



## Statewatch Analysis

### Commission: Action Plan on the Stockholm Programme

#### A bit more freedom and justice and a lot more security

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#### Introduction

The adoption of the “Action Plan implementing the Stockholm Programme” from the European Commission:

<http://www.statewatch.org/news/2010/apr/eu-com-stockholm-programme.pdf>

follows the deliberations of the Future Group, the Commission proposals and various drafts of the Council of the European Union’s final text. The Stockholm Programme and this Action Plan set out planned measures and initiatives for 2010-2014. (see Sources for full-text of documents).

The new Programme follows the Tampere Programme (1999-2003) and the Hague Programme (2004-2009)

#### Commission’s Action Plan

The Action Plan consists of a nine-page narrative and a 59 page Annex listing each proposal.

The opening arguments use familiar concepts such as “*the duty to protect and project our values and defend our interests*” and to ensure that peoples’ “*rights are fully respected and their security provided*”. The problem is that while we can all agree on the “everlasting values” of freedom and privacy, the record of the EU is that it has put security before liberties and rights time and time again since 11 September 2001. If the “values” of the EU are not matched by the practice, what good are values?

Much the same goes for democracy. It states that with the Lisbon Treaty coming into force there will be an increased role for the European Parliament as co-legislator which will make the EU more accountable for its actions:

*“in the interests of its citizens and enhance democratic legitimacy”*

This does not square with the fact the 83% of the measures going through the European Parliament's Civil Liberties Committee in the session 2004-2009 were agreed through secret, 1<sup>st</sup> reading deals with the Council (the 27 governments). See: European Parliament: Abolish 1st [and 2nd] reading secret deals - bring back democracy "warts and all":

<http://www.statewatch.org/analyses/no-84-ep-first-reading-deals.pdf>

The Commission says that the EU's must strengthen its stance in:

*"protecting the personal data of the individual in the context of all EU policies including law enforcement and crime prevention as well as in our international relations."*

If this intent was serious then the Commission would be proposing the an immediate withdrawal of the Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters: <http://www.statewatch.org/news/2008/jun/eu-counc-dpfd-final.pdf>

Nor would it be negotiating away peoples' rights through the agreements on PNR and financial transactions (SWIFT) with the USA.

While there are many, many mentions of the "citizen" it is noticeable that the "rights" of "business" are also to be protected. In the wake of the financial crisis "administrative burdens" must be removed and "cutting red-tape for business is a clear priority". To counter cross-border criminality the EU needs to work "hand in hand" with the business community (p5). Moreover, the "Smart use of modern technologies in border management in border technology" will "stimulate innovation among European industries" and thus contribute to:

*"Europe's prosperity and growth, and ensure the feeling of security of Union's citizens."*

Or put simply while the state controls peoples' movements in, out of and through the EU the multinationals will be able to market their "smart" technology globally.

On Internal Security the "priority" is to "take stock" of counter-terrorism measures adopted since 11 September 2001) and to assess and "improve" them to protect citizens. But there is no commitment to a wholesale review of counter-terrorism measures with a view to withdrawing some and ensuring that all the others have fundamental rights and liberties embedded in a way that is not undermined by the demands of security.

The EU's "demographic challenge" (a euphemism for an ageing population) requires skilled "legal immigrants" ("legal migration) to meet EU labour needs, while FRONTEX is to be boosted to exclude people fleeing from poverty and persecution.

Finally, the Commission says the "quality" of European legislation needs to be improved and so does implementation at national level. This greatly understates

the problem which was expressed more clearly in the Commission's proposals of June 2009: <http://www.statewatch.org/news/2009/jun/eu-com-stockholm-prog.pdf> (p6)

This document said there was a "wide gap" between the rules and policies adopted and implementation at national level. The Commission has only recently recognised "implementation" does not simply mean the transposition of measures into national law but crucially means monitoring and evaluating the actual practices that flow from law and rules. The Commission also recognised back then that the EU justice and home affairs *acquis* is "already large" (estimated to be over 1,600 measures) and increasingly complex - which contributes to the problem of implementing it. While, as noted by Steve Peers (see below), perhaps half of the pre-existing third pillar measures would be amended during this period, there is no commitment to producing a consolidated and comprehensive JHA *acquis* which can be used by national governments and which is comprehensible to citizens and civil society.

And if clarity is needed why are there two Commissioners - one for Justice, Fundamental Rights and Citizenship (Justice) and another for Home Affairs (Internal security and immigration) while there is a single Directorate-General (DG) of staff serving both and a single Justice and Home Affairs Council of Ministers? There should be a clear separation of powers with two Councils of Ministers, two Commissioners and two DGs, thus removing the confusion of aims and responsibilities and limiting the prospect for security to continue to take precedence over issues of freedom and justice.

## Conclusion

The historical legacy of the JHA *acquis* remains unresolved. Most of the measures and practices adopted from 1993 onwards are still in place and many are unlikely to be amended or withdrawn. Prior to 2006 the European Parliament was not even asked for its opinion and later was only consulted (which meant its views were routinely ignored). These measures and practices lack any democratic legitimacy.

The Justice and Home Affairs Council was setup in November 1993 and over the past 17 years there has been little progress on "Justice" but a lot on "Home Affairs" (Internal security and immigration). The Commission's proposals do contain some progressive measures such as those on the fight against racism and xenophobia and the social and economic "integration of the Roma in Europe", but why have we had to wait 17 years for these initiatives? And what chance is there now, when racism is so evident across Europe, that these measures will be meaningfully enforced? Why, at the behest of the Italian government, were far-right groups excluded from the Framework Decision on racism and xenophobia? We are told that: "The Commission will apply a "Zero Tolerance Policy" as regards violations of the Charter of Fundamental Rights"- does this mean Italy could be suspended from EU institutions for its blatant discriminatory and racist policies towards Roma and migrants?

Only now are the rights of suspects in criminal procedures to be given prominence in the Action Plan. They were included in both the Tampere and Hague Action Plans but not acted on. Over the past five years the Council failed to agree and

draft proposals and now it is only proposing a binding Directive for the right to interpretation and translation in criminal proceedings but only a non-binding "Resolution" for crucial procedural rights of suspects and accused people in criminal proceeding - indicating its opposition to the Commission's proposals.

The "harnessing of the digital tsunami" as advocated by the EU Future Group and the surveillance society, spelt out in Statewatch's "The Shape of Things to Come" is also embedded in the Commission's Action Plan as it is in the Stockholm Programme.

There may be a bit more freedom and justice but there will certainly be a lot more security.

Note: See proposal below for the exchange of information on "violent troublemaker": With this Analysis is also published: *Protests in the EU: "Troublemakers" and "travelling violent offenders [undefined] to be recorded on database and targeted:*

<http://www.statewatch.org/analyses/no-93-troublemakers-apr-10.pdf>

## The proposals

The proposals in the Commission's Action Plan can be provisionally divided into two categories:

- 1) Proposals likely to get wide support
- 2) Proposals/Reports/Actions which are likely to raise fundamental issues for rights and liberties.

Below is a non-exhaustive list (some with commentary) of the proposals in the second category.

<b>Data Protection and privacy</b>		
Communication on a new legal framework for the protection of personal data after the entry into force of the Lisbon Treaty	Commission	2010
New comprehensive legal framework for data protection	Commission	2010
Communication on Privacy and trust in Digital Europe: ensuring citizens' confidence in new services	Commission	2010
Recommendation to authorise the negotiation of a personal data protection agreement for law enforcement purposes with the United States of America	Commission	2010
Communication on core elements for personal data protection in agreements between the European Union and third countries for law enforcement purposes	Commission	2012
Comment: <i>There is a great danger that the new legal framework for data protection will be a major step back from the 1995 Directive.</i>		

<i>A EU-US agreement on data protection and data sharing will likely put the interests of state first and those of the individual second. IT would cover "all crimes" (however minor) not just terrorism and organised crime.</i>		
<b>Racism and xenophobia</b>		
Implementation of the Framework Decision 2008/913/JHA on racism and xenophobia	Member States	November 2010
Communication on the fight against racism, xenophobia and discrimination	Commission	2011
Report on the implementation of the Framework Decision 2008/913/JHA on racism and Xenophobia	Commission	2013
<p>Comment:</p> <p><i>In 1986 the European Parliament published two authoritative reports from its Committee of Inquiry into the Rise of Racism and Fascism and then another, in 1990, from a second Committee of Inquiry into Racism and Xenophobia - but nothing happened.</i></p> <p><i>Is there, in a climate of fear and racism, any chance now of meaningful action?</i></p>		
<b>Criminal proceedings and detention</b>		
Green paper on whether elements of minimum procedural rights for accused and suspect persons, other than those covered by the previous legislative proposals, need to be addressed	Commission	2014
<p>Comment:</p> <p><i>Why is it there is going to be a Green Paper on suspects rights but yet more binding legislation on obtaining, gathering and exchanging evidence - the needs of the prosecution have consistently taken primacy over those of defendants and there should be no further prosecutorial measures until suspects rights have been agreed</i></p>		
Green paper on detention issues and necessary follow up	Commission	2011
<b>European judicial area</b>		
Report on the implementation of the Framework Decision 2002/584/JHA on the European Arrest Warrant, and appropriate follow-up	Commission	2010
Legislative proposal on a comprehensive regime on obtaining evidence in criminal matters based on the principle of mutual recognition and covering all types of evidence	Commission	2011
Legislative proposal to introduce common standards for	Commission	2011

gathering evidence in criminal matters in order to ensure its admissibility		
<b>Improving “tools”</b>		
Action: Handbook on the implementation of the EU-US mutual legal assistance and extradition agreements Commission 2010	Commission	2010
<b>EU international presence: Criminal law</b>		
Action: Communication on international aspects of judicial cooperation in criminal matters	Commission	2013
<b>Internal Security Strategy</b>		
Communication on the Internal Security Strategy Commission 2010		
<b>Internal Security Strategy - managing the flow of information</b>		
Communication on the overview on information collection and exchange	Commission	2010
Legislative proposal on a common EU approach to the use of passenger name record data for law enforcement purposes	Commission	2010
Communication on the transfer of Passenger Name Record (PNR) data to third countries	Commission	2010
Proposals for authorising the negotiation and negotiation of agreements on Passenger Name Record data between the European Union and relevant third countries	Commission	Ongoing 2011-2014
Comment: <i>The EU intends to match the EU-US PNR scheme with one of its own with many of the same questions and dangers. However this would go even further covering all travel in and out of the EU, between Member States and within Member States by land, sea and air.</i>		
Evaluation report of the application of the Data Retention Directive 2006/24/EC, if necessary followed by a proposal for revision	Commission	2010
Comment: <i>Will this evaluation and revision respond to widespread criticisms as people across the EU have become aware of its implementation or will they extend its remit?</i>		
Report on the implementation of the Framework Decision 2006/960/JHA (Swedish initiative) on the exchange of information between the law enforcement authorities	Commission	2011
Report on the implementation of the Decision 2008/615/JHA (Prüm Decision) on the interconnection of DNA, fingerprints and vehicle information databases	Commission	2012

Communication on the European Information Exchange Model, followed by an Action Plan Commission 2012 2013	Commission	2012-2013
Communication on enhancing the traceability of users of pre-paid communication services for law enforcement purposes	Commission	2012
Comment: <i>Reflects a long-standing demand from the Council (national governments) to be able to track all mobile phone calls.</i>		
Green paper on commercial information relevant to law enforcement and information exchange models	Commission	2012
Comment: <i>This could lead to the formalisation of the gathering of commercial data for law enforcement and internal security agencies.</i>		
Police code, including the codification of the main instruments of access to information	Commission	2014
<b>Internal Security Strategy: “mobilising the necessary technological tools”</b>		
Legislative proposal for a European register of convicted third countries nationals	Commission	2011
Proposals on implementing measures on the European Criminal Records Information System (ECRIS)	Commission	2011
Communication on ECRIS evaluation and on its future development extending it to exchange information on supervision measures	Commission	2014
Communication on the feasibility of setting up a EU Police Records Index System (EPRIS)	Commission	2012
Communication on possible measures to promote the exchange of information between Member States, including Europol, on violent travelling offenders in connection with major events	Commission	2012
Comment: <i>The first proposal targets third country nationals.</i>  <i>ECRIS and EPRIS raise substantial questions over seeking to “harmonise” lists of national crimes.</i>  <i>The proposal on “violent offenders” could have the affect of curtailing the free movement of protestors and thus undermining the right to protest itself</i>  <i>See: Protests in the EU: “Troublemakers” and “travelling violent offenders [undefined] to be recorded on database and targeted:</i> <a href="http://www.statewatch.org/analyses/no-93-troublemakers-apr-10.pdf">http://www.statewatch.org/analyses/no-93-troublemakers-apr-10.pdf</a>		
Broad comment: <i>There is no mention of the European Security Research Programme (ESRP). Much of the technological</i>		

<i>development of these tools is being funded under the 1.4 billion euro security research programme. See: Neoconopticon report by Ben Hayes.</i>		
<b>Internal Security Strategy - law enforcement cooperation</b>		
Communication on the status of cooperation between the ESDP police mission and Europol Commission 2011	Commission	2011
Proposal on information exchange between Europol, Eurojust and Frontex		2011
Communication on the improvement of customs and police cooperation in the EU, including reflections on under-cover officers, on Police Cooperation and Customs Centres, on an EU approach to Intelligence led policing, and on common actions to improve operational police cooperation: assessment of state of play and possible recommendations	Commission	2014
In order to be able to analyse the threats at European level, a methodology based on common parameters should be established. Full use should be made of Europol, the Joint Situation Centre(SitCen) and Eurojust in the fight against terrorism.	Commission Member States	ongoing
<b>Internal Security Strategy: Crime prevention</b>		
Promote the concept of preventing and fighting organised crime through an administrative approach	Commission	Ongoing
<b>Internal Security: Statistics</b>		
New Action Plan on development of statistics on crime and criminal justice 2011-2015	Commission	2011
Proposal for a European classification of crime types	Commission	2013
EU Security Survey	Commission	2013
<b>Internal Security Strategy: Cybercrime</b>		
Ratification of the 2001 Council of Europe Cyber-crime Convention	Member States	No date
<b>Internal Security: Economic crime</b>		
Guidelines on new tools for recovery of proceeds of crime, such as the creation of national registers of bank accounts	Commission	2012
European strategy on identity management (identity theft), including legislative proposal on criminalisation	Commission	2012
<b>Internal Security: Terrorism</b>		
Communication on stocktaking of Counter-Terrorism measures	Commission	2010
Comment: <i>Note this is not a review of the exceptional and</i>		



<i>draconian powers adopted since 11 September 2001</i>		
<i>For example, an overbroad definition of terrorism which includes too many people; arrest warrant legislation which is too broad in scope and has been used for minor crimes; terrorism lists that deny affected parties fair trial rights; detention and rendition o, through and over EU soil.</i>		
Recommendation to authorise the negotiation of a long term agreement between the European Union and the United States of America on the processing and transfer of financial messaging data for the purpose of the fight against terrorism	Commission	2010
Implementation of the EU Action Plan on violent Radicalisation (non-legislative measures to prevent the distribution of violent radical content on the Internet; website on violent radicalisation development of benchmarking tools to measure the effectiveness of counter-radicalisation initiatives)	Commission	2010
Public-private dialogue on illegal online activities related to terrorism and other crimes	Commission	2010
Communication on voluntary anti-terrorist financing guidelines for EU based non profit organisations	Commission	2011
Comment: <i>There are substantial concerns in civil society and EU foundations that this proposal will restrict the actions of NGOs</i>		
Communication on a concerted effort at EU level to enable, reinforce and disseminate to the broader public currents and ideologies that reject extremism and violence	Commission	2011
Report on the implementation of the Framework Decision 2008/919/JHA on Terrorism	Commission	2011
Report on non-legislative measures to combat the use of the Internet for terrorist purposes	Commission	2011
Communication on the feasibility of an European Terrorist Finance Tracking Program	Commission	2011
Comment: <i>The latter would mean the introduction of a EU “SWIFT” system similar to that in the EU-US agreement to monitor all financial transactions. Will the EU also follow the USA and create a Terrorist Finance Tracking Programme?</i>		
<b>Internal Security: Management of external borders</b>		
Proposal to amend the Frontex Regulation (EC) No 2007/2004 Commission 2010	Commission	2010
Second progress report on the European Border Surveillance System (Eurosur) Commission, 2010	Commission	2010
Frontex to consider, within its mandate, establishing	<b>FRONTEX</b>	2010

regional and/or specialised offices		
Comment: <i>Note that FRONTEX, an EU agency, would be allowed to propose increases to its own powers.</i>		
Legislative proposal to set up Entry Exit System (EES)	Commission	2011
Comment: <i>This would log all exit and entry first by third country nationals then all EU citizens. Goes together with EU-PNR scheme.</i>		
Legislative proposal to set up Registered Traveller Programme (RTP)	Commission	2011
Legislative proposals on Eurosur development	Commission	2011
Development and entry into operation of the Schengen Information System II (SIS II) Commission Member States	Commission Member States	December 2011 or 2013, depending on the technical solution to be followed
Start of operations of the Agency for the operational management of large-scale IT systems in the area of freedom, security and justice		2012
Communication on the better cooperation, coordination, integration and rationalisation of the different checks carried out at the external borders with a view to twin the objective of facilitating access and improving security	Commission	2012
Communication on the long term development of FRONTEX including the feasibility of the creation of a European system of border guards	Commission	2014
Comment: <i>Proposal for FRONTEX to take over the role of national border officials.</i>		
Use of the CRMS (Community Risk Management System) in order to exchange risk information between customs offices at the border and further development of the common risk assessment, criteria and standards for management, security and safety at the external borders	Commission	ongoing
Strengthened cooperation of ports, airports and land borders on all matters of relevance for the management of the external border	Commission	Ongoing
Comment: <i>See together with EU-PNR scheme above</i>		
Communication on the possibility of introducing an EU-ESTA (Electronic System for Travel Authorization)	Commission	2011
Comment:		

<i>If the EU follows the US example this will be a “permission to travel” scheme.</i>		
<b>Migration and asylum</b>		
Communication on maximising the positive and minimising the negative aspects of immigration on Development (circular migration, remittances including the feasibility of creating a common EU portal on remittances; development of Diaspora networks and promoting the participation of migrant communities to development projects in the countries of origin, Migrants' rights, Brain drain)	Commission	2010
<b>Migrant rights</b>		
Green Paper on the right to family reunification	Commission	2010
Proposal for a modification of Directive 2003/86/EC on the right to family reunification	Commission	2012
<b>“Illegal” immigration</b>		
Legislative proposal amending Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence (and possibly merge with Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence; and extending existing provisions)	Commission	2012
Report on Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals	Commission	2014
Report on the implementation of the return Directive 2008/115/EC	Commission	2014
<b>External dimension: Third countries</b>		
Follow-up to the EU-US joint statement on enhancing transatlantic cooperation in the area of justice, freedom and security of 28 October 2009	Commission	Ongoing
See section <i>Ensuring the protection of fundamental rights</i> for relevant actions on an EU-US agreement on personal data protection for law enforcement purposes; section <i>Strengthening confidence in the European judicial area</i> on the implementation of the EU-US mutual legal assistance and extradition agreements; section <i>Ensuring the security of Europe</i> on a long term agreement between the EU and the USA on the processing and transfer of financial messaging data for the purpose of the Terrorist Finance Tracking Program; on the further development of the external aspects of radicalisation phenomenon, in particular with the USA; strengthening the EUUS judicial and police cooperation in the fight against cybercrime		

<b>Increased coherence</b>		
Communication on evaluating JHA policies	Commission	2010
Proposal for an evaluation mechanism for criminal justice cooperation	Commission	2012
Communication on an Action Plan on European training for EU internal security professionals	Commission	2011
Proposal on an Internal Security Fund Commission 2011-2013	Commission	2011-2013

## Sources

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2. Commission proposal: 10 June 2009:  
<http://www.statewatch.org/news/2009/jun/eu-com-stockholm-prog.pdf>

3. Various drafts of the Council of the European Union’s final text:

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<http://www.statewatch.org/news/2009/nov/eu-stockholm-programme-25-nov-16484-rev1-09.pdf>

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<http://www.statewatch.org/news/2009/oct/stockholm-presidency-programme-16-oct-09.pdf>

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4. The Tampere Programme (1999-2003):  
<http://www.statewatch.org/news/2008/aug/tamp.html>

5. The Hague Programme (2004-2009)  
<http://www.statewatch.org/news/2008/aug/hague-programme.pdf>

6. Statewatch Analysis: “The Shape of Things to Come” by Tony Bunyan:  
<http://www.statewatch.org/analyses/eu-future-group-the-shape-of-things-to-come.pdf>

6. Future Group report:  
<http://www.statewatch.org/news/2008/jul/eu-futures-jha-report.pdf>

7. For full background see Statewatch’s Observatory on the Stockholm Programme:  
<http://www.statewatch.org/stockholm-programme.htm>