



HOUSE OF LORDS

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The Select Committee on European Union

Home Affairs (Sub-Committee F)

Inquiry on

THE EU INTERNAL SECURITY STRATEGY

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WEDNESDAY 15 DECEMBER 2010

11 am

Witness: Rob Wainwright and Brian Donald

Members present

Lord Hannay of Chiswick (Chairman)
Lord Avebury
Baroness Eccles of Moulton
Lord Hodgson of Astley Abbotts
Lord Judd
Lord Richard
Lord Tope

Examination of Witness

Witness: **Rob Wainwright** [Director, Europol] and Brian Donald.

Q103 The Chairman: I think we can begin this evidence session now. We are very grateful to you, Mr Wainwright, and your colleague for coming from The Hague to give evidence to our inquiry on behalf of Europol. I will start with a few formal explanatory points. The session is open to the public. We may have some law students who wish to attend this session coming in fairly soon. A webcast of the session goes out live as an audio transmission and is subsequently accessible via the parliamentary website. A verbatim transcript of your evidence will be taken and this will be put on the parliamentary website. A few days after this session, you will be sent a copy of the transcript to check for accuracy. We would be grateful if you could advise us of any corrections as quickly as possible. If after this session you wish to clarify or amplify any points made during your evidence, or have any additional points to make, you are welcome to submit supplementary evidence to us. Perhaps we can start by you and your colleague introducing yourselves for the record. If you have any opening remarks that you would like to make on our inquiry—its scope and your views on it—please do so but that is voluntary, not obligatory.

Rob Wainwright: Thank you very much for this kind invitation. I have been director of Europol since April 2009. The last time I gave evidence to your Committee was

approximately two years ago when my candidacy for the position had just been announced. I am pleased to say that that was a successful initiative. I am joined by a British colleague, who was recently appointed as the chief of staff to my office in Europol.

Brian Donald: Good morning. My name is Brian Donald. I am the head of the office of the director of Europol. Prior to that I served with SOCA and latterly was head of the United Kingdom Liaison Bureau at Europol.

Rob Wainwright: We appreciate that there is a strong history of this Committee taking an active interest in relevant policy developments that affect EU internal security. It is, therefore, to be welcomed by the EU institutions especially, and certainly by my organisation, which explains my willingness and appetite to appear before you today. The subject matter is of topical interest to the development of internal security issues in the EU, so this is a very good time for national Parliaments as well as the European Parliament to consider the impact of these new legislative arrangements in the EU. I am interested today in giving you the perspective of the European police agency, which is relevant to so many aspects of these new arrangements, on which I can elaborate in the course of my evidence this morning.

Q104 The Chairman: Thank you. It is encouraging to feel that we have hit on a subject that is going to benefit from a little parliamentary scrutiny. I will start with the first question that sprang to our minds. What does Europol regard as the key issues of the internal security strategy? You have presumably studied, as have we, the Commission's communication of about a month ago on the five action points for implementing the internal security strategy that was approved by Ministers in March 2010. We would particularly like to hear what you think Europol can contribute to the fight against serious organised crime; what you think is achievable; and what should be the immediate priorities and longer-term goals.

Rob Wainwright: I will begin with some general statements. We have not only studied the document but played a very active role in the development of the strategy itself, especially the communication that was recently issued by the Commission. That says something about the central role envisaged in the strategy for the European police office. We are very pleased to have that opportunity, which brings with it the possibility for Europol to better fulfil its mandate of providing operational support to the relevant authorities in the member states in the fight against organised crime and terrorism.

In response to your question, I would like to make two broad statements. First, in institutional terms we regard the establishment of the strategy itself as a success—one that is, frankly, long overdue. Under the new architecture envisaged by the Lisbon treaty, for the first time we have a single coherent strategy to deal with all aspects of internal security in the EU. We have not had that before. In the past, in the absence of that policy coherence, there has been duplication of effort between agencies and the states. There has been a lack of clarity over what our agreed priorities should be, for example. Indeed, there has been a lack of institutional glue sticking everything together. This is already a significant development. The architecture that comes with it in administering this new strategy, particularly the establishment of the new so-called COSI group, gives us the framework to apply that practically. There have already been several meetings of that group, largely to positive effect.

At the heart of this strategy is the idea of, for the first time, an agreed European security model. We would certainly support the main principle of that. First, it should be based on intelligence-led policing. That means there should be a greater focus on better understanding the threat as the basis for defining in sharper relief what the common priorities should be in the EU. It means promoting greater information exchange arrangements, not only among member states but between member states and European agencies, including Europol; and

making efforts to increase the capacity of the EU to co-ordinate major cross-border operations. All of this is envisaged in the framework of the new internal security strategy. Already, the Council has decided on the framework of a new EU policy cycle to give practical effect to these aspirations under the strategy.

This initiative, under the Belgian presidency, defines the process landscape—if I can call it that—for how the strategy will be administered at the working level. It defines, for example, a four-year policy cycle and the extent to which certain threat assessments will be used as the cornerstone for policy-making. Even one year after the adoption of the Lisbon treaty, we are already quite far advanced in implementing the principles of the strategy. Within that there is a key role for Europol. The policy cycle, for example, formally gives responsibility to Europol for producing the definitive assessment of the threat to the EU from organised crime. On that basis Ministers will be formally invited to set priorities. It gives Europol the lead responsibility in developing a more integrated information management framework around the EU, and responsibility to develop its competence to co-ordinate cross-border operations. The strategy itself refers explicitly to the need to improve Europol's capacity to support member states. We would welcome that as a policy statement.

That is my first point. Institutionally this is already a good thing and is bringing some benefits. We also agree with the substance of the strategy, not least because we have been very much involved in its elaboration. The good analysis identifies the right priorities. The Commission's communication strikes a good balance between the five major objectives. In four of those five objectives Europol has an important role to play. Disrupting international crime networks is our core business. Europol is very much involved in the promotion of law and better and more sophisticated joint operations between the member states, and is promoted to be further involved through this strategy.

To give you a flavour for our current work, by the end of this year we will have facilitated approximately 13,000 major cross-border operations against some of the most significant organised crime and terrorist networks in Europe, using the unique competencies that we have. For example, we have 100 criminal analysts, a unique set of intelligence databases and a set of liaison officers who give us the capability to co-ordinate operations on a daily basis. That figure of 13,000 is already about 25% greater than it was a year ago, which shows that the appetite for engagement in this area at EU level seems to be growing.

We very much welcome the Commission's emphasis on improving the EU's response in regard to seizing criminal assets. Perhaps we can talk about that later.

With regard to terrorism, Europol applies all of the operational framework in this field as well. We have, for example, a unit of some 50 experts currently working on our terrorist casework. A decision, made by the Council earlier this year, to give Europol a key responsibility for managing the requests from the United States for access to terrorist financing data held in the EU was important to this area of tracking the financing of terrorism. In the Swift agreement and the so-called TFTP agreement Europol has been given a key role in verifying US requests. This is an important first step towards something that will end up with the creation of an EU terrorist financing tracking programme, possibly at Europol. I regard that as an important part of our future and the internal security strategy.

Similarly, cybercrime is very much the future in so many respects of the threat that we face from organised crime and terrorism. I know I can expect a specific question from your Lordships about this later so I will reserve my comments until then.

Finally, on borders, we are developing our relationship with Frontex in particular.

All of this is achievable. I think the Commission paper achieves the right ambition level. It does not overextend itself but it depends on several things. I see two or three major risks to the full implementation of the strategy. First, the implementation may get stuck in the

institutional treacle that often pervades working life in Brussels institutions. There are a lot of meetings and documents, and there is difficulty in achieving consensus across 27 member states. That is a characterisation of Brussels that many people see and feel every day.

Having said that, the Lisbon treaty has done a lot already to sharpen up those arrangements and bring added clarity. The establishment of COSI and the success so far in working through these issues are very promising signs. The Commission paper, in particular, is a sharp illustration of what we need to do in the future. So there are some encouraging signs here.

The second risk is that the member states will not fully engage with the process. This is also an inherent risk that flows through so much of the work that we see at the EU. The real willingness of member states to avail themselves of these new opportunities has yet to be proven.

Thirdly, in the light of these times of economic austerity, there is a risk of whether we have, collectively at the EU level and even in the national police budgets, the right level of resources to meet the level of ambition.

That is a very long answer to the first question, but I also used my introductory statement broadly to add to our understanding of the importance of this internal security strategy.

The Chairman: That is very helpful. Thank you. This Committee will be working on some aspects of this outside the internal security strategy because it has to make an input to the EU Select Committee's overall inquiry into the financial framework for 2014-2020. Although the JHA demands within that framework are small compared to other European policies, the Committee will be making an inquiry. It would be valuable if, in the course of your answers, you can focus a little on resource requirements, both from member state Governments co-operating with you and from Europol itself. We will be able to make use of that in the separate testimony that we will give to the overall Select Committee, which yesterday

decided to set up this inquiry into the financial framework. Each of the Sub-Committees has been asked for some input.

Q105 Lord Judd: You mentioned the real position of member states, but it is not only about member states, but the whole culture of the police, specifically, in member states. How is that working? How far do you feel that you are winning the hearts and minds of the police forces of the various member countries so that they co-operate in the success of the strategy?

Rob Wainwright: To a certain extent, the nature of how Europol was formed and has since developed does not help us in that respect. It was very much a top-down political initiative, driven from the start by Ministers themselves. That is fine and very helpful in one sense, because we do not lack political interest in our work; it is very important to our work. However, from the start—the history of Europol takes us back to the early 1990s—we have had to fight for our natural space in the hearts and minds of the police. We have to do that through hard labour, demonstrating to investigators in our 12,000 or 13,000 cases the unique value that we can add. Our common experience is that four out of five investigators who use us for the first time come back a second and third time, and so on. Reaching a community of 2 million police officers in the EU is a long road for us. You are right and you used a very important word, which we feel the effects of every day—culture. The culture of a police officer—Mr Hawker, I know, will understand—is often a conservative one of retaining his information and his case within his control. In so far as he will share it across borders, he will do so with known people and through informal channels—not always through multilateral channels such as Europol. Trying to break through that cultural barrier remains a work in progress.

Q106 Baroness Eccles of Moulton: I have one or two quick questions. The first is the quickest. You talked about the request from the States to share more intelligence data. Are you concerned about the security of that data?

Rob Wainwright: Are you referring to the recent—

Baroness Eccles of Moulton: I would not say it was entirely out of my mind.

Rob Wainwright: It is not entirely out of my mind either, but so far we have not made any definitive judgments that are having a practical effect on our collaboration with the United States. It remains for the member states, not least the United Kingdom, a very important ally in the fight against terrorism and organised crime. That has not changed, even with the events of the last few weeks and the unauthorised disclosure of so much material. Having said that, preserving the security and integrity of the information that we handle remains a top priority for us. Balancing those two interests is in our minds, as you would expect.

Q107 Baroness Eccles of Moulton: Throughout the Commission's communication there was quite a lot of mention of law enforcement. Do you have anything to say about that? Has the use of it not been as comprehensive as you would have liked at Europol? Does the communication assist you in any way?

Rob Wainwright: Are you referring to the fact that it is a limited definition of law enforcement?

Baroness Eccles of Moulton: Yes.

Rob Wainwright: Yes, it is limited in the sense that it is not an environment that naturally includes security and intelligence services. There is good reason for that: much security work is largely exempt from the arrangements of the Lisbon treaty. However, it gives rise to day-to-day practical problems, not least for an organisation such as Europol, which has a counterterrorism mandate. It removes a very important whole area of information that we

would otherwise need to fulfil our mandate. There are some problems with how we implement those definitional issues in practice.

Q108 The Chairman: My next question is to ask you to say a little bit about how you see the internal security strategy relating to the external European security strategy which was adopted by member states in 2003 and confirmed again in 2008. It is of course being given effect by the new European External Action Service, which is about to become fully operational on 1 January, as I understand it. The SitCen in Brussels is, I believe, going to become part of the External Action Service. It is shortly to have a new director because Mr Shapcott, from whom we took evidence, has moved on to a different post. Can you say a bit about how the internal strategy fits together with the external strategy and how you as an important part of the internal strategy fit together with the EEAS, which is an important part of the external strategy?

Rob Wainwright: The internal security strategy explicitly expects that there should be improvements in the future in the correlation between the internal and the external security strategy arrangements within the EU. The reason for that is quite compelling. The nature of the threat from organised crime and terrorism is becoming more global and cross-border in its impact. As we survey the nature of almost every major criminal threat affecting the internal security of the EU, we notice that almost all of them have their origins outside Europe. All of the cocaine and heroin consumed in the European Union originates in different parts of the world. Smuggled and trafficked people also almost all come from different parts of the world, and so the long list of examples goes on.

This should therefore call for policy coherence between the two strategies, and in particular effective operational arrangements to allow agencies such as Europol which are charged with securing the internal security of the European Union to work more effectively with the arrangements outside. What does that mean in practice? Already there are some foreign

policy instruments in the EU which have some arrangements that cater for our requirements, and in particular some arrangements that connect Europol's interests with the police missions of the EU in different parts of the world. We have information exchange arrangements that are currently in operation in that area. We already have a working relationship with SitCen by which we exchange information on a limited scale and even collaborate on joint assessments.

But in both of the examples I have mentioned, the arrangements are more of a first or second step rather than anything more substantial than that, and still not enough, I think, to give us the policy framework properly to co-ordinate the internal and external security requirements. So we are very much looking forward to the development of the new external action service as the instrument that perhaps will give us the means to develop this work much further.

Specifically in the Commission's communication on the internal security strategy, reference is made for example to the possibility of Europol liaison officers being embedded in EU missions around the world to bring that specific internal security dimension to the daily work of the missions, but also in a way that can help us better to reach the diplomatic interests of the countries that we engage with outside the Union.

We have our own working arrangements. We have formal legal co-operation agreements with over 20 countries outside the European Union now, and this gives us the framework with which to conduct our business. But it is not really entrenched within the machinery of the EU yet, and that is what we look forward to in terms of the EEAS. I have already written to Baroness Ashton with that in mind and I hope to meet her and her staff in the future to discuss how this can be implemented in practice.

Q109 The Chairman: Would it be possible for you to give the Committee a list of the countries you have legal co-operation agreements with?

Rob Wainwright: Of course.

The Chairman: That would be helpful for our report, because it would be a factual illustration of what you have been talking about.

Rob Wainwright: We will send it to you immediately.¹

Q110 Lord Richard: I would like to examine with you the role of the member states. In a sense, an awful lot of what you have been talking about has to do with communications. They depend very much on the attitude of individual member states and whether they are prepared to co-operate. As you know, Article 72 of the TFEU makes it clear that internal security continues to fall within the exclusive competence of member states. Will that limit the way in which the strategy is going to impact, and will it limit very much what you do in relation to that strategy? Do you think there will be more bilateral or multilateral co-operation between member states? What I am really asking is how you see this going because the relationship between the European part of it and the member states part of it is crucial to the operation of the whole thing.

Rob Wainwright: This is of course an entirely political question about the level of appetite within the EU to even consider modifying the cherished principle that responsibility for executive action in terms of internal security lies exclusively within the competence of member states. That is not touched by the Lisbon Treaty. Of course other options are available in which EU institutions such as Europol are given at least some greater competence in that respect, and that model would also work in terms of the implementation of the ambitions of the internal security strategy. Indeed, it would allow for a more direct correlation, perhaps, between an EU strategy and EU action. But that is not the model we have today and I am not here to argue for that. The model we have is based on status quo arrangements that, I have to say, also work rather well. I also think it is entirely possible that

¹ Subsequently Mr Wainwright informed the Committee that Europol had cooperation agreements with the following countries: Albania, Australia, Bosnia-Herzegovina, Canada, Colombia, Croatia, FYROM, Iceland, Moldova, Montenegro, Norway, Russia, Serbia, Switzerland, Turkey, Ukraine, USA.

the internal security strategy can be implemented through that rather more indirect constitutional arrangement involving the member states.

Q111 Lord Richard: That means, in effect that you preserve the principle but you would go around it.

Rob Wainwright: No, not at all. You work through the principle. A very good illustration of that is how Europol works on a day-to-day basis. We are able to form a view on how the threat from organised crime, for example, is changing across Europe. Uniquely we can see the pattern of criminal activity across all of the member states that you cannot see at the national level. On that basis we are able to bring unique knowledge to a number of member states, and often in a specific case, a unique lead. But after that our job is finished. It is then for the police authorities at the national level to do something about it in terms of arresting the criminals involved.

In those cases where we are able to demonstrate the obvious added value of the intelligence leads that we are presenting, the arrangements do not act as a barrier because it is self-evident that there should be police action thereafter. That is what I mean by saying that the arrangements can still be implemented in this way. Going back to the point that Lord Judd made, it depends on the cultural willingness of police authorities to work through these arrangements.

Your second question about the mix between bilateral and multilateral arrangements is also important. As I said earlier, there is a historical and cultural preference for informal and bilateral connections in regard to pursuing international police work in the EU, not just in the UK but in most member states. That has an impact on the ability of Europol and of the EU as a whole to concert the most effective action. Of course it does. But I also think it has an impact on the investigator because what we see in many cases every month is an opportunity missed by the investigator. By choosing to engage only with one other country

because that is what he thinks is the extent of his criminal case, he misses the opportunity to see the hidden part of that case, and he misses it by not checking our central databases.

There is also an economic point about how efficient it is to invest so many resources in very expensive bilateral networks of liaison officers around Europe any more when we have a common liaison bureau arrangement at Europol. Every member state is represented there and work is done with the 27 countries as a whole rather than on a bilateral basis. Increasingly in these economic times, more and more member states are turning to an investment in Europol, which is much cheaper than sustaining their traditional bilateral networks. I see something changing in that respect, and while it is mainly economic conditions that are forcing that change rather than anything else, none the less it is helpful to the general interests of the internal security strategy and certainly of my organisation.

Q112 Lord Richard: Perhaps I may ask you a specific question. Do you think that co-operation on intelligence issues will remain bilateral or multilateral, and outside the Union, or is there going to be more of an EU culture when it even comes to that?

Rob Wainwright: Here the cultural resistance is even higher and, importantly, there is an institutional or even a legal problem in that the Lisbon Treaty has an exemption around national security. I make no criticism of colleagues at the national level, including some former colleagues of mine in the UK. By their very nature, counter-terrorism investigations are more sensitive because the intelligence involved needs to be more highly protected. There is perhaps an undervaluation both of the security systems available at Europol and of how our analytical capacities can add value in these cases. Whereas I would not advocate a wholesale change to the current arrangements, I think there is significant scope for at least some change. But the general principle is one that is well accepted and not challenged, not even by me, frankly. That is the position we find ourselves in with regard to counter-terrorism.

Q113 The Chairman: Presumably, some evolution in that situation is most likely to be found through the operation of SitCen and the amount of sharing that people are prepared to do within it, as well as the extent to which SitCen begins to produce a product that is of genuine value to everyone.

Rob Wainwright: So far at least, and I don't see this changing very quickly. The product that comes from SitCen is of a strategic nature, not an operational nature, whereas we produce both types of product.

Q114 The Chairman: So that is the big distinction as between the overall policy thrust and the operational activities.

Rob Wainwright: But even in our case—it is not right for me to disclose more in a public forum—we are currently working on supporting quite a significant counter-terrorist investigation in Europe using our operational analysts and our 50 counter-terrorist experts to provide operational support in that case. My point is that we can do more of this in a more systematic way, even allowing for the importance of retaining the general principle.

Q115 Lord Judd: Before I come to the question I want to raise, can I follow up on your response to Lord Richard? You use the words “investigation” or “investigators” quite often when talking about winning the confidence of member states. It seems to me that potentially an important part of your work is crime prevention, and that is intelligence. Is that a more difficult area for co-operation and for winning confidence? Of course there is a relationship with the security services, but I am particularly interested in the police dimension of this.

Rob Wainwright: One of the cornerstones of our ambition is to become what I would describe as the information hub for police work in the European Union. We have a unique mandate, a unique legal framework, and a unique intelligence and information technology capability which, as a package, provides the possibility for us to sit at the centre of the information highway on all police matters in the European Union. A really important part of

that is the framework that we have developed over 15 years to protect the information that we collect and exchange as well as, in the mean time, offering very high levels of data protection to the citizens of Europe. Again, this unique framework has served us very well. In 15 years there has not been a single major security compromise in the handling of our data. The architecture involved is generally underestimated by the investigators. They think that by sharing their sensitive case work with Europol, we are going to copy it to 27 countries in Europe or that suddenly it will fly off in 1,000 different directions. That is not the case. Our security regime works around a very important set of handling codes and principles which retain in the hands of the originator full control over the dissemination of information. As a security regime, as I have said, it has stood the test of time. So we are capable of handling even sensitive intelligence, but it is harder for us to convince those in the counter-terrorist environment than those in the more everyday police environment to share information with us—despite the points that I have made.

Q116 Lord Judd: As you take the internal security strategy forward, you have mentioned the issues already arising on information exchange with the United States, for example. Could you elaborate a little more on how you envisage the impact of the development of the strategy on the United States, China, India, Russia and other countries which have an important part to play?

Rob Wainwright: The point that I made about bringing institutional coherence is really important here. To paraphrase the words of Henry Kissinger, who do I call in Europe? At least with the single internal security strategy, for the external world there is an easier understanding of what the strategy of Europe is in response to both internal and external strategies. The machinery that has been put in place, including COSI, to manage it is very helpful in this respect. The machinery which has led to the appointment of Baroness Ashton is also helpful. It is clear from these strategic documents that the EU attaches priority to

more effective and coherent engagement with the rest of the world. The United States is singled out for good reason. We have seen in the course of the last year a quickly developing relationship with the United States in our field, and that is very promising indeed. Similarly, right now we are in the middle of very important negotiations with the Russian Federation around concluding an operational agreement with Russia. That is also of significant strategic importance to us. It is less so in respect of India and China, but for the EU as a whole Baroness Ashton has made it clear that all of these countries, especially the BRIC countries and of course the United States, are major strategic priorities for the EU. I think that the internal security strategy helps in our elaboration of what sort of engagement we should have with the wider world.

Q117 The Chairman: Presumably you would include among the countries that are really rather essential to your work Ukraine and Turkey, both of which seem, to the outside observer at least, to be very closely connected with many of the areas you are involved in.

Rob Wainwright: Absolutely right, Lord Chairman. Both of those countries are strategically important for the flows of certain illicit commodities into the European Union, and we have been or are currently engaged in moves to conclude working agreements with them.

Q118 Lord Judd: How confident are you of the professional quality of co-operation in places like Russia? In your introductory remarks you emphasised that much of what you are confronted with originates outside the European sphere. Does that not make for co-operation, if it is possible and if it is reliable, with countries like India and China? Then, of course, there is the huge issue of Pakistan.

Rob Wainwright: As we survey the rest of the world, and without singling out any particular country, there are a number of challenges before us. They include levels of law enforcement competence, which is as much about the effectiveness of training as it is about resource allocations in those cases, and of course corruption in the public sector, which is a

problem in many parts of the world. In each area there is a challenge for the European External Action Service to help us in our work trying to promote at least the right political will in those countries to deal with these challenges. There are some good examples around the world where that has been done, but in at least some parts of the world these challenges are very significant. We have to deal with them on a case-by-case basis. Security is important to us where there are problems with corruption. Then we rely even more on the security framework that we operate on a daily basis to protect ourselves from hostile penetration.

Q119 Baroness Eccles of Moulton: Perhaps we could turn to the passenger name record. Is an EU directive on the PNR likely to be useful in the fight against serious organised crime, and should it also cover intra-EU flights?

Rob Wainwright: First, I can't speak from direct experience. There is a clause in the EU-US PNR agreement of 2007 that allows the US to share directly with Europol the results of its analysis of PNR data. Unfortunately, on not even one occasion have we received any information from the US in respect of that agreement, which of course is disappointing. I know, of course, from our close collaboration with the American authorities that they find it to be of significant security benefit to their counterterrorist strategy. I also know the position from inside the EU—the view of the UK and others, especially France, on the need for something similar in the EU. From my professional experience, I would judge even intra-EU PNR arrangements to be helpful in supporting the internal security strategy. I see it in the same way as I see the need for similar arrangements to be put in place in regard to tracking terrorist financing. They are of a similar type and order in terms of how they could support our internal security work.

Q120 Baroness Eccles of Moulton: Do you think there are privacy implications?

Rob Wainwright: Absolutely, as there are on terrorist financing. However, what we have in the EU, not least in the legal framework of Europol, are some of the most robust and

advanced data protection and data privacy safeguards anywhere in the world—perhaps the most advanced. Therefore, we need to reach a mature understanding on the right balance between data protection and the needs of internal security. The two are mutually reinforcing. I often say to the European Parliament that we believe in fundamental rights as well. We at Europol are proud of our data protection, but we are also clear that our job is to support the fundamental rights of citizens, perhaps by safeguarding the most important fundamental right, namely the right to a safe life. The two go hand in glove. In the specific example of PNR or TFTP, it is possible to reach an agreement that does not infringe the fundamental rights of our citizens.

Q121 Baroness Eccles of Moulton: Is there something to be said for having a safeguard such as a sunset arrangement to cover how long the records are held?

Rob Wainwright: In terms of data privacy, there are a number of important principles that should normally be applied to such agreements. They would include natural time limits and tests of proportionality and legality. There should also be a requirement for the data to be stored according to reliable standards. So there are a number of regular data privacy standards that should be applied to this agreement in the same way as they are to others.

Q122 Lord Avebury: If I understood you correctly, you said that the agreement with the Americans on PNR data would allow them to supply Europe with the same data that we supply to them, but that they have not done so in any single case. Does that mean that you have asked for the data and the request has been declined?

Rob Wainwright: No. That is a good question and congratulations on catching me out. We haven't asked them for that—at least not in individual cases. We said generally at the start of the agreement that we looked forward to the opportunity for the US to share data with us. Indeed, the text of the agreement places the initiative on the United States to push the data towards us, rather than us having to ask them. However, I take the point implicit in your

question that we should take some responsibility for being more proactive. That is not to say that on a bilateral level the United States has not shared the results of its data with member states: of course it has. I am just giving an illustration from my own experience at Europol. I don't want to paint an entirely bleak picture of the US track record on this, but I do think that institutionally we can improve on this in a new agreement, as we have done in the case of terrorist financing, where the arrangements are working very well. That is the model that we could follow in this case.

Q123 The Chairman: Perhaps I could follow up on that question. If I have understood what you are saying, the United States is probably exchanging a lot of information with individual member states, but is not making use of the capacity to make inputs to your information at Europol. Do you think that is because they have doubts about the security of the information that they pass on in that way because it would become available to 27 countries, or is it just a case of old habits dying hard?

Rob Wainwright: Maybe I should hesitate to speak for them, but my guess is that it's a combination of doubts about our security and doubts about the value added that we can bring. They are certainly champions of bilateral rather than multilateral work, at least in the case of most federal agencies in the US. Having said that, the EU-US TFTP agreement has effectively forced the Americans to engage with Europol in a way that they hadn't before. Through that process, we have seen that we have rather easily overcome any doubts that they might have had about security and about the value added that we bring. If you were to speak now to US Treasury Department officials, I think that they would speak very positively about their experience with Europol. This shows that where there is a natural prejudice against EU institutional machinery, at least in some cases in my experience, this can be overcome in practice.

Q124 Lord Avebury: To carry on with this line, if the Americans can be satisfied that the security arrangements that apply to Europol data are good enough for them to engage in sharing processes, is there a political hang-up that stops these things happening? Is this one of the items that you would put in Cathy Ashton's in-tray?

Rob Wainwright: Baroness Ashton can certainly help to address some of the cultural conservatism that we see also within the EU. That can be done by her interacting in a more positive way with the National Security Adviser, with the US Attorney-General and maybe even directly with officials in the White House and the State Department. But I don't think that there is a lot of politics at work here. It is more about the traditional ways of working of the US federal agencies, which are more reliant on a channel of co-operation other than this one.

Q125 Lord Hodgson of Astley Abbotts: I shall move on to proposals to revise the directive on money laundering, and the impact on member states' asset recovery offices. What is your feeling about how effective EU efforts have been in asset recovery and the confiscation of the proceeds of crime? What do we need to make them more effective in future? You will probably have seen our report on money laundering and the financing of terrorism. The UK recovered £135.7 million. It was a sizeable sum, but compared to the estimated £20 billion from the proceeds of crime, the word "fleabite" comes to mind.

Rob Wainwright: You might apply that word to many member states in the EU. In that respect, it is very welcome indeed that the Commission communication places a very high priority on the need to improve our collective response in this area. It places at the heart of the internal security strategy the need for more effective arrangements in regard to the recovery of criminal proceeds. Asset recovery offices are an important part of that, and it is a good example of where the EU can add value. The obligation under the EU instrument to establish asset recovery offices in all member states has had a positive impact in raising the

profile of this work around the EU. In the context of Europol, we have been very pleased to be directly associated with that. In 2007, we established the Europol criminal assets bureau to support this work. We are helping to train asset recovery officers in each member state. We have even provided them with a secure information exchange platform so that they can co-operate better among themselves. This is the right approach and we are pleased to have been associated with it so far.

You asked how we can make asset recovery more effective in the EU. So far, asset recovery offices have not been established in every member state. That is the job that we have to finish first. Where they have been established, they haven't been given the right resources or perhaps they haven't been given the right place within national arrangements to fight organised crime and terrorism, so a general strengthening of asset recovery offices in each member state is important. We always need to raise awareness, and encourage the mainstreaming, of financial investigations in all major counter-terrorist and organised crime investigations. I hesitate to think what the figure might be, but it is nowhere near the 100% that it should be when it comes to ensuring a proactive financial element in all the investigations. In the UK at least, we have more or less the right legal framework. As I see it, the Proceeds of Crime Act 2002 represents European best practice and puts in place most of the elements of what a national authority should do to secure the means to recover criminal assets. There might be a need to promote best practice. The model in Ireland is another one that we could use across the EU. Finally, we should facilitate better flows of financial criminal intelligence. I made some general remarks earlier about making better use of this new machinery to facilitate financial intelligence in a more coherent and systematic way. As regards money laundering, we would argue for further changes to reduce the number of shell companies, for example. In many cases, the beneficial owners cannot be identified. Whereas a very important principle in one of the 40 recommendations of the

Financial Action Task Force is to know your customer, very often that process leads to the customers self-certifying the details they have given to financial institutions. In reality, it is very difficult for financial institutions to prove the information that has been given. The issue of better identifying the true beneficial owners of these processes is something that must be taken further. This is also about better standards of customer due diligence and other issues as well. This is a major area of work for Europol. We have 20 dedicated officers working in this area and currently we are facilitating 10 major cross-border investigations into money laundering offences in the EU.

Q126 Lord Hodgson of Astley Abbotts: I regard that as a slightly gloomy answer, in that it seemed to indicate that even the UK's very low level of recovery was towards the top of the league table. Do you have best practice arrangements that you are promulgating across participant member states? If so, what efforts are being made to push that and who besides the UK is making good progress at being best in class?

Rob Wainwright: One of the functions that we exercise is as a specialist platform for European policing. We have particular competences and expertise in a range of areas, of which this is one. We are developing and helping to promulgate best practice across Europe. The UK, Ireland and the Netherlands are included in this—and, from a different perspective, Italy, given the way in which it has used this tool to prosecute Mafia organisations. There are good examples out there, and some can be taken even further with what agencies in Europe would refer to as administrative measures—trying to make greater use of the range of tax powers and other powers in the broader government community to crack down on major criminal organisations. There is work afoot to develop the whole prevention agenda: to deny criminals the opportunity to operate in the first place, and also to deny them the opportunity to profit from their illicit proceeds. As you see, the Commission is putting this area of work at the heart of its strategy.

Q127 Baroness Eccles of Moulton: You have already told us a bit about Europol working with SitCen, but do you see any changes in your relationship with SitCen coming about when it becomes part of the EEAS? Also, will the implementation of the internal security strategy affect your way of working within the EU?

Rob Wainwright: It is very difficult to predict how SitCen will go, even after speaking to the people directly involved. Perhaps Mr Shapcott has a different idea. As far as I can see, Baroness Ashton has not yet fully decided what sort of future service she wants, or even what the member states want, so it is difficult to answer that question. Our level of co-operation with SitCen is okay, but it could be a lot better, particularly in regard to information sharing and the joint production of major threat assessments in the field of counterterrorism. In that area, I hope that we will arrive at a better level of co-operation.

Q128 Baroness Eccles of Moulton: They, too, would probably want that.

Rob Wainwright: I will ask the new chief of SitCen that question when he or she is appointed.

Q129 Baroness Eccles of Moulton: What about the internal security strategy as a whole? Do you see much change arising in that?

Rob Wainwright: In regard to SitCen?

Baroness Eccles of Moulton: In regard to your relationship to the whole strategy.

Rob Wainwright: No, nothing more than I have just elaborated.

Q130 The Chairman: The Commission communication that we have been talking about and working on states that the Commission will put forward proposals to enhance co-operation between Europol, Frontex and the European Asylum Support Office on all border management issues. Could you say a few words about the role that Europol could play in this field, and how this should move ahead?

Rob Wainwright: Certainly, an important element in making our work collectively more effective is that the agencies should work better together. This year, for example, I had the opportunity to chair an inter-agency process to improve the operational co-operation between the four principal agencies in this field: Europol, Frontex, Eurojust and CEPOL. At that stage the European Asylum Support Office had not been formed. I convened the final meeting of that process in recent weeks. We have already agreed on many practical measures to improve our co-operation. Of course we need to build on that within the framework of the new internal security strategy. However, we should take into account some very important principles. First, where we bring ourselves closer together, we shouldn't duplicate our activities. I encourage Frontex to play a bigger role at the border, for example, in supporting the combating of cross-border criminal activities. I am also in favour of recent proposals to consider giving Frontex limited responsibilities to collect and exchange operational data—personal data, as it is called. However, I hesitate to develop in Frontex competences that more or less duplicate what Europol already does. I don't think we have the budget conditions at the moment to allow us the luxury of having overlapping competences like that. We have to take great care that we do this in a way that emphasises our respective competences. It's a question of exploiting complementarity and natural synergies rather than going much further.

Q131 Lord Hodgson of Astley Abbotts: I would like to talk about the European arrest warrant. I ought to place on the record that I am a patron of Fair Trials International which has had some concerns about the way that it has been operated. It would be helpful if you could tell us about the impact that you think it has had on the fight against serious organised crime and internal security matters generally, and whether you feel able to say anything to Sir Scott Baker's extradition review, which is going on here, or whether that is not allowed under your terms of reference.

Rob Wainwright: That is probably outside, but what I can say, also based on my experience as the international director of SOCA until 2009, is that the European arrest warrant has had a significant impact on supporting international police co-operation since its introduction approximately 10 years ago. As you know, it has transformed the business of extradition in the EU. The UK and many other countries have used it to very positive effect to trace the whereabouts of some dangerous criminals and to use this as a very fast and effective way to bring them back to justice in Britain and in other countries. According to my figures, more than 14,000 European arrest warrants were issued in 2009 across the European Union. From the UK perspective, this led, I think, to about 860 arrests made in the UK under European arrest warrants issued by other authorities. This shows that it is used on a substantial scale. It speaks for itself in terms of how it has become a mainstream element of international police co-operation. I know that important considerations are under review in regard to issues of proportionality especially. Eurojust, rather than Europol, has had more direct involvement in this and my colleagues in Eurojust have informed me about the issues that they are considering: the lack of proportionality; unwillingness of certain member states to surrender their own citizens; inadequate exchange of information; translation problems and other practical problems, so I recognise that this is not a perfect instrument in its implementation. From my narrow perspective, as regards any review of the arrest warrant, I would also be interested in how the casework involved, and especially the intelligence behind it, could also be systematically shared with Europol. In so far as we retain the only real European database for organised crime activity in Europe, it does not make much sense that these judicial instruments are not also cross-checked with our data repositories, and they are not systematically.

Q132 Lord Hodgson of Astley Abbotts: They are all bilateral now, are they?

Rob Wainwright: I think they are bilateral.

Brian Donald: The European arrest warrant is not bilateral. It can be bilateral if you know where the person is but generally they are circulated to all member states for execution if the person is found.

Q133 Lord Hodgson of Astley Abbotts: But not copied to Europol?

Brian Donald: No, not copied to Europol. Some member states will submit their intelligence items separately, but not the European arrest warrant. We do not administer that.

Q134 The Chairman: I take it that you can't help us on an issue that we were pursuing on our visit to Brussels, which was whether there is any breakdown in the EAW cases to show how many of them involve counterterrorism. We were told by the Commissioner that they didn't have such information. We are still searching for it because it seems to us rather relevant to our inquiry. I don't know whether you can help at all or whether Europol has any knowledge of that sort.

Rob Wainwright: No, I can't help at all, I'm afraid, but your point illustrates the fact that the European arrest warrant exists without an institutional home in the EU. It is a very effective legal instrument but certainly within the new architecture of the EU under Lisbon it floats in a space without an institutional home, which is different from most other instruments for police co-operation that we have. I wonder whether that could be changed in the future.

Q135 Lord Avebury: Can we move on to cybersecurity and consider first of all how Europol operates currently against cyberattacks and cybercrime? What impact do you think that Europol's work is having on these activities and how should it develop in future? What will your priorities be?

Rob Wainwright: As I said earlier, cybercrime is a major part of the threat that we face from organised crime. More and more even of offline traditional criminal activities are now facilitated through the abuse of the internet, certainly in terms of communication patterns

and so on. Of course, the scale of criminal activity committed via the internet is staggering. We estimated that within the last year approximately €100 billion of VAT fraud was committed by enterprising criminals online, and that is just one aspect of it. Of course, it is a growing threat and of course there should be a greater response to it. It is also a very good example of a transnational problem without a natural home anywhere.

All of this is pushing the institutions in the direction of establishing an EU cybercrime centre which the Council has decided to establish. We hope that we will play a major role in that and even be designated as that centre. So far we have developed that competence in this area as a central European police agency to co-ordinate more effective action across the 27 member states in three areas. First, we have a dedicated intelligence project, designed to identify the most significant cybercriminals operating in Europe. Using that, our information architecture, our analysts and our experts, we are supporting cross-border investigations against those criminal organisations. Secondly, there is a new initiative, at least within the EU, to develop what is known as an internet crime reporting online system, which will collect all internet crime reported online at the national level in a harmonised way across the EU. This will provide a crosscheck alerting system to notify law enforcement about potential connections between different criminal investigations. For the first time, the EU will have a comprehensive overview of reported cybercrime within its own borders. This could even in the future include a component of direct engagement with the public, for example. Thirdly, we are developing an expert platform for internet and forensic expertise. We have forensic experts at Europol who can improve the capacity for domestic law enforcement to investigate cybercrime offences. As a package, although rather small-scale at the moment because of our resource limitations, it already holds a key to the future elaboration of the EU cybercrime centre and that is the model that we would like to take forward, bearing in

mind also the need to have a more systematic engagement with industry. I have particular views about how that might be done as well.

Q136 The Chairman: Could I just ask about the resource implications? I note what you say about the cybercrime centre perhaps being established at Europol. That was certainly the preference that seemed to be in the mind of the Commissioner when we took evidence from her. Presumably, there would be quite important resource implications if that were to be the case. You cannot, presumably, do a great deal more with your existing resources. There would have to be substantial resource support for that. I noticed that you referred to the need to bring the private sector more into this. The evidence that we took in our inquiry on cyberattacks showed that the links between governmental authorities, broadly described—that is, police, government et cetera—are not very well equipped and need to have a much more effective interface with some very bright people indeed who exist in the private sector but do not get much involved in this, although they probably should be.

Rob Wainwright: This will be a real issue in the implementation of this ambition. Having said that, this is a scalable issue in the sense that there is obviously a minimum level of resources, although I hesitate to say what that is. Beyond that, it is possible to scale your work according to the available resources. It is possible to be relatively smart in the use of your resources. With industry, for example, we would think of borrowing some very good practice in the United States. I recently visited the cybercrime centres of the US secret service and discussed the matter with the FBI as well. They have a very good model of working with industry in a way that effectively subcontracts a lot of the hard work of research and forensic analysis to industry, and indeed to the academic world as well. This is for their benefit as well; it is a mutually reinforcing idea. We could also rely on the secondment of national experts—police officers, I mean—within the member states to come to Europol as the EU cybercrime centre, at least for a short tour of duty, and in that way

they could share the burden of the resource work as well. But in the end, there is a minimum level of resources that has to be applied to this quickly developing area of our work.

Q137 The Chairman: Have you produced a business model on that yet?

Rob Wainwright: No. We have something a bit more than the back of a fag paper, but it is not quite a finished article yet. We have some ideas and, if you would like, we can sketch something for you, at least in an informal way, and send that to your Committee if you are interested.

The Chairman: I think that would be very valuable indeed. Thank you. Lord Avebury, I am sorry I interrupted you.

Q138 Lord Avebury: I have just one supplementary on this. On the development of your internet forensic expertise, there again, there must be an awful lot of experience and knowledge in private industry, and among the largest companies as well. Do you think it would be possible to persuade some of those, like Microsoft and so on, to second some of their experts for the purpose of developing this centre of forensic expertise?

Rob Wainwright: Yes, it is possible. The new legal framework that was changed for Europol this year specifically promotes greater participation with industry, so I think that is possible. I have also spoken with some leaders in the internet security industry. They are very positive about this possibility, but what surprised me was the general under-appreciation of the extent to which organised crime was abusing the internet space. In so far as they are very serious about internet security, it is driven by a commercial imperative of designing a better, safer product for their users. The ideas that I have talked to some of them about mean that at the design stage of their new technologies they should introduce an approach which would better crimeproof their technologies and would design into that new technology ways which would prevent organised crime exploiting it. The new media and mobile technologies

are heaven-sent opportunities for organised crime syndicates and are being quickly exploited. I want to have a partnership with industry in which we can engage with it in a more proactive and productive partnership at the very start of the process of designing new technology. That is just one aspect of how we can have much better collaboration with industry in this area in the future.

Q139 Lord Avebury: I suppose I should have asked this earlier. It is desirable that cybercrime work should be centred within Europol. How do you imagine that you will be able to recruit, retain and develop staff with the best expertise and skills when a lot of other people are competing for them?

Rob Wainwright: It goes to the same point that the Lord Chairman asked me. We already have some experts in this field. I hope that we could supplement those with at least some others from national cybercrime centres, including one that will be established in the next year or so at SOCA here in London. Certainly, I will be making those overtures to national agencies like that in order to demonstrate to them that cybercrime investigations centred in the UK will, by their very nature, have a European, if not global, dimension, and that there are many strong reasons—even operational reasons—why they should invest in common European arrangements so that we can better support their work at the national level.

Q140 Lord Avebury: That wouldn't necessarily apply to law enforcement expertise, would it? I would like to know how the existing law enforcement expertise can be integrated within the more specialist technical expertise required to operate in the cyberdomain.

Rob Wainwright: There are very many experts in the law enforcement area and in other areas as well. In the context of an EU cybercrime centre, there is an issue about where you draw the boundaries between cybercrime and cybersecurity. That is a very important question to answer because, in terms of cybersecurity, a whole set of different arrangements

with very significant resources and significant national sensitivities are involved. We have to be realistic about the design of these new arrangements in the EU.

Q141 Lord Avebury: Have you got your own internal boundary between cybercrime and cybersecurity? Do you have a definition of where that line falls?

Rob Wainwright: No, and it's fair to say that our direct engagement with the military community is very small indeed.

Q142 Lord Hodgson of Astley Abbotts: When we looked at cybercrime and cybersecurity, we noted that this was a very fast-moving area with technology changing all the time and will-o-the-wisp perpetrators, so that finding where the perpetrators are based is very hard. In the unhappy event that the cybercrime centre, if it was established, was not centred in Europol, we would then have a three-legged structure—Europol, the cybercrime centre and ENISA in Heraklion. How do you think that would work? Would those of us who think Heraklion was a big mistake be able to draw some hope that this was going to bypass Heraklion and make the new body, which is yet to be established, the future centre?

Rob Wainwright: Objection—leading the witness, your honour. No, I don't think such a three-legged approach would work—I would say that, wouldn't I?—particularly when the solution of establishing Europol would therefore allow for a more coherent and less bureaucratic arrangement. So I would have concerns if a solution such as that were to transpire. The Commission has made it clear that it will support the future development of ENISA. Its location is a political decision that I'd rather not comment on. My job in that case would be to work with ENISA, particularly with regard to the development of a more comprehensive network of emergency response teams at the national level and EU level. Beyond that, you'll excuse me if I don't comment further.

Q143 Lord Judd: Le comité permanent de sécurité intérieure—COSI. Was it a valid initiative?

Rob Wainwright: Yes. I think I already said that it was long overdue, and it has brought institutional policy coherence. It has already proved its worth by establishing, agreeing and promoting this new EU policy cycle, which, as I said, gives a practical dimension to the internal security strategy. The first year's experience of COSI is still a mixed bag, I'd say, despite that overall positive impression. I hope it can survive in the institutional treacle of Brussels that is often a problem. Its membership is an important issue. At the moment, to a certain extent, it suffers from a lack of identity. We have a mixture of senior police officers, Ministry of the Interior officials and even lawyers around the table. That gives it a special, but at the same time a rather complex, character. Sometimes that inhibits the right kind of dialogue. In broad terms, though, it's needed if we are to implement the strategy, and so far I'd say it's working rather well.

Q144 The Chairman: Certainly when we were in Brussels, one of our witnesses said that it had got off to a slow start, which I think was a diplomatic way of saying that it wasn't yet functioning as effectively as it could. You've given it a rather better chit than that, but I think you recognise that it still hasn't got up to full speed. I wonder if you could also comment on whether COSI offers an opportunity to rationalise a bit this enormous alphabet soup of bodies that deal with counter-terrorism, serious crime and so on. Could it have a role in that, or is the situation irremediable?

Rob Wainwright: Nothing's irremediable, even in the EU. It has already rationalised the policy space and the institutional machinery of the Council and the Commission, so that is already a benefit. Extending that principle and effect to, for example, the number of different agencies in the EU is also possible and, in some respects, perhaps even desirable. Already we see a closer coming together of many of the agencies; I talked a bit about that earlier. You could of course go further by considering the merger of some, but that immediately becomes a very political question. The trend in the EU's history is to create more agencies

rather than fewer, which is why you have one in Heraklion and now a new asylum support officer in Malta.

The future of CEPOL is also being debated in the European Parliament because of the problems it has had in the past two years regarding the administration of its budget, among other things. To a certain extent because of the CEPOL issue, but also because of the general impact and tone of the Lisbon treaty, this is a current question, and COSI is competent to debate it. Having said that, I don't see a lot of political appetite at the highest levels of the Commission or indeed in the Council to consider that at the moment.

Q145 Lord Judd: Do you think its membership is right, or could there be more appropriate membership?

Rob Wainwright: I would prefer a greater representation of the law enforcement community at senior level. I'd rather see a few more police chiefs around the table, perhaps, than administrators from the Ministries of Justice and the Interior. But I'm biased, I think; when I go to the meetings, I also see that COSI has already proven to be very effective at increasing the profile of Europol and helping to administer our interest. Running through the centre of almost all COSI's outputs in the first year is the profile of Europol and more concerted action through the Europol channel, so that's probably why I give it a very good chit. In so far as the police chiefs are able to support that, that makes me very happy.

Q146 Lord Judd: It seems to me that there's always a danger in international work that you get a dead hand of theoretical policy-making, and there is a real need to generate an integrated team spirit among those concerned who maybe need to feel that they have a stake in that.

Rob Wainwright: I would not always characterise it as a dead hand, because Governments have very important interests that have to be represented. It is true that police chiefs as a community tend to operate in a more informal way, slightly freer of those sorts of burdens.

An associated subject is the future of the European Police Chiefs Task Force, which no longer has a formal place in the new architecture; its very being has been called into question by these new arrangements. I and others have been promoting the idea that we should retain its structure as an informal talking shop among the police chiefs themselves, an informal place to do business and exchange best practice, to retain that air of informality in order to get the most out of it.

Q147 Lord Judd: Following on from that, do you think the European Police Chiefs Task Force and the Police Working Group on Terrorism should be regularised and brought within the Council and COSI framework?

Rob Wainwright: No, I don't. The best contribution that the EPCTF can make in future is to sit outside that formal architecture, to operate as an influential senior think tank, if nothing else, and as a place for police chiefs to share best practice, still having influence on the formal policy debate in COSI but in that way rather than as something more constitutionally formal.

The Chairman: Thank you very much, Mr Wainwright, for being so generous with your time and being so full and frank in your answers. It has helped the Committee a great deal. We look forward to receiving the additional material you kindly promised us. We will let you have the transcript of what has been said here, we will be taking evidence in January and February and then we hope to produce a report in March; that is our target area. I hope you will find that it is useful for your extremely valuable work, which we all feel we understand a bit better now, thanks to your evidence.