



The “enemy within”: EU plans the surveillance of protestors and the criminalisation of protests

The EU plans would:

- * give control of operations to the newly-created EU “Task Force of Chief Police Officers” which has no legal basis for its activities
- * create mechanisms for “operational” cooperation for which there are no legal powers
- * legitimise the ongoing surveillance by “police and intelligence officers” (internal security services) of *“persons or groups likely to pose a threat to public order and security”*
- * create national databases of “troublemakers” based on suspicion and supposition without any legal standards or data protection and the unregulated exchange of this data
- * allow EU member states to pass laws to prevent people from going to protests in other countries if their names have been recorded as “suspects” or if they have been convicted of minor public order offences (obstructing the highway)

The Statewatch report concludes that:

- * the EU plans threaten the right to free movement and the right to protest
- * seven EU governments - Germany, Sweden, Portugal, Italy, Belgium, Luxembourg and the United Kingdom - wanted to go even further and create an explicit EU-wide database of “troublemakers” and to introduce travel bans on suspected “troublemakers” across the EU
- * the plans will lead to the surveillance of everyday political activity, with no limits or data protection, which is quite unacceptable in democracies
- * the plans were rushed through secret meetings in Brussels without any parliamentary scrutiny (national or European) and no chance whatsoever for civil society to register its objections
- * the plans will have little effect on the ground and the only option is going to be the increasingly authoritarian policing of protests in the streets
- * the overall effect is legitimise surveillance and to criminalise protests

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The “enemy within”: EU plans to criminalise protests

In the aftermath of confrontations, arrests and the shooting of protestors at the Gothenburg EU Summit (14-16 June) a special meeting was held in Stockholm of 25 EU prosecutors on 18-20 June. The meeting heard from Swedish prosecutors that 50 people were being held in custody (at 3 July) and the names and details of 400 others had been recorded for future use. This was confirmed by a local police chief in Gothenburg who said the names had been put on the Schengen Information System (SIS) [1].

The prosecutors put forward a number of ideas. It was suggested that the names of "potential hooligans" exchanged for Euro 2000 football championship should be compared with the list gathered in Gothenburg - though the link between travelling football fans and protestors is not spelt out, nor is it apparent. More concretely they point to the problem of making arrests on the streets because there were not enough police available to "investigate and begin to gather evidence" - this long-standing feature of public order policing was evident in Gothenburg and Genoa. There were very few arrests but many protestors were physically assaulted (what some call a form of "arbitrary punishment" for being part of a protest) - public order/para-military police units are, in the main, not trained to arrest and remove people but to clear the streets.

The meeting raised the idea that Europol should be given competence in the future to gather intelligence from national units and prepare analysis files on "suspected" groups (see below). The conclusions of the prosecutors meeting contains the following classic statement:

“It was thought that criminal organisations are behind these events in most cases as they are so well organised”

This meeting of EU prosecutors in Stockholm was followed by a special meeting of public order "experts" at the Police Cooperation Working Party in Brussels on 4 July. This was quickly followed by a series of meetings where the draft Conclusions were discussed by the "Justice and Home Affairs Counsellors" (specialist permanent officials based at the national delegations in Brussels) and twice by COREPER (the high-level committee of permanent representations of the 15 EU governments based in Brussels). The Conclusions were adopted at a specially convened meeting of the Justice and Home Affairs Council on 13 July.

EU Justice and Home Affairs Council adopt new measures to counter protests

The measures adopted by the Ministers at the Justice and Home Affairs Council were "Conclusions" which are considered to be "soft law" and not binding but all EU member states are expected to abide by them. National parliaments and the European Parliament were not consulted.

The first EU measures put in place were the Joint Action of 27 May 1997 on cooperation on law and order and security (covering public order in general including football matches *and* protests)[2]. This set up the exchange of information and intelligence and EU member states were to inform each other if:

“sizeable groups which may pose a threat to law and order and security are travelling to another member state”

The other legal power explicitly referred to is Article 46 of the Schengen Convention which covers the prevention of "offences against or threats to public order and security."

The following analysis looks at each of the measures agreed and their possible effect on the right to protest and the right to free movement.

The new plans are explicitly meant to put in place "operational measures". This is a major departure from existing powers which only cover the exchange between EU member states of information, intelligence and liaison officers.

The group charged with the overall "the practical implementation" of the plans (ie: everything from the gathering of intelligence to the policing of protests) is the "Task Force of Chief Police Officers". However, the day-to-day coordination will be carried out by a "senior officials working party" which will run the "permanent monitoring of these operational procedures", called a "Police Chiefs Task Force".

There are two problems with this arrangement. First, **the "Task Force of Chief Police Officers" has no legal basis for its activities** in the EU (there has been a reluctance to give it a status by amending the Europol Convention entailing a lengthy ratification process). Second, the "Police Chiefs Task Force" is intended to be legitimised under Article 3 of the 1997 Joint Action. But this Article gives **no** legal authority for the creation of an "operational" working party. Article 3 allows for an annual meeting (in the spring) of the "heads of central bodies for law and order and security to discuss matters of common interest" (Article 3.a) and the "holding of exercises and exchanges and training secondment" (Article 3.c).

The 1997 Joint Action confers no powers: i) to create a permanent working party or ii) to engage in operational issues.

At the national level there is to be the "activation" of permanent contact points in national criminal intelligence centres/services for the "collection, analysis and exchange information". This "information" is to come from "police or intelligence officers" who will:

"identify persons or groups likely to pose a threat to public order and security"

These terms of reference are vague, all-encompassing and have no test whatsoever of unlawful activity.

But, even more important, is the fact that **this remit legitimises the ongoing surveillance of any group whose concerns might lead them to take part in an EU-wide protest.** [3] It authorises the gathering of "open source" information from publications and the internet, the surveillance of e-mails, faxes and post, the taking of photos or video footage of members of a "suspect" group (what they call a "risk group"), the recruitment of informers, the infiltration of undercover police officers or internal security service agents and the recording of "fact" alongside supposition and "suspicion" (so-called "intelligence"). Moreover, such targeted surveillance is likely to be used in domestic situations as well as EU-wide events. The rationale which will feed this intrusion into ongoing political activity is that the agencies need to prepare their files and dossiers well in advance of any protest in another country (it is meant to be supplied to the host state at least four months in advance).

The EU governments could not agree on a proposal which was discussed at the highest level (in a COREPER meeting) to create a "European database of troublemakers who have committed violent acts". Spain, Germany, Portugal, Italy, Belgium, Luxembourg and the UK supported the idea (7 states), Austria, Sweden, Greece, Finland, Denmark, Ireland, Netherlands and France (8) opposed it. However, they did agree on:

"the use of all the legal and technical possibilities for stepping up and promoting, more structured exchanges of data on violent troublemakers on the basis of national files"

It should be noted that the standard of those who have "committed violent acts" (in the draft) has been lowered to simply "violent troublemakers". Whether or not there is a "European database" is, in a sense, immaterial. If state "A" is hosting a G8 Summit meetings then the files from the national databases in all of the other 14 states will be passed to state "A".

The Conclusions lay down no standards for data protection whatsoever nor for how long such files can be retained. However, another draft EU proposal on the table, dated 4.7.01, to extend measures on "football hooliganism" says that "records exchanged may be kept on record and may subsequently be consulted by other interested national information centres" (ie: other agencies in that state) [4]. It goes on to say that "general information" (ie: the size and suspected likelihood of the group to undertake violent action) can be kept for 10 years and "personal information" for at least "three years".

The national databases are likely to work in the following way. Files on groups and key individuals in these groups would be compiled by local police, political police units (eg: the Special Branch in the UK) and internal security agencies (eg: MI5 in the UK) to which would be added "communications intelligence" (eg: e-mails and "open source" websites). These files would be held on a national database (which may be called "national disorder intelligence and information systems", see doc on 7386/98) located at national criminal intelligence offices (eg: NCIS in the UK). National criminal intelligence offices also usually house the national SIRENE bureaux ("Supplementary Information Request at the National Entries") which has the capacity to exchange photos and fingerprints. The SIRENE network links into the Schengen Information System (SIS) based in Strasbourg. Files on "suspected troublemakers" could be exchanged between national SIRENE bureaux and/or placed on the SIS (accessible by all EU states).

This proposal is going to lead to the creation of files on political activists to be held on national databases which can be passed to other EU states, the use of which is unregulated.

In addition the national centres will provide a "pool of liaison officers" with the state hosting the main event who would go to that country and work with the local police agencies. They would also provide a pool of "spotters" who would: i) know the identities of key members of the "suspect" group; ii) would attempt to travel in the same party as the "suspect group" and iii) would attempt to "identify" members and "ringleaders" of the "suspect" group during a protest.

How effective "spotters" can be is a moot point. In a small to medium, and relatively orderly, protest they might be quite effective but in a large rambling protest their role may well be very limited. Equally, whether "spotters" identify for arrest "suspects" because they are committing an offence or simply because they are present is open to question.

The Conclusions then says that in the extensive amendments planned to the Europol Convention that:

"the Council will examine the possibility of increasing the powers of Europol in this area"

Europol has no powers covering public order, it was set up to deal with serious organised criminal organisations. **To extend Europol's power to cover public order and the surveillance of protest groups would dramatically change its role** (only the Netherlands and Austria entered scrutiny reservations on this issue).

Free movement

Austria (meeting of the World Economic Forum, 1-3 July, in Salzburg), Sweden and Italy all invoked Article 2.2 of the Schengen Convention to reimpose border controls prior to major protests. These were just part of a number of measures intended to stop the free movement of people, others included trying to cancel trains (ie: French attempt to stop train carrying 430 people from the UK) and refusing to let passengers disembark (ie: Italian refusal to let 150 Greek people land in Ancona).

The issue of whether there should be EU-wide powers to prevent people leaving their own country to go to another for a protest also divides the governments (eg: in the UK, for example, such powers only cover football supporters). The penultimate draft said measures should be taken:

“preventing individuals who have a record of law and order offences from leaving the Member State”

The same eight member states opposed the idea - Finland, Greece, France, Austria, Sweden, Ireland, Denmark and the Netherlands - and the same seven supported it - Germany, Luxembourg, Italy, Portugal, Belgium, Spain and the UK.

The adopted version leaves this issue in an ambiguous position stating that "all legal possibilities" should be used to prevent such individuals "from going to the country hosting the event". The standard for preventing people is that there are "serious reasons" to believe (undefined) that:

“such persons are travelling with the intention of organising, provoking or participating in serious disturbances of public law and order”

Moreover, people with a record of "law and order offences" is a very vague standard. For example, people can be arrested in the UK for minor offences such as obstructing the highway (sitting down in the road) or obstructing a police officer in the course of their duty (ie: refusing to move on when told to do so).

The measure as formulated encourages EU government to pass laws to prevent people from going to protests in other countries thus denying their right to freedom of movement if their names have been "recorded" on a database or if they have been convicted on minor public order offences.

An EU riot police force?

The EU's concept of "conflict" was spelt out in a report [drawn up by the UK] to a meeting of its public order experts in 1998. "Conflict" is:

“any act that is contrary to the general public's perception of normality or which adversely affects the quality of life... conflict has the potential adversely to affect the status quo”

This reasoning encompasses *any* mass protest which is thus the subject of law enforcement contingency planning. But none of the new measures will stop major demonstrations attended by tens of thousands of protestors. This is partly because most protestors will come from within the "host" state and partly because trying to identify "suspects" in advance rarely works (look at the list of 700 people supplied by the UK to the Euro 2000 authorities, hardly any of those arrested were on the list of "suspects").

It is likely that EU governments will be faced with the hard reality that while the issues underlying the protests remain - poverty, debt repayments, inequality between rich and poor (North and South) countries perpetuated by the exploitation of these countries under international agreements and the arms race - there are likely to be mass protests and **their only option is going to be how they respond on the streets.**

Otto Schilly, the German Interior Minister and Claudio Scajola, the Italian Interior Minister have called for the creation of an EU force of riot police (6.8.01). Mr Schilly suggested it could be modelled on a "border police" unit the two countries are planning. However, it is more likely, in the longer-term, that the 5,000 strong para-military police force being created by the EU military wing for use in the third world might be employed within the EU as well as outside.

Chronology

14-16 June	Gothenburg EU Summit
18-20 June	Special meeting of EU prosecutors (European Judicial Network) in Stockholm
1 July	Incoming Belgian Presidency calls a special meeting of public order "experts" in Brussels (Police Cooperation Working Party)
1-3 July	World Economic Forum in Salzburg, Austria

4 July	Meeting of Police Cooperation Working Party
5 July	COREPER meeting discusses draft conclusions on combating protests
9 July	Special meeting of Justice and Home Affairs Counsellors (national officials base in Brussels) amends draft
11 July	COREPER discusses revised text
13 July	Justice and Home Affairs Council adopt "Conclusion on security at meetings of the European Council and other comparable events"
19-22 July	G8 meeting in Genoa

Some forthcoming events

26-27 Sept	NATO meeting in Naples
3-5 October	International conference in the Hague: "Global civil society: Maintaining public order, a democratic approach" (<i>see Statewatch News online</i>)
5-9 Nov	UN Food and Agriculture Organisation (FAO) in Rome

Footnotes

1. Article 99 of the Schengen Convention covers the holding of data on the Schengen Information System (SIS). It allows information to be held where a person, for the purpose of the "prevention of threats to public safety" is intending to commit "extremely serious offences" or: "Where an overall evaluation of the person concerned, in particular on the basis of offences committed hitherto, gives reason to suppose that he will commit extremely serious offences in the future" (Art 99.2). It also allows for people and vehicles to be "checked" and/or placed under "discreet surveillance". Data on the SIS can be accessed by all EU police forces and customs and immigration officials.

2. The "Recommendations on guidelines for preventing and restraining disorder connected to football matches" was agreed in 1996. In 1997 this was followed by the Joint Action on law and order and security which extended the provisions of the Recommendations to public order in general including sporting events. It passed through the Justice and Home Affairs Council as an "A" point, this is without discussion - nor did national parliaments or the European Parliament have to be consulted.

3. In an interview Mr Schilly, the German Interior Minister said that according to the Office for the Protection of the Constitution there were "33,000 to 34,000 people who could be classified as left-wing extremists" and 6,000 people as belonging to the "militant independent scene" and that "some 400 German violent opponents of globalisation went to Genoa".

4. An EU meeting on football "hooliganism" held in Brussels on 22-23 May included the conclusion that: "the experts would like to propose" that the information gathered should be "related to the Schengen Information System".

Sources (the full-text of these documents is on:www.statewatch.org/news/2001/aug/12Aporeport.htm)

1. *Conclusions adopted by the Council (Justice and Home Affairs) and the representatives of the member states on 13 July 2001 on security at meetings of the European Council and other comparable events, doc no 10916/01, 16.7.01*

2. *Draft Conclusions on security at meetings of the European Council and other comparable events, doc no 10731/01 and Rev 1, 10 & 11.7.01*

3. *Note from the General Secretariat on an "Ad hoc meeting on follow-up to the Gothenburg events on 4 July", doc no 10525/01, 3.7.01*

4. *Outcome of proceedings of the Police Cooperation Working Party (chiefs of service for maintaining public order and justice experts), doc no 10795/01, 12.7.01*

5. *Draft discussion document for a policy debate on a ban on hooligans entering and/or leaving a country and similar measures, doc SN 3159/01, 8.6.01*

6. *Football matches with an international dimension - new Council Resolution, doc on 10536/01, 4.7.01*

7. *Public order: conflict management - experts meeting in Brussels on 15 April 1998, doc no 7386/98, 3.3.98*

8. *Joint Action on cooperation on law and order and security, 26.5.97*

9. *Statewatch, vol 7 no 3, 1997.*

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