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NOTE

from: General Secretariat of the Council
to: Delegations
Subject : Plenary Session of the European Parliament, Strasbourg, 3 July 2013
**Council and Commission statements - US NSA surveillance programme,
surveillance bodies in various Member States and impact on EU citizens'
privacy**

Mr LESKEVICIUS delivered the speech in annex I on behalf of the Council.

Ms REDING delivered the speech in annex II on behalf of the Commission.

On behalf of the political groups:

- Mr WEBER (EPP, DE) considered that the alleged US surveillance activities against friendly states were unacceptable and that the confidence in the US had been deeply shaken. However, he took the view that the EU and the US still had shared interests and that the free trade agreement should not be put on hold since it was in the vital interest of the EU to reach an agreement with the USA to boost growth and create jobs.
- Mr DROUTSAS (S&D, EL) called the allegations a wake-up call for the EU. He considered that US authorities had to provide full explanations on their surveillance programmes and to end these practices immediately if they turned out to be true. He took the view that negotiations on the Transatlantic Trade and Investment Partnership Agreement with the US should not be opened without respect of fundamental rights,

- Ms IN 'T VELD (ALDE, NL) felt that the Commission and Council statements did not reflect the urgency of the problem and stressed that the EU had to guarantee that its citizens be protected by EU law not by US law. She considered that bugging EU offices and spying on EU citizens were not a matter of national security and suggested to invite Barack Obama to the European Parliament to explain the situation. She added that the EU could not sign a trade agreement with a partner that it did not fully trust.
- Mr ALBRECHT (Greens/ALE, DE) said that it was the moment to accelerate negotiations on new EU data protection rules and ask US colleagues to agree on those standards. He felt that there should be no trade negotiations with the US without their assurances to stop those practices.
- Mr KIRKHOPE (ECR,UK) stressed the need to establish the facts first, and said that the US or any Member State should not be condemned on the basis of allegations that had yet to be corroborated. He strongly opposed the S&D argument to put on hold trade negotiations as well as the requests from other political groups to give asylum to Mr Snowden.
- Ms ERNST (GUE/NGL, DE) said that these surveillance and spying activities reminded her of cold war practices. She demanded that a committee of inquiry be established within the European Parliament and said that there should no free trade agreement with the US until trust was restored.
- Ms TZAVELA (EFD, EL) was of the opinion that surveillance programmes were necessary to safeguard the security of citizens against potential attacks.
- Mr MARTIN (NI, AT) denounced US surveillance activities on a global scale.

During the subsequent individual interventions, the very large majority of speakers intervening in the debate expressed strong criticism of the alleged US activities. Many spoke of a breakdown in trust and the need for dialogue. Several (in particular Mr BROK (EPP, DE), Mr LÓPEZ AGUILAR (S&D, ES)) said that the US surveillance programme was disproportionate and not related to national security.

Several underlined the urgent need to speed up the work on the EU data protection reform package (Mr COELHO (EPP, PT), Mr MORAES (S&D, UK), Ms SIPPEL (S&D, DE), Mr WEIDENHOLZER (S&D, AT)). Mr LANGE (S&D, DE) said that it would be unacceptable that the US would bug EU internal discussions on data protection.

A number referred to the importance of the European Parliament setting up a Committee on Enquiry on the matter (Ms MATHIEU HOUILLON (EPP, FR), Mr LÓPEZ AGUILAR (S&D, ES), Ms GUILLAUME (S&D, FR). A few MEPs (Mr VOSS, EPP, DE) suggested that some European Parliament visits to the US might be suspended.

There were however nuances not only between political groups, but also within groups. Whilst EPP members in general expressed strong criticism, most underlined the importance of not allowing the latest revelations to undermine work on a trade and investment agreement, pleading for transparency and dialogue instead (Mr IACOLINO (EPP, IT), Mr EHLER (EPP, DE) Mr KELLY (EPP, IE)). Mr PAPANIKOLAOU (EPP, EL) called for a redefinition of EU-US bilateral negotiations, both in terms of transatlantic trade and in terms of the negotiations on the protection of personal data.

S&D members were in general more critical, insisting on the need to put pressure on the US authorities to provide explanations. Many of them (Mr LÓPEZ AGUILAR (S&D, ES), Ms DE KEYSER (BE), Ms GUILLAUME (FR), Ms SIPPEL (DE), Mr WEIDENHOLZER (AT), Mr LEICHTFRIED (AT)) reflected their group's position that the EU-US trade and investment negotiations should be put on hold until there was a satisfactory response from the US. Ms ROMERO LÓPEZ (ES) considered that the current TFTP and PNR agreements did not offer sufficient safeguards to EU citizens. Ms PRENDEGAST (S&D) considered that assistance should be given to Snowden. Mr PAȘCU (S&D, RO) explained that his country had joined the west for its respect of freedoms.

ALDE members also insisted on the need for full and public explanations, but some suggested that trade negotiations could continue, albeit with the caveat that nothing could be concluded until there was a satisfactory outcome to the surveillance issue. Ms DE SARNEZ (ALDE, FR) considered however that, given the gravity of the facts, the opening of negotiations should be postponed. Mr LUDFORD (UK) and Ms NICOLAI (RO) stressed the need for Member States to scrutinize their own national intelligences services. Some like Mr VAJGL (ALDE, SI) considered that the recent treatment of the President of Bolivia was unacceptable.

The Greens and GUE groups were even stronger in their criticism and called for firm reactions to defend EU fundamental rights (Ms SARGENTINI (Greens/EFA, NL), Ms MIRANDA (Greens/EFA, ES), Mr TRIANTAPHYLLIDES (GUE/NGL, CY)). Mr JADOT (Greens/ALE, FR) felt that such revelations illustrated EU weakness vis-à-vis the US. Most supported the call for trade negotiations to be put on hold, some suggested that President Obama should be invited to the EP to explain himself in person, and some Greens and GUE members (Ms VERGIAT (FR), Ms BELIER (Greens/EFA, FR)) called for the EU to grant Edward Snowden political asylum. Mr MURPHY (GUE/NGL, IE) found it outrageous that the US would certainly have a copy of the negotiation mandate for the EU-US trade agreement, which was not the case for the European Parliament. Some wanted to know (Mr TARAND (Verts/ALE, EE), Ms ZUBER (GUE/NGL, PT) whether Member States were involved in those programmes.

Some ECR and EFD members considered that the request for further factual information was sufficient in the circumstances. ECR members in general were critical of any calls to halt trade negotiations, and both groups tended to underline that responsibility in this area lay primarily with Member States (Mr BIELAN (PL)) and that intelligence services were necessary (Mr PROVERA (EFD, IT)). Mr VAN ORDEN (ECR, UK) and Ms DE MARTINI (ECR, IT) considered that Mr Snowden had betrayed his country.

On behalf of the Commission, Ms REDING concluded by saying that the right to privacy was not negotiable. She reiterated the call for work to advance on internal EU data protection legislation, and set out the state of play on the EU-US data protection agreement, stressing the need to continue to insist on the principle of reciprocity. On the trade negotiations, she referred MEPs to the statement issued by the College of Commissioners the previous day.

On behalf of the Council, Mr LESKEVICIUS concluded that completing the data protection negotiations was a priority for the Presidency. He reiterated the need for political dialogue with the US, and expressed concerns about any approach to the trade negotiations which would put at risk their potential benefits. On the High-Level group proposed by the US, he informed the EP that this was due to be discussed by COREPER the following day.

On 4 July, the European Parliament adopted a Resolution on US NSA surveillance programme, surveillance bodies in various Member States and impact on EU citizens' privacy.

Annex I - speech delivered by Vice-Minister Leskevicius on behalf of the Council

Madam President, over recent weeks we have been confronted with a number of increasingly worrying leaks, media reports and allegations related to US surveillance programmes. Most recently very serious allegations have been made concerning US spying activities against the EU institutions.

You will have seen that the Commission, President van Rompuy and several Member States have rightly asked the US Government for clarification. The European External Action Service and the High Representative of the Union for Foreign Affairs and Security Policy in person have also been in contact with the US authorities, both in Washington DC and in Brussels, to check the accuracy of the information released over the weekend.

While these allegations are clearly a matter of concern, it would not be appropriate for me to speculate or make any further comment until we have a response from the US authorities and until such time as we are able to determine the facts with certainty.

For the moment we do not have the information to hand. Let me, however, be very clear on the principle. Like all of you, the Presidency would be extremely concerned at any spying activities by foreign nations against the European Union, whether that concerns EU institutions or Member State governments. The earlier disclosure of information about the surveillance programmes operated by the US National Security Agency has understandably raised a number of complex questions and serious concerns about the effects on EU citizens.

Although at the moment we have only very limited information about these programmes, it is already clear that they have a direct impact on EU citizens' personal data. The Union attaches particular importance to personal privacy and this is an important element in our cooperation with third countries. However, data collection programmes are operated for intelligence purposes: they are intended to protect US citizens in the first place but also others, including Europeans. Within the EU a balance between these two interests is ensured through legislation, and its implementation is monitored by independent courts. Although we have very little information about the US programmes, it was originally explained that they are based on US legislation and are monitored by independent courts which are known as the FISA courts, being based on the Foreign Intelligence Surveillance Act.

It would not be appropriate for the Council at the moment to comment further on the programmes themselves on the basis of such limited information. There are already agreements with the US which provide a legal framework for the transfer of personal data on EU citizens to the US enforcement authorities. The aim of the agreements is to assist these authorities in law enforcement and for the purpose of countering terrorism. The 2010 Terrorist Finance Tracking Programme (TFTP) agreement and the 2011 Passenger Name Records (PNR) agreement were signed by the Council and approved by this House. They include a number of robust data protection safeguards.

However, this particular case does not seem to involve the transfer of personal data to the US, since the data is already on US territory. This means that, under the current terms of the negotiating mandate which the Commission received from the Council in December 2010, it will not fall within the scope of the future EU-US data protection agreement.

As regards internal EU rules, in January 2012 the Commission put forward an ambitious data protection package which comprises both a general data protection regulation and a proposal for a directive on data protection in the context of police and judicial cooperation in criminal matters. These proposals seek to improve data protection standards within the EU, and the Presidency is committed to work to the same end. The proposals cover instances where data is transferred to third countries, but the particular case at hand does not seem to involve data transfer within the meaning of the proposals.

In the context of the future general data protection regulation, there are proposals to extend the scope of EU data protection rules to cover personal data of EU citizens, regardless of where the data is located. There will obviously need to be a detailed discussion on this. As a result, it is unlikely that the EU legislation we have on the table now would be able to address the issue of the personal data of EU citizens stored outside the EU and accessed by intelligence services. I know that there has been talk in this House of introducing a so-called anti-FISA clause into this regulation. This would require an EU court to approve any US court order aimed at obtaining intelligence. We will need to assess this option during the legislative process but again it is doubtful whether this proposal can provide an adequate response, given that the data concerned is located outside the EU.

The reason why I have looked at the range of options is because I do not want us to create the impression that this issue can be addressed easily through EU legislation. We are dealing here with intelligence gathering by a foreign nation. In this case it happens to be our most important strategic partner and ally, but that does not mean that we should remain silent. Should it be confirmed that any spying activities have taken place on EU territory or against EU interests, we should condemn them in strong terms. More generally, we can and should raise any questions which we consider to affect our citizens' privacy. However, this must happen through dialogue.

In raising privacy issues we have also to remember that all nations, in both the US and the Member States of the EU, have a primary duty towards their citizens to do everything under the law to protect their lives. Inevitably, the protection of our citizens against acts of terrorism and other threats will, if it is to be effective, require the collection and storage of personal data. Our challenge is to ensure that we strike a proper balance, based on applicable legal standards, between the need to protect and the right to privacy.

Annex II - speech delivered by Viviane Reding, Vice-President of the European Commission, EU Commissioner for Justice

The news over the past weeks and days has been deeply disturbing. Revelations, claims and counter-claims have been made at a dizzying speed. This debate is a useful opportunity to explain the different strands of the issue and to make sense of what the EU can do to address the situation.

I believe that we should carefully distinguish between two aspects to the problem. The first concerns international diplomatic relations. The second concerns the rights of EU citizens.

As regards the first matter of alleged spying on EU and EU Member States' diplomatic premises, the Commission has raised its serious concerns with the US. Yesterday, the President made a statement to this House in the context of the debate on the European Council Conclusions. The issue was also discussed by Vice-President Ashton directly with State Secretary Kerry. It is a matter of mutual trust and good practices in relations between friends and allies.

It is clear that for negotiations on the trade agreement with the US to succeed, there needs to be confidence, transparency and clarity among the negotiating partners. This excludes spying on EU institutions.

The second issue, related to the right of EU citizens, was debated here one month ago. I am happy to update you on latest developments.

In relation to the revelations on the PRISM programme and the Verizon case, I asked a series of questions in a letter to my US counterpart, Attorney-General Eric Holder, on 10 June. I have also spoken with him at the EU-US Justice Ministerial on 14 June in Dublin.

I raised our concerns regarding the impact of Verizon and PRISM on the fundamental rights of EU citizens. I asked for clarifications on the different levels of protection that apply to US and EU citizens. And I asked about the conflict companies can find themselves in when they are faced with competing obligations under US and EU law.

Some explanations for which I am awaiting written confirmation were given. But all questions have not been answered so far. This is why after the Ministerial I have written again, together with my colleague Cecilia Malmström, to our US counterpart asking for answers in particular on the volume of the data collected, the scope of the programmes and the judicial oversight for Europeans.

At the Ministerial in Dublin, we agreed with the US to set up a transatlantic group of experts to establish the facts surrounding these programmes. The purpose is to establish the facts and for the Commission to be able to assess the proportionality of the programmes with regard to the data protection of EU citizens.

The US appears to take our concerns regarding PRISM seriously. Attorney General Eric Holder committed, in a letter to me yesterday, to set up the expert group. We spoke yesterday evening on the phone and we agreed that the group will have its first meeting this month, and a second one in Washington in September. The Commission will report about the findings of the group to Parliament and Council in October.

At the EU-US Ministerial, I called once again for the conclusion of the negotiations for an EU-US Umbrella Agreement on data transfer for law enforcement purposes. An agreement that would guarantee equal treatment of EU and US citizens when their data is processed for law enforcement purposes. I urged my US counterpart to take the necessary steps to ensure real progress.

In response to media reports about the UK Tempora Programme, I have addressed a letter to Foreign Secretary William Hague and asked to clarify the scope of the programme, its proportionality and the extent of judicial oversight that applies.

The message is clear: the fact that the programmes are said to relate to national security does not mean that anything goes. A balance needs to be struck between the policy objective pursued and the impact on fundamental rights, in particular the right to privacy. It is a question of proportionality.

As many of you said in our last debate in June, programmes such as PRISM and Tempora are a wake-up call for us to advance on our data protection reform for both the private and the public sector.

A strong framework for data protection is neither a constraint nor a luxury but a necessity. It will help reverse the trend of falling trust in the way in which data is handled by companies to which it is entrusted.

That's why our proposed reform is an important part of the answer. It will maintain the current high level of data protection in the EU by updating citizens' rights, guaranteeing they know when their privacy has been violated and making sure that when their consent is required, the consent is real.

Various elements of the reform are of particular relevance. It will clarify the territorial application of the law, including to companies operating in the EU. It will have a broad definition of personal data. It will clarify regime for international transfers. It will impose obligations and responsibilities on processors as well as controllers of data.

Only a strong data protection regime can bring this trust both for EU citizens and for businesses and contribute to stability and growth of the digital economy. And trust is also the basis for EU-US cooperation in the field of law enforcement.

As many of you said in June, it has become urgent to proceed on a solid piece of legislation. Any delay in the data protection reform only plays in the hands of those who do not share the objective of a high level of data protection.

The whole world is watching us on this. And the debate on PRISM and similar programmes only reinforces that we have a chance to set a gold standard for data protection.

As regards next steps, we will continue the discussion with the UK on the Tempora project.

Together with the Presidency, we have started the discussion on the transatlantic expert group which will include experts from Member States. Based on the information gathered, the Commission will report back to the European Parliament and to the Council in October.