



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 4 October 2013**

**14496/13**

**PE 443  
DATAPROTECT 140  
CSC 118  
JAI 865  
JUR 522  
PESC 1188  
JAIEX 81  
RELEX 897  
COTRA 33**

**NOTE**

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from: General Secretariat of the Council  
to: Delegations

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Subject: Summary of the meeting of the Civil Liberties, Justice and Home Affairs  
Committee of the European Parliament, held in Brussels on 30 September 2013:  
Inquiry on Electronic Mass Surveillance of EU citizens

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The hearing was chaired by Ms in t'Veld (ALDE, NL).

***SESSION I***

***Exchange of views with US Civil Society (Part II)***

The first invited speaker, Mr ROTENBERG, from the Electronic Privacy Information Centre (EPIC), spoke about growing awareness of surveillance programmes over the past few years in the US and stated that these amounted to violations of the US Privacy Act (1974). He recommended that the EU suspend trade negotiations with the US pending resolution of these issues, and re-examine the SWIFT and PNR framework. He said that it was in the interest of both sides to identify

genuine threats and establish genuine privacy safeguards, and EU citizens should first get adequate assurances that their privacy would be respected. He called for the same safeguards to apply to EU and US citizens and stressed the urgent need to establish an international privacy protection framework.

In reply to questions asked, Mr Rotenberg said that data collected on such a scale served the purpose of gaining power and control. However, the US public clearly considered this a domestic issue. He said that in his view the US had gone too far, since *'friends don't spy on friends'*.

The second invited speaker, Ms CRUMP, American Civil Liberties Union (ACLU), spoke about recently revealed surveillance programs under FISA and Patriot Acts that were of particular concern to her organisation. She also described the efforts undertaken by civil society in the US to limit such programs. ACLU advocacy efforts concentrated on the NSA's collection of the content of internet communications (on the basis of section 702 of FISA, which also applies to American citizens in international communications) as well as the NSA's mass call tracking programme (collecting metadata on international and internal US calls). She highlighted the vast scope of the FISA order to the Verizon company and said that in the light of the Fourth amendment to the US constitution, the essential question was what could be reasonable expectations of privacy. The tracking programme also raised concerns under the First amendment and was detrimental to the right of association and freedom of expression.

During the discussion the following issues were raised: analysis of the discussion in the US (Mr Moraes, S&D, UK); disagreement on suspending trade talks, since these negotiations could be used for new data protection standards, negotiated as part of the trade agreement, moreover the EU should not suspend legally acceptable procedures just because of the existence of unlawful channels of transmission; (Mr Voss, EPP, DE); how to ensure adequate protection of EU citizens' rights in the US (Mr Albrecht, Greens, DE).

Mr Rotenberg explained that there was a surprising degree of agreement across the political spectrum in the US that the NSA's activities were wrong and should be ended, so that changes in the US seemed likely. However, this would have no meaningful impact on surveillance activities taking part in Europe.

He continued that the EU should seek changes to the US Privacy Act in order to protect EU citizens on a statutory basis and not merely through an international agreement, and that the EU should also discuss enforcement in practice.

The Chair commented that the representative of US government had declined a request to participate, should anyone question the balance of opinions in the hearing.

## ***SESSION II***

### **Whistleblowers' activities in the field of surveillance and their legal protection**

The first invited speaker, Mr DRAKE, ex-NSA Senior Executive, spoke of the global surveillance regimes being put in place, clearly beyond the purpose of prosecuting terrorism or international crimes. The sovereignty of citizens and states was at stake in the face unimaginable controls born in the aftermath of 9/11, violating existing US laws and the Constitution. The end was being used to justify the means. He also testified about his personal experiences as a whistle-blower after exposing wrongdoing in the NSA.

The second invited speaker, Mr WIEBE, ex-NSA Senior analyst speaking via video conference call, spoke about the shift from the legal standard of 'probable cause' to 'reasonable suspicion', which lowered the justification required for privacy intrusions. He explained the implications of the US Supreme court judgment in *Smith v. Maryland*, from 1979, which the US government was using as authority for collecting telephone metadata. He also described various investigative methods, such as parallel construction, where normal investigative techniques were used in order to recreate information provided by an illegal source.

The third invited speaker, Ms MACHON, an ex-MI5 Intelligence officer, spoke about the lack of meaningful oversight of UK intelligence services, asserting they were the most unaccountable service in any Western democracy. She called for legal protection of whistle-blowers and parliamentary oversight which would provide a legal channel for whistle-blowers with the aim of achieving greater accountability and transparency. She also called for a legal definition of national security.

The fourth invited speaker, Ms RADACK, a lawyer and representative of 6 whistle-blowers, from the Government Accountability Project, spoke about courage of whistle-blowers such as Mr Snowden, Mr Assange and Mr Manning. Mr Snowden's action had provoked a much needed public debate. She was herself a whistle-blower and explained the difficulties encountered in professional and public life as a consequence of US government's actions, not least prosecution on charges of espionage. The US authorities had sent a chilling message to those who could expose the illegalities of the past decade, resulting in a '*war on whistle-blowers, hacktivists, dissidents and journalists*'. US spending on intelligence was at the Cold War levels. She read out a statement on behalf of Mr Snowden, who thanked LIBE for their on going investigation.

The fifth invited speaker, Mr DEVITT, from Transparency International Ireland, presented examples from EU Member States where staff of intelligence services had blown the whistle. He pointed out that whistle-blowers have scant legal protection in the European Union. Furthermore, he stressed that the United Kingdom had incorporated protection for whistle blowers into the 1998 Public Interest Disclosure Act. Mr Devitt stated that the United Kingdom, in contrast to other jurisdictions in the European Union, had comprehensive and sufficient protection for whistle blowers in the public and private sectors. However, he claimed that the United Kingdom did not protect whistle blowers in the intelligence services. He pointed to the fact that most EU jurisdictions restrict the channels through which whistle blowers can report. He said that the Council of Europe had passed measures for the protection of whistle blowers. He urged the committee and national legislators to take these measures into account. He recommended that whistle blower protection should aim to protect all the staff working in the intelligence services and in the area of defence. Furthermore, he advised that there should be multiple channels available through which whistle blowers could report. Whistle blowers should not only be given the possibility to report internally but also externally. He referred to Ireland, where the parliament is discussing these recommendations and intends to pass a comprehensive bill in order to protect whistle blowers.

*Next meeting(s)*

- *3 October 2013, 16.00 – 18.30 (Brussels)*