



News Online

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6. UK: DIP Bill: [Unfettered bulk data collection powers presage mass surveillance and a debate about haystacks](#) (Hawktalk, link):

EU-UK-USA: NSA-GCHQ

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And see: **News Digest**: updated daily, dozens of news links every month:
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NEWS

1. CoE: [Third party intervention: Commissioner Muižnieks intervenes before the European Court of Human Rights on migration cases concerning Spain](#) (link):

"Today, Commissioner Muižnieks has submitted written observations to the European Court of Human Rights in relation to two complaints concerning alleged pushbacks of migrants from the Spanish city of Melilla to Morocco.

Basing his [observations on his visit to Melilla in January 2015](#) as well as on other credible reports, the Commissioner underscores the existence of an established practice of summary returns of migrants who attempt to enter Melilla in groups by climbing the fence surrounding the city. "Such returns, which affect Sub-Saharan Africans in particular, take place outside of any formal procedure and without identification of the persons concerned or assessment of their individual situation. This prevents the persons concerned from effectively exercising their right to seek international protection" he writes in his third party intervention."

and [Written submission to the court: CoE ECHR-Spain](#) (pdf)

2. European Parliament Study: [Implementation of the Lisbon Treaty: Improving Functioning of the EU: Foreign Affairs](#) (pdf):

"The report provides an analysis of the changes in the constitutional and institutional framework brought about by the Lisbon Treaty and assess the implementation of those changes including obstacles to further improvement of its implementation."

3. EU: Another bad day for democracy: CJEU Judgment: [Selon le Tribunal de l'UE, les analyses d'impact destinées à éclairer la Commission dans l'élaboration de ses propositions d'actes législatifs ne sont pas, en principe, accessibles au public avant la divulgation des propositions](#) (pdf):

"According to the EU General Court, impact analyzes to inform the Commission in drafting its legislative proposals are not in principle accessible to the public before the disclosure proposals. Premature access to these documents might seriously undermine the decision-making process of the Commission

In 2014, ClientEarth, a non-profit organization whose purpose is the protection of the environment, asked the Commission for access to two impact analyzes related to the environmental policy of the Union. The Commission refused to grant such access by indicating that, given the fact that the impact assessments were intended to assist in preparing legislative initiatives in the environmental field, the disclosure of these documents could be dramatically affect its decision-making processes affecting its discretion and reducing its ability to find compromises. Moreover, such disclosure was likely to result from external pressures that could hinder the difficult decision processes in which a climate of trust should prevail. Dissatisfied with the Commission's response, ClientEarth introduced in each case an appeal to the EU Court for the annulment of the refusal of the Commission.

By its judgment today, the Court dismisses the arguments of ClientEarth and confirms that the Commission was entitled to refuse access to the desired documents."

4. EU: [New EU accession reports: LGBTI rights in the Western Balkans and Turkey](#) (link): "the European Commission's published its annual progress reports on accession states' progress towards EU Membership. The reports include important and extensive information on the situation of lesbian, gay, bisexual, transgender and intersex people in those 7 countries."

5. EU: ACCESS TO DOCUMENTS: European Parliament: [Draft Report: on public access to documents: Committee on Civil Liberties, Justice and Home Affairs Rapporteur: Laura Ferrara](#) (pdf) This report is short on detail. Includes:

"Notes that the Treaty of Lisbon has done away with the reference to safeguarding the efficiency of legislative decision-taking;

Deplores the failure to implement Regulation (EC) No 1049/2001 as regards the obligation for the institutions to keep complete registers of documents; calls for a European policy on registers to be established and for implementing measures to standardise the classification and presentation of the institutions' documents...

'Trilogues': Points out that transparent law-making is of the utmost importance to citizens; calls on the institutions actively to circulate documents forming part of, or related to, legislative procedures and to improve communication with persons who might wish to obtain them; considers in particular that the EU institutions should, by default, make as many documents as possible accessible to the public via a single publicly accessible common portal making for ease of consultation"

Tony Bunyan, Statewatch Director, comments: "Article 15.3 of the Lisbon Treaty does not say "make **as many documents as possible** accessible to the public" it says make **all documents** concerning the legislative process public."

6. EU: [Cameron's Chatham House speech: Full speed ahead for the renegotiation of the UK's EU membership?](#) (EU Law Analysis, link):

"Today's Chatham House speech by David Cameron set out more detail of the UK's demands for renegotiation of its EU membership. It was accompanied by a letter from Cameron to the President of the European Council, Donald Tusk, which set out a summary of his requests."

7. European Parliament Studies:

- [Implementing the Lisbon Treaty: Improving the Functioning of the EU on Justice and Home Affairs](#) (pdf)

"This Study examines the functioning of EU Justice and Home Affairs (JHA) cooperation in light of the reforms and innovations introduced by the Lisbon Treaty since the end of 2009. It identifies the main challenges and deficits characterising the practical and effective implementation of these transformations and suggests specific ways for the European Parliament to address them."

- [WORKSHOP: Dual use export controls](#) (92 pages, pdf)

"The study concludes that the system's effectiveness could be improved in a number of ways, but that this requires an effort to mobilise political will at different levels and across different institutions within the EU and its Member States, and to enhance human resources, cooperation and capacity-building."

8. EU: Enlargement:

- [Communication: EU Enlargement Strategy](#) (COM 611-15, pdf)

- [Key findings of the 2015 report on Turkey](#) (Press release, pdf):

"the report emphasises an overall negative trend in the respect for the rule of law and fundamental rights. Significant shortcomings affected the judiciary as well as freedom of expression and freedom of assembly. Turkey saw a severe deterioration of its security situation. The settlement process of the Kurdish issue came to a halt despite earlier positive developments on the issue. It is imperative that the peace talks resume."

- [Turkey: 2015 Report](#) (SWD 216-15, pdf): "Civil society has remained active, growing in numbers and continuing to be involved in many spheres of public life, but restrictions to freedom of assembly remain a serious concern."

and see: [EU report slams Turkey over rule of law, free speech](#) (euractiv, link)

9. DRONES: [Italy's new 'license to kill'](#) (Il manifesto, link): "War. Italy will soon be the second European power, after the U.K., to wield lethal, American-armed drones. But despite their inaccuracy and yet another encroachment of U.S. foreign policy in Rome, few in Parliament seem to care."

10. Northern Ireland: [Castlereagh break-in allowed to happen, says former PSNI officer](#) (Irish Times, link): "Several special officers had to move after security breach at Belfast police station in 2002"

And see: [Inside Castlereagh: Files stolen from Special Branch HQ](#) (Statewatch News Online, June 2002)

11. EU: European Commission: [Communication: on the Transfer of Personal Data from the EU to the United States of America under Directive 95/46/EC following the Judgment by the Court of Justice in Case C-362/14 \(Schrems\)](#) (COM 566-15, pdf): "Until such time as the renewed transatlantic framework is in place, companies need to rely on the alternative transfer tools available. However, this option entails responsibilities for data exporters, under the supervision of the DPAs."

The Commission in its Communication stresses the following point: "**the Safe Harbour arrangement can no longer serve as a legal basis for transfers of personal data to the U.S**"

and see USA: Congressional Research Service (CRS): [The EU-U.S. Safe Harbor Agreement on Personal Data Privacy: In Brief](#) (pdf)

12. [EU seeks autonomous drones, "data fusion" and "enhanced command and control centres" for border control](#)

The EU has made €24 million available for research into autonomous drones, "data fusion" and "enhanced command and control systems" in order to improve the surveillance of Europe's borders and "to support missions ranging from surveillance to detection of marine pollution incidents, and including early identification and tracking of illegal activities and illegal communication."

13. EU: [Long-distance border controls to "check travellers data along his/her journey" and remotely detect "abnormal behaviour"](#)

The EU is offering €3 million for research projects that can work out how to gather massive amounts of data from individuals crossing the EU's borders without "increasing the risk of loss of privacy".

This unlikely-sounding task is part of the latest [work programme for the European Security Research Programme](#) (pdf), which sets out research priorities for 2016 and 2017. €302 million of a total six-year budget of €1.7 billion will be available over the next two years for projects dealing with crime, terrorism, natural and man-made disasters, critical infrastructures, cybersecurity and border controls.

14. EU: [Presumption of innocence: Council confirms the agreement found with EP](#) (Council Press release, pdf)

and [Proposal for a Directive of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings - Confirmation of the final compromise text with a view to agreement](#) (pdf) Final text in Annex.

15. UK-SYRIA: House of Commons Foreign Affairs Committee report: [The extension of offensive British military operations to Syria](#) (pdf): The Committee has a majority of Conservative (government party) members:

"We believe that there should be no extension of British military action into Syria unless there is a coherent international strategy that has a realistic chance of defeating ISIL and of ending the civil war in Syria. In the absence of such a strategy, taking action to meet the desire to do something is still incoherent...."

"In the absence of a UN Security Council Resolution, how the Government would address the political, legal, and military risks arising from not having such a resolution?"

and see: [Cameron drops plans to hold vote on airstrikes on Isis in Syria](#) (Guardian, link) *"Prime minister sought backing of Labour MPs who favoured extending RAF role into Syria but fears defeat in face of likely Tory rebellion"*

16. EU: Council of the European Union: **Data Retention, LEAs personal data exchange Directive, PSC/COSI**

- [Eurojust's analysis of EU Member States' legal framework and current challenges on data retention](#) (LIMITE doc no: 13085-15, pdf) Very useful summary:

"The transposing law of the DRD has been struck down in at least eleven Member States (AT, BE, BG, DE, LT, NL, PL1, RO, SI, SK, UK2). Amongst these, nine countries have had the law invalidated by the Constitutional Court (AT, BE, BG, DE, SI, NL, PL, RO, SK)."

- [Data Protection Directive: exchange of personal data between law enforcement agencies - Preparation for trilogue: Chapter V: Transfer of personal data to 3rd countries](#) (LIMITE doc no: 12838-15, pdf): Multi-column with Commission proposal, Council and European Parliament positions and "compromise"

- Meeting of two powerful Council committees: [Political and Security Committee \(PSC\) and Standing Committee on Operational Cooperation on Internal Security \(COSI\): Summary of discussions held on 22 October 2015](#) (LIMITE doc no: 13450-15, pdf): Seeking to reinforce "internal-external" coherence:

"Delegations will find enclosed the joint letter of the PSC Chair, Ambassador Walter Stevens, and of the acting COSI Chair, Jean-Louis Bordet, on the result of discussions held on 22 October 2015"

17. UK: [Lawyers believe Shaker Aamer has strong claim against UK government](#) (Guardian, link): *"Released Guantánamo inmate claims British intelligence officer was present while he was tortured in Afghanistan"*

and: [Before Shaker Aamer: others who made it back to Britain from Guantánamo Bay](#) (Guardian, link): *"Shaker Aamer is one of at least 16 UK citizens or residents to have been detained at the US base. A number have alleged that British authorities were complicit in their mistreatment"*

18. [Council of Europe anti-torture Committee visits Hungary to examine detention of foreign nationals](#) (link): *"Strasbourg, 30.10.2015 – A delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out an ad hoc visit to Hungary from 21 to 27 October 2015.... The purpose of the visit was to examine the treatment and conditions of detention of foreign nationals deprived of their liberty under aliens legislation or the recently amended criminal legislation according to which, inter alia, crossing the border fence or damaging it constitute a criminal offence... A detailed report on the visit will be submitted to the Government in due course."*

19. UK: [Parliament's human rights committee to investigate lethal drone strikes](#) (The Guardian, link): *"The prime minister's policy of ordering targeted drone killings overseas outside designated war zones is to be scrutinised in the first inquiry launched by the new chair of parliament's human rights committee."* See: [MPs right to push for answers over Government's kill policy](#) (Reprieve, link) and also: [UK to double drone fleet and boost SAS kit in fight against Isis militants](#) (International Business Times, link)

20. NORTHERN IRELAND: Joint MI5-PSNI report on paramilitary groups in Northern Ireland

"All the main paramilitary groups operating during the period of the Troubles remain in existence... Seventeen years after the 1998 Belfast Agreement, paramilitary groups remain a feature of life in NI [and] maintain a relatively public profile in spite of being illegal organisations."

"However, the most serious current terrorist threat in NI is not posed by these groups but by dissident republicans (DRs) - paramilitary groups not on ceasefire and who reject the 1998 Belfast Agreement... Their activities pose a severe threat to NI's security and stability and, at any given time, a terrorist attack is highly likely. There is also a smaller threat posed by dissident loyalist paramilitary groups. This report does not focus on dissident groups."

See: [Paramilitary groups in Northern Ireland: An assessment commissioned by the Secretary of State for Northern Ireland on the structure, role and purpose of paramilitary groups focusing on those which declared ceasefires in order to support and facilitate the political process](#) (pdf)

And: [Statement by the Secretary of State for Northern Ireland before the House of Commons, 20 October 2015](#) (pdf)

News coverage: [IRA's 'army council' still exists and influences Sinn Féin strategy – report](#) (The Guardian, link) and [Confusion as PSNI say IRA Army Council exists... but gardai say 'not on their side of the border'](#) (Irish Independent, link)

21. European Parliament Studies:

- [Cybersecurity in the European Union and Beyond: Exploring the Threats and Policy Responses](#) (pdf)

"It sets out to develop a better understanding of the main cybersecurity threats and existing cybersecurity capabilities in the European Union and the United States. The study further examines transnational cooperation and explores perceptions of the effectiveness of the EU response, pinpointing remaining challenges and suggesting avenues for improvement."

- [The law enforcement challenges of cybercrime: are we really playing catch-up?](#) (pdf):

"While this study shows that cybercrime poses significant challenges for law enforcement, it also argues that the key cybercrime concern for law enforcement is legal rather than technical and technological. The study further underlines that the European Parliament is largely excluded from policy development in the field of cybercrime, impeding public scrutiny and accountability."

22. EU: DIRECTIVE ON LEAs EXCHANGE OF PERSONAL DATA: European Data Protection Supervisor (EDPS): [A further step towards comprehensive EU data protection: EDPS recommendations for the police and justice sectors](#) (Press release, pdf)

"The EDPS calls on the legislators to ensure that none of the provisions of the Directive decrease the level of protection that is currently offered by EU law and by the instruments of the Council of Europe...."

Careful attention should be given to the modalities for international transfers of personal data to bring them in line with the recent CJEU ruling in the Schrems case. This ruling will have an impact on new legal instruments and agreements to be concluded by the EU with non-EU countries in the field of law enforcement (including, for instance, the EU-US Umbrella Agreement) so that they pass the strict test established by the Court"

[Full-text of EDPS Opinion](#) (pdf)

23. EU-UK: Meijers Committee report: [Accommodating British EU-demands and democratic change of the Treaties](#) (pdf):

"An agreement by the Heads of Government to change the Treaties, would give rise to serious concerns over legality, transparency, parliamentary scrutiny and democratic oversight. The Meijers Committee argues that the European Council should not be the exclusive forum to consider changes to the Treaties in an effort to accommodate British political demands. The Meijers Committee stresses that national parliaments, the European Parliament and, possibly, a Convention have a role to play and should not be left out of the current negotiations only to be confronted later on with a political agreement cast in stone."

24. [UN Special Rapporteur raises alarm over effect of counter-terrorism policy on civil society](#)

A UN Special Rapporteur on human rights has warned of a global "ideological pandemic" that has seen more than 60 states across the world pass counter-terrorism measures that have been used "to stifle legitimate opposition and to choke public interest and human rights organisations".

In an address to the UN's General Assembly, Ben Emmerson, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,

"urged governments across the world to ensure that the NGO sector be allowed to continue to play an indispensable role in co-ordinated efforts to counter the spread of terrorism."

His findings are detailed in a new report examining the impact of counter-terrorism measures on civil society: [Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism](#) (pdf)

25. Northern Ireland: [Secret service surveillance secrecy leads to court case collapse](#)

A court case in Northern Ireland involving some of the "most sophisticated" surveillance "ever seen" collapsed last week after MI5 refused a judge's order to provide more detail on tracking devices it had used to monitor the movements of three brothers accused of conspiracy to murder police and prison officers.

26. EU: **Parliament agrees with Council, votes against net neutrality**

"The European Parliament has voted against a set of amendments on Tuesday, Oct. 27, that would help preserve net neutrality in the EU, angering and disappointing supporters of the rejected legislation, and calling into question the future of a democratized web in Europe—and even the inventor of the World Wide Web, Sir Tim Berners-Lee, couldn't persuade them otherwise." See: [Against Advice From Inventor Of The World Wide Web, EU Votes Down Net Neutrality](#) (Tech Times, link):

And: [Parliament green lights roaming and net neutrality](#) (EurActiv, link): *"EU Digital Commissioner Günther Oettinger addressed opposition to the internet rules following the Parliament vote yesterday afternoon. 'If the concerns of the organisations are ever realised, I'm prepared to propose a change,' Oettinger said."*

What is net neutrality? The [Electronic Frontier Foundation explains](#) (link)

Text as adopted: [Position of the Council at first reading with a view to the adoption of a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation \(EU\) No 531/2012 on roaming on public mobile communications networks within the Union](#) (pdf)

27. FINLAND: [Council of Europe's anti-torture Committee reports on Immigration Detention in Finland](#) (International Detention Coalition, link): *"On 20th August 2015, The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the report on its fifth visit to Finland, which took place from 22 September to 2 October 2014."*

See: [Report to the Finnish Government on the visit to Finland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment \(CPT\) from 22 September to 2 October 2014](#) (pdf)

28. EU: Council of the European Union: [Future of the SIS/SIRENE configuration of the Working Party for Schengen Matters](#) (LIMITE doc no: 12887-17, pdf)

"Currently, the political guidance seems to come more from outside than inside the WG... Hot topics (foreign fighters, illegal migrants, return)"

29. EU: [Europol seeks "workable solution" on law enforcement access to encrypted data](#)

Europol, the EU's policing agency, has called for: *"a workable solution to the issue of encryption which*

allows legitimate users to protect their privacy and property without severely compromising government and law enforcement's ability to investigate criminal or national security threats."

The demand to make it easier for law enforcement authorities to access encrypted communications comes in Europol's latest '[Internet Organised Crime Threat Assessment](#)' (IOCTA) (4.4 MB, pdf), which was published at the end of September.

30. UK: [Lord Justice Pitchford: Undercover Policing Inquiry: Core Participants Ruling](#) (pdf):

"The Inquiry received applications from over 380 individuals, groups and organisations. Many established the criteria for core participant status. In those cases the applicants were notified that designation would be made."

and see: [Undercover police inquiry accidentally reveals witnesses data](#) (The Guardian, link)

31. EU-USA: DATA PROTECTION: [Commissioner Jourová's remarks on Safe Harbour EU Court of Justice judgement before the Committee on Civil Liberties, Justice and Home Affairs \(Libe\): Strasbourg, 26 October 2015](#) (pdf)

and European Parliament: [The CJEU's Schrems ruling on the Safe Harbour Decision](#) (pdf) and also: [German Data Protection Authorities Suspend BCR approvals, question Model Clause transfers](#) (dataprotectionreport.com, link)

32. [Eurozone crosses Rubicon as Portugal's anti-euro Left banned from power](#) (The Telegraph, link): "Portugal has entered dangerous political waters. For the first time since the creation of Europe's monetary union, a member state has taken the explicit step of forbidding eurosceptic parties from taking office on the grounds of national interest. "

and see: [Four Things You Need to Know About Portugal's Political Crisis](#) (link)

33. EU-UK: House of Lords: Select Committee on the European Union: [Potential impact on EU law of repealing Human Rights Act](#) (Unrevised transcript of evidence taken, pdf): Unrevised transcript of evidence from Professor Steve Peers, Professor Sionaidh Douglas-Scott, Dr Tobias Lock.

34. EU: Council of the European Union: [Access for law enforcement purposes to the EES](#) (LIMITE doc no: 12531-15, pdf):

"a large majority of delegations agreed that access to the Entry-Exit System (EES) for law enforcement authorities (LEA) should be provided as of the start of the operation of the future system...."

*i) the possibility of the use of the future EES as a **criminal identification and investigation tool**, ii) the data that should be inserted in the system, the data to be used for searches of the system and the data that should be obtained as a result of a hit, iii) the minimum retention period for access to LEA purposes and, iv) the possibility of **transfer of EES data to third countries...***

*– whether **intelligence agencies** or other specific types of administration units should be authorised to act as designated authorities..."* [emphasis added]

35. [Prevent duty 'heavy-handed and discriminatory'](#) (IRR, link):

"In the week that the government announced new counter-extremism measures, the IRR publishes contributions from its seminar on 'Securitisation, Schools and Preventing Extremism', held at Garden Court Chambers on 7 October, where participants considered the consequences of a new statutory duty on public bodies to prevent non-violent extremism and whether it breached the Equality Act."

36. EU: Council of the European Union: **Europol Regulation, Counter-terrorism and CT short term actions**

- [Preparation of the upcoming trilogues and technical meetings on the draft Europol Regulation](#) (DS LIMITE doc no: 1532, pdf) 31 pages. Including the Internet Referral Unit at Europol (EU IRU):

"If the EU IRU is expected to actively identify threats from, for example, terrorism propaganda, according to Europol, it is indispensable that a dialogue with the concerned private parties is possible. This would mean that e.g. Facebook is in a position to respond to a referral by Europol, by pointing out that the same IP address or the same person also has other accounts that Europol has not yet discovered. The same applies to other service providers, which generally have a very good overview of their customers' activities on their own platform, but possibly and probably also as regards other platforms."

- EU Counter-Terrorism Coordinator: [Follow-up to the statement of the Members of the European Council of 12 February 2015 on counter-terrorism: State of play on implementation of measures](#) (LIMITE doc no: 12318-15, pdf): The explicit interface between counter-terrorism and refugees and migrants:

*"the new **"Hot spot approach"** developed along the Commission proposals, and especially the **EU Regional Task Force in Catania** allow Frontex and Europol officers to cooperate on the spot and to make the best possible use of **screening and debriefing interviews of migrants....***

*Europol: Member States have increasingly provided information on foreign terrorist fighters to Europol since January 2013. The total number of contributions is now 1069 (620 by the end of February 2015), with **9724 person entities stored in Focal Point (FP) Travellers** (3600 in March 2015), **out of those 1969 are confirmed fighters/travellers**. Interpol has become a significant contributor to FP Travellers with more than 3000 persons reported by September 2015...*

*The IRU (see story above) has already carried out 500 referrals, over 90 % of which have been successful leading to the removal of the flagged content.... The IRU is **also tackling the facilitation of illegal immigration**, with a continuous analysis of social media-related information on a 7/7 basis." [emphasis added]*

- [Fight against terrorism: implementation of short-term actions](#) (LIMITE doc no: 12551-15, pdf)

"The Council considers it necessary and important to consolidate and strengthen the IRU within Europol. Member States are invited to increase contributions for referrals to the EU IRU and to second experts to the EU IRU. The Commission is invited to provide the EU IRU with appropriate resources as soon as possible and to inform COSI thereof in November..."

37. European Parliament Studies:

- [EU cooperation with third countries in the field of migration](#) (pdf):

"This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, reflects on the imbalances of EU external action as well as on the lack of evidence on the impact and efficiency of EU funding regarding the objectives of the migration policy, which are sometimes conflicting with the development goals.

The study brings forward recommendations for rationalization and coordination of action, more balance between the different components of the GAMM, more transparency for a better evaluation and scrutiny, and a reinforced partnership approach with third countries."

- [The European Parliament as a driving force of constitutionalism](#) (pdf):

"The report demonstrates that EP's formal and informal powers in legislation, comitology, Commission investiture, the budgetary process, economic governance and international agreements have increased strikingly since the Treaty of Rome. This empowerment is partially explained by the concern for democratic legitimacy on the part of some member states' (and the Commission).

To another important part the empowerment may be explained by the fact that treaties frequently contain ambiguous provisions and thus allow room for informal rules to emerge through bargaining specifying the details of treaty provisions."

38. EU: DATA PROTECTION DIRECTIVE: Law enforcement agencies: Council of the European Union: [Proposal for a Directive of the European Parliament and of the Council 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](#) (LIMITE doc no: 12643-rev-1-15, pdf) Outcome of Proceedings, 90 pages, with 129 Member State positions.

39. EU-USA: DATA PROTECTION: [The House of Representatives today approved the Judicial Redress Act of 2015 \(H.R. 1428\) by voice vote. Introduced by Subcommittee on Crime, Terrorism, Homeland Security, and Investigations](#) (link)

40. EU-USA COOPERATION: Council of the European Union: Europol Joint Supervisory Body: [Report on the Europol's implementation of the TFTP agreement](#) (Doc no: 12338-15, pdf)

*"The present assessment of the JSB is focussed on how Europol fulfils its task under the TFTP Agreement. In this respect, the JSB likes to restate its assessment that due to the nature of the TFTP, the situation in terms of mass data transfer remains unchanged. The JSB restates that, in view of the nature of the TFTP and the scope of the agreement **there is a massive, regular, data transfer from the EU to the US**. There is a clear tension between the idea of limiting the amount of data to be transmitted by tailoring and narrowing the requests and the nature of the TFTP."* [emphasis added]

UK: Draft Investigatory Powers Bill

1. UK: [Draft Investigatory Powers Bill: official documents](#) (Statewatch database, link):

In early November 2015 the UK government published proposed new surveillance legislation - the Draft Investigatory Powers Bill. All the relevant official documentation is published here (pdf format) and will be updated as the Bill develops.

2. UK: NEW SURVEILLANCE BILL: [Draft Investigatory Powers Bill](#) (299 pages, pdf) and Home Secretary: [Statement](#) (link)

[Interception of communications and equipment interference: draft codes of practice](#) (link) including Equipment interference: draft code of practice - showing the limits to the protection of journalistic confidential information.

[These documents \(26\) are related to the draft Investigatory Powers Bill](#) (link) including [Factsheet – Targeted Interception](#) (pdf) *"Only nine agencies can apply for an interception warrant. These include the Security and Intelligence Agencies, five Law Enforcement Agencies and the armed forces... ." and "the Bill will include a requirement for the Prime Minister to be consulted before the Secretary of State can decide to issue a warrant to intercept an MP's communications"*

and **"Remote access"**: [Factsheet – Targeted Equipment Interference](#) (pdf): *"Equipment interference (EI), sometimes referred to as computer network exploitation, is the power to obtain a variety of data from equipment. This includes traditional computers or computer-like devices such as tablets, smart phones, cables, wires and static storage devices. **EI can be carried out either remotely or by physically interacting with equipment.**"* and **"More sophisticated EI operations**

may involve remotely installing a piece of software on to a device. The software could be delivered in a number of ways and then be used to obtain the necessary intelligence."

[HM government transparency report on the use of disruptive and investigatory powers](#) (link)

[Counter-Terrorism website with links to all documents](#) (link)

And see: [Report of the Investigatory Powers Review](#) (pdf, June 2015, link) and [Annexes](#) (pdf link)

Also: [Here Are The Spying Powers UK Authorities Will Have If Theresa May's New Law Passes](#) (Buzzfeed, link): "Police, armed forces, and intelligence agencies now explicitly have powers to hack and modify computer systems, both individually and "in bulk"" and: [Snowden surveillance revelations drive UK and US policy in opposite directions](#). (Guardian, link): "Draft bill would enhance British government's surveillance powers as US works to limit NSA data collection following whistleblower's call for debate"

3. UK: [Only 'tiny handful' of ministers knew of mass surveillance, Clegg reveals](#) (Guardian, link): "Former deputy PM says he was astonished to learn how few cabinet members were aware of scale of UK spies' reach into lives of British citizens.... The government finally admitted on Wednesday that the mass surveillance of British citizens began in 2001 after 9/11 and was stepped up in 2005, using powers under national security directions largely hidden in the 1984 Telecommunications Act."

and: [The surveillance bill is flawed but at last we have oversight](#) (Guardian, link): "In government I was shocked by the scale of MI5's secret database. Its powers are at least now in the open... That the existence of this previously top secret database was finally revealed in parliament by the home secretary on Wednesday, as part of a comprehensive new investigatory powers bill covering many other previously secret intelligence capabilities"

See [Statement in the House of Commons by the Home Secretary on 4 November 2015](#) (pdf):

"The Bill will make explicit provision for all of the powers available to the security and intelligence agencies to acquire data in bulk. That will include not only bulk interception provided under the Regulation of Investigatory Powers Act 2000 and which is vital to the work of GCHQ, but the acquisition of bulk communications data, both relating to the UK and overseas.

That is not a new power. It will replace the power under Section 94 of the Telecommunications Act 1984, under which successive Governments have approved the security and intelligence agencies' access to such communications data from communication service providers."

See: [A Quick Overview of the Draft Investigatory Powers Bill](#) (SCL, link)

UK government claims DIP Bill on data retention is outside scope of EU law Why they're wrong (by analogy): [Does the UK's new data retention bill violate the EU Charter of Fundamental Rights?](#) (EU Law Analysis, link)

4. UK: [MI5 'secretly collected phone data' for decade](#) (BBC, link):

"the programme, which sources said was used to track terrorists and save lives, was "so secret that few even in MI5 knew about it, let alone the public".

The government's independent reviewer of terrorism legislation, David Anderson QC, told the BBC the legislation used to authorise the collection was "so vague that anything could be done under it". He added: "It wasn't illegal in the sense that it was outside the law, it was just that the law was so broad and the information was so slight that nobody knew it was happening".

[The surveillance bill is as big a threat to state security as to individual liberty](#) (Guardian, link) and [UK unveils plan to spy on Internet use, raising privacy fears](#) euractiv, link): ""What the British

are attempting to do, and what the French have already done post Charlie Hebdo, would never have seen the light of day in the American political system," Michael Hayden, former director of the U.S. National Security Agency and Central Intelligence Agency, told Reuters." also: [UK cyber-spy law takes Snowden's revelations of mass surveillance – and sets them in stone](#) (The Register, link) And see: [Interception, Authorisation and Redress in the Draft Investigatory Powers Bill](#) (UK Human Rights Blog, link)

5. UK: Independent Reviewer of Terrorism Legislation: [The big reveal](#) 7.11.15, link to site):

*As sharp-eyed commentators have noted, the launch of the Investigatory Powers Bill was accompanied by a significant avowal: **the use by intelligence agencies (but not the police) of a [bulk collection power](#) (relating to communications data but not to content or internet connection records) under s94 of the Telecommunications Act 1984, the details of which had never been made public.***

A number of people have asked whether I was made aware of this power during my Investigatory Powers Review.

The answer is that I was informed promptly and in some detail about the exercise of this power at the outset of my Review. Until this week, that knowledge was extremely restricted and neither I nor the Intelligence and Security Committee of Parliament (ISC), which also knew about it, was authorised to reveal it."

See: [How and why MI5 kept phone data spy programme secret](#) (BBC News, link)

6. UK: DIP Bill: [Unfettered bulk data collection powers presage mass surveillance and a debate about haystacks](#) (Hawktalk, link):

"The choices are:

(a) build the largest haystack about all the population because you know that the needle has to be in there "somewhere"; or

(b) have the powers to look at all the relevant smaller haystacks that are around when you have inkling as to what kind of needle you are looking for.

In Article 8 Human Rights terms, does Parliament enact legislation that allows the national security agencies to collect bulk personal data when there is no prior suspicion, so these agencies can do speculative searches in the hope they get lucky? Or do you have the traditional civil liberties view that you need a modicum of prior suspicion before you go looking?

The Home Office prefer the former; the civil liberties lobby the latter - and that is one of the key divisive issues at the heart of the Draft Investigatory Powers Bill ("DIP") published last week."

EU-UK-GCHQ-USA-NSA SURVEILLANCE

<http://www.statewatch.org/eu-usa-data-surveillance.htm>

1. NSA: Transparency about spying on the rest of the world, "Approved for Public Release"

A sterling effort at transparency from the NSA/the US Foreign Intelligence Surveillance Court: declassification of ['Procedures used by the National Security Agency for targeted non-United States persons reasonably believed to be located outside the United States to acquire foreign intelligence information pursuant to section 702 of the Foreign Intelligence Surveillance Act of 1978, as amended'](#) (pdf)

2. [German spying on EU states to be made illegal](#) (euractiv, link): "The German government has agreed that political espionage against EU countries and institutions by German intelligence services should be banned."

3. [Germany spies among friends: controversy grows over espionage activities](#) (DW, link): "NSA spying triggered a severe backlash from the German public, further damaging the US' reputation. But the BND has also been found with dirt on its hands. Spying among friends is not such an unusual practice in Berlin."

4. Germany: [Governments and NGOs: Germany Spied on Friends and Vatican](#) (Spiegel Online, link):

"Efforts to spy on friends and allies by Germany's foreign intelligence agency, the BND, were more extensive than previously reported. SPIEGEL has learned the agency monitored European and American government ministries and the Vatican...."

Since October's revelations, it has emerged that the BND spied on the United States Department of the Interior and the interior ministries of EU member states including Poland, Austria, Denmark and Croatia. The search terms used by the BND in its espionage also included communications lines belonging to US diplomatic outposts in Brussels and the United Nations in New York. The list even included the US State Department's hotline for travel warnings.

The German intelligence service's interest wasn't restricted to state institutions either: It also spied on non-governmental organizations like Care International, Oxfam and the International Committee of the Red Cross in Geneva"

5. EDWARD SNOWDEN: [Interview: Five hours with Edward Snowden](#) (pdf): "Suddenly he opens the door. DN's Lena Sundström and Lotta Härdelin had a unique meeting with the whistleblower who has fans all over the world but risks lifetime imprisonment in the home country he once tried to save..."

6. EU-NSA SURVEILLANCE: European Parliament: [Follow-up to the European Parliament resolution of 12 March 2014 on the electronic mass surveillance of EU citizens](#) (pdf)

and see: [Europe Is Spying on You](#) (nytimes.com, link): article on the threats of surveillance law just published by the Council of Europe Commissioner for Human Rights, Nils Muiznieks, in the New York Times: "When Edward Snowden disclosed details of America's huge surveillance program two years ago, many in Europe thought that the response would be increased transparency and stronger oversight of security services. European countries, however, are moving in the opposite direction. Instead of more public scrutiny, we are getting more snooping."

7. [MEPs vote in favour of granting Snowden asylum in EU](#) (WIRED, link): "The European Parliament has called on EU member states to drop all criminal charges against Edward Snowden and protect him against extradition to the United States. MEPs voted 285 votes to 281 in favour of a resolution that the NSA whistleblower should be allowed to seek safe asylum in the EU.

The resolution, which isn't binding, is nonetheless a strong signal from MEP's that EU member states should grant Snowden protection. MEPs voting in favour of the measures described Snowden as a "human rights defender" and urged member states to "drop any criminal charges" against him."

8. [Hungary prepares law allowing spies to pose as journalists](#) (euractiv, link):

"During the Cold War, it was commonplace that journalists also worked for the secret services. This practice had been largely discontinued since, but reportedly Hungary wants to return to it and enforce it by law. State intelligence agents could be stationed inside newsrooms under an amendment to the national security law proposed by Interior Minister Sándor Pintér..."

9. EU-USA: EPIC: Joint Hearing Before the United States House of Representatives Energy & Commerce Subcommittees on Commerce, Manufacturing, and Trade and Communications and Technology: [Testimony and Statement for the Record of Marc Rotenberg President, EPIC Adjunct Professor, Georgetown Law Hearing on "Examining the EU Safe Harbor Decision and Impacts for Transatlantic Data Flows"](#) (pdf): EU negotiators are pinning all their hopes for a deal on the EU-USA "Umbrella Agreement" on exchange of personal data on the protection given to EU citizens under the recently passed US Judicial Redress Act. Marc Rotenberg comments in evidence:

"The Judicial Redress Act does not provide adequate protection to permit data transfers and it does not address the many provisions in the Privacy Act that need to be updated."

10. [Europe, Still Angry at U.S. Spying, Prepares to Increase Its Own](#) (The Intercept, link): *"Just as the United States is taking a first step toward placating European privacy concerns about U.S. surveillance, several European countries are passing laws dramatically expanding their own spy programs."*

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Statewatch Bulletin/Journal: Archive: Since 1991: <http://www.statewatch.org/subscriber/>

Database, over 31,000 items: <http://database.statewatch.org/search.asp>

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