

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

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INQUIRY INTO EUROPOL

WEDNESDAY 25 JUNE 2008

MRS ISABELLE PERIGNON, MR FABIO MARINI, MR DICK HEIMANS
and MRS VICTORIA AMICI

Evidence heard in Public

Questions 227 – 268

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WEDNESDAY 25 JUNE 2008

Present

Dear, L.
Garden of Frognal, B.
Harrison, L.
Jopling, L. (Chairman)
Marlesford, L.
Mawson, L.
Young of Norwood Green, L.

Witnesses: **Mrs Isabelle Pérignon**, Head of Sector, **Mr Fabio Marini**, Deputy Head of Unit, **Mr Dick Heimans**, Head of Sector for Counter-Terrorism, and **Mrs Victoria Amici**, Desk Officer in charge of Europol, European Commission, examined.

Q227 Chairman: Thank you for coming and thank you for bringing your colleagues with you. You will, I am sure, have been told that this is a part of the Sub-Committee which covers what we call Home Affairs. It is a Sub-Committee of our European Committee, of which there are several Sub-Committees covering a whole range of issues. This Committee is conducting an inquiry on Europol. We have come this morning from Den Haag after spending yesterday talking to officials in Europol and Eurojust. We have a good many questions which have arisen both from the written evidence we have received, from the evidence we had orally yesterday, and also, of course, from various witnesses who have appeared before us in London over the last few weeks. I wonder in the broader sense if you could explain to us how the budget management procedures of the Council Decision will change in future the governance of Europol.

Mr Marini: My Lord Chairman, first of all I would like to thank you for inviting us to this hearing today. My name is Fabio Marini. I am the Deputy Head of Unit in the Fight Against Organised Crime, Police and Customs Co-operation. I am here today with a few colleagues

who are involved in the Europol dossier and I would like to introduce them. Mrs Isabelle Pérignon is the Head of Sector for Police and Customs Co-operation and has followed since September last year the discussion in the Council on the Europol Decision. Dick Heimans is Head of Sector for Counter-Terrorism who drafted the Commission proposal transforming Europol into an agency, which was adopted in 2006. Mrs Victoria Amici is the Principal Administrator in charge of the Europol file following the implementation measures that need to be adopted by 2010. Coming to your first question, Europol, by becoming a new agency, will adhere to the financial and budgetary legislative framework applicable to EU institutions and Community borders. Europol will have to comply *inter alia* with the rules for the establishment and implementation of the budget at EU level. The principles laid down in the financial regulation represent safeguards towards increased coherence and accountability and participation. We would also like to underline two of the budgetary principles governing the financial regulation, on the one hand the principle of sound financial management which requires effective and efficient internal control, and on the other hand the principle of transparency. A practical example of the application of this principle is the obligation to publish the annual accounts in the official journal of the European Union. The EU budget procedure has two immediately significant consequences, first of all, the involvement of two branches of the budget authorities, the Council and the European Parliament, in the adoption of Europol's budget which increases its accountability and transparency, and, secondly, the obligation to submit an annual activity report. This will make Europol more open and accountable to European citizens. The annual activity report will be endorsed by the Council and transmitted to the European Parliament and the annual accounts will be scrutinised by the Court of Auditors and published. Finally, it is the European Parliament which is responsible for granting the discharge to the Director.

Q228 Chairman: Thank you. Can I add to that? It has been suggested to us over our inquiry that the Commission has only limited competence to co-ordinate policy implementation in the area of justice and home affairs. I wonder if you would like to comment on this. If there is this gap in the Commission's competence what are you doing to try to correct that situation by changing the arrangements which exist at the moment?

Mr Marini: Talking about the limited competence, the Commission generally speaking works with Member States in developing policies, of course, and we try to negotiate our proposals every day by ad hoc meetings with representatives of Member States based also on the public/private partnership, and we try to have common concerns in developing these policies.

Q229 Chairman: Sorry – I am not talking about the agreement of Member States. I am talking about the whole rules which govern the activities of the Commission. It has been suggested to us that there is a gap in what you are competent to do under the arrangements which are laid down. Our specialist adviser reminds me that this came from a witness that we heard yesterday who suggested that the implementation of policy in the Third Pillar was something for which the Commission was bravely trying to carry out work in that area but had limited powers to co-ordinate the various actors on the Third Pillar scene.

Mr Marini: I have not understood your question very well. Do you mean in the sense of the Treaty of Lisbon or in the future? Could you be more precise?

Q230 Chairman: The question related to the situation now in terms of the expression of policy at Council level and how policy can be translated into co-ordinated action within the Third Pillar and the role of the Commission in trying to facilitate that translation of policy into implemented activity.

Mr Marini: As I said in my previous answer, we have a sort of facilitator role. A facilitator role means trying to organise ideas and pushing, in co-operation with Member States, possible initiatives to develop specific issues in the Third Pillar, in the police co-operation field, for example. Of course, in the current situation we have, as you know, limited powers. A framework decision, for example, is a useful legal tool but the problem in comparison with what our colleagues in the First Pillar feel they can do with a country is that we do not implement this regulation. We have only limited powers in the sense that we can make a report to Member States on the implementation of this. We are confident that in the future in a different legal scenario we could improve our activities.

Q231 Lord Harrison: I suppose the question in a novel way is, are there things that you would like to do in the present position that you feel frustrated from doing because of the limited competence?

Mr Marini: We cannot say “frustrated”. Even if we do not have infringement procedures we try to cope with the situation, as I said. We try to develop our ideas in co-operation with Member States rather than impose them because, of course, we do not have any power to impose them. The key to being successful, I think, is to start a discussion from the beginning on a specific issue with representatives of Member States developing ideas, for example, to judge how to develop best practice in different scenarios, to have a clear view of the situation in the different areas of competence and to act as facilitators of national needs. This is what we can do now and this is, I would say, our first course in our activities.

Q232 Chairman: I think we must get on. I realise that I have jumped this question on you and maybe you would like to ponder and reflect on the question and then perhaps in the next week or so we could further enlarge on what we are talking about and **you could write to us**

within the next month if you would so that you can think a little more about what the problem is.

Mr Marini: Of course.

Q233 Lord Dear: Can I continue the thrust on the budgets? We all appreciate that every organisation that spends money has to have very sound financial management. That goes across the globe. I wondered if you had a view about Europol's planning documents, whether you think they are appropriate and proper for the purpose of working up their budget. In other words, can they work out a proper budget given the constraints and the procedures that they have to work by?

Mr Marini: In talking about the present situation it should be noted that so far Member States have evaluated Europol's current planning documents, for example, the year plan, the annual budget and the accounts, after these documents have each time been discussed and adopted by the Council, but in becoming an EU agency Europol will have to comply with and also benefit from the provisions of the financial and budgetary frameworks which are applicable to all EU bodies. We consider that the documents foreseen by the different legal instruments governing the budgetary management applicable, as I say, to all EU budgets and which Europol would have to comply with are appropriate means for giving a reasonable assessment of the budget in accordance with the budget principles as I mentioned before. An accounting officer function will also be created within the agency building in the spirit of the existing financial counsellor.

Q234 Lord Dear: The reason we ask the question is that there has been some suggestion that the budget is inadequate, and maybe you will comment on that, but, of course, everyone wants more money and one appreciates that, and, secondly, in particular the procedures that have to be followed in order to construct the budget before you even spend the money are not

really suited to an organisation like Europol which has unusual demands. I wondered if you were satisfied with the procedures as they exist or whether you see them being changed in some way in the future, not necessarily to spend more but to manage the budget better.

Mr Marini: Talking about the additional resources to Europol, for example, the European Parliament can grant additional resources to Europol, but within the total amount of the chapter. The European Parliament can also put credits in reserve pending fulfilment of the additional conditions. This is also important.

Mrs Pérignon: We need to make a clear distinction between what is the situation today without any Community financing and what will be the situation when Europol becomes an agency as of 1 January 2010, and that is one of the reasons why the Commission decided to draft the proposals. Then the role of the Parliament will be increased and there will be the possibility to grant additional money to Europol. For example, the Commission has already planned in its financial perspectives to increase the budget, so in 2010 we will have €82 million available to Europol and then it increases every year, in 2011 to 83 million, and then to €84 million and €85 million, so the Commission can propose additional money in comparison to what is the situation today with €64 million. Then, of course, the Parliament, as Fabio Marini has told you, can increase this envelope, taking into account that it needs to respect the given envelope, but it can increase this amount and we think that it will be beneficial to Europol as an organisation.

Q235 Lord Dear: I am grateful to you for that. That deals with whether the money is adequate in total, but I am also interested, and perhaps you can help me with this as well, in not only the total amount, which may well grow in future, but also in whether the budgetary management mechanisms within that sum, today or later, are proper to help an organisation like Europol to grow. You have got the money on the one hand, the total. Put that to one side. You have then got the mechanisms in which you allocate the money and then spend it

within any budget and I wondered if you thought that mechanism was appropriate for Europol or whether it should be changed.

Mrs Pérignon: For us today the Commission is not in a position to judge the situation that existed in the past because it is the Member States, as you know, who discuss and then decide, and so far they have not changed anything and we have never heard about any complaint when it was discussed in the Council about anything that should be changed.

Q236 Lord Dear: Nothing has come from the Management Board of Europol to you, because it is really the Management Board's function to lay the money out and spend the money within Europol?

Mrs Pérignon: Yes, exactly.

Q237 Lord Dear: They have not made any representation to you?

Mrs Pérignon: As you know, the Commission is only an observer to this Management Board, and on this Management Board you also have the financial controller who has a key function because he checks the validity of all the financial decisions which are made by the Management Board, but once this decision is taken by the Management Board the final decision is presented to the Council, and so far we have never heard about that.

Mr Heimans: I want to add one additional element perhaps that may not yet be clear, and that is the fact that even in the current situation Europol is working to a financial regulation which is very close to the financial regulation of the European Union, so in regard to the actual conditions for spending the money in terms of procurement, allocated money, the rules are not going to be all that different. In the past we have not had any problems at Europol that I have heard of in terms of spending the money for the new operational task, if that is your concern, that the procedures will stand in the way of quickly and adequately allocating resources.

Q238 Lord Mawson: Can I add to what Lord Dear was saying? It seems to me one would only want to put more money into an organisation that was effective in what it was doing, and what you need to be very sure about is that it is being effective. One of the things we are picking up (or I am picking up) is that the governance of the organisation is particularly difficult because of the constant demand for innovation in the services delivered, but the organisation is divided into these rigid vertical structures and the relationship between the Management Board and the Director is difficult. If that is true can such an organisation engage efficiently with the modern world we now live in when there is a need for innovation and being fleet of foot and where it is pretty essential to do that? What needs to be done to modernise this organisation so that when you put the money in it is effectively used and delivers something at the end?

Mrs Pérignon: In the draft Council Decision on which we had the political agreement, as you know, on 18 April, there are some changes which are very important concerning the Management Board structure. There are also, as my colleagues have said, all the new budgetary procedures that will be applicable in the future. As for us, we are in a difficult position now to tell you exactly if there are any difficulties with the Management Board and the Director and it is one of the questions I am sure you can ask this afternoon to the Chairman of the Management Board.

Chairman: It does seem to me that in the answer you gave a few seconds ago you did graphically illustrate the limited competence I was talking about a few minutes earlier.

Q239 Lord Dear: I think we are already halfway to the question I was going to pose to you, which is, moving away from the totality of the budget which we have explored with you and the way in which the budget is managed once it gets into Europol, I wonder if you consider that the Commission itself has got any role at all in setting the objectives of any of the agencies, particularly Eurojust and Europol. We are particularly interested in Europol but

there is a liaison with Eurojust. The setting and measuring of objectives in detail will obviously flow down through the Management Board and into Europol or Eurojust, but I wonder if you see a role for yourself. Should the role you have at the moment be enhanced? Should you not have such a great role? It would help us to understand your thinking on that issue as well. Do I make myself clear?

Mrs Pérignon: Yes. Your question is in fact two-fold because first of all there is the objectives issue and then the measurement of the indicators. As you know, the objectives of the agencies are determined in the legal basis of the different agencies and so the legal basis is adopted by the Council and then the Parliament when we have co-decision, and in the case of the proposal for a Council Decision on Europol Article 3 of the draft Council Decision sets out the objectives clearly and it was something that was discussed in the Council. Generally, in fact, Europol is considered as a regulatory agency and it falls into the category of agencies fulfilling operational activities. These agencies are normally managed by a management board, as we have in Europol, which is responsible for adopting the Annual Work Programme, and the work programme has to respect the legal framework which is also set out in the legal basis, ie, the draft Council Decision, so the Commission must give an opinion on the work programme prior to its adoption by the Management Board and that is exactly the case we have with Europol. According to Article 37(10)(b) of the draft Council Decision the Management Board prepares the Annual Work Programme where it sets objectives and then before adopting it the Commission must give an opinion on it. Concerning the evaluation during which the results are measured the legal basis, so also the Council Decision, determines how we can evaluate the work of the agencies. Here again there is no fixed rule so we have differences between the agencies in the Union. It depends on the agency but the agency has the possibility to launch its own evaluation or it is launched by the Commission with or without the help of an external evaluator. In general terms there is always an

obligation for agencies which are financed through Community funding to be evaluated at regular periods and this is determined by our financial regulation. In the specific case of Europol you can see that in Article 37(11) it provides that within four years of the date of application of this Decision there will be an evaluation and thereafter every four years. Every four years we will have an evaluation and the Management Board will show the Commission an independent external evaluation. That is something that was decided during the discussions in the Council, that it should be external, so then we carefully analyse how we can evaluate Europol activities. It is also important to note that in the draft Council Decision we have Article 38(4) which says that the Director of Europol shall be responsible for establishing and implementing, in co-operation with the Management Board, an effective and efficient monitoring and evaluation procedure relating to Europol's performance in terms of the achievement of its objectives – that is the wording of Article 38 – and the Director shall report regularly to the Management Board on the results of that monitoring. Therefore, since the Commission will be a full member of the Management Board as of 1 January 2010, which is not the case today because we are only an observer, we will have one voting right. Then the Commission will have the possibility of saying a word on this monitoring and evaluation procedure. Finally, I would like to insist on the fact that Europol is one of the agencies we have in this field of JHA issues but we also have other agencies. Altogether throughout the Commission we have 26 agencies and the Commission is now in the process of evaluating these agencies. The Commission published in March this year a communication explaining what the different agencies are and what types of agency they are, and it will be followed by an evaluation which will be launched at the end of this year/beginning of next year, and we will have the results in 2009/2010, evaluating all the evaluations of the different agencies. We are already in the process of analysing the differences between these evaluations because we have already what we call a meta-study survey, which is a survey on all the different

systems of evaluation. It will be a first assessment and we expect the results by the end of this year.

Q240 Lord Dear: That is very helpful. One final question, which I suppose goes to the root of everything you said. Theoretically, if you were to find that one of the agencies – Europol or any of the others – was not performing in a way that satisfied you would you be able in the new procedure, as it were, to reach into that and effect change? To evaluate is one thing. To do something with the evaluation means that you have the power to react. Would you have such a power?

Mrs Pérignon: Thank you for your very interesting question. Indeed, that is something we could raise because we are, for example, for Europol and other agencies part of the Management Board, so that is something we could raise in the Management Board and discuss with other members. That is also something that we can then discuss at the level of the Member States and ultimately the Commission has the power to initiate and propose legislation, so we also have the possibility to adopt an amending legislation if it helps to improve and change.

Q241 Lord Mawson: Can I ask how long that is all going to take because we are living in a very fast-moving world here?

Mrs Pérignon: I cannot pre-judge how long the discussions with the Member States will take but, of course, as you know, it is something that is not incumbent on the Commission. It is something that needs to be discussed with the Member States and if Member States consider that there is the necessity to respond quickly then I hope they will act in the same way.

Lord Harrison: I think the Committee is experiencing some difficulty, and if I ask myself what it is, I think it is this. To most of the questions that have been put to you this morning you have described the situation in terms of documents presented and so on. We also

understand that until 2010 you have no active role, no voting role, but what we would find valuable is to get some sense from you, even in that status as observer, of what you observe and say about the various questions that are being put to you, whether it is the one on the sound financial management or another. Do you have any views, even though you may not be in a position particularly to intervene and say? It is the purpose and right and proper business of the Commission to look hard and say, "Is this right?", and, "Is that right?". We are not getting a sense from you of whether you think this evolving process is going to be beneficial in the long run and that you welcome not what is happening but the process, the road, that has been embarked upon by, in this case, Europol and others. We would like some opinions from you, not just the law.

Q242 Chairman: This is a fundamental question which is concerning all of us. I do hope that you will be able to elaborate on what Lord Harrison has asked you. If I can put it as well in this way, in the experience you have had so far, because so many of you are involved with Europol in one way or another, and Victoria Amici is, as I understand it, the desk officer in charge of Europol, in your observations of Europol up to this point where are the areas where you think there might be the need for change? That is what we are after knowing. It is a fundamental question, quite frankly. If I can be very rude, if you do not know, if you do not mind my saying, we think you ought to know.

Mr Heimans: Can I try and give you some first elements of response but maybe my colleagues will add to this? The first thing to realise is that obviously we are civil servants here. We are not here to give political judgments on the organisation.

Q243 Chairman: We are not asking for that.

Mr Heimand: If you are asking us what have we observed at Europol and we have responded, I think history shows what we have done. We have looked at the situation as it

was, we have co-operated quite closely with the Austrian Presidency, for example, to try to find ways of improving Europol that would meet the consent of the Member States. These are the limits of the role that we have and we have, I think, succeeded in putting forward a proposal which means that there is more flexibility for the legal basis of Europol, so that if there is an issue that has been noted by the Member States there can be quicker action at the level of legislation. We have said we feel that the mandate of Europol is too limited because it is only limited to organised crime at this stage. We think that it should be all serious crime, which is a very important point to make. If there is a killer who operates in different Member States of the European Union but he operates by himself it should be Europol which should be able to analyse the situation and give advice to the Member States authorities, and, thirdly, we said that Europol should be more operational. There was a request from the Member States that Europol should be more involved in the actual police work. It should not be strategic; it should be operational work that they are involved in. At the same time Member States told us that Europol officials should not go out and arrest people all across Europe, so how do you make an organisation more operational? You focus on its main characteristics, which are the exchange of information, the support of the exchange of information and the central analysis of that information. I think that in all these key areas the proposal which has been put forward by the Commission has made some significant changes.

Q244 Lord Marlesford: What are your views on the future co-ordination of Europol and Eurojust? I would like you please to put the arguments in favour of them getting closer together and the arguments against that.

Mrs Pérignon: I am pleased to tell you that the Commission supports the idea of improving the co-operation between Europol and Eurojust and we work on the adoption of a statement concerning the co-operation between the two which was adopted at the JHA Council on 5 June in Luxembourg. In this statement the Council urged Europol and Eurojust to prepare

amendments to the co-operation agreement that they signed in 2004. They are supposed to prepare by the end of this amendments to this co-operation agreement, so it has to announce the mutual exchange of information necessary for the achievements of the tasks of both Eurojust and Europol. These amendments will be done without changing the legal framework, so there will not be any change to the draft Council Decision that we adopted in the political agreement in April and there will not be any changes to the Europol Decision that is now being discussed in the Council, as you know, to be adopted by the end of this year. The Council also agreed at the beginning of June that a task force would be set up by the Presidency under the responsibility of the Presidency to assist Europol and Eurojust in preparing amendments to this co-operation agreement. The Commission will be part of this task force and we will therefore contribute to the work of the task force. Since the signature of this co-operation agreement of 2004, which allows the exchange of personal data, both organisations have improved their links and, as you know because you visited Eurojust and you met Mr Jose Luis Lopes da Mota, they have worked together to establish a manual, for example, on the joint investigation teams. They have drafted a practical manual to help the practitioners in this field and Eurojust is so far associated with six Analysis Work Files. There was also a secure communication line which was signed in June 2007 to help improve this co-operation. We are pleased to see that there will be improvements in the co-ordination between Eurojust and Europol. We are planning to participate in the task force and elaborate on ideas about how to improve the situation. The Commission is also trying to co-ordinate the action between Europol and Eurojust by playing a role in the EU JHA heads of agencies, so every year – and now it is the third year and there was a meeting last week – the heads of agencies in the JHA fields, that is, CEPOL, Eurojust, Europol, Frontex, meet and exchange best practice and ideas on how to improve relations among them and the Commission supports such initiatives so that we can really see how they can better co-operate together and

exchange best practice. In summary, we consider that there are ways in which we could improve this co-operation and we will do our utmost to facilitate these improvements.

Q245 Lord Marlesford: But they are separate organisations and there is an argument presumably for them remaining such and an argument in favour of them getting closer together. What I am trying to get from you is your thinking as to the limiting factors of both those sides of the argument – the argument in favour of them getting closer and equally the need for them to remain separate and the reasons for that. It is very helpful to know what is actually happening and how it has all been handled administratively but it is really your thinking that I am after.

Mrs Pérignon: Because you have the police co-operation side with Europol and the judicial co-operation side with Eurojust it makes sense that they try together to collaborate and co-operate as much as possible.

Q246 Lord Harrison: Yes, but what is your opinion? Can I dive into this most simple of questions that Lord Marlesford is pursuing? We understood from the organisations involved that Eurojust was sent to set up at The Hague. It was separated physically from Europol. Europol itself is now moving into new premises and we understand that Eurojust will move but will still be separated by something like 200 metres. We heard of the virtues of Europol and Eurojust being co-located, brought under the same roof, not only in terms of security but also in terms of the fact that they will be talking to each other on a regular basis. Do you, the Commission, have an opinion on that? Would you favour and press for the co-location or, in giving an answer to Lord Marlesford, are there theoretical and practical reasons for making sure that the two remain wholly independent and separated? What we would like you to do as observers of the scene is give a view on this.

Mrs Pérignon: For the Commission it is really important that they both work together and we always favour the fact that they should be located at the same place. As they might have explained to you, they are having difficulties with the housing but it is important that they try to the best extent possible to be physically at the same place. In any case, and on all the aspects, technically and politically, the Commission really favours the fact that they should work together.

Q247 Lord Dear: Sorry – I missed that: they should not work together or they should?

Mrs Pérignon: They should work together. We really favour this.

Chairman: I am concerned that the clock is working against us and we have a lot more questions to ask. You do not seem to be prepared to give any more opinions on this so the only thing is to move on.

Q248 Baroness Garden of Frognal: This is a factual question. In June 2006 the Commission discussed evaluation of EU policies on Freedom, Security and Justice and proposed to agree contact points in the Member States to facilitate dialogue with the Commission. Have these contact points ever been set up? If so, who is the contact point in the UK, because we do not seem to be aware of that in the evidence we have seen?

Mrs Pérignon: As you just mentioned, the Commission adopted a communication on the evaluation of the policies in the JHA field in 2006, and there was then a dialogue between the Commission and the Council in order to identify the best way to set up this evaluation mechanism. The Commission organised a conference in October 2006 and all these actors were sitting together and taking part. In the conference we identified precisely what could be the indicators of the evaluation, how we could make available statistics and data, et cetera. Then the Justice and Home Affairs Council in December 2006 acknowledged the need to improve the existing individual evaluation mechanisms and they decided to have further

discussions in the working group in the Council, and that was what was done all throughout the year 2007.

Q249 Baroness Garden of Frognal: And the contact points?

Mrs Pérignon: Despite the extensive consultations we had with all the stakeholders and all the discussions we had, the process for implementing the evaluation mechanisms has been slower than expected and the group of national contact points has not yet been set up and these contact points have never been communicated by the Member States.

Q250 Baroness Garden of Frognal: Do you envisage them being set up or are you suggesting that the barriers are so great for the Member States that we are unlikely to get these contact points set up?

Mrs Pérignon: It seems that discussions need to continue before the Member States will agree on establishing these contact points.

Q251 Chairman: Which are the countries which are being difficult about this?

Mrs Pérignon: For this I have no idea. I can consult my experts and give the answer in writing.

Q252 Chairman: Will you write to us?

Mrs Pérignon: Yes.

Q253 Baroness Garden of Frognal: My other question you have covered in previous answers but perhaps I could specifically ask you how would the Commission suggest measuring the impact of the new Council Decision on Europol? You did talk about evaluation and measurement in a previous answer. In what you have already said does that

cover the impact of the new Council Decision? Is there anything else you like to add to add to that?

Mr Marini: In the impact assessment which has accompanied the proposal for the Council Decision the Commission has explained how the impacts of the proposal should be assessed. According to the results, the impacts of the proposal after implementation will be monitored and evaluated on a continuous basis, mainly by Europol's Management Board but also by the Council, the Commission and the European Parliament. In addition the proposal specifies that the Director will establish a monitoring system in order to collect indicators of the effectiveness and efficiency of the duties performed within Europol. This is according to the impact assessment. This monitoring system should provide Europol with the necessary data for carrying out the evaluation. This will be done under the responsibility of the Director of Europol. As mentioned earlier, according to the draft Council Decision we provide that within four years of the date of application of the Decision, so 2014 and every four years thereafter, the Management Board shall commission an independent evaluation of the implementation of the Decision and the activity carried out by Europol. Meanwhile, the results of the study commissioned by the Commission in 2009 for an evaluation of the regulatory agencies we hope will be available in 2010. We contribute to the ongoing debate on the future of the Community agency system. At the time the Commission will benefit from the experience gained by evaluating the other agencies to better define its major indicators.

Q254 Lord Young of Norwood Green: Director, in July 2007 the Commission reported on the implementation of The Hague Programme for 2006 and provided an institutional scoreboard. It showed that the Commission working paper on criminal intelligence-led law enforcement, originally planned for 2005, had to be delayed, possibly to 2008 or 2009. What was the cause of the delay, and am I right in assuming that you are writing the paper now?

Are you halfway through it? What was the cause of the delay and when do you expect to start writing the paper, as my earlier question has evoked some humour?

Mr Marini: In fact, the Commission considers it premature to issue this working paper. According to the Commission it is necessary first to have an in-depth analysis of the Decision and explore the possibilities to be developed by Member States. In order to develop this brainstorming the Commission specifically included criminal intelligence-led law enforcement within the priorities of our financial programme. We have a financial programme for the fight against crime and in introducing this programme in 2007 and 2008 we provided special funds to develop this brainstorming. Unfortunately, so far no Member State has applied for these funds. So far Member States have not given much support to the idea of criminal intelligence-led law enforcement as the subject of the fifth mutual round of inspections organised by the Council. As I said, it seems premature to work on these issues but it is also true that a revised OCTA prepared by Europol can be considered as a step towards this direction. For the moment Member States consider that they need time for a more in-depth analysis. This is the reason for the delay.

Q255 Lord Young of Norwood Green: As I understood it, and maybe I have misunderstood, I thought the UK and the Dutch were keen on intelligence-led criminal investigation.

Mr Marini: That is correct. I would say something else, that in practical terms from an operational point of view this intelligence-led law enforcement system can be considered to be already in place in some Member States, practically speaking. There is something else to say with regard to the theoretical approach to this policy. It is true that some Member States are really keen to develop this, and you mentioned the UK and the Netherlands which are really in favour of this, but so far it has not been the case for the rest. That is the problem that

we have to manage for the moment. That is why we put these special funds in our financial programme, to develop this brainstorming.

Q256 Lord Young of Norwood Green: So you have the special funds but nobody is using them?

Mr Marini: No, for the simple reason that Member States did not apply for them. Nobody has submitted an application.

Q257 Lord Young of Norwood Green: Are you in favour of intelligence-led law enforcement?

Mr Marini: We should consider the situation at the general level, at EU level. For the moment this is a minority. It is a really restricted number of countries which are in favour. Even if I said that from an operational point of view we can say that this is in place, it is different to pass from the operational organisation in some Member States to the theoretical approach to intelligence-led law enforcement. That is the problem that we have to face now. In principle we could develop this, of course, with the consensus of the others.

Q258 Chairman: I am not clear what the reasons are that those who are blocking this are giving for not wanting to go down this path. In terms of law enforcement what arguments do they pursue?

Mr Marini: In our understanding at least there is no specific reason to be against this. If you ask Member States nobody will tell you they are against this idea. What I said was that it is a little bit premature to issue this working document for the reason that this sort of brainstorming has not been sufficiently developed at EU level. The most important reason for this is the lack of involvement of the other Member States even if, as I said, from a practical point of view in some Member States (more than the UK and the Netherlands) this is an

operational practice; that is clear, but it is difficult. We do not have so far sufficient argument to develop this working document. That was the reason, basically.

Q259 Chairman: I am sorry; you have not answered my question. You keep using this word “premature”. That is not an argument, frankly. Why do those countries which are blocking say it is premature?

Mr Marini: Exactly.

Q260 Chairman: Why?

Mr Marini: Because in principle, for example, in the Council in the discussion -----

Q261 Chairman: If you do not mind my interrupting, I was President at one time of the Agriculture Council for the British Presidency. If a delegate had come along and said, “I do not want this because it is premature”, he would have been laughed out of the meeting just on the basis of saying, “It is premature”. He would have to explain why he thought it was premature. Why are they saying this?

Mr Marini: They simply consider that within the list of their priorities this was not at the top. They had other priorities first, that was the outcome of the inspections organised by the Council, so this is not among the first priorities for the Member States so far, even if they did not deny the importance of this. This is for the moment what is happening with the other Member States.

Q262 Lord Young of Norwood Green: In the interests of time I think we have got as far as we can on that one; thank you. In the Work Programme for 2009 Europol has an objective for establishing the Overall Analysis System for Intelligence and Support (OASIS) as a best practice standard for Member States. Does the Commission have a role in identifying best

practice standards in activities conducted by its own agencies or soon-to-be agencies? Can I ask as a supplementary, have you a means of validating these best practice standards?

Mrs Pérignon: In general terms the Commission is always paying attention to best practices and trying to disseminate them as widely as possible. As I explained earlier on, for example, in all the meetings of groups of experts in which the Commission participates, for instance, in the meetings of the EU/JHA heads of agencies, best practices are exchanged and we always try to promote them but we do not have any means of validating them. We can invite the agencies or the soon-to-be agencies to develop and adopt these best practices but we cannot force them upon them.

Q263 Lord Young of Norwood Green: You do not have any external validation of best practice?

Mrs Pérignon: No.

Q264 Lord Young of Norwood Green: Do you feel this is something that is lacking?

Mr Heimans: Identification of best practice – this serves of course to help the authorities in the Member States. The fact that we consider it to be best practice is something that we can put in a communication, for example. In my own line of work we are working on radicalisation, for example. You identify what different Member States are doing in that field and you communicate that to the other Member States but it is not as if the Commission is going to rubber-stamp a particular practice and say, “This is the best and all Member States should follow it”. I do not think the Member States would be too keen to see such a position from us.

Q265 Lord Young of Norwood Green: So it is advisory?

Mr Heimans: Yes.

Lord Dear: I wanted to pursue this point because it flows directly out of the question that I put at the very beginning of this session, which was all about how one delegates powers. I spent a lot of my working life in very large organisations and, as you understand and as I understand and all of us know, life is about an exercise in delegating power downwards. We have Member States. They need to have an organisation like Europol. You sit between the Member States or manage the Member States and you delegate the responsibility for Europol and other similar agencies down to that, but you do not just cast them adrift. You have to have some means of making sure they do what you wish them to do and knowing whether or not they are performing the right task and the right task properly. I am putting it in very simple terms because there might be a risk of a misunderstanding within this room. My question originally and Lord Young's question go to the whole root of this, that we are very interested in knowing whether the Member States, individually or as a collective through the Commission, have any real interest in what Europol does and any real interest in co-ordinating it so that Europol goes in and deals with things knowing it has the support, if not of every Member State, certainly of the majority. The picture I am getting, and please tell me if I am wrong, is that the Member States are really all over the place, that Europol is making up its own rules almost as it goes along, – and I am deliberately over-simplifying this but I am trying very hard because of the language difficulties to put this into a clear context – that Europol is operating to its best endeavours; let me put it in those terms, that Member States have not got a clear view of what they want Europol to do, and that the linkage between the two is at best fragmented and at worst hardly exists. I have deliberately over-emphasised that to try and get to the point which we have all been looking at for the last half hour or so, and I think all of my colleagues, from the nodding that is going on in the room, would really like an answer to those linkages between Member States and Europol. Are the targets clear? Is everyone satisfied and, if they are not, why not?

Q266 Lord Mawson: Can I add a dimension to that, because my experience of best practice in the UK that is emerging is that you can create whatever structure you want and you can co-locate organisations, and having built quite a number of projects that have co-located quite a number of organisations I know from experience that you can put them all in the same building, like this, actually, but they could still be a thousand miles away from each other; they will not communicate unless something else happens that is to do with people and relationships. It seems to me the most effective organisations I have experienced, certainly in the UK in the public sector and the business sector, are all about where the relationships are properly in place and are actually happening and are dynamic. My worry about a lot of this conversation – and Lord Dear is quite right in what he is saying – is that it all seems very fragmented and the relationships do not seem to be in place in a way that would make a dynamic organisation actually work, dealing with some very difficult issues that I suspect are appearing every day. That is a concern to me because these people are going to have to operate in the modern world and I would be very interested at the end of this to get a feel from Victoria what this is really like, an honest feel at the front line, because you are the interface there and it would be interesting to know honestly what it is like.

Mr Heimans: I worked at Europol from 1995 to 2004 before joining the Commission, and since then I have worked on the issue as well from the Commission side. I think the picture that you are painting is excessively bleak, if I can put it that way. Quite clearly you are going to have difficulties in managing an organisation if the main power within that organisation is with a Management Board which consists of 27 different Member States which all have their individual interests. They all have their individual systems of criminal law that they have to apply as well, they all have their individual relations between prosecutors and law enforcement personnel, and they all have their different relationships between law enforcement agencies and intelligence agencies which also need to work together in order to

get that information to the right level. I do not think it is right to say that the Commission is the path through which power is delegated by the Council to Europol. I think that is a misrepresentation of the way the organisation is set up. The main power for managing the organisation rests with the Member States. We can try to co-ordinate, we can try to improve, we can try to influence, but the power rests with the Council and it is the Council which decides through the Management Board, through the heads of national units, through all the different ways in which the Member States are represented within the organisation what is the best course of action, and I think they are doing a fairly good job of it, to be honest.

Mrs Amici: As you have noticed, first of all, in terms of practical experience our colleague Dick Heimans actually has been on both sides of the board since he worked at Europol and then worked as a Commission official on the proposal for a Council Decision. My experience is much more limited, more recent and, dare I say, much more bureaucratic.

Q267 Lord Young of Norwood Green: Refreshing candour!

Mrs Amici: However, your question prompts a few comments from my side. In particular I note with interest the comment you made about fragmentation of relations and how organisations can be set up to work best in order to deliver their mission. On the aspect of fragmentation, on the one hand I do not know if you are making comparisons with other bodies that are at a European level which are multinational but I think one of the components that we have to take into consideration and that can represent, let us say, an obstacle to unity of purpose is the fact that around the table at the Management Board we have 27 Member States. That is the first point. Secondly, I think you alluded to roads and responsibilities. We have two main organs in Europol, which are the Management Board and the Director. I think from hearsay that there have been feelings that in the past relations have not been perhaps been at their best and I believe that some of the other interviewees who have made submissions referred also to the matter sometimes of clashes of personalities. I think there is

that element in that, but one of the objectives of the new make-up, what the Commission has proposed in its original proposal to bring Europol into the fold of the EU agencies, is precisely to give it a structure which is similar to that of other agencies, certainly not perfect, surely perfectible, but where at least the respective roles of Management Board and Director are more clearly defined, and the driving force behind this division of responsibility is perhaps that the Management Board should be responsible for the strategic direction of the organisation, for setting objectives and monitoring their implementation, for monitoring progress and keeping an eye on the operation of the Director, whilst the Director should be concerned with the day-to-day management and with delivering the objectives that are set to him, notably in terms of staffing issues and, of course, the implementation of the budget.

Q268 Chairman: Thank you. I am afraid the clock has beaten us. We have interlocutors coming to have lunch with us and I think out of courtesy we really ought to break this now. We have two more questions which I think you have had notice of. Is that correct?

Mr Marini: Yes.

Chairman: We would very much like your answers on paper. They are important questions, but if you would be kind enough to let us have those answers and if we want to follow up we can perhaps do this by email in the future.

Lord Marlesford: I am not asking for an answer, I follow your guidance on timing, Chairman, but could I, as it were, supplement your two questions with a point which I think they will take into account?

Chairman: Will you please do that?

Lord Marlesford: One of the main growing functions of Europol is clearly dealing with terrorism. Europol is very much a police-linked organisation. Much of the work against terrorism is not done by the police (although a lot is done by the police) but by the security services, for example, in the British case, the Security Service, which we call MI5, which

originally was fighting the Soviet threat and then moved to drugs and is now very largely directed to and dealing with terrorism. Do you feel there should be more direct linkage between the Member States' security services and Europol than there is at the moment because at the moment it seems the linkage is almost entirely with the police? Perhaps you would take that into account when you reply.

Chairman: That is very helpful. We seem to have covered a lot of ground in a short time and it has been helpful of you to put in your views about these matters to our inquiry. We shall, of course, send you a copy of our report when we publish it. We are hoping to finish our evidence sessions before the end of July and to publish a report before the end of the year, so we will transmit it to you at that time. Thank you for coming.