



A *Statewatch* report

The "enemy within" II:

EU plans to extend the Schengen Information System (SIS) to:

- i) create EU database to target "suspected" protestors and bar them from entering a country where a protest is planned
- ii) create EU database of all "foreigners" to remove third country nationals who have not left within the "prescribed time frame"

Introduction

The Council of the European Union (the 15 EU governments) are discussing plans to create two new dedicated databases on the Schengen Information System (SIS). The first database would cover **public order and protests** and lead to:

"Barring potentially dangerous persons from participating in certain events [where the person is] notoriously known by the police forces for having committed recognised facts of public order disturbance"

"Targeted" suspects would be tagged with an "alert" on the SIS and barred from entry to the country where the protest or event was taking place.

The second database would be **a register of all third country nationals in the EU** who will be tagged with an "alert" if they overstay their visa or residence permit - this follows a call by the German government for the creation of a "centralised register".

Both of these new databases are being put forward under the post-11 September "Anti-terrorism roadmap" (item 45 on the version of 15.11.01, to "Improve input of alerts into the SIS").

In its report reacting to Gothenburg and Genoa on 13 July the Justice and Home Affairs Council agreed to the creation of national databases of "trouble-makers" but put off the decision to create a centralised EU-wide database.

This initiative comes in the context of the debate over the definition of terrorism to be agreed by the Justice and Home Affairs Council on 6-7 December. The draft on the table would embrace protests and protestors in the definition of terrorism.

SIS to hold database on protestors

The Conclusions of the special Justice and Home Affairs Council on 13 July - after Gothenburg but before Genoa - said that:

1. Police and intelligence officers should: *"identify persons or groups likely to pose a threat to public order and security"*

2. All legal and technical *"possibilities"* should be used for the: *"more structured exchanges of data on violent troublemakers on the basis of national files"*. At that time the Council (EU governments) were divided 8-7 against the creation of a "European database of troublemakers".

***Statewatch* monitoring the state and civil liberties in the EU**

3. All legal possibilities: *"should be used to prevent such individuals.. from going to the country hosting the event"*. The criteria for preventing people attending protests is to be where there are *"serious reasons"* (in the eyes of police and security agencies) to believe that: *"such persons are travelling with the intention of organising, provoking or participating in serious disturbances of public law and order"*.

The rationale of these Conclusions feed into the post 11-September definition of "terrorism" put forward by the European Commission which extends to protests and demonstrations (see, *proposed Framework Decision on combating terrorism*).

Now the EU Presidency of the Council of the European Union (Belgium) has put forward (15.10.01) a proposal that the Schengen Information System (SIS) be extended to cover:

"Potentially dangerous persons" who are to be prevented from entering countries for "sports, cultural, political or social events"

Under the plan the scope of the SIS - the EU's police cooperation, internal security and border control database - would be widened to allow for "alerts" to be placed on people:

"known by the police forces for having committed recognised facts of public order disturbance"

Under the proposal, Article 99 of the Schengen Implementing Convention would be extended. It currently allows police forces to enter the names of people on the SIS to be placed under:

discreet surveillance or specific checks... where there are real indications to suggest that the person concerned intends to commit or is committing numerous and extremely serious offences

Although Article 99 is currently only available for "extremely serious offences", the proposed extension would allow the inclusion on the SIS of people:

"with the intention of organising, causing, participating or fomenting troubles with the aim of threatening public order or security"

An "alert" on these 'trouble-makers':

"would cause the person to be barred from entering the country during a limited period before and after the event takes place"

'Football hooligans', demonstrators, in fact anyone with a public order misdemeanour to their name, could face bans on entering other EU countries during such periods:

"The specific event could be any sports, cultural, political or social event"

The Belgian presidency's explanatory notes, headed:

"Barring potentially dangerous persons from participating in certain events"

makes clear the intent of the proposal:

"Example: A known violent football fan can be barred from attending a football match, if there are indications that the person might cause disorders before, during or after the game. The measure could be extended to violent demonstrators as well."

The overall purpose would be to:

"Limit the risk of public disorder during a sports, social, cultural or political event by targeting known individuals, resulting in increased internal security in the Schengen territory"

The targeting of "known individuals" will be based on information gathered at national level (by police and internal security agencies) and passed on to the SIS in Strasbourg. The database of suspected "troublemakers" held on the SIS will then be accessed national police and internal security agencies when there is an assumed "threat" for a particular event in that country. **This would deny people the right of free movement in the EU and the right to protest.** However, the placing of an "alert" on the SIS that a "targeted" person is a suspected "troublemaker" could be accessed and used to stop them travelling (during the period of a prescribed event) for other purposes such as visiting friends or to go on holiday - **it would constitute a quasi criminal record.** Moreover, the construction at national level of a register of "known individuals" means that the **normal political activity of groups and organisations will have to be placed under regular surveillance.**

German government calls for EU-wide "foreigners" database

In the immediate aftermath to the 11 September attacks in the USA the German government put forward far-reaching proposals to the meeting of the EU Justice and Home Affairs Council on 27-28 September. These included a proposal that at the national level:

"each Member State should maintain centralised population registers and centralised registers storing data on third-country nationals present in the territory of the Union"

Only five EU member states have computerised and centralised population registers:

Belgium
Denmark
Luxembourg
Finland
Sweden.

Another four EU member states have "municipal registers" (that is register compiled and held at the municipal level but not in a form which can be accessed for analysis at national level), these are:

Germany
Spain
Italy
Netherlands
Austria

Five EU member states do not have population registers:

France
Ireland
Portugal
UK
Greece (Greece does have municipal records but only of Greek nationals).

However, the data held on these national and/or municipal records is often out of date and/or incomplete.

Only two EU countries have registers of "foreigners" (third-country nationals):

Germany
Luxembourg

(Source: Demographic Statistics, Eurostat, 1960-99)

The German government also proposed that there should be established:

"a European central register of third-country nationals present within the territory of the Union"

It might have been thought that such a far-reaching, and potentially dangerous, idea would have been noted and forgotten but it was not, it re-appeared on the measures to be taken post-11 September under the Council's "Anti-terrorism roadmap".

The German "central foreigners register" (AZR)

The German central foreigners register (AZR) was set up in 1953 and is based at the Federal administration office in Cologne. Originally a card index, the AZR was the first federal register to be automated in 1967. Since then, it has been continuously expanded. Up to 1994 its legal basis consisted of a single phrase in the 1959 law on the creation of the federal administration office.

The new law on the AZR in 1994 legitimised its technical and practical status at that time which covered registers with the data on all foreigners with more than temporary status in Germany (i.e. more than a three months tourist visa), everyone who asked for asylum, all war and civil war refugees and all people on which an immigration law decision has been taken (whether in favour or against them).

The individual files include names, surnames, knowledge and writing ability on German law and language, other languages, former names, aliases, sex, nationality, date and place of birth, civil status, the numbers and further details of personal documents, last address in home country, nationality of husband or wife, every change of address, every entry or leaving of the country, status under the immigration or asylum law.

The file also includes: reasons for denial of a visa, if a person has been denied naturalisation, if a person is on the police wanted persons list for denial of entry, for arrest or are to appear before a court (under Article 98 of the Schengen agreement), if there are "reasons to believe, that a person is suspected" of having committed or planned to commit in the future an offence of "trafficking" of immigrants, trafficking of illegal drugs, membership, support or propaganda for a criminal or terrorist organisation or another offense with a terrorist intention - this can be based on uncorroborated suspicion or rumours. In these cases there will be a record of the decision or a short report.

This data held on the AZR allows the permanent surveillance of a person. Those who have access to the AZR can follow the movements of a "non-german" person from one flat to another, they know if a child is born or if he or she marries. The police intelligence can be passed to the immigration offices and lead to their removal from Germany, even if the rumours never have been substantiated.

The AZR can also be accessed online by police and internal security service (offices for the protection of the constitution). These agencies can also get data on so called "group enquiries". This means that they can select the files of an indefinite number of people according to a certain search criteria. The AZR is thus another police or intelligence data bank.

In the proposed new law on "combatting international terrorism", which Interior Minister Otto Schily wants to pass through parliament before Christmas, another expansion of the AZR is planned. Persons with permanent residence, who up to now could not be subject to group enquiries, will now be included. The visa system a part of the AZR will be expanded to be a visa decision system, that means it will hold every decision on visa with all the personal details and files - this means that not only the overseas consulates and the immigration offices will get access but also the police and internal intelligence agencies.

SIS to hold database on "foreigners" in the EU

The 20 September Conclusions of the Justice and Home Affairs Council and the regular updates to the Anti-terrorism roadmap contain a number of measures and new "operational" practices which imply a fundamental changes in external borders controls and the control of "foreigners" within the EU - as did the October US/Bush letter of demands on the EU.

The German government proposal for a EU register of third-country nationals (based on similar national registers) has been taken up by Belgium, the current EU Presidency, who are proposing to amend the rules for Articles 96 and 99 (public order, see above) governing "alerts" on the Schengen Information System (SIS).

It is proposing to amend Article 96 so that:

data of persons entering the Schengen area are introduced and that it is checked whether they have left the area after the expiration of their visa or permit. In case the person does not leave the area within the prescribed time frame, an alert could automatically be raised under a new paragraph of Art. 96. The data of the person should not be visible during his authorised stay and would have to be deleted after the person left the Schengen area.

The official logic is spelt out as "checks at entry and leaving the Schengen Area for citizens of third countries" so that:

"When the person does not leave the area within the prescribed time, an alert is automatically inserted in the SIS"

Overall this would mean adding to the existing categories held under Article 96 (people to be refused entry on grounds of public order and national security or against who there is a deportation or expulsion order or prohibition on entry) "alerts" for people who overstay their visa period or their residence permit period. In order to do this a database has to be set up at national level of all visas issued and all residence permits and this data sent to the central collection on the SIS - this data would not be "visible" during the period of "authorised stay" and would be deleted when the person has left the Schengen area. If the person failed to leave the "Schengen Area" within the proscribed time-limit an "alert" would be flagged against their name as a illegally present person. National data which is placed on the central SIS system is then accessible through thousands of terminals (mostly police and immigration) across the Schengen countries. **This would, in effect, be a European central register of third-country nationals present within the territory of the Union.**

Under pre 11 September plans access to the SIS is already to be widened to give access to immigration, driving licensing and other law enforcement agencies and its capacity increased to allow the non-Schengen countries (UK and Ireland) and accession candidates to participate (see Statewatch, vol 11 no 1).

Who is on the SIS?

One of the greatest problem for people who are put onto a database on the Schengen Information System is that they are not told their names are on record, that is, until they attempt to travel (if they are on the protestors database) or when they are detained for removal from the EU (if they are a third country national whose time limit has expired). For a person to get their name removed from such lists is extremely difficult. Some years ago two football fans found it took years and lengthy appeals and procedures to get their wrongly recorded names taken off a list of suspected "hooligans".

European Commission proposals on "illegal immigration"

On 15 November the European Commission adopted a Communication on a "Common policy on illegal immigration" which touches on and adds to new measures to control entry to the EU and for border controls.

The Communication includes proposals to try and deal with "undocumented residence" (ie: those who overstay the proscribed period or those who are unrecorded "illegals") and the creation of a "**European Visa Identification System**" which could include "high security" visa documents, taking an storing an "electronic photo" of the person and scanning and storing travel documents (ie: visa, passport or identity card).

The Commission want to see the creation of a "**European Border Guard**" and a "European Border Guard School" - this would meet a long-standing worry of existing EU states that the standards in the applicant countries would not meet those expected in the EU. Another initiative proposed is the "creation of a single technical support agency" - this would include: "systems management of the SIS, Eurodac and European Visa Identification System with regard to migration management in general". Europol too "should be given more operative powers" to tackle illegal immigration.

The Commission are to present proposals in the near future to cover: i) a "Community Return Policy" (that is, detaining and deporting refugees and asylum-seekers to countries of origin or "safe" third countries; an "obligation under international law" for third world countries to "readmit own nationals"); ii) a Communication on "European Border Management"; iii) a feasibility study on "the creation of a European Visa Identification System".

The ideology of this Commission Communication is summed up as:

"Border controls must in particular respond to the challenges of an efficient fight against criminal networks, of trustworthy action against terrorist risks and of creating mutual confidence between those Member States which have abandoned border controls at their internal frontiers"

One of the founding principles of the EU is the right to freedom of movement between countries without border checks, a principle effected by the Schengen countries since March 1995. But now we are seeing extension after extension of so-called "compensatory measures" which negate this "freedom".

Documentation (available on the Statewatch website:www.statewatch.org/news/2001/nov/19sis.htm)

1. Proposal for extensions on Art 96 and Art 99 of the Schengen Convention, 12813/01
2. German government proposals, SN 4038/01
3. European Commission communication on a common policy on illegal immigration
4. Statewatch bulletin, "SIS II: technical innovation pretext for more data and control: Feature article
5. Statewatch: The "enemy within": EU plans the surveillance of protestors and the criminalisation of protests.
6. Statewatch's "Observatory" on EU plans to combat protests
7. Statewatch "Observatory": in defence of freedom and democracy, threats to civil liberties post-11 September:

Statewatch was founded in 1991. It is an independent group of researchers, journalists, lawyers, academics and community activists and its contributors are drawn from 12 European countries. Its work covers the state and civil liberties in Europe. Statewatch does not have a corporate view and does not seek to create one. Statewatch's main publications are: the bulletin, now in its eleventh year of publication, six times a year and Statewatch News online (www.statewatch.org/news)