

HOUSE OF LORDS  
MINUTES OF EVIDENCE  
TAKEN BEFORE  
THE SELECT COMMITTEE ON THE EUROPEAN UNION  
(SUB-COMMITTEE F)

UKRep, 10 avenue d'Auderghem, Brussels

**INQUIRY INTO EUROPOL**

WEDNESDAY 25 JUNE 2008

PROFESSOR GILLES DE KERCHOVE

Evidence heard in Public

Questions 343 – 360

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WEDNESDAY 25 JUNE 2008

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Present

Garden of Frogmal, B.  
Jopling, L. (Chairman)  
Marlesford, L.  
Mawson, L.  
Young of Norwood Green, L.

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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 small unit within the General Secretariat of the Council which collects strategic intelligence from the Internal/External Security Service, the

Intelligence Service, open sources, military intelligence, so the process itself has some merit because it puts people around the table and they 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 informed, that the European Parliament and national parliaments get a collective assessment on the threats in the field of terrorism. 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 we are developing policies and adopting legislation which may affect freedoms and in this respect we need 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 specific committee in the European Parliament for Justice and Home Affairs, I decided to explain how we saw the threats and there were mixed feelings in my institution. I felt it was a good decision because that was important and I think it is one of the topics you may raise. It is important, as I said, to explain the real nature of the threat. On the plane coming here from Istanbul I was reading quite an interesting study produced by a Canadian university on the threat to human security, and the main message of the paper was that it seems that the threat is declining in respect to Islamic extremist terrorism in terms of fatalities. It seems that the discourse in the paper was not the US approach because they were including people killed in Iraq whom you normally would not call victims of terrorism as such, so 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 legislation definition of terrorism

can stand trials to a certain extent because in some cases, for example, a country I know a bit more, 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 agree. There the intelligence community has something to say as well because they do not reveal everything. It does not exhaust the assessment of the threat, I do agree with you, but it gives you some figures and you have to start with something and that is a sign to a certain extent.

**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, okay, 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 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 possible attack 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. It is a bit more theoretical there but on the other hand they belong to the same free movement Schengen area and they have possible targets. They all have an American embassy. They may have cells hidden somewhere. It is important to ensure that they realise 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 we have designed all the proper policies on that but during the UK Presidency we 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 we have started designing procedures to help Member States react. It is 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 less probably 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 the Decision in 2005 which obliges Member States to provide systemically to Europol and Eurojust all information related to Europol investigations and Eurojust prosecutions 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, and I do not know if you have received a copy that I submitted two weeks ago to the Council, 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 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, 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 two cases, in one 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, that they had hired an analyst 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 more 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 that Eurojust may undertake some work on its own initiative based on information it receives from Europol. That requires that there be a clear 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 per cent 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 on both sides building a bridge between the two. 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, but it just reflects some difficulties or some competition, you may call it, between traditionally on the Continent (it is less the case in your country because the system is slightly different) the ministries of interior and the ministries of justice, which is a bit surprising. I said in a recent speech at Eurojust where all the terrorist focal points were meeting, “It is not your country”, and it is a bit surprising because in fact the objection came (and still comes)

from a country where the prosecutors and the investigative magistrates are almost 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 compromise in April was, I think, because the Council was in a hurry to agree on the Europol Decision and we were due to have it adopted formally before the entry into force of the Lisbon Treaty, so they were a bit scared that if we opened that box it would procrastinate the adoption of the Europol Decision. Therefore, they left the text unchanged but the conclusions were adopted by the Council asking the two agencies to report by the end of this year and propose amendments to the 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 in the future. It is not only about Eurojust getting access to the Analysis Work Files of Europol. On the other hand Eurojust should provide Europol with all the information they receive and feed 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 function to find, cases where they work together. With some colleagues in Washington we were looking for cases where the two, with the Americans, could work together in the field of terrorism and 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 I think the FBI as well but mainly the Pentagon, 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 if 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 sad that that has not been decided. I do not know if it is still possible but 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 I was close to the Presidency. It was the Belgian Presidency and I did my best to push the intelligence community to come closer to the EU decision-making process. They set up at the time a specific group called the Counter-Terrorist Group (CTG), which is a sort of 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. I think 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. Nowhere is it said that it is only the police as such. The security services, MI5 or the ST 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, and it is a platform where security services, intelligence services, customs, police, prosecutors, share information related to counter-terrorism. We organised with the Spanish government a meeting in Madrid to have these different platforms trying to work together, in the first phase not on an operational basis but on a strategy information basis. They have a lot to learn from each other because this topic is so sophisticated that they can 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 more and more that they do not see the overall picture where the European Union wants to go and where they 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 to define all the elements of an EU policy in the field. The feeling so far was a bit that we were proceeding step by step like slices of salami and we did not provide the Parliament with a strong vision of where we wanted to go and where we wanted to stop. We 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, 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 not setting up (because it was a group which did work in the past) but 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 was 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 indefinite 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. It cannot participate in a joint investigation team. 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 they have to be involved as often as possible, for 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, I think there should be something like between ten and 20. The Spaniards and the French have created more than ten in the field of terrorism but on ETA terrorism I think they do not see why Europol should be involved, and I can understand that; it is mainly these two countries, but they have one on PKK, I think, between France and Germany. I think Europol should be on this joint investigation team. I do not know if the UK has set up many joint investigation teams and if so whether they have 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.