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Committee on Civil Liberties, Justice and Home Affairs

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DRAFT REPORT

on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs

(2013/2188(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Claude Moraes

PR_INI

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs
(2013/2188(INI))

The European Parliament,

– having regard to the Treaty on European Union (TEU), in particular Articles 2, 3, 4, 5, 6, 7, 10, 11 and 21 thereof,

– having regard to the Treaty on the Functioning of the European Union (TFEU), in particular Articles 15, 16 and 218 and Title V thereof,

– having regard to Protocol 36 on transitional provisions and Article 10 thereof and to Declaration 50 concerning this protocol,

– having regard to the Charter on Fundamental Rights of the European Union, in particular Articles 1, 3, 6, 7, 8, 10, 11, 20, 21, 42, 47, 48 and 52 thereof,

– having regard to the European Convention on Human Rights, notably its Articles 6, 8, 9, 10 and 13, and the protocols thereto,

– having regard to the Universal Declaration of Human Rights, notably its Articles 7, 8, 10,11,12 and 14[1],

– having regard to the International Covenant on Civil and Political Rights, notably its Articles 14, 17, 18 and 19,

– having regard to the Council of Europe Convention on Data Protection (ETS No 108) and its Additional Protocol of 8 November 2001 to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and transborder data flows (ETS No 181),

– having regard to the Council of Europe Convention on Cybercrime (ETS No 185),

– having regard to the Report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, submitted on 17 May 2010[2],

– having regard to the Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, submitted on 17 April 2013[3],

– having regard to the Guidelines on human rights and the fight against terrorism

[1] http://www.un.org/en/documents/udhr/
[2] http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/134/10/PDF/G1013410.pdf?OpenElement
[3] http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf

adopted by the Committee of Ministers of the Council of Europe on 11 July 2002,

– having regard to the Declaration of Brussels of 1 October 2010, adopted at the 6th Conference of the Parliamentary Committees for the Oversight of Intelligence and Security Services of the European Union Member States,

– having regard to Council of Europe Parliamentary Assembly Resolution No 1954 (2013) on national security and access to information,

– having regard to the report on the democratic oversight of the security services adopted by the Venice Commission on 11 June 2007[1], and expecting with great interest the update thereof, due in spring 2014,

– having regard to the testimonies of the representatives of the oversight committees on intelligence of Belgium, the Netherlands, Denmark and Norway,

– having regard to the cases lodged before the French[2], Polish and British[3] courts, as well as before the European Court of Human Rights[4], in relation to systems of mass surveillance,

– having regard to the Convention established by the Council in accordance with Article 34 of the Treaty on European Union on Mutual Assistance in Criminal Matters between the Member States of the European Union, and in particular to Title III thereof[5],

– having regard to Commission Decision 520/2000 of 26 July 2000 on the adequacy of the protection provided by the Safe Harbour privacy principles and the related frequently asked questions (FAQs) issued by the US Department of Commerce,

– having regard to the Commission assessment reports on the implementation of the Safe Harbour privacy principles of 13 February 2002 (SEC(2002)196) and of 20 October 2004 (SEC(2004)1323),

– having regard to the Commission Communication of 27 November 2013 (COM(2013)847) on the functioning of the Safe Harbour from the perspective of EU citizens and companies established in the EU and the Commission Communication of 27 November 2013 on rebuilding trust in EU-US data flows (COM(2013)846),

– having regard to the European Parliament resolution of 5 July 2000 on the Draft Commission Decision on the adequacy of the protection provided by the Safe Harbour privacy principles and related frequently asked questions issued by the US Department of Commerce, which took the view that the adequacy of the system could not be

[1] http://www.venice.coe.int/webforms/documents/CDL-AD(2007)016.aspx
[2] La Fédération Internationale des Ligues des Droits de l'Homme and La Ligue française pour la défense des droits de l'Homme et du Citoyen against X; Tribunal de Grande Instance of Paris.
[3] Cases by Privacy International and Liberty in the Investigatory Powers Tribunal.
[4] Joint Application Under Article 34 of Big Brother Watch, Open Rights Group, English Pen Dr Constanze Kurz (Applicants) - v - United Kingdom (Respondent).
[5] OJ C 197, 12.7.2000, p. 1.

confirmed[1], and to the Opinions of the Article 29 Working Party, more particularly Opinion 4/2000 of 16 May 2000[2],

– having regard to the agreements between the United States of America and the European Union on the use and transfer of passenger name records (PNR agreement) of 2004, 2007[3] and 2012[4],

– having regard to the Joint Review of the implementation of the Agreement between the EU and the USA on the processing and transfer of passenger name records to the US Department of Homeland Security[5], accompanying the report from the Commission to the European Parliament and to the Council on the joint review (COM(2013)844),

– having regard to the opinion of Advocate-General Cruz Villalón concluding that Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks is as a whole incompatible with Article 52(1) of the Charter of Fundamental Rights of the European Union and that Article 6 thereof is incompatible with Articles 7 and 52(1) of the Charter[6],

– having regard to Council Decision 2010/412/EU of 13 July 2010 on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program (TFTP)[7] and the accompanying declarations by the Commission and the Council,

– having regard to the Agreement on mutual legal assistance between the European Union and the United States of America[8],

– having regard to the ongoing negotiations on an EU-US framework agreement on the protection of personal data when transferred and processed for the purpose of preventing, investigating, detecting or prosecuting criminal offences, including terrorism, in the framework of police and judicial cooperation in criminal matters (the 'Umbrella agreement'),

– having regard to Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom[9],

– having regard to the statement by the President of the Federative Republic of Brazil at

[1] OJ C 121, 24.4.2001, p. 152.
[2] http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2000/wp32en.pdf
[3] OJ L 204, 4.8.2007, p. 18.
[4] OJ L 215, 11.8.2012, p. 5.
[5] SEC(2013)630, 27.11.2013.
[6] Opinion of Advocate General Cruz Villalón, 12 December 2013, Case C-293/12.
[7] OJ L 195, 27.7.2010, p. 3.
[8] OJ L 181, 19.7.2003, p. 34
[9] OJ L 309, 29.11.1996, p.1.

the opening of the 68th session of the UN General Assembly on 24 September 2013 and to the work carried out by the Parliamentary Committee of Inquiry on Espionage established by the Federal Senate of Brazil,

– having regard to the US PATRIOT Act signed by President George W. Bush on 26 October 2001,

– having regard to the Foreign Intelligence Surveillance Act (FISA) of 1978 and the FISA Amendments Act of 2008,

– having regard to Executive Order No 12333, issued by the US President in 1981 and amended in 2008,

– having regard to legislative proposals currently under examination in the US Congress, in particular the draft US Freedom Act,

– having regard to the reviews conducted by the Privacy and Civil Liberties Oversight Board, the US National Security Council and the President's Review Group on Intelligence and Communications Technology, particularly the report by the latter of 12 December 2013 entitled 'Liberty and Security in a Changing World',

– having regard to the ruling of the United States District Court for the District of Columbia, Klayman et al. v Obama et al., Civil Action No 13-0851 of 16 December 2013,

– having regard to the report on the findings by the EU Co-Chairs of the ad hoc EU-US Working Group on data protection of 27 November 2013[1],

– having regard to its resolutions of 5 September 2001 and 7 November 2002 on the existence of a global system for the interception of private and commercial communications (ECHELON interception system),

– having regard to its resolution of 21 May 2013 on the EU Charter: standard settings for media freedom across the EU[2],

– having regard to its resolution of 4 July 2013 on the US National Security Agency surveillance programme, surveillance bodies in various Member States and their impact on EU citizens, whereby it instructed its Committee on Civil Liberties, Justice and Home Affairs to conduct an in-depth inquiry into the matter[3],

– having regard to its resolution of 23 October 2013 on organised crime, corruption and money laundering: recommendations on action and initiatives to be taken[4],

– having regard to its resolution of 23 October 2013 on the suspension of the TFTP

[1] Council document 16987/13.
[2] Texts adopted, P7_TA(2013)0203.
[3] Texts adopted, P7_TA-(2013)0322.
[4] Texts adopted, P7_TA(2013)0444.

agreement as a result of US National Security Agency surveillance[1],

– having regard to its resolution of 10 December 2013 on unleashing the potential of cloud computing[2],

– having regard to the interinstitutional agreement between the European Parliament and the Council concerning the forwarding to and handling by the European Parliament of classified information held by the Council on matters other than those in the area of the common foreign and security policy[3],

– having regard to Annex VIII of its Rules of Procedure,

– having regard to Rule 48 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A70000/2013),

The impact of mass surveillance

A. whereas the ties between Europe and the United States of America are based on the spirit and principles of democracy, liberty, justice and solidarity;

B. whereas mutual trust and understanding are key factors in the transatlantic dialogue;

C. whereas in September 2001 the world entered a new phase which resulted in the fight against terrorism being listed among the top priorities of most governments; whereas the revelations based on leaked documents from Edward Snowden, former NSA contractor, put democratically elected leaders under an obligation to address the challenges of the increasing capabilities of intelligence agencies in surveillance activities and their implications for the rule of law in a democratic society;

D. whereas the revelations since June 2013 have caused numerous concerns within the EU as to:

- the extent of the surveillance systems revealed both in the US and in EU Member States;
- the high risk of violation of EU legal standards, fundamental rights and data protection standards;
- the degree of trust between EU and US transatlantic partners;
- the degree of cooperation and involvement of certain EU Member States with US surveillance programmes or equivalent programmes at national level as unveiled by the media;
- the degree of control and effective oversight by the US political authorities and certain EU Member States over their intelligence communities;

[1] Texts adopted, P7_TA(2013)0449.
[2] Texts adopted, P7_TA(2013)0535.
[3] OJ C 353 E, 3.12.2013, p.156-167.

- the possibility of these mass surveillance operations being used for reasons other than national security and the strict fight against terrorism, for example economic and industrial espionage or profiling on political grounds;
- the respective roles and degree of involvement of intelligence agencies and private IT and telecom companies;
- the increasingly blurred boundaries between law enforcement and intelligence activities, leading to every citizen being treated as a suspect;
- the threats to privacy in a digital era;

E. whereas the unprecedented magnitude of the espionage revealed requires full investigation by the US authorities, the European Institutions and Members States' governments and national parliaments;

F. whereas the US authorities have denied some of the information revealed but not contested the vast majority of it; whereas the public debate has developed on a large scale in the US and in a limited number of EU Member States; whereas EU governments too often remain silent and fail to launch adequate investigations;

G. whereas it is the duty of the European Institutions to ensure that EU law is fully implemented for the benefit of European citizens and that the legal force of EU Treaties is not undermined by a dismissive acceptance of extraterritorial effects of third countries' standards or actions;

Developments in the US on reform of intelligence

H. whereas the District Court for the District of Columbia, in its Decision of 16 December 2013, has ruled that the bulk collection of metadata by the NSA is in breach of the Fourth Amendment to the US Constitution[1];

I. whereas a Decision of the District Court for the Eastern District of Michigan has ruled that the Fourth Amendment requires reasonableness in all searches, prior warrants for any reasonable search, warrants based upon prior-existing probable cause, as well as particularity as to persons, place and things and the interposition of a neutral magistrate between Executive branch enforcement officers and citizens[2];

J. whereas in its report of 12 December 2013, the President's Review Group on Intelligence and Communication Technology proposes 45 recommendations to the President of the US; whereas the recommendations stress the need simultaneously to protect national security and personal privacy and civil liberties; whereas in this regard it invites the US Government to end bulk collection of phone records of US persons under Section 215 of the Patriot Act as soon as practicable, to undertake a thorough review of the NSA and the US intelligence legal framework in order to ensure respect for the right to privacy, to end efforts to subvert or make vulnerable commercial software (backdoors and malware), to increase the use of encryption, particularly in

[1] Klayman et al. v Obama et al., Civil Action No 13-0851, 16 December 2013.
[2] ACLU v. NSA No 06-CV-10204, 17 August 2006.

the case of data in transit, and not to undermine efforts to create encryption standards, to create a Public Interest Advocate to represent privacy and civil liberties before the Foreign Intelligence Surveillance Court, to confer on the Privacy and Civil Liberties Oversight Board the power to oversee Intelligence Community activities for foreign intelligence purposes, and not only for counterterrorism purposes, and to receive whistleblowers' complaints, to use Mutual Legal Assistance Treaties to obtain electronic communications, and not to use surveillance to steal industry or trade secrets;

K. whereas in respect of intelligence activities about non-US persons under Section 702 of FISA, the Recommendations to the President of the USA recognise the fundamental issue of respect for privacy and human dignity enshrined in Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights; whereas they do not recommend granting non-US persons the same rights and protections as US persons;

Legal framework

Fundamental rights

L. whereas the report on the findings by the EU Co-Chairs of the ad hoc EU-US Working Group on data protection provides for an overview of the legal situation in the US but has not helped sufficiently with establishing the facts about US surveillance programmes; whereas no information has been made available about the so-called 'second track' Working Group, under which Member States discuss bilaterally with the US authorities matters related to national security;

M. whereas fundamental rights, notably freedom of expression, of the press, of thought, of conscience, of religion and of association, private life, data protection, as well as the right to an effective remedy, the presumption of innocence and the right to a fair trial and non-discrimination, as enshrined in the Charter on Fundamental Rights of the European Union and in the European Convention on Human Rights, are cornerstones of democracy;

Union competences in the field of security

N. whereas according to Article 67(3) TFEU the EU 'shall endeavour to ensure a high level of security'; whereas the provisions of the Treaty (in particular Article 4(2) TEU, Article 72 TFEU and Article 73 TFEU) imply that the EU disposes of certain competences on matters relating to the collective security of the Union; whereas the EU has exercised competence in matters of internal security by deciding on a number of legislative instruments and concluding international agreements (PNR, TFTP) aimed at fighting serious crime and terrorism and by setting up an internal security strategy and agencies working in this field;

O. whereas the concepts of 'national security', 'internal security', 'internal security of the EU' and 'international security' overlap; whereas the Vienna Convention on the Law of Treaties, the principle of sincere cooperation among EU Member States and the human rights law principle of interpreting any exemptions narrowly point towards a

restrictive interpretation of the notion of 'national security' and require that Member States refrain from encroaching upon EU competences;

P. whereas, under the ECHR, Member States' agencies and even private parties acting in the field of national security also have to respect the rights enshrined therein, be they of their own citizens or of citizens of other States; whereas this also goes for cooperation with other States' authorities in the field of national security;

Extra-territoriality

Q. whereas the extra-territorial application by a third country of its laws, regulations and other legislative or executive instruments in situations falling under the jurisdiction of the EU or its Member States may impact on the established legal order and the rule of law, or even violate international or EU law, including the rights of natural and legal persons, taking into account the extent and the declared or actual aim of such an application; whereas, in these exceptional circumstances, it is necessary to take action at the EU level to ensure that the rule of law, and the rights of natural and legal persons are respected within the EU, in particular by removing, neutralising, blocking or otherwise countering the effects of the foreign legislation concerned;

International transfers of data

R. whereas the transfer of personal data by EU institutions, bodies, offices or agencies or by the Member States to the US for law enforcement purposes in the absence of adequate safeguards and protections for the respect of fundamental rights of EU citizens, in particular the rights to privacy and the protection of personal data, would make that EU institution, body, office or agency or that Member State liable, under Article 340 TFEU or the established case law of the CJEU[1], for breach of EU law – which includes any violation of the fundamental rights enshrined in the EU Charter;

Transfers to the US based on the US Safe Harbour

S. whereas the US data protection legal framework does not ensure an adequate level of protection for EU citizens;

T. whereas, in order to enable EU data controllers to transfer personal data to an entity in the US, the Commission, in its Decision 520/2000, has declared the adequacy of the protection provided by the Safe Harbour privacy principles and the related FAQs issued by the US Department of Commerce for personal data transferred from the Union to organisations established in the United States that have joined the Safe Harbour;

U. whereas in its resolution of 5 July 2000 the European Parliament expressed doubts and concerns as to the adequacy of the Safe Harbour and called on the Commission to review the decision in good time in the light of experience and of any legislative developments;

[1] See notably Joined Cases C-6/90 and C-9/90, Francovich and others v. Italy, judgment of 28 May 1991.

V. whereas Commission Decision 520/2000 stipulates that the competent authorities in Member States may exercise their existing powers to suspend data flows to an organisation that has self-certified its adherence to the Safe Harbour principles, in order to protect individuals with regard to the processing of their personal data in cases where there is a substantial likelihood that the Safe Harbour principles are being violated or that the continuing transfer would create an imminent risk of grave harm to data subjects;

W. whereas Commission Decision 520/2000 also states that when evidence has been provided that anybody responsible for ensuring compliance with the principles is not effectively fulfilling their role, the Commission must inform the US Department of Commerce and, if necessary, present measures with a view to reversing or suspending the said Decision or limiting its scope;

X. whereas in its first two reports on the implementation of the Safe Harbour, of 2002 and 2004, the Commission identified several deficiencies as regards the proper implementation of the Safe Harbour and made several recommendations to the US authorities with a view to rectifying them;

Y. whereas in its third implementation report, of 27 November 2013, nine years after the second report and without any of the deficiencies recognised in that report having been rectified, the Commission identified further wide-ranging weaknesses and shortcomings in the Safe Harbour and concluded that the current implementation could not be maintained; whereas the Commission has stressed that wide-ranging access by US intelligence agencies to data transferred to the US by Safe-Harbour-certified entities raises additional serious questions as to the continuity of protection of the data of EU data subjects; whereas the Commission addressed 13 recommendations to the US authorities and undertook to identify by summer 2014, together with the US authorities, remedies to be implemented as soon as possible, forming the basis for a full review of the functioning of the Safe Harbour principles;

Z. whereas on 28-31 October 2013 the delegation of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) to Washington D.C. met with the US Department of Commerce and the US Federal Trade Commission; whereas the Department of Commerce acknowledged the existence of organisations having self-certified adherence to Safe Harbour Principles but clearly showing a 'not-current status', meaning that the company does not fulfil Safe Harbour requirements although continuing to receive personal data from the EU; whereas the Federal Trade Commission admitted that the Safe Harbour should be reviewed in order to improve it, particularly with regard to complaints and alternative dispute resolution systems;

AA. whereas Safe Harbour Principles may be limited 'to the extent necessary to meet national security, public interest, or law enforcement requirements'; whereas, as an exception to a fundamental right, such an exception must always be interpreted restrictively and be limited to what is necessary and proportionate in a democratic society, and the law must clearly establish the conditions and safeguards to make this limitation legitimate; whereas such an exception should not be used in a way that

undermines the protection afforded by EU data protection law and the Safe Harbour principles;

AB. whereas large-scale access by US intelligence agencies has seriously eroded transatlantic trust and negatively impacted on the trust for US organisations acting in the EU; whereas this is further exacerbated by the lack of judicial and administrative redress for EU citizens under US law, particularly in cases of surveillance activities for intelligence purposes;

Transfers to third countries with the adequacy decision

AC. whereas according to the information revealed and to the findings of the inquiry conducted by the LIBE Committee, the national security agencies of New Zealand and Canada have been involved on a large scale in mass surveillance of electronic communications and have actively cooperated with the US under the so called 'Five eyes' programme, and may have exchanged with each other personal data of EU citizens transferred from the EU;

AD. whereas Commission Decisions 2013/65[1] and 2/2002 of 20 December 2001[2] have declared the adequate level of protection ensured by the New Zealand and the Canadian Personal Information Protection and Electronic Documents Act; whereas the aforementioned revelations also seriously affect trust in the legal systems of these countries as regards the continuity of protection afforded to EU citizens; whereas the Commission has not examined this aspect;

Transfers based on contractual clauses and other instruments

AE. whereas Directive 95/46/EC provides that international transfers to a third country may also take place by means of specific instruments whereby the controller adduces adequate safeguards with respect to the protection of the privacy and fundamental rights and freedoms of individuals and as regards the exercise of the corresponding rights;

AF. whereas such safeguards may in particular result from appropriate contractual clauses;

AG. whereas Directive 95/46/EC empowers the Commission to decide that specific standard contractual clauses offer sufficient safeguards required by the Directive and whereas on this basis the Commission has adopted three models of standard contractual clauses for transfers to controllers and processors (and sub-processors) in third countries;

AH. whereas the Commission Decisions establishing the standard contractual clauses stipulate that the competent authorities in Member States may exercise their existing powers to suspend data flows when it is established that the law to which the data importer or a sub-processor is subject imposes upon them requirements to derogate from the applicable data protection law which go beyond the restrictions necessary in

[1] OJ L 28, 30.1.2013, p. 12.
[2] OJ L 2, 4.1.2002, p. 13.

a democratic society as provided for in Article 13 of Directive 95/46/EC, where those requirements are likely to have a substantial adverse effect on the guarantees provided by the applicable data protection law and the standard contractual clauses, or where there is a substantial likelihood that the standard contractual clauses in the annex are not being or will not be complied with and the continuing transfer would create an imminent risk of grave harm to the data subjects;

AI. whereas national data protection authorities have developed binding corporate rules (BCRs) in order to facilitate international transfers within a multinational corporation with adequate safeguards with respect to the protection of the privacy and fundamental rights and freedoms of individuals and as regards the exercise of the corresponding rights; whereas before being used, BCRs need to be authorised by the Member States' competent authorities after the latter have assessed compliance with Union data protection law;

Transfers based on TFTP and PNR agreements

AJ. whereas in its resolution of 23 October 2013 the European Parliament expressed serious concerns about the revelations concerning the NSA's activities as regards direct access to financial payments messages and related data, which would constitute a clear breach of the Agreement, in particular Article 1 thereof;

AK. whereas the European Parliament asked the Commission to suspend the Agreement and requested that all relevant information and documents be made available immediately for Parliament's deliberations;

AL. whereas following the allegations published by the media, the Commission decided to open consultations with the US pursuant to Article 19 of the TFTP Agreement; whereas on 27 November 2013 Commissioner Malmström informed the LIBE Committee that, after meeting US authorities and in view of the replies given by the US authorities in their letters and during their meetings, the Commission had decided not to pursue the consultations on the grounds that there were no elements showing that the US Government has acted in a manner contrary to the provisions of the Agreement, and that the US has provided written assurance that no direct data collection has taken place contrary to the provisions of the TFTP agreement;

AM. whereas during the LIBE delegation to Washington of 28-31 October 2013 the delegation met with the US Department of the Treasury; whereas the US Treasury stated that since the entry into force of the TFTP Agreement it had not had access to data from SWIFT in the EU except within the framework of the TFTP; whereas the US Treasury refused to comment on whether SWIFT data would have been accessed outside TFTP by any other US government body or department or whether the US administration was aware of NSA mass surveillance activities; whereas on 18 December 2013 Mr Glenn Greenwald stated before the LIBE Committee inquiry that the NSA and GCHQ had targeted SWIFT networks;

AN. whereas the Belgian and Dutch Data Protection authorities decided on 13 November 2013 to conduct a joint investigation into the security of SWIFT's payment networks in order to ascertain whether third parties could gain unauthorised or unlawful access

to European citizens' bank data[1];

AO. whereas according to the Joint Review of the EU-US PNR agreement, the United States Department of Homeland Security (DHS) made 23 disclosures of PNR data to the NSA on a case-by-case basis in support of counterterrorism cases, in a manner consistent with the specific terms of the Agreement;

AP. whereas the Joint Review fails to mention the fact that in the case of processing of personal data for intelligence purposes, under US law, non-US citizens do not enjoy any judicial or administrative avenue to protect their rights, and constitutional protections are only granted to US persons; whereas this lack of judicial or administrative rights nullifies the protections for EU citizens laid down in the existing PNR agreement;

Transfers based on the EU-US Mutual Legal Assistance Agreement in criminal matters

AQ. whereas the EU-US Agreement on mutual legal assistance in criminal matters of 6 June 2003[2] entered into force on 1 February 2010 and is intended to facilitate cooperation between the EU and US to combat crime in a more effective way, having due regard for the rights of individuals and the rule of law;

Framework agreement on data protection in the field of police and judicial cooperation ('umbrella agreement')

AR. whereas the purpose of this general agreement is to establish the legal framework for all transfers of personal data between the EU and US for the sole purposes of preventing, investigating, detecting or prosecuting criminal offences, including terrorism, in the framework of police and judicial cooperation in criminal matters**;** whereas negotiations were authorised by the Council on 2 December 2010;

AS. whereas this agreement should provide for clear and precise legally binding data-processing principles and should in particular recognise EU citizens' right to access, rectification and erasure of their personal data in the US, as well as the right to an efficient administrative and judicial redress mechanism for EU citizens and independent oversight of the data-processing activities;

AT. whereas in its Communication of 27 November 2013 the Commission indicated that the 'umbrella agreement' should result in a high level of protection for citizens on both sides of the Atlantic and should strengthen the trust of Europeans in EU-US data exchanges, providing a basis on which to develop EU-US security cooperation and partnership further;

AU. whereas negotiations on the agreement have not progressed because of the US Government's persistent position of refusing recognition of effective rights of administrative and judicial redress to EU citizens and because of the intention of providing broad derogations to the data protection principles contained in the

[1] http://www.privacycommission.be/fr/news/les-instances-europ%C3%A9ennes-charg%C3%A9es-de-contr%C3%B4ler-le-respect-de-la-vie-priv%C3%A9e-examinent-la
[2] OJ L 181, 19.7.2003, p. 25

agreement, such as purpose limitation, data retention or onward transfers either domestically or abroad;

Data Protection Reform

AV. whereas the EU data protection legal framework is currently being reviewed in order to establish a comprehensive, consistent, modern and robust system for all data-processing activities in the Union; whereas in January 2012 the Commission presented a package of legislative proposals: a General Data Protection Regulation[1], which will replace Directive 95/46/EC and establish a uniform law throughout the EU, and a Directive[2] which will lay down a harmonised framework for all data processing activities by law enforcement authorities for law enforcement purposes and will reduce the current divergences among national laws;

AW. whereas on 21 October 2013 the LIBE Committee adopted its legislative reports on the two proposals and a decision on the opening of negotiations with the Council with a view to having the legal instruments adopted during this legislative term;

AX. whereas, although the European Council of 24/25 October 2013 called for the timely adoption of a strong EU General Data Protection framework in order to foster the trust of citizens and businesses in the digital economy, the Council has been unable to arrive at a general approach on the General Data Protection Regulation and the Directive[3];

IT security and cloud computing

AY. whereas the resolution of 10 December[4] emphasises the economic potential of 'cloud computing' business for growth and employment;

AZ. whereas the level of data protection in a cloud computing environment must not be inferior to that required in any other data-processing context; whereas Union data protection law, since it is technologically neutral, already applies fully to cloud computing services operating in the EU;

BA. whereas mass surveillance activities give intelligence agencies access to personal data stored by EU individuals under cloud services agreements with major US cloud providers; whereas the US intelligence authorities have accessed personal data stored in servers located on EU soil by tapping into the internal networks of Yahoo and Google[5]; whereas such activities constitute a violation of international obligations; whereas it is not excluded that information stored in cloud services by Member States' public authorities or undertakings and institutions has also been accessed by intelligence authorities;

Democratic oversight of intelligence services

[1] COM(2012) 11, 25.1.2012.
[2] COM(2012) 10, 25.1.2012.
[3] http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/139197.pdf
[4] AT-0353/2013 PE506.114V2.00.
[5] The Washington Post , 31 October 2013.

BB. whereas intelligence services perform an important function in protecting democratic society against internal and external threats; whereas they are given special powers and capabilities to this end; whereas these powers are to be used within the rule of law, as otherwise they risk losing legitimacy and eroding the democratic nature of society;

BC. whereas the high level of secrecy that is intrinsic to the intelligence services in order to avoid endangering ongoing operations, revealing *modi operandi* or putting at risk the lives of agents impedes full transparency, public scrutiny and normal democratic or judicial examination;

BD. whereas technological developments have led to increased international intelligence cooperation, also involving the exchange of personal data, and often blurring the line between intelligence and law enforcement activities;

BE. whereas most of existing national oversight mechanisms and bodies were set up or revamped in the 1990s and have not necessarily been adapted to the rapid technological developments over the last decade;

BF. whereas democratic oversight of intelligence activities is still conducted at national level, despite the increase in exchange of information between EU Member States and between Member States and third countries; whereas there is an increasing gap between the level of international cooperation on the one hand and oversight capacities limited to the national level on the other, which results in insufficient and ineffective democratic scrutiny;

Main findings

1. Considers that recent revelations in the press by whistleblowers and journalists, together with the expert evidence given during this inquiry, have resulted in compelling evidence of the existence of far-reaching, complex and highly technologically advanced systems designed by US and some Member States' intelligence services to collect, store and analyse communication and location data and metadata of all citizens around the world on an unprecedented scale and in an indiscriminate and non-suspicion-based manner;

2. Points specifically to US NSA intelligence programmes allowing for the mass surveillance of EU citizens through direct access to the central servers of leading US internet companies (PRISM programme), the analysis of content and metadata (Xkeyscore programme), the circumvention of online encryption (BULLRUN), access to computer and telephone networks and access to location data, as well as to systems of the UK intelligence agency GCHQ such as its upstream surveillance activity (Tempora programme) and decryption programme (Edgehill); believes that the existence of programmes of a similar nature, even if on a more limited scale, is likely in other EU countries such as France (DGSE), Germany (BND) and Sweden (FRA);

3. Notes the allegations of 'hacking' or tapping into the Belgacom systems by the UK intelligence agency GCHQ; reiterates the indication by Belgacom that it could not confirm that EU institutions were targeted or affected, and that the malware used was extremely complex and required the use of extensive financial and staffing resources

for its development and use that would not be available to private entities or hackers;

4. States that trust has been profoundly shaken: trust between the two transatlantic partners, trust among EU Member States, trust between citizens and their governments, trust in the respect of the rule of law, and trust in the security of IT services; believes that in order to rebuild trust in all these dimensions a comprehensive plan is urgently needed;

5. Notes that several governments claim that these mass surveillance programmes are necessary to combat terrorism; wholeheartedly supports the fight against terrorism, but strongly believes that it can never in itself be a justification for untargeted, secret and sometimes even illegal mass surveillance programmes; expresses concerns, therefore, regarding the legality, necessity and proportionality of these programmes;

6. Considers it very doubtful that data collection of such magnitude is only guided by the fight against terrorism, as it involves the collection of all possible data of all citizens; points therefore to the possible existence of other power motives such as political and economic espionage;

7. Questions the compatibility of some Member States' massive economic espionage activities with the EU internal market and competition law as enshrined in Title I and Title VII of the Treaty on the Functioning of the European Union; reaffirms the principle of sincere cooperation as enshrined in Article 4 paragraph 3 of the Treaty on European Union and the principle that the Member States shall 'refrain from any measures which could jeopardise the attainment of the Union's objectives';

8. Notes that international treaties and EU and US legislation, as well as national oversight mechanisms, have failed to provide for the necessary checks and balances and for democratic accountability;

9. Condemns in the strongest possible terms the vast, systemic, blanket collection of the personal data of innocent people, often comprising intimate personal information; emphasises that the systems of mass, indiscriminate surveillance by intelligence services constitute a serious interference with the fundamental rights of citizens; stresses that privacy is not a luxury right, but that it is the foundation stone of a free and democratic society; points out, furthermore, that mass surveillance has potentially severe effects on the freedom of the press, thought and speech, as well as a significant potential for abuse of the information gathered against political adversaries; emphasises that these mass surveillance activities appear also to entail illegal actions by intelligence services and raise questions regarding the extra-territoriality of national laws;

10. Sees the surveillance programmes as yet another step towards the establishment of a fully fledged preventive state, changing the established paradigm of criminal law in democratic societies, promoting instead a mix of law enforcement and intelligence activities with blurred legal safeguards, often not in line with democratic checks and balances and fundamental rights, especially the presumption of innocence; recalls in

that regard the decision of the German Federal Constitutional Court[1] on the prohibition of the use of preventive dragnets ('präventive Rasterfahndung') unless there is proof of a concrete danger to other high-ranking legally protected rights, whereby a general threat situation or international tensions do not suffice to justify such measures;

11. Is adamant that secret laws, treaties and courts violate the rule of law; points out that any judgment of a court or tribunal and any decision of an administrative authority of a non-EU state authorising, directly or indirectly, surveillance activities such as those examined by this inquiry may not be automatically recognised or enforced, but must be submitted individually to the appropriate national procedures on mutual recognition and legal assistance, including rules imposed by bilateral agreements;

12. Points out that the abovementioned concerns are exacerbated by rapid technological and societal developments; considers that, since internet and mobile devices are everywhere in modern daily life ('ubiquitous computing') and the business model of most internet companies is based on the processing of personal data of all kinds that puts at risk the integrity of the person, the scale of this problem is unprecedented;

13. Regards it as a clear finding, as emphasised by the technology experts who testified before the inquiry, that at the current stage of technological development there is no guarantee, either for EU public institutions or for citizens, that their IT security or privacy can be protected from intrusion by well-equipped third countries or EU intelligence agencies ('no 100% IT security'); notes that this alarming situation can only be remedied if Europeans are willing to dedicate sufficient resources, both human and financial, to preserving Europe's independence and self-reliance;

14. Strongly rejects the notion that these issues are purely a matter of national security and therefore the sole competence of Member States; recalls a recent ruling of the Court of Justice according to which 'although it is for Member States to take the appropriate measures to ensure their internal and external security, the mere fact that a decision concerns State security cannot result in European Union law being inapplicable'[2]; recalls further that the protection of the privacy of all EU citizens is at stake, as are the security and reliability of all EU communication networks; believes therefore that discussion and action at EU level is not only legitimate, but also a matter of EU autonomy and sovereignty;

15. Commends the current discussions, inquiries and reviews concerning the subject of this inquiry in several parts of the world; points to the Global Government Surveillance Reform signed up to by the world's leading technology companies, which calls for sweeping changes to national surveillance laws, including an international ban on bulk collection of data to help preserve the public's trust in the internet; notes with great interest the recommendations published recently by the US President's Review Group on Intelligence and Communications Technologies; strongly urges governments to take these calls and recommendations fully into account and to overhaul their national frameworks for the intelligence services in order to implement appropriate safeguards and oversight;

[1] No 1 BvR 518/02 of 4 April 2006.
[2] No 1 BvR 518/02 of 4 April 2006.

16. Commends the institutions and experts who have contributed to this inquiry; deplores the fact that several Member States' authorities have declined to cooperate with the inquiry the European Parliament has been conducting on behalf of citizens; welcomes the openness of several Members of Congress and of national parliaments;

17. Is aware that in such a limited timeframe it has been possible to conduct only a preliminary investigation of all the issues at stake since July 2013; recognises both the scale of the revelations involved and their ongoing nature; adopts, therefore, a forward-planning approach consisting in a set of specific proposals and a mechanism for follow-up action in the next parliamentary term, ensuring the findings remain high on the EU political agenda;

18. Intends to request strong political undertakings from the European Commission to be designated after the May 2014 elections to implement the proposals and recommendations of this Inquiry; expects adequate commitment from the candidates in the upcoming parliamentary hearings for the new Commissioners;

Recommendations

19. Calls on the US authorities and the EU Member States to prohibit blanket mass surveillance activities and bulk processing of personal data;

20. Calls on certain EU Member States, including the UK, Germany, France, Sweden and the Netherlands, to revise where necessary their national legislation and practices governing the activities of intelligence services so as to ensure that they are in line with the standards of the European Convention on Human Rights and comply with their fundamental rights obligations as regards data protection, privacy and presumption of innocence; in particular, given the extensive media reports referring to mass surveillance in the UK, would emphasise that the current legal framework which is made up of a 'complex interaction' between three separate pieces of legislation – the Human Rights Act 1998, the Intelligence Services Act 1994 and the Regulation of Investigatory Powers Act 2000 – should be revised;

21. Calls on the Member States to refrain from accepting data from third states which have been collected unlawfully and from allowing surveillance activities on their territory by third states' governments or agencies which are unlawful under national law or do not meet the legal safeguards enshrined in international or EU instruments, including the protection of Human Rights under the TEU, the ECHR and the EU Charter of Fundamental Rights;

22. Calls on the Member States immediately to fulfil their positive obligation under the European Convention on Human Rights to protect their citizens from surveillance contrary to its requirements, including when the aim thereof is to safeguard national security, undertaken by third states and to ensure that the rule of law is not weakened as a result of extraterritorial application of a third country's law;

23. Invites the Secretary-General of the Council of Europe to launch the Article 52 procedure according to which 'on receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the

manner in which its internal law ensures the effective implementation of any of the provisions of the Convention';

24. Calls on Member States to take appropriate action immediately, including court action, against the breach of their sovereignty, and thereby the violation of general public international law, perpetrated through the mass surveillance programmes; calls further on EU Member States to make use of all available international measures to defend EU citizens' fundamental rights, notably by triggering the inter-state complaint procedure under Article 41 of the International Covenant on Civil and Political Rights (ICCPR);

25. Calls on the US to revise its legislation without delay in order to bring it into line with international law, to recognise the privacy and other rights of EU citizens, to provide for judicial redress for EU citizens and to sign the Additional Protocol allowing for complaints by individuals under the ICCPR;

26. Strongly opposes any conclusion of an additional protocol or guidance to the Council of Europe Cybercrime Convention (Budapest Convention) on transborder access to stored computer data which could provide for a legitimisation of intelligence services' access to data stored in another jurisdiction without its authorisation and without the use of existing mutual legal assistance instruments, since this could result in unfettered remote access by law enforcement authorities to servers and computers located in other jurisdictions and would be in conflict with Council of Europe Convention 108;

27. Calls on the Commission to carry out, before July 2014, an assessment of the applicability of Regulation EC No 2271/96 to cases of conflict of laws for transfers of personal data;

International transfers of data

US data protection legal framework and US Safe Harbour

28. Notes that the companies identified by media revelations as being involved in the large-scale mass surveillance of EU data subjects by US NSA are companies that have self-certified their adherence to the Safe Harbour, and that the Safe Harbour is the legal instrument used for the transfer of EU personal data to the US (Google, Microsoft, Yahoo!, Facebook, Apple, LinkedIn); expresses its concerns on the fact that these organisations admitted that they do not encrypt information and communications flowing between their data centres, thereby enabling intelligence services to intercept information[1];

29. Considers that large-scale access by US intelligence agencies to EU personal data processed by Safe Harbour does not per se meet the criteria for derogation under 'national security';

30. Takes the view that, as under the current circumstances the Safe Harbour principles do not provide adequate protection for EU citizens, these transfers should be carried out

[1] The Washington Post, 31 October 2013.

under other instruments, such as contractual clauses or BCRs setting out specific safeguards and protections;

31. Calls on the Commission to present measures providing for the immediate suspension of Commission Decision 520/2000, which declared the adequacy of the Safe Harbour privacy principles, and of the related FAQs issued by the US Department of Commerce;

32. Calls on Member States' competent authorities, namely the data protection authorities, to make use of their existing powers and immediately suspend data flows to any organisation that has self-certified its adherence to the US Safe Harbour Principles and to require that such data flows are only carried out under other instruments, provided they contain the necessary safeguards and protections with respect to the protection of the privacy and fundamental rights and freedoms of individuals;

33. Calls on the Commission to present by June 2014 a comprehensive assessment of the US privacy framework covering commercial, law enforcement and intelligence activities in response to the fact that the EU and the US legal systems for protecting personal data are drifting apart;

Transfers to other third countries with adequacy decision

34. Recalls that Directive 95/46/EC stipulates that transfers of personal data to a third country may take place only if, without prejudice to compliance with the national provisions adopted pursuant to the other provisions of the Directive, the third country in question ensures an adequate level of protection, the purpose of this provision being to ensure the continuity of the protection afforded by EU data protection law where personal data are transferred outside the EU;

35. Recalls that Directive 95/46/EC provides that the adequacy of the level of protection afforded by a third country is to be assessed in the light of all the circumstances surrounding a data transfer operation or set of data transfer operations; likewise recalls that the said Directive also equips the Commission with implementing powers to declare that a third country ensures an adequate level of protection in the light of the criteria laid down by Directive 95/46/EC; whereas Directive 95/46/EC also empowers the Commission to declare that a third country does not ensure an adequate level of protection;

36. Recalls that in the latter case Member States must take the measures necessary to prevent any transfer of data of the same type to the third country in question, and that the Commission should enter into negotiations with a view to remedying the situation;

37. Calls on the Commission and the Member States to assess without delay whether the adequate level of protection of the New Zealand and of the Canadian Personal Information Protection and Electronic Documents Act, as declared by Commission Decisions 2013/651 and 2/2002 of 20 December 2001, have been affected by the involvement of their national intelligence agencies in the mass surveillance of EU

[1] OJ L 28, 30.1.2013, p. 12.

citizens and, if necessary, to take appropriate measures to suspend or revers the adequacy decisions; expects the Commission to report to the European Parliament on its findings on the abovementioned countries by December 2014 at the latest;

Transfers based on contractual clauses and other instruments

38. Recalls that national data protection authorities have indicated that neither standard contractual clauses nor BCRs were written with situations of access to personal data for mass surveillance purposes in mind, and that such access would not be in line with the derogation clauses of the contractual clauses or BCRs which refer to exceptional derogations for a legitimate interest in a democratic society and where necessary and proportionate;

39. Calls on the Member States to prohibit or suspend data flows to third countries based on the standard contractual clauses, contractual clauses or BCRs authorised by the national competent authorities where it is established that the law to which the data importer is subject imposes upon him requirements which go beyond the restrictions necessary in a democratic society and which are likely to have a substantial adverse effect on the guarantees provided by the applicable data protection law and the standard contractual clauses, or because continuing transfer would create an imminent risk of grave harm to the data subjects;

40. Calls on the Article 29 Working Party to issue guidelines and recommendations on the safeguards and protections that contractual instruments for international transfers of EU personal data should contain in order to ensure the protection of the privacy, fundamental rights and freedoms of individuals, taking particular account of the third-country laws on intelligence and national security and the involvement of the companies receiving the data in a third country in mass surveillance activities by a third country's intelligence agencies;

41. Calls on the Commission to examine the standard contractual clauses it has established in order to assess whether they provide the necessary protection as regards access to personal data transferred under the clauses for intelligence purposes and, if appropriate, to review them;

Transfers based on the Mutual Legal Assistance Agreement

42. Calls on the Commission to conduct before the end 2014 an in-depth assessment of the existing Mutual Legal Assistance Agreement, pursuant to its Article 17, in order to verify its practical implementation and, in particular, whether the US has made effective use of it for obtaining information or evidence in the EU and whether the Agreement has been circumvented to acquire the information directly in the EU, and to assess the impact on the fundamental rights of individuals; such an assessment should not only refer to US official statements as a sufficient basis for the analysis but be based on specific EU evaluations; this in-depth review should also address the consequences of the application of the Union's constitutional architecture to this instrument in order to bring it into line with Union law, taking account in particular of Protocol 36 and Article 10 thereof and Declaration 50 concerning this protocol;

EU mutual assistance in criminal matters

43. Asks the Council and the Commission to inform Parliament about the actual use by Member States of the Convention on Mutual Assistance in Criminal Matters between the Member States, in particular Title III on interception of telecommunications; calls on the Commission to put forward a proposal, in accordance with Declaration 50, concerning Protocol 36, as requested, before the end of 2014 in order to adapt it to the Lisbon Treaty framework;

Transfers based on the TFTP and PNR agreements

44. Takes the view that the information provided by the European Commission and the US Treasury does not clarify whether US intelligence agencies have access to SWIFT financial messages in the EU by intercepting SWIFT networks or banks' operating systems or communication networks, alone or in cooperation with EU national intelligence agencies and without having recourse to existing bilateral channels for mutual legal assistance and judicial cooperation;

45. Reiterates its resolution of 23 October 2013 and asks the Commission for the suspension of the TFTP Agreement;

46. Calls on the European Commission to react to concerns that three of the major computerised reservation systems used by airlines worldwide are based in the US and that PNR data are saved in cloud systems operating on US soil under US law, which lacks data protection adequacy;

Framework agreement on data protection in the field of police and judicial cooperation ('Umbrella agreement')

47. Considers that a satisfactory solution under the 'Umbrella agreement' is a pre-condition for the full restoration of trust between the transatlantic partners;

48. Asks for an immediate resumption of the negotiations with the US on the 'Umbrella Agreement', which should provide for clear rights for EU citizens and effective and enforceable administrative and judicial remedies in the US without any discrimination;

49. Asks the Commission and the Council not to initiate any new sectorial agreements or arrangements for the transfer of personal data for law enforcement purposes as long as the 'Umbrella Agreement' has not entered into force;

50. Urges the Commission to report in detail on the various points of the negotiating mandate and the latest state of play by April 2014;

Data protection reform

51. Calls on the Council Presidency and the majority of Member States who support a high level of data protection to show a sense of leadership and responsibility and accelerate their work on the whole Data Protection Package to allow for adoption in 2014, so that EU citizens will be able to enjoy better protection in the very near future;

52. Stresses that both the Data Protection Regulation and the Data Protection Directive are necessary to protect the fundamental rights of individuals and therefore must be treated as a package to be adopted simultaneously, in order to ensure that all data-processing activities in the EU provide a high level of protection in all circumstances;

Cloud computing

53. Notes that trust in US cloud computing and cloud providers has been negatively affected by the abovementioned practices; emphasises, therefore, the development of European clouds as an essential element for growth and employment and trust in cloud computing services and providers and for ensuring a high level of personal data protection;

54. Reiterates its serious concerns about the compulsory direct disclosure of EU personal data and information processed under cloud agreements to third-country authorities by cloud providers subject to third-country laws or using storage servers located in third countries, and about direct remote access to personal data and information processed by third-country law enforcement authorities and intelligence services;

55. Regrets the fact that such access is usually attained by means of direct enforcement by third-country authorities of their own legal rules, without recourse to international instruments established for legal cooperation such as mutual legal assistance (MLA) agreements or other forms of judicial cooperation;

56. Calls on the Commission and the Member States to speed up the work of establishing a European Cloud Partnership;

57. Recalls that all companies providing services in the EU must, without exception, comply with EU law and are liable for any breaches;

Transatlantic Trade and Investment Partnership Agreement (TTIP)

58. Recognises that the EU and the US are pursuing negotiations for a Transatlantic Trade and Investment Partnership, which is of major strategic importance for creating further economic growth and for the ability of both the EU and the US to set future global regulatory standards;

59. Strongly emphasises, given the importance of the digital economy in the relationship and in the cause of rebuilding EU-US trust, that the European Parliament will only consent to the final TTIP agreement provided the agreement fully respects fundamental rights recognised by the EU Charter, and that the protection of the privacy of individuals in relation to the processing and dissemination of personal data must continue to be governed by Article XIV of the GATS;

Democratic oversight of intelligence services

60. Stresses that, despite the fact that oversight of intelligence services' activities should be based on both democratic legitimacy (strong legal framework, ex ante authorisation and ex post verification) and an adequate technical capability and expertise, the

majority of current EU and US oversight bodies dramatically lack both, in particular the technical capabilities;

61. Invites, as it has done in the case of Echelon, all national parliaments which have not yet done so to install meaningful oversight of intelligence activities by parliamentarians or expert bodies with legal powers to investigate; calls on national parliaments to ensure that such oversight committees/bodies have sufficient resources, technical expertise and legal means to be able to effectively control intelligence services;

62. Calls for the setting up of a high-level group to strengthen cooperation in the field of intelligence at EU level, combined with a proper oversight mechanism ensuring both democratic legitimacy and adequate technical capacity; stresses that the high-level group should cooperate closely with national parliaments in order to propose further steps to be taken for increased oversight collaboration in the EU;

63. Calls on this high-level group to define minimum European standards or guidelines on the (ex ante and ex post) oversight of intelligence services on the basis of existing best practices and recommendations by international bodies (UN, Council of Europe);

64. Calls on the high-level group to set strict limits on the duration of any surveillance ordered unless its continuation is duly justified by the authorising/oversight authority;

65. Calls on the high-level group to develop criteria on enhanced transparency, built on the general principle of access to information and the so-called 'Tshwane Principles'[1];

66. Intends to organise a conference with national oversight bodies, whether parliamentary or independent, by the end of 2014;

67. Calls on the Member States to draw on best practices so as to improve access by their oversight bodies to information on intelligence activities (including classified information and information from other services) and establish the power to conduct on-site visits, a robust set of powers of interrogation, adequate resources and technical expertise, strict independence vis-à-vis their respective governments, and a reporting obligation to their respective parliaments;

68. Calls on the Member States to develop cooperation among oversight bodies, in particular within the European Network of National Intelligence Reviewers (ENNIR);

69. Urges the Commission to present, by September 2014, a proposal for a legal basis for the activities of the EU Intelligence Analysis Centre (IntCen), as well as a proper oversight mechanism adapted to its activities, including regular reporting to the European Parliament;

70. Calls on the Commission to present, by September 2014, a proposal for an EU security clearance procedure for all EU office holders, as the current system, which relies on the security clearance undertaken by the Member State of citizenship, provides for

[1] The Global Principles on National Security and the Right to Information, June 2013.

different requirements and lengths of procedures within national systems, thus leading to differing treatment of Members of Parliament and their staff depending on their nationality;

71. Recalls the provisions of the interinstitutional agreement between the European Parliament and the Council concerning the forwarding to and handling by the European Parliament of classified information held by the Council on matters other than those in the area of the common foreign and security policy that should be used to improve oversight at EU level;

EU agencies

72. Calls on the Europol Joint Supervisory Body, together with national data protection authorities, to conduct a joint inspection before the end of 2014 in order to ascertain whether information and personal data shared with Europol has been lawfully acquired by national authorities, particularly if the information or data was initially acquired by intelligence services in the EU or a third country, and whether appropriate measures are in place to prevent the use and further dissemination of such information or data;

73. Calls on Europol to ask the competent authorities of the Member States, in line with its competences, to initiate investigations with regard to possible cybercrimes and cyber attacks committed by governments or private actors in the course of the activities under scrutiny;

Freedom of expression

74. Expresses deep concern about the developing threats to the freedom of the press and the chilling effect on journalists of intimidation by state authorities, in particular as regards the protection of confidentiality of journalistic sources; reiterates the calls expressed in its resolution of 21 May 2013 on 'the EU Charter: standard settings for media freedom across the EU';

75. Considers that the detention of Mr Miranda and the seizure of the material in his possession under Schedule 7 of the Terrorism Act 2000 (and also the request to *The Guardian* to destroy or hand over the material) constitutes an interference with the right of freedom of expression as recognised by Article 10 of the ECHR and Article 11 of the EU Charter;

76. Calls on the Commission to put forward a proposal for a comprehensive framework for the protection of whistleblowers in the EU, with particular attention to the specificities of whistleblowing in the field of intelligence, for which provisions relating to whistleblowing in the financial field may prove insufficient, and including strong guarantees of immunity;

EU IT security

77. Points out that recent incidents clearly demonstrate the acute vulnerability of the EU, and in particular the EU institutions, national governments and parliaments, major European companies, European IT infrastructures and networks, to sophisticated

attacks using complex software; notes that these attacks require such financial and human resources that they are likely to originate from state entities acting on behalf of foreign governments or even from certain EU national governments that support them; in this context, regards the case of the hacking or tapping of the telecommunications company Belgacom as a worrying example of an attack against the EU's IT capacity;

78. Takes the view that the mass surveillance revelations that have initiated this crisis can be used as an opportunity for Europe to take the initiative and build up an autonomous IT key-resource capability for the mid term; calls on the Commission and the Member States to use public procurement as leverage to support such resource capability in the EU by making EU security and privacy standards a key requirement in the public procurement of IT goods and services;

79. Is highly concerned by indications that foreign intelligence services sought to lower IT security standards and to install backdoors in a broad range of IT systems;

80. Calls on all the Members States, the Commission, the Council and the European Council to address the EU's dangerous lack of autonomy in terms of IT tools, companies and providers (hardware, software, services and network), and encryption and cryptographic capabilities;

81. Calls on the Commission, standardisation bodies and ENISA to develop, by September 2014, minimum security and privacy standards and guidelines for IT systems, networks and services, including cloud computing services, in order to better protect EU citizens' personal data; believes that such standards should be set in an open and democratic process, not driven by a single country, entity or multinational company; takes the view that, while legitimate law enforcement and intelligence concerns need to be taken into account in order to support the fight against terrorism, they should not lead to a general undermining of the dependability of all IT systems;

82. Points out that both telecom companies and the EU and national telecom regulators have clearly neglected the IT security of their users and clients; calls on the Commission to make full use of its existing powers under the ePrivacy and Telecommunication Framework Directive to strengthen the protection of confidentiality of communication by adopting measures to ensure that terminal equipment is compatible with the right of users to control and protect their personal data, and to ensure a high level of security of telecommunication networks and services, including by way of requiring state-of-the-art encryption of communications;

83. Supports the EU cyber strategy but considers that it does not cover all possible threats and should be extended to cover malicious state behaviours;

84. Calls on the Commission, by January 2015 at the latest, to present an Action Plan to develop more EU independence in the IT sector, including a more coherent approach to boosting European IT technological capabilities (including IT systems, equipment, services, cloud computing, encryption and anonymisation) and to the protection of critical IT infrastructure (including in terms of ownership and vulnerability);

85. Calls on the Commission, in the framework of the next Work Programme of the

Horizon 2020 Programme, to assess whether more resources should be directed towards boosting European research, development, innovation and training in the field of IT technologies, in particular privacy-enhancing technologies and infrastructures, cryptology, secure computing, open-source security solutions and the Information Society;

86. Asks the Commission to map out current responsibilities and to review, by June 2014 at the latest, the need for a broader mandate, better coordination and/or additional resources and technical capabilities for Europol's CyberCrime Centre, ENISA, CERT-EU and the EDPS in order to enable them to be more effective in investigating major IT breaches in the EU and in performing (or assisting Member States and EU bodies to perform) on-site technical investigations regarding major IT breaches;

87. Deems it necessary for the EU to be supported by an EU IT Academy that brings together the best European experts in all related fields, tasked with providing all relevant EU Institutions and bodies with scientific advice on IT technologies, including security-related strategies; as a first step asks the Commission to set up an independent scientific expert panel;

88. Calls on the European Parliament's Secretariat to carry out, by September 2014 at the latest, a thorough review and assessment of the European Parliament's IT security dependability focused on: budgetary means, staff resources, technical capabilities, internal organisation and all relevant elements, in order to achieve a high level of security for the EP's IT systems; believes that such an assessment should at the least provide information analysis and recommendations on:

- the need for regular, rigorous, independent security audits and penetration tests, with the selection of outside security experts ensuring transparency and guarantees of their credentials vis-à-vis third countries or any types of vested interest;

- the inclusion in tender procedures for new IT systems of specific IT security/privacy requirements, including the possibility of a requirement for Open Source Software as a condition of purchase;

- the list of US companies under contract with the European Parliament in the IT and telecom fields, taking into account revelations about NSA contracts with a company such as RSA, whose products the European Parliament is using to supposedly protect remote access to their data by its Members and staff;

- the reliability and resilience of third-party commercial software used by the EU institutions in their IT systems with regard to penetrations and intrusions by EU or third-country law enforcement and intelligence authorities;

- the use of more open-source systems and fewer off-the-shelf commercial systems;

- the impact of the increased use of mobile tools (smartphones, tablets, whether professional or personal) and its effects on the IT security of the system;

- the security of the communications between different workplaces of the European Parliament and of the IT systems used at the European Parliament;

- the use and location of servers and IT centres for the EP's IT systems and the implications for the security and integrity of the systems;

- the implementation in reality of the existing rules on security breaches and prompt notification of the competent authorities by the providers of publicly available telecommunication networks;

- the use of cloud storage by the EP, including what kind of data is stored on the cloud, how the content and access to it is protected and where the cloud is located, clarifying the applicable data protection legal regime;

- a plan allowing for the use of more cryptographic technologies, in particular end-to-end authenticated encryption for all IT and communications services such as cloud computing, email, instant messaging and telephony;

- the use of electronic signature in email;

- an analysis of the benefits of using the GNU Privacy Guard as a default encryption standard for emails which would at the same time allow for the use of digital signatures;

- the possibility of setting up a secure Instant Messaging service within the European Parliament allowing secure communication, with the server only seeing encrypted content;

89. Calls on all the EU Institutions and agencies to perform a similar exercise, by December 2014 at the latest, in particular the European Council, the Council, the External Action Service (including EU delegations), the Commission, the Court of Justice and the European Central Bank; invites the Member States to conduct similar assessments;

90. Stresses that as far as the external action of the EU is concerned, assessments of related budgetary needs should be carried out and first measures taken without delay in the case of the European External Action Service (EEAS) and that appropriate funds need to be allocated in the 2015 Draft Budget;

91. Takes the view that the large-scale IT systems used in the area of freedom, security and justice, such as the Schengen Information System II, the Visa Information System, Eurodac and possible future systems, should be developed and operated in such a way as to ensure that data is not compromised as a result of US requests under the Patriot Act; asks eu-LISA to report back to Parliament on the reliability of the systems in place by the end of 2014;

92. Calls on the Commission and the EEAS to take action at the international level, with the UN in particular, and in cooperation with interested partners (such as Brazil), and to implement an EU strategy for democratic governance of the internet in order to

prevent undue influence over ICANN's and IANA's activities by any individual entity, company or country by ensuring appropriate representation of all interested parties in these bodies;

93. Calls for the overall architecture of the internet in terms of data flows and storage to be reconsidered, striving for more data minimisation and transparency and less centralised mass storage of raw data, as well as avoiding unnecessary routing of traffic through the territory of countries that do not meet basic standards on fundamental rights, data protection and privacy;

94. Calls on the Member States, in cooperation with ENISA, Europol's CyberCrime Centre, CERTs and national data protection authorities and cybercrime units, to start an education and awareness-raising campaign in order to enable citizens to make a more informed choice regarding what personal data to put on line and how better to protect them, including through 'digital hygiene', encryption and safe cloud computing, making full use of the public interest information platform provided for in the Universal Service Directive;

95. Calls on the Commission, by September 2014, to evaluate the possibilities of encouraging software and hardware manufacturers to introduce more security and privacy through default features in their products, including the possibility of introducing legal liability on the part of manufacturers for unpatched known vulnerabilities or the installation of secret backdoors, and disincentives for the undue and disproportionate collection of mass personal data, and if appropriate to come forward with legislative proposals;

Rebuilding trust

96. Believes that the inquiry has shown the need for the US to restore trust with its partners, as US intelligence agencies' activities are primarily at stake;

97. Points out that the crisis of confidence generated extends to:

– the spirit of cooperation within the EU, as some national intelligence activities may jeopardise the attainment of the Union's objectives;

– citizens, who realise that not only third countries or multinational companies, but also their own government, may be spying on them;

– respect for the rule of law and the credibility of democratic safeguards in a digital society;

Between the EU and the US

98. Recalls the important historical and strategic partnership between the EU Member States and the US, based on a common belief in democracy, the rule of law and fundamental rights;

99. Believes that the mass surveillance of citizens and the spying on political leaders by

the US have caused serious damage to relations between the EU and the US and negatively impacted on trust in US organisations acting in the EU; this is further exacerbated by the lack of judicial and administrative remedies for redress under US law for EU citizens, particularly in cases of surveillance activities for intelligence purposes;

100. Recognises, in light of the global challenges facing the EU and the US, that the transatlantic partnership needs to be further strengthened, and that it is vital that transatlantic cooperation in counter-terrorism continues; insists, however, that clear measures need to be taken by the US to re-establish trust and re-emphasise the shared basic values underlying the partnership;

101. Is ready actively to engage in a dialogue with US counterparts so that, in the ongoing American public and congressional debate on reforming surveillance and reviewing intelligence oversight, the privacy rights of EU citizens are addressed, equal information rights and privacy protection in US courts guaranteed and the current discrimination not perpetuated;

102. Insists that necessary reforms be undertaken and effective guarantees given to Europeans to ensure that the use of surveillance and data processing for foreign intelligence purposes is limited by clearly specified conditions and related to reasonable suspicion or probable cause of terrorist or criminal activity; stresses that this purpose must be subject to transparent judicial oversight;

103. Considers that clear political signals are needed from our American partners to demonstrate that the US distinguishes between allies and adversaries;

104. Urges the EU Commission and the US Administration to address, in the context of the ongoing negotiations on an EU-US umbrella agreement on data transfer for law enforcement purposes, the information and judicial redress rights of EU citizens, and to conclude these negotiations, in line with the commitment made at the EU-US Justice and Home Affairs Ministerial Meeting of 18 November 2013, before summer 2014;

105. Encourages the US to accede to the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108), as it acceded to the 2001 Convention on Cybercrime, thus strengthening the shared legal basis among the transatlantic allies;

106. Calls on the EU institutions to explore the possibilities for establishing with the US a code of conduct which would guarantee that no US espionage is pursued against EU institutions and facilities;

Within the European Union

107. Also believes that that the involvement and activities of EU Members States has led to a loss of trust; is of the opinion that only full clarity as to purposes and means of surveillance, public debate and, ultimately, revision of legislation, including a strengthening of the system of judicial and parliamentary oversight, will be able to

re-establish the trust lost;

108. Is aware that some EU Member States are pursuing bilateral communication with the US authorities on spying allegations, and that some of them have concluded (United Kingdom) or envisage concluding (Germany, France) so-called 'anti-spying' arrangements; underlines that these Member States need to observe fully the interests of the EU as a whole;

109. Considers that such arrangements should not breach European Treaties, especially the principle of sincere cooperation (under Article 4 paragraph 3 TEU), or undermine EU policies in general and, more specifically, the internal market, fair competition and economic, industrial and social development; reserves its right to activate Treaty procedures in the event of such arrangements being proved to contradict the Union's cohesion or the fundamental principles on which it is based;

Internationally

110. Calls on the Commission to present, in January 2015 at the latest, an EU strategy for democratic governance of the internet;

111. Calls on the Member States to follow the call of the 35th International Conference of Data Protection and Privacy Commissioners 'to advocate the adoption of an additional protocol to Article17 of the International Covenant on Civil and Political Rights (ICCPR), which should be based on the standards that have been developed and endorsed by the International Conference and the provisions in General Comment No 16 to the Covenant in order to create globally applicable standards for data protection and the protection of privacy in accordance with the rule of law'; asks the High Representative/Vice-President of the Commission and the External Action Service to take a proactive stance;

112. Calls on the Member States to develop a coherent and strong strategy within the United Nations, supporting in particular the resolution on 'The right to privacy in the digital age' initiated by Brazil and Germany, as adopted by the third UN General Assembly Committee (Human Rights Committee) on 27 November 2013;

Priority Plan: A European Digital Habeas Corpus

113. Decides to submit to EU citizens, Institutions and Member States the abovementioned recommendations as a Priority Plan for the next legislature;

114. Decides to launch *A European Digital Habeas Corpus for protecting privacy* based on the following 7 actions with a European Parliament watchdog:

Action 1: Adopt the Data Protection Package in 2014;

Action 2: Conclude the EU-US Umbrella Agreement ensuring proper redress mechanisms for EU citizens in the event of data transfers from the EU to the US for law-enforcement purposes;

Action 3: Suspend Safe Harbour until a full review has been conducted and current loopholes are remedied, making sure that transfers of personal data for commercial purposes from the Union to the US can only take place in compliance with highest EU standards;

Action 4: Suspend the TFTP agreement until (i) the Umbrella Agreement negotiations have been concluded; (ii) a thorough investigation has been concluded on the basis of an EU analysis, and all concerns raised by Parliament in its resolution of 23 October have been properly addressed;

Action 5: Protect the rule of law and the fundamental rights of EU citizens, with a particular focus on threats to the freedom of the press and professional confidentiality (including lawyer-client relations) as well as enhanced protection for whistleblowers;

Action 6: Develop a European strategy for IT independence (at national and EU level);

Action 7: Develop the EU as a reference player for a democratic and neutral governance of the internet;

115. Calls on the EU Institutions and the Member States to support and promote the European Digital Habeas Corpus; undertakes to act as the EU citizens' rights watchdog, with the following timetable to monitor implementation:

- April-July 2014: a monitoring group based on the LIBE inquiry team responsible for monitoring any new revelations in the media concerning the inquiry's mandate and scrutinising the implementation of this resolution;
- July 2014 onwards: a standing oversight mechanism for data transfers and judicial remedies within the competent committee;
- Spring 2014: a formal call on the European Council to include the European Digital Habeas Corpus in the guidelines to be adopted under Article 68 TFEU;
- Autumn 2014: a commitment that the European Digital Habeas Corpus and related recommendations will serve as key criteria for the approval of the next Commission;
- 2014-2015: a Trust/Data/Citizens' Rights group to be convened on a regular basis between the European Parliament and the US Congress, as well as with other committed third-country parliaments, including Brazil;
- 2014-2015: a conference with the intelligence oversight bodies of European national parliaments;
- 2015: a conference bringing together high-level European experts in the various fields conducive to IT security (including mathematics, cryptography and privacy-enhancing technologies) to help foster an EU IT strategy for the

next legislature;

116. Instructs its President to forward this resolution to the European Council, the Council, the Commission, the parliaments and governments of the Member States, national data protection authorities, the EDPS, eu-LISA, ENISA, the Fundamental Rights Agency, the Article 29 Working Party, the Council of Europe, the Congress of the United States of America, the US Administration, the President, the Government and the Parliament of the Federative Republic of Brazil, and the United Nations Secretary-General.

EXPLANATORY STATEMENT

'The office of the sovereign, be it a monarch or an assembly, consisteth in the end, for which he was trusted with the sovereign power, namely the procuration of the safety of people'
Hobbes, Leviathan (chapter XXX)

'We cannot commend our society to others by departing from the fundamental standards which make it worthy of commendation'
Lord Bingham of Cornhill,
Former Lord Chief Justice of England and Wales

Methodology

From July 2013, the LIBE Committee of Inquiry was responsible for the extremely challenging task of fulfilling the mandate[1] of the Plenary on the investigation into the electronic mass surveillance of EU citizens in a very short timeframe, less than 6 months.

During that period it held over 15 hearings covering each of the specific cluster issues prescribed in the 4 July resolution, drawing on the submissions of both EU and US experts representing a wide range of knowledge and backgrounds: EU institutions, national parliaments, US congress, academics, journalists, civil society, security and technology specialists and private business. In addition, a delegation of the LIBE Committee visited Washington on 28-30 0ctober 2013 to meet with representatives of both the executive and the legislative branch (academics, lawyers, security experts, business representatives)[2]. A delegation of the Committee on Foreign Affairs (AFET) was also in town at the same time. A few meetings were held together.

A series of working documents[3] have been co-authored by the rapporteur, the shadow-rapporteurs[4] from the various political groups and 3 Members from the AFET Committee[5] enabling a presentation of the main findings of the Inquiry. The rapporteur would like to thank all shadow rapporteurs and AFET Members for their close cooperation and high-level commitment throughout this demanding process.

Scale of the problem

An increasing focus on security combined with developments in technology has enabled States to know more about citizens than ever before. By being able to collect data

[1] http://www.europarl.europa.eu/meetdocs/2009_2014/documents/ta/04/07/2013%20-%200322/p7_ta-prov(2013)0322_en.pdf
[2] See Washington delegation report.
[3] See Annex I.
[4] List of shadow rapporteurs: Axel Voss (EPP), Sophia in't Veld (ALDE), Jan Philipp Albrecht (GREENS/ALE), Timothy Kirkhope (EFD), Cornelia Ernst (GUE).
[5] List of AFET Members: José Ignacio Salafranca Sánchez-Neyra (EPP), Ana Gomes (S&D), Annemie Neyts-Uyttebroeck (ALDE).

regarding the content of communications, as well as metadata, and by following citizens' electronic activities, in particular their use of smartphones and tablet computers, intelligence services are de facto able to know almost everything about a person. This has **contributed to a fundamental shift in the work and practices of intelligence agencies, away from the traditional concept of targeted surveillance as a necessary and proportional counter-terrorism measure, towards systems of mass surveillance.**

This process of increasing mass surveillance has not been subject to any prior public debate or democratic decision-making. Discussion is needed on the purpose and scale of surveillance and its place in a democratic society. Is the situation created by Edward Snowden's revelations an indication of a general societal turn towards the acceptance of the death of privacy in return for security? Do we face a breach of privacy and intimacy so great that it is possible not only for criminals but for IT companies and intelligence agencies to know every detail of the life of a citizen**?** Is it a fact to be accepted without further discussion? Or is the responsibility of the legislator to adapt the policy and legal tools at hand to limit the risks and prevent further damages in case less democratic forces would come to power?

Reactions to mass surveillance and a public debate

The debate on mass surveillance does not take place in an even manner inside the EU. In fact in many Member States there is hardly any public debate and media attention varies. Germany seems to be the country where reactions to the revelations have been strongest and public discussions as to their consequences have been widespread. In the United Kingdom and France, in spite of investigations by The Guardian and Le Monde, reactions seem more limited, a fact that has been linked to the alleged involvement of their national intelligence services in activities with the NSA. The LIBE Committee Inquiry has been in a position to hear valuable contributions from the parliamentary oversight bodies of Belgian, the Netherlands, Denmark and even Norway; however the British and French Parliament have declined participation. These differences show again the uneven degree of checks and balances within the EU on these issues and that more cooperation is needed between parliamentary bodies in charge of oversight.

Following the disclosures of Edward Snowden in the mass media, public debate has been based on two main types of reactions. On the one hand, there are those who deny the legitimacy of the information published on the grounds that most of the media reports are based on misinterpretation; in addition many argue, while not having refuted the disclosures, the validity of the disclosures made due to allegations of security risks they cause for national security and the fight against terrorism.

On the other hand, there are those who consider the information provided requires an informed, public debate because of the magnitude of the problems it raises to issues key to a democracy including: the rule of law, fundamental rights, citizens' privacy, public accountability of law-enforcement and intelligence services, etc. This is certainly the case for the journalists and editors of the world's biggest press outlets who are privy to the disclosures including The Guardian, Le Monde, Der Spiegel, The Washington Post and Glenn Greenwald.

The two types of reactions outlined above are based on a set of reasons which, if followed,

may lead to quite opposed decisions as to how the EU should or should not react.

5 reasons not to act

– *The 'Intelligence/national security argument': no EU competence*

Edward Snowden's revelations relate to US and some Member States' intelligence activities, but national security is a national competence, the EU has no competence in such matters (except on EU internal security) and therefore no action is possible at EU level.

– *The 'Terrorism argument': danger of the whistleblower*

Any follow up to these revelations, or their mere consideration, further weakens the security of the US as well as the EU as it does not condemn the publication of documents the content of which even if redacted as involved media players explain may give valuable information to terrorist groups.

– *The 'Treason argument: no legitimacy for the whistleblower*

As mainly put forward by some in the US and in the United Kingdom, any debate launched or action envisaged further to E. Snowden's revelations is intrinsically biased and irrelevant as they would be based on an initial act of treason.

– *The 'realism argument': general strategic interests*

Even if some mistakes and illegal activities were to be confirmed, they should be balanced against the need to maintain the special relationship between the US and Europe to preserve shared economic, business and foreign policy interests.

– *The 'Good government argument': trust your government*

US and EU Governments are democratically elected. In the field of security, and even when intelligence activities are conducted in order to fight against terrorism, they comply with democratic standards as a matter of principle. This 'presumption of good and lawful governance' rests not only on the goodwill of the holders of the executive powers in these states but also on the checks and balances mechanism enshrined in their constitutional systems.

As one can see reasons not to act are numerous and powerful. This may explain why most EU governments, after some initial strong reactions, have preferred not to act. The main action by the Council of Ministers has been to set up a 'transatlantic group of experts on data protection' which has met 3 times and put forward a final report. A second group is supposed to have met on intelligence related issues between US authorities and Member States' ones but no information is available. The European Council has addressed the surveillance problem in a mere statement of Heads of state or government[1], Up until now only a few national

[1] European Council Conclusions of 24-25 October 2013, in particular: 'The Heads of State or Government took note of the intention of France and Germany to seek bilateral talks with the USA with the aim of finding before

parliaments have launched inquiries.

5 reasons to act

– *The 'mass surveillance argument': in which society do we want to live?*

Since the very first disclosure in June 2013, consistent references have been made to George's Orwell novel '1984'. Since 9/11 attacks, a focus on security and a shift towards targeted and specific surveillance has seriously damaged and undermined the concept of privacy. The history of both Europe and the US shows us the dangers of mass surveillance and the graduation towards societies without privacy.

– *The 'fundamental rights argument':*

Mass and indiscriminate surveillance threaten citizens' fundamental rights including right to privacy, data protection, freedom of press, fair trial which are all enshrined in the EU Treaties, the Charter of fundamental rights and the ECHR. These rights cannot be circumvented nor be negotiated against any benefit expected in exchange unless duly provided for in legal instruments and in full compliance with the treaties.

– The *'EU internal security argument'*:

National competence on intelligence and national security matters does not exclude a parallel EU competence. The EU has exercised the competences conferred upon it by the EU Treaties in matters of internal security by deciding on a number of legislative instruments and international agreements aimed at fighting serious crime and terrorism, on setting-up an internal security strategy and agencies working in this field. In addition, other services have been developed reflecting the need for increased cooperation at EU level on intelligence-related matters: INTCEN (placed within EEAS) and the Anti-terrorism Coordinator (placed within the Council general secretariat), neither of them with a legal basis.

– *The 'deficient oversight argument'*

While intelligence services perform an indispensable function in protecting against internal and external threats, they have to operate within the rule of law and to do so must be subject to a stringent and thorough oversight mechanism. The democratic oversight of intelligence activities is conducted at national level but due to the international nature of security threats there is now a huge exchange of information between Member States and with third countries like the US; improvements in oversight mechanisms are needed both at national and at EU level if traditional oversight mechanisms are not to become ineffective and outdated.

– *The 'chilling effect on media' and the protection of whistleblowers*

The disclosures of Edward Snowden and the subsequent media reports have highlighted the

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the end of the year an understanding on mutual relations in that field. They noted that other EU countries are welcome to join this initiative. They also pointed to the existing Working Group between the EU and the USA on the related issue of data protection and called for rapid and constructive progress in that respect'.

pivotal role of the media in a democracy to ensure accountability of Governments. When supervisory mechanisms fail to prevent or rectify mass surveillance, the role of media and whistleblowers in unveiling eventual illegalities or misuses of power is extremely important. Reactions from the US and UK authorities to the media have shown the vulnerability of both the press and whistleblowers and the urgent need to do more to protect them.

The European Union is called on to choose between a 'business as usual' policy (sufficient reasons not to act, wait and see) and a 'reality check' policy (surveillance is not new, but there is enough evidence of an unprecedented magnitude of the scope and capacities of intelligence agencies requiring the EU to act).

Habeas Corpus in a Surveillance Society

In 1679 the British parliament adopted the Habeas Corpus Act as a major step forward in securing the right to a judge in times of rival jurisdictions and conflicts of laws. Nowadays our democracies ensure proper rights for a convicted or detainee who is in person physically subject to a criminal proceeding or deferred to a court. But his or her data, as posted, processed, stored and tracked on digital networks form a 'body of personal data', a kind of digital body specific to every individual and enabling to reveal much of his or her identity, habits and preferences of all types.

Habeas Corpus is recognised as a fundamental legal instrument to safeguarding individual freedom against arbitrary state action. What is needed today is an extension of Habeas Corpus to the digital era. Right to privacy, respect of the integrity and the dignity of the individual are at stake. Mass collections of data with no respect for EU data protection rules and specific violations of the proportionality principle in the data management run counter to the constitutional traditions of the Member States and the fundaments of the European constitutional order.

The main novelty today is these risks do not only originate in criminal activities (against which the EU legislator has adopted a series of instruments) or from possible cyber-attacks from governments of countries with a lower democratic record. There is a realisation that such risks may also come from law-enforcement and intelligence services of democratic countries putting EU citizens or companies under conflicts of laws resulting in a lesser legal certainty, with possible violations of rights without proper redress mechanisms.

Governance of networks is needed to ensure the safety of personal data. Before modern states developed, no safety on roads or city streets could be guaranteed and physical integrity was at risk. Nowadays, despite dominating everyday life, information highways are not secure. Integrity of digital data must be secured, against criminals of course but also against possible abuse of power by state authorities or contractors and private companies under secret judicial warrants.

LIBE Committee Inquiry Recommendations

Many of the problems raised today are extremely similar to those revealed by the European Parliament Inquiry on the Echelon programme in 2001. The impossibility for the previous legislature to follow up on the findings and recommendations of the Echelon Inquiry should serve as a key lesson to this Inquiry. It is for this reason that this Resolution, recognising both

the magnitude of the revelations involved and their ongoing nature, is forward planning and ensures that there are specific proposals on the table for follow up action in the next Parliamentary mandate ensuring the findings remain high on the EU political agenda.

Based on this assessment, the rapporteur would like to submit to the vote of the Parliament the following measures:

A European Digital Habeas corpus for protecting privacy based on 7 actions:

Action 1: Adopt the Data Protection Package in 2014;

Action 2: Conclude the EU-US Umbrella agreement ensuring proper redress mechanisms for EU citizens in case of data transfers from the EU to the US for law-enforcement purposes;

Action 3: Suspend Safe Harbour until a full review is conducted and current loopholes are remedied making sure that transfers of personal data for commercial purposes from the Union to the US can only take place in compliance with EU highest standards;

Action 4: Suspend the TFTP agreement until i) the Umbrella agreement negotiations have been concluded; ii) a thorough investigation has been concluded based on EU analysis and all concerns raised by the Parliament in its resolution of 23 October have been properly addressed;

Action 5: Protect the rule of law and the fundamental rights of EU citizens, with a particular focus on threats to the freedom of the press and professional confidentiality (including lawyer-client relations) as well as enhanced protection for whistleblowers;

Action 6: Develop a European strategy for IT independence (at national and EU level);

Action 7: Develop the EU as a reference player for a democratic and neutral governance of Internet;

After the conclusion of the Inquiry the European Parliament should continue acting as EU citizens' rights watchdog with the following timetable to monitor implementations:

- April-July 2014: a monitoring group based on the LIBE Inquiry team responsible for monitoring any new revelations in the media concerning the Inquiries mandate and scrutinising the implementation of this resolution;

- July 2014 onwards: a standing oversight mechanism for data transfers and judicial remedies within the competent committee;

- Spring 2014: a formal call on the European Council to include the European Digital Habeas Corpus in the guidelines to be adopted under Article 68 TFEU;

- Autumn 2014: a commitment that the European Digital Habeas Corpus and related recommendations will serve as key criteria for the approval of the next Commission;

- 2014-2015: a Trust/Data/Citizens' rights group to be convened on a regular basis between the European Parliament and the US Congress as well as with other committed third-country parliaments including Brazil;

- 2014-2015: a conference with European intelligence oversight bodies of European national parliaments;

- 2015: a conference gathering high-level European experts in the various fields conducive to IT security (including mathematics, cryptography, privacy enhancing technologies, …) to help foster an EU IT strategy for the next legislature;

ANNEX I: LIST OF WORKING DOCUMENTS

LIBE Committee Inquiry

Rapporteur & Shadows as co-authors	Issues	EP resolution of 4 July2013 (see paragraphs 15-16)
Mr Moraes (S&D)	US and EU Member Surveillance programmes and their impact on EU citizens fundamental rights	16 (a) (b) (c) (d)
Mr Voss (EPP)	US surveillance activities with respect to EU data and its possible legal implications on transatlantic agreements and cooperation	16 (a) (b) (c)
Mrs. In't Veld (ALDE) & Mrs. Ernst (GUE)	Democratic oversight of Member State intelligence services and of EU intelligence bodies.	15, 16 (a) (c) (e)
Mr Albrecht (GREENS/EFA)	The relation between the surveillance practices in the EU and the US and the EU data protection provisions	16 (c) (e) (f)
Mr Kirkhope (ECR)	Scope of International, European and national security in the EU perspective	16 (a) (b)
AFET 3 Members	Foreign Policy Aspects of the Inquiry on Electronic Mass Surveillance of EU Citizens	16 (a) (b) (f)

ANNEX II: LIST OF HEARINGS AND EXPERTS

LIBE COMMITTEE INQUIRY
ON US NSA SURVEILLANCE PROGRAMME,
SURVEILLANCE BODIES IN VARIOUS MEMBER STATES
AND THEIR IMPACT ON EU CITIZENS' FUNDAMENTAL RIGHTS AND ON
TRANSATLANTIC COOPERATION IN JUSTICE AND HOME AFFAIRS

Following the European Parliament resolution of 4th July 2013 (para. 16), the LIBE Committee has held a series of hearings to gather information relating the different aspects at stake, assess the impact of the surveillance activities covered, notably on fundamental rights and data protection rules, explore redress mechanisms and put forward recommendations to protect EU citizens' rights, as well as to strengthen IT security of EU Institutions.

Date	Subject	Experts
5th September 2013 15.00 – 18.30 (BXL)	- Exchange of views with the journalists unveiling the case and having made public the facts	• Jacques FOLLOROU, Le Monde • Jacob APPELBAUM, investigative journalist, software developer and computer security researcher with the Tor Project • Alan RUSBRIDGER, Editor-in-Chief of Guardian News and Media (via videoconference)
	- Follow-up of the Temporary Committee on the ECHELON Interception System	• Carlos COELHO (MEP), former Chair of the Temporary Committee on the ECHELON Interception System • Gerhard SCHMID (former MEP and Rapporteur of the ECHELON report 2001) • Duncan CAMPBELL, investigative journalist and author of the STOA report 'Interception Capabilities 2000'
12th September 2013 10.00 – 12.00 (STR)	- Feedback of the meeting of the EU-US Transatlantic group of experts on data protection of 19/20 September 2013 - working method	• Darius ŽILYS, Council Presidency, Director International Law Department, Lithuanian Ministry of Justice

	and cooperation with the LIBE Committee Inquiry (In camera) - Exchange of views with Article 29 Data Protection Working Party	(co-chair of the EU-US ad hoc working group on data protection) • Paul NEMITZ, Director DG JUST, European Commission (co-chair of the EU-US ad hoc working group on data protection) • Reinhard PRIEBE, Director DG HOME, European Commission (co-chair of the EU-US ad hoc working group on data protection) • Jacob KOHNSTAMM, Chairman
24th September 2013 9.00 – 11.30 and 15.00 - 18h30 (BXL) **With AFET**	- Allegations of NSA tapping into the SWIFT data used in the TFTP programme - Feedback of the meeting of the EU-US Transatlantic group of experts on data protection of 19/20 September 2013 - Exchange of views with US Civil Society (part I)	• Cecilia MALMSTRÖM, Member of the European Commission • Rob WAINWRIGHT, Director of Europol • Blanche PETRE, General Counsel of SWIFT • Darius ŽILYS, Council Presidency, Director International Law Department, Lithuanian Ministry of Justice (co-chair of the EU-US ad hoc working group on data protection) • Paul NEMITZ, Director DG JUST, European Commission (co-chair of the EU-US ad hoc working group on data protection) • Reinhard PRIEBE, Director DG HOME, European Commission (co-chair of the EU-US ad hoc working group on data protection) • Jens-Henrik JEPPESEN, Director, European Affairs, Center for Democracy & Technology (CDT) • Greg NOJEIM, Senior Counsel and Director of Project on

	- Effectiveness of surveillance in fighting crime and terrorism in Europe - Presentation of the study on the US surveillance programmes and their impact on EU citizens' privacy	Freedom, Security & Technology, Center for Democracy & Technology (CDT) (via videoconference) • Dr Reinhard KREISSL, Coordinator, Increasing Resilience in Surveillance Societies (IRISS) (via videoconference) • Caspar BOWDEN, Independent researcher, ex-Chief Privacy Adviser of Microsoft, author of the Policy Department note commissioned by the LIBE Committee on the US surveillance programmes and their impact on EU citizens' privacy
30th September 2013 15.00 - 18.30 (Bxl) **With AFET**	- Exchange of views with US Civil Society (Part II) - Whistleblowers' activities in the field of surveillance and their legal protection	• Marc ROTENBERG, Electronic Privacy Information Centre (EPIC) • Catherine CRUMP, American Civil Liberties Union (ACLU) Statements by whistleblowers: • Thomas DRAKE, ex-NSA Senior Executive • J. Kirk WIEBE, ex-NSA Senior analyst • Annie MACHON, ex-MI5 Intelligence officer Statements by NGOs on legal protection of whistleblowers: • Jesselyn RADACK, lawyer and representative of 6 whistleblowers, Government Accountability Project • John DEVITT, Transparency International Ireland
3rd October 2013 16.00 to 18.30 (BXL)	- Allegations of 'hacking' / tapping into the Belgacom systems by intelligence services (UK GCHQ)	• Mr Geert STANDAERT, Vice President Service Delivery Engine, BELGACOM S.A. • Mr Dirk LYBAERT, Secretary General, BELGACOM S.A.

		• Mr Frank ROBBEN, Commission de la Protection de la Vie Privée Belgique, co-rapporteur 'dossier Belgacom'
7th October 2013 19.00 – 21.30 (STR)	- Impact of us surveillance programmes on the us safe harbour - impact of us surveillance programmes on other instruments for international transfers (contractual clauses, binding corporate rules)	• Dr. Imke SOMMER, Die Landesbeauftragte für Datenschutz und Informationsfreiheit der Freien Hansestadt Bremen (GERMANY) • Christopher CONNOLLY – Galexia • Peter HUSTINX, European Data Protection Supervisor (EDPS) • Ms. Isabelle FALQUE-PIERROTIN, President of CNIL (FRANCE)
14th October 2013 15.00 - 18.30 (BXL)	- Electronic Mass Surveillance of EU Citizens and International, Council of Europe and EU Law - Court cases on Surveillance Programmes	• Martin SCHEININ, Former UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, Professor European University Institute and leader of the FP7 project 'SURVEILLE' • Judge Bostjan ZUPANČIČ, Judge at the ECHR (via videoconference) • Douwe KORFF, Professor of Law, London Metropolitan University • Dominique GUIBERT, Vice-Président of the 'Ligue des Droits de l'Homme' (LDH) • Nick PICKLES, Director of Big Brother Watch • Constanze KURZ, Computer Scientist, Project Leader at Forschungszentrum für Kultur und Informatik
7th November	- The role of EU IntCen in EU	• Mr Ilkka SALMI, Director of EU

2013 9.00 – 11.30 and 15.00 - 18h30 (BXL)	Intelligence activity (in Camera)	Intelligence Analysis Centre (IntCen)
	- National programmes for mass surveillance of personal data in EU Member States and their compatibility with EU law	• Dr. Sergio CARRERA, Senior Research Fellow and Head of the JHA Section, Centre for European Policy Studies (CEPS), Brussels • Dr. Francesco RAGAZZI, Assistant Professor in International Relations, Leiden University
	- The role of Parliamentary oversight of intelligence services at national level in an era of mass surveillance (Part I) (Venice Commission) (UK)	• Mr Iain CAMERON, Member of the European Commission for Democracy through Law - 'Venice Commission' • Mr Ian LEIGH, Professor of Law, Durham University • Mr David BICKFORD, Former Legal Director of the Security and intelligence agencies MI5 and MI6 • Mr Gus HOSEIN, Executive Director, Privacy International
	- EU-US transatlantic experts group	• Mr Paul NEMITZ, Director - Fundamental Rights and Citizenship, DG JUST, European Commission • Mr Reinhard PRIEBE, Director - Crisis Management and Internal Security, DG Home, European Commission
11th November 2013 15h-18.30 (BXL)	- US surveillance programmes and their impact on EU citizens' privacy (statement by Mr Jim SENSENBRENNER, Member of the US Congress)	• Mr Jim SENSENBRENNER, US House of Representatives, (Member of the Committee on the Judiciary and Chairman of the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations)
	- The role of Parliamentary oversight of intelligence services at national level in an era of mass surveillance (NL,SW))(Part II)	• Mr Peter ERIKSSON, Chair of the Committee on the Constitution, Swedish Parliament (Riksdag) • Mr A.H. VAN DELDEN, Chair

		of the Dutch independent Review Committee on the Intelligence and Security Services (CTIVD
	- US NSA programmes for electronic mass surveillance and the role of IT Companies (Microsoft, Google, Facebook)	• Ms Dorothee BELZ, Vice-President, Legal and Corporate Affairs Microsoft EMEA (Europe, Middle East and Africa) • Mr Nicklas LUNDBLAD, Director, Public Policy and Government Relations, Google • Mr Richard ALLAN, Director EMEA Public Policy, Facebook
14th November 2013 15.00 – 18.30 (BXL) **With AFET**	- IT Security of EU institutions (Part I) (EP, COM (CERT-EU), (eu-LISA)	• Mr Giancarlo VILELLA, Director General, DG ITEC, European Parliament • Mr Ronald PRINS, Director and co-founder of Fox-IT • Mr Freddy DEZEURE, head of task force CERT-EU, DG DIGIT, European Commission • Mr Luca ZAMPAGLIONE, Security Officer, eu-LISA
	- The role of Parliamentary oversight of intelligence services at national level in an era of mass surveillance (Part III)(BE, DA)	• Mr Armand DE DECKER, Vice-Chair of the Belgian Senate, Member of the Monitoring Committee of the Intelligence Services Oversight Committee • Mr Guy RAPAILLE, Chair of the Intelligence Services Oversight Committee (Comité R) • Mr Karsten LAURITZEN, Member of the Legal Affairs Committee, Spokesperson for Legal Affairs – Danish Folketing
18th November 2013 19.00 – 21.30 (STR)	- Court cases and other complaints on national surveillance programs (Part II) (Polish NGO)	• Dr Adam BODNAR, Vice-President of the Board, Helsinki Foundation for Human Rights (Poland)
2nd December 2013 15.00 – 18.30 (BXL)	- The role of Parliamentary oversight of intelligence services at national level in an era of mass	• Mr Michael TETZSCHNER, member of The Standing Committee on Scrutiny and

	surveillance (Part IV) (Norway)	Constitutional Affairs, Norway (Stortinget)
5th December 2013, 15.00 – 18.30 (BXL)	- IT Security of EU institutions (Part II) - The impact of mass surveillance on confidentiality of lawyer-client relations	• Mr Olivier BURGERSDIJK, Head of Strategy, European Cybercrime Centre, EUROPOL • Prof. Udo HELMBRECHT, Executive Director of ENISA • Mr Florian WALTHER, Independent IT-Security consultant • Mr Jonathan GOLDSMITH, Secretary General, Council of Bars and Law Societies of Europe (CCBE)
9th December 2013 (STR)	- Rebuilding Trust on EU-US Data flows - Council of Europe Resolution 1954 (2013) on 'National security and access to information'	• Ms Viviane REDING, Vice President of the European Commission • Mr Arcadio DÍAZ TEJERA, Member of the Spanish Senate, - Member of the Parliamentary Assembly of the Council of Europe and Rapporteur on its Resolution 1954 (2013) on 'National security and access to information'
17th-18th December (BXL)	Parliamentary Committee of Inquiry on Espionage of the Brazilian Senate (Videoconference) IT means of protecting privacy	• Ms Vanessa GRAZZIOTIN, Chair of the Parliamentary Committee of Inquiry on Espionage • Mr Ricardo DE REZENDE FERRAÇO, Rapporteur of the Parliamentary Committee of Inquiry on Espionage • Mr Bart PRENEEL, Professor in Computer Security and Industrial Cryptography in the University KU Leuven, Belgium • Mr Stephan LECHNER, Director, Institute for the Protection and Security of the Citizen (IPSC), - Joint Research Centre(JRC), European Commission • Dr. Christopher SOGHOIAN, Principal Technologist, Speech,

	Exchange of views with the journalist having made public the facts (Part II) (Videoconference)	Privacy & Technology Project, American Civil Liberties Union • Christian HORCHERT, IT-Security Consultant, Germany • Mr Glenn GREENWALD, Author and columnist with a focus on national security and civil liberties, formerly of the Guardian

ANNEX III: LIST OF EXPERTS WHO DECLINED PARTICIPATING IN THE LIBE INQUIRY PUBLIC HEARINGS

1. Experts who declined the LIBE Chair's Invitation

US

- Mr Keith Alexander, General US Army, Director NSA[1]
- Mr Robert S. Litt, General Counsel, Office of the Director of National Intelligence[2]
- Mr Robert A. Wood, Chargé d'affaires, United States Representative to the European Union

United Kingdom

- Sir Iain Lobban, Director of the United Kingdom's Government Communications Headquarters (GCHQ)

France

- M. Bajolet, Directeur général de la Sécurité Extérieure, France
- M. Calvar, Directeur Central de la Sécurité Intérieure, France

Netherlands

- Mr Ronald Plasterk, Minister of the Interior and Kingdom Relations, the Netherlands
- Mr Ivo Opstelten, Minister of Security and Justice, the Netherlands

Poland

- Mr Dariusz Łuczak, Head of the Internal Security Agency of Poland
- Mr Maciej Hunia, Head of the Polish Foreign Intelligence Agency

Private IT Companies

- Tekedra N. Mawakana, Global Head of Public Policy and Deputy General Counsel, Yahoo
- Dr Saskia Horsch, Senior Manager Public Policy, Amazon

EU Telecommunication Companies

- Ms Doutriaux, Orange
- Mr Larry Stone, President Group Public & Government Affairs British Telecom, UK

[1] The Rapporteur met with Mr Alexander together with Chairman Brok and Senator Feinstein in Washington on 29th October 2013.
[2] The LIBE delegation met with Mr Litt in Washington on 29th October 2013.

- Telekom, Germany
- Vodafone

2. Experts who did not respond to the LIBE Chair's Invitation

Germany

- Mr Gerhard Schindler, Präsident des Bundesnachrichtendienstes

Netherlands

- Ms Berndsen-Jansen, Voorzitter Vaste Kamer Commissie voor Binnenlandse Zaken Tweede Kamer der Staten-Generaal, Nederland
- Mr Rob Bertholee, Directeur Algemene Inlichtingen en Veiligheidsdienst (AIVD)

Sweden

- Mr Ingvar Åkesson, National Defence Radio Establishment (Försvarets radioanstalt, FRA)