



EUROPEAN PARLIAMENT

2014 - 2019

Committee on Foreign Affairs

2014/2232(INI)

6.2.2015

DRAFT REPORT

on ‘Human rights and technology: the impact of intrusion and surveillance systems on human rights in third countries’
(2014/2232(INI))

Committee on Foreign Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on ‘Human rights and technology: the impact of intrusion and surveillance systems on human rights in third countries’ (2014/2232(INI))

The European Parliament,

- having regard to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, in particular Article 19 thereof,
- having regard to the European Union’s Strategic Framework on Human Rights and Democracy, adopted by the Council on 25 June 2012¹,
- having regard to the EU Human Rights Guidelines on Freedom of Expression Online and Offline, adopted by the Council (Foreign Affairs) on 12 May 2014²,
- having regard to the report by the Organisation for Security and Co-operation in Europe (OSCE) of 15 December 2011 entitled ‘Freedom of Expression on the Internet’³ and to the regular report of the OSCE Special Representative on Freedom of the Media to the OSCE Permanent Council of 27 November 2014⁴,
- having regard to the report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 23 September 2014 (A/69/397)⁵,
- having regard to the report of the Office of the UN High Commissioner for Human Rights of 30 June 2014 entitled ‘The right to privacy in the digital age’⁶,
- having regard to the report of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe of 26 January 2015 on ‘Mass surveillance’⁷,
- having regard to its resolution of 14 March 2014 on the United States National Security Agency surveillance programme, surveillance bodies in various EU Member States and their impact on EU citizens’ fundamental rights and on transatlantic cooperation in Justice and Home Affairs⁸,
- having regard to the report by the Special Representative of the UN Secretary-General on human rights and transnational corporations and other business enterprises, of

¹ http://eeas.europa.eu/delegations/un_geneva/press_corner/focus/events/2012/20120625_en.htm.

² http://eeas.europa.eu/delegations/documents/eu_human_rights_guidelines_on_freedom_of_expression_online_and_offline_en.pdf.

³ <http://www.osce.org/fom/80723?download=true>.

⁴ <http://www.osce.org/fom/127656?download=true>.

⁵ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/545/19/PDF/N1454519.pdf?OpenElement>.

⁶ http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A-HRC-27-37_en.doc.

⁷ <http://website-pace.net/documents/19838/1085720/20150126-MassSurveillance-EN.pdf/df5aae25-6cfe-450a-92a6-e903af10b7a2>.

⁸ Text adopted P7_TA(2014)0230.

- 21 March 2011, entitled ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’¹,
- having regard to the OECD guidelines for Multinational Enterprises² and the 2014 annual report on the OECD guidelines for Multinational Enterprises³,
 - having regard to the Internet Corporation for Assigned Names and Numbers Annual Report 2013⁴,
 - having regard to the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 12 February 2014 entitled ‘Internet Policy and Governance: Europe’s role in shaping the future of Internet Governance’⁵,
 - having regard to the NETmundial Multistakeholder Statement adopted on 24 April 2014⁶,
 - having regard to the Chair’s summary of the ninth Internet Governance Forum held in Istanbul on 2-5 September 2014,
 - having regard to the European Union restrictive measures in place against Egypt, Libya, Iran, South Sudan, Sudan and Syria, some of which include embargoes on telecommunications equipment, information and communication technologies (ICTs) and monitoring tools,
 - having regard to EU Regulation EU no 599/2014 of the European Parliament and of the Council of 16 April 2014 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items⁷,
 - having regard to the Joint Statement by the European Parliament, the Council and the Commission on the review of the dual-use export control system of 16 April 2014⁸,
 - having regard to the communication from the Commission to the Council and the European Parliament of 24 April 2014 entitled ‘The review of export control policy: ensuring security and competitiveness in a changing world’⁹,
 - having regard to the Council Conclusions of 21 November 2014 on the review of export

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http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf?v=1392752313000/_jcr:system/jcr:versionstorage/12/52/13/125213a0-e4bc-4a15-bb96-9930bb8fb6a1/1.3/jcr:frozensnode

² <http://www.oecd.org/daf/inv/mne/48004323.pdf>

³ <http://www.oecd-ilibrary.org/docserver/download/2014091e.pdf?expires=1423160236&id=id&accname=ocid194994&checksum=D1FC664FBCEA28FC856AE63932715B3C>

⁴ <https://www.icann.org/en/system/files/files/annual-report-2013-en.pdf>

⁵ COM(2014)0072.

⁶ <http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf>

⁷ OJ L 173, 12.6.2014.

⁸ OJ L 173, 12.6.2014.

⁹ COM(2014)0244.

- control policy,
- having regard to its report of 12 November 2012 on a digital freedom strategy in EU foreign policy¹,
 - having regard to its report of 13 June 2013 on the freedom of the press and media²,
 - having regard to its resolutions on urgent cases of breaches of human rights, democracy and the rule of law, where they raise concerns regarding digital freedoms,
 - having regard to the European Convention on Human Rights and the ongoing negotiations on the EU's accession to the Convention,
 - having regard to the Charter of Fundamental Rights of the European Union,
 - having regard to Rule 52 of its Rules of Procedure,
 - having regard to the report of the Committee on Foreign Affairs (A8-0000/2015),
- A. whereas technological developments and access to the open internet enables human rights and fundamental freedoms, exerting a positive effect by expanding the scope of freedom of expression, access to information, the right to privacy and freedom of assembly across the world;
- B. whereas technological systems are also increasingly used as tools for human rights violations through censorship, surveillance, unauthorised access to devices, jamming, interception, tracing and tracking of information and individuals;
- C. whereas this is done by governments, criminal organisations, terrorist networks and private actors to violate human rights;
- D. whereas the context in which ICTs are used determines, to a great extent, the impact they can have as a force to advance or to violate human rights;
- E. whereas in the digital domain, private actors play an increasingly significant role;
- F. whereas (cyber-)security and counter-terrorism measures involving ICTs, or the monitoring, of the internet often have significant detrimental effects on the human rights of people all over the world, especially in the absence of legal basis, necessity, proportionality or democratic and judicial oversight;
- G. whereas digital security and digital freedom are both essential and cannot replace one another, but should reinforce one another;
- H. whereas the European Union can only lead by example on digital freedoms when these are safeguarded in the EU itself;
1. Recognises that human rights and fundamental freedoms are universal and should be

¹ Texts adopted, P7_TA(2012)0470.

² Texts adopted, P7_TA(2013)0274.

- defended globally;
2. Calls on the Commission to ensure coherence between the EU's external actions and its internal policies related to ICTs;
 3. Stresses that the role of ICTs should be mainstreamed in all EU policies and programmes to advance human rights protection;
 4. Calls for the active development and dissemination of technologies that help protect human rights and facilitate people's digital freedoms and security;
 5. Calls on the Commission and the Council to support, train and empower human rights defenders, civil society activists and independent journalists using ICTs in their activities, and to promote the related fundamental rights of privacy, freedom of expression, freedom of assembly and freedom of association online;
 6. Urges the Council and the Commission to insist on the need to guarantee and respect digital freedoms and unrestricted access to the internet in all forms of contact with third countries, including in accession negotiations, trade negotiations, human rights dialogues and diplomatic contacts;
 7. Calls for the inclusion of conditionality clauses in all agreements with third countries which explicitly refer to the need to guarantee and respect digital freedoms and unrestricted access to the internet;
 8. Stresses that an effective EU development and human rights policy will require the mainstreaming of ICTs and the bridging of the digital divide, by providing basic technological infrastructure and by facilitating access to knowledge and information to promote digital literacy all over the world;
 9. Underlines that the digital collection and dissemination of evidence of human rights violations can contribute to the global fight against impunity; considers that such material should be admissible under international (criminal) law as evidence in court proceedings;
 10. Deplores the fact that EU-made information and communication technologies and services are used in third countries to violate human rights through censorship, mass surveillance, jamming, interception, monitoring, and the tracing and tracking of citizens and their activities on (mobile) telephone networks and the internet;
 11. Considers mass surveillance to be disproportionate at all times, hence in violation of the principles of necessity and proportionality, and, therefore, a violation of human rights;
 12. Stresses that corporate social responsibility principles and human rights by design criteria, which are technological solutions and innovations protecting human rights, should be adopted in EU law to ensure that internet service providers, software developers, hardware producers, social networking services/media and others consider the human rights of end-users globally;
 13. Stresses the need to implement and monitor EU regulations and sanctions relating to

- ICTs at EU level, including the use of catch-all mechanisms, so as to ensure that Member States comply with legislation and that a level playing field is preserved;
14. Urges the Commission, in this respect, swiftly to put forward a proposal for smart and effective policies to regulate the export of dual-use technologies, addressing potentially harmful exports of ICT products and services to third countries, as agreed in the Joint Statement of the European Parliament, Council and Commission of April 2014;
 15. Stresses that the Commission should swiftly be able to provide companies that are in doubt as to whether to apply for an export licence with up-to-date information on the legality or potentially harmful effects of potential transactions;
 16. Calls on the Commission to submit proposals to review how EU standards on ICTs could be used to prevent the potentially harmful impacts of the export of such technologies or other services to third countries where concepts such as ‘lawful interception’ have different implications, or where the rule of law does not exist;
 17. Calls for the development of policies to regulate the sales of zero-day exploits to avoid their being used for cyber-attacks or for unauthorised access to devices leading to human rights violations;
 18. Deplores the active involvement of certain European companies, and of international companies operating in the EU, in countries violating human rights;
 19. Urges the Commission publicly to exclude companies engaging in such activities from EU procurement procedures, from research and development funding and from any other financial support;
 20. Calls on the Commission and Council actively to defend the open internet, multi-stakeholder decision-making procedures and digital freedoms in internet governance fora;
 21. Calls on the Commission to involve civil society, and independent experts in the ICT field, to ensure up-to-date expertise that should result in future-proof policy making;
 22. Underlines the need to avoid unintended consequences such as restrictions on research, on the exchange of and access to information or on the export of technologies that are in the interest of advancing human rights;
 23. Believes that cooperation between governments and private actors worldwide in the digital domain calls for clear checks and balances and must not lead to the undermining of democratic and judicial oversight;
 24. Instructs its President to forward this report to the Council, the Commission, the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy, and the EEAS.