Edward Snowden's '1984'

by Ian Bond

From his refuges in Hong Kong and Moscow, former US National Security Agency contractor Edward Snowden has given the world one shocking revelation after another: the American government spies on Americans! The American government spies on its allies! The Germans are in bed with the Americans! The British spy on everyone!

The British government has wisely kept its head down, but most of Europe has reacted with real or simulated shock to this evidence that the US and Europe are separated by more than just an ocean. Some politicians urged the Commission not to start the negotiations on the Transatlantic Trade and Investment Partnership (TTIP), while some Members of the European Parliament (MEPs) threatened not to ratify it.

There are two aspects of the story, often conflated, which raise different issues. The first is the extent to which preventing terrorism or organised crime justifies collecting data or 'metadata' (that is all information about a communication except its content) from everyone. The second is the morality and the value of spying on allies.

US comments on the issue of security versus privacy have mostly focused on what Snowden has said about the NSA's domestic spying, and on the extraordinary access granted to contractors. Few care about the impact on Europe.

With its memories of Nazi and Communist secret police, Germany has shown the most sensitivity about violations of privacy. Chancellor Merkel has steered a careful course, defending the need for intelligence services in a democracy and stressing the value of America as an ally. But at the same time, as criticism grew, she proposed in an interview on July 14th that there should be strict new EU rules on privacy and data protection, replacing the current mishmash of national interpretations of the 1995 data protection directive. Merkel complained that Facebook avoided strict German privacy laws by operating under a more relaxed regime in Ireland, and that the British had a different philosophy on privacy from the Germans. Indeed, the UK has been a major obstacle to the Commission's efforts to update the 1995 directive.

Much European commentary on whether allies should spy on allies has been either hypocritical or naïve. After the US had accused France earlier this year of hacking US computers for economic intelligence, it was perhaps natural for President Hollande and Foreign Minister Fabius to respond in kind; but when *Le Monde* revealed that the French external intelligence service, the DGSE,

was also sucking up data in bulk, French leaders were left looking foolish.

Equally, President Obama's flippant first reaction ("I guarantee you that in European capitals, there are people who are interested in, if not what I had for breakfast, at least what my talking points might be") showed little awareness of European sensitivities. More positively, US Attorney General Eric Holder agreed with EU Commissioner for Justice, Fundamental Rights and Citizenship Viviane Reding to set up an expert group to "establish the facts surrounding these [NSA] programmes" and report back in the autumn – usefully taking some heat out of the issue by postponing it.

The responses of EU institutions to the Snowden story have been inconsistent. EU High Representative Catherine Ashton issued a sober statement on July 1st that she was aware of the reports, had sought urgent clarification from the US and would not make any further comment until there was more clarity.

Viviane Reding, however, notwithstanding her agreement with Eric Holder to set up an experts group, told a public meeting on June 30th: "We cannot negotiate over a big transatlantic market if there is the slightest doubt that our partners are carrying out spying activities on the offices of our negotiators." TTIP negotiations will be tortuous enough, without holding the agreement hostage in this way. Fortunately, the EU's lead negotiator in the first round of talks in Washington did not repeat the idea.

Reding's comments risk encouraging those MEPs who are suspicious of free trade agreements or the US or both – those who held up agreements on US access to European banking data for the Terrorist Finance Tracking Programme, for example. MEPs have leverage because they must ratify any eventual TTIP agreement. Though British officials will assert that intelligence issues are beyond the EP's competence, opening markets in e-commerce and telecommunications will inevitably raise data protection and privacy issues. The Parliament signalled this in its July 4th resolution on the NSA surveillance programme, calling on the Commission "to ensure that EU data protection standards …are not undermined as a result of the TTIP".

Reactions to the Snowden affair show that Europe and America both need a serious debate about privacy and security in the internet age. When hundreds of millions of Facebook users post information about their lives in embarrassing detail, and tens of millions tweet their every thought, what does 'privacy' mean? When terrorism is nurtured in cyberspace, how do we counter it? Jan Fleischauer pertinently asked in *Der Spiegel* whether, if Germany suffered a terrorist attack because of delays in sifting the metadata of the perpetrators, the Justice Ministry would be brave enough to explain that such attacks were the price to be paid for the right to determine the fate of our personal information.

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The debate in the European Parliament would be better informed if the MEPs had some mechanism for receiving classified briefing, along the lines of the UK's parliamentary Intelligence and Security Committee. A paper written for the Parliament in 2011 makes some sensible suggestions on how this could be done in relation to EP oversight of bodies like Europol, introducing the 'need to know' principle and security vetting into the EP.[1] These proposals could be extended to cover other sensitive areas. No doubt British ministers will turn pale at the thought, but the alternative is worse, given the ability of the EP to block international data sharing agreements which are vital in combating terrorism and organised crime.

Governments on both sides of the Atlantic should think harder about the costs and benefits of spying on allies. Writing in *Foreign Affairs*, Henry Farrell and Abraham Newman have kicked off a debate on whether the damage done to America's interests in Europe when it is caught spying on its allies outweighs the value of the intelligence acquired: the EU and US are close enough partners that the Americans are unlikely to have learned much from spying that they could not have found out by asking.

That is not true of some of the EU's other trade and diplomatic negotiating partners. Edward Snowden has caused tremendous damage to important intelligence programmes, but he has performed a useful service for the EU, in showing how much it needs to tighten up its security. Now the EU knows where some of the holes are, it should plug them, fast. More than one Big Brother is watching.

Ian Bond
Director of foreign policy, CER

1: Aidan Wills and others, 'Parliamentary Oversight of Security and Intelligence Agencies in the European Union', European Parliament, 2011.