



## Statewatch analysis

# The EU's Police Chief Task Force (PCTF) and Police Chiefs Committee

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- a tale of self-regulation and self-definition by a body with no legal or constitutional basis
- Police Chiefs Committee created

A plethora of groups, agencies and centres have been set up by the EU since the entry into force of the Amsterdam Treaty. One of the first was the Police Chiefs Operational Task Force - as it was originally called - set up after the Tampere Summit in October 1999. Recommendation no 44 called for:

*"the establishment of a European Police Chiefs Operational Task Force to exchange, in cooperation with Europol, experience, best practices and information on current trends in cross-border crime and contribute to the planning of operative actions"*

In the event the PCTF has interpreted "contributing" to the "planning" of operations as planning operations - as the Belgian delegation observed as early as May 2000 it is "essentially geared towards the operational aspects of police work".

To say it was "set up" sums up its legal basis - it was "set up" and first met in April 2000 in Lisbon and to this day has no legal basis in the EU.[1]

### 2000 - PCTF launched

A "Note" from the UK Delegation to the Article 36 Committee dated 2 February 2000 summarised the intended role of the PCTF (doc no: 5858/00). The "idea" was defined as bridging the "gap" between the provision of information and intelligence "on serious organised crime" through Europol and "its translation into operational activity".[2] The examples cited were drug trafficking, illegal immigration and paedophile rings. The PCTF would be a "high level informal group" comprised of "top-level law enforcement officers with the "authority to commit resources and direct operations".

Although an "informal" group it was to report to the JHA Council via the Article 36 Committee while the legal basis was sorted out. The UK Note said it was "anticipated" the PCTF "would be given a formal legal basis set out in a separate legal instrument". This was necessary, it was argued, in order to give it a "proper status within the Council structure" and "should be negotiated quickly so that the Task Force can start work later this year" (ie: 2000).

The same Note said that the PCTF:

*"would be serviced by the Council Secretariat"*

The UK Note also posed a number of questions that needed answers, including: "How will the Task Force physically get information from Europol without it breaching data protection laws? Will there be the need to store it separately and if so how"? These questions, like its legal status, have never been answered.

The first meeting in Lisbon, 7-8 April 2000, was entitled an "Informal meeting of Chief Police Officers" - an "informal" meeting of an "informal" group. The Presidency Conclusions (doc no 7753/00) set the tone for the future - the PCTF was to define its own remit and roles to be rubber-stamped by the Article 36 Committee. The Conclusions said that it was necessary to create a "flexible, evolving and initially informal structure". Its transnational roles on organised crime now included terrorism and public order ("whenever events occur which are likely to threaten it"). December 2001 was set as the date for assessing its function - as we shall see below three events were to shape its role before then.

In May 2000 the Belgian delegation sent a Note to the Article 36 Committee (doc no: 8120/00) calling for the PCTF to: *"be made an official working party of the Council of the EU.*[3] drafting opinions for the JHA Council and Article 36 Committee. The second meeting of the PCTF in Paris on 14-15 September 2000 tried to flesh-out its roles. Counterfeiting of the euro, which was just about to be launched and "community policing" were added.

## **2001 - new roles for the PCTF**

With little substantive to discuss the third meeting of the PCTF in Stockholm, 8-9 March 2001, the group looked to define its role for itself (doc no: 7194/01). Its "Working Methods" it was decided: *"require only a minimum of regulations"*. A set of "guidelines" were agreed including any law enforcement agency in any member state could "initiate the planning of joint operative actions against transnational crime" seen as an "threats of immediate concern to a group of Member States". A joint operation was planned "along the *future* external border of the EU" (emphasis added, the EU then had 15 members).

The demonstrations in Gothenburg (June 2001) and Genoa (July 2001) brought "public order" to the top of the EU's agenda and the PCTF was charged with advising on the "most appropriate operational measures for ensuring effective policing and security of European Councils and similar events" and ensuring effective "EU police

cooperation in support of the Member State hosting the event". Interestingly the draft Council Conclusions said that they should consider:

*"the amendment of the Europol Convention [and] examine the possibility of entrusting this task to Europol" (doc no: 10731/01)*

The final draft deleted "Europol" and gave the lead role to the PCTF - though the "pivotal role" of the PCTF was changed to a "significant contribution".

11 September 2001 was to further shape the PCTF's roles. The Conclusions of the special meeting of the JHA Council on 20 September requested the PCTF to organise an "ad-hoc meeting of the heads of EU counter-terrorist units" (that is, specialist police units rather than security and intelligence agencies) to discuss: 1) improving operational cooperation between them and with third states; 2) coordinating measures particularly on air safety and 3) to consider the "missions" for counter-terrorism specialists "within Europol".

A follow-up meeting on 29 October 2001 between Europol, Eurojust and the PCTF resulted in a Note to the Article 36 Committee (doc no: 15389/01). This says that while Europol and Eurojust were "based on a specific legal act" (a Convention and a Framework Decision):

*"the PCTF had no institutional or legal status. The place of PCTF, which was now nearly two years old, in the architecture of the EU's institutions had to be specified and its work methods clarified if coordination between the three bodies was to be effective."*

The Presidency Note further said that the job of the PCTF was to:

*"support the competent bodies of the EU... and not itself become a decision-making forum".*

The fourth meeting of the PCTF in Brussels on 30-31 October 2001 discussed a report on its role from the "Comite des sages" (Committee of "wise men")! The majority of delegations said it was "premature to discuss the role of the Task Force within the EU" (doc no: 13747/01). On terrorism the PCTF:

*"expresses satisfaction with the work of the ad hoc group meeting of the heads of counter-terrorists units with a view to drawing up a list of terrorist groups in the EU and recommends that this list be confirmed by the Working Party on Terrorism"*

The PCTF at this meeting threw its weight behind a number of controversial proposals which were later to come through: 1) calling for a review of Article 99 of the Schengen Agreement - which allows discrete surveillance or checks on named individuals or vehicles: *"with a view to relaxing the procedure to bring it more into line with practice"*; 2) establishing a uniform code for informants; 3) for a: *"better*

*balance between the rules for data protection and adequate research possibilities, particularly in the fields of telecommunications and electronic data"; [4] harmonising the "technical aspects" of identity cards and passports and 5) "the exchange of information between police services and airline companies" - the EU's PNR scheme agreed in April 2004.*

On 14 November 2001 the Council Presidency circulated a Note from the Greek delegation which called for the PCTF taking on:

*"a more official character by being included in the structures of the Council, in order that their decisions be given a mandatory character" (doc no: 13406/01 ADD 3).*

### **2001 - is the PCTF part of the Council or not?**

On 1 November 2000, Tony Bunyan, Statewatch editor, requested a copy of the Agenda of the PCTF meeting on 29-31 October 2000. The General Secretariat of the Council replied on 8 November that:

*"The meeting in question was organised by the Belgian authorities, not by the Council, and thus there is no Council agenda of that meeting"*

To which the response was: It was clear that the PCTF was agreed at the Tampere Summit (para 44) and confirmed by the UK Note and that Belgium called the meeting was unsurprising as it held the Council Presidency. Further, for a body created by the Council not to be subject to the Code of Access to documents was "unacceptable" (doc no: 13871/01). The Council's reply was, to say the least, convoluted. It was correct that the European Council agreed in Tampere to set up the body however:

*"this task force has not been set up by the Council of the European Union, which is not identical with the European Council... the [PCTF] operates outside the Council's organisational framework... it must be concluded that the documents of the European Police Chiefs Operational Task Force are not held by the Council in the sense of Article 2.3 of Regulation 1049/2001" (doc no: 13873/01)*

So in terms of accountability the PCTF has no legal basis, it is not a Council body - even though it meets under the auspices of the European Council and it is serviced by the Council Secretariat - and therefore no access to documents the Council does not hold.

### **2002 - PCTF defines its own role**

The fifth meeting of the PCTF took place in Gran Canaria, 9-10 April 2002. Some information of the operations organised through the PCTF are listed: 1) "High Impact"; 2) "Rio"; 3) "Rio-II" (Italy and Spain); 4) "Twilight" (Denmark and UK); 5) "Track" (Finland and Russian Federation, stolen vehicles). The meeting also

endorsed the UK proposal for a study on "data retained by telephone and Internet service providers".

Significantly, the PCTF established a "Steering Committee":

*"comprising the Troika [representative from the past, present and next Council Presidencies], the General Secretariat of the Council, which will also provide secretarial support, and Europol" (doc no: 8839/1/02)*

What is interesting in the composition of the "Steering Group" is the role of the General Secretariat of the Council. The UK Note from February 2000 noted that the General Secretariat would "service" the PCTF. Here, however, the General Secretariat is a full member of the "Steering Committee" (and also of the full meeting) as a "player" - the General Secretariat works for the 25 EU governments yet here it is, in its own right, sitting at the table planning and evaluating *police operations*, contrary to any notion of the "separation of powers".

The sixth meeting in Copenhagen, 22-23 July 2002, agreed "Conclusions" drafted by the Presidency and the Steering Committee on the "future functioning of the Task Force" (doc no: 1175/02).

The Conclusions list eight areas where "significant operational matters have been considered" including, safety and security at Summit meetings. "anti-globalism problems", and "High Impact Operations". It also sets of the priority to focus:

*"to a greater extent on the planning and execution of actual police operations at Union level"*

### **2003 - PCTF steps up its influence and roles**

At the seventh meeting in Crete, 19-20 May 2003 a detailed discussion on combating terrorism took place with the PCTF "inviting" Europol to take further steps to enhance cooperation with Interpol. The 2004 Olympics Games and illegal immigration (Europol plan to tackle "illegal immigration" from Ukraine and trafficking of human being from Bulgaria) were discussed at length.

Now on the agenda was the EU's Police Mission in Bosnia-Herzegovina: return of refugees, organised crime and control of borders with problems of "underpayment" resulting in a "continuous problem of corruption of some police officers". A whole day was devoted to organised crime with four operational plans noted: Track (Finland), Mare (Germany, "illegal immigration by sea"), Hercule (Austria) and Twilight (Denmark). The PCTF also "invited" Europol to draw up concrete action plans on: "ethnic Albanian OC groups" (organised crime) and drug trafficking via the Balkans.

The tenor of the eighth meeting in Rome, 6-7 October 2003, shows the PCTF trying to flex its muscles, especially as regards Europol. The Task Force decided that: "the Director of Europol *will*" (emphasis added) "assess cooperation between law

enforcement agencies and intelligence agencies, "submit to the Task Force" proposals to improve this cooperation, and:

*"enhance information exchange among Member States and third countries, by eliminating the obstacles of technical, organisational or legislative nature that prevent the complete and rapid exchange of information" (doc no: 13395/03)*

The idea that the PCTF could arbitrarily order Europol to "eliminate" obstacles in this way is either naive or daft.

### **2004 - 11 March (Madrid) and new remits**

The ninth meeting of the PCTF was in Dublin, 22-23 March 2004. This was just after the bombings in Madrid on 11 March and the sharing of intelligence was high on the agenda.

The PCTF was asked to see how its operational capacity could be reinforced and noted that, "The issue of intelligence is central to the fight against terrorism" and collaboration between police, security and intelligence agencies also a priority.

Like many Conclusions of these meetings the intention is clear while the practice is often different. Post 11 March 2004 there was a historical and continuing reluctance on the part of security and intelligence agencies to pass over to police agencies like Europol and the PCTF (except on the "need to know" related to surveillance and arrests).[4]

More practically there was an attempt to get national police forces to send through intelligence to Europol - that is "intelligence" gathered by national specialist police units. The meeting also sought to resurrect the "Atlas" project on which see below.

Cyber crime, the annual organised crime report, and Joint Investigation Teams (JITs) were discussed. On JITs "certain problems on the efficiency" of the proposal, as it then was, were voiced. It should be more flexible and the procedures "not be cumbersome" (see below).

The Austrian delegation informed the meeting on a seminar on "Sky Marshals" (US-style armed officers), and "many delegations stressed that the priority should be given to preventive action". Although the response here was luke-warm the introduction of "Sky Marshals" is in the Prum Convention signed by Austria and Belgium, Germany, Spain, France, Luxembourg and the Netherlands on 27 May 2005.

An "extraordinary meeting" of the PCTF was held in Brussels on 10 May 2004 with its future role as the main topic based on a paper from the Presidency (doc no: 9453/04). The report of the meeting notes that there was broad agreement, yet again, to "bring the Task Force within Council structures", to increase the number of meetings (formal and informal) and support for the maintenance of the Steering Group. The new idea was the need for "an operational support structure" an "Operational Support Unit" for the Task Force which could either be based at

Europol or in the General Secretariat of the Council - the preferred option was Europol (policy influence was already guaranteed through the participation of the General Secretariat on the Steering Committee and its general meetings [5]). The Support Unit would be under the direction of the Steering Committee whose meetings it would attend "in a support capacity". It would be comprised of three representatives, one from each member of the Troika.

In its fifth year of existence the PCTF - still without any legal basis - was assuming greater roles in the policing field. It was to present the Council with a Comprehensive Operational Strategy Plan (COSPOL).[6] Plenary meetings would be "held in Brussels at the premises of the Council Secretariat" as a "Council Committee (ie: inside the structures of the Council)" while operational meetings would take place at Europol (where the Support Unit would be based).

The Steering Group was to be given carte blanche to "approve the attendance of representatives of other bodies or organisations as appropriate".

The main role of the Council Secretariat - in addition to its active membership of the Steering Group and plenary sessions - was to ensure coherence with the work of the Council's main policy-making Committees and Working Groups (eg: Article 36 Committee and the Police Cooperation Working Party).

The "Reporting structure", a gesture to accountability, was simply ensuring that the Conclusions of the plenary sessions are "brought to the attention of the Council".[7]

On 25 October 2004 a meeting of EU Chiefs of Police was held in Warmsveld, Netherlands on the policing aspects of the European security and defence policy (ESDP). The resulting Declaration noted the first two ESDP police missions in Bosnia (EUPM) and Macedonia (EUPOL PROXIMA) and the commitment to provide for "non-military crisis management" 5,000 para-military police (which has yet to materialise) - which is perhaps why the meeting "welcomed the initiative to establish a European Gendarmerie Force (EGF) by France, Italy, the Netherlands, Portugal and Spain" (it was formally launched from its base in Italy in January 2006).

The Conclusions of the tenth formal meeting of the PCTF, 11-12 October 2004, were the first to be censored (ie: sections were blanked out, so-called "partial access" to the document was allowed) (doc no: 14094/04). The chair opened the meeting by noting the success of the PCTF and that:

*"organised crime and terrorism are increasingly being fought jointly. The joint approach is also used increasingly and successfully at sports events and demonstrations of anti-globalists."*

One of the main items on the agenda was "COSPOL 1", the one most heavily censored. The job of COSPOL was to set targets, appointing "forerunner groups" "lead groups), managing operational performance and "empowering information sharing" at the EU level.

The "Scheme of COSPOL 1" set out six targets/teams - however, these were: 1. Terrorism (shared lead), 2. Counterfeiting of the euro (Germany), 3. East European Organised Crime (Poland), 4. West Balkan Organised Crime (Italy), 5. Cyber crime/child pornography (Sweden) and 6. Drugs: synthetic drugs and ecstasy (France). Between six and eight member states participate in each team. For example, the West Balkans Organised Crime target/team lead by Italy has the following participants: France, Austria, Belgium, Denmark, Slovakia, Luxembourg, Norway and Europol. All the targets are mentioned in later Conclusions so why this section was deleted is not at all apparent.

Opinions "diverged as to whether the Council should be asked to validate the choice of targets or that it would be more appropriate to just inform the Council in these operational matters." A majority of representatives favoured asking the Council but: "certain delegations thought that decisions on operational matters should be left to Police Chiefs". It was decided to submit the plan and targets to the Council leaving it to "their discretion how to respond to it".

In November 2004 yet another Note appears on the "Role and positioning of the PCTF" (doc no: 14708/04). On the *operational* side "it is desirable to bring the PCTF closer to Europol" and relevant meetings should be hosted by Europol". It is also noted that the role of the PCTF:

*"is wider than the competence areas of Europol (eg: maintaining law and order and security)"*

However, on the *strategic role* of the PCTF they "should meet within Council structures" which "will ensure accountability of the European operational cooperation". How is this to be done? There were two views: a) a number of delegations supported the idea that the Police Cooperation Working Party should meet once or twice a Presidency in "a Police Chiefs" setting"; b) several delegations thought "it would be more fitting to convene their meetings at a higher level, with direct reporting to COREPER" - either through joint meetings with the Article 36 Committee or a "separate meeting forum (the Police Chiefs Committee). The Council was invited to decide. When the Note was discussed in the Article 36 Committee (11-12 November 2004, doc no: 15102/04) "concerns were expressed by some delegations on the number of subgroups created by the PCTF".

At the JHA Council on 19 November 2004 there was a discussion on the Presidency Note on the role and positioning of the PCTF (doc no: 14938/04). On its *strategic* role the Council decided:

*"Because of their strategic role with regard to European police co-operation, it is desirable that the highest representatives of the police of the Member States meet within the Council structures. This will allow to discuss strategies and issues related to structural problems as well as provide a clear operational point of view in the Council's proceedings. Moreover, it will ensure the accountability of the European operational co-operation.*

*It is proposed that, pending the definite setting of the internal security committee, provided for in Article III-261 of the Constitutional Treaty and point 2.5 of the Hague Programme, each incoming Presidencies convene one or two times the Police Chiefs in association with the Article 36 Committee meetings or in any other setting they find appropriate.”*

Pending the Constitution and COSI coming into being meetings could be convened by the Council Presidency with the Article 36 Committee or any other "appropriate" setting, whatever that mean. Of course, the EU Constitution is in abeyance for the foreseeable future. Presidencies could "convene" meetings, but did this make the "Police Chiefs" a Council Committee? And why is the "Police Chiefs Committee" not included on the Council's List of preparatory bodies (last update 27 December 2005)?

### **2005 - PCTF, "Police Chiefs" Committee and "Atlas"**

The first overtly operational meeting of the PCTF at Europol HQ in the Hague was held on 10 February 2005. The meeting discussed the six targets under COSPOL (doc no: 6268/05).

The first meeting of the strategic meeting of Police Chiefs was on 12 May 2005 at the Council in Brussels (doc no: 9494/05) and the agenda was available too (CM 1410/1/05). The chair said that it was hoped that its meetings could "bring the operational police point of view closer to the Council structures, both towards the Council and the Article 36 Committee" - the "appropriate setting" was apparently for its to hold a meeting on its own.

The meeting considered the Europol Work Programme for 2006 and "the Police Chiefs confirmed their endorsement of this work programme". Although:

*“it would be examined how the Police Chiefs could give useful and timely input to be taken into account for the next working programme”*

At this meeting on 30 May 2005 the Commission expressed concern that so far:

*“only one Joint Investigation Team had been set up and wondered what the underlying reason for this was. The Commission appealed to the delegations to increase the use of this tool”*

Member States it seems, although they had rushed through the Framework Decision on Joint Investigation Teams were keener on using other more flexible resources - through the PCTF and ad hoc multinational teams where accountability is more remote.

Under "Combating terrorism" the Belgian delegation presented the "Atlas strategy" (circulated by the Presidency as a "Discussion document on a normative framework for "ATLAS"", doc on: 8434/05). Following 11 September 2001 under the "umbrella" of the PCTF the "Atlas network" has:

*“conducted various seminars, studies, exchange of material and common exercises”*

and has set up a "secure communications network" via Europol,

The purpose of "Atlas" is to coordinate the use of:

*“special intervention units at EU level”*

This appears to refer to para-military police units specialising in dealing with terrorism, sieges, hostage-taking, cross-border pursuit, public order etc.

The question is asked whether the "appropriate legislative framework existed"? And how the EU would cope "when its special units are requested to intervene in different situations taking place simultaneously"?

Under "issues to be discussed" is "What is a crisis situation", should the definition be very broad or limited in scope? The assistance required might be of equipment only or equipment with specially trained personnel or a whole unit.

It was intended only to use special intervention units inside the EU.[8]

Liability to the victims, the public and members of the team needed to be clarified. The decision to ask for assistance should be taken at a "political level", while decisions during operations at a political/judicial level. "Possible grounds for refusal" include "different political approach towards separatist groups, how to deal with hostage-takers, ethical grounds and disproportionate response (see below). [9]

In parallel, in October and November 2005 the Police Cooperation Working Party (Mixed Committee) discussed the creation of "Special Task Forces" to deal with "crisis situations" where "there is a direct threat to persons or institutions" (doc no: 13957/1/05).

The PCTF meeting on 27 October 2005 in the Hague proposed renaming the PCTF "Operational Support" to "PCTF Support Unit" (as the officers are not involved in actual operations). It also observed that Commission finance programmes are "inappropriate for operational issues" - the Commission representative promised to pass on the message that:

*“a balance had to be struck between efficiency of police work and the necessary budgetary rules” (doc no: 14736/05).[10]*

The final meeting of the year on 7 December 2005 was the second meeting of the Police Chiefs Committee at the Council.

It spent some time looking at Joint Investigation Teams (JITs) and why so few had been set up. During the discussion it was said that there was a complex procedure for setting up JITs and this may lead "authorities to choose a more pragmatic and direct way of cooperation", while other delegations observed that the complex procedures "provided the necessary legal guarantees to ensure that the case would stand up in court".

Surprise was also expressed that:

*"no JIT has so far been set up within the COSPOL framework , as these projects by definition concern trans-national investigations"*

On the ground it appear the police forces prefer to organise multilaterally rather than through JITs.

## **Conclusions**

The PCTF is now in its seventh year, though now it is a hybrid with the PCTF meeting in the Hague on operational matters (together with a Support Unit), a Steering Group meeting regularly with no agendas or Outcomes ever published, and a Police Chiefs meeting under the auspices of the Council.

The fact that the PCTF meets at Europol offices does not give it any a constitutional or legal basis. Nor does the Council agreeing that Council Presidencies could call meetings of Police Chiefs in any "setting they find appropriate" pending the adoption of the EU Constitution (which may never happen).

It is convenient for the Council to operate in this fashion where through the active participation of the General Secretariat (JHA) it can influence both operations and strategy - but it is a wholly unaccountable arrangement which has no place in a democratic Europe.

## **Footnotes**

1. Under the EU Constitution, currently in long-term abeyance, there have been suggestions that the PCTF might become part of the Internal Security Committee (COSI). An alternative view was that it would service COSI. Either way it would still need a legal basis.

2. On 19 September 2001 Belgium, Spain and UK proposed the early implementation of Joint Investigation Teams (JIT) which are in the 2000 Mutual Assistance Convention. This was implemented on 1 January 2003 though a Commission report in 2005 said only two JITs had actually been constituted. JITs would seem to meet the perceived "gap" but the PCTF provided a more flexible, informal, mechanism.

3. The Council failed to answer as to its "legal basis" in answer to a question from Marco Cappato MEP, doc no 11031/00, 3 October 2000.

4. This was resolved in the summer of 2004 when internal security agencies agreed to forward intelligence to the Joint Situation Centre (SitCen), part of the EU's growing military apparatus under Mr Solana in the Council Secretariat.
5. As noted in document no: 14094/04: "There is no doubt whatever that the Council Secretariat is the entrance to the Council and the Council's structures".
6. Two proposals for European police cooperation were on the table: the Comprehensive Operational Strategic Plan for Police (COSPOL) from the Netherlands and the European Criminal Intelligence Model (ECIM) from the UK (doc no: 13075/04).
7. A Presidency Note, 27 October 2004 suggested that maybe there should be joint meetings of the PCTF and the Police Cooperation Working Party which "will ensure the accountability of the European operational cooperation" (doc no: 13075/1/04).
8. The GSF is intended to operate outside and inside the EU.
9. An interesting Note from the Luxembourg Presidency raised the issue of developing a structure for police supervisory and inspection authorities at the EU level to oversee the activities of police units acting at this level or in another state (doc no: 10048/05).
10. More details on the PCTF Support Unit are given in 15067/05.

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