ask. You do not seem to be prepared to give any more opinions on this so the only thing is to move on.

Q248 Baroness Garden of Frognal: This is a factual question. In June 2006 the Commission discussed evaluation of EU policies on Freedom, Security and

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Justice and proposed to agree contact points in the Member States to facilitate dialogue with the Commission. Have these contact points ever been set up? If so, who is the contact point in the UK, because we do not seem to be aware of that in the evidence we have seen?

Mrs Pérignon: As you just mentioned, the Commission adopted a communication on the evaluation of the policies in the JHA field in 2006, and there was then a dialogue between the Commission and the Council in order to identify the best way to set up this evaluation mechanism. The Commission organised a conference in October 2006 and all these actors were sitting together and taking part. In the conference we identified precisely what could be the indicators of the evaluation, how we could make available statistics and data, et cetera. Then the Justice and Home Affairs Council in December 2006 acknowledged the need to improve the existing individual evaluation mechanisms and they decided to have further discussions in the working group in the Council, and that was what was done all throughout the year 2007.

Q249 Baroness Garden of Frognal: And the contact points?

Mrs Pérignon: Despite the extensive consultations we had with all the stakeholders and all the discussions we had, the process for implementing the evaluation mechanisms has been slower than expected and the group of national contact points has not yet been set up and these contact points have never been communicated by the Member States.

Q250 Baroness Garden of Frognal: Do you envisage them being set up or are you suggesting that the barriers are so great for the Member States that we are unlikely to get these contact points set up?

Mrs Pérignon: It seems that discussions need to continue before the Member States will agree on establishing these contact points.

Q251 Chairman: Which are the countries which are being difficult about this?

Mrs Pérignon: For this I have no idea. I can consult my experts and give the answer in writing.

Q252 Chairman: Will you write to us?

Mrs Pérignon: Yes.

Q253 Baroness Garden of Frognal: My other question you have covered in previous answers but perhaps I could specifically ask you how would the Commission suggest measuring the impact of the new Council Decision on Europol? You did talk about evaluation and measurement in a previous answer. In what you have already said does that cover the

impact of the new Council Decision? Is there anything else you like to add to that?

Mr Marini: In the impact assessment which has accompanied the proposal for the Council Decision, the Commission has explained how the impacts of the proposal should be assessed. According to the results, the impacts of the proposal after implementation will be monitored and evaluated on a continuous basis, mainly by Europol's Management Board but also by the Council, the Commission and the European Parliament. In addition the proposal specifies that the Director will establish a monitoring system in order to collect indicators of the effectiveness and efficiency of the duties performed within Europol. This is according to the impact assessment. This monitoring system should provide Europol with the necessary data for carrying out the evaluation. This will be done under the responsibility of the Director of Europol. As mentioned earlier, according to the draft Council Decision we provide that within four years of the date of application of the Decision, so 2014 and every four years thereafter, the Management Board shall commission an independent evaluation of the implementation of the Decision and the activity carried out by Europol. Meanwhile, the results of the study commissioned by the Commission in 2009 for an evaluation of the regulatory agencies we hope will be available in 2010. We contribute to the ongoing debate on the future of the Community agency system. At the time the Commission will benefit from the experience gained by evaluating the other agencies to better define its major indicators.

Q254 Lord Young of Norwood Green: Director, in July 2007 the Commission reported on the implementation of The Hague Programme for 2006 and provided an institutional scoreboard. It showed that the Commission working paper on criminal intelligence-led law enforcement, originally planned for 2005, had to be delayed, possibly to 2008 or 2009. What was the cause of the delay, and am I right in assuming that you are writing the paper now? Are you halfway through it? What was the cause of the delay and when do you expect to start writing the paper, as my earlier question has evoked some humour?

Mr Marini: In fact, the Commission considers it premature to issue this working paper. According to the Commission it is necessary first to have an in-depth analysis of the Decision and explore the possibilities to be developed by Member States. In order to develop this brainstorming the Commission specifically included criminal intelligence-led law enforcement within the priorities of our financial programme. We have a financial programme for the fight against crime and in introducing this

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programme in 2007 and 2008 we provided special funds to develop this brainstorming. Unfortunately, so far no Member State has applied for these funds. So far Member States have not given much support to the idea of criminal intelligence-led law enforcement as the subject of the fifth mutual round of inspections organised by the Council. As I said, it seems premature to work on these issues but it is also true that a revised OCTA prepared by Europol can be considered as a step towards this direction. For the moment Member States consider that they need time for a more in-depth analysis. This is the reason for the delay.

Q255 Lord Young of Norwood Green: As I understood it, and maybe I have misunderstood, I thought the UK and the Dutch were keen on intelligence-led criminal investigation.

Mr Marini: That is correct. I would say something else, that in practical terms from an operational point of view this intelligence-led law enforcement system can be considered to be already in place in some Member States, practically speaking. There is something else to say with regard to the theoretical approach to this policy. It is true that some Member States are really keen to develop this, and you mentioned the UK and the Netherlands which are really in favour of this, but so far it has not been the case for the rest. That is the problem that we have to manage for the moment. That is why we put these special funds in our financial programme, to develop this brainstorming.

Q256 Lord Young of Norwood Green: So you have the special funds but nobody is using them?

Mr Marini: No, for the simple reason that Member States did not apply for them. Nobody has submitted an application.

Q257 Lord Young of Norwood Green: Are you in favour of intelligence-led law enforcement?

Mr Marini: We should consider the situation at the general level, at EU level. For the moment this is a minority. It is a really restricted number of countries which are in favour. Even if I said that from an operational point of view we can say that this is in place, it is different to pass from the operational organisation in some Member States to the theoretical approach to intelligence-led law enforcement. That is the problem that we have to face now. In principle we could develop this, of course, with the consensus of the others.

Q258 Chairman: I am not clear what the reasons are that those who are blocking this are giving for not wanting to go down this path. In terms of law enforcement what arguments do they pursue?

Mr Marini: In our understanding at least there is no specific reason to be against this. If you ask Member States nobody will tell you they are against this idea. What I said was that it is a little bit premature to issue this working document for the reason that this sort of brainstorming has not been sufficiently developed at EU level. The most important reason for this is the lack of involvement of the other Member States even if, as I said, from a practical point of view in some Member States (more than the UK and the Netherlands) this is an operational practice; that is clear, but it is difficult. We do not have so far sufficient argument to develop this working document. That was the reason, basically.

Q259 Chairman: I am sorry; you have not answered my question. You keep using this word “premature”. That is not an argument, frankly. Why do those countries which are blocking say it is premature?

Mr Marini: Exactly.

Q260 Chairman: Why?

Mr Marini: Because in principle, for example, in the Council in the discussion—

Q261 Chairman: If you do not mind my interrupting, I was President at one time of the Agriculture Council for the British Presidency. If a delegate had come along and said, “I do not want this because it is premature”, he would have been laughed out of the meeting just on the basis of saying, “It is premature”. He would have to explain why he thought it was premature. Why are they saying this?

Mr Marini: They simply consider that within the list of their priorities this was not at the top. They had other priorities first, that was the outcome of the inspections organised by the Council, so this is not among the first priorities for the Member States so far, even if they did not deny the importance of this. This is for the moment what is happening with the other Member States.

Q262 Lord Young of Norwood Green: In the interests of time I think we have got as far as we can on that one; thank you. In the Work Programme for 2009 Europol has an objective for establishing the Overall Analysis System for Intelligence and Support (OASIS) as a best practice standard for Member States. Does the Commission have a role in identifying best practice standards in activities conducted by its own agencies or soon-to-be agencies? Can I ask as a supplementary, have you a means of validating these best practice standards?

Mrs Pérignon: In general terms the Commission is always paying attention to best practices and trying to disseminate them as widely as possible. As I explained earlier on, for example, in all the meetings

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of groups of experts in which the Commission participates, for instance, in the meetings of the EU/JHA heads of agencies, best practices are exchanged and we always try to promote them but we do not have any means of validating them. We can invite the agencies or the soon-to-be agencies to develop and adopt these best practices but we cannot force them upon them.

Q263 Lord Young of Norwood Green: You do not have any external validation of best practice?

Mrs Pérignon: No.

Q264 Lord Young of Norwood Green: Do you feel this is something that is lacking?

Mr Heimans: Identification of best practice—this serves of course to help the authorities in the Member States. The fact that we consider it to be best practice is something that we can put in a communication, for example. In my own line of work we are working on radicalisation, for example. You identify what different Member States are doing in that field and you communicate that to the other Member States but it is not as if the Commission is going to rubber-stamp a particular practice and say, “This is the best and all Member States should follow it”. I do not think the Member States would be too keen to see such a position from us.

Q265 Lord Young of Norwood Green: So it is advisory?

Mr Heimans: Yes.

Lord Dear: I wanted to pursue this point because it flows directly out of the question that I put at the very beginning of this session, which was all about how one delegates powers. I spent a lot of my working life in very large organisations and, as you understand and as I understand and all of us know, life is about an exercise in delegating power downwards. We have Member States. They need to have an organisation like Europol. You sit between the Member States or manage the Member States and you delegate the responsibility for Europol and other similar agencies down to that, but you do not just cast them adrift. You have to have some means of making sure they do what you wish them to do and knowing whether or not they are performing the right task and the right task properly. I am putting it in very simple terms because there might be a risk of a misunderstanding within this room. My question originally and Lord Young’s question go to the whole root of this, that we are very interested in knowing whether the Member States, individually or as a collective through the Commission, have any real interest in what Europol does and any real interest in co-ordinating it so that Europol goes in and deals with things knowing it has the support, if not of every Member State, certainly

of the majority. The picture I am getting, and please tell me if I am wrong, is that the Member States are really all over the place, that Europol is making up its own rules almost as it goes along,—and I am deliberately over-simplifying this but I am trying very hard because of the language difficulties to put this into a clear context—that Europol is operating to its best endeavours; let me put it in those terms, that Member States have not got a clear view of what they want Europol to do, and that the linkage between the two is at best fragmented and at worst hardly exists. I have deliberately over-emphasised that to try and get to the point which we have all been looking at for the last half hour or so, and I think all of my colleagues, from the nodding that is going on in the room, would really like an answer to those linkages between Member States and Europol. Are the targets clear? Is everyone satisfied and, if they are not, why not?

Q266 Lord Mawson: Can I add a dimension to that, because my experience of best practice in the UK that is emerging is that you can create whatever structure you want and you can co-locate organisations, and having built quite a number of projects that have co-located quite a number of organisations I know from experience that you can put them all in the same building, like this, actually, but they could still be a thousand miles away from each other; they will not communicate unless something else happens that is to do with people and relationships. It seems to me the most effective organisations I have experienced, certainly in the UK in the public sector and the business sector, are all about where the relationships are properly in place and are actually happening and are dynamic. My worry about a lot of this conversation—and Lord Dear is quite right in what he is saying—is that it all seems very fragmented and the relationships do not seem to be in place in a way that would make a dynamic organisation actually work, dealing with some very difficult issues that I suspect are appearing every day. That is a concern to me because these people are going to have to operate in the modern world and I would be very interested at the end of this to get a feel from Victoria what this is really like, an honest feel at the front line, because you are the interface there and it would be interesting to know honestly what it is like.

Mr Heimans: I worked at Europol from 1995 to 2004 before joining the Commission, and since then I have worked on the issue as well from the Commission side. I think the picture that you are painting is excessively bleak, if I can put it that way. Quite clearly you are going to have difficulties in managing an organisation if the main power within that organisation is with a Management Board which consists of 27 different Member States which all have

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their individual interests. They all have their individual systems of criminal law that they have to apply as well, they all have their individual relations between prosecutors and law enforcement personnel, and they all have their different relationships between law enforcement agencies and intelligence agencies which also need to work together in order to get that information to the right level. I do not think it is right to say that the Commission is the path through which power is delegated by the Council to Europol. I think that is a misrepresentation of the way the organisation is set up. The main power for managing the organisation rests with the Member States. We can try to co-ordinate, we can try to improve, we can try to influence, but the power rests with the Council and it is the Council which decides through the Management Board, through the heads of national units, through all the different ways in which the Member States are represented within the organisation what is the best course of action, and I think they are doing a fairly good job of it, to be honest.

Mrs Amici: As you have noticed, first of all, in terms of practical experience our colleague Dick Heimans actually has been on both sides of the board since he worked at Europol and then worked as a Commission official on the proposal for a Council Decision. My experience is much more limited, more recent and, dare I say, much more bureaucratic.

Q267 Lord Young of Norwood Green: Refreshing candour!

Mrs Amici: However, your question prompts a few comments from my side. In particular I note with interest the comment you made about fragmentation of relations and how organisations can be set up to work best in order to deliver their mission. On the aspect of fragmentation, on the one hand I do not know if you are making comparisons with other bodies that are at a European level which are multinational but I think one of the components that we have to take into consideration and that can represent, let us say, an obstacle to unity of purpose is the fact that around the table at the Management Board we have 27 Member States. That is the first point. Secondly, I think you alluded to roles and responsibilities. We have two main organs in Europol, which are the Management Board and the Director. I think from hearsay that there have been feelings that in the past relations have not been perhaps been at their best and I believe that some of the other interviewees who have made submissions referred also to the matter sometimes of clashes of personalities. I think there is that element in that, but

one of the objectives of the new make-up, what the Commission has proposed in its original proposal to bring Europol into the fold of the EU agencies, is precisely to give it a structure which is similar to that of other agencies, certainly not perfect, surely perfectible, but where at least the respective roles of Management Board and Director are more clearly defined, and the driving force behind this division of responsibility is perhaps that the Management Board should be responsible for the strategic direction of the organisation, for setting objectives and monitoring their implementation, for monitoring progress and keeping an eye on the operation of the Director, whilst the Director should be concerned with the day-to-day management and with delivering the objectives that are set to him, notably in terms of staffing issues and, of course, the implementation of the budget.

Q268 Chairman: Thank you. I am afraid the clock has beaten us. We have interlocutors coming to have lunch with us and I think out of courtesy we really ought to break this now. We have two more questions which I think you have had notice of. Is that correct?

Mr Marini: Yes.

Chairman: We would very much like your answers on paper. They are important questions, but if you would be kind enough to let us have those answers and if we want to follow up we can perhaps do this by email in the future.

Lord Marlesford: I am not asking for an answer, I follow your guidance on timing, Chairman, but could I, as it were, supplement your two questions with a point which I think they will take into account?

Chairman: Will you please do that?

Lord Marlesford: One of the main growing functions of Europol is clearly dealing with terrorism. Europol is very much a police-linked organisation. Much of the work against terrorism is not done by the police (although a lot is done by the police) but by the security services, for example, in the British case, the Security Service, which we call MI5, which originally was fighting the Soviet threat and then moved to drugs and is now very largely directed to and dealing with terrorism.

Chairman: That is very helpful. We seem to have covered a lot of ground in a short time and it has been helpful of you to put in your views about these matters to our inquiry. We shall, of course, send you a copy of our report when we publish it. We are hoping to finish our evidence sessions before the end of July and to publish a report before the end of the year, so we will transmit it to you at that time. Thank you for coming.

Supplementary evidence by the European Commission

How did the Commission interpret the phrase “to strengthen Europol and make it more operational without executive powers” attributed to the Justice and Home Affairs Council and used in the Friends of the Presidency’s Report to the Future of Europol?

The discussions in the Friends of the Presidency Group demonstrated that whilst there was considerable support for a more operational role for Europol, this should not be translated into operational policing powers for members of the organization. The main idea was that Europol should become more operational through enabling enhanced support to the Member States’ operational activities. One of the main new elements to increase Europol’s possibilities to offer support to the Member States’ authorities operational work is through enhanced possibilities for data processing, in particular the possibility to create new databases (Article 10 of the draft Council Decision).

The extension of Europol’s mandate through the new decision to all forms of serious transnational crime where the involvement of a criminal organization is no longer a requirement can also undoubtedly be seen as a means of strengthening the role of Europol in assisting police cooperation at EU level in the fight against international crime without autonomous executive powers.

The new legal basis brings about improvements in terms of flexibility and of effectiveness of the organization, and will be accompanied by a stronger implication of the European Parliament by means of its role of budgetary authority; that goes in the direction of better democratic control of the European Police Office.

Under the new Council Decision, does the Commission believe that Europol has kept any working mechanisms that are truly dedicated to a common approach as described in Article 2 Europol Convention?

The overall goals of Europol have not changed with the Council decision. The wording of the provisions relating to its “Objectives” (Article 3) could be simplified from the language contained in the Convention on that point given the fact that Europol’s mandate has evolved over time. Compared to 10 years ago, Europol is no longer in its infancy, and has progressively extended its areas of activity whilst improving the cooperation between competent authorities. The simplified way of expressing Europol’s mandate, tasks and objectives should not be seen as a move away from the objective of supporting the Member States in their law enforcement activities.

The instruments and working mechanisms of Europol, ie, the AWF, the Information system, the Liaison Officers, the National units all contribute, by definition, to a “common approach” across Member States in the fight against serious forms of transnational crime. These elements will also not be changed by the Council Decision. In general, Article 3 of the draft Council Decision clarifies that the objective of Europol shall be to support the Member States’ authorities in preventing and combating organized crime, terrorism and other forms of serious crime affecting two or more Member States.

As a result of joining the European family exchange of data with other agencies relevant for Europol’s work will be facilitated, and this, too, should increase its effectiveness. Finally, it will now be possible for Europol to create new data bases. This should open the way to future developments in the organization.

A key factor to the success of Europol, however, rests with Member States. Naturally Europol’s capacity to provide the necessary added value in criminal analysis at EU level cannot reach its full potential unless the Member States transmit the relevant information and intelligence to Europol.

Do you feel there should be more direct linkage between the Member States’ security services and Europol than there is at the moment, because at the moment it seems the linkage is almost entirely with the police?

The first point to make in this context is that Europol is a law enforcement organisation, not a security service. The mandate of Europol for counter-terrorism issues therefore has historically been limited to “crimes committed or likely to be committed in the course of terrorist activities” (Article 2 Europol Convention). Europol’s mandate under the new Europol Decision is likely to be a bit wider, since it simply mentions “terrorism” as part of Europol’s mandate (Articles 3 and 4 draft Council Decision). The second point to consider is that already in 2005, the Council decided that information related to terrorist offences should be provided to Europol and Eurojust (Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences). Under this Decision, “all relevant information concerning and resulting from criminal investigations conducted by its law enforcement authorities with respect to terrorist offences” must be transmitted to Europol, and “all relevant information concerning prosecutions and convictions for terrorist offences” must be transmitted to Eurojust. The European

Commission supports narrow contacts between all national authorities competent to prevent and fight terrorism and Europol which can take place in line with the applicable national and international legal framework.

17 July 2008

WEDNESDAY 25 JUNE 2008

Present	Dear, L Garden of Frognal, B Jopling, L (Chairman)	Marlesford, L Mawson, L Young of Norwood Green, L
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Examination of Witness

Witness: MR AGUSTIN DIAZ DE MERA GARCIA CONSUEGRA, MEP, Rapporteur on the Council Decision, European Parliament, examined.

Q269 Chairman: Thank you very much for coming to talk to us. As you will know, this is a Sub-Committee of the European Union Select Committee of the House of Lords in London. We are tasked with overseeing issues in the European Union which concern what we call the Home Office. May I say to you how welcome you are. We were in The Hague yesterday and we are here today and we return to London tonight. You will realise that you are on the record. Could you tell us what the European Parliament's strategy was during the negotiation of the Council Decision on Europol? We would be interested to know how you saw it from that chamber.

Mr Diaz de Mera (through an interpreter): As you will know, the European Parliament has only been consulted. It is part of a consultation process which is different from a co-decision process whereby there will have to be negotiations with the Council. Here the Parliament has only been consulted. There is no co-decision process.

Q270 Chairman: Starting from there, can you tell us whether the European Parliament is satisfied with the new legislative framework which governs Europol, which has now been agreed by the Council?

Mr Diaz de Mera: We believe that Europol should be an agency rather than being ruled by a Convention. We think that the Convention is obsolete. Crime has been advancing, so to speak, and with the Convention in the last three or four or seven years we have needed three or four or seven years to ratify different amendments to this Convention. Article 34 is the legal base for the proposal for decision which would mean that there would no longer be the need for ratification by the Member States but rather a decision by the Council which would be the best way to cater for the new challenges and the new problems faced by the new criminality. That is as far as the form is concerned. As far as the content is concerned, we are not happy because the Council has not accepted all the amendments proposed by the European Parliament. We proposed 82 amendments and only 18 have been accepted. I will explain some of them later. We are not happy because the Council has not taken into account the control capacity of the

European Parliament any more than the control of the budget. We are not satisfied because, contrary to the Commission proposal, we have not been given the co-ordination organisation and execution capabilities of the joint investigation teams that we suggested, and we are not satisfied because previously Europol had the power to build joint investigation teams and work with them to fight against the counterfeiting of euros. There was the possibility of a Europol agent leading these joint investigation teams and this possibility has now been eliminated. We are also not happy because the European Parliament wanted to be able to participate in the nomination and the dismissal of the Europol Director and this suggestion has not been accepted. Finally, to sum up, we are not happy because none of our proposals for data protection has been accepted either.

Q271 Chairman: Thank you. That is a litany of dissatisfaction.

Mr Diaz de Mera: Obviously, but we think this is the starting point. It is obviously not the end. We think that with an agency we can reach these goals that cannot be reached now as fast and as well as we think we can through this agency.

Q272 Lord Dear: I would like to thank Sr Diaz de Mera. I mean no discourtesy by leaving but I have to return to London. I wish him well.

Mr Diaz de Mera: Have a nice trip.

Q273 Chairman: Do you think the development of Europol over the last few years has been made more difficult because of the inability of the Member States to reach a degree of unanimity without which those sensible developments could not possibly take place?

Mr Diaz de Mera: Please allow me to give you my personal opinion through my personal experience. The main problem in Europol is the lack of trust. Europol was created in 1995, which is almost 13 years ago, and we have not been able to reach the kind of trust level that we wanted. It is a problem of trust but it is also a problem of specialisation because Europol has been fighting against crime but especially through pre-emptive actions, that is, there has been a problem of not being able to share enough information and

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intelligence between Member States. Whenever information has been shared it has been basically shared with peers, with other specialists, so this information exchange, as I see it through my personal experience, is bilateral. There is a bilateral trust rather than an information exchange through Europol itself. Of course, we are getting better. We now have better practices and good examples, more specialisation. It is not a problem of the Member States but rather of their special services not being able to trust each other as much as they should. The key is trust.

Chairman: Thank you very much. We have heard that before.

Q274 Baroness Garden of Frognal: In your November 2007 report on the Council Decision on Europol you had certain concerns with data protection and democratic control over Europol. Have any of these been taken into account by the Council in the text that was agreed?

Mr Diaz de Mera: Unfortunately not. We had many hopes of the European Parliament having more power in the field of freedom, security and justice but, as you know, there has been a guest that we had not invited, so to speak, which is the referendum in Ireland which has broken a little bit all these hopes of the European Parliament being able to intervene more in the field of freedom, security and justice, but I have to say the figure of the Data Protection Ombudsman has been kept.

Q275 Baroness Garden of Frognal: With regard to data protection, if the Treaty of Lisbon enters into force will Europol be bound by the provisions of Regulation (EC) 45/2001 protecting individuals with regard to data processing by Community institutions and bodies?

Mr Diaz de Mera: That is a very good question indeed. If the Council adopt the agreement in April Europol will be bound by its rules and if the Lisbon Treaty is approved it will be bound by Regulation 45/2001 which is part of the First Pillar.

Q276 Lord Mawson: The budget is the main means of control which the European Parliament can exercise over Europol. What scope is there for the European Parliament to shape governance of Europol by putting forward inter-related requirements for discharging Europol's budget?

Mr Diaz de Mera: The first thing I would like to say is that, as things are today, the only control tool that the European Parliament has is the budget, but I would like to explain the problems of controlling Europol that the European Parliament has, trying to analyse here the Europol budget so that you can see the limited competences, the limited power that Europol actually has over the budget. Let me try to

explain the last Europol budget. The total budget was €64 million, €44 million for staff, €3.2 million for administration costs, €2.4 million for buildings, subsidies, documents, vehicles, €970,000 for salary adjustments, €2.5 million for the Management Board, but for the operation unit for chiefs of police €100,000, and for the information system €10.6 million, which are the parts of the budget that we can actually control, so we only have competences on the operation unit, €100,000, and the information system, €10.6 million. I have explained all this so that you can see that our power, our control, is quite limited.

Q277 Chairman: If it was not limited and you had a much wider responsibility with regard to the budget compared with now, what in your experience would be the changes you would like to see in the administration and the general activity of Europol whereby you could influence their policy in directions you wished by using the weapon of the budget? As we know, the power to control the budget is one of the great powers that all parliaments have and we can remember the previous report this Committee did on Frontex where the European Parliament exerted influence on that through the budget. What I would like you to do is just to tell us the things that dissatisfy you now which you would like to put right by using the power of the budget if that power was extended to allow you to do those things.

Mr Diaz de Mera: Thank you for that very interesting question. Let me just remind you that this is only my personal opinion, but I would like to know more about how much is spent on operational capacity, on mission capacities, things like the fight against international terrorism, the counterfeiting of euros, cyber crime, paedophilia, organised crime, common crimes across borders, and also, of course, how much is spent on the information system which is so vital for Europol.

Q278 Chairman: How many of those things do you think are a consequence of bad management of Europol itself or bad guidance from the Management Board?

Mr Diaz de Mera: I cannot say that there has been bad management, rather that the legal framework is a bit obsolete for the year 2008 and for the following years, so we do need a new legal framework, we do need an agency so that we have more flexibility. Basically, we need new tools for Europol to face the new challenges of the global world.

Q279 Chairman: Do you think that there is confusion and do you think that there is a big disadvantage to Europol at the moment because the Commission does not seem to know exactly where it stands in exercising influence over Europol?

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Mr Diaz de Mera: What kind of influence do you mean? It is important to clarify what kind of influence.

Q280 Chairman: We have had it suggested to us that there is confusion over the Commission's ability to co-ordinate the activities of Europol, and that they do not seem to have a mandate to apply the role of co-ordinators which might very well be useful.

Mr Diaz de Mera: Europol has a Director and he has to respond to the Management Board. He is under the Management Board. The Chair of the Management Board rotates. According to the Convention there is a new Chair of the Management Board every six months. This is linked to the European Presidency, to the country that holds the European Presidency. On the Management Board there is one member from the European Commission but he has no real influence over the Europol tasks and all the chiefs of police of the Member States are represented permanently on the Management Board of Europol.

Q281 Lord Marlesford: If I may follow up one of your points on the priorities, you gave considerable priority to fighting terrorism. I agree: it is an increasing danger and threat. Yesterday we spent with Europol and I felt that it was an organisation which was too much linked purely to the police, and to fight terrorism they need also to have direct links to the non-police security and intelligence services of Member countries. What is your view?

Mr Diaz de Mera: That is a very good question indeed. In my opinion in the European Union there is a *totum revolutum*, a chaos, so to speak, as far as intelligence and information is concerned. There is Europol, there is the situation centre and there is the co-ordinator for the fight against terrorism. In theory the co-operation among these three bodies is good but I think there are too many of them and too many to cope with the complexity of this terrorist threat.

Q282 Lord Mawson: The Treaty of Lisbon makes provision for scrutiny of Europol's activities by the European Parliament together with national parliaments, and requires the Commission to bring forward regulations setting out the procedures for this oversight (Article 88(2)). What form will the European Parliament suggest this oversight should take?

Mr Diaz de Mera: First, the Treaty of Lisbon has to be approved. If that is the case we will be able to achieve common policies. The security has to do with common policies more than anything. If the Treaty of Lisbon is approved the European Parliament and the national parliaments will be able to control Europol activities and that is what we suggested and what the Council did not approve. This mixed committee by

the European Parliament and the national parliaments though would be very useful.

Q283 Lord Mawson: If it is not approved do you think our security is seriously vulnerable as a result of these institutional problems?

Mr Diaz de Mera: The security will remain basically the same as it is today. The Member States will have more control over security and the European bodies will have less, and, as you know, crime is more transnational than ever today.

Q284 Chairman: When we are talking about oversight, Article 85 of the Treaty is almost identical to the one we have just been talking about, Article 88, and Article 85 deals with the oversight of Eurojust. Would you have given us the same answer if my colleague had asked you about Eurojust and Article 85?

Mr Diaz de Mera: Basically, my answer would be yes, it would be the same. I will try to explain. Unfortunately, we have had very bad experiences which lead me to think that we should be able to achieve the goal of a court decision in one country being recognised in another Member State of the European Union. For that I think we need a record of crimes and of criminals, a Community kind of record or database. If we had that we would avoid sad cases like the one we all know, this criminal that committed a crime in the UK and then went to Spain, to the Costa del Sol, and killed two teenagers, Sonia Carabantes and Rocio Wanninkhof. You all know that I am speaking about the Alexander King case.

Q285 Lord Marlesford: How would the European Parliament suggest measuring the impact of the new Council Decision on Europol?

Mr Diaz de Mera: As I said before, the European Parliament is not happy. We are not pleased because our opinion has not been taken into account but as Rapporteur I think that what we will do now is freeze our opinion. We will wait to see if the Lisbon Treaty is approved. If that is the case we will have the co-decision process and we will ask for the file again. We will look at this subject again and then we will give our opinion about Europol.

Q286 Lord Marlesford: Can I go back to this question of the European Parliament opinion not being accepted? Do you think this is because of the Commission at the bureaucratic level or was it as a result of representations from Coreper to the Commission?

Mr Diaz de Mera: It is obviously a position of the Council, of the Member States. It is very difficult for 27 Member States to agree, obviously.

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Q287 Lord Marlesford: Which were the most difficult ones?

Mr Diaz de Mera: Due to my age I am being wise. I will not answer that question.

Q288 Lord Young of Norwood Green: Touché!

Mr Diaz de Mera: It is a British answer!

Q289 Chairman: But everything leaks in the European Union. I am sure if we asked somebody else they would tell us, but we would like to hear it from you.

Mr Diaz de Mera: As soon as you know please tell me.

Q290 Lord Young of Norwood Green: How does the European Parliament currently participate in the evaluation mechanisms for the implementation of EU policies in Justice and Home Affairs, in particular in regard to the work of Community agencies such as Europol?

Mr Diaz de Mera: Thank you very much for this question. It is a very good question. Our ability to speak in this kind of evaluation is more apparent than real. Let me tell you what kind of bodies of people come to speak to my Committee of Civil Liberties, Justice and Home Affairs. Frontex comes

and speaks to us, the European Data Protection Supervisor, Eurojust, the body which fights against drugs, CEPOL, Europol through its Director and sometimes the Chair of the Management Board, the co-ordinator of the fight against terrorism, the director of the agency for fundamental rights. What they do is they come to our Committee, they speak to us, they tell us of their goals and what they do, we ask them some questions and that is it basically, so what we expect is that if the Lisbon Treaty is approved we will have more competences.

Q291 Lord Young of Norwood Green: When you say you will have more competences, does that mean you will be able to have more rigorous evaluation and will there be some independent evaluation, a report that you can refer to?

Mr Diaz de Mera: Not only that; we will be able to suggest and propose many legal amendments in many fields.

Chairman: Mr Diaz de Mera, we are very grateful to you for coming. You have been very informative. You have been even better—you have been reasonably brief, for which we thank you very much. We shall make use, I am sure, of much of what you have told us. We are hoping to produce our report this side of Christmas and we shall most certainly send you a copy of it.

WEDNESDAY 25 JUNE 2008

Present	Garden of Frogal, B Jopling, L (Chairman) Marlesford, L	Mawson, L Young of Norwood Green, L
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Examination of Witnesses

Witnesses: MR ROBERT CREPINKO, Chairman, and MR ALFREDO NUNZI, Secretary, Europol Management Board, examined.

Q292 Chairman: Mr Crepinko, thank you so much for coming here. As you may know, this is a Sub-Committee of the principal European Union Committee of the House of Lords in the British Parliament. We cover most issues which are the responsibility of what we call the Home Office in London and we are conducting this inquiry on Europol which we began a few weeks ago. It is our intention to complete our inquiries by the end of July and then put a report together in the autumn after the parliamentary recess is over and to publish that report at the end of the year. We shall, of course, send you a copy of it when we produce it, although you will no longer be in the Chair of the Management Board. You realise you are on the record. I wonder if you would be kind enough to begin by just telling us something about your own background because I think it would help us in knowing what your connections have been over previous years with the issues which are concerning us.

Mr Crepinko: My Lord Chairman, thank you for the invitation. It is a great honour to be here. Before I begin I would like to ask you if it is okay with you for the Secretary of the Management Board, Mr Alfredo Nunzi, to accompany me. The reason I decided to invite him is that he might be a help if we come to very technical questions, if you will allow that. I rely sometimes upon his help.

Q293 Chairman: His contributions will be most welcome to the Committee, no problem at all.

Mr Crepinko: I hope that my English will be good enough because when I was preparing for this hearing Mr Nunzi asked me if I needed an interpreter and I said I would not need one. I hope that you will not need one to understand me.

Q294 Chairman: You are doing very well.

Mr Crepinko: Thank you. For the Slovenian Presidency I am the Chairman of the Management Board and when I take my Chairman hat off I am the Deputy Director of Criminal Police in the Republic of Slovenia, so my in my day-to-day work I am responsible for the operative work of criminal police in the Republic of Slovenia. That means all domestic criminal cases and also international co-operation. I have not been doing this job very long. I started in

November last year. Before that I was head of the Special Operations Division, meaning for covert operations, surveillance and stuff like that for the whole of Slovenia.

Q295 Chairman: Is that what we call Special Branch in the UK?

Mr Crepinko: Yes, but within the criminal police. Before that I used to work in the drug field. I was a criminal inspector at the national level responsible for drug cases, mainly international drug cases. Before that I worked in the Regional Police Directorate as a criminal police officer in the field of organised crime, prostitution, trafficking of human beings, also smuggling of very high value goods, and before that I worked for three years in another police directorate in Celje in juvenile delinquency. Although I am rather young I started my police career when I was 14 when I went to the police school. At that time in Slovenia we had so-called cadet police courses so I went when I was 14 to this police high school and then at 18 I started as a police officer in a small police station in Kr→ko.

Q296 Chairman: You began by saying you were honoured to come to meet us. I have to say, listening to that, that we are very honoured to meet you.

Mr Crepinko: Thank you.

Q297 Chairman: Perhaps I could begin. How would you describe the quality of the communication between the police operational level in Member States and the policy makers in the Council?

Mr Crepinko: In the Council or—

Q298 Chairman: In the Council of Ministers.

Mr Crepinko: This is an interesting question, not very related to the role of the Management Board.

Q299 Chairman: But if I am right the Management Board comes between Europol on the one hand and the Commission and the Council on the other.

Mr Crepinko: It is a very interesting point of view. I never thought of the Management Board in that way. You could maybe say it is in between but I do not see it as something in between the policy-making in Brussels and the operative field back home. Maybe

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when giving this evidence I will switch hats from Deputy Director in Slovenia to the Chairman to make it more colourful. I see the Management Board as a managing body of Europol, not so much as a bridge to Brussels. Okay, there are some actions that have to be taken from the Management Board to the Council to get approval, but, as I said, I see the Management Board more Hague-based, if I can simplify it like that, rather than as a bridge to Brussels. It is an interesting interaction between the operative field in the Member States and the Management Board and then to Europol. That is a really interesting situation.

Q300 Lord Mawson: We learned that the European Criminal Intelligence Model builds upon the UK intelligence-led policing approach. Is intelligence-led policing a concept that is welcomed in most Member States?

Mr Crepinko: I am aware that the Organised Crime Threat Assessment that is being conducted in Europol has its origins in the UK Intelligence Model. I see what I have experienced in the Management Board but also back home—this is now me switching hats—it is a very well appreciated model. It has been accepted by the Member States. Although it had all new approaches it had a period of very hard work to get it through, but I think for the time being it is a very well acknowledged system and this is one of the reasons the Slovenian Presidency put as one of its priorities to introduce such a model in the Western Balkans. I do not know if you are aware but there is an initiative to introduce a so-called SEEOCTA, a South Eastern European OCTA, so new states can learn from good experiences in the EU in this field and find a better way forward in intelligence-led policing.

Q301 Baroness Garden of Frognal: The new Europol Council Decision introduces an 18-month tenure as Chairman of the Management Board. What do you see as the advantages and disadvantages of this length of office?

Mr Crepinko: Thank you for the question. It is very interesting because it comes now when my period of the chairmanship is almost over. As you are all aware, Germany, Portugal and Slovenia were the first trio Presidency, so we decided almost 18 months ago to try something similar with this 18 month chairmanship of the Management Board in the future. Always after six months the Chairman of the Management Board changes. The main needs of criminal policing in Europe are known so there are not big changes, but nevertheless the person changes and the personal handling of the issues changes every six months, so I see advantage in an 18-month period for a more stable way of handling these important issues. Talking about the disadvantages, I can only

say from my personal, if you like egoistic point of view that out of what would have been three Chairmen two of them will not have the possibility of enjoying the pleasure of being the Chairman. I do not see any other disadvantages.

Q302 Baroness Garden of Frognal: Would there be different ways in which you would have worked if you had had a longer tenure of office?

Mr Crepinko: I would not say it would be different. When people ask me, “Are you happy that it is soon to be over?”, I answer them, “No, I am not”, because you need some period of time to get into the business and if you had some more time maybe you could achieve more because you could prepare. I was preparing very hard for a long time for this job but when you are in the field it is a bit different.

Q303 Baroness Garden of Frognal: But will it improve the Management Board to have a longer tenure?

Mr Crepinko: I think it will have a positive impact on the Management Board.

Q304 Lord Young of Norwood Green: What we hope is that it will give the Management Board more time to focus on strategy and maybe less temptation to, shall we say, deal with the day-to-day running and leave that to the Director.

Mr Crepinko: I do not see a big impact in that field because strategy is from my point of view not so related to this changing of chairmanships every six months. I think that already with the establishment of the Management Board there are no big threats to having the temptation to go to day-to-day work. It is not like that.

Q305 Lord Young of Norwood Green: It does not happen?

Mr Crepinko: It might have happened sometimes but the reason was not because of the legal circumstances in which the Management Board operates. The reason is not that it changes every six months.

Q306 Chairman: I wonder if I can go back. Lord Mawson asked you a question a minute ago in which he asked whether you felt intelligence-led policing was a concept that is welcomed in most Member States. When we talked to the Commission this morning we asked them a question about a working paper on criminal intelligence-led law enforcement which was originally planned for 2005 and has been delayed and delayed and delayed, and all they could tell us was that it had not been implemented, although it was a decision taken, because it was—the word they kept using was “premature”. Why do you think that working paper on intelligence-led law enforcement has been delayed? We pressed them very

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hard to see what reasons there were for Member States to block it, which they clearly have done. What is behind all this because one would have thought that intelligence-led law enforcement was something which most people would welcome?

Mr Crepinko: My Lord Chairman, I hope you will not be offended when I say that I would really not like to comment on the decisions made in Brussels, or was it by one of the European agencies or the Member States? I can only now go back to my own country, to Slovenia. We think it is a very good approach and we are struggling very hard to introduce it. Because our development is rather short in this field in comparison with some other Member States I can only say—but it is real speculation—that you are talking about 27 Member States. Maybe there are different cultural, social environments or maybe it is simply the way states handle their day-to-day criminal police work. Maybe that is the reason that some Member States are taking more time to come to the conclusion that it is a good thing.

Q307 Chairman: I wonder if the Secretary has a comment on that.

Mr Nunzi: I do not have a comment on this issue.

Q308 Chairman: So you think that just endless delay is acceptable?

Mr Crepinko: As I said at the beginning, the Brussels machinery works in its own physics, so from my position of Chairman of the Management Board I cannot comment on the reasons for the delays if there are any.

Q309 Baroness Garden of Frognal: If we can refer back to the Management Board, do you expect that the demands on the Secretariat at the Management Board will increase under the new arrangements? Will the workload increase?

Mr Crepinko: I think it will. I can say for the time being that the workload on the Management Board Secretariat is already very high, but I think under the new regulation the workload will get even higher.

Q310 Baroness Garden of Frognal: Are there any particular areas where you think it will be more demanding?

Mr Crepinko: I could hardly comment on that.

Q311 Lord Marlesford: Can I go back before I ask the next question on the agenda to something which Lord Jopling asked earlier on, which was your opinion on the intelligence-led policing for Europol, and expand that question a little bit? One of the conclusions that came to me yesterday, having spent the day with Europol, was that the importance of fighting terrorism, which is obviously considerable, is very much based on the police experience of Europol

and I wonder whether there is a case to be made to say that there should be more direct input for the purpose of fighting terrorism into Europol from the various intelligence agencies, the non-police intelligence agencies. In our case it would probably be the Security Service MI5, and other countries have their own. At the moment it is all based on police intelligence and the police network, whereas, of course, in the case of the United Kingdom, the Security Service's main task now is trying to protect us primarily from Islamist terrorism. Do you think there is a case for having a more direct input into Europol from the intelligence services?

Mr Crepinko: As you are aware in the current organisation of Europol, the Europol national unit, already it is possible to settle these things at the national level. It is one of the discussions we often have also in the Management Board. Maybe sometimes there is no need to change anything at the top, but—and I told this also to the Member States as the Chairman—there are a lot of things we can do back home and we need to do back home. There are no hindrances back home to adding information to improve the data quality in the information system of Europol. From my personal feeling I do not see a real need for the time being to change the concept of Europol, but I know in some Member States there are really big discussions on how to improve that at the national level.

Q312 Lord Marlesford: Is the size of the Management Board, 27 people, an obstacle to good governance and what do you anticipate the role of the Commission will be on the Board when the Commission becomes a full member?

Mr Crepinko: Being a member of, if I may say so, one of the new Member States, I can only say that a bigger number of countries represented in the Management Board is not a hindrance but vice versa: it is an added value, because when we talk about what are the hindrances to intelligence-led policing my answer to that question is that more countries, more views, more experiences can only add to the common goal. Okay, it is perhaps a bigger challenge to chair 27 Member States than a lower number but I think it is a good thing; I do not think it is bad. Also, while the European Commission has only observer status in the Management Board there are already some very good inputs from their side, so they are already a very active player in the Management Board although technically they only have observer status. I do not see any big changes in that.

Q313 Lord Marlesford: So it will not make a lot of difference?

Mr Crepinko: I do not think so.

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Q314 Lord Mawson: What in your opinion makes for an effective organisation? What conditions do you have to have in order to have an effective organisation?

Mr Crepinko: It is a very good question. When I was preparing for this hearing I was—"afraid" is too strong a word. My English is on a certain level but not only my English. When we are talking about languages, the Slovenian language has a small amount of words for some things, if I may say so, and English has a much bigger amount, and I was afraid that we would get into some fields where in my translation to English from Slovenian we have one word and you have a lot of them, so I would like to apologise for not answering this because I do not know how to describe it in English. I can only put my Slovenian hat on and say that an effective organisation is an organisation that completes its tasks at a very good level.

Lord Mawson: Yes, but what needs to be happening within an organisation? What conditions do you have to have within an organisation to make sure that is happening? I think your English is very good, by the way.

Q315 Lord Young of Norwood Green: It is better than our Slovenian!

Mr Crepinko: I have a lack of words to describe it, so I can only go to the basic answer. It is an organisation where the goals are settled, the strategies to achieve those goals are settled and all the players are known and the players are doing their job in going through this strategy to these goals. This is how I can explain my opinion of an effective organisation.

Q316 Chairman: I am sure you are familiar with the old saying that the best committee is a committee of one. Clearly a committee of 27 brings with it difficulties. I ought perhaps to know the answer to this question, but I do not. Who initiates new propositions within the Management Board? Is it the Secretariat, is it the Presidency, or do your initiatives come from the membership, from "in the hall", as we say?

Mr Crepinko: This is the thing that makes life in the Management Board so interesting, because the initiatives come either from the Chairman—

Q317 Chairman: Or from Europol itself, of course.

Mr Crepinko: Yes. There are various ways in which they come in life. It can be the Presidency, it can be Europol, it can be a group of Member States. It can be one Member State by itself, so there are different ways in which initiatives come to life and that makes it very interesting.

Q318 Chairman: And if it is a proposal to change the way in which Europol operates does it have to have unanimous approval or does it operate on the QMV principle?

Mr Crepinko: It differs from the question we are talking about. Everything is settled. It is either the Convention or there are implementing rules they set up. There are different quotas that need to be fulfilled for different questions. Sometimes it is unanimous, sometimes it is a simple majority, the qualified majority. It differs from question to question.

Q319 Chairman: I think it would be helpful if we could have a note. I do not think we have had a note, but I am told it is in the Decision. Can you tell us how often in your period as Chairman a proposal has failed because there were only one or two Member States who were against it and blocked it?

Mr Crepinko: I can remember only one such case when we were talking about establishing the police co-operation in Kosovo. There was a proposal to establish police co-operation at the operative level and the Management Board decided not to do so upon the opinion of some Member States.

Q320 Chairman: How many?

Mr Crepinko: I do not know that; I am sorry.

Q321 Chairman: Was it one or two or something like that?

Mr Crepinko: I do not remember. It was enough that the proposal did not go through. I do not remember, I am sorry.

Q322 Lord Marlesford: I want to ask again about the Management Board and the performance of Europol. Perhaps I could start by asking to what extent does the Management Board guide or lay down the priorities for Europol because it was explained to us about the Analysis Work Files, of which I think there are now 18, and the decision to set up such programmes obviously was a very important decision. Is that the sort of decision that would be made with a proposal from Europol to your Board or could your Board make a suggestion to Europol that they should set it up? What is the guidance relationship between you and Europol?

Mr Crepinko: When you are talking about guidance of priorities the Management Board is the organ giving the priorities to Europol, and when you are talking about Analysis Work Files it can go, as we said in the previous question, both ways. It can be either proposed by Europol because of the needs they have discovered when doing maybe other Analysis Work Files or it can come from one or more Member States that feel this is one area that should be dealt with in this way.

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Q323 Lord Marlesford: So on the whole—and it is difficult for you to answer—how satisfactory do you find the performance of Europol in general?

Mr Crepinko: Again my answer will be with both hats. As the Deputy Director in Slovenia I am very satisfied with the services we are getting as the Slovenian criminal police from Europol. When I am talking as the Chairman of the Management Board I can say that I am satisfied. Otherwise I would be obliged to take some action during my chairmanship to improve that.

Q324 Lord Marlesford: In a sense you could ask the question do you need the Board or could Europol function perfectly well on its own, but presumably there are two things. One is that you would, as you said, set priorities and you would do that from your Member States' input, but, of course, they do also have the Member State inputs direct to Europol from the liaison offices. Is that a useful duplication?

Mr Crepinko: Yes, I think it is because through the liaison bureaux there is the operative input, the police input, and from the Management Board there is the policy-making strategic input, so this does not overlap in my opinion. As I said before, it is very valuable to have these boards to build these strategies.

Q325 Lord Marlesford: Supposing a nation decides that Europol should be switching some priorities or doing something about an important problem. Would they normally communicate that direct to Europol? Would they communicate it, say, in the case of Slovenia, through you, or would it come from Coreper at a political level?

Mr Crepinko: Again, you are talking about 27 Member States, so it varies a lot between the Member States. There are different ways in which Member States tackle the issues.

Q326 Chairman: You answered Lord Marlesford a few moments ago by saying that during your period as Chairman of the Management Board you have not made any initiatives in order to improve the working of Europol. Does that mean to say that during this six months, which is almost over now, you could find nothing at all to criticise in the workings of Europol and that you have taken no steps to try to change things for the better? That sounded as though it was the implication of what you said.

Mr Crepinko: My Lord Chairman, I hope I was not misunderstood. I did not want to say that I did not do anything to improve the work of Europol in this period. The initiatives of the Presidency have been reflected in the Work Programme, in the budget, in several documents. I just said that I cannot say that I am critically dissatisfied with Europol's work because otherwise I would have to take some action.

I have personally done a lot of things along the way on how to improve Europol's working, and not only as the Presidency, of course. All 27 Member States at each meeting try through these different mechanisms to improve the work of Europol because when we go back home it is our main interest that Europol is strong and that it functions well.

Q327 Chairman: Could you tell us what was the Management Board strategy during the drafting of the Council Decision?

Mr Crepinko: The Europol Management Board was not involved in the preparation work for the draft Council Decision. The involvement of the Management Board started officially, if I am not mistaken, at the March meeting when we established the ad hoc committee to prepare all implementing rules necessary for the draft Council Decision or for the Council Decision then to come into power. Because the draft Council Decision was prepared here in Brussels in the Europol working party, it was their responsibility to prepare the document.

Q328 Lord Young of Norwood Green: Mr Crepinko, you are obviously a Chairman who sees the Europol glass half full rather than half empty. I say that genuinely, not in criticism. This is a bit of a complicated question so I will try and put it carefully. The new Council Decision on Europol puts responsibility on the heads of Europol national units to discuss proposals that will improve Europol's operational effectiveness, encourage commitment from Member States and evaluate the reports and analyses drafted by Europol. Is this a move of operational responsibility away from the Management Board onto the heads of Europol national units?

Mr Crepinko: If you will allow me I would just like to add to your remark. Not only as Chairman and not only in regard to Europol, I am a glass half full person and it helps in difficult situations.

Q329 Lord Young of Norwood Green: I agree.

Mr Crepinko: I do not see it as a switchover from this responsibility to the heads of Europol national units because already it is their responsibility to make sure the operative field is covered, so I just think—and this is my personal opinion—that it states more clearly—

Q330 Lord Young of Norwood Green: What is already happening?

Mr Crepinko: Yes.

Q331 Lord Young of Norwood Green: On information systems, under the Council Decision Europol can establish other systems for the processing of personal data besides the Analysis Work Files/Index System and the Europol

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Information System (EIS). Have you any plans to develop these new databases?

Mr Crepinko: I can say only that Europol is the whole time developing new systems that could be more effective, a better tool, a better help for its users, and I think that can only be welcomed if there is a need for new systems to be introduced. In the Management Board life is very dynamic because a lot of initiatives are raised. Some of them are buried, some of them go further, and there are already at this stage initiatives on new information systems.

Q332 Lord Young of Norwood Green: Just developing that slightly,—and we discussed this with another witness; we talked about the fact that it is not so much how much information you get but the quality of information—are you able to encourage that approach, that sometimes less is more? It is as much about quality as about quantity?

Mr Crepinko: This is a very important issue and it has been already brought up to the table of the Management Board meetings on several occasions. It has become a regular issue at every meeting because awareness of the importance of it is very high. At the Management Board level we can encourage Member States to go in this direction, to improve the quality, and also the quantity, of their information into the system, but this is again one of the situations where I have to be honest: it is also our responsibility when we go back home to ensure that this happens in our police forces, not only at some meeting level.

Q333 Lord Young of Norwood Green: Can you give us an appreciation of the work of the Security Committee and indicate the main sources of difficulty from a Europol security point of view?

Mr Crepinko: I am sorry; I did not understand the question.

Q334 Lord Young of Norwood Green: You are not familiar with the work of the Security Committee?

Mr Crepinko: I am, yes.

Q335 Lord Young of Norwood Green: Can you give us some description of its work? How big an issue is security from a security of information point of view, from a Europol point of view?

Mr Crepinko: I will give you an example to answer this question. I am not well oriented in time because everything happens so fast these days, but Europol had needed for several months to get security accreditation for its information system that was then given by the Management Board in March, so it shows that already all the modern systems have been introduced. The level of security needed for such an organisation as Europol is so high that it needed several months and several meetings for improvements before it got the clearance for it to be

used, so it is a very important issue for this organisation.

Q336 Lord Young of Norwood Green: And you think we have reached the right level now, do you?

Mr Crepinko: I might answer this very simply. We will never reach that level.

Q337 Chairman: Perhaps I can ask you a question which I asked yesterday in Europol with regard to the security of information and the extent to which information leaks. If you had to grade it between one and ten, ten being the fact that you could not sleep at night because you were so worried that nothing was sacred and everything leaked and everybody knew exactly what you were doing, and one being absolutely perfect, which you have just said is virtually impossible and I accept that, where would you put the protection of sensitive information in Europol between one and ten?

Mr Crepinko: From the position of the Chairman I can surely not give that mark, so I will again switch to my Slovenian hat. I can say that it is very high. From my experience with our Europol national unit, when I go back into the days when I was working in the drug field and we wanted to either give or get some information from the system, it was very well structured. The security measures that, for instance, Italy put into the system will not lose their way. It was very high, so it is numerically not able to make a grade but I would certainly say it is very high.

Q338 Lord Marlesford: We were told that there were difficulties, for example, in the personnel positive vetting system, checking that individuals were reliable. We have a system in England which is called positive vetting and we have classifications of “restricted” at the bottom, which merely means that you cannot give it to the press, to “confidential”, to “secret” to “top secret”. We were told by Eurojust that there were real difficulties in some parts of Europol, but again, asking you with your national hat on, do you think your system of positive vetting is rather similar to ours? It is very elaborate in Britain and very tough.

Mr Crepinko: We introduced a very similar system in 2002, if I am not mistaken, and it has been a big issue back in Slovenia just to fill in these gaps, just to make sure that it all functions, and it still is a big issue. To go back to the Europol issue, the security of the information is one of the main concerns of Europol, not only in the Member States but also it is one of the biggest things when we are talking about agreements, co-operation or operative or strategic agreements with third states. It is one of the big letters and it is an obstacle a state cannot step over if it is not fulfilled 100%. I think it is being paid a lot of attention and I think it is also necessary that it is like that.

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Q339 Lord Marlesford: My earlier suggestion was that it might be useful if the intelligence agencies of the 27 nations had a more direct input. From their point of view I can see they would probably be more worried than the police about this particular aspect and it could be a barrier.

Mr Crepinko: By the information I have also had when there have been checks with other European agencies to see if these systems match each other, if confidential is confidential, if the documents are handled the same way, I can tell from the discussions I have heard or read that Europol's standards are very high.

Q340 Lord Mawson: How would you describe the relationship between the Management Board and the Police Chiefs Task Force?

Mr Crepinko: It is a very interesting relationship. Because the members of the Management Board are very high ranking police officers or officials in the Member States there is an overlap and some of them are also members of the Police Chiefs Task Force, and I remember that at the last meeting we had a discussion on a matter that was being handled in the Police Chiefs Task Force. I think that in the future, and it was also the result of this discussion, these two should be connected better because when the Police Chiefs Task Force was established that was the aim, and now both are developed we see that there are overlaps and we have to make sure that in the future there is a better exchange of things, that there is not

duplication of work being done in either Analysis Work Files or the COSPOL projects. It is an area that will certainly be very interesting in the future.

Q341 Lord Mawson: How is the work of Europol coordinated with the work of Eurojust? The 2009 Work Programme sets the minimum frequency of the Europol/Eurojust steering committee meetings at three months. Is this sufficient?

Mr Crepinko: I think it is the same thing that we discussed before about the amount or the quality of the information put into the system. I do not see a problem that these meetings are not often enough. I think it comes down to the quality of the co-operation between the two of them, but I can only say what I hear from the oral reports from the Director at every Management Board meeting and his views on this co-operation were very positive and none of the Member States objected to those statements. I can only assume that it means that the co-operation is good.

Q342 Chairman: Thank you very much for coming and thank you for giving us your impressions. I think we can understand the problems that the Chairman of the Management Board has in having a very short term of office, in being able, particularly having other responsibilities as you clearly do, to get around all the problems of Europol. We are very grateful to you for coming, thank you, and carry on the good work.

Mr Crepinko: Thank you for having me here.

Examination of Witness

Witness: PROFESSOR GILLES DE KERCHOVE, EU Counter-Terrorism Co-ordinator, examined.

Q343 Chairman: Professor de Kerchove, thank you very much for coming. I am sorry that we have kept you waiting for a few minutes. We are a little late in starting. You will realise that this is a Sub-Committee of the principal European Union Committee of the House of Lords in London. Our task is to overlook European legislation and manifestations so far as our Home Office is concerned. We started this inquiry on Europol just a few weeks back. We are hoping to finish our evidence sessions before the end of July to produce a report after the summer recess in the autumn, and when we do produce it we will send you a copy. We will also send you a transcript because you realise you are on the record here. We much appreciate your coming. We are extremely interested in problems which surround terrorism. Let me begin straightaway. You are responsible for monitoring the implementation of the European Union Counter-Terrorism Strategy. Could you explain how the TE-SAT produced by Europol fits into the European Union's Counter-Terrorism Strategy and what value does it add to what is going on centrally in the European Union?

Professor de Kerchove: I see a value in the process and in the product, in the process to the extent that Europol and Eurojust pull together information and try to analyse the information, and work with the Situation Centre, which is a unit within the General Secretariat of the Council which collects strategic intelligence from the Security Services, Intelligence Services, police information from Europol, military intelligence, open sources so the process itself has some merit because it drives people to exchange more information and that is good. The second is just to make public the collective assessment of the threat, which is by nature extremely important because in this very sensitive subject it is important that the public be well informed, that the European Parliament and national parliaments get a collective assessment of the terrorist threats. Something which I find extremely important is to have this discussion with the European Parliament and as often as I can I try to attend meetings of national parliaments because the Council is developing policies and adopting legislation which may affect freedoms and in this respect it requires a consensus in parliaments on the need for that, and in order to tailor the legislation as well as possible we need to build a consensus in respect of the threat. The first time I attended a meeting of the LIBE Committee, which is the committee in the European Parliament dealing with Justice and Home Affairs, I decided to explain how we saw the threats. It is indeed important, as I said, to explain the real nature of the threat. On the plane coming here from Istanbul I was reading an interesting study produced by a Canadian university on the threat to human security, and the main

message of the paper was that the threat is declining in respect to Islamic extremist terrorism in terms of fatalities. If one does not include people killed in Iraq whom you normally would not call victims of terrorism as such, it is interesting to have as objective a description of the threat as possible in terms of number of attacks which took place, number of attacks prevented, number of people killed, number of trials and number of people sentenced, because all these say something about the nature of the threat but also about the adequacy of our legislation. Something I have asked Eurojust to look at more closely is to see if the national legislation based on the EU definition of terrorism can stand trials because in some cases, for example in Belgium, there has been a decision of the Court of Appeal—and I will not comment on the decision but it was a decision which surprised some scholars—interpreting the Belgian legislation defining a terrorist crime and it seems that yesterday the highest court in Belgium decided to quash the decision. All this gives you some information so you have to be informed and Eurojust has to collect as much information as possible on the key decisions in the European Union.

Q344 Lord Marlesford: I find it a little surprising to measure a threat by what has happened because surely a threat is about what may happen, and the Trend Report was very gloomy, I thought, and certainly the British assessment, as we are told every day, is that it is highly likely that there will be an attack. How do they come to the conclusion that because not much has happened recently the threat is less?

Professor de Kerchove: That was a question I got in the European Parliament: if the number of casualties decreases does it mean that there is no threat any more? I do not think so. There the intelligence community has something to say as well because they do not reveal everything. The number of attacks does not exhaust the assessment of the threat, I do agree with you.

Q345 Lord Marlesford: I think I am right in saying that there was quite a gap before 9/11.

Professor de Kerchove: What do you mean?

Lord Marlesford: I mean there had not been for a few months anything very dramatic immediately before 9/11.

Q346 Chairman: A gap in terrorist activity.

Professor de Kerchove: Yes, that is true.

Q347 Chairman: Could you tell us whether the open publication of the EU Terrorism Situation and Trend Report is sufficient to give citizens of the Union a rounded picture of the problems they face? It is very

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important to think of the effect of all this on the civilian population.

Professor de Kerchove: To a certain extent it gives some data and it has to be as accurate as possible, but you need to qualify the data and explain the context. Once again you have to add the assessment provided by the intelligence community on failed attacks and that is how I see part of my role. It is important to ensure that 27 Member States share a common perception of the threat. It is probably more obvious for the ten Member States which have been directly confronted with terrorist attack.

Q348 Chairman: Do you include Estonia in that?

Professor de Kerchove: Because of the cyber attack?

Q349 Chairman: Yes.

Professor de Kerchove: Yes, indeed, but others have not been directly affected. I was in Poland recently. The terrorist threat is a bit more theoretical there but on the other hand Poland belongs to the free movement Schengen area and may have possible targets. Poland has an American embassy. It may have cells hidden somewhere. It is important to ensure that it realises how it develops.

Q350 Chairman: Can I pursue a personal hobbyhorse here? When we are talking about the civilian population does it come within your remit to think about what would happen in the aftermath of a very serious CBRN attack? Does that come within your concerns?

Professor de Kerchove: Yes.

Q351 Chairman: I have been pursuing for a number of years the concern I have that, certainly in the United Kingdom, in the event particularly of chemical or biological attack, in normal circumstances you would not know until you started getting clinical symptoms whether you had had that attack or not. I am concerned about the pitifully low number of people in our emergency services, whether it is police, ambulance, doctors, nurses, firemen, those sorts of services, who have been vaccinated for what might be biological agents so that if you were to suddenly start getting symptoms appearing when you were not aware of the attack in the first place, which might have been made a week early, the emergency services would be wide open to becoming victims of the attack. Is that something you have ever thought hard about in the EU context?

Professor de Kerchove: We have started working on that. As you know, the EU CT Strategy is based on the UK one except that we do not use the four Ps; we have replaced the last one, "Prepare" by "Response". We have been very active on two of the four strands and a bit less on the other two, and one where we need to work more is, of course, on response. On CBRN

the Commission has set up a task force recently with a view to producing a policy package by the middle of next year. I cannot say that the EU has designed all the necessary policies on that yet but during the UK Presidency it started designing a special arrangement in Brussels to help Member States, because from beginning to end it is mainly a responsibility for the Member States. What we do is support Member States. We are not in the front line, in the driving seat; Member States are. If it is such a huge attack where more than one Member State is a victim of an attack the EU may play some role and it has started designing procedures to help Member States react. It is sometimes difficult. When you mentioned the vaccine, my predecessor was really very worried by the fact that the Commission tried to get some information on the stockpile of vaccine in EU Member States and has never received full information from the Member States, I suppose for good and less good reasons. A good reason, of course, is that it has to remain confidential because you do not say, if you have a stockpile, how big it is, but also because in the case of a major attack some might be a bit reluctant to share; and even large Member States have not provided the necessary information to the Commission. So at this stage the Commission has dropped this request but we have to work much more on that, and I do agree it is a very relevant problem.

Chairman: Perhaps I can come back to you on a personal basis with that at some future time.

Q352 Baroness Garden of Frognal: Professor de Kerchove, you have been quoted as saying, "We need to know whether the Member States are providing enough information to Europol and Eurojust—which I'm not sure they are", you say, "—and find out what we can do to make it work". Do you think that Europol and Eurojust are receiving sufficient information to make reliable reports and, if not, what are the implications and how do you see improvements being made?

Professor de Kerchove: You know that the Council adopted a Decision in 2005 which obliges Member States to provide systemically to Europol and Eurojust all information related to investigations (Europol) and prosecutions (Eurojust) in terrorist cases where more than two Member States are involved. When I was reporting for the first time to the European Council I raised this concern and I asked the two agencies to report, which they did a month ago, and in my recent report I made a first assessment of the two reports from the two agencies. It is improving but there is still some room for improvement. Europol it seems (and they have confirmed that) does not get systematic information on terrorist cases, I would not say quite often but it happens that they learn that something has happened

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or there is a pending investigation by reading the press or by watching television, and then they ask the relevant Member States to provide information. I need to look at what the most recent report said, but I would say that they have identified for the first three months of 2008 six cases, 10% of what they have received, where Member States should have sent information. After having asked the Member States to provide information, out of the six cases they received three answers. Out of the other three cases, in two they did not get any information and they got one refusal, based on the fact that it was not police information but linked to an intelligence operation. That means that there is room for improvement for sure. That confirms the feeling I had before asking, and the same for Eurojust.

Q353 Baroness Garden of Frognal: And that would have had an impact on the operational outcomes?

Professor de Kerchove: Yes. Europol in its report suggests that we amend the Decision of 2005 to delete the requirement that two Member States be involved in the terrorist act because when you start an investigation you do not always know if another Member State is involved, and in order to have the full picture of the terrorist situation in the European Union they really ask for all information if possible. That is something which the Council may consider in the future.

Q354 Lord Young of Norwood Green: In your discussion paper to the Council dealing with the EU Counter-Terrorism Strategy you call for the creation of structural links between Europol and Eurojust. What is the problem with the current framework for co-operation between these two organisations?

Professor de Kerchove: That is indeed a concern that I still have. I was surprised, talking to my colleagues in Eurojust, to learn that they had hired analysts to process the information provided in the context of the 2005 Decision, and I said to myself that if one looks at who is doing what in the Architecture of Internal Security Europol should be the place where one collects and analyses the information, while Eurojust is in charge of co-ordinating prosecutions. It would be a duplication of effort to see Eurojust collecting and analysing information because it is the core business of Europol. That is the first concern. The second concern is that, of course, Eurojust has to perform its task at the request of Member States but the Decision creating Eurojust says also that Eurojust may undertake some work on its own initiative based on information it receives from Europol. That requires that there be a close link between the two agencies and when Eurojust needs a criminal analysis it just asks Europol to do it. In the field of terrorism it makes sense, I think, that Eurojust gets access, if not to 100% of the Analysis

Work Files on Islamic terrorism but at least on the main findings and the trends and the like. I was surprised to hear that at least two (but I heard recently three) Member States did not agree because in the Convention creating Europol there is a veto right for each state participating in the Analysis Work File. I therefore intervened in the Council of Justice and Home Affairs in November last year, insisting and explaining that we were in a unique context because the Council was discussing at the same time the transformation of the Convention creating Europol into a Decision and at the same time some amendments to the Decision creating Eurojust, so that was the perfect occasion to have a provision in both legislations building a bridge between the two agencies. It seemed to me a bit odd that these two agencies, which participate in the same logic—investigating, prosecuting, bringing people to justice, supporting Member States' investigations and prosecutions—in their prospective legislation treat the other one as a third agency with no special links, such as the relationship between Europol and the Food Agency or whatever; so I insisted a lot, and I must say I was not very popular in doing so, but it just reflects some difficulties or some competition, you may call it, between the ministries of interior and the ministries of justice. I said in a recent speech at Eurojust where all the terrorist focal points were meeting, "It is not UK which is against it", and it is a bit surprising because in fact the objection came (and still comes) from countries where the prosecutors and the investigative magistrates are fully involved in the investigation, they control the investigation, so in the Member States where they do not want Eurojust to get access to Europol most of the information goes to the judicial authorities. I did my best to convince them. I would not say that I failed, but the Council was in a hurry to agree on the Europol Decision and have it adopted formally before the entry into force of the Lisbon Treaty, and Ministers were a bit scared that if they were to open that box it would procrastinate the adoption of the Europol Decision. So the compromise in April was to leave the text unchanged but to adopt the conclusions asking the two agencies to report by the end of this year and propose amendments to their co-operation agreement. It is, I think, a step in the right direction but it will not be possible to amend the co-operation agreement beyond what the texts foresee and the veto right remains in the Decision creating Europol, so that may happen again in the future. It is not only about Eurojust getting access to the Analysis Work Files of Europol. It is also about Eurojust providing Europol with all the information it receives and feeding the Analysis Work Files. That is one point. They should inform each other when a joint investigative team is set up. They should try to work together more often and that is something I try in my

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function to find : cases where they could work together. With some colleagues in Washington we were looking for cases where the two agencies, with the Americans, could work together in the field of terrorism. That led to the organisation of a meeting a month and a half ago on jihadists returning from, in this case, Iraq, where the Pentagon and the FBI decided to share all the information they had collected in Iraq on jihadists returning to either northern Africa or Europe. That turned out to be an excellent meeting and I am trying to convince the two agencies to multiply that type of co-operation.

Q355 Lord Young of Norwood Green: Would it help I they were in the same building or co-located?

Professor de Kerchove: I have always thought that the two agencies should be in the same building. To me it is very unfortunate that that has not been decided. I do not know if it is still possible since Europol is building a new building.

Q356 Chairman: We are told that it is not possible. We were shown a model of Europol's new building and we understand the new Eurojust building will be adjacent but not connected.

Professor de Kerchove: But indeed they should have been in the same building.

Chairman: Exactly.

Q357 Lord Marlesford: If I can come in because it seems relevant to what you have just said, Professor, it seems to me that Europol is very police linked and I wonder whether there should not be more of a direct link into Europol from Member States' intelligence agencies, for example, in our case the Security Service MI5. I know that through SOCA and all the rest there is information sharing, and I can see some of the inhibitions that there would be but, given that two of the Analysis Work Files are very much about terrorism and many of us feel that terrorism is perhaps the biggest single priority because of its catastrophic potential, I would feel happier if Europol were more linked in and that it was not just "pol", but I am not suggesting changing the name, of course.

Professor de Kerchove: I tried this a long time ago. After 9/11 it was the Belgian Presidency and I did my best to push the intelligence community to come closer to the EU decision-making process. The security services set up at the time a specific group called the Counter-Terrorist Group (CTG), which is a sub-group of the Berne Club, which is the club for the security services, but the CTG is only devoted to counter-terrorism. At the same time I suggested that one create at Europol a counter-terrorist task force where Member States could send intelligence and security agents. It was not a success, to say the least. The intelligence community is not very eager to work

with Europol. They could. If you look at the Convention, and I have not checked but if you look at the Decision as well, "competent authorities" may provide information to Europol. Nowhere is it said that it is only the police as such. The security services, MI5 or the DST in France, could be considered as competent authorities and provide information to Europol. I think in the long run it will happen. I am optimistic on that one, but it will take a lot of time. The first step—and that is why I am so much in favour of that—is what develops at national level. You in the UK some time ago created the JTAC where the different players share information and you do that very well. France has UCLAT. Belgium created what they call OCAM. These are platforms where security services, intelligence services, customs, police, prosecutors, share information related to terrorism. Three months ago the Spanish government organised a meeting in Madrid to explore how these different platforms could work together, in the first phase not on an operational basis but on a strategic basis. They have a lot to learn from each other because the integration of data is a complicated process. They could have common training and they can share experiences in integrating different data. You are right: in the long run that would be the right thing to do, but step by step. We have to do that slowly.

Q358 Lord Mawson: In your discussion paper to the Council dealing with the EU Counter-Terrorism Strategy, you mentioned a lack of co-ordination in the implementation of the principle of availability. You recommended that the Council should adopt a common EU policy on information sharing. Can you describe the positive progress being made in this respect?

Professor de Kerchove: I will start by explaining why I made this statement. It was because by attending meetings of the LIBE Committee in the European Parliament (not only me but colleagues as well) I have had the feeling that members of the European Parliament do not see the overall picture, where the European Union wants to go and where it will stop creating different legislation on data collection and data sharing. Some, but I do not agree with the statement, are afraid of creating a "surveillance society". I think we have to go further in data collection and data sharing, and in order to achieve that—and I had, of course, the Lisbon Treaty in mind in saying that—we need to have the European Parliament and national parliaments on board. It is then up to the Council and the European Parliament to define all the elements of an EU policy in the field. The feeling so far was a bit that the Council was proceeding step by step like slices of salami and did not provide the Parliament with a strong vision of where it wanted to go and where it wanted to stop. It

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started with modernising the SIS, creating the Visa Information System, allowing the police to get access to the VIS. The Germans suggested, but it is not a formal proposal yet, getting access to EURODAC, another database. The Commission came up with this proposal to set up a Passenger Name Record system like you have in the UK. All of this is necessary and in order to get a better consensus on this legislation I think we need this overall strategy. That was the first point. The second point was that for purely logistical reasons some legislation had been discussed in different groups within the Council, and so you have sometimes lawyers or police people discussing part of the same subject and sometimes there is a lack of consistency. That is why in my first report I strongly recommended, and I think most of my colleagues are in agreement with this, the setting up of one single working group within the Council to look at all aspects of the problem. The first step was done recently by re-setting up an ad hoc working group on information sharing, which has met or will meet in the coming days, to look at the way to implement two sets of legislation. One is what we call the "Swedish initiative", which is meant to improve cop-to-cop sharing of information, and the other one is on the Prüm Decision, which is very technical because it defines all the standards for DNA exchange of information, fingerprints and the like, so to answer your question it is a step in the right direction but I hope that as soon as possible the Council will decide to set up this working group. With colleagues in the Secretariat we have started working, but we are not that much advanced, on defining the different aspects of what could be the EU policy in the field of data sharing and data protection. Other proposals will come soon. The Commission will come with the proposal to set up an agency for not all but the main IT systems in the field of Justice and Home Affairs, the SIS, the VIS, EURODAC as well, I think. They are all projects on the site of what we call e-Justice, so all this calls for a good discussion in this working group.

Q359 Lord Mawson: Do you agree with Professor Willy Bruggeman that the participation of Europol in joint investigative teams and the right of Europol to ask Member States to start an investigation in specific cases are first but certain steps on the road to a more executive Europol?

Professor de Kerchove: It depends on what you mean by "executive power". I have always thought that executive power was mainly the possibility to arrest someone. It is a coercive power. The answer is yes, when Europol participates in a joint investigation team you may call it executive power but it is not coercive power. In the current legal framework, the current Treaty and even the Treaty of Lisbon Europol is not given any real executive power. It cannot itself launch an investigation. However, I am very much in favour of that because for me Europol is an agency which is there to support Member States' investigations. In order to show Member States the added value that Europol can bring I think it has to be involved as often as possible. Eurojust as well. The question we discussed at the outset on providing information to Europol and Eurojust, and it is the same at national level, requires a high level of trust between the police and the prosecutors and the EU agencies, so if they do not meet each other, if they cannot realise what it is they can get from Europol, from the information they provide, they will not do it, or they will not do it enough. It is, I think, very necessary that Member States accept having Eurojust and Europol even in the back seat in joint investigation teams. They have to learn, and if they go to the field they will learn, and they have to be in a position to show the added value of what they do. It is not the case yet but where there are not enough joint investigation teams (JITs), I think there should be something like 30 JITs. The Spaniards and the French have created more than ten JITs in the field of terrorism but on ETA terrorism they do not see why Europol should be involved, and I can understand that; it is mainly a concern for these two countries. A JIT has also been set on PKK, I think, between France and Germany. Europol should participate in this joint investigation team. I do not know if the UK has set up many joint investigation teams and if so whether it has involved Europol.

Q360 Chairman: I think on that note we are really going to have to stop because we have to catch a train. You have been extremely full in your answers and very clear. We have found this a particularly interesting session because terrorism is something which this Committee is very concerned about and, one never knows, it may return to this in the future. You have been most helpful and it is most appreciated, Professor. Thank you.

Professor de Kerchove: My pleasure.

WEDNESDAY 2 JULY 2008

Present	Dear, L Garden of Frognal, B Harrison, L (Chairman) Henig, B	Marlesford, L Mawson, L Teverson, L Young of Norwood Green, L
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Memorandum by the Association of Chief Police Officers of England, Wales and Northern Ireland (ACPO)

ACPO POSITION

The Association of Chief Police Officers welcomes the decision of the House of Lords' Select Committee on the European Union to conduct an Inquiry into Europol, the European Police Office.

The Inquiry has provided ACPO with an opportunity to consider specifically, the intended alterations to the governance arrangements for Europol, changes to the current role and operating environment under this new arrangement and examine how effectively information from Europol reaches police forces in the UK.

The criminal threat is increasingly international. The continuing expansion of the European Union and increased "freedom of movement" pose significant challenges to UK law enforcement agencies, which are charged with preserving the security and safety of UK citizens. It is critical that the highest levels of cooperation be maintained between the UK and agencies in Europe to ensure that the legal, logistical and language differences do not provide an increased opportunity for Europe's criminals to gain an advantage.

UK police forces need fast-time, reliable, up-to-date and comprehensive information exchange with our European colleagues and rely on the Serious and Organised Crime Agency (SOCA) for this. SOCA manages the relationship with Europol for police forces in the UK.

Police forces are broadly satisfied with what they get.

Enquiries when handed to SOCA may pass down one of a number of channels (Europol, SOCA Liaison Officers Network or Interpol) and may be requested under one of several legal authorities (Swedish Initiative, EU treaties, etc.). The precise channel used is not generally important to the requesting police force, on condition that the product that results is legal, reliable, useful and timely.

As it is often unclear when information arrives back with UK forces what route it has taken, police forces can be unsighted on the extent of Europol's contribution.

Europol is an effective law enforcement partner and resource to policing in the UK. It aims to facilitate information exchange and to provide high quality analysis. In this regard ACPO sees more evidence of success in the former aspiration than the latter. ACPO does, however, recognise the need to be realistic in its expectations, with an EU population of 495 million citizens, there is only so much impact that Europol's limited analytical capability can have. SOCA puts people in to Europol to ensure they get a share, so too do the Metropolitan Police Service.

Other forces would generally be pragmatic and not expect to see too much direct local benefit from this analysis (although there will be occasions when they get it!) Instead they would feel the benefit via the UK Threat Assessment (UKTA) which is informed by the Europol Organised Crime Threat Assessment.

ACPO Crime Business Area has commissioned a limited review of the National Intelligence Model (NIM). One area of scrutiny will be the operation of NIM at a national and international level. A further piece of work is underway to review the National Strategic Assessment (NSA), looking at its relationship to the UKTA. Both of these pieces of work will entail scrutiny of international links including Europol.

Examples abound of effective international, bilateral and multilateral initiatives around intelligence sharing and policy development. ACPO relies on SOCA to maintain an overview. Yet, however the formal mechanisms for co-operation (Europol, Eurojust, Swedish Initiative, Interpol) develop, ACPO would remind the Committee of the value of direct contact, face to face, between investigators—which proves its value time and time again.

ACPO welcomes any improvement in international capability and any development that will improve the speedy availability of accurate, comprehensive and up-to-date information.

This submission provides an overview of the ACPO position in relation to the operations of Europol and the current arrangements for accessing their services through SOCA. ACPO representatives will attend the Committee to provide oral evidence where they will address the questions raised in the Committee's Call for Evidence in greater detail.

ACPO will provide a more comprehensive written submission to the Committee following the oral evidence stage if that is desirable.

THE ASSOCIATION OF CHIEF POLICE OFFICERS

The Association of Chief Police Officers (ACPO) is an independent, professionally led, strategic body. In the public interest and, in equal and active partnership with Government and the Association of Police Authorities, ACPO leads and co-ordinates the direction and development of the police service in England, Wales and Northern Ireland. ACPO's 341 members are police officers of Assistant Chief Constable rank (Commanders in the Metropolitan and City of London Police) and above and senior police staff managers in the 44 forces in England, Wales and Northern Ireland and other forces such as the British Transport Police and States of Jersey Police.

Prepared by Chief Constable Ian Johnston and
Assistant Chief Constable Nick Gargan

27 June 2008

Examination of Witnesses

Witnesses: SIR RONNIE FLANAGAN, HM Chief Inspector of Constabulary, CHIEF CONSTABLE KEN JONES, President, Association of Chief Police Officers, CHIEF CONSTABLE IAN JOHNSTON, Chief Constable of British Transport Police and ASSISTANT CHIEF CONSTABLE NICK GARGAN, Thames Valley Police, examined.

Q361 Chairman: Good morning gentlemen; I hope you are all sitting very comfortably on the bench there. My name is Harrison and it is my pleasure to chair the meeting this morning in the absence of Michael Jopling, our normal Chairman. We are extremely grateful to the four of you and colleagues for coming in today and we are extremely grateful for the written evidence that you provided; we look forward to the further written evidence from ACPO. As you may hear from my raised voice, the acoustics here in this room, as elsewhere in the Houses of Parliament, are notorious so I would be grateful if you could speak up. In the 19th century of course, politicians used to declaim and that is why they built them in this way, but we would be most grateful if you could speak up. We are actually being broadcast now, we are on the webcam and some day someone is going to explain that to me but I understand the importance of it. When you have given your evidence to us, we will be sending you a transcript and we would be very pleased if you would look at that transcript and if any corrections are needed or if you feel that you may have in some way misled the Committee or that you want to correct a false impression, we would be very grateful if you would contact our Clerk, Michael Collon, and have that corrected. The essence of what we do is to end up with good clear evidence to help us in our thoughts. It would be very helpful if the four of you would perhaps introduce yourselves first of all, with the purpose of distinguishing your separate roles so that

the Committee has a better idea of where the answers that you give come from, and then we go on to the first question. Perhaps I can ask Sir Ronnie first of all just to start and give a brief overview, but also say a little bit about his important role.

Sir Ronnie Flanagan: I am Ronnie Flanagan, Her Majesty's Chief Inspector of Constabulary. That is a position that has been in existence for some 150 years and the legal responsibility of the inspectorate is to inspect police forces, at least originally to inspect police forces, to ensure and to satisfy Government that they are operating in an effective and an efficient manner. I said "initially" to inspect police forces because, for the purposes of what you are examining, we now inspect SOCA. I have to stress we have no remit whatsoever in inspecting Europol, but through inspection of SOCA we get at least a sense of what Europol is doing and the role that SOCA plays in respect of United Kingdom policing vis-à-vis Europol. So I am here this morning in that capacity.

Chief Constable Johnston: I am Ian Johnston. I am the Chief Constable of the British Transport Police but my main reason for being here today is that I am the Chairman of the ACPO Crime Business Area. ACPO divides its national responsibilities out into a number of different groupings—crime, criminal justice, force modernisation and a number of different areas, and I deal with the crime side. In that respect, I have responsibilities around serious and organised crime, and the Crime Business Area is the main interface with the Serious and Organised Crime Agency, which

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obviously then takes us into Europol and the issues that you are talking about here today.

Chief Constable Jones: I am the President of ACPO and my job is to coordinate activities across the business areas, like the one that Ian runs, to give our best advice to the Government, but also to liaise and get the best out of our relationships with organisations like SOCA and, through SOCA, Europol. We like to think we are here in the public interest, we guard that very jealously and part of that responsibility I have is to give independent advice to Government on issues such as this.

Assistant Chief Constable Gargan: I am Assistant Chief Constable Nick Gargan with Thames Valley Police where I am responsible for crime and criminal justice. This gives me the operational oversight of the interface with SOCA and Europol from a force perspective. I am also here as the intelligence portfolio holder on Mr Johnston's behalf within ACPO Crime Business Area so I have a link into various of the connections, both with the Serious and Organised Crime Agency but also the Schengen information system too.

Q362 Chairman: That is very helpful. Before I ask the first question, it would be extremely helpful if you could identify those of you who you feel you would like to answer any particular question. The Committee does not want to hear the same answer four times, but obviously if any of you want to complement the answer of one of your colleagues, please do indicate and we can do it in that way.

Chief Constable Jones: We have been discussing this and we have decided who would lead off to each particular question.

Q363 Chairman: I am most grateful; thank you very much indeed. Could you give the Committee a brief overview of the UK arrangements for connecting ACPO to SOCA, to the UK Europol National Unit and to Europol, all of whom we visited last week? How would you assess these arrangements in terms of effective flow of information?

Chief Constable Johnston: SOCA is the gateway for ACPO into Europe and all ACPO forces connect to SOCA in terms of all of their international work at a variety of different levels through programmes of activity, through our international liaison officers who are attached to each force, through joint working with SOCA and others on projects and operations, and through the international gateway which is provided by SOCA in their multi-lateral department. The SOCA multilateral provides access to all of the international channels, not just for Europe; it obviously includes Europol and also provides a link to the large number of the UK's overseas liaison officers' network. They also provide

the route through to Interpol and to policing cooperation under the Schengen Agreement. SOCA also provides for us a central bureau for the European arrest warrant. So broadly speaking the arrangement is that our link to Europe is in through SOCA. In terms of their general effectiveness, I guess the questions later on will take us into a more detailed response to that, but I would say that the arrangements are widely known but at varying levels across the Police Service. Those who are involved in drugs and human trafficking have a pretty good and sharp understanding of the relationship and the route ways and how to get the best out of the system. Others, who are perhaps investigating serious crimes with international connotations of a one-off nature around a murder inquiry, for example, will have less knowledge and therefore are less effective in their use of the system. However, in each force they do have their own international liaison officer and we can seek advice from SOCA multilateral on the best way to get help from Europe generally. I would describe the general arrangements as effective, but there are opportunities within them for improvement and no doubt we will get the opportunity to suggest a few of those improvements during the course of our discussion here.

Chairman: We would be very grateful if you could be sure to do that; it would be very helpful.

Q364 Lord Young of Norwood Green: I find myself educated just reading your evidence. I had a totally false perspective of ACPO. I had you down more as a trade union, but that is probably because of my background. I found the evidence very helpful. Could you tell us more about the different tools of information management, some of which you have described in your evidence: the organised crime threat assessment, the way that the UK one seems to interact with the European threat assessment, according to your evidence; situation reports; the criminal intelligence model? How far have they developed and what do you think they mean from the perspective of police governance?

Sir Ronnie Flanagan: What I want to do first is draw upon experience within the United Kingdom because one of the major tools is what we in the United Kingdom describe as the "National Intelligence Model" and which Europol has adopted as a European Intelligence Model. What I wanted to do was give the experience within the UK and then extrapolate that to where we see Europol and, having adopted the tools, how far they have developed, as you have asked, and perhaps what more might yet be done. The story starts in terms of adoption of the National Intelligence Model in around 2001 and very quickly and very encouragingly it was adopted as a model by all 43 forces in England and Wales, by all

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eight forces in Scotland and indeed by the Police Service in Northern Ireland; so that was a very encouraging development. The model itself starts with what we call strategic assessments, including assessments of all the threats to be faced, all the operational activity in which we are to engage and then, building upon those strategic assessments, the development of what we call a control strategy. Then, through intelligence assessments and through what we describe as tasking and coordinating arrangements, how do we allocate all of the resources that are available in the most effective and efficient way to deal with those threats that have been identified in the original strategic assessment? In the United Kingdom experience I said that it was very encouraging that all 52 forces throughout the United Kingdom adopted the model. That is not to say that it was not without teething problems and certainly so far as the inspectorate were concerned, what we had to create at the centre was an assisted implementation team. Quite apart from adoption of the model, we wanted to ensure through inspection and offering assistance that each of those forces knew exactly what the model was, were operating it to comparable standards and we in the Inspectorate continue to inspect today and make judgments on how far individual forces within the United Kingdom are actually applying and putting to use the National Intelligence Model. It is fair to say that, if we do not keep that continuing spotlight that we have identified a real risk, impetus is lost and there is a risk of dropping back. Why do I spend so much time outlining the UK experience? It is true to say that during the previous UK presidency, our representatives were critical in having basically exactly the same model that I have described adopted by Europol. Of course, when you are talking about 43 forces operating to a national standard in England and Wales and similarly our colleagues in Scotland and Northern Ireland and you realise there are difficulties in that structure, you can imagine there are many, many more challenges in dealing with 27 Member States with different forms of criminal justice. In terms of how they have developed, we are very conscious of previous evidence given by our colleagues from the Serious and Organised Crime Agency. There are very encouraging examples and you were given an example relating to Croatia, where adoption of the model worked very well. It is true to say that we would have concerns, if we did not keep up that unrelenting focus to ensure that 27 different Member States adopt the model and apply it and through that, indeed engaging in the organised crime threat assessment and the other tools that they engage in, the analytical work files that Europol so effectively provides. In answering that element of the question that asks how mature these tools are, very

encouraging but very much still a work in progress. I suggested at the outset that we, the inspectorate for policing in the United Kingdom, have no remit in inspecting Europol, but we would be encouraging them to place a very intense focus upon the development of the tools and the application of the tools through their own inspection procedures.

Q365 Lord Young of Norwood Green: You mention in your evidence that the UK's threat assessment is informed by the Europol organised crime threat assessment.

Sir Ronnie Flanagan: We will address that specifically in relation to a question that is still to be asked, but it is fair to say at this stage that our threat assessment is very much informed by the organised crime threat assessment provided by Europol. In terms of overall policing governance, which is the last element of your question, we collectively and certainly I individually would say that there are very positive signs that the application of these tools, while still to be developed and worked upon, as I indicated, do very much provide a positive element to police governance and do very much feed in to what we do in the UK and the conclusions that we come to in terms of our threat assessment.

Q366 Lord Young of Norwood Green: Just one final point, as you mentioned the analytical work files, you seemed to mention them in a positive way. Do you think they are developing well as a useful means of exchanging information?

Sir Ronnie Flanagan: Yes indeed and you can see that in the structure: there is a different analytical work file for extremist Islamist terrorism, the drugs problem, human trafficking. There are different files for those different areas of work and we would pronounce positively on those.

Q367 Chairman: Sir Ronnie, just for interest, do you have a continental equivalent to you as Chief HMI and are they too limited to just looking at their own police forces and the equivalent of SOCA?

Sir Ronnie Flanagan: I cannot speak for every one of the 27 Member States and indeed some other European countries that are not yet within the EU, but I have not yet discovered one. In fact we have been in communication with colleagues in France and colleagues in many countries and in Europe and indeed far beyond Europe in terms of their development of what might be described generally as civilian oversight of policing. I say "civilian oversight" because I would very strongly stress the independence of the inspectorate, independent of both Government and indeed independent of the Police Service.

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Q368 Lord Mawson: I was interested to hear you describe your organisations as “businesses” and I am interested in who the customers are and what the market is that you are actually operating in, but also how that actually relates to this whole question of Europol. My experience of quite experienced business people is that sometimes you can have all the structure and all the speak in place in the middle, but to really know what is going on in your business, you have to go right to the front edge in one place and spend some time there and really understand in one place what is actually happening, what is actually getting delivered for customers. I would just be interested to hear a bit about what your experience has been when you have gone to that front edge of Europol and looked at what is actually happening and just a brief description of what you saw.

Chief Constable Jones: Nick is here from Thames Valley Police as well, he has two hats on today, and he has some statistics and experience of using these services directly and also in a bilateral sense. I could make a broader point about the Association of Chief Police Officers’ description of its work as divided into business areas, if that is where you wanted some elaboration.

Q369 Chairman: Yes; please do continue.

Chief Constable Jones: I will ask Nick to pick up the Europol issue, but in terms of the way we divide our policy development work, we call them business areas precisely for the reason that we want people to have a sense of what we do on behalf of the public. If it is not influencing delivery to the public, our standards, our ethos, influencing Government, then we should not be doing it. It is our attempt to move away from a purist policy development machine, which we are not, and to be one which actually puts the public first. Ian leads the biggest area that we have and the Crime Business Area covers things like homicide investigation, has a direct impact on communities in the neighbourhood and we work back from there. We have used the language of business for that reason, we have a view of who our customers and clients are and it is definitely the public.

Assistant Chief Constable Gargan: In terms of going to the front line, I would make three points. The first is that I have not actually visited Europol itself for several years but I had a sense, on visiting repeatedly, that it felt like quite a bureaucratic organisation and an organisation that was finding its feet and an organisation of staff who were nervous of the constraints on their ability to grow in terms of operational delivery. In terms of the UK front line, I have had several contacts with detectives from my own force and colleagues from SOCA in the last couple of weeks with an eye on this session and have

had some very mixed reviews. There are clearly some excellent examples of Europol adding value to operations, making links, particularly where those operations relate to three or more states; that is where the value of Europol comes in, rather than in terms of bilateral inquiries where we already have a very generous and high quality set of arrangements in terms of SOCA liaison officers.

Q370 Lord Mawson: What are they telling you about what is not working?

Assistant Chief Constable Gargan: The difficulty of getting work adopted because, of necessity, Europol must be quite discriminating in terms of the amount of work it will take on, with a database with a relatively small number of entries and a relatively small staff for a huge population in the EU. At Thames Valley Police our experience is that if you add together both incoming and outgoing inquiries to Interpol, Europol and the UK central authority for mutual legal assistance, combined, in both directions, that amounts to fewer than 500 inquiries per year which, for a population of 2.1 million people, feels rather low. Now that might change when the Schengen information system comes on-line and when every police national computer check then becomes an international check those volumes may go up but our experience is that when colleagues do ask for an international service, they invariably get a good and appropriate service and, on occasions, that really is excellent.

Q371 Lord Mawson: Is Europol sufficiently included in the implementation of the UK’s strategy to combat organised crime and terrorism?

Chief Constable Jones: That is a difficult one. Building on some of the points which have been made, it is critical that Europol continues to focus on those areas presenting the most serious threat and risk to communities, so there is a danger of mission creep and as they expand they are spreading their jam far too thin. We have to keep them focused on the critical areas, so in that respect we support the 18 areas they concentrate on through the analytical work files. The other issue that is critical is the issue around intelligence. We will get the maximum benefit from the European Criminal Intelligence Model, ECIM, provided that continues to align with our intelligence model, and we think that is the best way for them to work. Obviously we were very influential during our presidency in landing that, but there are signs that that perhaps is perhaps losing some momentum and impetus. Provided the ECIM continues to develop, then we will continue to feed off it. That then directly informs our organised crime threat assessment, which in turn influences our control strategy—sorry for all this jargon—and that does feed through

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ultimately to things like the national community safety plan and to police authorities and chiefs' local force plan. However, there needs to be this alignment around a common purpose and approach so we do need to continue to keep pushing very hard on that and we do through SOCA and through other partners and players. Is it sufficient? I would say at the moment, probably not. I could not say "Yes it is sufficient" because I would never be satisfied. Could it be sufficient? Yes, provided we continue to resource, provided we continue to focus on the more serious issues and provided we all operate to a common script; that is pretty critical.

Q372 Lord Mawson: Are the EU Justice and Home Affairs Council conclusions on organised crime routinely entered into the national policing strategies of the UK?

Chief Constable Johnston: The short answer is: yes. The conclusions from the Council are fed into the Serious and Organised Crime Agency and they do feature in the UK threat assessment which is the bit of machinery within the National Intelligence Model that SOCA use to disseminate their assessment of threat more broadly from serious and organised crime across the UK and into the UK; they do feature as part of that. That clearly is an annual publication but they also feature in their more routine month-by-month assessments of priority, so they are embraced, they are included in our assessments.

Q373 Lord Teverson: Outside the Council obviously the Commission gets involved in certain matters, and I know about the difference between First Pillar and Third Pillar, but do police forces ever deal directly with the Commission or lobbying or consultation? Is there a communication at that level without going through the UKRep or purely government political connections?

Chief Constable Johnston: Not that I am aware of. Our route in to all those negotiations is through SOCA, which has its value because a single route gives a very clear and common, shared sense of direction; I am not aware of any other route in.

Chief Constable Jones: We do get approached by various EU bodies for advice or for a view on and we tend to channel that through the regular channels that go through SOCA. Regular approaches are made but we try, by and large, to discipline that so that we present a united front.

Q374 Baroness Garden of Frognal: Are the UK's chief police officers satisfied that the mechanisms for improving law enforcement information exchange within the EU are coordinated and adequate for their purpose for the years to come?

Assistant Chief Constable Gargan: There are four elements to that question. Overwhelmingly we talk here about operational information exchange and that is a multi-stranded activity. We have the SOCA liaison officers, we have Interpol, we have Europol, we have the Schengen information system on the horizon and then specific initiatives, the Prüm initiative around finger prints, DNA and vehicle driver details, the Swedish initiative, indeed we also have our own ACPO Criminals Records Office. We have this very complex multi-stranded set of arrangements. On occasion, it looks from our perspective that they are driven by individual Member States' initiatives but our stance over the years has been, rather like making a mobile telephone call, we do not really mind whether it is routed bounced off a satellite, sent down a fibre-optic cable or sent through a telegraph wire provided we get what we need from the other end. That tends to be the ACPO approach and we rely on SOCA to provide that coordination on our behalf and we believe it is largely effective. The second area of information exchange is that there is some rogue bilateral contact, either unit-to-unit or the guy you met in a camp site in Spain two years ago and you ring with an enquiry of your French police colleague, but that is very low. The number of inquiries that take place of that sort are very low; they used to be higher and they are reducing as people become aware of data protection legislation. The third and incredibly valuable level of information exchange is for a very specific operation and this is where you cannot actually beat getting detectives from the British Police Force together with their overseas counterparts. Whether that is pursuing a murder, a missing person investigation, an abduction or an offence of drug trafficking, that face-to-face contact between the investigators themselves is incredibly valuable, but of course we rely on SOCA to broker that and to make sure there is a central oversight. Then the final tier of exchange relates to the exchange of know-how and support from one force to another. There is a proposal for an international police assistance board to ensure that there is some kind of central oversight and coordination of that which has traditionally been something that the Foreign and Commonwealth Office has had sight of. So across those four elements, given that the second element, the sort of rogue contact, is one that is low and diminishing in its level, we can be broadly satisfied.

Q375 Baroness Garden of Frognal: Chief Constable Jones mentioned a common script and in fact in your answers about communication I wonder whether you find any hurdles in a mutual understanding of terminology or indeed language within EU members.

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Assistant Chief Constable Gargan: There are clearly issues around language, although the UK is fortunate in that people from third party states are as likely to speak English as a second language as any other. There are equally difficulties around respecting judicial systems; the role of police, the role of magistrates and state prosecutors can create confusion and difficulties in progressing cases. I have personal experience of working with the French and when British investigators make a request the language of the British investigator is not understood by the French examining magistrate, not because of an Anglo-French linguistic difficulty, but rather because of very different operating systems in the two countries.

Q376 Lord Dear: The thing about terminology, and this cropped up when we were in The Hague and Brussels last week, and pretty well everyone was saying there was a difficulty, not in understanding the language, because by and large English is the *lingua franca* but in the way in which a word or a phrase can have totally different connotations depending on the accusatorial or inquisitorial system. The easy answer is that we should have a common dictionary, a common lexicon and that is a long way off I guess. I wonder if you saw it as a real problem, which they perceived to be a problem across in The Hague and in Brussels, or whether it is something we just wait to resolve itself?

Assistant Chief Constable Gargan: My personal view is that the only pragmatic way around that is through goodwill and better understanding of one another's systems. That is where the SOCA liaison officer network really comes into its own, when you are operating with a country and you actually have people embedded there who have worked with the police and judiciary there, worked with examining magistrates and have developed fixes to work round specific problems that exist and commonly crop up in operations.

Q377 Lord Dear: To explain the correct terminology. One of the things we could consider doing is to put a helpful recommendation into the report. I cannot speak for my colleagues here but it is one of the things clearly that we could consider. Since they are in a perceived area, would it help you to have some sort of extra clarity injected into that issue? I am not sure, sitting here, how you would do it.

Chief Constable Jones: Absolutely, particularly words like "intelligence" and "information" and there are significant misunderstandings there which inhibit the momentum which Sir Ronnie and I have already talked about. At the risk of being controversial, the recent discussion around pre-charge detention amplified quite well the differences of appreciation of

each other's processes and systems from very learned judges and lawyers on either side of the debate. It is a big issue and for the public it is a big issue.

Q378 Lord Mawson: A lot of my life has been spent in trying to bring together quite complex partnerships to make things work out of silo, but it seems to me a lot of this area is about human relationships, not only in this country but in 27 countries. Do you think enough is being invested in the whole of that, in people and relationships? When you actually start to get those things in place, all sorts of things get dealt with quite quickly, whereas the systems and the processes are not actually dealing with them. Do you think the investment is right for the whole of that area?

Chief Constable Jones: It is not sufficient, and one of the issues for Europol is that their visibility is not high enough in the human sense at a senior professional level in the way that some other European bodies are, and we do need to invest in development on either side; I am not pointing a finger at Europol. It is absolutely critical, but once you have the key players, you overcome issues around threats of compromising information and what have you. In my opinion it is not routinely invested in sufficiently and it is the word "routine", it is looking at cross-training or at regular fora for people at the right level in different organisations. There is a risk that SOCA, although it does not want to be a choke point, could become a choke point. You have hit on a very important issue there.

Q379 Chairman: Whilst it is clearly desirable to use SOCA as a filter, it could be that what get obscured are Europol's relations with the UK forces, and perhaps they do not know and understand that.

Chief Constable Jones: That is absolutely right, and in some of the reforms to our training and development, as we are revisiting this now through green papers and what have you, we ought to look to create the space for more of internationalism to come back in to our agenda because clearly we are up against a global ideological terrorism threat but we are also seeing the emergence of new forms of organised criminality as well which are global in their reach and not just one country or even two or three countries and we need to take those on.

Sir Ronnie Flanagan: Mr Gargan referred to the establishment of an international police assistance board. This deals with all sorts of international police assistance that we in the UK would offer in areas outside Europol's remit. The reason it is important to mention it is as I was leading on this to advise in a cross-departmental Whitehall way, involving of course the Home Office but also the Foreign Office, DfID, the Ministry of Defence, Secretary of State for

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Scotland and Northern Ireland. What we identified as absolutely critical was this concept of having a one-stop shop. Relating that back to Europol, it is absolutely crucial that we in the UK have a one-stop shop. I cannot think of a better body or a more appropriate body than SOCA in that national sense. Undoubtedly, it does have shortcomings. SOCA, for example, has no remit in relation to counter-terrorism, so suddenly you find our Met colleagues, who have very much an international remit in that regard, deploy representatives to Europol quite outside SOCA. So there are shortcomings with SOCA but the advantages, in my view, very much outweigh the shortcomings. The trick is, and we will be dealing with this in subsequent questions, how to allow fully effective bilateral communication, force to force, but in a way that is complementary and feeds into the central mechanism. From my point of view, I would like to stress the absolutely crucial nature of having this one-stop shop.

Chairman: You have posed the question very well; it is the answers which are perhaps more difficult.

Q380 Lord Young of Norwood Green: I just want to explore the point that was made by Assistant Chief Constable Gargan about the way that the embedded SOCA liaison officers do start to cross those cultural and judicial differences. It seemed to me, when we walked along that corridor where they were all stationed, that that really did make a difference. It seems to me that if the Met have a role in relation to counter-terrorism, well why do they not embed a liaison officer, or do they?

Sir Ronnie Flanagan: Yes, that was the point I was making, they do exactly that. They have one and have imminent plans for a second one to be embedded.

Q381 Lord Teverson: Let us move on to the European Parliament which will have to satisfy itself that Europol has a positive impact on UK forces in terms of “competent law enforcement authorities” for the purposes of the Europol Convention and Council Decision. Will SOCA be best placed to provide this information? I would be interested, within that context, to understand really how you would see the European Parliament oversight work.

Chief Constable Jones: The bold answer is yes, SOCA are best placed, the mechanisms they use are transparent, they are open, we feel we have good access to them and there is a good two-way flow of information. The challenge will come as Europol, hopefully, increases its capacity and leverage over some of the critical threat and risk areas I mentioned earlier and whether that will be sufficient, but we currently feel absolutely it is. One of the problems of course is that, in terms of competent authorities, some agencies which are important to us, and Sir

Ronnie has mentioned one of the issues is terrorism, are not regarded as competent. For example, some of our security agencies in the UK are not part of that group and that does need some thinking frankly. That was more critical a few years ago of course because MI5 had a remit around organised crime which it no longer has and they had an oddity where they were not a competent authority, but we managed around that. As terrorism becomes, and I agree with some of the recent assessment that it is, enduring and is probably going to be around for a generation then, the view of what is and what is not a competent authority will need to be looked at afresh.

Q382 Lord Teverson: That sounds like that could be quite a critical area in a way in how this is structurally laid out.

Chief Constable Jones: Yes, it is. It is one-way and when we get back to this visibility and the value-added of Europol more needs to be done to raise that and that will result in more challenge, more critical challenge and hopefully constructive and more improvement. Ultimately we are here to try to make neighbourhoods safer and if we are not, we are wasting our time and your money. There is this feeling that it does tend to be a bit one-way at times.

Q383 Baroness Henig: What is your view of the added value of Europol’s work in the area of counter-terrorism, and what value do you attribute to the Europol Terrorism Situation and Trend Report?

Chief Constable Jones: There is a tremendous amount of value-added in our liaison, not just with Europol but through Europol to other agencies around Europe and it is particularly at the operative level. Sir Ronnie has already mentioned that the NPS have placed an individual at the heart of that and it is actually becoming more and more important now that we continue to improve and develop those links. In terms of TE-SAT, I have the report hot off the press. Although it is constructed from open source, it does give a very useful overview to the less well-informed about terrorism across the EU; it is a useful document but it does not really go into the detail which might be of value to operational people. However, it is very influential in terms of political oversight and certainly I have used it when I was chairman of the terrorism committee to influence people in that particular area, particularly a committee such as this. There is some very useful information in it, but it is open source at a very, very high level. It is a developing field and I return to my point about competent authorities: we cannot just exclude certain agencies because they do not fit the definition of what is or not a competent authority.

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Q384 Baroness Henig: I assume that a number of bodies deal with issues relating to counter-terrorism of which Europol is one, so it is quite a crowded field. *Chief Constable Jones:* It is.

Q385 Baroness Henig: I am not quite clear how they all mesh together or how the liaison works. I was not in The Hague last week when there was a visit there and I get the impression that Europol is very much information exchange and bureaucratic centre, and I just wonder therefore how it ties in with presumably more active players in the terrorism area.

Chief Constable Jones: Through one of the work files, one of the 18, it is becoming more of a node, more of a centre, more active but it has come to the party a little bit later than some of the other agencies. Then we get into this other issue about nervousness around compromising information and intelligence. I have to tell you that on some of the investigations that I am aware of, the liaison agency to agency that goes through Europol is incredibly effective but Europol's role in this is to facilitate and they need to be an authoritative source of who is talking to whom, which country is talking to which country. They do not need to know the content of that from our perspective, but an agency in this country is dealing with an investigation and I have seen them take in Holland, France and Spain and then an investigator in Spain needs to know from somebody where these investigative links are and then discussions around sharing the content of those enquiries can take place at the operational level. Europol needs to locate itself securely as that central flagging point in the way that we used to have the crime squad and now we have SOCA doing that for inquiries within the UK.

Q386 Baroness Henig: Is there anything that needs to be done to enhance its role? From where you are sitting, is there anything that we perhaps might need to consider that could make that rather more effective?

Chief Constable Jones: We do need to raise that issue up. It is done, but I am not able to say whether it is done effectively or ineffectively. My sense is that it is not visible and that is a challenge that needs to be made. I could not say with confidence this morning that it is working well or not working well but it is critical and those at the operational investigative leading edge in any country can go to a central point. It avoids what we call blue-on-blue, where investigations might cross one another. There are real concerns around the compromise of information because ultimately lives are at risk.

Q387 Lord Teverson: In terms of trust levels, obviously there is even an issue between SOCA and the other organisations, which we presume is good,

but given that a lot of very sensitive information could be disappearing in all sorts of areas, is there enough trust there or does one pull back to a certain degree on certain issues?

Chief Constable Jones: It is a case-by-case basis really but we are getting smarter and quicker at dealing with other jurisdictions and overcoming those issues quicker. Certainly there are some people that maybe think that all information needs to be put in one database centrally somewhere and everything will be all right, but actually therein lie some real problems for us. It goes back to the human relationship issue, but we are getting much swifter at doing that. These jurisdictional barriers are real and they do take time to overcome.

Q388 Lord Marlesford: I got the impression, visiting Europol last week, that the national liaison offices are very important for many reasons and it seems to me that one of the reasons is that it is possible, where there is suspicion or worry about the security of information, for the national liaison office to have things which agencies in the UK would not necessarily want Europol to have. I was rather struck because there did not appear to be any direct linkage between our security service and the national liaison office. I would have thought that would have been quite a good way of getting the right relationship in and of course various countries have different systems of policing whereby the security service, the analogues of MI5, are, to a greater or lesser extent, embedded in police forces whereas here it is pretty separate really. Certainly the French reorganisation which we heard about this week was an interesting one which seems to be a very big effort to integrate much more on the counter-terrorism front. Do you think, just purely in rather simple organisation terms, if the national liaison office, particularly the UK one, were to be strengthened with a pretty senior level of linkage with our security service with their own people in the liaison office, this would help?

Chief Constable Jones: That is a question for the agency but certainly we see the liaison activity as critical and becoming more critical. I would agree with your broad point but perhaps I am not best placed to answer the question.

Assistant Chief Constable Gargan: We could usefully make the point there that the DST and the RG in France are both part of the police so that is an internal reorganisation; that is not our way of working traditionally in the UK so it would be an altogether different question and a broader constitutional question.

Q389 Lord Marlesford: I do not see a constitutional problem in the sense that one is not suggesting a change in the arrangements between the UK agencies

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inside the UK, one is merely trying to get a better relationship and flow of information without the inhibitions about security with Europol.

Assistant Chief Constable Gargan: I guess the issues would be around what is an intelligence agency not an evidence agency, that is the security service operating with Europol, with judicial police forces that are evidential agencies.

Chief Constable Jones: Our security agencies quite properly make great play of the distinction between intelligence and secret intelligence and they would see the need for a completely different structure to be place around secret intelligence rather than organised crime intelligence, for example. I agree with you that there is an overlap there and there is a linkage there that needs to be explored and that is becoming more and more critical.

Q390 Lord Dear: An observation rather than a question and I would value your response to it. It goes back to the question asked about trust and in The Hague last week, if I understood the position correctly, on the counter-terrorist side the only information which is exchanged amongst the Member States is at restricted level, which is very low of course and is largely *ex post facto* anyway.

Chief Constable Jones: Yes.

Q391 Lord Dear: I can see enormous difficulties in trading high value, highly ranked intelligence on an ongoing inquiry, for all the obvious reasons about not knowing where it is going to go and who is going to use it or misuse it. It was nevertheless *ex post facto* and a very low level and I wondered whether you had an observation on that.

Chief Constable Jones: At the investigative level the liaison is good because it depends entirely on the links that people have made and are already making around the current and old investigation. Above the level where you are going to start circulating and sharing secret intelligence, it is necessarily very, very difficult, hence your remark about restricted intelligence. I would not be surprised if there were greater interchange of higher grade material between the actual agencies concerned.

Q392 Lord Dear: On a bilateral basis.

Chief Constable Jones: Yes, on a bilateral basis.

Sir Ronnie Flanagan: I just want to point out that there are other mechanisms for the exchange of much more highly sensitive material and when we talk about trust, it is not any lack of trust in the individuals or the individual Member States, it is rather a need to make sure that highly sensitive material is protected so that prosecution cases are not jeopardised, so that lives are not put at risk, so that methodology is not put at risk. The sort of

mechanisms we are describing are not appropriate mechanisms for the exchange of information intelligence of that level of sensitivity.

Q393 Chairman: Does that mean that we need other mechanisms or there are other places?

Sir Ronnie Flanagan: No, you can be assured that other mechanisms are in place.

Q394 Baroness Henig: We have heard that the current system places significant emphasis on bilateral communication. What are the obstacles from your point of view to the better use of the Europol Information System?

Assistant Chief Constable Gargan: To the first part of that, yes, the current set of arrangements does indeed place a significant emphasis on bilateral communication. The Serious Organised Crime Agency send out about 5,500 requests per annum of which around 10% are routed through Europol, so there is that emphasis. In terms of the better use of the Europol Information System, I suppose a start would be to get properly connected to it, which we are not. The second thing is, if there are 62,000 entries on the system, we need to be confident that they are the right 62,000 entries and this is where the strategic intelligence assessment and the cyclical process of making an assessment, putting in place a control strategy, setting out in a concerted way to gather intelligence to fill your gaps and tasking and coordinating your effort to make sure you are doing the things that matter and that your chosen interventions are the right interventions, that is where that cyclical process really comes into its own. If Europol seeks to position itself, as it does, at the low volume high end of the criminal investigative market, it is critically important that those 62,000 entries are the right people. At the minute I guess there is obviously the scope for that database to become much larger; that is inhibited by the limited access that I have described, by a lack of confidence which is a discussion we have just had about respective doubts about security and a broad lack of awareness; again a theme of our earlier discussion, and that leads to a low level of contribution to the database.

Q395 Baroness Garden of Frognal: We have already touched on some of the issues in my next question. Europol may be moving away from its task of facilitating information exchange in favour of providing analytical services. What is your view of the effectiveness of crime analysis carried out in the absence of a European intelligence cycle or other coordinating framework?

Chief Constable Johnston: First of all, we do not sense that Europol is actually moving away from its task of facilitating information exchange and we do in fact

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welcome the growth in their approach around analytical services, which are extremely important in the future going forward. The work of the analysts on the Europol analytical work files is based on the NIM. During our presidency of the EU, we did manage to get lodged within something called the European Criminal Intelligence Model the principles of NIM which we regard obviously favourably as they are the principles that we have adopted in the UK and they are now generally accepted. The issue is the extent to which they are generally applied. Because of a whole range of cultural issues, and Sir Ronnie alluded to the difficulties in getting the model implemented across the UK, we have exactly the same problems getting that model implemented across all 27 countries in Europe who want to comply. We would say that there is a model, the model is giving us an effective product but it could be a lot more effective if it were applied more universally throughout the whole of Europe. I guess that is what we would be hoping others would do for us in the future. We are aware that there are improved mechanisms for feedback on the quality of the product being developed within Europol at the moment and we very much welcome those developments because it will give us the opportunity to apply pressure for a more common approach to NIM throughout Europe.

Q396 Chairman: When we were in Brussels last week, we asked the Commission about the whole aspect of intelligence-led policing and they told us that an expected report was premature, which caused us to raise eyebrows. In the light of what you have just said, do you find that surprising?

Chief Constable Johnston: Yes. We know from our experience within the UK that getting a shift in approach to issues both in a sort of procedural and cultural sense does take time so we are realists around it. We are encouraged that the model is there in principle, but we do recognise that in practice there is some way to go yet. This is hardly surprising and it will be a continuing problem as new countries join the arrangements.

Q397 Lord Dear: Just for the record, I ought to declare the fact that I do have a previous interest in policing. As you all know, I served in the Police Service for a long time until 12 years ago and indeed had a very small part in the setting up of Europol back in the mid 1990s. I put that on the record. The ACPO written evidence, which was very helpful, said at one stage, Europol “aims to facilitate information exchange and provide high quality analysis . . . ACPO sees more evidence of success in the former aspiration” that is the information exchange side rather than the analysis. That leads me directly into

my question which is: do you see any gaps in the current information exchange mechanisms within the EU justice and law-enforcement communities? If there are any, what would you do or hope to see to address that?

Sir Ronnie Flanagan: We see a number of gaps and they arise as a result of a number of different causes and those causes do need to be addressed. First of all, not surprisingly there is the whole question of application of appropriate IT systems and the truth is there are only some five or six countries which input data automatically to the central base. Until we address that, that is a potential for a real gap that exists at the centre. Of course it is work in progress and by something like April 2010, hopefully there will be very significant improvement in that whole question of automatically inputted data. Secondly, there is an irony in the very success of bilateral contacts and they work extremely effectively and are not, in my view, in any sense to be discouraged but there has to be a complementary inputting to the central database as well. Where Europol is particularly effective is where there are more than two Member States involved, where there is a plurality and it just could not work on a bilateral basis. However, the very success of bilateral approaches sometimes leaves Member States being quite happy on either side of that dialogue and communication but without the centre necessarily knowing what is going on and bringing therefore again a risk of a gap when others come in and have missed, because the opportunity to draw on the experience that has been successful bilaterally it is not centrally routine. The absence of some inputs does need some analysis of its own and we have certainly encouraged Europol and undoubtedly they will have plans for that analysis. My question is, when Ken talks about visibility, I just wonder how many chief constables would be familiar with the document that Ken has.⁹ We could not say with 100% certainty that 100 per cent chief constables would be familiar with that assessment document. There is something in terms of from the centre, from Europol, asking Member States for their experience, seeking feedback. There is something for Member States to be more alert and more aware of the need, constantly be giving feedback to the centre and the absence of that brings about again a potential gap. Those are several examples of gaps that do exist and gaps that need to be identified and need to be addressed.

Q398 Lord Marlesford: On the purely practical side of that, when there is a bilateral exchange between a UK police force and another country, is there, for information as it were, a note of that bilateral sent at least to the UK liaison office?

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Sir Ronnie Flanagan: Undoubtedly there should be. My fear is that there is not always.

Q399 Lord Marlesford: When I was in Whitehall, I always thought the system of copying Foreign Office telegrams was extremely efficient. Even though it was not obvious that particular posts were interested, it did ensure that no balls were dropped, or helped to ensure.

Sir Ronnie Flanagan: To go back to the first point, the absence of automated data input systems tends to work against it happening automatically. Mr Gargan earlier referred in a benign way to rogue bilateral interchanges which are not through the liaison structures. There is a whole range of other networks, for example there is the European chapter of FBI graduates, and that means that officers of pretty high levels in the police forces right throughout Europe have contacts and sometimes use those contacts and often to good effect. However, if it is not channelled through the centre, if it is not channelled through the mechanisms and structures we have created, there is a great risk that those gaps result in a less than efficient ability on the part of others, not originally engaged in a particular bilateral.

Chief Constable Jones: We also need to make sure the liaison bureaux are actively sharing the contacts they have with us with Europol and I would hope that they are so we are getting the maximum benefit from the work files, for example. That is a question I cannot answer but I would anticipate and expect that that link was very strong and routine and we are getting the benefit at least from our liaison bureaux of bilateral contacts.

Assistant Chief Constable Gargan: Perhaps I might just offer a word of reassurance about the contacts that take place involving SOCA liaison officers: that is centrally held and recorded at SOCA in London so there is no chance of the British representation in Europol not knowing what the liaison officers in France or Madrid or any other places do.

Q400 Lord Mawson: Lots of us over the years have watched lots of television about serious crime and detectives, so we feel very informed about how it really works. Most of you have to deal with the reality at the moment. It seems to me that there are two different things in play here: one of them is the whole question about how we get secure data and information systems which actually work and are competent. In terms of a business thing, it seems to me that one bit of a business is to make that work like a bank, so that when you press the button, the stuff comes out and it actually works and is very useful at the time and it is accurate, and that has a particular culture necessary to it. However, there is another bit of the business which is absolutely critical because

just to rely on systems and processes et cetera might not actually do the very thing you need to do. There is the front end which seems to me to be quite entrepreneurial, quite inventive: the ability to build relationships across all sorts of things very quickly to intervene; very different culture, very different way of working to do with instinct, a whole range of other things that might not sit easily with this other culture. Is that true? How do you encourage both those cultures—because it seems to me you do need both—and what are we doing to develop those sorts of entrepreneurial people who have instinct, gut reaction and all that stuff that is necessary to join the dots and make everything work?

Assistant Chief Constable Gargan: I have some personal experience of that because I spent two years in France as our liaison officer in Paris and you are exactly right: there is not a database in the world that can persuade a French surveillance team to turn out for you at 11am on a Saturday when they have cutting the lawn and a barbecue planned for later that day. It is the real strength of the SOCA network and the precursor national criminal service network and customs networks that they were capable of doing exactly that. It is something that works very well in the UK. On the data side of your question and your point, it is not simply about effective data, it is also about mindset and about willingness to share and we talked about some of the constraints around security. I represent the Crime Business Area on the board that is developing the new Police National Database, the Impact Programme, which arose from one of the Richard recommendations. If the programme director were with us this morning, one of the key points he would make about the police national database would be that it represents the need to move our collective thinking on from need-to-know towards need-to-share and indeed dare-to-share, as he would put it. The same mindset is very relevant here, but of course you would only dare to share if you were confident in the data that underpins it. Success lies in the blend of those two things: the personal relationships and the effective data supporting that mindset.

Lord Mawson: My concern when I listened to the Commission last week and others was that they could cope a bit with the whole idea of the information and that sort of mechanism. When you get into the rather more daring stuff, which is absolutely necessary, I can imagine those sorts of cultures are all very difficult to get behind because they are absolutely critical to the front face of engaging with customers or whatever the phrase might be.

Chairman: You were getting nods there.

Q401 Lord Dear: I suppose that the \$64,000 question is how to make Europol better both for the European Union as a whole and for us specifically.

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The question that you have already had notice of is a very short one: more broadly, how can Europol make a more positive impact on policing within the EU framework? This is your chance to write a chunk of our report.

Chief Constable Johnston: Thank you very much. I will kick this off and I am sure colleagues will want to chip in and we have touched upon most of the things during our discussions here this morning. The first point to make is that the system does work at the moment, it is not falling apart and it is producing a very helpful product for us. My shopping list would begin with a more comprehensive adoption of the National Intelligence Model as defined in the UK and as agreed during our European presidency; that would be extremely helpful. Improvements around the analytical component of their work would be extremely welcome. We have already alluded to the IT issues in terms of the capacity to input bulk data. There is something about the whole organisation marketing its value, so becoming better known across the Police Service, better respected across the Police Service which will attract better people to it which will get this spiral of improvement in it. There is something about alignment of European priorities that is a fairly difficult challenge, but getting out priorities narrowed down. You have to remember that this is very much a low volume high value area and we are not going to be able to do everything and we are only going to be effective if we really do focus in on the things that are really important to us. There are things around continuity in terms of staff and the human relationship bit has been played out very strongly here and I would very much endorse that. It is good to see that there are going to be changes in the period of tenure of the chair of the Europol management board from six months to 18 months. It is that sort of thing, although 18 months is still pretty short really in terms of developing long and trusting relationships. On the whole thing of culture, a shared culture within the setup and the routine approach to where there has been a bilateral, we do get the feedback loop going into the centre so information is not missed out.

Q402 Chairman: That is a comprehensive summary. Are there other contributions?

Sir Ronnie Flanagan: I would just say, and I am not going to say that Europol is overly bureaucratic because I do not personally have the evidence to say that that is the case, but my experience of other bodies is such that there is a real risk that there can be too great a level of bureaucracy at play and certainly if Europol can examine itself and the management board and how it works and be satisfied that it takes a sufficiently strategic view rather than getting into the wheels of the work of the organisation, if it does by

that self-inspection, if you like, come to a conclusion that there is too great a level of bureaucracy and if that is the case, acts to reduce that level of bureaucracy, that would bring about improvement. However, I stress that I do not have any personal evidence to say that it is too bureaucratic.

Chief Constable Jones: I would just like to reinforce a couple of points. Where Europol goes next is very important so it is identification of common purpose and common causes which bind Member States together and they are the critical low volume but high impact areas around counter-terrorism and organised crime. There would be common agreement then and from that would flow common cause and more impact and effect. There have been occasions in the last ten years when it has lost some focus but that is not the case currently. The more we keep it focused, the more impact and the more effective it will be. The other point I would just reinforce is about visibility and while I was listening I did think about Eurojust, for example, whose profile is much higher and they make much more effort to communicate with criminal justice professionals across the EU. Maybe Eurojust could offer us something in terms of raising the value-added of Europol. They are the two points I would like to make.

Q403 Lord Dear: Every now and again, we hear almost *sotto voce* the suggestion that there might be an operational role for Europol, and then immediately we back off because I can see enormous difficulties with that. I wondered whether you had a view on it. It has never been expressed to us as a firm recommendation; it has just been mentioned in passing by people so far.

Chief Constable Jones: I will offer a view. Its key value-added is in facilitation of Member States' law enforcement activities and if it ever got into the position of initiating investigation, it would probably unravel. That is my view. I do not think the European Community is yet ready for a federal enforcement approach that is led in that way and it would cut across so many accountabilities, not least of which our cherished local accountabilities in the UK. However, I do think its future lies in facilitation not in investigation, but that is just my personal view.

Sir Ronnie Flanagan: It is a view I would share, for what it is worth.

Q404 Lord Teverson: During this inquiry the one group of people we have not been able to interview are the villains to a degree because they are your customers from the other side of the counter in a certain way. What do you think, not in the terrorism area but the organised crime area more, that community would fear most about Europol or

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changes in Europol or is it completely outside of Europol? Would Europol not affect them at all?

Chief Constable Jones: If they were to band and brigade their focus around common purpose, that would be a strong signal to criminality and terrorism that Member States are determined to get their act together and actually focus on a few areas and actually do something with it. We have some positive experiences which are not well advertised where that is delivered. Currently, if you were to go out and ask organised criminality, or the man or woman in the street, it would not mean much to them. They would probably want to talk to you more about Interpol, because Interpol has a higher profile, but not Europol. There is an issue in that because we in law enforcement do know that if we project confidence and common purpose, it does deter the opposition and ultimately that is what we are here to do. If I am honest, as we sit here today, you would probably find that they are not aware of it or certainly not intimidated by it, which they should be.

Q405 Lord Marlesford: When we had SOCA give us evidence, they talked a certain amount about the suspicious incident reports or something like that which are fed in to them and they claimed that every report is carefully filed and they have got over one million files. This strikes me as not very practical in terms of police work because one has heard an awful lot of press reports of very foolish reports being made. Do you feel that your use of such reports would be better if it were fined down to things which actually might matter?

Chief Constable Johnston: If you are referring to the SARs report, which is a suspicious activity report, which is the banking role feeding information into us, SOCA do endeavour to prioritise the release of information to forces, so we are not deluged by it at the front end. I have to say the volume is enormous and, I am being brutally honest, to manage all of that effectively is a pretty tough old job and it is probably beyond us.

Assistant Chief Constable Gargan: It bears on the previous question about what a criminal fears as well and what we need to move towards with SARs is to take the suspicious activity reports and to take our own organised crime mapping and to take the various other databases and sources of information that are available to us and, to use the words of colleagues in SOCA, to develop almost industrialised processes for working that information so that investigative leads arise from it because it is vast. If we can develop those industrialised processes, we can actually create the means of providing a sustained attack. It is the sustained attack that the criminal fears and if they cannot see the joins between Europol, SOCA and police forces so that they are

conscious that they are being attacked on many fronts and their assets are being taken from them and their financial movements are being noted and their vehicle movements are being noted, then that could put us on the front foot. The suspicious activity reports in bulk provide us with a substantial investigative opportunity but we need to continue to refine the way that we take advantage of that opportunity.

Sir Ronnie Flanagan: I should like to say that we must not in any sense ever discourage adherence to the legislation because I remember, not that long ago, being involved in a chase of a money trail right across the world when a Metropolitan officer had lost his life in the course of an operation and, because we in the United Kingdom had no such mechanisms, there were opportunities for laundering of money within our jurisdiction which did not then exist even in the United States, so it is a very positive development. Yes, there is such a volume that there are difficulties in managing it, but the solution does not lie anywhere in trying to reduce the volume.

Q406 Chairman: May I just ask a domestic question about the role of SOCA? Given the importance of SOCA as that conduit, how important do you think the two-way relationship is between SOCA and the 52 police forces in the United Kingdom? Do we also forward information, data, do we load data into the Europol Information System in an automatic way? Is that what we do?

Chief Constable Jones: There are some real difficulties around the relationship between SOCA and the 52 forces. They largely flow from the fact that SOCA is not the national crime squad with a different label on it. We created an organisation to do a fundamentally different task. That left a gap between force activities and their activities which was once filled by the crime squad. There was a commitment back then by Government that they were going to resource that gap, so we were going to create more operational capability to take on organised crime. In a sense SOCA have become the sort of whipping post for that and that is quite unfair. I should like to make that point this morning. What are we doing about that? We looked, through HMI, around merging forces; we thought we could create new capability that way. That did not happen. Now Government are supporting and assisting the Service to build new capability to fill the gap. The gap is the issue really. SOCA is not the crime squad and it is a fundamentally different organisation. We currently have a number of pilots running around the country where forces are collaborating to fill the gap. We have a superb, probably one of the best in the world, counter-terror network now which is across England, Wales, Northern Ireland and Scotland so the gap

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between forces and supranational agencies has been filled in that way. We are starting to create one around organised crime. We now have a network of intelligence nodes around the UK which sit above forces and fit the gap. Bit by bit we are shoring it up, but the real issue is this capability gap which was left with the creation of SOCA. It has affected relationships, sometimes unfairly.

Q407 Chairman: That is very helpful. What about loading the data into the Europol system?

Chief Constable Johnston: We are not one of the five countries which have the mass download capability and therefore we do have difficulties loading all the information onto the system in a timely way.

Q408 Chairman: We come to the very last question, to which I think I partly know the answer. You have given us a wonderful opportunity to understand the system better but you may have thought, coming into the room, that there were things you wanted to impart to us which were important to the story you wanted to tell in the report. So when I ask you whether you think it is value for money for the €9.6 million, could you also just add if there is anything you feel we should know about which our forensic questions have somehow overlooked?

Sir Ronnie Flanagan: I think I speak for all of us in saying that we have concluded that at the level of expenditure at €9.6 million it definitely does represent value for money so far as the United Kingdom is concerned. From my point of view, nothing to add, except I would like to say, in relation to the inspection of SOCA, that it is very important that we in the Inspectorate do inspect SOCA. They have to be given tremendous credit for doing a remarkable job in a relatively short time in bringing together a number of precursor organisations with very different cultures and blending them into the organisation which is now SOCA. If anyone thought they were going to produce very publicly demonstrable startling results overnight, that was never going to be the case. They are certainly fit for purpose and there will be a pattern of increasingly very public successful results to be produced.

Q409 Chairman: Any other additional contributions?

Chief Constable Johnston: No, I had my opportunity earlier when answering Lord Dear's question thank you very much.

Chairman: May I say to you gentlemen that this has been an excellent witness session. The Committee are extremely grateful to you for organising yourselves before you came in the room. The quality and clarity of the answers really will form a very important part of our final report. We are most grateful to you for finding time this morning to come to see us. Many thanks indeed.

WEDNESDAY 9 JULY 2008

Present	Dear, L Garden of Frognal, B Harrison, L (Chairman) Henig, B Marlesford, L	Mawson, L Teverson, L Young of Norwood Green, L Hylton, L
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Examination of Witnesses

Witnesses: MR DAVID SMITH, Deputy Information Commissioner and MR JONATHAN BAMFORD, Assistant Information Commissioner, examined.

Q410 Chairman: Good morning gentlemen. My name is Harrison and, in the absence of Lord Jopling, I am chairing the meeting today. We are extremely grateful to both of you for coming in and acting as witnesses for our Europol inquiry this morning. If I could say this to you: these rooms are not adapted for modern speech and conversation, so please do speak up and we would be most grateful. When you speak up all will be recorded and we will have some minutes of these meetings which will be sent on to you. Because we are anxious to get as accurate a view as you are able to give us, please do correct any misunderstandings or anything which appears ambiguous and was not intended to be ambiguous. Additionally, if there are further items, as a result of the questions we put, where you want to give us further information, we would be most grateful if you could write and give us any additional information. May I ask you both to introduce yourselves, David Smith and Jonathan Bamford, and perhaps just say a few words about where you come from?

Mr Smith: Thank you My Lord Chairman. It is a pleasure to be here and we are very happy to come to give evidence to the Committee. We have said this before but it is worth repeating that we are pleased with the interest that is taken in the work of Europol and in our work and are happy to come here and give evidence and tell you about what we do. I am David Smith, I am Deputy Information Commissioner in the UK Information Commissioner's Office. I am also, at the moment, the Chairman of the Europol Joint Supervisory Body. I am sure there will not be any difference between me and my UK colleague, but I will give evidence on behalf of the Joint Supervisory Body and I will let Jonathan introduce himself.

Mr Bamford: I am Jonathan Bamford. I am Assistant Information Commissioner and Director of Data Protection Development. I am one of the members of the UK Joint Supervisory Body delegation and I sit on the Joint Supervisory Body and that is primarily the reason why I am here today.

Q411 Chairman: I am very grateful for those introductions. Let us move to question number one and indeed in your role as the current Chairman of

the Europol Joint Supervisory Board perhaps Mr Smith you could tell us a little bit about the work. Incidentally, how long do you retain the chairmanship?

Mr Smith: I retain the chairmanship until October; it is a two-year term of office. I understand I can be re-elected for a further one year. The role of the Joint Supervisory Body is essentially independent supervision. It is to take an independent view of whether Europol is complying with the data protection requirements in the Europol Convention and in the legal instruments which sit above that. The reference points here are the Council of Europe Convention on Data Protection and there is a recommendation on the use of personal data in policing. It is to ensure that the rights of individuals whose data are held at Europol are not violated. It is just worth emphasising that of course there are suspects and perpetrators of crimes and associates of those but Europol also holds data about people like victims and witnesses. The legal document talks about reviewing the activities of Europol, monitoring the permissibility of the transmission of data between Europol and other organisations, interpreting and examining implementation of the Europol Convention and considering requests from individuals for checks on the data that is held about them at Europol and whether that is held essentially in accordance with the rules. In practice we have regular contact with Europol. We have a permanent secretary, who I am afraid is on leave today otherwise he would be here with me, who meets Europol every couple of weeks or so to discuss the development of new systems, problems that have arisen, give them data protection advice. We, as the Joint Supervisory Body, consist of representatives of the data protection authorities from each of the EU Member States. We meet four or five times a year and issue opinions on new developments like new analysis systems at Europol, but a key part of our work is the inspection. We do an annual inspection of data processing at Europol and produce a report with recommendations which is a fundamental part of our work. Just one other thing to mention before I finish

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is that we do have an appeals committee as well which is a quasi-judicial body which rules essentially on complaints from individuals that when they have applied for access to the data held by Europol or asked for the data to be deleted and they are not satisfied with Europol's response to their request, then they have a right of appeal to this appeals committee which rules on their appeal and the rulings of that committee are final.

Q412 Baroness Garden of Frognal: We have had evidence that the Member States tend to prefer bilateral channels and wondered how much of an issue that is for JSB, or is it sufficient that the bilateral exchanges are supervised by competent national bodies?

Mr Smith: I will let my colleague answer because it is not really an issue for the Joint Supervisory Body. The Joint Supervisory Body is primarily concerned with processing by Europol and, when bilateral channels are used, that essentially is not a Joint Supervisory Body matter. Although it can be done on equipment provided by Europol, Europol are not the controlling body behind that, it is between the two Member States.

Mr Bamford: It is a worry to the wider European data protection commissioner community that sits outside the framework of the Europol Joint Supervisory Body. We are all part of a working party on police and justice which all the EU and European data protection authorities' commissioners sit on. We have been concerned over the increasing number of bilateral arrangements with third countries that might be there. We much favour the idea of some common standards and equivalently high safeguards and there is a risk with the bilateral arrangements that those are watered down in particular arrangements. It is a particular concern to us, with the concept of the principle of availability, with the wider sharing of information between law enforcement bodies, which is a legitimate objective, what might happen if information is provided by one Member State to another and then that Member State has a bilateral arrangement with a third country. How do those arrangements work in practice and would you find that actually something is occurring there in terms of a transmission of information which the originating state would have concerns about or where they might want particular safeguards? Our chairman has just written to Mr Barrot at the Commission to ask the Commission and the Council to look into the existence of the bilateral arrangements between member states and third countries that are there and consider whether there are implications. The letter has been sent quite recently. We actually do want to judge whether the risks that we feel might be there are actually there in practice and to gauge the extent of these. We have

also decided as well, at national level, to contact our own government authorities to ask them to explain to us the extent of the existing bilateral arrangements. If I am honest with you, I cannot say that I have a list available to me of all the arrangements that the UK has entered into with other countries. We would do a better job if we understood about those arrangements that are there and we will be contacting our authorities as a result of a recent meeting we have had of the working party to find out what the situation is and gauge the extent of the bilateral arrangements that are in place. The short answer is that there is a concern that there is a risk of a dilution of common standards.

Q413 Baroness Garden of Frognal: In your view, is there a greater need for coordination between the national data protection supervisory bodies and the JSB?

Mr Bamford: The majority of the European data protection authorities also wear the hat as member of the Joint Supervisory Body, so there is an in-built cooperation arrangement there because we do not come up with substantially different views depending which forum we sit in. The whole point behind the working party on police and justice is to be able to deal with matters in the policing and justice area which are not covered within the framework of existing joint supervisory arrangements, such as Europol, such as Schengen, such as the customs information system. We do cooperate at that level to try to coordinate our activities, to come up with a coherent response. There is a risk, if we keep reinventing the wheel on Member States with third party bilateral arrangements, that we end up with something different and it just seems much more efficient and sensible and with less risk if we have common standards rather than keep reinventing the wheel 20-odd times.

Mr Smith: If I may, the Joint Supervisory Body recognises the need for very close cooperation and coordination with national data protection authorities. I hesitated when the questioner asked whether there was a need for greater cooperation or coordination, because I think probably not. There is a need for close cooperation and we are already doing that. As my colleague has explained to you, it is partly to do with the way the Joint Supervisory Body is made up because it contains representatives of all the national supervisory authorities. In the 2006 inspection at Europol—I will not go into too much detail about specific cases—we did do checks on data held in the Europol information system and traced that back into Member States, essentially to see whether the data was in accordance with the competences of Europol, whether it was about serious organised crime with an international basis to it, and as a result of that some data have been deleted

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from the system. This year we repeated the same sort of process and at the moment 18 of the 27 national data protection authorities are in the process of doing checks on data that we found at Europol to see whether it is within Europol's competence. That process has led to changes at national level; changes in the procedure for handling data within the national units have developed as a result of tracing Europol data back to the national unit. It is perhaps just worth mentioning that when we move, as I assume we will, to the Europol Decision to replace the current Convention, there is a new specific duty on the Joint Supervisory Body to cooperate with other supervisory authorities as part of its work.

Q414 Chairman: Just to go back one step, in your reply to Baroness Garden of Frognal you said you had written to the Government about the nature of the bilaterals. Was that very recently?

Mr Bamford: We have not written a letter yet. May I put some chronology on it? We had a meeting of the working party in Brussels a couple of weeks ago, one of the action points following from that is for us to write to our Government. We have not written a letter yet but it will be going out asking what the situation is. I suspect one of our slight difficulties is deciding whom to write to because clearly there can be a number of interested parties. At the moment we are just deciding to make sure we have all bases covered.

Q415 Lord Young of Norwood Green: I just wanted to return to the answer you gave in relation to the bilateral exchanges. You almost bemoaned them in a way and said that what we need are fewer of those and more common standards. Are they not really a practical reality, because of the fact that people are having to operate with 27 Member States, with a variety of different standards applying, and that bilateral exchanges are an inevitable by-product of that until people feel confident that there are indeed common standards operating in Member States?

Mr Bamford: In answer to your question, it is possible to have some core standard features that provide a level of protection that can be included in all sorts of bilateral arrangements, if you need to do that. The working party on police and justice has come up with its own paper of what the sort of considerations would actually be when trying to make information more widely available. The key for us is to make sure that we have the core things in place there and that there are some common elements to achieve that. Clearly we desire something which does not allow for too much variation from that, but we are not against some flexibility; we just need to make sure that we have the core things in place.

Q416 Lord Marlesford: In one of your earlier answers you referred to the fact that in the course of one of your inspections you found some information which, in your view, it was not appropriate to keep and it was therefore deleted. This is an interesting aspect of your work. Can you give us an example of the sort of information, not cases or anything, which you found inappropriate? I think you said you were judging it against the criteria of serious and organised crime and terrorism.

Mr Smith: There is a particular example which featured in both the last inspection and this year's inspection. I just hesitate because I do not want to give out too much information so I will not mention the Member State which was involved. It was to do with a group of 33 women, young women, and their information was in the Europol information system. Essentially they were a ring of prostitutes and their information was held with the indication that they were suspects or perpetrators of criminal activity. When we traced it back to the Member State, it appeared actually they were probably victims of people trafficking. There was some doubt there because it was possible that amongst the 33 one or two or maybe even more were part of the criminal ring behind the people trafficking, but essentially there was not sufficient evidence to hold them in the Europol system as suspects. Our report last year asked for those data to be deleted. In fact, when we came to do the inspection this year, those data were still in the system which caused us a great deal of concern. At that point we wrote both to the data protection authority for the Member State concerned, because the inputting of data, the quality of data coming in, is essentially a matter for the Member State rather than Europol. We also wrote to the Director of Europol reminding him that Europol have some responsibility as well, in accordance with the Convention. We set a time limit and those data were then very quickly removed from the system. It illustrates another slight tension, this tension between where Member States' responsibility ends and Europol's responsibility starts for the accuracy of data. The Director acted entirely properly and took steps to ensure that the data were removed, but he did point out to us very clearly that he did not consider it was Europol's responsibility and that the data in question was the Member State's responsibility.

Q417 Lord Marlesford: That really brings up a very interesting point, that you have a certain influence or authority or power to require Europol to take away things which it is not appropriate to keep. Presumably you have none of that as far as any Member State is concerned. In other words, information which goes from Europol to a Member State, once it is in the Member State, is totally out of

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the control of the European Union and the Commission.

Mr Smith: Yes. Once it has gone to a Member State, it is up to the data protection authority of that Member State to supervise the data. In fact with the Europol JSB, even at Europol, when I say our powers “require” the data to be deleted, I mean our powers are essentially to make a recommendation to the Director of Europol and if we are not satisfied with the response, then to raise the matter with the management board. I have to say that at the moment, under the Convention, it is unclear what happens then if the management board do not agree with our approach, whereas actually, if it were in the UK, we would have a power to order—it would probably be SOCA, the Serious Organised Crime Agency—the Member State to delete the data but they of course have a right of appeal against that, if they wish.

Q418 Lord Dear: You are being very frank and very helpful to us on this issue of the data and whether it is to be supervised or dealt with by the Member State or by Europol. May I just follow that more closely and ask you this and indeed, if it is too sensitive, you might not want to answer it. Do you have complete confidence that in all the 27 Member States, their data protection agencies are pretty well in line and following the same standard as yourself? Or, conversely, at the other end of what might be a scale, do you have some worries that in some countries data protection really counts for very little? I have deliberately gone out onto the perimeter with that question and I wonder whether you could give a view. It would be helpful to know, if you can give a view, where it would sit on that scale of opportunity.

Mr Smith: It is hard to answer the question and I expect you are not surprised that I am a bit reticent to go too far.

Q419 Lord Dear: Do not name names; I would not expect you to.

Mr Smith: I do not know enough about how the systems work in practice in other countries to comment on them. What I would say is that even in the UK we can only make limited checks on what goes on. We did our own inspection of the Europol national unit about three years ago now and we are due to do another one, but we cannot be there all the time. We do rely on SOCA to get it right. Where data come to Europol, then we check what is coming in from Member States and raise that with Europol and I know, as a result of our previous work, the quality of data that is coming into Europol is improving, there are more reliability codes—these are the codes which say the data is from a reliable source and so on—than there were previously. There is a very different approach to data protection compliance between some Member States and others depending

on the legal system. Some are very, very keen on the letter of the law in the Convention and they check that the Convention is complied with and if it is, they are satisfied. I have to say that our approach is less about the letter of the law and more about the effects of the data on individuals. There is sometimes a tension there but we cannot be there all the time supervising everything we do. We rely very much on good practice in Member States and certainly from the UK’s point of view, what we look at is where we see the greatest risk and our experience and our checks show that although these are very important and sensitive data, by and large things are done reasonably well in this area and there are other areas of our remit that require our attention.

Q420 Lord Dear: “In this area” meaning the 27 Member States or “in this area” meaning Europol?

Mr Smith: The “area” meaning the UK’s transmission of data to Europol.

Q421 Lord Dear: My question was more to do with when it does go out and responsibility moves, which you have explained, whether in general terms you feel comfortable with the way in which it is then viewed by 27 Member States or whether you have some fears at that point.

Mr Smith: I cannot say anything other than that we have no evidence to suggest that there are any problems with the handling of data that has gone out from Europol when it gets to Member States.

Q422 Lord Dear: May I move on to the fact that the Joint Supervisory Body has made a number of comments on improving the quality of data sent to Europol and on analysis work files in particular. I wondered whether you would give us a steer on how quickly that situation is improving and, in general terms, how far there is yet to go, assuming that there is some way yet to get to.

Mr Smith: The situation is improving. I am pleased to say that on recent inspections we have found the quality of data to be better than when we originally made checks. Yes, there are a few problems, but we found nothing, particularly in the analysis work files, that we would find unusual or out of step. The data in the analysis work files is largely relevant to the purpose of the file and where we have some doubts we have gone back to Member States. What sometimes does not happen is if information is sent forward by a Member State, say to go into the Europol information system, there is not enough supporting information with it to make that judgment there and then as to whether it is appropriately Europol data or not, whether it is about serious crime crossing borders. So that is an area which could be improved but I would say to you that things are going in the right direction. I would not want to come here really

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with any aspect of what we are saying to be taken as complaints to this Committee; Europol are moving in the right direction and they do take our JSB recommendations seriously when we make them. They have a difficult balance because they want to get data from Member States. If they are too insistent on quality, Member States may simply stop sending the data. It is getting that balance between encouraging data and standards at the same time that is the challenge.

Q423 Lord Dear: I have another question which you have almost answered about your role, in so far as the analysis work files are concerned, in supporting the development of those files.

Mr Smith: Yes, they feature in our checks when we do our inspections, but there is an opening procedure for analysis work files as well. When a new analysis work file is opened, an opening order is created which describes the purpose of the file and the types of information that should be kept in the file and we, as the Joint Supervisory Body, are asked for an opinion on that. There has been a change in recent years to simplify that procedure. It used to be that the management board had to agree it and consult with the Joint Supervisory Body before the analysis work file could start and there was a lot of red tape there. Now the analysis work file can be started by the Director and then the opinion is sought and we have been happy with that. We have also been happy with the development of target groups within analysis work files. Rather than an analysis work file being for a very specific type of crime and when a new type of crime develops you start a new analysis work file, Europol are moving to rather broader analysis work files, maybe on particular aspects of Islamic terrorism or something of that sort, then, within that file specific target groups in which a smaller number of Member States cooperate looking at particular aspects of the criminal activity. Europol sees that as a more efficient way of working and, again, as the JSB, our views have been sought and we have been content to go with that. This is not a complaint, but Europol are not as good perhaps as they should be at keeping us up to date on the development of these target groups within analysis work files. Part of our view was that we should be kept informed as part of transparency. More for administrative failings than anything else, this does not always happen.

Q424 Lord Dear: I am getting the picture—and it is an encouraging picture, if I may say so—that you see your role in two parts: one is an audit to make sure that things are done properly and the other is almost a mentoring role, whilst the work is in progress, to encourage it to be done properly rather than waiting for the mistakes to be made before you go in. Would that be a correct assumption?

Mr Smith: That is exactly right. We are keen to cooperate with Europol, we are keen to give them advice as they are developing, whether it is a new analysis work file or the system, the Oasis system, which is the analysis computer system that they are now developing for analysis, to give them our views and they are keen to seek our views so that they solve the problems before they ever happen. We do have this back-up role of auditing and checking but even then, our approach is to make recommendations and expect that Europol will comply with those and discuss with them those recommendations. Yes, I am pleased to tell you that by and large that process does work well.

Chairman: I think, Mr Bamford, you were nodding your head in agreement with Mr Smith throughout his replies to Lord Dear.

Q425 Lord Mawson: Europol is the provider of technical infrastructure, applications and data processing systems for use by Member States. Does the JSB consider that Europol can dissociate itself from data protection responsibilities when data is owned and processed by Member States?

Mr Smith: A slightly difficult question but I suppose the legal answer is yes, Europol can dissociate itself. If it is only supplying essentially the equipment, the technology on which the message is passed from one Member State to another, then Europol does not have legal responsibility for those data. Having said that, we have been keen that those systems should properly support data protection safeguards and where the exchange goes through the Europol system, the InfoEx system as it is at the moment, there are data protection safeguards within that. I am not sure there is a great deal more that I can add to that.

Q426 Lord Mawson: The text of the Europol Convention reflected a heavy emphasis on technology use, information exchange and data protection accountability. Do you detect a change of emphasis in the new Council Decision?

Mr Smith: The change in emphasis in the Council's Decision is more on flexibility; it is a less rigid instrument than the existing Convention, particularly in enabling Europol to introduce other information systems in addition to the Europol information system and the analysis work files without requiring a change in the legal instrument. We have been very keen that Europol should have that flexibility but also that the Joint Supervisory Body should have an input into the decision making on any new information systems. I am pleased that, as it has gone through the processes, the Europol Decision has now got that requirement to work with the Joint Supervisory Body built in. I would also point out, if I may, that we were particularly pleased

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in discussion on the Council's Decision about changes that have been made to the articles dealing with the individual's right of access to data at Europol. It has always been a very difficult area because you have a combination of the Convention and the national law of the Member State from which the individual applies. These provisions, coupled with the Europol Convention and how those relate has never been entirely clear. The problem really is that whenever anybody applies to Europol for access to their data, they get the answer "We cannot tell you whether Europol holds data on you because if we tell you it might prejudice the prevention or detection of crime". For a long time we felt that that may be the appropriate answer in some cases but there are many requests from people when there are no data held at Europol about them and does it really prejudice policing to tell them that is the case? We had some very helpful discussions with Europol in which we agreed the text to put forward to the Council working party dealing with the Europol Decision and that was largely adopted by the Council working party. We expect that when the Europol Decision comes into effect, we will have a simpler system of giving access that gives people a genuine right of access but does still enable Europol to withhold information where it genuinely needs to withhold it in order to protect its policing function. If I may just comment, in the whole process of developing the Council Decision, we believe the views of JSB have been taken seriously and have led to major changes. It is encouraging to us in this process that data protection has not been seen as a threat by the Council working party and a threat to policing. It has been seen as going hand in hand and part of the necessary safeguards that go with developing greater information exchange. That is not always the case, but it has been here and we welcome that.

Q427 Chairman: Mr Bamford, you seem to agree.

Mr Bamford: I do agree and if I could just add one point to the original question that was asked. You had three elements to the original question there in terms of technology, information exchange and data protection safeguards and the increases there. Clearly there is much greater flexibility now, greater interoperability is available. Our concern is to make sure that those three elements of technology, information exchange and data protection safeguards are kept in balance in some way, that we do not end up with greater interoperability meaning that any old data gets exchanged, we need to make sure that there is still a sensible approach and sensible safeguards, not just the mere capacity to do it meaning you can do, and you need the things in balance still.

Q428 Lord Marlesford: I would like to follow up this point about people asking whether Europol have got information about them. It would never occur to most of us, even if we knew of the existence of Europol, to ask whether they had data on us and therefore, in a sense, if I were a policeman, I would find it sufficiently interesting that somebody should ask, and if there were no information, I would at least record the fact that they had asked so that if that person came up in another frame later on, it just might be of significance. Would that be something which would be appropriate in data protection terms?

Mr Smith: It would be appropriate for Europol to record clearly that they had had an access request as part of the administrative process, because if they had another request from the same person, they would need to know. It would perhaps be a step too far, in terms of the purpose of the information, to record the fact that someone has made an access request as part of the policing information that is held. I have to say, and I understand the point that you are making, that some of the requests at least are from people who are perhaps somewhat obsessive about organisations holding information about them. There is no real prospect that Europol would be holding information and just giving them a non-committal answer plays to the obsession that information is being held on them. A straight answer is the way to deal with those people. Where there is some reason to believe they might have a criminal intent—part of the process is that Europol, before answering, can go back to check with the Member State as to the Member State's view it may still be right for Europol to give a non-committal answer. So the end result is not that everybody will get a straight answer: it depends on the facts of the particular case, which is what we look to.

Q429 Lord Marlesford: I really want to ask you your view on the dividing of the original objectives of Europol into separate articles, whether you find this a satisfactory division or whether you have concerns or whether it is evolving or should evolve?

Mr Smith: We did have some concerns and they probably come most strongly from members of the JSB who come from those countries which are very concerned with legal compliance and a legal basis for all the processing that goes on in Europol and the concern was that the objective of Europol as it was set out was drawn more widely than the competences of Europol. If you are checking on whether there is a legal basis for the processing of data at Europol, where do you go to? To the competences or to the objectives? The objectives talked simply about organised crime, whereas we have always been keen that Europol is confined to cross-border crime where cooperation actually assists. Not everything is cross

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border. If I can give you an example, the terrible murder of two French students in London. It clearly has cross-border implications because they were French students in London but there is nothing, as far as I know at the moment, to suggest that that would be a Europol matter and require international cooperation. They happen to be French students; there is no suggestion as far as I know of any French connection with criminal activity; whereas some crime clearly does cross borders, for example where money laundering of the proceeds of crime in the UK takes place in Spain or wherever. The objective and the competences have been clarified much more clearly as discussions have gone on and the latest version gives a much stronger reference in the objectives to organised crime being Europol's competence and talks about it affecting two or more Member States. The competency goes on to talk about "in such a way as to require a common approach". Our concerns have been largely—I would not say completely—addressed as the Decision developed.

Q430 Lord Marlesford: When you are using this word "competence" which has a strange Euro meaning, presumably you are referring to *vires* rather than capabilities?

Mr Smith: Yes; that is exactly right.

Chairman: Thank you very much for clarifying the difference between the original objective of Europol, Article 2 of the Europol Convention, and the separate articles relating to objective and competence, Articles 3 and 4 of the Council Decision.

Q431 Baroness Henig: May I ask how the JSB advisory body intends to oversee the responsibilities of Europol when Member States use the network to exchange information outside the competence of Europol in accordance with Article 9(3)(d) of the Council Decision?

Mr Smith: Again, I am afraid I have to answer that they will not be doing so because if it is outside the competence of Europol, it is also outside the competence of the Joint Supervisory Body. I do not know whether my colleague wants to add anything. This is then in the territory of the national supervisory body.

Q432 Baroness Henig: I thought that might be the case from what was said earlier.

Mr Bamford: It is, and then it is down to the cooperation of the national supervisory authorities and the framework with which we generally work is a cooperative one and we have structures there such as this working party on police and justice, which may aid that form of cooperation in the future. There is a structure in place but it will have to happen on a

bilateral basis between ourselves and our counterparts in the other states.

Q433 Baroness Henig: Those who want to cooperate always do and difficult cases tend to remain difficult, if I might put it in those terms. How does the Joint Supervisory Body see the development of a data protection officer whose independence is protected under the Council Decision?

Mr Smith: We are very supportive of the principle of setting up this quasi-independent data protection officer. It is a system which Eurojust has adopted and works well under the Eurojust decision. We are particularly pleased that it emphasises the importance of data protection within Europol, emphasises that the responsibilities there go straight to the Director and that data protection has to be taken seriously. There is also a very clear duty to cooperate with the Joint Supervisory Body, there is a whistle-blowing capability to the data protection officer, so if matters are not resolved within Europol, he or she has a very clear right to come to the Joint Supervisory Body with concerns. It is a step forward from where Europol already are in practice and it is very welcome. One other development that the data protection officer at Europol has recently introduced is their own auditing; so they do internal data protection auditing which is also seen as part of the function of the new statutory data protection officer. Again this is a very welcome step and helps underline these concerns about data quality and ensuring that quality is maintained at Europol.

Mr Bamford: My understanding as well is that the data protection officer for Europol will do an annual report which will go to the management board and also to the Joint Supervisory Body and that is a helpful link between the two. We see the activity of the data protection officer and it gives us an opportunity on the Joint Supervisory Body to have that report to inform our future action in some way and that is a helpful development.

Q434 Lord Young of Norwood Green: What is your view on the EU's requirements for equivalence in data protection regimes when EU law enforcement information is exchanged with third countries? Are these requirements currently hampering this exchange of information?

Mr Smith: May I start by talking about the words? The word you used was "equivalence" and the requirements actually are not equivalence; where they exist they are about adequacy. The provisions in third countries do not have to be equivalent to the same level; they have to be adequate to deliver protection. It is a common misunderstanding and I raise it because the restrictions are not as restrictive as some people might think. There are many agreements in place between Europol and third

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countries on which the JSB has given an opinion. It is hard to say whether the requirements are currently hampering the exchange. I suppose that to some extent they may be because we have on the agenda of the Joint Supervisory Body agreements with Russia and Israel, presumably on the basis that Europol wants to exchange personal information with Russia and Israel and presumably feels that it cannot do so because it does not yet have an agreement in place. I do think that the extent to which this requirement for adequacy stands in the way of transfer is entirely justified. The point was made about transfer to other European Member States, but what happens to the data that goes to Europol when it goes to a third country? There has to be some proper protection for it. There are already—and these will continue—measures that allow the Director to transfer data in emergencies to safeguard essential interests in a Member State. Even then he still has to undertake some data protection considerations. It is a difficult area. In the first pillar, where we talk about the data protection directive, we do have a system whereby third countries can be deemed adequate by the Commission and they make a finding that third countries are adequate for the exchange of personal data. We have no such system in the third pillar area at the moment and there does not seem to be one greatly in prospect. It is slightly odd that Europol has to make its finding and Eurojust does so separately and other organisations do so. A slightly more joined-up system would be of benefit to everybody.

Q435 Chairman: What are the current lines of reporting of the JSB and how will the Council Decision change that?

Mr Smith: I hesitate with this one. I am tempted to say that we are an independent body and we report to no-one, but that is not a very satisfactory answer. We are independent, so we are not answerable to anybody but we do present an activity report; the requirement is to do so regularly and we do so every two years, and that goes to the Parliament and the Council, and the management board have a prior opportunity to consider it and to attach their comments to it. That has been the practice and it has actually being enshrined in some changes to the Convention that will be followed through into the final Decision. We have also, as a Joint Supervisory Body, taken steps to improve the transparency of our work. We have a website, we do publish a highly edited extract of our minutes on that website, we do publish the opinions that we reach, we do have information about people's rights and how they can exercise their rights. We just have this difficulty that there is a limit to how far we can go on transparency without prejudicing essentially the security of Europol information. That is probably about as far as I can go.

Q436 Lord Marlesford: What is the linkage with the Commission? Do you have a linkage to the Information Commissioner?

Mr Smith: No, the Joint Supervisory Body is comprised of up to two representatives from the data protection authorities of each Member State. The UK data protection authority is represented on the Joint Supervisory Body and when the Joint Supervisory Body produces its report, the UK data protection authority will generally make that available and circulate it and they will send it to this Committee. They are part of the process rather than having a formal link.

Q437 Chairman: Earlier on you talked about the data protection officer and that his independence is protected by the Council Decision. You used the expression "quasi independent". Why did you qualify it with "quasi"?

Mr Smith: I suppose because it is the Joint Supervisory Body that ultimately is the independent body. The data protection officer—and I hesitate a little without going to the Decision—is an employee of Europol; pay and rations still come from the Director, his annual appraisal will be done by the Director. So he has some channels which guarantee he can exercise his proper function but he is part of Europol at the end of the day and that is why he is not completely independent, whereas we are not answerable to Europol. If we upset the Director, and we try not to do, there is no comeback on the Joint Supervisory Body.

Q438 Chairman: I am just trying to recall the evidence with SOCA and certainly in the oral evidence that they gave to us, they made it clear that data protection in no way imperilled the work that they did. However, as I recall the written evidence that they gave to us, which you may have had sight of, they did suggest that sometimes it is easier to go down the path of bilateral conversations rather than working through Europol, which perhaps suggests that observing data protection might sometimes make life difficult. I think I am right in reporting—and I hope and believe I am—but do you have any comment on that?

Mr Smith: That is fair comment. There is no doubt that the activities of Europol are more closely supervised in data protection terms than bilateral exchanges of information that do not involve Europol. In the UK we have a power in law to inspect the national unit involved in Europol exchanges. We have no power to make comparable inspections of bilateral exchanges because the only power to make inspections derives in fact from the Europol Convention and we would have a similar power if the UK joined Schengen and we have one for the customs system. Yes, Europol exchanges are subject to close

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supervision and also some of the data protection requirements may well be more stringent because of the desire of Europol not to be seen to be data protection deficient, which would then be a reason for countries not to supply them with data because it will not be protected properly, so they do maintain higher standards. Sometimes it is possible that Member States, I hesitate to say it, could get away with lower standards in bilateral arrangements than they could do through Europol. It is something we are conscious of and we are making some inquiries about bilateral arrangements. It is an area we do need to look at more closely as a national authority rather than as a Joint Supervisory Authority.

Mr Bamford: Obviously we would be concerned if the simple red tape got in the way and that caused the process to be lengthier through Europol. In some of the aspects of the way things operate there, there is at least some element of scrutiny that comes to bear. It is not quite so certain with bilateral arrangements where the scrutiny is being applied to the arrangement that has been put in place. There is a difference there and potentially a weakness there as a result of that but none of us wants red tape getting in the way; we want the right decisions to be made and the right levels of standards to be in place.

Mr Smith: The answer SOCA gave you when they gave evidence to you is encouraging. This question of whether data protection hampers information exchange or stands in the way is quite difficult because, at the end of the day, yes, it does to some extent and it ought to do so. It ought not to stop sensible information exchange but it is about

applying safeguards and rights for individuals and they do make it more difficult than just handing over the data without further thought. It is getting the balance right and by and large, certainly through Europol, we do get that balance right.

Q439 Chairman: In the absence of any further questions from my colleagues, may I remind you what I said at the beginning that if you have any further thoughts or indeed any corrections you wish to make, please do so. However, there is opportunity now: if you think there is anything the Committee should learn about the work that the two of you jointly do, please do impart it to us now, if there is anything else that you came primed to tell us this morning.

Mr Smith: No, we have covered all the points, unless my colleague has anything to add. I hope we have left you with the impression that the data protection supervision at Europol is important to us but we do feel the system is operating reasonably effectively at the moment and that Europol does take account of our concerns and tries to address them. Whilst we might have differences from time to time, there are no major failings which I would want to bring to your attention.

Chairman: I say on the behalf of the Committee, we have heard a most eminently sensible and sensitive set of replies to our questions this morning. We are extremely grateful to both of you for coming this morning and for giving us much meat to think about and consider in finally coming to our conclusion and report. Many thanks indeed.

Examination of Witnesses

Witness: DR NICHOLAS RIDLEY, John Grieve Centre, London Metropolitan University, examined.

Q440 Chairman: I welcome Dr Nicholas Ridley before us today from the John Grieve Centre, London Metropolitan University. As you were sitting at the back you will have heard me say that this will be on the record, we will send a transcript to you at the end of it and please do feel free to add any further information once you have corrected the transcript as our aim is to get accurate information from our witnesses. You will also have heard me say that we should be most grateful if you could speak up as the acoustics are particularly poor. Perhaps we could start the evidence session by you introducing yourself and then we can move on to questions.

Dr Ridley: My name is Nick Ridley. I am a former intelligence analyst. I was 23 years as an intelligence analyst, first at New Scotland Yard in Special Branch and the Anti-Terrorist Section of Counter-Terrorist Command, then I was seconded to NCIS briefly before going to Europol where I was an intelligence analyst employed by Europol for 14 years. I am now a senior lecturer at the John Grieve Centre for

Policing and Security at London Metropolitan University.

Q441 Chairman: Can you explain the work of a crime analyst and how it benefits organisations like Europol and the Member States working with it?

Dr Ridley: I would suggest that an analyst at Europol is working on diverse and complex intelligence by research and interpretation with the objective of assisting in establishing and identifying exactly what criminality is occurring, who is involved, to what extent they are involved, as much new information as possible about those individuals and any other new intelligence which can be gleaned for such research and interpretation. It is disseminated in the form of analytical reports, sometimes illustrated graphically with either criminal association charts or finance flow or quite often important sequences of events highlighting important periods within the inquiry. The format of the reports or dissemination is

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comparatively unimportant; they can be informal and preliminary, that is preliminary analysis with follow-up questions to the investigators or completed analytical reports. I would suggest that the key aspect about analysis is that it gives added value; it gives new information or new lines of inquiry or new interpretations to enhance and move that operational inquiry forward. Working at Europol the advantages and opportunities are tremendous in the sense that it gives multinational information intelligence; it is an opportunity to tie up operational intelligence from different Member States and to make salient connections, to disseminate this information quickly. It is an opportunity to identify hitherto unknown *modus operandi* particularly in criminal finances and, to a lesser extent, in terrorist financing. The analyst is enhanced by a superb speedy data-mining system, the AWFs. They are beyond reproach in terms of instant retrieval and instant connections of intelligence. I would suggest the disadvantages are what may have been touched on already by the two previous speakers in a benevolent way. There tends to be a misperception of the concept of AWFs. An AWF is nothing more or nothing less on the advantageous side than an electronic storage receptacle of intelligence, instantly available to the analyst. The downside is that possibly analysis is held back by data input cumbersome procedures. No analysis intelligence can be worked on until it is actually inputted into the AWF, which causes delays in speedy reaction in real time information exchange. There is possibly, from the analytical point of view—and I can only speak from an operational analysis point of view—over-regulatory bureaucracy. A particularly telling point was made by the former Director of Europol in 2004, that is half a decade after Europol was established, where he cited the fact that up to 2004 there were more individuals internationally empowered to look at and supervise what Europol was doing in intelligence terms than the entire staff of Europol itself, which for a criminal intelligence agency is quite a good point in terms of holding it back. Finally, the downside, the disadvantage of analysis is the dissemination. The handing to different Member States means that they have a caveat on where that information can go and have to be consulted before that is placed in reports and also, particularly in terrorism, there is the issue of non-EU Member States having access to data or whether data from certain non-EU Member States can be accepted and worked upon. Terrorism is international yet there are some regulations where certain data cannot be accepted.

Chairman: Thank you very much for that substantial reply.

Q442 Lord Dear: I want to ask a question about the definition of the words “assembly”, “processing” and “utilisation”. As we understand it, the Europol

definition of analysis, therefore your work, is “... the assembly, processing or utilization of data with the aim of helping a criminal investigation”. If you could revisit that in the future, would you leave it as it is as a definition or seek to see it changed? It would help us to know how you perceive those words.

Dr Ridley: From an analytical point of view—and it is a definition of analysis—I would suggest it is not only out of date, it is retarding analysis. What it is doing is equating, confusing, commingling and mixing the intelligence process with intelligence analysis. The assembly and processing of data is part of the intelligence process; it is separate from analysis. Analysis is part of the intelligence process. May I briefly outline the five stages?

Q443 Lord Dear: Yes, it would help us if you did.

Dr Ridley: The intelligence process is quite simply gathering, getting the stuff in, working on it and disseminating it or the five stages: intelligence collection; collation, putting it together; evaluation; analysing it then disseminating that analysis product. The assembly, the processing, that is the actual processing and evaluating and inputting the data, is nothing to do with actually working on it.

Q444 Lord Dear: Are you saying “assembly” is the capture out on the street, so to speak? Is that right.

Dr Ridley: Indeed; the assembly is capturing on the streets, collating it, placing it in the work files.

Q445 Lord Dear: And there is a whole science out there of the way in which one would go about that.

Dr Ridley: Indeed.

Q446 Lord Dear: Technological means, visual means; we understand that. You are saying that is not part of your task, that is the capture.

Dr Ridley: That is intelligence gathering, that is investigation and intelligence gathering. I would suggest analysis is having the intelligence data evaluated or making an evaluation and then working on it. Part of that definition is, in the context of analysis or the AWF, actually processing it, that is actually inputting it into the work files, the electronic architecture, in accordance with Member States’ wishes and data protection. I would suggest that is not part of analysis.

Q447 Lord Dear: This is critical and it might be helpful, if you also consider it helpful to us, to let us have a note later setting this out in detail because the slices are quite close together. I can see that. If you agree, that would be helpful.

Dr Ridley: Yes, I would be happy to assist.

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Q448 Lord Dear: You are going to use terminology of course, so define, if you would, each term precisely and then show how they fit together. That would be extraordinarily helpful.

Dr Ridley: And suggest its place in the context of AWF because that is what we are talking about. Is that acceptable?

Lord Dear: Indeed.

Q449 Lord Marlesford: It would be interesting to know whether this technique, this approach is purely a British one or whether it is used by the Americans and others as well; the distinctions, the methodology you have been describing. Is this a UK methodology or an international methodology used by the CIA and all those people?

Dr Ridley: It has always been the ideal standard intelligence set-up, ideally that the intelligence gatherers and the intelligence capturers, collectors, should be separate from those actually working on the data to avoid preconceptions. Obviously there would be some interface because the context in where and how the data was captured would be of crucial value and the investigator's opinion is of crucial value in terms of the individual. That is where the evaluation process partly comes in. There is some interface, but I would suggest that it is a separate process.

Q450 Lord Dear: I can see a parallel with another world I inhabit from time to time of forensic science where the collection of the evidence at the scene is deliberately kept very separate from what is called search and recovery, which is a laboratory process, and then goes to scientific analysis, and there is a deliberate split from the capture of the evidence.

Dr Ridley: Yes, I agree.

Q451 Lord Dear: I can see that model in my mind and understand why you are espousing it and you do agree with that, do you?

Dr Ridley: Yes, I fully agree with that.

Q452 Baroness Garden of Frognal: Can you describe the connections between the strategic assessments that exist at Level 3 in the UK National Intelligence Model (NIM) and SOCA's UK Organised Crime Threat Assessment/Control Strategy and the Europol Organised Crime Threat Assessment/COSPOL projects?

Dr Ridley: Yes. There are indeed connections, there are indeed links and you can see the parallel and complementary thought process or methodology between the SOCA threat assessment and the OCTA, the Europol Organised Crime Threat Assessment. The methodology addressing the concept of criminal groups is the same. The OCTA used the phrase "oriented clusters with common aims"; SOCA uses

the words "the criminal core groups with varying outsiders". It distinguishes quite categorically the SOCA criminal groups, for example, in terms of drug trafficking it identifies three quite separate sets of groups which are impacting on the UK, the Turkish, those based in the Netherlands as a secondary supply, also the UK-based groups, not merely as receivers but also as facilitators. The OCTA, on a wider scale, identifies the oriented clusters as those indigenous organised crime groups, non-EU crime groups—and they call them intermediate—who are integrating themselves in the EU. There is also a connection on the geo-spatial methodology of the nexus points in illegal immigration and the OCTA methodology on the regional hubs where it divides them north-west, south-west, north-east, south-east, with different crime priorities. Also there is a connection between the financial specialists, the exploitation specialists for money laundering and terrorist financing in both reports. Having said that, the connections are spasmodic and not continuous. If for no other reason, may I suggest that the threat assessment of SOCA appears to have a different objective to that of the OCTA. I do not want to sound patronising here as I am looking at it from an academic point of view, but in all credit to SOCA they have cited their objectives in the threat assessment as to develop the threat posed to the UK, the importance of improving knowledge and, they have said, improving the understanding of the nature of organised crime. If you like, they are concentrating on the changing dynamics of organised crime and the threats posed to the UK. OCTA is more operationally orientated; in its own words the OCTA threat assessment states that it helps close a gap between strategic findings and operational activities. It allows the EU system to develop complementary measures to countering organised crime, linking ministerial and policy levels with those of practitioners and law enforcement agencies which operate at the front line. The unfortunate thing is that OCTA is not really operationally orientated. Having said those objectives, it does go on to state that it needs to be realised that OCTA is not detailed enough to pinpoint specific criminal investigations. If a threat assessment is not doing that, it is not bridging the gap or it is not assisting operational inquiries. I would suggest that from a strategic overview point of view the OCTA is a magnificent document, it is précising information gathered over a year from 27 Member States. It is précising, boiling it down and making it a cohesive whole. In terms of accepting information and analysing it and synthesising it, it is a magnificent *tour de force* from an academic, strategic analysis point of view, speaking as an academic. To an operational analyst working in a police organisation, there is little or no operational value in the Europol OCTA. Does that answer your question?

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Q453 Baroness Garden of Frognal: Is there a common understanding of terminology in your work amongst these different bodies?

Dr Ridley: I think so; they are looking at the dynamics of organised crime, they are looking at threat levels, the impact, they are trying to make common threat levels, trying to discern common solutions and identify priorities. SOCA achieves that in a far more specific way than OCTA.

Q454 Lord Young of Norwood Green: Listening to your analysis or comparing the two it seems to me that it is almost impossible for OCTA to do what SOCA do because it is 27 Member States and they are boiling down and synthesising a mountain of information. Is there any way that it could be changed to make it more operationally focused as well as being strategic or is it impossible?

Dr Ridley: I would suggest that in its present form it would be extremely difficult were it to be broken down into operational segments and strategic reports dealing with operational priorities but then operational priorities would have to be identified in more specific detail.

Q455 Lord Young of Norwood Green: The Europol Work Programme 2009 shows a heavy investment in analytical effort. Can you explain the strengths and weaknesses of analysis in the fight against organised crime and terrorism? When you were talking about capture it seemed to me that evaluation was a key area and I cannot help feeling that if it is junk in you are going to get junk out, so the evaluation process must be key to the analytical. I may be wrong.

Dr Ridley: I fully agree with you. It is a trade-off. If you have masses of information, you cannot seek to evaluate every single piece, but what you can do is break down and identify your essentials, A1s if you like, or 4x4 or 5x5. The problem with 27 Member States is inevitably that they will have different methods of evaluating, even if they have a common evaluation system, how that is applied, the 5x5 or, in the European Union, the 4x4 system. How that is applied in each Member State remains the domain of the Member State and also the exigencies of actually gathering the information and disseminating it. If they have no time they will do without the evaluation rather than sacrifice real time in order to pass it on.

Q456 Lord Young of Norwood Green: What about the strengths and weaknesses of the analysis process?

Dr Ridley: You are looking at different evaluated systems, different evaluated segments of information but the strength of analysis is the magnificent AWF data mining and data cross-referencing. As a piece of electronic architecture—I do not wish to be too detrimental to AWFs—it had to happen in the early stages of Europol because there was so much

information coming in. It helps to assuage Member States' fears or caution about giving over information because each Member State still has sole access and control over its contributions within each work file. Only the analyst can see all the different Member States' contributions and pull them together. In a sense it is an ideal tool for obtaining information, voluntary data capture; the problem is in dissemination and also accepting information from those Member States not part of the work file. I have an example, if I may cite an example without naming Member States, a case in 2002 where one Member State had a group of criminals engaged in criminal financing and they were clearly sending finances overseas by various means to two or three locations in the Gulf region which eventually impacted on the situation in Somalia. The inquiry proceeded and it went so far. Had it been allowed to proceed further without the trammelling of the data protection AWF regulations this would have been a useful indicator and we could have been ahead of the game about what is happening in Somalia now. The second thing which was missed was a *modus operandi*—I cannot go into details—of terrorist financing which only came to light later as a result of subsequent research outside Europol. The third aspect was that there was information to hand from the United States. At the same time as those terrorist finance transfers were going to the Gulf region, there were parallel transfers of comparable amounts going to the same financial institutions in the Gulf region from the United States at exactly the same time and that was missed because it was not permitted to be included in the general context. Had that been included at the time it would have enhanced the inquiry. It is a small example, but I cannot go into more details.

Q457 Lord Mawson: I am always interested in people who deal with the practical details of life and how it really works because you see very different things. If you were to suggest three things which need to happen with Europol to make it a far more effective organisation, what would be your top three things?

Dr Ridley: Thank you; it is always nice to be given the opportunity to be king, as it were. I suppose ideally split the function of data collection and data inputting from the analysis function. I am sure that has happened, but when I was at Europol, there were concerns about sharing data with other agencies, particularly Eurojust. I am sure it is happening now as that was four years ago, but there should be more two-way flows of information with Eurojust because that is a vital tool in terms of not merely exchanging information about terrorism but actually bringing terrorists or potential terrorist suspects to court and charging them with the right offence. There are two.

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Q458 Lord Mawson: Do you have a third?

Dr Ridley: Two out of three.

Q459 Chairman: Could you just explain something? Earlier you mentioned methods of evaluation being 5x5 and 4x4. Could you lift me out of my ignorance there? What does that actually mean?

Dr Ridley: I apologise. The 4x4 system is where both the source and the information itself given by that source are evaluated. The source codes are four—now five in the UK but four in the European Union; they are A, B, C and X. The codes for the actual information given by that source are 1, 2, 3 and 4. Therefore, if I give you information which is from an impeccable source, I would hope myself, and it is absolutely reliable it would be A1. It is a common misconception but the last category is not the worst type of information. They are not graded according to scale of reliability. The worst type of information is C3 because on the majority of occasions C source is generally unreliable and 3 is generally not reliable. X4 is an unknown quantity. X4 can be subsequently upgraded by other corroborative information and can be absolute gold dust. That is a brief answer.

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

Lord Young of Norwood Green: Perhaps that could be expanded in a note.

Q460 Lord Marlesford: All this terminology is very confusing. When we went to Europol, for me certainly and I think some of my colleagues, this concept which is so crucial of the analysis work file, which is a most awkward phrase in my opinion because it does not relate to anything obvious, is clearly key. Would you like to give your view on the strengths and weaknesses of Europol's analysis work files both as to the way they are divided up and the way they are used?

Dr Ridley: As I said in answer to a previous question, the work file is a superb piece of data storage electronically and for the analysts, the investigators; it can establish international links very quickly cross-matching data. I would suggest that part of the problem is a misconception of AWFs. They are work files; they are data storage vehicles, electronically created, electronically maintained and afford cross-matching data. At the end of the day they are data storage and used for data mining. They are not analysis tools which can give you extra information. They are subject to so many regulations, many of them necessary for data protection purposes. If you have 27 Member States you must have possibly up to 27 different regulations and of necessity there must be data protection. There are also regulations about what is acceptable within the work file and what is not. They are also extremely cumbersome to service. Pieces of information going in are broken down and

are placed in several categories. A bank account, for example, has a number, it can go into the account category; it can also go into the individual category; it can also go into the financial institution category. So there are three separate sets. It can be done very quickly with skilled inputters but nonetheless inputters or data processors are needed to speedily input that. By the regulations, if urgent information comes in, it cannot be worked on until it is actually in the work file. Most of the time that is not a problem because it is urgently placed in the work file, but it means real time is taken out of the working day by other analysts.

Lord Marlesford: I am still very confused, but I shall think about it when I can read what you have said.

Q461 Chairman: Given what you have said, are there ways where practically matters could be improved?

Dr Ridley: Yes. This was touched on by the previous witness. In an emergency there are procedures where urgent or life-threatening information can be transmitted or exchanged. The context I am thinking of is where it is not life-threatening or it is an emergency which is not yet recognised.

Q462 Chairman: Then how would you tackle it? Could procedures be improved to facilitate those two circumstances?

Dr Ridley: Everything would have to be hastened, placed in the work file and done very quickly. It could be done but it does cause a lot of extra time out of the working day. How do you prioritise this? There are three work files on illegal immigration; there are two on terrorism; there are five in Europol on drugs; there are four on financial crime, all of which have been opened because it is an urgent pan-European problem. How would you make a case for prioritising this piece or this set of information which needs urgent processing?

Q463 Lord Marlesford: Thinking about this, your banking analogy is very helpful. I would find it more helpful to think of the Europol arrangements as a databank with work files within it. I think the word "analysis" in this context is slightly confusing. If I were to think that there is a massive databank at Europol and it has a number of work files which cover, for example, illegal immigration, drugs, money laundering and all the rest of it, that would be a simpler concept for me, if it is the right concept.

Dr Ridley: Yes, I think you are very near the truth. They are work files or files or databanks which the analysts and investigators and empowered people draw from to carry out their work. They are not in themselves intelligence analysis in any way. I do not wish to detract from their value.

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Dr Nicholas Ridley

Lord Marlesford: No, I just wanted to understand more clearly what they actually are and I am beginning to.

Q464 Chairman: Can data in those files be cross-checked?

Dr Ridley: Yes, with empowered people in Member States in both work files, if the same Member State has access to both work files. They cannot be switched over and back willy-nilly as quickly as in the ideal intelligence world they should be. It requires authority and a certain procedure.

Q465 Chairman: So there is room for improvement there.

Dr Ridley: From the intelligence exchange analysis yes, I agree with you.

Q466 Lord Mawson: How would you describe the opportunity to work in a joint investigation team as a Europol analyst?

Dr Ridley: As an analyst, very challenging. It would depend what sort of joint investigation. I understand from an outsider's point of view that there have been 21 joint investigations of various sorts; some are confederated where it is a joint investigation but each investigation team remains within its own Member State and they pool the data electronically. I would suggest that is not the way to work. If it were *in situ*, where one Member State had everyone together, it would be extremely challenging.

Q467 Lord Mawson: You would not actually meet as people; you would not ever meet, you would just work on-line.

Dr Ridley: I would suggest you would not meet as often as you should, but that is just one JIT method tried by Member States in the initial stages just to see whether a compromise could be reached. I understand there is extreme caution amongst Member States and some are saying that they are doing nothing more than bilateral or trilateral investigations are doing through Europol. It is a positive step, it is a way forward. A possible plus point of the joint investigation's use would be to include members of Eurojust as well in terms of looking at the long-term legal outcome.

Q468 Lord Mawson: One of the things I have been trying to encourage us to think about, because this is about complex relationships between different organisations, nothing to do with your world but to do with another world, having been involved in establishing an IT system, is that IT systems and data and all that stuff are only as good a tool as the people and the relationships of the people who are functioning in all that. One of the questions we have been asking a number of times is what investment is

being made in these sorts of relationships between these key players. It seems to me that the quality of the relationships is really fundamental to getting out of the end of it what you need to get out of it. Is there enough investment in that or are you saying this is weak?

Dr Ridley: I totally agree. There have been differing levels of skills of analysis within Europol. Not unnaturally, some Member States prefer to train their analysts or intelligence people and keep them for more pressing matters at home; others send their better quality people abroad for a limited period of time; others are more fluid in terms of who they second and who they do not.

Q469 Baroness Henig: Do you consider that analytical work is hampered by data protection considerations? If so, could you say how?

Dr Ridley: Inevitably it must be because in intelligence exchange or analysis we all want the best information and speediest exchange of information and the speediest flow completely untrammelled. There are certain parameters which must be accepted. I would suggest, in the case of Europol, that may be lessening, but it is not being hampered by data protection but being hampered by a preoccupation with data protection. There is a certain caution about placing data within the work files in case of subsequent adverse consequences. From what I understood from the very helpful presentation of the two previous witnesses, the Joint Supervisory Board is now more collaborative and more of a mentoring process and therefore I should imagine that Member States are more willing or Europol is more willing to put more data in, to be boldly inputting more data knowing that any potential serious adverse consequences can be averted at an early stage because of this closer collaboration. It is more of a preoccupation with data protection issues than the issues themselves.

Q470 Baroness Henig: So your perception is that things are actually improving in this area in any event.

Dr Ridley: Yes, I would suggest so.

Q471 Chairman: I do not know whether you feel capable of answering this. Do you think the information exchange on the Internet is a problem? Given the availability of the Internet and generally information can be exchanged there, do you think it is a problem or does that not really concern an analyst?

Dr Ridley: In terms of the source of information or actually sending information on the Internet?

Q472 Chairman: Both.

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Dr Nicholas Ridley

Dr Ridley: As a source of information it can be ideal. It has opened up completely new vistas of open sources and informed opinion. It means there is a certain caution in dissemination because, quite simply, there are more people or more potential dangers of information being either mischannelled or misinterpreted. Yes, I would suggest that it should be viewed with caution but as a source of information it has opened up completely new vistas.

Q473 Lord Hylton: I was wondering whether there are criteria within Europol for deciding when data become obsolete. If there are not, are you just accumulating masses of useless information?

Dr Ridley: I understand every work file is reviewed at a certain period of time to look to see whether this information is obsolete, partly for data protection regulations but also for intelligence efficiency; it is reviewed over certain periods. Then there is always the danger that you are throwing out long-term intelligence which at the moment appears completely irrelevant but subsequently may prove to be absolutely spectacular, possibly like the Somali example. In terms of terrorism and criminal finances,

money laundering, five years is not a long time for long-term intelligence to come to fruition.

Q474 Chairman: Is there anything you would like the Committee to know which you think we have not extracted from you from the set of questions we presented to you? Is there anything you would like to add?

Dr Ridley: Nothing substantial, just my own sentiment that I had many happy years at Europol as an analyst and anything I may have said that it is an implied criticism is to assist in the general improvement, which I hope goes without saying.

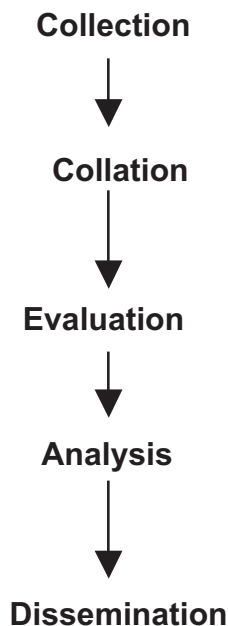
Chairman: Dr Ridley, we are extremely grateful for you sitting through the earlier session so patiently and contributing so well to this session as well at the end of the morning. Once again I remind you that if there is anything you have said or that you wish to elaborate on or offer us or indeed in response to Lord Dear, who did ask for that clarification on the five points, we should be most grateful if you could forward that and anything else which comes into your mind after you leave. On behalf of the Committee may I thank you once again for the excellence of the information you have given us and for your testimony. Many thanks indeed.

**Supplementary evidence by Dr Nicholas Ridley, John Grieve Centre for Policing and Community Safety,
London Metropolitan University**

THE INTELLIGENCE PROCESS

At its simplest, use of intelligence is three basic stages:

- (1) the gathering of information,
- (2) which is then analysed, and
- (3) the results are given out. The whole intelligence process is that of:



COLLECTION is the gathering in of all intelligence usually carried out by investigators.

COLLATION is assembling all the intelligence together in one receptacle, file, or databank.

EVALUATION is giving each piece of information a graded value, generally in two parts, evaluating the source of the information and the content of the information itself.

These are not always the same value:

- An impeccable and reliable source can give over information that he/she is not entirely sure of the total reliability, ie a police officer –impeccable source–can overhear by chance a snippet of conversation where details are unclear and the important name which was mentioned was not clearly audible and it is only a possibility that the surname Davidson? –or Davison?– or Davis?– was mentioned.
Evaluation = A 4 (source = A, impeccable; content = 4 unknown or uncertain).
- A habitual criminal can give over details of documents of which he/she was temporarily in possession, and these are minutes of a Cabinet Office meeting. If he/she is to be believed, then the content itself is impeccable.
Evaluation = C1 (source = C, usually unreliable; content = 1, impeccable).

In theory every piece of information should be evaluated, and in theory information is not intelligence without evaluation. However, in the event of copious amounts of data being received, often at short notice, it is only possible to identify the A1s and A2s, that is the most reliable or sound pieces of information around which the hypothesis and analysis can be started.

ANALYSIS is working upon the collected collated and evaluated data, by research and interpretation. It is examining the data, further researching some aspects finding out more facts/data and formulating hypothesis and making progress in establishing/ascertaining:

- the exact nature of the criminality occurring;

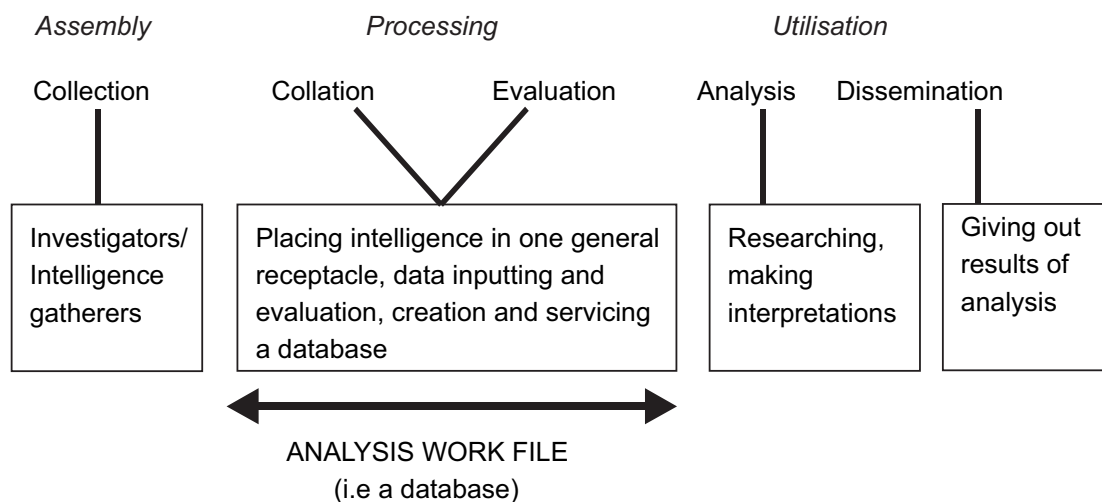
- who is/are involved, to what extent he/she/they are involved and the respective roles in the ongoing criminality;
- researching and finding out further information about the individual(s), ie current addresses, alternative addresses, current associates, personal circumstances, wives/husbands/partners, financial details;
- identifying and suggesting further lines of inquiry; and
- assisting in progressing the overall direction of the inquiry or operation.

DISSEMINATION is giving out the findings or results of analysis. These are usually in the form of analytical reports, either informal or formal, often illustrated graphically with charts depicting, individual links between criminals, or time-scales showing important sequence of events and the cause and effect relationship or flow charts showing criminal finance flow.

The informal reports may be preliminary update analysis of the current situation combined with follow up further questions to investigators or formal longer reports giving a complete analysis of the situation.

It is submitted that the crucial aspect is that analysis must result in added value, ie the provision of additional hitherto unknown or unperceived intelligence and/or new or alternate lines of inquiry for the investigation, or a differing interpretation of the overall situation.

In the context of the intelligence process the so-called analysis work files have little or nothing to do with analysis; they form stages two and three of the intelligence process.



The name, or term, Analysis Work File

In this context, it is submitted that an Analysis Work File is nothing less, but nothing more than a database which holds and stores intelligence.

In the context of Europol Analysis Work Files the name was a somewhat misguided attempt to emphasise regulatory empowerment and regulatory constraints. A Work file is a computer based database divided into differing folders, each containing intelligence contributed by the differing Member States. The investigative and law enforcement representatives from contributing Member States have access to the computed based database, but only to the folder containing the intelligence of their Member State; the analysts working within the work file project have access to all the folders ie all the data. In this way Member States can contribute data but it is not automatically shared amongst all participating Member States, thereby ensuring that each contributing Member State retains some form of control and ownership of the data sent to Europol. Analysts have access to all the data in every folder, but cannot work on any other data received which is not, or has not, been inputted into the folder or AWF.

It was this role of analysts, that of having access to all data/contributions within the work file but only able to utilise data which is only in the work file (ie not use or mix data received from other sources or Member States not part of the work file group) that engendered the name "Analysis Work Files".

To avoid confusion over function it may be of benefit to perceive AWFs as simply "work files" or even files, as in filing cabinets, cardboard files, folders on a computer containing information, database. AWFs hold the data, and store the data, as any other database or file.

The Europol definition of analysis as “the assembly, processing or utilization of data with the aim of helping a criminal investigation”

This definition appears not only to be out of date but arguably is stultifying to analysis. It mixes and confuses analysis and the whole five stage intelligence process.

The assembly of data is the collection stage; the processing is that of the collation and evaluation stages, ie the creation and data inputting of the Analysis Work File. Only the utilisation refers to analysis, ie the working upon/analysing the data, and the subsequent dissemination.

WEDNESDAY 16 JULY 2008

Present	Dear, L Garden of Frognal, B Harrison, L Jopling, L (Chairman)	Marlesford, L Mawson, L Teverson, L
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Examination of Witnesses

Witnesses: RT HON TONY McNULTY, a Member of the House of Commons, Minister of State, Home Office, and MR PETER STORR, International Director, Home Office, examined.

Q475 Chairman: Minister, welcome. It is good of your to come. You will be aware that the committee has been conducting an inquiry on Europol for the last few weeks. We are grateful to you and to Mr Storr, who came to talk to us earlier, which was extremely helpful. You realise that this is on the record. If, after the meeting, you would want to add anything on reflection to what you have said to us, we would welcome that most warmly. I wonder if at the beginning on a somewhat sour note I could ask you when you go back to your department if you might say to Mr Byrne that this committee is less than happy that we received a reply from him on 7 July to a letter which Lord Grenfell wrote him on 26 July last year. This really has got to improve. If you could maybe in ministerial meetings discuss this with the Secretary of State and the ministerial team, if you do what I think most ministers certainly in my time did, it would be most helpful if you would say that we really cannot wait nearly a year for a reply to letters. It just will not do. I suggest we do not pursue it now. I just wanted to make the point.

Mr McNulty: May I say in passing that I will take that back in the strongest terms, not least because myself and Meg Hillier have tried to make huge advances in the relationships between both Lord Grenfell's committee and the equivalent in the Commons in terms of all our dealings: the paperwork, what is reserved and what is not reserved. It is to my dismay that I recognise that Liam and his team have been so dilatory. I will take that back to him in the strongest terms.

Q476 Chairman: Thank you. Minister, talking about European Union police cooperation, to what extent have Member States provided a coordinating framework for the operational aspects of various bodies like Europol, Eurojust and the European Police College, which are set up under Title VI of the Treaty on police and judicial cooperation in criminal matters?

Mr McNulty: You will know in the informal sense they are all set up under the framework of the five-year work programme for Justice and Home Affairs under the oversight I think of an Article 36

committee, but we try formally and informally to encourage as much coordination between Eurojust, Europol and the Police College, because we think that is in the interests of Member States and indeed of the institutions themselves. You will know we are at this kind of crossroads in the wake of the Irish referendum in terms of what may or may not prevail in terms of new architecture post the Lisbon Treaty. It is not for me to speculate as to what form or otherwise that may take after the October Council.

Q477 Chairman: When one looks at the Europol decision, which discusses a truce, Europol's relations with Eurojust on the level of a partnership, could you tell us whether the Council did consider aligning the legal frameworks of the two agencies in order to create a more effective intelligence-led policing model?

Mr McNulty: I think, to be fair, they are not the same legal frameworks, as you know. We think that the current legal framework for each reflects their distinct role. I visited both in The Hague and I do know and appreciate that co-location helps enormously in terms of the two working together in partnership. I think the Council conclusion's agreed last month aimed at improving cooperation between the two organisations to get them in the place where they can agree a cooperation agreement before the end of 2008. So I do not think I would dwell on the distinct nature of their respective legal frameworks. I think there are other ways in which we can get them working together and working together far more effectively.

Q478 Chairman: Is it too late for them to be co-located in the same building?

Mr McNulty: They are already, as I understand it. They certainly were when I went to visit them.

Q479 Chairman: This is not what we were told.

Mr McNulty: They are in different buildings, yes, but very close together.

Chairman: There was a great deal of criticism. The buildings are close together and when we were there we were told that it would be far better if there be one

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building in which they both were. I think it was an internal decision within The Netherlands that this did not happen. I just wonder whether you think it is possible to go back on that because this committee—and I am giving what I think is the view of the committee—feels that it would be far better if they had been in one building.

Q480 Lord Mawson: Minister, you may from elsewhere be aware that I worked in East London for many years where one has watched lots of different pieces of government elsewhere and lots of talk about joined-up thinking and joined-up action but when we started to look at it on the ground, actually in reality it was not happening. A great deal of money was spent and lots of structures were created but there was fragmentation. I come a bit cold to some of this as the new boy but one can very quickly see quite a lot of fragmentation here. The whole positive of co-location is very important. I know, having built buildings, about co location. You can co-locate what is in the building and they never talk to each other. Something else has to happen in the modern world to bring these sorts of organisations together in a way that works and which is all about people and relationships, not necessarily more structures. As I look at this, there is all that reality there and difficulty about how you move some of this into the modern world, so it operates in the modern worked and actually does what it is meant to do. My question, and this is an aspect of this but I just set that context of what we are seeing here, is: what evidence of the effectiveness of EU police cooperation does the Council receive from the Police Chiefs' Task Force?

Mr McNulty: If I can go back just momentarily to the issue of co-location, there was certainly when I was there an absolute aspiration to co-locate. I am not entirely clear whether that decision is irreversible that they do not, but I will explore that. I certainly agree with the sentiments of both the Chair and Lord Mawson that co-location is part of the matter; it is not the whole matter by any means. I know that from assorted government departments I have worked in and the difficulty sometimes of getting one half to speak to the other—not in the Home Office, I hasten to add—but I do take that point. The creation of the Police Chiefs' Task Force was to solve some of the strategic and overarching problems, and that is really where Europol's job is. I am sorry to throw acronyms that I know you will be familiar with but the COSPOL (Comprehensive Operational Strategic Planning for the Police) project was set up within the PCTF with the aim of providing a tactical response to threats identified in the organised crime threat assessment. I think they are mindful that there does need to be that coordination within the architecture of Europol. I do understand, Lord Mawson, your point that they do need to integrate far more readily

with themselves and with the police forces, but there have been some successes. When I visited, there was huge excitement around a successfully coordinated operation I think involving 28 countries to crack an on-line child sex abuse case, led I think very ably by one of our colleagues from Ireland. It was hugely successful. I think in the end it concluded with some 46 arrests in the UK; 2500 customers in 19 countries were identified and a whole range of computers, videos and photographs were seized and, sadly, a whole range of young victims were also identified, but happily taken care of. There is some evidence of them slowly knitting together the necessary integration through their committee structures and oversight structures, but equally and as importantly some evidence of the thing working, and working I think very well. There is some difficulty around different systems appreciating quite what certainly in the UK we mean by intelligence-led proactive policing, particularly those with the sort of inquisitorial system, those rooted in the Napoleonic Code. It is not quite that the police sit back and simply react to events and incidents as they happen, but there is I think a counter-intuitive and cultural distinction between quite what we mean in the UK by intelligence-led policing and what they might understand by the issue. That does not mean we do not keep pushing the whole notion of intelligence-led policing within Europol and the overarching structures within the EU because we all know the importance of that.

Q481 Lord Dear: The point arose on your last comment about the definition of terms. I wondered if you could help us on this. We have heard constantly in our investigations into Europol the fact that different countries apply different meanings to different terms and indeed intelligence-led policing and intelligence generally is one of those examples cited. I wonder if you saw any quick way through that because quite clearly it is causing problems, not least for the directorate itself, and some sort of lexicon by which people pay up to a common dictionary definition might be of help. It seems so simple yet nobody seems to be doing it. I wonder if there is anything we can do to accelerate that.

Mr McNulty: At least part of the answer does lie in the oversight and committee structure that we were just referring to and persuading them at the strategic level that there should at least be some common agreement, as you implied, as to exactly what we mean by these terms. I am pretty sure it is not as stark as the Napoleonic inquisitorial-based models do not do intelligence policing and UK models do. There must be some overlap. I think in the end, like many of the European institutions, the clarity will come in the doing, if I can say it in those terms. I think by the example set by the UK and others we can push what

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we think the intelligence policing model looks like and the French and other equivalent definition of it a little bit further to reach that common ground that you refer to. I think that is part of the strategic oversight.

Q482 Lord Marlesford: I think the point about intelligence-led policing is important. I would be very grateful if, Minister, you could tell us exactly what you mean by it in the UK sense. Secondly, as part of that question, you referred to the difference between the legal systems: what exactly do you think are the implications for intelligence-led policing and the differences between inquisitorial and accusatorial legal systems?

Mr McNulty: The simplest definition of intelligence-led policing is carrying out tomorrow's activities, tomorrow's policing, based on the experience you have of individual targets and activities up to that point, so using that body of information to inform the directions you go in, whether around targeting individuals, particular sets of activities, particular geographical locations, whatever; it is about building up that body of knowledge and experience and utilising that in a proactive fashion rather than simply reacting to the next set of events. Clearly it is more complex than that but at its crudest that is roughly what we mean by it. As I say, I think some of that work is undoubtedly done in systems other than our own. There have been huge advances in the last 15 or 20 years in the United Kingdom in terms of an intelligence-led, targeted approach to policing being far more readily the norm rather than simply a little portion on top of everyday policing in this country, all the way from neighbourhood policing up to SO15 and others. I am sure something similar is starting to develop in other systems, but you will know, to come on to your second point, that in many instances it takes the inquisitorial dimension of the investigating magistrate to set an investigation going in the first place. So there is an incident, an event, and early evidence is presented to a magistrate to see if, against particular people, there is sufficient to build a case up. That sort of investigative framework is entirely different from our own, without going into too many details and without re-visiting other significant debates that your Lordships have just had and we have dealt with over the last couple of months.

Q483 Lord Marlesford: Following that up, once the police are involved in an investigation, if they are using intelligence-led policing as you describe it, I am not clear why the police activity is any different whether it is done under the accusatorial system of our own or the investigative system, the European system.

Mr McNulty: It is a perfectly fair point. That hinges around your opening phrase "once the police are involved". I think that is where it turns. Once the police are involved in investigations of a crime, then I think the systems diverge far more readily. What intelligence-led policing is much about in this country is the precursor activity before a crime or an action, and that is where I think less happens in terms of these other models, but they are developing in a similar fashion. I do not think there is quite the regard for targeting of an individual's activity, geography as I have said, use of informers and use of surveillance. All those other elements are developed of course in the other models but I do not think they are as developed and targeted as the real intelligence-led system that we have had here since the advent of the national intelligence model, and previous to that. It is now much more I think in policing DNA, if I can use that term, in the UK than it is in some of the continental models. That is not to say one is better than the other; it is just that they are different.

Lord Marlesford: My Lord Chairman, I think it would be very helpful, if you would agree, if we could ask the Minister whether we could have a note, because it is such an important part, from the Home Office on exactly what they see as the difference in practice in intelligence-led policing between the UK and other EU members?

Q484 Chairman: Would that be possible? That would be helpful.

Mr McNulty: I am perfectly happy to do that.

Q485 Lord Mawson: During its presidency in 2005, the UK introduced an EU-wide organised crime threat assessment (OCTA) as part of a longer-term plan to develop a European Criminal Intelligence Model (ECIM). Why is there a marked difference in support for intelligence-led policing amongst the Member States?

Mr McNulty: It is partly for the reasons we have already gone through. I would say that the organised crime threat assessment and intelligence-led policing are very much, to be fair, work in progress. I think—and this goes back in part to Lord Dear's point—that the more we develop and mature the links between police forces and respectively between the police forces and Europol on a cross-border, European-wide basis in terms of the threat of organised and serious crime, the more I think the intelligence policing model comes into its own when you are looking at pre-emptive actions, crime trends, travel patterns and a whole range of other things that are much more around the intelligence-led policing model than otherwise. I think slowly other Member States are realising the benefits of such an approach. Albeit work in progress, as I have said, the principle of intelligence-led policing is beginning to take hold

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across Europe at least in that high level, supra-Europe, strategic dimension in terms of organised and serious crime and in part, and as an aside and without taking up another potential corner, because of the continuing cooperation that there is in our counter-terrorism effort where much more readily the intelligence model is the order of the day.

Q486 Lord Marlesford: If and when the Treaty of Lisbon comes into force, what improvements will be made in the area of operational cooperation on internal security by the creation of a standing committee within the Council? What kind of resources do you see such a committee needing?

Mr McNulty: To start at the end of the question, it will be a senior level working group of the Council, supported by the Secretariat of the Council and attended by the Member States, just as Europol, Eurojust and Frontex are. So I do not think in those terms it would need to command any more resources. We do not know the exact role and remit of the committee on internal security and will not until after the October Council when they determine what to do on Lisbon post the Irish referendum, but I think it may be a very useful and sharper focus for these matters if the standing committee does develop. I am mindful too of two points: firstly, that as ever with these things perhaps, there is a plethora of acronyms and bodies that stand behind them and hopefully, if we do go down the route of a standing committee, that will be the focal point; and, secondly, that we do need to retain a sharp distinction between strategic cooperation and the operation and tactical use of our police forces on a Member State by Member State basis.

Q487 Lord Marlesford: The message I get from that on this particular issue is that the Lisbon Treaty is not going to make a great deal of difference. I would like to know whether there are any aspects which we should be taking into account in our report on Europol which are going to be seriously affected if the Lisbon Treaty does not survive.

Mr McNulty: Given that much of the assorted architecture around Europol is new and emerging and work in progress, I think that the current position of Europol will endure and not be unduly harmed in this very narrow sense by Lisbon, in the sense that Lisbon may have regularised things a bit and put a standing committee in place and some of those other elements, but much of the work around refocusing and reconfiguring Europol has already been done but very recently and, notwithstanding the October Council, will endure with or without the Lisbon Treaty, to be fair.

Q488 Baroness Garden of Frognal: Minister, if I can turn to Europol governance for the next question, for Europol the principle of subsidiarity is that Europol will deal with crimes that “require a common approach by the Member States owing to the scale, significance and consequences of the offences”. In the Council Decision, this phrase is moved from Europol’s objective into an Article dealing with its competence. What is the purpose of this change and what will be its effect?

Mr McNulty: There was certainly a lot of negotiation around it, as I understand it, but I think the absolute effect is to limit Europol’s outreach to precisely those trans-national crimes that, as it implies, because their scale, significance and consequences involve at least two or three countries and need and demand that level of cooperation. I think, however nuanced it seems, the move of the particular wording from an objective to a competence or vice versa just reflects that and reflects that limitation and concern from members that the reach and definitions around Europol should not be too broad as to simply operational responsibility or locus on any Member State.

Q489 Baroness Garden of Frognal: So it was in effect a limitation on its powers?

Mr McNulty: A limitation to simply crimes of trans-national scale and significance where quite properly Europol could have a role.

Q490 Lord Dear: Minister, I have a couple of questions on the essential relationship between the Director and the Management Board and then of course obviously backwards to the Member States. The structure is initially fairly easy to understand. Following the Council Decision, the Director puts up strategic plans which he has worked out in draft. They are adapted or accepted as the case may be after a debate at the Management Board, and then he supplies the services to Member States. That is all fairly easy to understand. But we are confused a little on why the Management Board secretariat was not enlarged—we were told it should have been enlarged and was not—and strengthened to allow it to develop the strategy and make that job more meaningful and therefore leave the Director to get on with the task of delivering the requirement. Of course, implicit in that question is the central relationship between the Director and the Management Board. We have heard two conflicting sets of evidence, so to speak: one saying that the Director is unduly borne upon by a Management Board—using my words and not theirs; they meddle too much in strategy—and another that says that is perfectly acceptable. Do you have a view on that and how it might be improved if at all?

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Mr McNulty: I think in part the Management Board secretariat was not extended or expanded precisely to address that issue, so that they did set a broad strategic framework and then left the Director to get on with it and deliver. In terms of sympathy, I would be with you in terms of not having a Management Board be overbearing in terms of allowing the Director the time and space to get on with his role. It is a clear relationship but not one that is, like in many of these bodies, where the director is utterly supplicant to the board. There should be the time, space and discretion for the Director to get on with the job.

Q491 Lord Dear: That is the theory. Does the Home Office have a view as to whether the Director does find that the Management Board interferes too much—perhaps a better word to use is involved too much—in the day-to-day running or not?

Mr McNulty: It is a concern, but I certainly do not have evidence that it is an overbearing concern. It is one that we do need to be alive to and not let it get in the way.

Mr Storr: It has been mentioned to us in the past. I think the view we have taken is that there are certain functions of the Management Board which are so important that they have to be exercised in a hands-on way, particularly control of the budget. The other concern which we have had on occasions, speaking frankly, is about the nature of the relationship between the Director and the Management Board, which I think comes back to Lord Mawson's point about the importance of relationships between people as well as relationships between structures. Our hope would be that whoever the next Director of Europol would be, there would be an improvement in relations between the Director and the Board that have not always been entirely plain sailing in the past.

Q492 Lord Dear: I think the chairmanship of the Management Board is going to be moved from six to 18 months very shortly. That may well bear on the issue.

Mr McNulty: Yes.

Q493 Chairman: Do you think that 18 months is still too short a time?

Mr McNulty: I think it is certainly, as Lord Dear says, preferable to six months. We will see whether it is sufficient. Bear in mind that you still at this stage have to get that notional rotation in and then I think 18 months is probably sufficient on a rotation basis.

Q494 Chairman: Would you have thought on that four years might be an even better stint?

Mr McNulty: On one level I would agree with that certainly but I am not sure that four-year rotations would garner much support in the hallowed ranks of the European Union.

Q495 Lord Marlesford: I just wonder: that issue at this point does not depend on Lisbon, does it?

Mr McNulty: No, I do not think it does.

Q496 Chairman: No, but we have heard it a suggestion that 18 months even then is too short a time for a chairman to get really stuck in.

Mr McNulty: As I say, the reality is that it will, as far as I am aware, remain a post that is up for rotation. I think in the overarching system of rotation, 18 months is possibly pushing the outer limitations, but I certainly agree, as I say, that six months was far too short.

Q497 Lord Mawson: This, unfortunately, has all to do with how you create organisations that can operate complex partnerships in the modern world and deliver stuff that really counts when it comes to it. Continuity in those relationships seems to me fundamental. I do myself know from the things I have been involved in that 18 months is a very short period of time to understand the detail of the various organisations involved and to build the sort of trust, relationships and honesty that are necessary to make things work. Four years in my experience is something rather more like it. How you get there, I do not know, but it seems to me there needs to be far more of a discussion, if these things are actually to work in practice, about these sorts of matters, otherwise a great deal of money is invested and lots of structures are created, but in terms of effectiveness and delivery, who knows.

Mr McNulty: I would usefully suggest that, as and when we get the new Director, it may well be appropriate for the Home Office to talk to them in such terms and in the light of whatever Europol comes up with. I am very happy to commit to that. It might well be that the advent of a new Director is an opportune time to discuss these matters, but we are in the rotation world; we are in the sort of demi-world where politics and organisational matters meet. I would argue on one level that 18 months for a minister to get a grip of anything is not long enough, but I think it is about the average life of a minister in any given post. I have been very fortunate in that I have been in this post two years and in the Home Office three years, but I suspect I am the exception, not the rule.

Q498 Lord Dear: I would like to ask Mr Storr if he would like to come back on the matter of the relationship between the Director to the Management Board.

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Mr Storr: There is just one point of clarification on the question of 18 months. During the negotiations we put forward our own view, which was that two years or more would have been more acceptable. I think the reason that they settled on 18 months was because they were thinking in terms of three six-month presidencies working very closely together. As the Minister has said, when that rotates, the prize of Chairman of the Management Board then becomes one which the three presidencies in question have to fight over. I think if one went as far as four years, you would find that those presidencies or future presidencies had some reluctance to give up their place at the table, as it were. I suppose one could also say that in addition to the Director having a view on it, whoever the new Director is, there is a question of the review period of the Council decision itself at the end of four years, which would be an opportune time to take a view on whether the 18-month tenancy had worked or not.

Q499 Lord Mawson: There is just one practical point. I do not know how exactly this works, so I may be completely naïve about this. With the presidency that is coming up, in a sense could that person be part of the organisation and growing into the job for the next period so that you build relationships? This may not be possible. My experience of organisations is that if you can get people growing up through the culture and then taking on the role, you get real continuity happening rather than these constant breakages, but that may or may not be possible.

Mr Storr: I think what could be possible is that by and large when the chairmanship of the Management Board changes, the change is within the present membership of the Board. For example, when we had the presidency, Rob Wainwright, who I think has given evidence to this committee on behalf of SOCA, moved from being simply a national member on the Board to being the Chair of the Board. So you would I think over a period of time develop some sort of continuity of experience which may go some way towards meeting your point.

Q500 Chairman: I wonder, Minister, whether you have a view about the capacity of bilateral liaison methods to deal with information exchange requirements over the next 10 or 20 years?

Mr McNulty: This is a very vexed issue in the sense that I should rather we had multilateral agreements on data exchange and information exchange as quickly as possible, but progress is, to say the least, slow. I think there is a function for bilateral liaison methods over the coming 10 or 20 years, but I do know that some suggest that if you develop or over-develop efficiently the bilateral methods, then that stymies the multilateral developments across the European Union all the more. It is a matter of

balance but I do have to say it has been really quite tedious and slow to get anywhere in terms of EU-wide arrangements for information exchange, so I think the bilateral will still prevail. It is incumbent on all those involved in the bilaterals to try to ensure a push on progress with a multilateral, but it is a vexed issue.

Q501 Chairman: Following that, national liaison officers at Europol have now a new ability to exchange information on crimes outside the competence of Europol, and that can strengthen the European Union objective of providing citizens with a high level of safety within an area of freedom, security and justice. How do you think that will work out?

Mr McNulty: I think it should and has in the past worked very well, and of course it is not new. It was just clarified in the agreement because it was going on already and had to be seen as distinct from Europol's competence. That sort of liaison does go on; it goes on beyond the remit of Europol. I think it has worked successfully in the past and should continue to do so, and hopefully, as I said earlier, the more examples there are of good practice and good success around such information exchange, the more we may move towards what everybody wants and that is the development of a European information system that works. I am not saying there has not been progress; there has but it has been inordinately slow. I should point out to your Lordships that later on today we are publishing a report by someone called Magee, which goes to this very point and looks at the exchange of criminality information and other sorts of information across not just the UK Government but across Europe and across the broader international domain. It followed from the rather unfortunate discovery of 27,000 applications for mutual legal assistance in the Home Office in a room somewhere that nobody knew about some year or so ago and was a promise from the then Home Secretary, Dr John Reid, that we would look at as clearly as we could all these matters in terms of exchange of information around criminality and other matters. I simply say that is information that is coming out later today that might be of interest above and beyond your immediate concerns about Europol.

Chairman: I think I have said enough about operations internally at the Home Office. I will not say any more.

Q502 Lord Dear: I want to go back to what is in effect bilateral agreements. The classic simplicity, going back to the Director's relationship with the Management Board and the Council, is that the Council set up the Management Board and the Management Board deals with the Director. That is

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fairly easy and understandable. We wondered whether there are any instances that you know of where the Council actually, this is where the bilateral element comes in, are tasking the Director direct by whatever means, somehow or other cutting out the Management Board? Is there any evidence of that?

Mr McNulty: None that I am aware of.

Mr Storr: No. I think by and large the Council plays its role in setting the overall priorities based on the organised crime threat assessment, which is then translated into the five-year work programme of the Justice and Home Affairs Council and specific to Europol, but clearly the Management Board and the Director will take notice of priorities identified by Ministers at the Council level, but I am not aware of any instances of direct tasking to the Director of Europol by the Justice and Home Affairs Council, other than perhaps at the time of the Madrid explosion when the Council I think took the view that Europol needed to play a greater part in the fight against terrorism. Even so, it was not a direct tasking; it was simply identifying a very current and important issue with the expectation that Europol would decide what action it needed to take to fulfil the mandate that the Council had decided to give it.

Lord Dear: We ask the question because there is, I suppose understandably, quite a lot of evidence about bilateral negotiations or contacts which cut out one part of the system. It would seem to us almost impossible to envisage a situation where somehow or other the Council did on occasion, perhaps quite rightly, seek to influence the Director in the margins in some way. In a sense of course that is perfectly acceptable. In another sense of course it does cut out the Management Board if indeed it is taking place. The question is asked really around the whole issue of bilaterality, if that is a word, taking place. It seemed to us a human dynamic that it is almost impossible to ignore. I think you have probably answered the question. I am not pushing you for the answer. You say you do not know it happened.

Q503 Chairman: Can I go back a bit to when we were talking about crimes which are outside the competence of Europol. Would you like to see Europol's competence extended?

Mr McNulty: No, I think we would take the view that where it is settled now is probably appropriate.

Q504 Lord Teverson: Perhaps we could move on to evaluation and oversight. Clearly in an area like this where there is a lot of sensitivity about some of the information or outputs and how they have been achieved, it is quite difficult in many ways to get the right balance. Europol's objective is "to support and strengthen action by the competent authorities of the Member States". We would like to ask: who will assess whether Europol's activities have that desired

effect within the UK's competent authorities and indeed your views on other Member States.

Mr McNulty: From our end, principally SOCA is our conduit and representative back to Europol and from the European dimension the Europol National Unit has to engage with the competent authorities in the UK and develop the relationship. We have a very strong relationship with SOCA and would discuss these matters with them on a regular basis.

Q505 Lord Teverson: Would they formally report to you as Minister in terms of the performance of Europol?

Mr McNulty: I would have to check that. I am not sure in any formal sense they would. Principally my colleague Vernon Coaker is responsible for liaison with them as my colleague in terms of a policing portfolio. Whether it is strictly a formal report on how good Europol has been over the last year, I will have to get back to the committee, but certainly there are discussions.

Q506 Chairman: It would be helpful if you could give us a note on that.

Mr McNulty: Yes.

Q507 Lord Teverson: How would you exercise your role as a member of the Council in terms of performance of Europol?

Mr McNulty: I do not think again in any formal way they report on a regular basis. I think my colleague Meg Hillier goes to the Council rather than me.

Mr Storr: The aspect of the relationship which is the most near to the formal one is when the Council looks at the Europol budget. In that particular case, the Ministers will take a particular interest in ensuring that what Europol is proposing to spend its money on conforms to the Europol mandate and does not go beyond, and also, in the same way as Ministers look at the way in which police budgets are put together, Europol is not assuming that every new task it is given demands new resources to do it.

Q508 Lord Teverson: If I can pursue it, would you see in this world of judging things with key performance indicators that there are Europol key performance indicators or equivalent that would judge its performance on an annual basis?

Mr Storr: One of the issues which slightly concerned the Home Office during the course of the year was a report—and I am sure it will be available to this committee—by an auditor into the way in which Europol judged its own performance that identified a number of weaknesses in overall management. I think we would be looking to the new Director significantly to try to sharpen up the way in which the performance of Europol and the management

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information indicating how good was that performance was put together.

Mr McNulty: During the negotiations on the Council decision, we did push for the inclusion of an Article 48 that allowed the European Parliament to have a greater degree of scrutiny of Europol. I think that greater scrutiny by the European Parliament and indeed national parliaments would not do any harm at all.

Q509 Chairman: I do not think we have seen the auditor's report to which you referred. Could we please have a copy of it?

Mr Storr: I think it was I who referred to it. I would need to check the status of the document. We have certainly seen a copy of it. If it is permissible for us to share it with the committee, then of course we will do so. I would need to check with Europol exactly what the status of that document was.

Chairman: Yes. If there are odd paragraphs which are sensitive, we would understand if they were blacked out, but I think we would like to see the bulk of it if you could possibly do that. Thank you.

Q510 Lord Teverson: The next question is around the European Parliament and the Commission's desire for transparency. It comes on to that area of broader transparency. Following on from what you have said, whatever happens to the Lisbon Treaty, you would like to see a greater involvement by the European Parliament. How do you see national parliaments potentially getting involved either with Lisbon or without it?

Mr McNulty: I think there is an ongoing scrutiny role for national parliaments as well, which is why I welcome, amongst other things, your inquiry. Collectively the Houses of Parliament need to determine whether for Europol or any other institution they should be doing that on a more formal annual or biennial basis. I would welcome that sort of scrutiny, too. Article 48 which we included in the Council decision again stands regardless of Lisbon. That was part of the Council decision around the new approach to Europol that affords the European Parliament the ability to scrutinise far more readily than it could and request the Management Board and the Director to attend and provide evidence in what we think is a far more efficient way than with the absence of Article 48. I think the scrutiny is absolutely appropriate. There is, as with all police forces, a distinctive degree in scrutinising operational matters, in which clearly I think there is a limited role, but in terms of its overall role, strategy, work plan, budget, these are more than appropriate matters for as much scrutiny as possible by the European Parliament or national parliaments.

Q511 Lord Dear: Switching on to the sharing intelligence, the UK should be sharing intelligence with its EU partners and vice versa. Are you happy that that is being done to best effect, and particularly could you give us a view on what improvements might be made with particular regard to terrorism?

Mr McNulty: I think it is being done to good effect, both in terms of crime and terrorism. We send representatives to Europol's twice yearly counter-terrorism high level experts meeting and make priorities to the work programme. As you will know, that is new but it is developing a much stronger focus and is working very well. I know from colleagues in the security services that outside the Europol dimension they have good and improving relations with all their equivalents. I am satisfied from two years looking at these matters that we do share, certainly on the counter-terrorism side, as much as we need to and in adequate fashion. Certainly post-Madrid and post-7/7, the urgency to do so was really enhanced and I think the European Union did step up to the plate, if I can use an ugly Americanism, in that regard and it has become a lot better since then than perhaps it was before 2005 and did not quite develop as it should between 2001 post-9/11 and 2005. I think it is in a very healthy place now. It can always get better of course, but I think the counter-terrorism side is in good shape and it is increasingly better on the serious and organised crime side through Europol.

Q512 Lord Dear: That would apply to the new Members States as well?

Mr McNulty: It is clearly less delivered there, to be frank, but it is improving and I would say it is on an upward trajectory.

Q513 Lord Dear: I know you have answered this question already. We are looking to see that there is a will in the new countries to do it? The fact that they have to come up to speed is another matter.

Mr McNulty: I think there is. I think the concerns there would be more around capability and capacity rather than will.

Q514 Lord Marlesford: Some of us gained the impression when we visited Europol and in subsequent discussions in Brussels that the terrorism dimension was not as effectively linked up through Europol as perhaps the more non-terrorism aspects of policing, perhaps for two reasons: first of all because SOCA itself does not comprise, although it has links with, the security service; and, secondly, because of the inhibitions naturally that there are in sharing or having people inside Europol. I wonder whether you feel that if the liaison offices—and I am thinking obviously particularly of the UK liaison office—at Europol were to have a more direct link or

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indeed a presence from the security service, which would of course enable there to be total control over what information we gave, that would not actually make the use of Europol in fighting terrorism more effective. I certainly gained that impression.

Mr McNulty: I think it may, but the emerging network of counter-terrorism coordinators within the European Union is working and working effectively. Part of that is under Europol and part not. I think you are right; in the first instance Europol's clear role is in the area of serious and organised crime and all those competences that are outlined there and defined, as I said earlier, in my terms adequately. I think it is satisfactory. I would not want to have it developed or heightened just for the sake of it. The emerging architecture across the European Union through the national CT coordinators and inside Europol works and works well in the circumstances. I do take your point and it might be worth exploring, and I shall certainly take it back, as to whether there should be a greater security service presence in the liaison role at Europol. It is a fair point.

Q515 Lord Marlesford: This is in the liaison office in order to avoid any risk of sharing stuff between them.

Mr McNulty: Surely, although again rather like all organisations—Europol, Interpol or whatever—there are clear protocols about what we share, how we share it and who with. Sensitivities can be got round in that regard whilst preserving security.

Q516 Lord Mawson: Are you satisfied that there is sufficient visibility of Europol and other EU agencies in the UK competent authorities? The general public I suspect are completely unaware of how all this is working. It affects their security. I also know, having spent many years working in housing estates, that it often is about people connecting and knowing who is who and what is what that you get all the information about where the problem family or whatever is. I do wonder whether there is a point where there is a television series opportunity here to bring to the attention of the general public what is out there and the opportunities in all of this so it becomes more common knowledge. I suspect there is a lot of blindness about all of this out there.

Mr McNulty: I certainly believe the starting premise that Europol could be more visible and clearly defined in terms of what it does and clearly defined in the public sense because I fear you are right; people either know nothing about it or, rather like Interpol, think it is what it is not. I think the popular perception is that Interpol is a sort of international rescue and Thunderbirds without the rockets and has this competence that goes all round the world and prevails at the cost of national forces. I do take the point seriously. I think Europol does good work and

it would be very useful if that could be put more in the public face. It is not in my competence to suggest a TV series as a result. That may or may not work.

Q517 Lord Harrison: My Lord Chairman, first I do apologise for coming late and I will explain why. You are old enough, but the Minister is not old enough, to remember *Fabian of Scotland Yard*, which was a TV series and he was often linked to Interpol, as I recall it. On this question of visibility, it was made very plain to us in the course of the inquiry that as it were everything stopped at SOCA. Even this morning the reason why I am delayed is to have heard an excellent briefing from one of your people, because I am going on a visit to Ukraine about Home Office issues, concerning Ukraine. He mentioned SOCA and the work that is being done there. I tell the Minister this because our own committee went to the Ukraine border and wrote a report about it. It was interesting that the official did not mention Europol, whereas you would have thought there might be some natural link in. This was all too brief a briefing, but I do think Lord Mawson's point is a very justified one and I welcome your positive attitude about trying to spread information, especially about an agency which does appear to be useful and certainly could and should be useful.

Mr McNulty: Without getting into trouble, it is something I relate to SOCA too. I would rather like SOCA's profile to be higher in terms of relating to people exactly what they do and how they do it because again there are huge successes. There are ways to go but they are rather shy and retiring. Perhaps we can have a new *Inspector Fabian of the Yard* who is seconded to SOCA in the first instance and then to Europol. I am a member of the Fabian Society but it is not connected with *Fabian of the Scotland Yard*.

Q518 Chairman: Let me go back to a question we did not ask with regard to police cooperation. Do you believe there is a political will to move away from a mentality of "need to know" over to one which might be described as "need to share" within a distinctive European Union cooperation framework?

Mr McNulty: There is, and it is growing but it almost goes to many of the points that we have discussed about bilateralism versus multilateralism, operational versus strategic. I think we are moving in that direction, not least through other developments that, as I say I think are rather slow but nonetheless are there through Prüm, the framework decision for our criminal records and others, so there are parallel things developing elsewhere in the Union. Slow progress I think is the short answer, but, yes, a recognition increasingly that you do need to go from need to know to need share, not least given the growing utilisation of technology.

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Q519 Lord Teverson: Coming back to UK arrangements, one of the areas more broadly, as has been said, is that certainly for some Member States it is not the greatest of career moves to move as a serving officer or in one of the services to Europol. Are you happy that within the United Kingdom there is not a career blemish if you go to The Hague and that we are encouraging people to have that as part of their career structure?

Mr McNulty: It is an interesting point. I am very happy that there is not a blemish involved and it is not seen as a downward move, but there are inordinate difficulties that go to human resources, pension arrangements and a whole range of other issues that are a complete nightmare, but I am doing my level best to correct so that I can actively encourage people as a matter of course to go on secondment whether it is to Europol or Interpol. We are getting round them but again that has proved to be quite a slog. I would start with the premise that it would not be a blemish but rather the opposite, an absolute benefit to go and get some experience in Europol, Interpol or with other international forces. We are almost there but it goes to really tedious things about pension arrangements and when you stop being a serving policeman and whether effectively you have to resign, go to Europol or Interpol and then come back again and what that means for your pension arrangements. We are slowly getting round it but it is difficult. I want it to be positively encouraged.

Q520 Lord Teverson: I would agree with that absolutely. Are those mainly UK considerations?

Mr McNulty: They are principally UK considerations and the notion of stepping out from being a serving police officer.

Q521 Lord Teverson: I get the impression informally from a couple of places that there is certainly dissatisfaction about SOCA's performance as the intermediary. Do you have any feeling about that or is the Home Office trying to do anything about that?

Mr McNulty: I do not get a sense of unhappiness about it. That certainly has not been relayed to me or colleagues from Council meetings. I would always look for that to improve.

Q522 Lord Teverson: I meant more maybe from within the United Kingdom and other areas that may have to work through SOCA.

Mr McNulty: There were certainly some concerns expressed by colleagues in ACPO about SOCA and then, as is the way with these things, from colleagues in SOCA about ACPO. I have held a series of meetings with Vernon Coaker, as I have said, who

largely looks after SOCA, firstly with ACPO to talk about SOCA and then with SOCA to talk about ACPO and then with both of them to try and see what the measure of it was. I think they have just about finalised a sort of working protocol and understanding between the two as to quite where particularly level two and level three crimes stop and start in terms of their operational competence in the UK and by inference SOCA acting as a conduit with Europol. I think we are in a happier place now than we were.

Q523 Lord Dear: I was going to make an observation rather than put a question about the problems of getting the right people—good people—to go to agencies like SOCA and particularly to Europol. I think it is not only to do with pensions; it is it do with the whole culture of the organisation, which sadly has been deeply rooted in the police service, and maybe other agencies as well, over the years that when you go away, you are out of sight and out of mind for three years or five years, or whatever, and when you come back you have to learn to do the job again and prove yourself again, and of course that is a huge disincentive. One of the few ways I would say in my experience you can get over that in part is to send somebody there on promotion. They got something out of it when they went; they come back having held that rank which they might have got had they remained at home. It is a simple device but it is a cultural thing. How you get chief constables and others to face up to it is difficult.

Mr McNulty: We are doing it in part by the sort of limited proliferation of other bodies and other potentials for secondment. There is an increasing exchange between the Home Office and serving police officers in the general sense with NPIA, with SOCA, with some of these other organisations. I think with the newer generation of chief constables, less so human resource directors, they are positively encouraging that so that their people do get a wealth of experience potentially for short bursts across a whole range of areas rather than 30 years in one place attitude. I think it is changing.

Mr Storr: Perhaps I could add that I think as the committee knows the United Kingdom will be fielding a candidate for Director of Europol during the course of this year.

Chairman: Thank you for that. If colleagues have nothing further, Minister, thank you for coming and for being a good deal briefer than some of our witnesses are. We appreciate that. This is our final evidence session and we shall be starting to put together a report during the summer recess, which we shall be looking at soon after we come back in October. We are hoping to produce a report and publish it before the end of the session, which now

16 July 2008

Rt Hon Tony McNulty MP and Mr Peter Storr

looks as though it so going to be the end of and wind up our evidence sessions. We appreciate
November. It has been most helpful for you to come that. Mr Storr, thank you for coming again to see us.

Written Evidence

Memorandum by the Association of Chief Police Officers in Scotland (ACPOS)

I refer to your correspondence dated 20 March 2008, in connection with the above subject, which has been considered by the Crime Business Area, and can now offer the following by way of comment.

STRATEGIC COORDINATION

The ACPOS National Intelligence Model (NIM) Development Team has worked closely with Europol representatives and the National Policing Improvement Agency (NPIA) to enhance the development of the European Criminal Intelligence Model (ECIM). Furthermore, a number of European delegates have visited this team to examine the processes and application of the National Intelligence Model.

With regard to the development of EU Architecture of Internal Security, intelligence led policing and the ECIM, the Organised Crime Threat Assessment (OCTA) provides the starting point in that it provides the strategic understanding of the current threat based on available information and identifies the highest priority serious and organised crime threats to the EU. This fits firmly with the aim of the “Hague Programme” to provide a forward looking approach to the fight against organised crime in a proactive manner. Complemented by the development and implementation of the ECIM, which facilitates effective action through the management of an intelligence cycle based around Member States contribution to the Europol Information System (EIS), this would provide an opportunity for the initiation of cross-border investigations with a view to the disruption of significant criminal activity. The intelligence process would be completed by the results and intelligence generated being utilised to support the next round of assessments.

Europol’s commitment to ensuring its activities are always supportive of the activities of stakeholders and partners such as “Eurojust”, “Frontex” and “SitCen” is clear from its inclusion of same within its current business plan, demonstrating Europol’s efforts to achieve such cooperation.

BILATERAL INFORMATION EXCHANGE

Information exchange in the form of the use of the Schengen Information System is currently under development, with the UK currently exchanging only limited information on a bilateral basis with other member states. However, Schengen Information System II (SISII) will present the opportunity to progress the flow of information via interface with the Police National Computer (PNC) and other criminal justice partner databases.

Operational links between ACPOS and Europol are maintained by the secondment of an SCDEA Officer to Europol and ACPOS is keen to enhance the current interaction with Europol and will continue to work in partnership with them in this regard.

The EIS holds a European database of criminal intelligence, which supports the automatic identification of links between investigations in different Member States and facilitates the sharing of information in a secure and reliable way. It is recognised that some Member States utilise automatic data loaders to populate the EIS with relevant criminal intelligence from their country. Member States use of the EIS in this way offers law enforcement agencies throughout Europe greater opportunities to identify international aspects to investigations and whilst the UK does not currently have access to automatic data loaders, the opportunity to consider, in conjunction with key partners in the fight against organised crime, the potential benefits of same, would be welcomed.

Notwithstanding the foregoing, it remains possible for UK law enforcement agencies, via the UK Europol National Unit, to make use of the EIS in respect of UK investigations. The current system does place a significant emphasis on bilateral communication.

COMBATING ORGANISED CRIME

During a visit to Europol, ACPOS representatives involved in the compilation of the ACPOS Scottish Strategic Assessment (SSA) shared best practice with staff from OCTA and an ACPOS representative is now part of the OCTA Working Group. The SSA takes cognisance of OCTA and has direct links in priorities such as Human Trafficking, Importation of Class A controlled drugs and Serious and Organised Crime. ACPOS will also invite an Analyst from Europol to be part of the team working on the 2008/09 SSA and an Analyst from ACPOS will participate in the Europol Analysts Quarterly Co-ordinators Forum. Europol will also be involved in the data collection processes as part of the Scottish Network Analysis and an Information Sharing Agreement will facilitate this work.

In terms of training, it is suggested that Europol should not develop training provisions in competition with the European Police College (CEPOL). Members suggest that Europol should influence and inform the design and content of training provision but not duplicate it.

COMBATING TERRORISM

Due to constraints on protectively marked intelligence not all Scottish Counter Terrorism Intelligence is shared with the Terrorism Situation Report (TSR). A standard operating procedure in this regard is currently being compiled.

EUROPOL'S INFORMATION EXCHANGE NETWORK

Members welcome the opportunity to contribute to the EIS. In the absence of automatic data loaders or systems which can accommodate direct submission, however, significant bilateral communication remains necessary to achieve same. Access to EIS, which can store, search and analyse information relative to international criminality allowing law enforcement agencies to collaborate in their investigations provides UK law enforcement agencies with the opportunity to maximise its involvement with Europol and identify potential opportunities for joint investigations.

Members suggest that as a method of developing intelligence sharing in the future; it may be possible to provide a link between the Scottish Intelligence Database (SID) and the Europol Information System (EIS). Mr Brian Donald, the Head of the UK Liaison Bureau at Europol, has attended the Scottish Tactical Coordination Group meeting and delivered a presentation on EIS and the work of Europol, and it was agreed that Europe will be included in the data collection processes of the Scottish Network Analysis within the terms of an information sharing protocol.

EUROPOL'S INFORMATION EXCHANGE WITH THIRD PARTIES

All 27 Member States of the EU are represented on the Europol Liaison Bureau Network. Europol also has a number of cooperation agreements with countries outside the EU and with other organisations. These fall into two categories, operational agreements, where personal data can be exchanged and strategic agreements, which are limited to strategic intelligence exchanges such as trends and modus operandi. Members consider that this approach is appropriate.

GOVERNANCE AND METHODOLOGIES

Currently SOCA, a non policing organisation, is the link between UK police and Europol. The co-operation afforded by the Director General is high, however it is clear that some of the European policing discourse is outwith the areas of interest of SOCA. Therefore, the engagement of UK institutions with Europol is less productive than it might be. Members welcome the change in governance and status recently agreed for Europol and will hopefully improve the opportunity for engagement.

In respect of the value attributed by Member States and other customers to OCTA, Analytical Work Files (AWFs) and other products and services offered by Europol, members highlight that Scotland is constructively involved with OCTA. OCTA provides processes and structure which can also be adopted for internal purposes. Other products which are considered of value and would be increasingly welcomed by members are operational intelligence reports, analytical outputs and strategic situation reports.

With regard to AWFs, information provided to ACPOS on specific issues has to date been very good. The products are useful and provide an overview of processes and issues at the outset. Whilst they retain a strategic overview, they are not overly complex. Opportunities to improve the exchange and sharing of such analytical products between Scotland and Europol are currently being explored.

The Joint Supervisory Body (JSB) is an entity set up to review the activities of Europol, to ensure that the rights of the individual are not violated by the storage, processing and utilisation of data held thereby. It is understood that the body comprises of two representatives from the national data protection authority of each Member State who are appointed to serve for a period of five years. In order to guarantee independence, the Europol Convention states that members of the JSB are not to receive instructions from any other body.

It is not clear whether existing arrangements for Europol, and their strategic objectives, will easily allow the evolution of their role to widen into general policing matters. Members suggest it may be more advantageous to support Europol as an information and response coordination organisation in respect of crime disruption and investigation, and establish a separate body to oversee other matters of policing cooperation. The European Chiefs of Police Task Force (ECPTF), which includes ACPOS representation, currently has a responsibility in this regard but the changing nature of the precedence militates against sustained delivery of an agreed strategy.

Notwithstanding, members welcome the opportunity to contribute to the review given the increasing international nature of policing and the benefits to be derived by cementing existing strategic partnership links with Europol and the Europol National Unit.

Harry Bunch, General Secretary

1 May 2008

Memorandum by HM Revenue and Customs

1. EUROPOL'S MISSION

1.1. Europol is the European Union (EU) law enforcement organisation that handles criminal intelligence. Its aim is to improve the effectiveness and co-operation between the competent authorities of the Member States in preventing and combating serious international organised crime and terrorism. The mission of Europol is to make a significant contribution to the European Union's law enforcement action against organised crime and terrorism with an emphasis on targeting criminal organisations.

1.2. HMRC regard Europol as a key law enforcement partner. We have two officers seconded to Europol and work closely with Europol in the development and exchange of intelligence. Europol also fulfil a valuable role in facilitating joint operational activity with European law enforcement agencies and assist us in developing knowledge and relationships.

2. EUROPOL'S MANDATE

2.1. Europol supports the law enforcement activities of the Member States against serious and organised crime that is crime where an organised criminal structure is involved and two or more Member States are affected.

2.2. Europol supports the law enforcement activities of the Member States by:

- facilitating the exchange of information between Europol and Europol Liaison Officers (ELOs). These ELOs are seconded to Europol by the Member States as representatives of their national law enforcement agencies, thus they are not under the command of Europol and its Director as such. Furthermore, they act in accordance with their national law.
- providing operational analysis and support to Member States' operations;
- providing expertise and technical support for investigations and operations carried out within the EU, under the supervision and the legal responsibility of the Member States;
- generating strategic reports (eg threat assessments) and crime analysis on the basis of information and intelligence supplied by Member States or gathered from other sources.

3. HMRC PERSONNEL AT EUROPOL

3.1. HMRC have a permanent Europol Liaison Officer seconded from the Criminal Investigation Directorate in HMRC to the UK Liaison Bureau at Europol (UKLB). The secondment is due to be reviewed in 2009. The Liaison Officer currently has responsibility for a number of so called Analytical Work Files (AWF). AWFs are European wide databases of criminal intelligence on specific crime areas. The Liaison Officer also represents HMRC and the UK Liaison Bureau, in other customs related issues such as alcohol smuggling, and seizures of drugs and weapons at ports and airports.

3.2. HMRC have also seconded a National Expert from Criminal Investigation to the Financial and Property Crime Unit at Europol. The purpose of this secondment was to ensure that MTIC (Missing Trader Intra Community) fraud featured in Europol's Organised Crime Threat Assessment 2007, which defines the crime areas Europol will focus on in the coming year. The seconded is currently on his second secondment and has been embedded with different Europol teams to facilitate the UK initiative to establish a new work file dealing with MTIC fraud.

4. THE UK LIAISON BUREAU (UKLB)

4.1. The UKLB is a SOCA managed and lead office representing UK law enforcement authorities at Europol on a pan European level. The office maintains a multi agency approach with SOCA, HMRC, the Metropolitan Police and the Scottish Crime and Drug Enforcement Agency all represented.

4.2. The Europol convention stipulates that each Liaison Bureau must have a Europol National Unit (ENU) for routing intelligence and support. The UK ENU is located at SOCA. The UKLB is able to facilitate bilateral and multilateral exchanges of intelligence with or without including the interaction of Europol.

5. THE LIAISON BUREAUX AT EUROPOL

5.1. The Liaison Bureaux at Europol facilitate the exchange of intelligence on a bilateral and multilateral basis, and also between Europol and the competent authorities in EU Member States. Europol is a multi-disciplinary agency, comprising not only regular police officers but staff members from the various law enforcement agencies of the Member States and covering specialised areas such as customs, immigration services, intelligence services, border and financial police.

5.2. In May 2007 Europol had 581 staff of which 116 were ELOs. The Liaison Bureaux currently has a total of 129 ELOs, representing 65 different law enforcement agencies from 34 countries.

5.3. One exceptional added value is that Europol helps to overcome the language barriers in international law enforcement co-operation. In practice this means that any law enforcement officer from a Member State can address a request to their ENU in their native language. The request is then translated for exchange at Europol where the daily working language is English.

6. CO-OPERATION AGREEMENTS

6.1. All 27 Member States of the EU are represented in the Liaison Bureau Network. Europol also has a number of cooperation agreements with countries outside the EU and with other organisations. These fall into two categories, operational, where personal data can be exchanged, and strategic, which are limited to strategic intelligence exchanges such as trends and modus operandi.

6.2. The Information Management Operations Unit (IMT4) is the designated point of contact for Europol for the actual information exchange of information with Third Party countries and organisations. These are countries outside the EU, with either an operational agreement or a strategic agreement with Europol. IMT4 is the intelligence gateway, which authorises and registers the communication of data with Third Parties.

7. EUROPOL COMPUTER SYSTEMS

7.1. Information Exchange System (Info Ex)

7.1.1. The Information Exchange System (Info Ex) is Europol's in-house software system, which facilitates the exchange of intelligence between Member States, Europol and Third parties. It provides the possibility of storing, searching, and analysing information related to trans-national crimes, allowing law enforcement agencies across Europe to collaborate effectively in their investigations.

7.1.2. Data inserted in the Info Ex remains under the full control of the intelligence owner who is responsible for the accuracy, reliability and storage time limits of the data. If for example the UK wanted to access data exchanged between Europol, France and Poland, it could only do so by seeking permission from the country that owns the data.

7.2. Information System (IS)

7.2.1. The Information System (IS) is another in-house Europol software system. It holds a European wide data base of criminal intelligence, which supports automatic detection of possible hits between different investigations and facilitates the sharing of sensitive information in a secure and reliable way.

7.2.2. The types of data stored include: offences, people, means of transport, communication and payment, identity documents, drugs, firearms, currency, organisations, and of course the owner.

7.2.3. Some Member States utilise automatic data loaders in their ENUs, to populate the IS system with criminal intelligence from their country. This offers other law enforcement agencies around Europe a greater chance of obtaining hits against this intelligence. However the UK is not one of these countries.

8. EUROPOL CRIMINAL ASSETS BUREAU

8.1. This team are situated within Europol's Financial and Property Crime Unit (SC4) and assists investigations in tracking down and confiscating criminal finances and property. Among other things they manage the secretariat of the Camden Assets Recovery Inter-Agency Network (CARIN), an extensive network of financial investigators.

8.2. The primary aim of CARIN is to enhance the effectiveness of Member States efforts in depriving criminals of their illicit profits and to encourage cooperation with third countries in this regard. The group aims to improve cross-border and inter-agency cooperation as well as information exchange within and outside the EU. CARIN works on an informal non-coercive nature placing financial investigators in different countries in touch with one another.

9. EUROJUST

9.1. Eurojust is an international organisation of 27 EU prosecutors and judges located in The Hague. It aims to improve legal co-operation between Member States, and to bring better co-ordination of cross-border investigations and prosecutions. It also facilitates the exchange of information and makes recommendations to change laws and to improve Mutual Legal Assistance (MLA) and extradition arrangements. The UK has three representatives at Eurojust, Aled Williams from the Crown Prosecution Service, Phil Hicks from HMRC, and Lynne Barrie from The Crown Office. The UKLB and the UK representatives at Eurojust have regular interaction about cases concerning operational and legal advice.

10. HMRC ENGAGEMENT

10.1. AWF Smoke

The main area of work HMRC engage with Europol over is AWF Smoke. Prior to the secondment of an HMRC officer to Europol in June 2006, HMRC were contributing on a sporadic basis to AWF Smoke and were ranked at 5th from last among the Member States contributing to the work file. Since then the UK has consistently been in the top three and are currently the largest contributor of tobacco fraud intelligence in Europe with 36 out of 135 contributions (26.66%) in the last quarter of 2007. However there is still a strong reluctance from HMRC to share sensitive intelligence with other Member States through Europol channels. The Fiscal Crime Liaison Officer (FCLO) Network is the preferred route.

10.2. AWF MTIC

AWF MTIC opened on 2 April 2008 and is a UK lead initiative to combat abuse of the tax system by organised criminal groups. The aim is to provide a European platform for collating and analysing data from Member States MTIC investigations.

10.3. Controlled deliveries¹

¹ A controlled delivery is an investigative technique that allows specific consignments of illicit goods or controlled substances to pass through the territory of one or more country. The objective is to identify those persons involved in a transaction and to facilitate the arrest of the principals behind the operation.

Since October 2006 the UKLB has facilitated a total of 40 controlled deliveries of drugs found in freight and parcel detections. 34 of these were found by HMRC in the UK and offered to Member States, mainly Spain, The Netherlands, Italy and Ireland. This cooperation has directly resulted in the seizure of 142.5 kilos of drugs and 53 arrests.

10.4. Cash detections

Since July 2007 HMRC's Financial National intelligence Unit has regularly contributed intelligence from UK cash detections to AWF Sus-Trans. This work file aims to establish links between Member State money laundering investigations. However to date no links have been established.

10.5. HMRC training

In March 2007 the HMRC secondee arranged for our Cyclamen National Intelligence Unit to provide counter terrorism and proliferation awareness training to Finland. The Finnish Board of Customs is planning to set up a similar awareness programme in their country, based on UK model principles.

11. THE FUTURE DEVELOPMENT OF EUROPOL

11.1. HMRC welcome the new proposal for a Decision under Articles 30 and 34 of the TEC. This will provide a firmer legal basis for Europol than the current Convention as the Decision will be binding on member states whereas the Convention is not. As the opening section of the Explanatory Memorandum to the original version of the Proposal stated:

"...Since its adoption in 1995, three different Protocols have been adopted to amend the Europol Convention, respectively in 2000, 2002 and 2003, which include provisions which will significantly improve Europol's effectiveness. At the time of writing, none of these instruments have entered into force yet, due to the fact that not all Member States have ratified them. In addition discussions on Europol's functioning have demonstrated that even after the entry into force of the three Protocols, further improvements to Europol's functioning are still desirable. This is partly due to the emergence or increase of new security threats such as terrorism, which pose new challenges to Europol and require novel approaches. Moreover, improved sharing of information and implementation of the principle of availability as supported in the Hague Programme, make it necessary to further adapt Europol's legal framework while maintaining an emphasis on robust data protection provisions. A significant change which is proposed is that Europol should be financed from the Community budget. This will put Europol on an equal footing with Eurojust and CEPOL and increase the role of the European Parliament in the control of Europol, thus enhancing democratic oversight over Europol at European level. Application of the EU Staff Regulations will also bring significant simplification. This is in line with the resolution adopted by the European Parliament. The current proposal aims at establishing Europol on the basis of a Council Decision, including all the amendments already incorporated in the three Protocols, as well as further improvements to address the new challenges faced by Europol..."

11.2. Section 3 of the EM also states (legal effect):

"The proposal aims to replace the Europol Convention by a Council Decision. It incorporates the amendments to the convention introduced by the three Protocols such as extension of Europol's mandate and tasks to cover money laundering, assistance in the field of crime prevention, technical and forensic police methods, the possibility to participate in joint investigation teams or request Member States to conduct or coordinate investigations and greater information of the European Parliament..."

12. CONCLUSION

12.1. HMRC regard Europol as a valuable partner in the development and support of law enforcement intelligence and operations within Europe. We also support the proposal to place Europol on a firmer legal footing which can only benefit the work of Europol. We would be happy to provide further information to the Committee, if needed.

Andrew Lawrence

Deputy Head of Criminal & Enforcement Policy

28 April 2008

Letter from the Rt Hon Tony McNulty, MP, Minister of State, Home Office to the Chairman of the Select Committee, 23 July 2007

DOCUMENT 5055/07—DRAFT COUNCIL DECISION ESTABLISHING THE EUROPEAN
POLICE OFFICE (EUROPOL)

You mentioned your concern that not all Member States may be making full use of the Europol Information System, and asked for usage figures.

As you may recall the Information System was only established in October 2005. At the end of June 2007 around 40,000 “objects” (records) had been entered onto the system but there is an ongoing process of review and removal to “clean the data” with updates and data deletion to remove unrefined and expired material. The Europol Management Board has expressed its concern that the amount of inserted data remains low and while several Member States had very little data in the system others had expired data that needed to be updated or deleted. Members of the Management Board have expressed a commitment to increase the amount of data input into the Information System, and believe that the introduction of an “automated data loader” may help the situation.

In strict numerical terms the UK is not a major user when compared to the data input by Germany, France, Italy and Austria but part of this is explained by the fact that about 45% of the objects on the Information system relate to forgery of money (Euro counterfeiting). This makes easy comparison of system usage by country problematic.

However, taking June 2007 as an example sixteen countries input new material onto the Information System. In terms of volume the UK was fifth behind Germany, Belgium, Cyprus and Italy, but since it was not possible to identify the types of material input volume comparisons become meaningless.

23 July 2007

**Letter from the Chairman of the Select Committee Lord Grenfell to the Rt Hon Tony McNulty, MP
Minister of State, Home Office, 9 July 2008**

(DOCUMENT 10082/08)—Proposal for a Council Regulation amending Regulation (Euratom, ECSC, EEC) No 549/69 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply

Sub-Committee F (Home Affairs) of the European Union Select Committee considered this document at a meeting on 9 July 2008.

Like you, we could not see why Europol officials participating in joint investigation teams should enjoy an immunity from criminal (and civil) proceedings not enjoyed by police officers in those teams. We believe this derogation from the Protocol on Privileges and Immunities is a satisfactory outcome.

We note that the main Council Decision establishing Europol, and presumably also this Regulation, are likely to be adopted in October or November. As you know, the Decision is being kept under scrutiny pending the conclusion of the Committee’s inquiry into Europol, but in reliance on paragraph 3(b) of the House of Lords Scrutiny Reserve we were content that you should give your agreement to the proposal at the April Council, and we are content that you should agree to its adoption. We will similarly keep this draft Regulation under scrutiny, since it is part of the same package, but again are content that you should agree to its adoption.

9 July 2008

Memorandum by the Lancashire Constabulary

Lancashire Constabulary, in line with all UK Police forces, has over recent years experienced a significant increase in the requirement to conduct investigations and enquiries overseas. Such enquiries are normally routed through Interpol, on a police to police basis or, by means of an International Letter of Request, through the Judicial Co-operation Unit at the Home Office. The latter mainly being used where evidence is requested from another country.

Each UK Police Force has an International Liaison Officer (ILO) through which International enquiries are processed. In 2002 the ILO in Lancashire dealt with 106 cases increasing to 279 cases during 2007.

The Serious and Organised Crime Agency (SOCA) act as the UK’s national central bureau for both Interpol and Europol. When an enquiry is received by SOCA from a UK police force SOCA will direct it to either Interpol or Europol accordingly.

Europol principally deal with criminal intelligence, working on •intelligence collection and analysis concerning criminal threats which transcend a number of member states. In particular Europol have recently been involved in activity to counter human trafficking within Europe. They produce intelligence assessments and briefings which are used by UK police to inform strategic and tactical decision making. Europol is based in The Hague, Netherlands.

Europol supports the law enforcement activities of the Member States mainly against:

- illicit drug trafficking;
- illicit immigration networks;
- terrorism;
- forgery of money (counterfeiting of the Euro) and other means of payment;
- trafficking in human beings (including child pornography);
- illicit vehicle trafficking; and
- money laundering.

In addition, other main priorities for Europol include crimes against persons, financial crime and cybercrime. This applies where an organised criminal structure is involved and two or more Member States are affected.

Europol, through seconded liaison magistrates, Eurojust, work closely with European Justice Ministries to facilitate the completion of International Letters of Request. This function has been used in connection with Lancashire enquiries on a number of occasions and has been of considerable assistance in what were otherwise difficult cases.

In a recent initiative Europol has worked with member states to improve the processing of financial enquiries between member states. The Europol Asset Tracing request form now is frequently used (1-2 per month) by Lancashire officers.

Although most enquiries are directed to Europol through SOCA, Lancashire's ILO has dealt directly with Europol staff in connection with human trafficking enquiries and on each occasion has found the staff to be accommodating and helpful providing speedy resolutions to problems and facilitating co-operation with overseas law enforcement agencies.

Europol has in the region of 600 staff, 18% of which are seconded officers, the organisation is funded by contributions from member states according to their GNP, although there are proposals for it to be funded directly from the EU budget. Budget 2008: EUR 66.4 million.

The view of our liaison officer is that the activities of Europol have little effect on the policing of Lancashire. Whilst we have consulted them on a number of occasions their responses have not in the main assisted us all that much. The exception to this is the liaison magistrate function which can be useful where obtaining timely assistance from other countries is proving difficult. However, it may be that SOCA utilise Europol on our behalf to deal with some of our Interpol enquiries and we are therefore unaware of the Europol contribution.

The intelligence products that are published by Europol are generally of a strategic nature and whilst they are of limited relevance to policing at a local level, they assist in informing understanding of the international nature of organised crime.

September 2008

**Letter from His Excellency Mr P W Waldeck, Ambassador of the Kingdom of the Netherlands
to the United Kingdom, to the Chairman of Sub-Committee F**

Thank you for your letter of 1 July concerning the headquarters of Europol and Eurojust in The Hague. The Dutch Government and the Municipality of The Hague are in complete agreement with you that it would be very beneficial if these organisations could be co-located in the same building. However, the new headquarters which Europol decided to build and which is currently under construction is not large enough to accommodate Eurojust as well. The possibility is now being investigated of housing Eurojust in the immediate vicinity of the new Europol building.

Let me assure you that neither the Dutch Government nor the Municipality of The Hague at any stage opposed the co-location of Europol and Eurojust. I much regret that you were told otherwise.

5 August 2008