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(SUB-COMMITTEE F)

INQUIRY INTO EUROPOL

WEDNESDAY 18 JUNE 2008

PROFESSOR JULIET LODGE and PROFESSOR DIDIER BIGO

MR TIM WILSON

Evidence heard in Public

Questions 108 - 145

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Present

Dear, L
Garden of Frognal, B
Harrison, L
Hodgson of Astley Abbots, L
Jopling, L (Chairman)
Marlesford, L
Mawson, L
Teverson, L

Memoranda submitted by Professor Juliet Lodge and Professor Didier Bigo

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, 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 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 that, and trying to establish that there should be an approach towards this justice and home affairs communication technology which is 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, and also to 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 a notion of information and it has not the same meaning in logic, 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. I think here we certainly have to have more precision again to the people, especially when you have analysts on one side and European police officers on the other side. The third element is: who is entering this information into the system and for what purpose? It is as crucial as the information itself. The (?) 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 share exactly the way that what they receive as relevant information. 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 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, it is the case at the national level that it exists in any case, so I am not saying that it is bad to have struggles, 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, for example, on counterfeiting the euro, where we finally found an agreement between OLAF and Europol which have good claims, both agencies, on the 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 we 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, it is a level of current information, and you have a lot of analysts with not so many work files, but, as we did not have of course access to the 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 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 it. Because of the large amount of information, you need to have expert software, and sometimes maybe the human mind could be just as efficient as some expert software, and also to replace human beings by so-called 'advanced technology', which

may cost a lot of money, efficiency will not be the result, 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 go on Europol, Eurojust, Frontex and to have not only their formal agreement, but interviews with the people inside both at the headquarters and at some Member State levels. For the moment, that is why the mapping is 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 whole 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. Now, 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, in 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 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 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 we are saying really 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 on ad hoc information 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. Maybe it is also a strategy of seniority to go on the ad hoc information system in a way to restrict the others with some level of intelligence or information you want, so maybe it is not just that it is because of efficiency and speed, but also because it is a

Q118 Lord Hodgson of Astley Abbotts: Could I just come back to mutual trust, and you used 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 information 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 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: In my view, it is really correct, that point, and it is a central point, perhaps to come back to the previous question, each time we have information to know who has given the information, and at the time of Euro football, I have proposed about four years ago a kind of yellow card. 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 to diminish their ranking of valuable information and then, not immediately, but in the future, they will think twice about sending 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, 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 identifying that they 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 participating 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, and that then again would lead to other training of personnel as well, and it is not just the inclusion of those (?). 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 that 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 prosecutors. 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, *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!

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 and presumably that would provide the answer and is that what you think is the 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, if Frontex, which is on the first pillar, has more and more capacity about policing and surveillance, even with the future of Frontex, some capacity which is going even 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. I have kept that very brief, but of course we can develop more than that the capacity of the different organisations, but I have just one word on the relationship between Europol and Sitcen, it is clearly something central to ask, and that is that 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 and 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 improbability, 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 are having 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, it can very easily become a way by which certain States start to initiate investigating roles which have implications for strategy and the political leadership, and the 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, I think, 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 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, so 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

much 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 you want 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 is police orientated. It will also correlate with the *corpus juris*, creating a legal base on Euro crime than the European prosecutor, but we know that Europol has evolved along different lines, especially with the influence of those Schengen magistrates and with the success of mutual recognition as a model for This intergovernmental trend has been welcomed by some member states (and I see us as one of them) for Europol taking too much autonomy from the international security agencies for good reason, but it 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) the auxiliary of Europol than the reverse. Eurojust is on prosecution, and it has created the (?) in the idea of justice in Europe especially if we look at the rights that occur at EU level and the place of magistrates coming from the good, inter-function of Eurojust. Judges are sovereign in European courts but they are not in Eurojust. Maybe if they were involved in the earlier routine of policing through investigations - 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 DGXI, which is Justice, Freedom

and Security. That is not the way national governments function, and therefore you have 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 may be to discuss a little bit more about that and to see if a solution cannot be there, lying at the heart of the organisation, and to reframe the legal bit of the organisation would have many effects on the new balance between the two.

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 thinking 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 the conception 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, constriction 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 in time 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 a symmetry of relation 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 (?) of their data, they say it is legitimate to commerce, as I am sure you know, but there is a rider to that when one is talking about accountability, and 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 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 submitted by Tim Wilson and Robin Williams

Examination of Witnesses

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 super-national 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 criminal activity that is out there. I think this is a case where the statistics are awful. One can never rely on chronological criminal justice data as giving you 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 there, and I think that while you have discussed organised and serious crime quite a lot so far in your proceedings, I think that one must put a lot of emphasis on continuing Europol's facilitation of bilateral and multilateral exchanges between forces, 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. I think that 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 parliament 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 parliaments 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 issues 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 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 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. 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, where I think the majority of Europol's more operational activity (the

work of 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.

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 the awful statistics, but we do need to have some idea of what is happening out there, and that 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 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 special basis.

Q139 Lord Hodgson of Astley Abbotts: 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 were addressed, whether we have got past the pilot stage, and perhaps also, if this 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 John Dickinson, as you will remember, and 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 he 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 database. 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 be seen 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 Peter Lewis on the Dutch disk 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 standard 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 for the full 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. That is where the single national point, I think, is important because at both points, if everyone is talking about automated systems, one has got a forensic scientist who is giving advice on the basis of a fairly good knowledge of the countries one is dealing with about the quality and reliability of the DNA system used, including issues such as the quality of forensic material 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 NLs will match. 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. I think that will work in an approved 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”; 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 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 in 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, machines are coming out with a list of (?) measures. I think they provide 10. At the same time, within the 24/7 fingerprint bureau within Scotland Yard, there is a team of

people checking the matches visually to ensure that the machine has got it right. 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 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 Mumbai; it asks 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 storage. If you are weeding records for various purposes there is always the risk that you may be missing 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 rules 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 and you are looking at 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 the (?) 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 arrests 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.

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 there 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, to the 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 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 kind of 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 funding. 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 between 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 incident of the exchequer audit, (?), recognising that that piece of legislation changed nominal control by parliament over money to practical control over money. Increasingly the information held by agencies is a vital feature 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 bureaucrats 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.