

Prism and GCHQ

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On 20 June 2013, the European Parliament debated revelations about the US National Security Agency's Prism surveillance programme. We print two contributions to the debate, beginning with Sylvie Guillaume MEP, who is a member of the Parliament's Socialists and Democrats Group. Jan Philipp Albrecht MEP is the Parliament's rapporteur on data protection regulation and a member of the Greens/EFA group.

Sylvie Guillaume MEP said: As a member of the European Parliament working on civil liberties for several years already, I find it absolutely unacceptable that the United States authorities have access to European Union citizens' data. Such generalised access to EU citizens' data is clearly not compliant with the EU's current data protection legislation.

Alongside many other colleagues, I already had doubts on the loyalty of our US partner when I objected to the EU-US Passenger Name Records (PNR) agreement last year, arguing that the data protection safeguards foreseen do not meet EU standards.

At a time when the EU is about to open negotiations for an EU-US trade agreement, this highly sensitive issue must seriously be taken into account. In that context, I'm also wondering what is really hidden behind this generalised surveillance? When we know that Germany is the European country mainly concerned, I can hardly believe that the purpose of the National Security Agency's (NSA) snooping and surveillance of electronic communication is purely based on security reasons but may be more for commercial ones.

Given that many key questions remain unanswered, I'm now eager to know what the US reaction to the letter that EU justice commissioner Viviane Reding sent to the Attorney General on 10th June with regard to accessing and processing of data of EU citizens will be. I hope we will soon have the opportunity for an honest and open debate in order to clarify the respective responsibilities of not only the US authorities and the American private companies involved, but also the European

administration and the national governments. At least this scandal has had a positive effect by highlighting a crucial need for a growing awareness of the threats to privacy our citizens are exposed to in their daily life. It shows even more clearly that we need a strong legal framework for the protection of personal data, providing a strong compliance with the fundamental principles of data minimisation and purpose limitation, and restoring citizens' control over the way their personal data is processed. Members of the European parliament will have to keep this in mind when voting on the reports of our colleagues, Jan Albrecht and Dimitrios Droutsas, in the coming weeks.

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Jan Philipp Albrecht MEP said:

The reported broad access to telephone and cloud data by US intelligence services is violating the rule of law and democracy.

Mass surveillance on EU citizens is also breaching the laws of the European Union and its member states. The National Security Agency (NSA) Prism programme was accessing and analysing personal data and private conversations by using a warrant following the Foreign Intelligence Surveillance Act (FISA) and Patriot Act. Both are not in line with EU primary and secondary law.

The surveillance scandal hit the public in the middle of on-going negotiations on the EU data protection reform. The new regulation would also regulate how international service providers like Google and Yahoo deal with personal data in the European Union. And again, here is a direct link to the United States: according to a *Financial Times* report, the Obama administration successfully lobbied the European commission to weaken its proposal for a data protection regulation to make sure US agencies were able to spy on Europeans.

The inter-service draft, sent in November 2011 by Justice Commissioner Viviane Reding to her colleagues, already contained a provision which required a legal foundation such as a mutual legal assistance treaty and an authorisation by the competent European data protection authority as a condition for the disclosure of user data to authorities in third countries. This provision disappeared in the final Commission proposal. As rapporteur for this dossier, I have proposed to re-introduce this provision in the data protection regulation.

Other amendments would introduce strong whistleblower protection, or a warning for the users when their data leaves the EU, and a demand for a special legal instrument for cloud data processing. Now it is up to my

colleagues in the European Parliament and to ministers in Council to decide on this question. The trust in US cloud computing services is at an historic low after these leaks. It becomes more and more obvious that safe fundamental rights standards are a competitive advantage. If we really want to create a safe 'European Cloud', we must not allow that our data protection rules are undermined by third states' laws and practices.

Tony Bunyan

Statewatch Director, commented:

'These revelations come as no surprise to those who have tracked US-UK intelligence-gathering since the 1946 UK/USA agreement setting up global co-operation between the NSA and GCHQ. Intercepts by GCHQ are routinely forwarded to the Cabinet Office and then onto Ministries like the Foreign Office and have always given UK Ministers and officials the inside track in EU and international negotiations. Secondly, this confirms that a technological capacity of "reading people's email before/as they do" can be used not only to spy on other governments but also on organisations and individuals in civil society.'

www.statewatch.org

'No casual process' said Hague, prior to Snowden's revelations

... Germany's justice minister Sabine Leutheusser-Schnarrenberger described Tempora as a 'catastrophe' if true, Reuters reports. 'The accusations against Great Britain sound like a Hollywood nightmare. The European institutions should seek straight away to clarify the situation,' she said.

Germany's opposition Social Democrat Thomas Oppermann described the scenario as 'Orwellian' in the *Frankfurter Allgemeine Sonntagszeitung*, referring to George Orwell, the British writer of dystopian novel *1984*.

For his part, William Hague, the UK's foreign minister, earlier this month defended GCHQ surveillance programmes in the House of Commons. He said every request to intercept the content of an individual's communication 'requires a warrant signed personally by me or another secretary of state'. 'This is no casual process,' he said.

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