

**Report by Elmar BROK, Chairman of EP Foreign Affairs Committee, on his visit to Washington DC  
focused on the issue of NSA surveillance programmes of internet and telecommunications**

(15-18 July)

*Concerns of European citizens related to NSA surveillance programmes and urgent need for measures to re-establish trust in the transatlantic partnership were the core focus of my agenda in Washington DC. My interlocutors in Congress and Administration were in particular receptive to warnings of major economic problems looming should the safe harbour agreement be repealed by the EU, risks for continuation of counter-terror cooperation and also for prospects for the TTIP.*

*During my stay in Washington I saw the US debate on the NSA surveillance and data collection programmes taking a new direction. Lack of balance between security and privacy and lack of proportionality in the conduct of these programmes, as well as, more broadly, lack of appropriate privacy safeguards in view of the surveillance possibilities provided by the fast technological development is increasingly accentuated by both parties in the Congress. This discussion, of course, is focused on the rights of US citizens.*

*It is now of utmost importance to maintain the pressure as the internal US debate evolves, pushing for equal privacy rights for US and EU citizens, including access to judicial redress in case of data misuse. The EU-US data privacy framework agreement, currently under negotiation, is an opportunity in this regard.*

During my visit of Washington DC I met with senior representatives of the US Administration and with a number of senior Members of the US Congress, including several committee chairs and also Speaker John Boehner (see programme attached).

The meetings I held were focused on drawing the attention of the American political leadership to the **serious and strong concerns felt by European citizens** due to the **perceived disproportionate dimension of these programmes, their massive intrusion into individual privacy, and lack of any judicial and legal rights available to non-American allies.**

Although most of my American counterparts initially pointed to the importance of data collection programmes for US (and European) national security, after some discussion they (including even senior officials at Departments of Homeland Security and Justice) recognised that reference to successes resulting from transatlantic intelligence cooperation are not any more sufficient to accommodate the concerns of EU citizens.

Most relevant for this recognition was **acknowledgment of the serious economic consequences which a repeal of the safe harbour agreement by the EU would have for the internet economy.** Quickly understood by them were also the risks for the continuation of counter-terror cooperation and for prospects for the TTIP negotiation, should the current public discussion and outrage in the EU continue.

I explained that the **key to re-establishing trust is to ensure equality of rights of US and EU citizens as far as data privacy is concerned - information rights and access to judicial redress in case of data misuse.** The EU-US framework agreement on data privacy, currently under negotiation, should be used as an opportunity in this regard. **I also insisted that political signals of American willingness to find necessary solutions are needed, now, with utmost urgency.**

Specifically:

**Dr Karen Donfried**, senior director for Europe in the National Security Council, recognised the urgent need for proper political messaging with assurances towards the European partners. While she was not sure whether a policy change, provision of privacy rights to EU citizens and finalisation of the EU-US privacy framework agreement could be feasible in this Administration, she showed readiness to cooperate, has continued the communication with me about this issue since, and has also passed my message to Lisa Monaco, the Assistant to the President for Homeland Security.

As several other Administration interlocutors she pointed to the perceived lack of clarity concerning European structures and appropriate counterparts in this whole context. I clarified that the situation in the EU was straight-forward: whereas intelligence cooperation continued to be conducted on the level of EU Member States, data privacy issues had to be tackled on the European level, hence the need for an EU-US privacy umbrella agreement.

**Undersecretary of State Wendy Sherman** recognised my message and promised to pass it on. She explained that Snowden was a criminal and not a whistleblower, as he did not use any of the many paths available for whistleblowers in the US system (intelligence inspectors, Congress). Sherman as well as **Deputy Secretary of Homeland Security Rand Beers** and **Deputy Assistant Attorney General Bruce Schwartz** accentuated the importance of bilateral EU-US expert groups in order to work out joint solutions; after some discussion **they recognised however that that these cannot replace the urgently needed political messages and cooperation to find tangible privacy rights solutions.**

**Senator Diane Feinstein**, Chair of the Senate Select Committee on Intelligence (Democrat from California), explained in detail the judicial and legal oversight of the data collection and surveillance programmes, and the thresholds to be met for the services to get judicial authorisation for insight into the content of data. She agreed however that lack of oversight, access to information and judicial redress available to European citizens was a problem which needed a solution, possibly through access to the FISA court system, and undertook to look into possible solutions.

**Congressman Mike Rogers**, Chairman of the House Select Committee on Intelligence (Republican from Michigan), expressed by his own initiative interest to bring a Congressional delegation to the European Parliament which would discuss possible paths to providing assurances and privacy rights to European citizens.

In the opinion of **Congressman Mario Diaz Balart**, co-chair of the TLD (Republican from Florida), the current Administration overstepped with the amount of data collected and with the dimension of government intrusion into the individual privacy the legal authority given to it by the Patriot Act (for the re-authorisation of which he so far voted) and that he would not any more support its re-authorisation without appropriate re-adjustments.

*Background on the US political discussion*

During the same week, a hearing of the House Judicial Committee as well as numerous reports in the press showed a **growing impatience within the US Congress and the American civil society with the extent of current data collection and surveillance programmes** as exposed by Snowden. In the first weeks immediately following Snowden's disclosures the Congress and the American public seemed comforted by the assurances of tight oversight conducted by the Select Intelligence Committees of both Houses and also by explanations that only in a low number of cases (288 out of the billions of

communications metadata gathered) the (secret) Foreign Intelligence Surveillance Court (FISA) authorised the services to look into content of the data collected. During my stay I however saw movement coming into the discussion – Congressmen from both parties went on record assessing the programmes as “legally off the tracks” and going beyond what the Congress approved in the name of fighting the war on terror. The Congressional debate made clear that if no adjustment is found, the Administration will have serious difficulties with reauthorisation of the Patriot Act – the basic legislation authorising government surveillance lapses in two years.

An amendment to the Defense Appropriations Act, tabled just a few days after my visit, by Justin Amash, a libertarian Republican from Michigan, and co-signed by John Conyers, Ranking Democrat on the House Judiciary Committee, suggested to bar appropriations for the NSA surveillance programmes. After an intense discussion in the House of Representatives it was defeated by a tight majority of 217 against and 205 in favour of the amendment. This close vote result shows that the exertion of political pressure remains rewarding in this regard.

On the left, Senators Wyden and Udall, known privacy advocates, are strongly opposing the NSA data collection programme and are likely to introduce corresponding amendments to Senate appropriations bills in the coming days.

***However, as the whole Congressional debate is focused on rights of American citizens, it remains of crucial importance to maintain the pressure on the need to put the rights of EU citizens on the same level in order to prevent a serious damage to the transatlantic partnership. The initiative in this context clearly lies with the US Administration; Recommendation: however, awareness and support needs to be further developed in the Congress. The EU and the member states have to exert pressure in order to approach quick negotiations of the Framework Agreement for Data Protection which contains the crucial point on information rights and the access to the US legal process for EU citizens in case of data abuse. Otherwise, further data protection contracts or their extensions (PNR) will not be possible. The termination of the Safe Harbor Agreement or its announcement is a further form of pressure.***

24 July 2013