

EUROPEAN PARLIAMENT



Committee on Civil Liberties, Justice and Home Affairs

(In association with the Committee on Constitutional Affairs, according to rule 50 of the Rules of Procedure)

1 June 2010, 15.00 – 18.30

- 14. Interventions of EU institutions, bodies, offices and agencies on access to EU documents after the Lisbon Treaty, "Transparency and intelligence", intervention of the Counter-terrorism Coordinator, Gilles de Kerchove.**

Transcript of the speech made by Mr Gilles de Kerchove.

Mr Gilles de Kerchove

Thank you very much Mrs Chair, I should stress at the out-set that I am of course, in favour of transparency. All my reports to the Council are published on the Council website as the EU CT (*counter terrorism*) Strategy. The concept of trust is the key factor in all of this. In a democracy no policy can be sustainable unless people trust those who are implementing it. And the best way to obtain that trust is to be transparent with the people about what we plan to do and, at least in general terms, how it will be done. As the new Prime Minister in the UK put it in a broadcast over the weekend: "Transparency can help us to rebuild trust in our politics. One of the reasons people don't trust politicians is because they think we have got something to hide".

One of the most pernicious effects of terrorism is the way in which it promotes fear and does generate mistrust. Promoting trust and social cohesion is an important part of the prevent strategy, one of the four pillars of the EU CT Strategy. But not the point for a discussion today.

The key point for a discussion over transparency is the need to sustain and promote all citizens trust in the security agencies. That's the topic you asked me to develop. People need to feel they are not being unjustly targeted because of the religion or ethnicity and that the personal data collected for use against terrorism and serious crime is not being misused for other purposes. In order to do all this, the relevant

authorities must be as transparent as they can be. Transparency itself can be a powerful tool, for example against a terrorist organisation that seeks to make political propaganda by misrepresenting what governments are trying to do.

In the context of the creation of the European External Action Service, I am arguing that the European Union needs to be much more active in explaining itself and what it is doing, especially in the Arab world. Indeed in this case, transparency is not really enough. Being open is a wonderful thing, but achieves little if no one comes to look at what is on offer. We have a duty to explain what we are doing, but again that goes beyond the dimension of today's debate.

I have however, been invited to discuss transparency and intentions. As you will all know, the operations of the security and intelligence agencies are the part of the state most protected against transparency, and indeed as far as the Lisbon Treaty is concerned, national security has been carved out as an exclusive competence of the Member States. During the negotiation of the Lisbon Treaty, the father of the Treaty, the Member States, insisted to add as a sentence which already existed before, which said 'internal security is the prime responsibility of the Member States'. They added another sentence which stated that 'national security is solely the responsibility of the Member State'. The Union, as you know, has no intelligence agency of its own, in the usual sense of the term. I am not therefore, best qualified to discuss this subject with you, except I suspect anyone better qualified would be reluctant to appear.

To understand why this is so, we need to return again to the concept of trust. Trust requires transparency, as I have argued above. But trust also sets significant limits to transparency. Citizens, whose PNR data (passenger name data) is sent to the United States under the proper safe guards, might not be entirely happy about this but they are content for this to happen if they are convinced that this is needed to help protect them from terrorist attack. When they entrust this personal data to the authorities, they need to know that they will be properly protected against transparency, not only against it being published in the media but also against it being made available to the agencies of governments or the states not entitled to see it.

This is not just a question of personal privacy of individuals, important though that is, it is exceptionally important in serious criminal and terrorist cases that individuals with important information should feel free to come forward so that this can be used to protect their fellow citizens. Such individuals frequently entrust the public authorities with their lives. We must be careful that transparency does not put such people in danger.

Intelligence and Security agencies are an extreme case of those who are authorised to gather information in ways which have significant implications for personal privacy. For this reason, the legal, judicial and parliamentary controls of such agencies are a sensitive political matter and have developed differently in different Member States according to their different histories and legal systems. But all Member States have faced the same dilemma on how to maintain public trust in these agencies without compromising their ability to operate effectively.

Careful police investigations in recent years have foiled a number of plots by terrorist groups aimed at taking the lives of large numbers of European citizens. We know,

even from attacks which have failed, such as the Detroit plot, the attempted blowing up of North-West Airlines Flight 253, that terrorist organisations examine carefully how we defend ourselves against them and take their own counter-measures accordingly. We cannot afford to tell the world exactly what the relevant specialised services can do, and perhaps more importantly cannot do, in tracking terrorists and identifying what they are up to. I agree that terrorists have rights of course, but these do not include the right to be an effective terrorist.

The sensitivities of the world in which the intelligence agencies operate makes them, more than any other organisation, aware of the value and importance of trust. A key part of that trust is that information they supply should not be passed on without the consent of the originator, and you know the golden rule in the intelligence community, which is called the third party rule, who is the only person who can really know the sensitivities involved in obtaining the information and the risks of revealing it. Breaching this principle will do nothing to increase transparency if the consequence is that information is no longer provided.

I know that the Rapporteurs draft on the latest regulation notes that national security is outside the scope of the regulation. This is of course true, but it tells only part of the story. If we are to have effective counter-terrorism policy at the EU level, that policy needs to be informed by those who most deeply understand the problem. That means the security and intelligence agencies. We should not cut ourselves off from them and their advice, and that means finding ways in which they can feel comfortable that their sources and methods will not be compromised by such cooperation.

Thank you ladies and gentlemen.