



Statewatch

The Shape of Things to Come¹

- EU Future Group

“Every object the individual uses, every transaction they make and almost everywhere they go will create a detailed digital record. This will generate a wealth of information for public security organisations, and create huge opportunities for more effective and productive public security efforts.” (EU Council Presidency paper)

Conclusions to

Analysis by Tony Bunyan

This analysis looks at the ideology in the Future group report, *Freedom, Security and Privacy - the area of European Home Affairs*. The EU is currently developing a new five year strategy for justice and home affairs and security policy for 2009-2014. The proposals set out by the shadowy ‘Future Group’ include a range of extremely controversial measures including techniques and technologies of surveillance and enhanced cooperation with the United States.²

This examines the proposals of the Future Group and their relation to existing and planned EU policies. It shows how European governments and EU policy-makers are pursuing unfettered powers to access and gather masses of personal data on the everyday life of everyone - on the grounds that we can all be safe and secure from perceived “threats”.

The Council of the European Union’s “Future Group” presented its final report at the Justice and Home Affairs Council’s July 2008 meeting. This will lead to a new justice and home affairs programme for 2010-2014, following the “Tampere” programme (1999-2004) and the “Hague” programme 2005-2009. The final programme will be proposed by the

¹ With due acknowledgement to H G Wells. “The Shape of Things to Come” was written by Wells in 1933 and he wrote the screenplay for the film “Things to Come” (1936). Among other things he predicted a “technological revolution” which would be used by the state in a highly authoritarian way. However, he was trying to envisage what the world would look like in 2106 - not 2008.

Thanks to the Network for Social Change for their support: <http://thenetworkforsocialchange.org.uk/>

² Future group report: *Freedom, Security and Privacy - the area of European Home Affairs*: <http://www.statewatch.org/news/2008/jul/eu-futures-jha-report.pdf>

European Commission, then amended and adopted by the Council. It will set out a detailed programme for both new measures and practices for the five-year period.

Conclusions

The new programme, scheduled to be called the "Stockholm" programme, will be adopted by the European Council - a meeting of all the Prime Ministers from the 27 member states - and will "set in stone" the priorities for home affairs for the following five years.

The "convergence principle" and "state-building"³

The introduction of the "convergence principle" is another step in the building of the EU state. This is described in the background papers for the Future group as: "*the pooling of sovereignty*". It builds on the "principle of availability" (Hague programme) of all data, information and intelligence held all agencies across the EU to all other agencies and outside and the "interoperability" of EU information systems must be compatible so that all agencies can access each others data

"Convergence" means too shifting from harmonising laws at national level to standardising training, equipment and information technology across all the law enforcement agencies in the EU. This ensures "interoperability" and efficiency, and is much cheaper if EU-wide standards are set and then licences are negotiated with the multinationals. Agencies will still work at the national level but their environment will be determined (harmonised) by EU standards and more and more roles will be undertaken at the EU level.

"Convergence" also requires further legal harmonisation so that "obstacles" (eg: judicial authorisation) to gathering, accessing and transferring data and intelligence are removed.

In the Lisbon Treaty "state-building" is evident in both the creation of bodies and agencies to act on an EU-wide basis and the creation of administrative and operational cooperation centrally organised by the EU. "Cooperation" will cover all "criminal offences" and embrace all agencies. This will include the establishment of measures for the: "collection, storage, processing, analysis and exchange of relevant information" and for "investigative techniques" (which means telephone-tapping, bugging, informants, agent provocateurs etc).⁴

Overseeing operational activities will be the new Standing Committee on Internal Security (COSI) which is planned to oversee and direct all operational matters - with national and European parliaments only to be "informed" about its activities.⁵

This analysis only deals with certain aspects of EU state-building, those concerning justice

³ That a European state is under construction is not a question - it is matter of whether you want to see it or not. Most of academia cannot see it, those at the sharp end - refugees, migrants and protestors - know it exists. In March 1991 - the same month Statewatch was launched - I wrote an article for *Race & Class*, "Towards an authoritarian European state", nothing has happened since to change my view.

⁴ Cementing the European state - new emphasis on internal security and operational cooperation at EU level: <http://www.statewatch.org/news/2008/feb/07lisbon-european-state.htm>

⁵ The practice of "informing" parliaments is no substitute for proper accountability. In the EU this usually means a bland annual report and an uninformed debate.

and home affairs and internal security. Another aspect is the proposed European External Action Service envisaged under the Lisbon Treaty which would turn the current European Commission 180 plus missions around the world into EU embassies with powers of intelligence-gathering.

Yet another example is the EU Security Research Agenda. This is described, in what should be viewed as a complementary study to this one, in *Arming Big Brother* as:

*“the development of the security-industrial complex in Europe and in particular the development of the EU Security Research Programme (ESRP). Spawned by the military-industrial complex, the security-industrial complex has developed as the traditional boundaries between external security (military) and internal security (security services) and law enforcement (policing) have eroded.”*⁶

The “digital tsunami and the EU surveillance state”

The coded language in the main Future group report hides the broader intent which is revealed in other documents, especially the one from the Portuguese Council Presidency. The assumption behind the “digital tsunami” is:

“Every object the individual uses, every transaction they make and almost everywhere they go will create a detailed digital record. This will generate a wealth of information for public security organisations, and create huge opportunities for more effective and productive public security efforts.”

The implications of this statement are breath-taking.

Across the EU - following the 2004 EU Directive - governments have, or are, adopting national laws for the mandatory retention of everyone’s communications data - all forms of communication (phone-calls, faxes, mobile calls including locations) which will be extended to keeping a record of all internet usage from 2009 - even though few are aware this is happening.⁷ This allows law enforcement and security agencies to get access to all traffic data - in the UK access is already automated. Access to the content should, under national law, be authorised by judicial authorities - though state agencies have had the technological capability to access content for years.

When traffic data including internet usage is combined with other data held by the state or gathered from non-state sources (tax, employment, bank details, credit card usage, biometrics, criminal record, health record, use of e-government services, travel history etc) plus “open source” information a frightening detailed picture of each individual’s everyday life and habits can be accessed at the click of a button.⁸

The harnessing of the “digital tsunami” by public security organisations, as set out in the

⁶ *Arming Big Brother* by Ben Hayes (TNI/Statewatch):
<http://www.statewatch.org/analyses/bigbrother.pdf>

⁷ Statewatch Observatory: The surveillance of telecommunications in the EU:
<http://www.statewatch.org/eu-data-retention.htm>

⁸ Open source spying: <http://cryptome.org/cia-openspy.htm>

Portuguese Council Presidency's paper, means that behaviour will be predicted and assessed by "machines" on the basis of which directions are given to state officials on the spot.

To this must be added the fact that state agencies can access any home or work computer and look at its contents - and, if they can look at its content they could add or alter it too. It was a proposal by the German government in June 2008 which confirmed the ability of the agencies to do this, by seeking the power to authorise online computer searches in private homes through:

"remote searches of computer hard drives".⁹

Taking all these extensive powers of surveillance together it is not too hard to see, for example, why lawyers, journalists and civil society groups might be concerned. The monitoring of a lawyer's communications and correspondence could reveal the defence's case and counter-evidence gathered - especially in cases which are politically sensitive. A journalist's contacts and communications could be watched in order to pre-empt a story or to prepare a plausible denial in advance. While a group organising a protest could find its preparatory work undermined and disrupted and its organisers targeted for detention or arrest - with their demonstrations surveilled by spying "drones".¹⁰

"Ordinary" people who "have nothing to hide" are under the illusion that this sweeping surveillance system has nothing to do with them - which is why they will never realise they did not get a job interview because the employer had accessed to a criminal record based on a "spent" conviction or why their application for an insurance policy failed because the company had access to their health record.

The European Data Protection Supervisor put it politely when he said of the police and, by implication, all state agencies:

"It is not sufficient to start from the assumption that the police under all circumstances and in all cases operate within the legal limits of their legal obligations".

There is an assumption, on this and wider issues in the EU, is that "if it is technologically possible why should it not be introduced?" This brings to mind the discussion in the EU over the age at which children should be subjected to finger-printed for passports, visas or ID cards. The discussion in the working parties of the Council of the European Union (the governments) have been based not on moral questions but rather at what age is it technologically possible to collect accurate fingerprints - most want this to be from six years old and upwards, some even want to collect them at birth.¹¹

⁹ German government press release:

<http://www.statewatch.org/news/2008/jun/germany-surveillance-powers-proposal-prel.pdf>

¹⁰ See: Policing protests in Switzerland, Italy and Germany:

<http://www.statewatch.org/news/2008/apr/02policing-protests.htm>

and: Proposal to create EU-wide "troublemakers" database:

<http://www.statewatch.org/news/2008/apr/04eu-troublemakers.htm>

¹¹ Fingerprinting of children: <http://www.statewatch.org/news/2006/aug/02eu-fingerprinting-children.htm>

At the heart of this issue is the “ownership” of personal data. Is it our personal data, which we “own” and which we may consent to be used for a specific, stated purpose? Or is it “owned” by the collector and holder of the data (internet service provider, airline, bank or credit card companies or state agencies)? For example, the European Parliament is currently discussing a proposal from the Commission on users’ rights relating to electronic communications networks. The European Data Protection Supervisor has raised the question of whether Internet Protocol addresses (“IP”) are personal data, as the Data Protection Directive and the Privacy Directive apply whenever personal data are processed, but:

“If IP addresses are not deemed personal data, they can be collected and further processed without the need to fulfil any legal obligation arising from the two above mentioned Directives. For example, such an outcome would enable a search engine to store for an indefinite period, IP addresses assigned to accounts from which, for example, materials related to specific health conditions (eg: AIDS) have been searched.”¹²

It will be remembered that under the EU Directive on mandatory data retention all ISPs are obliged, from 2009, to store records of all internet usage by everyone in Europe. What if searches for “specific health conditions” are captured and stored by ISPs then accessed by state agencies and further processed by them - who “owns” this data, the individual or the state?

The security-industrial nexus

In the immediate aftermath of 11 September 2001 the EU, and national governments, adopted measures said to be necessary as “exceptional” because of the “war on terrorism” and that they were not permanent but time limited. Seven years on the “exceptional” has become the norm.

What is much clearer now is that 11 September 2001 was used to accelerate a process already underway. Globalisation and its “technological revolution” - nurtured by Western states and developed by multinationals - was ready to break out of the constraints imposed by liberal democratic values. Notions of privacy and data protection espoused as basic values stood in the way of progress. The welfare state, where a benevolent state protected and cared for the people, has been replaced by the market state requiring the social control of market forces, unhindered by rights and regulations. In place of theoretically serving the people, the state now serves the interests of international capital.

Moreover, the “war on terrorism” presented a massive opportunity not just to use its monopoly of information technology but to apply it to new, highly lucrative, areas: The surveillance of travel and communications, new systems for data-sharing, data-mining, interpreting behaviour, the collection of biometrics and readers to check them. The construction of EU-US standards to record, check and hold people’s travel records is intended to set standards which will be laundered to set global standards too - and new markets for the West’s multinationals to pursue and profit from.

EU-USA

¹² Comments by the EDPS: <http://www.statewatch.org/news/2008/sep/ep-eprivacy-edps-opinion.pdf>

Internationally, the prospects are little better. It is often forgotten that 21 of the 27 member states of the EU are also in NATO, which is why the majority are supplying "peace-making" or "peace-keeping" troops in Afghanistan.

Through NATO and other fora the influence of the USA on the EU has grown enormously since 2001. The most significant, largely unseen, influence has been through the numerous high-level meetings between the EU and the USA on justice and home affairs issues. All the evidence shows that this is an unequal relationship with nearly all the demands coming from the US side.

Top EU officials are fond of saying the EU and the USA share "common values", but do we? What they mean is that the political elites (governments and officials) share the same values.

Now the Future group is proposing that the EU finally "make up its mind" (ie: it has already been discussed) by 2014 on the creation of a:

"Euro-Atlantic area of cooperation with the USA in the field of Freedom, Security and Justice".

This goes way beyond the existing mechanisms for cooperation. Since 2001 six agreements have been reached with the USA - all of them controversial. High-level officials have been meeting regularly though these meetings concern specific issues *not* every aspect of justice and home affairs.

The Future group's "area of cooperation" would cover *all* aspects of justice and home affairs: policing and terrorism, immigration, asylum and border controls, laws and rights of suspects, databases and data-sharing, privacy and data protection. The USA would be sitting at the table with a very powerful voice with its demands and influence hidden from public view.¹³

The politics of EU values

One of the myths that the EU seeks to perpetuate is the idea that it is based on "common values". Amongst these are "freedom", "liberty", "justice", "fundamental rights", "democracy", and in this context "privacy" (and data protection). In practice these values have changing meanings according to the general political climate. For example, the "values" of the EU are not the same as they were in 2000 when Austria's membership of the EU was suspended under the Treaty because of the inclusion in its government of a fascist and racist party.¹⁴ If the EU still had the same "values" then the membership of the Italian government could have been suspended in the summer of 2008 over its policies of targeting, detaining and deporting on Roma with overt racist statements.

¹³ Official EU documents recording EU-US meetings are censored so that all the views expressed by the US are deleted: See: "Partially accessible" document:

<http://www.statewatch.org/news/2008/sep/eu-usa-partial-access-9223-06.pdf> and full-text doc:

<http://www.statewatch.org/news/2008/aug/eu-usa-9223-06.pdf>

¹⁴ Under Article 7 of the Nice Treaty, which still applies, the EU should react when "a clear danger exists of a member state committing a serious breach of fundamental rights." A qualified majority of the EU's heads of state may suspend certain EU council voting rights of the country in question.

And are the "shared/common values" of the EU the same now as they were in 1999? In 1999 there were 15 EU member states with 12 governments on the broad left (social democrats) and 3 on the right - now with 27 member states there are 21 on the right or far-right and only 6 on the so-called "left"(social democrats) including the UK! What this means is that the "Council of the European Union" (the governments) is in the hands of the right and far-right and that the mandates given by Interior and Justice Ministries at national level to officials and officers going to Council working parties reflect their politics.

In the European Parliament the centre-right and its far-right allies can put together the largest parliamentary block which can only be defeated if all the other groups (PSE, socialist, ALDE, Liberal, Green and GUE, united left) vote together - which happens occasionally. With the European Parliament elections in June 2009 there is a possibility that the centre-right and far-right will have a permanent majority.¹⁵

The European Summit (EU Prime Ministers, dominated by the centre and far-right) will lay down the new justice and home affairs programme (the "Stockholm" programme) and the Council of the European Union through the Justice and Home Affairs Council (national Home/Interior/Justice Ministers, dominated by the centre and far-right) will, as it always does, determine on the content of each and every measure.

If the EU Summit, the Council and the European Parliament are dominated by the centre-right and far-right it can be argued "that is simply the democratic outcome". But "democracy" cannot be divorced from other values such as "freedom" and "liberty" which transcend political systems.¹⁶ What if "democracy" is used to diminish, undermine and remove these universal values and lead us down the road of authoritarianism?¹⁷

EU "values" are not "shared" or "common" but those of the ruling elite who assume they can define and propagate as a "consensus" where there is none.

Tony Bunyan: Final comment

"There is now only a slim chance that the political elites in Council of the European Union, the European Commission, national governments, the law enforcement agencies and the multinationals will change course - they have already invested too much to allow a meaningful public debate to take place.

This is because they actually believe that technology, not values and morality, should drive change. They believe they have balanced freedom and security when all with eyes and ears to see and hear know that liberties and freedoms have been made subservient to the demands of security.

The national and European states require unfettered powers to access and gather masses of personal data on the everyday life of everyone so that we can all be safe and secure from perceived "threats". But how are we to be safe from the state itself, from its uses

¹⁵ Surge in support for far right ahead of poll reflects centre-left crisis across EU: Guardian, link: <http://www.guardian.co.uk/world/2008/sep/25/eu/print>

¹⁶ See letter from Dr Richard Horton, Editor of the *Lancet*, Guardian 14.2.08.

¹⁷ See: *While Europe sleeps*, Tony Bunyan: <http://www.statewatch.org/analyses/essay-11.pdf>

and abuses of the data they hold on us?

The outrageous proposal that the EU should tie itself in with the USA across the whole justice and home affairs field will place our privacy and civil liberties in great danger.

If we do not have an open and meaningful debate now we never will, because by then it will be too late.”

Tony Bunyan, October 2008

NB: This is Version 1.3. Minor changes in the Conclusion made 30.9.08. Substantive revisions will carry new Version number (eg: Version 2.0 etc)

Thanks the Network for Social Change for their financial support in preparing this publication: <http://thenetworkforsocialchange.org.uk/> Thanks to Ben Hayes, Steve Peers, Trevor Hemming, Heiner Busch and Ann Singleton for their comments and help.

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Documentation

1. All the links in this pdf file are “live”, click to go to the source document.
2. All the documents (and any future documents) are available on: “The Shape of Things to Come” - the EU Future group: <http://www.statewatch.org/future-group.htm>

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