



Statewatch briefing September 2003

Tampere European Council, 15-16 October 1999

The story of Tampere

an undemocratic process excluding civil society

Tony Bunyan, *Statewatch* editor, who covered the “Tampere process”, comments:

“The Conclusions of EU Summits, meetings of the 15 EU Prime Ministers, have an authority and presumed legitimacy on which major subsequent measures are based.

Some Summit Conclusions are based on proposals which have been widely circulated prior to their adoption, giving parliaments and civil society the chance to make their views known. However, many Summit Conclusions are drafted during the Summit itself giving no opportunity for a wider debate.

The special EU Summit meeting in Tampere, Finland in October 1999, was used to make the so-called “Area of freedom, security and justice” one of the primary objectives of the EU - and its Conclusions have been used in numerous instances to legitimise proposed measures.

The account below tracks the two meetings leading up to the Summit - the Informal meeting of Justice and Home Affairs Ministers in Turku, Finland (16-17 September 1999) and the meeting of the Justice and Home Affairs Council in Luxembourg (4 October 1999) - and the proceedings inside the Summit (15-16 October 1999).

There was no advance text available. On the first day of the Summit a set of draft Conclusions appeared for the first time and at 10.00 am on the second day the final version came out - they were adopted at 12.40pm and formally released at 2.00pm. There was absolutely no opportunity for parliaments or civil society to have any say.

The process through which the Tampere Summit Conclusions were adopted can only be described as profoundly undemocratic (and it is one that has been used at subsequent Summits).

And it is quite unacceptable because the programme adopted affected the basic rights and liberties of the people of Europe and of refugees and asylum-seekers fleeing from poverty and persecution” [9.9.03]

This account first appeared in *Statewatch* bulletin, volume 9 no 5, 1999

"Tampere" was a very strange "Summit". It was a summit of EU "spin". It was a summit like no other (except the extraordinary summit in Luxembourg on employment, 20.11.97) where no preparatory reports were available, only the final summit conclusions. This special report traces what was available and who decided what.

In the weeks running up to the summit NGOs and voluntary groups said that Tampere should be about "freedom" and "justice" and not just "security" ("Tampere European Council: An "Area of freedom, security and justice" or an "obsession with security"?", *Statewatch*, May-August, 1999) and this was a theme embraced by EU leaders up to and at Tampere. The other main criticism, that no preparatory reports were available to civil society, was never addressed. However, in the latter mode the Tampere Conclusions says:

"The area of freedom, security and justice should be based on the principles of transparency and democratic control. We must develop an open dialogue with civil society on the aims and principles of this main area in order to..." (para 7)

It might be thought this paragraph would conclude with something like: "allow civil society to play its full part in the decision-making process." But no, it ends:

"[in order to] strengthen citizens' acceptance and support."

And here is the nub. The intention is not to enable citizens and civil society to participate but rather to "spin" policies in such a way that *passive* citizens "accept" and "support" what is being done in their name.

The Tampere process - background

The Amsterdam Treaty in Title VI of the TEU and Title IV of the TEC set new objectives for justice and home affairs in the EU covering policing, customs, legal cooperation, visas, immigration and asylum. This was followed up by the "Action Plan establishing an area of freedom, security and justice", a detailed programme for the Council and Commission adopted at the December 1998 regular European Council in Vienna (some Council documents refer to this as the "Vienna Plan"). The Action Plan contains 51 specific objectives with target dates of two and five years.

The idea of a special European Council on justice and home affairs was put forward by Spain (following a suggestion by Jacques Santer) at an informal European Council at Pörtlach, Austria on 24-25 October 1998. The proposal was formally adopted at the Vienna Summit at the end of the Austrian Presidency of the EU. The intention was to put "justice and home affairs" at the centre of the EU agenda in the same way that previously the original customs union, then the internal market, and more recently the common currency ("euro") had been.

The December 1998 Justice and Home Affairs Council (JHA) spoke of the Tampere meeting considering three major items: 1) a strategy paper on migration and asylum; 2) the Action Plan/Vienna Plan; and 3) the High Level Group report and action plans on six target migration "producing" countries. In the event these three major reports were not discussed as such at Tampere, rather the Tampere Conclusions assumed these three reports had already been agreed - which they had not.

So what was to be on the Tampere agenda, what was its purpose?

By June there was no concrete agenda, and no preparatory reports, in the public domain. On 18 March the German and Finnish Presidencies had written jointly to all

EU governments and then carried out the first of two "tours of capitals" in April and May (the second started at the end of September). This established agreement on the three themes to be discussed: a) asylum and immigration; b) the fight against cross-border crime; c) the establishment of a "European judicial area".

At the end of July the UK House of Lords Select Committee on the European Communities produced a report on "Prospects for the Tampere Special European Council" (HL 101, 27.7.99). This includes a useful background to the broad issues, as under a-c above, and the UK government's contribution to the summit. The UK contribution, while acknowledging that immigration and asylum would be given particular attention, singled out the mutual recognition of judicial decisions, "citizen's access to justice" and "preventing and combatting youth crime". The report said that there "have to be tangible benefits for the citizens - most importantly, in relation to civil liberties" and that accountability remained a major problem. In evidence Home Secretary Jack Straw told the committee that "whenever two or three Interior Ministers are gathered together, they tend to talk about nothing else" than asylum and migration.

So was Tampere to be more about "freedom" and justice" than "security" (immigration and asylum and policing)?

Five documents were being discussed in the Council working parties in June and July: 1) asylum and immigration, 9.7.99; 2) criminal matters, 12.7.99; 3) civil law, 23.6.99; 4) "Guidelines for a European migration strategy", 1.6.99; and 5) "Mutual recognition of judicial decisions and judgements in criminal matters", 29.3.99. All were clearly relevant to the three themes set out in the Presidency's letter and tour of capitals, but were they going to be on the agenda at the informal meeting of JHA Ministers in Turku in September and then the JHA Council on 4 October and were these the only documents?

A "Presidency Information Note" (SN 2946/1/99) dated 13 July setting out a full programme between July and the October Tampere meeting seemed to include the five documents, and implied discussions on these at the Informal JHA Council in Turku (16-17 September) and the JHA Council in Luxembourg (4-5 October). If this was accurate then civil society, if it could get access to the documents, could perhaps take a view on the issues.

Informal JHA Council, Turku, September 1999 and the Presidency "agendas"

The gathering of the Informal Justice and Home Affairs Council in Turku, Finland shed some light on what might be on the Tampere agenda, but not much. The Presidency issued five or six very general press releases (see sources below), the UK, Denmark and Sweden launched a "Joint Initiative on crime prevention and youth crime" and Germany and France presented their demands (see below).

At the Presidency press conference it became clear that there was to be no commitment to the "mutual recognition of judgements" in general but only an initial agreement on specific offences such as extradition and money-laundering. It also emerged that the adoption of similar, if not equal, treatment of refugees and asylum-seekers on reception (for example, dispersal and vouchers) and on education, work and welfare was to be used in the "information campaigns" in the six third world countries in the High Level Groups' Action Plans.

It was the letters from the Finnish Prime Minister Mr Lipponen to all EU governments which provided the best guide to Tampere the last of which, at the end of September referred to the "attached draft agenda".

But if this "draft agenda" plus the five early summer documents formed the basis for Tampere they were not presented as such to parliaments nor were they

available to most NGOs and voluntary groups and citizens. Nor were they on the JHA agenda in Luxembourg.

"Illegal immigration and trafficking"

A consistent, common theme in Turku at the Informal JHA Council, at the JHA Council in October (during the presentation of the Germany, France and UK plan), and at the Blair-Straw-Cook press conference in Tampere was "illegal immigration" and the assumption that all "illegal" migrants enter the EU with the help of organised criminal gangs. Yet the "1998 Annual Report on police cooperation under the Schengen Convention" reports that during a pilot operation in 1998 of:

"5,000 people [who] were detained either on illegal entry, in attempting illegal entry or when illegally resident on the territory. Approximately 500 of these were proven to have been smuggled in."

This operation was carried out after careful planning by Schengen states to target known routes. Although it is not possible to extrapolate from these figures, it can be said that according to this official report *only 10% of "illegal immigrants" detained were "smuggled" in by organised criminal gangs.*

JHA Council, Luxembourg, 4 October 1999

The Justice and Home Affairs Council had, in the words of the Presidency, only been "submitted by way of information" the report of the High Level Group - it did not discuss or agree. Thus the JHA Council in Luxembourg did *not* agree the High Level Group report because it was not asked to because it was a so-called "cross-pillar" report (covering first pillar economic and humanitarian aid, second pillar diplomatic pressure, and third pillar demands for the automatic return of refugees to their country or "region" or origin). So presumably this far-reaching report was discussed by the General Affairs Council? No, the General Affairs Council simply nodded it through on 12 October without any discussion as an "A" Point.

The scheduled two day JHA Council ended with a late Ministerial lunch on day 1.

As to the forthcoming Tampere Council, there were *no* reports on the table and the Ministers simply "discussed it over lunch" where they were apparently much concerned with being excluded from going to the Tampere Summit - it being a long-established tradition at Summits/Council that the Heads of Government (Prime Ministers) are accompanied only by Foreign Secretaries (all preparations for Summits go through the EU General Affairs Committee which is comprised of Foreign Secretaries).

The scheduled Presidency press conference was upstaged by one organised by Germany, France and the UK - which was only announced in the middle of the morning. The Joint Note put out by Germany and France launched at Turku was now re-launched with the UK joining in. The object of this "Note" was to emphasise that immigration and asylum stayed top of the agenda in Tampere. What was new, and on the Presidency's "agenda", was that third country nationals "residing legally and long-term.. were entitled to be fully integrated" and "as soon as good integration has been achieved and confirmed, it is natural and desirable that the foreigners defined.. should acquire the nationality of their state of residence". What is unclear is whether they were talking about third country nationals becoming full EU citizens, citizens only of the country of residence, or naturalised in some kind of half-way house as second-class citizens. This is apparent because in the next breath (or rather paragraph) the "Note" says:

"Germany, the UK and France emphasise that foreigners have responsibilities as well as rights and that they have in particular the obligation to respect and to

share the laws which exist in Europe both in private life (personal rights) and in social life.

In this regard, common procedures for withdrawal of residence permits and for expulsion, where there is a threat to public order and security, should be sought by the European Union."

EU citizens cannot be expelled (or have their right to live in the EU withdrawn) if their actions or beliefs are deemed to threaten public order or security but this could happen to "foreigners"/third country nationals/second-class citizens.

Tampere, 15-16 October 1999

The Tampere Council on 15-16 October started with the same kind of general press releases as had been given out in Turku, a month earlier. Although Interior Ministers were not meant to be present Jack Straw was there alongside Robin Cook and Tony Blair (the only other Interior Minister present was from the Netherlands, even the Finnish Presidency Justice Minister and Interior Minister were not there).

Although there was some UK embarrassment as to why the new Ministers and parliament in Scotland were not present as they had a right to be Straw-Blair-Cook were clear that the purpose of the Summit was to tackle "illegal immigration and allow no hiding place for criminals". Straw attacked another embarrassing situation which has found UK courts coming to a different view from EU partners on refugees from "non-state" persecution, "our courts adopted a wide definition, I want a narrow definition". While Straw said the UK was adamantly against an EU "Single Judicial Space" he was enthusiastic about "Eurowarrants" which would lead to the "arrest and transfer of our own nationals plus any other suspects for trial".

It appears that the only document "on the table" was the 14 page "draft conclusions" which was revised by a group of officials overnight and redistributed to delegations early on Saturday morning - this small group of officials were from the Presidency, the Commission and DG H (justice and home affairs) of the Council General Secretariat.

At about 10.00 am on the final morning the revised "draft Conclusions" were available to the media, and to NGOs actually in Tampere - after a morning session which lasted until 12.40 the final, amended, "Conclusions" were announced at 2.00 pm.

In Turku (Informal JHA Ministers meeting), Luxembourg (JHA Council) and Tampere (Summit) it was hard not to get the impression that EU government ministers and prime ministers did know about the "headline issues" (issues likely to get in the headlines) but little of the details. The "key players" were the officials on the small drafting group (officials like Mr Charles Elsen, head of DG H in the Council and Mr Adrian Fortescue, director-general of the Commission justice and home affairs directorate) and those from the Article 36 Committee and the Strategic Committee on Immigration and Asylum (supported by a great multitude of specialist officials who sit on the Council working parties).

At times it was a bit like the Peter Sellers scene in the film "Dr Strangelove" on the one *hand* Prime Ministers and Ministers knew they should be emphasising the positive, "citizen-friendly", aspects of "freedom" and "justice" but on the other *hand* the "security" aspects, "threats", "illegal immigrants", "organised criminal gangs and illegal immigration" and "asylum-shopping" kept slipping out.

A realistic assessment of the "Tampere process" would have to conclude that the only documents of substance were: i) the two very general September letters from

the Presidency setting out the "draft agenda" and ii) the draft and final "Conclusions" of the summit - the so-called "Tampere milestones".

As an exercise to bring the "Union ever closer to the people" history will be the judge. As a process involving parliaments (national and European), civil society and citizens Tampere was a complete sham - but then it was only intended to: "to strengthen citizens' acceptance and support" not their participation in democratic decision-making.

Sources

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