

European Parliamentary rapporteur denounces NSA/GCHQ spying as illegal

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14 January 2014

A draft report from the European Parliament's civil liberties committee rapporteur, Claude Moraes, condemned mass surveillance by the US National Security Agency (NSA) and Britain's Government Communications Headquarters (GCHQ) as illegal.

Moraes is a Member of the European Parliament for London and deputy leader of the European Parliamentary Labour Party.

The 52-page report was authorised as part of the parliament's inquiry into the revelations by US whistleblower Edward Snowden. Set up last July, its remit includes, "investigating the alleged surveillance activities of US authorities as well as any carried out by certain Member States."

The draft calls on the US and British governments to end the mass collection of data of citizens. Revelations disclosed since June have "resulted in compelling evidence of the existence of far-reaching, complex and highly technologically advanced systems designed by US and some member states' intelligence services, to collect, store and analyse communication and metadata of all citizens around the world on an unprecedented scale and in an indiscriminate and non-suspicion-based manner."

It notes, "US NSA intelligence programmes allowing for the mass surveillance of EU citizens through direct access to the central servers of leading US internet companies (PRISM programme), the analysis of content and metadata (Xkeyscore programme), the circumvention of online encryption (BULLRUN), access to computer and telephone networks and access to location data, as well as to systems of the UK intelligence agency GCHQ such as its upstream surveillance activity (Tempora programme) and decryption programme (Edgehill); believes that the existence of programmes of a similar nature, even if on a more limited scale, is likely in other EU countries such as France (DGSE), Germany (BND) and Sweden (FRA)".

Without stating that what is being constructed is the basis of a police state, it warns the spying programmes are "yet another step towards the establishment of a fully-fledged preventive state, changing the established paradigm of criminal law in democratic societies, promoting instead a mix of law enforcement and intelligence activities with blurred legal safeguards, often not in line with democratic checks and balances and fundamental rights, especially the presumption of innocence."

It calls on the US and European Union states to "prohibit blanket mass surveillance activities and bulk processing of personal data," and questions the "legality, necessity and proportionality" of programmes such as the NSA's Prism and the UK's Tempora. (See "Communications of millions subject to US-UK spying")

Pointing to the sharp tensions between the major powers underpinning the report, the draft states that it is "very doubtful" that such mass collection of information is only guided by the fight against terrorism. Involving "the collection of all possible data of all citizens," this "points therefore to the possible existence of other power motives such as political and economic espionage."

As well as calling on the US to bring its laws governing the activities of its intelligence services into line with international law, it adds that the UK, Germany, France, Sweden and the Netherlands need to revise legislation, to comply with the European Convention on Human Rights.

Moraes refers to the "chilling" way that "journalists publishing Snowden's revelations have been intimidated by state authorities."

The draft includes a section warning "that mass surveillance has potentially severe effects on the freedom of press, thought and speech as well as a significant potential for abuse of the information gathered against political adversaries" and "emphasises that these mass

surveillance activities appear also to entail illegal actions by intelligence services and raise questions regarding extra-territoriality of national law.”

The draft criticises the move by the British government and GCHQ officers last July to destroy files from Snowden that the *Guardian* held at its London HQ. It condemns the illegal detention at Heathrow Airport on August 18 last year by British police, of David Miranda, the partner of the former *Guardian* journalist Glenn Greenwald. This, it notes, was an interference with the right of freedom of expression and in violation of article 10 of the European Convention on Human Rights.

The inquiry was established amid growing tensions between the EU and the US. The draft says bluntly, the “mass surveillance of citizens and the spying on political leaders by the US have caused serious damage to relations between the EU and the US and negatively impacted on trust in US organisations acting in the EU”.

While criticising the mass spying organised mainly by the NSA and GCHQ, the draft does not call for an end to state surveillance, only its “reform”. It is “vital that transatlantic cooperation in counter-terrorism continues,” the draft asserts, adding that the European Parliament, “is ready actively to engage in a dialogue with US counterparts”.

Reforms need “to ensure that the use of surveillance and data processing for foreign intelligence purposes is limited by clearly specified conditions and related to reasonable suspicion or probable cause of terrorist or criminal activity,” it urges.

The fact is that there are no serious moves by the US and Britain to dismantle any of the mass surveillance programmes they operate. The intelligence agencies criticised in the report refused to “co-operate with the inquiry the European parliament has been conducting on behalf of citizens,” the draft states.

The committee voted last week in favour of inviting Snowden to testify from Russia, where he is in forced exile, via video-link.

Two votes were cast against by members of the UK’s Conservative Party. Timothy Kirkhope used the occasion to heap further slanders on Snowden, stating that he had “endangered lives” and adding that inviting him to speak was a, “highly irresponsible act” by a committee that “continues to act like a school debating society that is oblivious to the risks the West now faces, and the tactics used by our enemies”

In a barely veiled threat Kirkhope added, “At least if Snowden wants to give evidence to MEPs he will now

have to come out of the shadows and risk his location being discovered.”

Kirkhope’s comments follow statements last week by the Republican chairman and ranking Democrat on the US House Intelligence Committee, who said a classified Pentagon report had concluded Snowden’s revelations damaged the US military.

“The vast majority of the material was related to the Defense Department, and our military services,” not NSA operations, Chairman Mike Rogers said, adding, “Clearly, given the scope and the types of information, I have concerns about operations that would be ongoing in Afghanistan.”

C.A. Dutch Ruppertsberger, the committee’s ranking Democrat since 2011, claimed that that Snowden had stolen approximately 1.7 million intelligence files that “concern vital operations of the US Army, Navy, Marine Corps and Air Force.”

In a scurrilous statement, he added, “Snowden handed terrorists a copy of our country’s playbook and now we are paying the price, which this report confirms”.

Last Friday, outgoing NSA deputy director, John C. Inglis, said there were no plans to end the bulk collection of the phone data of all Americans. “I’m not going to give that insurance policy up, because it’s a necessary component to cover a seam that I can’t otherwise cover,” he said.

On January 17, Obama is to announce his response to the December advisory panel recommendations on the NSA. (See “Obama advisory committee whitewashes US spying programs”) It has been well-trailed that he will announce few changes if any to the existing set-up.



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