



Statewatch

Protests in the EU: “Troublemakers” and “travelling violent offenders [undefined] to be recorded on database and targeted

Tony Bunyan

The proposal to put "troublemakers" on the Schengen Information System (SIS) database was discussed and rejected by the Council of the European Union (the 27 governments) back in 2001 following the protests in Gothenburg and Genoa. It did produce two separate Manuals, one on security against terrorism at Summit meetings and another on policing public order. In 2007 the two Manuals were collapsed into one so that:

“The scope of the manual is now such that it applies to the security (both from a public order point of view as well as counter-terrorism) of all major international events, be it political, sporting, social, cultural or other. (EU Security Manual) [1]”

But the Manual *only* dealt with bilateral cooperation between two or more Member States for specific events - not the creation of an EU-wide “troublemakers” database.

The database proposal came back onto the agenda after protests at the G8 Summit, 6-8 June 2007, in Heiligendamm, Germany. Over the next two years there were numerous discussions in two Council Working parties which ended in June 2009 with no agreement on the need for a database let alone a legal definition of a “troublemaker” or a “violent offender”.

It was therefore highly surprising that the Swedish Council Presidency included in the Stockholm Programme:

“exchange information on travelling violent offenders including those attending sporting events or large public gatherings.”

Thus the Commission is now promising a Communication on possible measures to promote the exchange of information between Member States, and Europol, on

violent travelling offenders in connection with major events in 2012.[¹]

The issue of “violent troublemakers” was not mentioned in the Future Group Report on the planned Stockholm Programme (2010-2014) nor in the Commission’s proposals for the Stockholm Programme.[²]

This is even more surprising as the term is used very loosely in the Council Working Party discussions to include those suspected or alleged potentially to be a problem with the terms “Troublemakers” and “violent troublemakers” regularly interchanged. By adding this measure to the Stockholm Programme it becomes a legislative priority to put the proposal into effect.

SIS/SIRENE Working Party

Following the protests at the G8 Summit in June 2007 the German government presented a proposal on the options for “*sharing information on violent troublemakers at large events*” [³] and the possibility of “*using the SIS for this exchange of information*”. On 4 December 2007 under the heading: “*Troublemakers*” the SIS/SIRENE Working Party noted that:

“Commission argued that although the alerts pursuant to Article 99 were not designed to this end, this kind of alerts could prove helpful in locating troublemakers.”

However, some delegations argued that this type of alerts neither met the legal (Art. 99 regards extremely serious criminal offences or serious threats) nor the operational needs (there was no possibility of arresting persons) referred to by CATS.” [⁴]

Article 99 (for the SIS) concerns the surveillance of people suspected of extremely serious criminal offences.[⁵]

On 14 March 2008 the Council Presidency circulated a paper to the Working Party on the Subject of: “*Troublemakers*”[⁶] where:

“several delegations reflected the idea that the persons envisaged could be inserted under Article 99. Other delegations raised doubts about the usefulness of Article 99 alerts for violent troublemakers since arrest cannot be carried out under this Article.”

The Presidency paper said that data would concern:

¹. Though it should be noted that the Commission has already started work on the issue. The Minutes of the Police Cooperation Working Party of on: 15 January 2010 noted that: “*The Commission representative thanked delegations for having replied to the Commission’s request for comments on the questionnaire regarding the pre-study on violent troublemakers.*”

“persons to be barred from certain events, such as European summits or similar venues, international sports or cultural events or other mass gatherings because they are a threat to public order and public security at such events... [but] This proposal begs questions as the right of free movement, other civil liberties and data protection, as these persons should therefore not be permanently visible or included in the SIS, requiring a very careful management of such alerts.”

On 18 March 2008 at the SIS/SIRENE Working Party decided to ask the views of the Police Cooperation Working Party (PCWP) - which should have been leading on this issue as it was not simply a technical question. However, before the PCWP considered the question the German government circulated yet another Note on 7 April 2008.[7] This might have been expected to clarify exactly who is a "troublemaker" at "mass events"/International gatherings in the EU - instead the German delegation Note widens the scope. It states that in Germany it is permissible to enter an alert to "prevent violent confrontations and other criminal offences" at major international political or sporting events on:

“whom certain facts give reason to believe that they will in future commit significant criminal offences using violence or the threat of violence. A "significant criminal offence" is one which falls into a category higher than that of petty crime, noticeably disturbs the public peace and is likely to have a considerable effect on the public's sense of security.”

To define "significant criminal offence" as including one that "disturbs the public peace" is absurdly wide - this would include non-violent protesters sitting down in the street, equally any large-scale gathering to protest could be interpreted by police as having "a considerable effect on the public's sense of security".

The Police Cooperation Working Party (PCWP) - Survey of Member States

On 19 May 2008 the Council Presidency circulated a Note to the Police Cooperation Working Party (PCWP) on improving information exchange on "violent troublemakers active internationally"[8] and noted that discussions in the SIRENE Working group had not led to any conclusions because: "there is no definition" of a "violent troublemaker... nor what the detailed operational requirements are" and the operational requirements were: "not known". The PCWP decided that a survey should be carried out.

Not until 16 January 2009 - **eight months later** - were replies from 15 Member States available.[9]. These showed that only Germany and Denmark have a legal basis for "violent troublemakers" and:

“no Member State except for Germany has a database including this kind of information.”

In Denmark “violent troublemakers” can be “marked” (“flagged”) in national databases. Moreover, the replies shows that action taken against “violent troublemakers” was against “essentially sports hooligans”.

Several delegations warned against such a widespread distribution of these data as they:

“would not be proportional to the purpose for which this information is exchanged, which is normally the policing of a certain event, limited in space and time. The right of free movement, other civil liberties and data protection rather call for a very careful access management to this type of information.”

These same delegations favoured the improvement of “existing mechanisms of information exchange on violent troublemakers.

SIS/SIRENE Working Party

Back in the SIS/SIRENE Working Party a Council Presidency Note on “Troublemakers” said:

“feedback from the Police Cooperation Working Party is crucial for any effective further steps [emphasis added]”[10].

Police Cooperation Working Party

On 27 February 2009 the Council Presidency sent out a Note to the Police Cooperation Working Party with an updated report on the replies of Member States to the survey - now covering 24 Member States.[11] This confirmed that only two states - Germany and Denmark - have a legal concept of “violent troublemaker” and that only Germany has database on covering “violent troublemakers”. The argument that the exchange of information on “violent troublemakers” largely concern “sports hooligans” is repeated.

Some Member States however would “welcome” the inclusion of these data on the SIS to allow for “widespread and on-line access”:

“In particular Bulgaria, Germany, Estonia and Latvia would prefer that law enforcement authorities have a comprehensive and permanent access to data on violent troublemakers.”

They argued that the present *ad hoc* exchange is “not sufficient” and causes a “great deal of administrative and technical efforts”.

The German delegation then made an extraordinary proposal that Member States should be allowed to “flag” alerts on violent troublemakers even if:

“such alerts were incompatible with national law”

because when there was a “hit” the action taken would be in the requesting Member State - not in the Member State which lodged the data. This is saying that in a Member State where there is no legal concept of a “violent troublemaker” the police *collect* information and intelligence on “violent troublemakers” and *put this onto the SIS* then allow the two Member States who have laws on “violent troublemakers” to access it and use it to take action (possibly coercive) against the individual(s).

However, Belgium, Lithuania, Poland, Slovakia and Sweden:

“explicitly state that they have no operational need to have access on a permanent basis on violent troublemakers”

The Council Presidency therefore concluded that:

“there is no general agreement on the definition of a “violent troublemaker” and it is still not defined exactly at what occasions, by whom and for what purposes the information is needed and used. It would, therefore, seem that an agreement on making data on violent troublemakers permanently available does not seem to be likely in the short term.”

The Council Presidency proposed either that the issue of making data on violent troublemakers permanently available is “not pursued” or that current mechanisms of information exchange on violent troublemakers be improved.

The Outcomes (Minutes) of the meeting of the Police Cooperation Working Party held on 4 March 2009 recorded that “no agreement could be reached”. And “some Member States” preferred “consulting football experts” and “other Member States preferred not to pursue the discussions.”[12]

At the meeting of the Police Cooperation Working Party on 9 June 2009

“The UK delegation welcomed the efforts made by the Presidency and the DE delegation to provide a definition but recalled its reservation about the use of the SIS to exchange personal data on violent troublemakers who do not fall under the umbrella of counterterrorism or serious and organised crime.”[13]

The incoming Swedish Council Presidency said that further discussions should await a Belgian paper being prepared on “all legal possibilities (ie: entry and exit bans) to prevent known risk football fans “from travelling to matches in other Member States” which would also address the issue of “violent troublemakers”.

This conclusion by the Police Cooperation Working Party appeared to kick the idea “into the long grass”.

The use of Article 99 - a parallel discussion in SIS/SIRENE

On 13 March 2009 the Council Presidency circulated a document to the SIS/SIRENE Working Party, titled “Reinforcing use of Article 99”, of the SIS because these “alerts” are “not employed equally by Member States, moreover, “several countries hardly ever use this type of alert”[14] - two countries provide 90% of the data and for “Specific checks” (Article 99) just three countries entered 95% of the “alerts”.

In the Note the Council Presidency questioned the interpretation of paragraph 1 of Article 99 of the Convention implementing the Schengen Agreement of the word “surveillance”. This can be taken to mean that Article 99 is a matter of judicial cooperation - surveillance/observation - and therefore “judicial authorities are involved in the procedure for entering Article 99 alerts in the SIS”. Such an approach, the Note says:

“slows down the procedures and also limits the number of alerts”

and the judiciary are involved in the use of surveillance it:

“is restricted by reason of the strong impact on human rights”

The Note ends with the Council Presidency inviting Member States to follow its interpretation of Article 99 alerts and:

“to adopt a proactive approach to the use of Article 99 alerts and fully exploit Article 99 alerts for the purpose of prosecuting criminal offences and for the prevention of threats to public security as well as preventing threats to internal or external national security.”

The discussion on putting “alerts” on the SIS for “violent troublemakers”, which had been rumbling on for over eight years, now becomes quite bizarre in this Working Party on: how to use these “alerts” for just about every threat imaginable. From nuclear proliferation, terrorism, child protection, sexual offenders and dangerous criminals to all manner of all other offences which are perceived to possibly threaten public order and the catch-all “public security”.

A second Note on 13 March 2009 sent to the SIS/SIRENE Working Party (Mixed Committee) concerned improving information exchange on “*persons disturbing the public order and/or endangering public security by using SIS*”. This document was revised twice.[15]

In documents 7558/1/09 (27 May 2009) and 7558/2/09 (16 June 2009) attention is drawn to the “latest incidents during the NATO summit” (in Strasbourg where there

were protests) which showed “in a drastic way” the “urgent need” to exchange information on persons “disturbing the public order and/or endangering public security.”[16]

So the Council Presidency goes on to urge the SIS/SIRENE Working Party to:

“close the discussions on the specific issue of “violent troublemakers” and to look at the matter from a broader perspective.”

The Council Presidency Note then broadens the scope of the discussions by saying the “various working parties and other bodies say there is a need to share information on:

“persons disturbing the public order and/or endangering public security, eg: sports hooligans, violent rioters, sexual offenders, repeated offenders of serious crimes.”

People “disturbing the public order” covers a multitude of offences (from noisy neighbours to rowdy drinkers to protests that “disturb” traffic flows) for which each Member States already has laws in place. To collapse this category by the use of “and/or” to encompass persons “endangering public security” is not logical or nor legally defensible. “Violent rioters” have presumably been arrested and convicted and information on them would be available anyway. The same goes for “repeated offenders of serious crimes”. To suggest that suspected/alleged “violent troublemakers” fall into the same category is simply “guilt by association”.

The field “type of offence” in Article 99 alerts could be extended to include, for example, “football hooligan”. The purpose of the alert would change too as it would be for the purpose of:

“sharing information with the aim of prevention and protection against serious threats for public security” [emphasis added]

As the legal framework of the SIS does “not provide necessary legal base” for this new alert as the SIS is a “search” database only “legal changes would be necessary”.

Endgame?

There was no further discussion on “troublemakers” (violent or otherwise”) or on the use of Article 99 in the Police Cooperation Working Party or the SIS/SIRENE Working Party.

The Swedish Council Presidency did circulate a report by the Belgian led group of experts who provided a Note on the legal options concerning public order and football matches on 13 October 2009.[18] The orientation paper says that when it is completed it will have six Chapters and will then be submitted “to the football

experts” and that the paper will also consider “improvements on information exchange on violent troublemakers”.

Conclusion

The EU already has in place questionable procedures for the bilateral exchange of information and intelligence (which may be “hard” or “soft”, ie: suspicions/allegations) for cross-border protests. The idea of creating a permanent EU-wide database of suspected “troublemakers” or alleged “violent troublemakers” on the SIS offends against the the right of free movement.

Only two Member States out of 27 have national laws on the issue and to “harmonise” the collection of such personal information and intelligence onto a central database is utterly disproportionate.

Since the onset of the EU’s response to the “war on terrorism” the prime targets have been Muslim and migrant communities together with refugees and asylum-seekers. Now there is an emerging picture across the EU that demonstrations and the democratic right to protest are among the next to be targeted to enforce “internal security”.

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Footnotes

1. See:

<http://www.statewatch.org/news/2009/dec/eu-troublemakers-handbook-2007.pdf>

2. See Statewatch’s Observatory on the Stockholm Programme:

<http://www.statewatch.org/stockholm-programme.htm>

3. EU doc no: 15079/07

4. EU doc no: 16585/07

5. Schengen Information System Article 99 report:

<http://www.statewatch.org/news/2008/feb/08SISart99.htm>

6. EU doc 7544/08:

7. EU doc no: 8204/08

8. EU doc no: 9535/08

9. EU doc no: 5450/09

10. EU doc no: 5153/09

11. EU doc no: 5450/1/09

12. EU doc no: 7423/09

13. EU doc no: 11176/09

14. EU doc no; 7557/09

15. EU doc no: 7558/09, 7558/09 REV1 and 7558/REV2

16. Sky News: Tensions Rise At Nato Summit, Strasbourg, 4.4.09

17. EU doc no: 9223/1/09:

For full documentation See:

www.statewatch.org/news/2009/dec/01-eu-troublemakers-links.htm

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