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JOINT MOTION FOR A RESOLUTION

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European Parliament resolution on the US NSA surveillance programme, surveillance bodies in various Member States and impact on EU citizens' privacy

The European Parliament,

- having regard to Articles 2, 3, 6 and 7 of the Treaty on European Union and Article 16 of the Treaty of Functioning of the European Union;
- having regard to the Charter of Fundamental Rights of the European Union, and to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),
- having regard to Council of Europe Convention 108 of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data and the additional protocol thereto of 8 November 2001,
- having regard to European Union law on the right to privacy and to data protection and notably Directive 95/46/EC on the protection of individuals with regard to the processing of personal data, Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, Directive 2002/58/EC on e-privacy, Regulation (EC) No 45/2001 on the protection of personal data by the Community institutions and bodies,
- having regard to the Commission proposals for a Regulation and for a Directive on the reform of the Data protection regime in the EU,
- having regard to the EU-US Mutual Legal Assistance Agreement allowing exchange of data for the prevention and investigation of criminal activities, to the Cybercrime Convention (CoE no. 185), to the EU-US Safe Harbour Agreement (2000/520/EC) as well as to the revision of the Safe Harbor scheme underway;
- having regards to the US Patriot Act and to the Foreign Intelligence Surveillance Act (FISA), including Section 702 of the 2008 FISA Amendment Act (FISAAA);
- having regard to the ongoing negotiations of the EU-US framework agreement on protection of personal data when transferred and processed for police and judicial cooperation purposes;
- having regard to its previous resolutions on the right to privacy and to data protection, and notably its “resolution of 11 July 2001 on the existence of a global system for the interception of private and commercial communications (ECHELON interception system)”;

- having regard to the statements by the President of the European Council, Herman van Rompuy, the President of the European Parliament, Martin Schulz Vice-President and Commissioner for Justice, Fundamental Rights and Citizenship, Viviane Reding, the High Representative for Foreign Affairs and Security Policy, Catherine Ashton;
 - having regard to Rule 110(4) of its Rules of Procedure;
- A. Whereas the transatlantic partnership between the EU and the US must be based on mutual trust and respect, loyal and mutual cooperation, the respect for fundamental rights and the rule of law;
 - B. Whereas EU Member States shall respect the fundamental rights and values enshrined in Article 2 of the TEU and the Charter of Fundamental Rights;
 - C. Whereas adherence to these principles is currently in doubt after reports in the international press in June revealed evidence that the United States authorities are accessing and processing the personal data of European Union citizens on a large scale, when using US online service providers, through programmes such as PRISM;
 - D. Whereas this doubt not only concerns the actions of United States authorities, but also those of several EU Member States, which according to the international press have cooperated with the PRISM programme and other such programmes or obtained access to the databases created;
 - E. Whereas furthermore several EU Member States have surveillance programmes of a similar nature as PRISM or are discussing the setting up of them;
 - F. Whereas particular questions have been raised regarding the compatibility with EU law of the practice of the UK intelligence agency Government Communications Headquarters (GCHQ) directly tapping into undersea transatlantic cables carrying electronic communications; through a programme code named “Tempora”; whereas other Member States reportedly access transnational electronic communications without a regular warrant but on the basis of special courts, while data is shared with other countries (Sweden), while others could enhance their surveillance capabilities (the Netherlands, Germany); whereas concerns have been expressed in other countries in relation to the interception powers of secret services (Poland);
 - G. Whereas there are indications that EU institutions, EU and Member State embassies and representations have been subjected to US surveillance and spying activities;
 - H. Whereas the Commissioner Reding has written to the US Attorney General, Mr. Eric Holder, a letter raising European concerns and asking for clarifications and explanations on the PRISM programme and other such programmes which involve data collection and search and laws under which such programmes may be authorised; Whereas a full response from the US authorities is still pending, despite the discussions that took place at the EU-US Justice Ministerial meeting in Dublin on June 14;

- I. Whereas under the Safe Harbour Agreement, the Member States and the Commission are entrusted with the duty of guaranteeing the security and integrity of personal data; whereas the companies involved in the PRISM case, as reported in the international press, are all parties to the Safe Harbour Agreement; and under Article 3, the Commission has the duty, should the provisions of the agreement not be respected, to reverse or suspend the agreement;
 - J. Whereas the EU-US agreement on Mutual Legal Assistance, as ratified by the Union and the Congress, stipulates modalities of gathering and exchanging information, and requesting and providing assistance in obtaining evidence located in one country to assist in criminal investigations or proceedings in another;
 - K. Whereas it would be unfortunate, should the efforts for a Transatlantic Trade and Investment Partnership (TTIP) agreement, which demonstrates the commitment to further strengthen the partnership between the EU and the US, be affected by the recent allegations;
 - L. Whereas the Commissioner Malmström announced the setting up of a transatlantic group of experts on 14 June 2013;
 - M. whereas Commissioner Reding has written to the UK authorities to express concern about the media reports on the Tempora programme and asking for clarifications on its scope and operation; whereas the UK authorities have defended GCHQ's surveillance activities and affirmed that they operate under strict and lawful guidelines;
 - N. whereas the data protection reform is under way at EU level, through the revision of the Directive 95/46 and its replacement with the proposed general Data Protection Regulation and the Data Protection Directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data;
- 1. Whilst confirming its ongoing support for the transatlantic efforts in the fight against terrorism and organised crime, expresses serious concern over the PRISM programme and other such programmes, as this could stipulate, should the information available until now be confirmed, a serious violation of the fundamental right to privacy and data protection of EU citizens, but also of the rights to private and family life, the secrecy of communications, the presumption of innocence, freedom of expression, freedom of information, and to conduct business;
 - 2. Strongly condemns the spying on EU representations as it would imply, should the information available until now be confirmed, to a serious violation of Vienna Convention on Diplomatic Relations, the and the impact they may have on transatlantic relations; Calls for an immediate clarification of US authorities on the matter;

3. Calls on the US authorities to provide, without undue delay, full information to the EU, on the PRISM programme and other such programmes involving data collection, in particular as regards their legal basis, necessity and proportionality and the safeguards implemented to protect the fundamental rights of EU citizens, such as limitation of scope and duration, conditions for access and independent supervision, as provided for under the Cybercrime Convention and as requested by Commissioner Reding in her letter to Attorney General, Mr. Holder, of 10 June 2013; Calls on the US authorities to suspend and review those laws and surveillance programmes that violate EU citizens' fundamental right to privacy and data protection, as well as EU and Member States' sovereignty and jurisdictions and the Cybercrime Convention;
4. Calls the Commission, the Council and Member States to consider all instruments at their disposal in the discussions and negotiations with the US, both at political level and at experts' level, to achieve the above mentioned objectives, including among others, the possible suspension of the PNR and the TFTP agreements;
5. Demands that the transatlantic expert group, as announced by Commissioner Malmström and with European Parliament participation, will have appropriate security clearance level and access to all appropriate documents, in order to be able to conduct its work properly and within a set deadline; further demands that the European Parliament is adequately represented in this expert group;
6. Calls on the Commission and the US authorities to resume, without delay, the negotiations on the framework agreement on protection of personal data when transferred and processed for police and judicial cooperation purposes; In that respect calls on the Commission to ensure during these negotiations that at least the following criteria will be met by this agreement:
 - a. right to information for EU citizens when their data is processed in the US
 - b. equal access for EU citizens to the judicial system of the US as US citizens
 - c. in particular right to redress;
7. Calls on the Commission to ensure that EU data protection standards, and the negotiations in the current EU data protection package, are not undermined as result of the Transatlantic Trade and Investment Partnership (TTIP) agreement with the US;
8. Calls on the Commission to conduct a full review of the Safe Harbour Agreement in the light of the recent information, under Article 3 of the Agreement;
9. Expresses serious concern on the revelations related to the alleged surveillance programmes run by Member States, either with the help of the US National Security Agency, or unilaterally; Calls all Member States to examine their compatibility with EU primary and secondary law, notably article 16 TFEU on data protection and the EU's fundamental rights obligations deriving from the European Convention on Human Rights and the constitutional traditions common to the Member States;

10. Underlines that all companies providing services in the EU must comply with EU law without exception, and shall be liable for any breaches;
11. Stresses that companies operating under third country jurisdiction should provide users located in the EU with a clear and distinguishable warning on the possibility of personal data being processed by law enforcement and intelligence following secret orders or injunctions;
12. Regrets that the Commission has dropped the former Article 42 of the leaked version of the Data Protection Regulation; calls the Commission to clarify why it has decided so; calls on the Council to follow the European Parliament approach and to reinsert such a provision;
13. Underlines that in democratic and open States based on the rule of law, citizens have a right to know about serious violations of their fundamental rights, as well as to denounce these, including against their government; stresses the need for procedures allowing whistleblowers to unveil serious violations of fundamental rights, as well as to provide them with the necessary protection, including at international level; expresses its continued support at investigative journalism and media freedom;
14. Calls on the Council to urgently accelerate its work on whole of the Data Protection Package, and specifically on the proposed Data Protection Directive;
15. Stresses the need to set up a European equivalent of the mixed parliamentary-judicial control and inquiry committees on intelligence services, as currently exists in some Member States;
16. Instructs its Committee on Civil Liberties, Justice and Home Affairs to conduct an in depth inquiry modelled on Rule 185 of its rules of procedure in collaboration with national parliaments and the EU US expert group set up by the Commission, and reporting back by the end of the year, into this matter by
 - a. gathering all relevant information and evidence from both US and EU sources (fact-finding),
 - b. investigating the alleged surveillance activities of US authorities as well as possibly carried out by some Member States (mapping responsibilities),
 - c. assessing the impact of surveillance programmes (damage and risk analysis) on: fundamental rights of EU citizens (particularly their right of respect of private life and communications, freedom of expression, right to presumption of innocence and right to an effective remedy), the actual data protection in the EU and for EU citizens outside the EU focusing in particular on the effectiveness of EU law in case of extraterritoriality mechanisms; the EU safety at times of cloud computing; their added-value and proportionality as to the fight against terrorism; the external dimension of the area of freedom, security and justice (assessing the validity of adequacy decisions for EU

transfers to third countries such as “Safe Harbour” agreement, international agreements and other legal instruments for legal assistance and cooperation, etc)

- d. exploring the most adequate redress mechanisms in case of confirmed violations (administrative and judicial redress and compensation schemes);
 - e. putting forward recommendations aimed at preventing further violations, and ensuring a credible high-level protection of EU citizens’ personal data via adequate means, in particular the adoption of a fully-fledged “data protection package” (policy recommendations and law-making);
 - f. issuing recommendations aimed at strengthening IT security in the EU Institutions, bodies and agencies thanks to proper internal security rules for communication systems in order to prevent and remedy unauthorised access, disclosure or loss of information and personal data (remedy to security breaches);
17. Instructs its President to forward this resolution to the Commission, the Council, the Council of Europe, parliaments of the Member States, the US President, the US Senate and House of Representatives, the US Secretaries for Homeland Security and Justice.