



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from: General Secretariat of the Council
to: Delegations

Subject: Summary of the **9th hearing of the LIBE inquiry on electronic mass surveillance of EU citizens**, held in Brussels on 11 November 2013

The meeting was chaired by Ms In 't Veld (ALDE, NL).

SESSION I

US surveillance programmes and their impact on EU citizens' privacy

Mr 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 Republican author of the Patriot Act, presented the US Freedom Act he was sponsoring in the Congress together with the co-sponsor in the Senate, Mr Leahy, Chair of the Senate Judiciary Committee. He stressed that this proposal would achieve a better balance between civil liberties and security and would end bulk metadata collection and improve transparency and oversight. He said recent revelations of surveillance had damaged relations between the US and the EU. It was necessary to work pragmatically to re-establish that trust.

During the debate the following issues were raised: the prospects of adopting the proposed US Freedom Act and the possible timeline, ways of strengthening the rights of EU citizens in the US legal framework; the lack of scrutiny of the work of security agencies in the US; reactions to the role of UK intelligence agencies and the lack of public debate in the UK.

In response to the questions, Mr Sensenbrenner stressed that proposed legislation which would end bulk data collection would also be of benefit to EU citizens. He referred to the constitutional set-up of the US, noting that foreign policy was an exclusive prerogative of the President and that the only leverage was indirectly via the budgetary bill. He acknowledged that for the time being there was clear opposition to the bill from the Senate Intelligence Committee, which had a separate proposal giving legitimacy to the work of NSA, with its Chair Senator Feinstein in the lead. The necessary cooperation should continue under the new legal framework with a strengthened safeguard; with the FISA Court remaining in place but with the addition of the new function of a Privacy Advocate. Mr Sensenbrenner would not comment on the UK's situation.

The Chair concluded the debate by saying that the EU and the US should find the means to cooperate on civil liberties protection, which was in her view a pre-condition for a Free Trade Agreement.

SESSION II

The role of parliamentary oversight of intelligence services at national level in an era of mass surveillance (Part II)

At the start of the meeting, Mr Pirker (EPP, AT) raised a procedural issue questioning the relevance of Mr Eriksson's participation as he was not the Chair of the Defence committee which was responsible for intelligence matters in the Swedish Parliament.

Mr ERIKSSON, Chair of the Committee on the Constitution, Swedish Parliament (Riksdag), explained that in fact there were three committees, namely the defence, justice and constitutional committees, covering the issues discussed, albeit each from a different perspective. The Constitutional Committee was primarily competent for civil liberties issues. He outlined the existing legal framework and the main issues debated a few years ago when the reform took place.

The Defense Intelligence Committee carried out the day-to-day scrutiny of operations, such as search terms used by the national radio agency. Mr Eriksson explained that as a member of the Greens party, which was currently in opposition, he did not consider the existing arrangements to be satisfactory as there were many loopholes and insufficient transparency. The tools available could certainly be improved. In addition, the legislation only applied to Swedish citizens and to situations that were purely internal. There was no international agreement banning spying, so it was perfectly legal.

Mr A.H. VAN DELDEN, Chair of the Netherlands' independent Review Committee on the Intelligence and Security Services (CTIVD), outlined the functioning of the CTIVD, noting that in his view oversight was satisfactory and that cooperation with the Executive was very good. Replying to the questions, Mr Van Delden explained that the legislation in Netherlands was somewhat outdated as it focused on the distinction between data carried via cables and other types of data.

SESSION III

US NSA programmes for electronic mass surveillance and the role of IT companies

Ms Belz, Vice-President, Legal and Corporate Affairs Microsoft EMEA (Europe, Middle East and Africa) stressed the balance between security and privacy in the digital age. She stressed that only data which had previously been requested by governments were handled. She said that different levels of protection had been put into practice. She underlined that Microsoft did not forward any technical details to governments. She also emphasised that there were no loopholes permitting governments to submit such requests. In answering the question as to how requests were processed, Ms Belz pointed out that a compliance team verified if the requests were valid. She stated that Microsoft only retrieved data. Therefore, no direct access to servers was given. Furthermore, she confirmed that only specific requests were processed. In addressing the safety of data, Ms Belz confirmed that encryption techniques were used. She called upon governments to provide universally applicable laws which ensured the privacy of citizens around the world. She urged governments and multinational companies to collaborate on universally applicable agreements rather than circumventing existing agreements.

Mr Lundblad, Director, Public Policy and Government Relations, Google, confirmed that the US Government had no direct access to Google's servers. He also stated that Google was not participating in any programmes such as PRISM. He said that the privacy of gmail-users was ensured through encryption techniques. He pointed out that ensuring the privacy of Google users could be compared to an arms race vis-à-vis hackers and cyber-criminals. He stressed that Google would publish all requests. He urged national governments to be more transparent about their requests. He was disappointed that the US Government had denied Google the possibility of publishing government requests.

Mr Allan, Director EMEA Public Policy, Facebook, underlined Facebook's stringent policies concerning government data requests. He stated that requests which did not comply with the legal basis were rejected. Moreover, he pointed out that Facebook Ireland complied with all Irish data protection requirements. He disagreed with press reports which claimed that Facebook had given governments direct access to their servers. He urged national governments to enhance privacy laws and to be more transparent with regard to data access requests.

In response to questions from the rapporteur and shadow rapporteurs as well as from committee members, Ms Belz denied accusations that Microsoft had been aware of the PRISM programme before. She admitted that data which were sent internally from server to server were not encrypted. However, this policy was under review at the moment. Furthermore, she confirmed that Microsoft was complying with all legislation. However, in some cases the legislation was not always clear. She emphasised once again that Microsoft did not provide any loopholes for governments. She confirmed that Microsoft levied an administrative fee on governments which had made a request. Ms Belz called for the reform of Safe Harbour.

Mr Lundblad underlined that all communications at Google were encrypted. He said that legislation was conflicting and this made it hard to comply with all data protection and privacy laws. Moreover, he made it clear that Google had made all government data requests public before the Snowden scandal erupted. Mr Lundblad urged national governments to reform their request policies. He denied that Google received any income generated through government requests.

Mr Allan stressed that Facebook published as much information as possible on government data requests. He underlined the multiple responsibilities in the US and in Ireland and in Member States. Therefore he urged member States to harmonise data protection and privacy laws. He denied that Facebook received any remuneration from governments which had requested data.

Date of next meeting

- 14 November 2013, 15.30 – 18.30 (Brussels)
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