



## Statewatch

# EU: The surveillance of travel where everyone is a suspect

- *“all travellers are... considered a priori as potential law breakers”*
- travellers to be checked by *“an automated gate and kiosk”*

by Tony Bunyan

The Commission's "border package", announced in February, comes on top of EU biometric passports and ID cards (fingerprints) currently being implemented, biometric resident third country national permits (with optional e-gov "chips"), the Visa Information System (VIS, collecting and storing the fingerprints of all visitors) and a planned EU-PNR (passenger name record) database system.

The "package" covers an "entry-exit" system for visitors in and out of the Schengen area; an "automated border crossing system" for *bona fide* travellers and EU citizens; an "Electronic System of Travel Authorisation" (ESTA, like the USA is to bring in) requiring prior "authorisation to travel", a "European Border Surveillance System" (EUSOR) and the "Integrated European Border Management Strategy".

All in all, to quote the European Data Protection Supervisor (EDPS) we have:

*“far reaching proposals implying the surveillance of the movements of individuals follow[ing] each other at an amazing pace”*

The "sheer number" of proposals coming out in a "seemingly piecemeal way" make it extremely difficult for parliaments and civil society to "contribute meaningfully", the EDPS says.

This is compounded by a failure to explain why, for example, the 2004 EC Directive on the collection of API (Advance Passenger Information) has not been implemented across the EU - even though the deadline was September 2006 (API data is that contained in EU passports). Surely an evaluation of this system in operation is required before extending data collection to the same 19 categories (or rather the 34 categories collapsed into 19) being demanded by the USA.

The figures cited to introduce an "entry-exit system" for visitors are based on "estimates" or "samples" which are open to question. This comes with the admission that at least 50% of "overstayers" - collapsed into a category of "illegals" - are those who have overstayed their time limit, including visa waiver visitors from countries like the USA.

The "European Border Surveillance System" (EUSOR) to "detect, identify, track and intercept" those attempting to enter the EU "illegally" (together with FRONTEX operations in the Mediterranean) runs contrary to the EU's obligation to respect the rights of people seeking sanctuary under international obligations for the protection of refugees. EUSOR plans include sending out surveillance "drones" to order boats to turn back.

The "package" comes with the admission, in the "Integrated European Border Management Strategy" Impact Assessment that the use of EU databases like the Schengen Information System (SIS) in tackling terrorism are limited as the "perpetrators" have mainly been EU citizens or living in the EU with official permits:

*"None of the policy options contribute markedly to reducing terrorism or serious crime...In view of the latest terrorist acts in the area of the EU, it can be noted that the perpetrators have mainly been EU citizens or foreigners residing and living in the Member States with official permits."*

*Usually there has been no information about these people or about their terrorist connections in the registers, for example in the SIS or national databases."*

And as the European Data Protection Supervisor put it, there is an "underlying assumption" in the proposals that:

*"all travellers are put under surveillance and are considered a priori as potential law breakers."*

On top of this the "package" proposes - for visitors and EU citizens - "Automated Border Control" processing - which is labour-saving as no people are involved:

*"Automated Border Control processes normally consist of the following: Fingerprint matching would be used in conjunction with an automated gate and kiosk."*

*The traveller enters the automated gate area, possibly by presenting their passport in order to open a door that closes behind them once they have entered (to ensure only one passenger uses the gate at a time).*

*The kiosk prompts the traveller to present the e-passport for scanning (visual and electronic) and is prompted to present one or two fingerprints for scanning. The*

*fingerprint image is captured and the system converts both the captured image and the image stored on the e-passport into templates and attempts to match them, according to predetermined thresholds. If a good match is achieved, a second gate opens and the traveller is allowed to cross the border. If there is not a good enough match, or any other problem occurs, the gate does not open and the traveller is directed for processing by a border guard.”*

Tony Bunyan, Statewatch editor, comments:

*“The idea that visitors and possibly EU citizens - including children aged six and above - should enter an enclosed box and be told what to do by machines and for computers to decide whether to let us out or not is a quite appalling proposal.*

*We are told it will save money because no officials need to be involved and that the EU should embrace all the benefits of modern technological developments. If this is the price of “progress” it is a bridge too far”*

### **EU-PNR: Where the UK leads will the rest follow?**

Prior to putting forward the EU-PNR proposal the Commission held a consultation exercise. Most illuminating are the options given and the response of EU governments (24 replied).

The first concerns the “scope” of the proposal, should it cover just air travel or sea and land travel as well? Six member states (Bulgaria, Spain, Latvia, France, Luxembourg and the UK) said it should cover all three. A further 12 said it should cover air and sea travel.

Second, should it cover just travel into the EU, or travel out of the EU as well or travel within the EU in addition? Seven governments want all three categories (Bulgaria, Cyprus, Germany, Estonia, France, Romania and the UK).

All wanted it to cover terrorism and serious organised crime - the UK wants it to cover “general public policy purposes” as well.

As to the “onward transfer” of PNR data nine governments (Belgium, Bulgaria, Cyprus, Estonia, Italy, Lithuania, Portugal, Romania and the UK) want the data to be passed outside the EU to third countries.

The UK leads the field by wanting just about everything covered - land, sea and air, in and out of the EU and inside the EU and all the data can be passed to third countries. It is already planning to “profile” all passengers entering and leaving the country and conduct security checks at main-line stations. It is even suggested that for boats leaving Orkney and Shetland for the mainland local people will have to prove their identity before boarding.

A note of caution should be made: the Commission’s EU-PNR proposal only covers travel in and out of the EU but the scope of the scheme may change or be

extended when the Council (the EU governments) start to look at the scheme in its working parties, as happens so often.

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## POSTSCRIPT

The Commission's proposal was discussed in the Council's Multidisciplinary Group on Organised Crime - comprised of law enforcement officials and officers. As predicted above major differences appeared amongst the governments particularly over the scope of the measure which many wanted to cover all crime and over who should have access to the data/information. In July 2008 the Commission proposal was ditched and the Council set about drawing up its own plan.

See:

Note from the Austrian delegation:

<http://www.statewatch.org/news/2008/jul/eu-pnr-austria-note-11724-08.pdf>

Council Presidency Note:

<http://www.statewatch.org/news/2008/jul/eu-pnr-11281-08.pdf>

Council Presidency Note:

<http://www.statewatch.org/news/2008/jul/eu-pnr-117721-08.pdf>

plus the penultimate draft of the proposal during discussions in the Council's Multidisciplinary group on organised crime:

<http://www.statewatch.org/news/2008/jul/eu-pnr-7656-rev2-08.pdf>

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