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Data protection

EU: LIBE Committee's draft report proposes European Digital Corpus

- **MEP Claude Moraes** (UK, S&D) has published a **draft report** on surveillance programmes and their impact on EU citizens' fundamental rights.
- Confirming the findings of the unprecedented scale of data snooping, the draft has highlighted that trust between the EU and the US, as well as **trust in the security of IT services has been profoundly shaken**, requiring the EU institutions **set up a plan** that would comprehensively address those trust issues. In order to do so, the report has suggested an implementation calendar for the corpus which is composed of the following 7 actions:
 - Adoption of the Data Protection Package in 2014: The Council Presidency, as well as the Member States, are called on to speed up works on the Data Protection Package.
 - Conclusion of an EU-US Umbrella agreement
 - Suspension of Safe Harbour
 - Suspension of the TFTP agreement
 - Enhance the protection of the rule of law and the fundamental rights of EU citizens
 - Develop a European Strategy for IT independence
 - Position the EU as a reference for democratic and neutral Internet governance
- Recalling that **companies identified by the media** as being involved in the surveillance **are the same as those which have self-certified their adherence to the safe harbour**, the draft states that international transfers of data are not adequately protected under the current provisions of the **Safe Harbour framework**. Therefore, the Commission is requested to **immediately suspend** its decision on the adequacy of the **harbour's privacy** principles.
- Member States' competent authorities are called to **suspend data flows to any organisation adherent to Safe Harbour**. By June 2014, the Commission should present a comprehensive assessment of the US privacy framework. Finally, the draft report called on the EU Member states to **prohibit bulk processing of personal data**.
- In line with the loss of trust affecting the American providers of **cloud computing services**, the development of European clouds is perceived as essential for ensuring a high level of protection. Therefore, establishing a **European Cloud Partnership** is key and requires greater support from the Member States and the European Commission.
- As for **trade relations**, the draft has reiterated that the Parliament would only give its consent to the final TTIP agreement provided that it fully respects fundamental rights as recognized by the EU Charter.
- The Commission and ENISA are called to **develop minimum security and privacy standards and guidelines for IT systems, networks and services by September 2014**. A broader mandate, better coordination and additional resources for Europol's CyberCrime Centre, ENISA, CERT-EU and EDPS are also required by June 2014 to cope more effectively with major IT breaches.

- As for **Internet governance**, the Commission is requested to take action, in cooperation with the interested partners (e.g. Brazil), to implement an EU strategy for democratic governance of the Internet. This would prevent what the draft calls 'undue influence over ICANN's and IANA's activities' by individual entities, companies or states. The draft calls the Commission to present such a draft strategy no later than January 2015.
- In terms of **Internet infrastructure**, data flows and storage are to be reconsidered in a way that would strive for more data minimization and transparency, less centralized mass storage of raw data, as well as avoiding unnecessary routing of traffic through countries not meeting human rights and data protection standards.

EU: Parliament allows Snowden's testimony on US snooping

- In a vote on 9 January, the **European Parliament's Civil Liberties Committee (LIBE)** **voted to include a pre-recorded testimony from Edward Snowden** as part of the Parliament's inquiry into allegations of US mass surveillance.
- The message, in response to the questions MEPs asked in advance, is expected to be included in the Committee's inquiry session taking place at the end of January.
- Reportedly, **UK MEPs were strongly opposed** to Snowden's message inclusion. **MEP Sophie in 't Veld** (Netherlands, ALDE) underlined that the message is an **opportunity for EU citizens** to get the necessary answers regarding the scope of the surveillance. While several MEPs warned that the scheduled testimony could derail the EU-US FTA negotiations, in't Veld highlighted that assurance of data protection is necessary for the conclusion of the negotiated trade agreement.

EU: Commission rejects all candidates for the new Data Protection Supervisor

- The mandates of the **European Data Protection Supervisor** and his assistant expire on 16th January.
- The current supervisor, **Peter Hustinx**, stated that given the circumstances, it is not likely that a team of supervisors will be appointed before or just after the mandate finishes. However, he complained that this will end up in a **period of uncertainty**, considering the recent snooping scandals. He has called for an urgent replacement of the team.

France: Watchdog fines Google and imposes a warning message

- **CNIL**, the French data protection watchdog **has fined Google** €150,000 for not respecting the French data protection rules. Although the fine is financially insignificant for the American group, Google was in addition, **urged to post a warning on its French homepage** stating that its company's unified privacy policy does not comply with French law.
- While not opposing the streamlining of Google's privacy policies into one, CNIL justified its decision through four main points:
 - Lack of user's information about their data processing and their incapacity to exercise their rights (e.g. objection, deletion)
 - Company's non-compliance with the obligation to obtain user consent prior to storing cookies
 - Failure to define retention periods for the processed data
 - Combination of all users data collected across its services without legal basis

Germany: Coalition disagrees on Data Retention Directive implementation

- German Justice Minister Heiko Maas (SPD) has stated that before issuing a legislative proposal to implement the EU's 2006 **Data Retention Directive** in Germany, he would wait for a decision by the European Court of Justice (ECJ) following the 2010 ruling of the country's highest court that cancelled the legal texts implementing the Directive.
- Whilst the coalition agreed to comply with the Directive, the Social Democrats are said to hope that the ECJ ruling will make changes to the Directive or scrap it altogether because of its infringements to fundamental rights.

- The recently published **opinion** of Advocate General Pedro Cruz Villalón stated that the **EU data protection Directive is indeed incompatible with the EU Charter of Fundamental Rights**, as the charter requires that any limitation on the exercise of a fundamental right (privacy) must be provided for by law.

France: Orange to file suit over NSA cable interception

- Orange is to file a legal suit that should determine whether or not the NSA intercepted its customer data on the so-called SeaMeWe 4 cable.
- The French legal system permits a plaintiff to file a **complaint without selecting a defendant**, stated Reuters.

Open Internet

Russia: More websites could be blocked without court order

- A recently passed proposal authorising prosecutors to order **blocking of websites** considered as promoting rioting, racial hatred or extremism, extends the list of illegal content that may be blocked without a court order. The proposal should also **apply to websites hosted in foreign jurisdictions**. Should the content be not removed, the site in question will be blocked in Russia.
- Under the bill, a **special agency could be set up to monitor the web** to identify the incriminated sites.
- The law has been criticised by the Presidential Committee on Human Rights for infringing constitutional rights and freedoms. The Russian Association of Electronic Communications, an industry group for Russian tech firms, also warned that as there is no specific mechanism in the law for handling media websites where provocative statements may appear among users' comments, the law could lead to legitimate websites being shut down due to deliberate provocations.
- The bill requires approval of the upper house of the Russian Federal Council and the President before becoming a law.

General

Italy: Implementation of the 'Google tax' delayed

- A so-called '**Google tax**' that would increase **tax imposition on foreign Internet companies**, recently adopted by the Italian Parliament, will see **its implementation delayed**. The law, which is part of the budget bill, requires non-Italian Internet companies to obtain an Italian VAT number, making them taxable in the country.
- The law should have become effective on 1 January but will only enter into force on 1 July 2014. The **delay in implementation** is said to allow Italy to officially **alert the European Union**, potentially triggering investigation of the bill's legality. The law intends to address a common practice by many large Internet companies headquartered in a European country with a low corporate tax rate: the company's subsidiaries in other European countries are deemed by to be solely tasked with sales and market, thus paying little or no tax despite of the overall significant revenues.
- According to the critics quoted in the media, the tax is **perceived as a threat to the development of the Italian e-commerce market**, already among the smallest in the EU. Reportedly, the US embassy lobbied for the law to be cancelled.

EU: Greek Presidency to focus on digital single market

- **Greece** announced that **telecommunications will count among its priorities** for the first six months of 2014 during which the Country holds the rotating Presidency of the Council of the European Union.
- The Presidency's wish is to shift towards a **digital single market** and it will therefore promote all the measures necessary to establish a digital single market, together with the **release of a roadmap on stability and development** of the latter. Among other things, it will work on **boosting confidence in online payments**, promoting the directive to **lessen the cost of deploying high-speed electronic networks**, while also aiming at finishing the work on the draft of the **cybersecurity directive**.