



The NSA Leaks and Transatlantic Relations

The leaks by former US intelligence contractor Edward Snowden, which began in in June 2013, have shaken publics on both sides of the Atlantic. Snowden's leaks revealed that US and European intelligence services were carrying out an unprecedented level of surveillance on their own citizens, and that the US National Security Agency (NSA) was spying on the diplomats and officials of allied nations and intergovernmental organizations. The leaks have had an uneven effect on the relationship of trust between citizens and elites across the Atlantic, and have also impacted diplomatic relations between Europe and America. This brief analyses the impact of Snowden's leaks on transatlantic relations, arguing that while the leaks have not seriously affected relations, they have caused a loss of trust between the US and some of its European partners. The brief is divided in three parts: part I analyses European reactions to different phases of the leaks. Part II assesses impact of the revelations on transatlantic relations, while part III turns to likely repercussions in the following months.

Part I: European reactions to the leaks

Snowden provided his leaks over the course of several months (although not the quantity of material that Bradley, now Chelsea Manning had), ensuring that the story stayed in the news. The leaks can roughly be divided in three different waves, both on the basis of their nature and of European reactions to them. The first wave comprises the leaks of June 2013, revealing mass surveillance carried out by the NSA on Americans and Europeans. Leaks began early in the month, when the Guardian and Washington Post revealed an NSA program named PRISM. Under PRISM, agents could collect data held by US companies such as Google, Apple and Facebook, including emails and search histories. Seeing as Europeans make extensive use of these companies' services, it was immediately apparent that their data was also being collected. The European Commission's reaction was relatively slow, and it was not until the 11th of June that it demanded assurances that EU citizens' rights were not being infringed by PRISM. The US responded that PRISM was not carrying out bulk data mining, but that it only targeted specific individuals on the basis of a court order and of Congressional oversight. The exchange concluded with the Commission agreeing to an American proposal to convene a meeting of experts to clarify remaining matters. Viviane Reding, European Commissioner for Justice, Fundamental Rights and Citizenship highlighted the importance of concluding an agreement on the collection and exchange of data in the law enforcement sector to settle the matter with the US.¹ During this first wave of leaks, European governments did not seem to be too concerned with the issue: during Obama's visit to Berlin on June 19th, Chancellor Merkel defended the NSA's program, although she highlighted the need for 'diligence also as regards the proportionality. [of data collection]'.² The restrained reactions by EU officials and European leaders seemed to suggest these revelations would not have any real impact on transatlantic relations: part of this response was due to the majority of European partners also engaging in this

kind and level of surveillance activity.

However, containing the fallout from the leaks became significantly more difficult with the second wave of revelations, starting on June 29, 2013, when claims that the NSA had been spying on EU embassies and diplomats in Washington, New York and Brussels surfaced. The following day, the Guardian reported that the US was also carrying out surveillance on the embassies of European member states such as France and Italy. This time the monitoring could hardly be justified on the grounds of security and counterterrorism; instead it appeared to be commercial spying aimed at gaining leverage in the upcoming talks with the EU on a Transatlantic Trade and Investment Partnership, set to begin in early July. The European reactions was significantly stronger than it had been in early June: on June 30th EU foreign policy head Catherine Ashton made a statement requesting 'urgent clarification' from the US, echoed by expressions of strong concern from the Commission.³ The European Parliament was especially outraged, with President Schulz stating that the revelations risked seriously harming relations. Some MEPs, in particular from the Greens, issued calls for the cancelling of the TTIP talks. French President François Hollande was also very vocal, stating that 'we cannot accept this type of behavior between partners and allies' and that spying had to stop immediately.⁴ German Chancellor Angela Merkel was initially more cautious, arguing that nothing had yet been proven, but during her summer press conference on July 19th she stated that 'on German soil German laws must be obeyed' and that 'one cannot' spy on friends.⁵ However, the strong European reaction to this second wave of revelations did not prevent the opening of the negotiations on TTIP, which began as scheduled in early July. A dual track structure was agreed, according to which negotiations on TTIP would proceed along with the setting up of a EU-US Working Group on data protection. The two would remain separate, allowing trade negotiations to go ahead even if the talks on privacy were problematic. Throughout the summer of 2013, the situation seemed calm, despite the revelation that many European intelligence services were co-operating closely with the NSA's mass-data collection. In reality a lot of the European angst was geared to positioning around TTIP – aside from espionage against the European institutions these revelations still fell within an expected range of intelligence activity and were not 'shocking' per se. The relatively limited importance of the NSA scandal in public debate is shown by the case of the German election campaign: Socialist Party candidate Peer Steinbrück criticized Merkel's handling of the affair, demanding a halt to TTIP negotiations. Yet this strategy failed to undermine Merkel or to turn the NSA scandal into a major campaign issue, and Steinbrück eventually lost the election.

In late October the third and most damaging wave of leaks began: a series of documents published by Le Monde disclosed NSA surveillance on French citizens, companies and diplomats. The newspaper revealed that the NSA had collected over 70 million phone calls in France in a single month, and that it monitored traffic of French Internet providers. It also transpired that the NSA bugged diplomats at the French embassies in New York and Washington. Hollande reacted by calling Obama, stating that these activities were unacceptable between allies, but the hypocrisy in this position should be noted: the French have been cited amongst security officials as being the most active of America's allies in espionage activities against the United States but without attracting the same adverse publicity.⁶ This set of revelations was compounded by the accusation that the NSA had hacked Merkel's phone. This highly damaging accusation was essentially proven true when Obama did not deny that the

Chancellor's phone had been bugged in the past. Merkel reacted sharply, stating that 'spying between friends, that's just not done', and the American Ambassador in Berlin was summoned to explain himself.⁷ The tone of the official German reaction was particularly striking given Merkel's previous moderation on the issue. German public opinion seemed to be weighted heavily towards Snowden, with growing calls for him to be offered asylum.⁸ The European Parliament issued calls to suspend the TTIP talks, and also passed a resolution to suspend the sharing of data on financial transactions.⁹ On the other hand, European Commission officials took a more moderate stance, underlining the need to for trust between partners to be restored, but dismissing calls for TTIP talks to be suspended.¹⁰ France and Germany soon began bilateral talks with the US over a 'no spy agreement', which could later be extended to other European countries. Over the winter, the scandal caused by the leaks seemed to gradually wash away and on January 17th Obama announced a series of reforms to the NSA: it would collect less data and the US would no longer spy on close allies.¹¹ With Hollande's visit to Washington in February and Merkel's in May, tensions seem to have eased. The EU-US summit held in Brussels in March proved a good opportunity to reaffirm ties. President of the European Council Herman van Rompuy affirmed that the transatlantic bond was 'shock proof' and that co-operation was 'unrivalled'. Regarding the leaks he stressed the co-operative approach now being taken by the EU and US in reforming data exchange rules.¹² In fact an intense dialogue on data protection regulation had by then started between the EU and US, and the reality is that the mainstay of Europe's counter-terrorism intelligence comes via the US intelligence community: in short, Europe will have to accept surveillance of their own as a transaction cost for the greater utility of wide-spread safety.

Part II, Short-term consequences

Internationally, Snowden's leaks dealt a heavy blow to the US, significantly damaging relations with many countries, such as Brazil. International opinion weighted in heavily against the indiscriminate spying apparently being carried out by the NSA, and in December 2013 the UN General Assembly approved a resolution on the 'Right to privacy in the digital age'. The fact that the leaks did not lead to a real fallout between the US and Europe is testimony to the strength of transatlantic bonds. Negotiations over the TTIP began despite the European Parliament's calls for them not to; data sharing was not suspended, and Europe did not grant Snowden asylum. During his state visit to the US in February 2014, Hollande strove to emphasize the importance of bilateral relations, and concerning the NSA revelations he stated: 'Mutual trust has been restored'.¹³ Merkel also sought to ease the tension caused by the NSA affair, despite growing sympathy for Snowden in Germany. In other European states, such as Poland and Estonia, there was only limited fallout in the first place, seeing as relations with the US were always prioritized. It is hard to find any evidence that co-operation thus far has been meaningfully affected: it continues on a daily basis on issues such as terrorism and organized crime, but also and in broader terms on issues of international diplomacy such as Ukraine, Syria and Iran. More broadly, the EU and US continue to promote good governance and the rule of law, seeking to enhance the structures of global governance and to promote a rules-based global order. Despite this, it may be argued that a significant rift has opened between the US and the European Parliament. From the first days of the leaks the Parliament took a strong stance, calling for suspension of agreements with the US in various areas. Later on, it invited Snowden to present

evidence on the NSA program, and the session was eventually held via video link in December 2013, despite attempts by some Conservative MEPs to prevent this. In March 2014, it passed a resolution to suspend a series of data sharing agreements with the US.¹⁴ The European Parliament's resolutions are not legally binding, but its favorable vote will be necessary to approve the TTIP agreement. While the parliament is unlikely to reject an agreement that otherwise has full European backing, its critical stance could prove to be an obstacle to ratification, as shown by the resolution adopted in March.

Four sets of factors explain why the revelations only caused limited fallout. Firstly, and as noted earlier, European grievances over the NSA's bulk data collection were somewhat hypocritical: indeed it quickly became apparent from the leaks that many European intelligence agencies were also involved in large-scale data mining. Moreover, many European intelligence agencies, including Germany's and France's, were involved in more or less extensive co-operation with the NSA itself. Mass data gathering may have shocked the European and American public, but for European governments it was less surprising. This explains why the first wave of revelations passed without causing significant tension between European capitals and Washington. Secondly, while the second and third waves of leaks were far more damaging than the first in diplomatic terms, they were not completely unexpected. In fact, although shocking, it did not in retrospect seem too surprising that states would spy on each other to better understand their intentions and predict their behavior. Thirdly, European capitals' room for maneuver was relatively limited: blocking co-operation with the US on counterterrorism issues would have been a symbolic but ultimately self-defeating step. The same is true for halting the negotiations on the TTIP. In fact, it has been estimated that an ambitious agreement could boost the EU economy by 120 billion euros a year, equivalent to about 500 euros per household.¹⁵ The EU simply cannot afford to lose the opportunity to make economic gains of such importance at a time when Europe's economy is ailing. European room for maneuver was also limited by internal divisions: the leaks had revealed that the British intelligence community (and GCHQ in particular) was practically working as part of the NSA and had been carrying out extensive surveillance operations on European partners. The British position, along with the unwillingness of many states in Eastern Europe to challenge the US, meant that a common European stance was difficult. Moreover, even if Europeans had decided to take self-defeating steps to symbolically condemn US actions, there was no reason to believe American spying would have been curtailed or terminated. The final factor in smoothing the European reaction and easing tensions was the start of the Ukrainian crisis in February/March 2014. The crisis was a sign of growing instability in Europe's neighborhood, and a reminder of the US's enduring importance in European security. From the start of the crisis, the EU and US have striven to emphasize transatlantic unity in view of an external challenge, and therefore tried de-emphasize the fallout from the NSA affair.

The diplomatic fallout has been limited, but Snowden's revelations have impacted relations on a deeper level: the bonds of trust between Europe and America have been undermined. The loss of trust has been caused not so much by the mass collection of citizens' data as by the spying on diplomats and heads of government. In fact, while mass data collections has somewhat soured public perceptions of the US, the fact that European agencies were complicit in the data's collection has somewhat curbed the fallout. Arguably, mass collection of data has undermined citizens' trust towards political elites in general: polling carried out by the German Marshall

Fund of the United States suggests that Europeans are opposed to surveillance carried out by the US and by their own governments alike.¹⁶ On the other hand, it may be argued that the bugging of embassies, diplomats and heads of government has significantly undermined the 'special' nature of the transatlantic relationship in the eyes of the political elite, harming US-German relations in particular. The revelation that the US was carrying out monitoring from its Embassy in the heart of Berlin served almost as a visual metaphor for the loss of trust. In her state visit to the US in May 2014, Merkel sought to lessen the tension, but also stated that there were still difficulties to overcome, and that 'there will have to be more than just business as usual'.¹⁷ The fact that initial plans for a no-spy agreement between Germany and the US were shelved is further testimony to the simmering tension. Germans, once enthusiastic of Obama, have now become disillusioned with his foreign policy: the failure to close down Guantanamo, the proliferation of drone strikes and the different attitudes towards intervention in Libya and Syria have all contributed to this perception. The fallout between the US and Germany may not yet have reached its endpoint: on June 4th 2014, the German Federal prosecutor launched an official investigation in the hacking of Merkel's phone, a sign that anger over the spying has prevailed over considerations of the potential damages to the relationship with the US. Throughout Western Europe, with the possible exception of Britain, the NSA revelations have been a significant blow to transatlantic unity. Compared to one year ago, the transatlantic relationship is not markedly weaker, but it now looks self-interested and pragmatic rather than idealistic and selfless.

PART III: Future prospects

While extensive co-operation between the US and Europe is set to continue, the leaks and the loss of trust they entail are likely to have a series of concrete consequences in the medium term. First of all, it is possible that public concerns over mass data collection will lead to increased pressure on European intelligence agencies to weaken their co-operation with US agencies, potentially undermining collective security: more likely however is that governments will weather this storm and it will be business as usual to a great degree. As far as the TTIP is concerned, negotiations are still ongoing, but it seems increasingly likely that fears over data protection will make it harder to adopt common standards, while fears of backdoor access may lead to resistance to the opening up of European government procurement to US companies. Ultimately, the European Parliament will have to approve the final deal, a potentially difficult hurdle to overcome. To keep abreast with the pace of technical change revealed by the NSA's techniques, the EU and European governments are set to launch a set of initiatives designed to update the EU's digital infrastructure so that it is better protected from external probing, and to create a stronger regulatory framework for data protection. In this regard, in October the Commission developed proposals for the reform of data protection, ensuring that non-European companies respect EU data protection law and only transfer data outside of the Union in specific circumstances. These combined efforts are likely to result in a strengthened European data protection system and in stronger regulations, which could end up restricting not only American spying but also the operations of US companies in Europe if they fail to comply with European standards. This may actually serve as a stimulus for the US to adopt similar standards.

In diplomatic terms, there is likely to be a symbolic push for a formal or informal agreement over spying, and a push to review existing EU-US data transfer agreements. Official limitations on actual spying seems unlikely after the failure of the US-German 'no spy' agreement. Instead of a

formal understanding it is likely that the US will refrain from indiscriminate spying in the future, recognizing the potential for diplomatic fallout. In terms of data-transfer agreements, the EU is seeking to strengthen the existing 'Safe Harbor' data transfer framework, ensuring that the US does not abuse the clause allowing extensive transfers for national security reasons. Moreover negotiations are ongoing for an 'Umbrella Agreement' for data transfer in the context of counterterrorism and judicial cooperation: the key point will be securing the right of European citizens to seek redress in American courts in case of improper data transfer. The US is likely to be receptive to these initiatives, realizing that these are conciliatory steps and that indiscriminate spying has the potential to cause serious damage.

If current negotiations concerning future co-operation in data sharing succeed, it is possible that Snowden's revelations will eventually come to be seen as having had some positive side-benefits within a wider narrative of treachery: spurring co-operation and playing a role in restoring trust and renewing the transatlantic partnership in the digital age. It will be possible for the US to weather this storm of adverse publicity and diplomatic fallout but if this is the path chosen it will cast a shadow over transatlantic relations: it will be better to offer symbolic reforms to curb the NSA's perceived excesses.

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NOTES

¹ Press Conference by Viviane Reding, Vice-President of the European Commission and EU Justice Commissioner, 14 June 2013, http://europa.eu/rapid/press-release_SPEECH-13-536_en.htm

² Remarks by President Obama and German Chancellor Merkel in Joint Press Conference, 19 June 2013, <http://www.whitehouse.gov/the-press-office/2013/06/19/remarks-president-obama-and-german-chancellor-merkel-joint-press-confere>

³ For Ashton's statement: See Statement by EU High Representative Catherine Ashton on the alleged surveillance of EU premises, 30 June 2013, http://europa.eu/rapid/press-release_MEMO-13-633_en.htm

For Commission statement see Commission discussion on the alleged US intelligence activities targeting EU institutions and Member States, 2 July 2013, http://europa.eu/rapid/press-release_MEMO-13-641_en.htm

⁴ Press Conference by president Hollande, 1 July 2013, <http://www.elysee.fr/conferences-de-presse/article/point-de-presse-du-president-de-la-republique-a-lorient/>

⁵ Press Conference by Chancellor Angela Merkel, 19 July 2013, <http://www.bundesregierung.de/ContentArchiv/DE/Archiv17/Mitschrift/Pressekonferenzen/2013/07/2013-07-19-merkel-bpk.html>

⁶ Phone Call with president Obama, 22 October 2013, <http://www.elysee.fr/communiqués-de-presse/article/entretien-telephonique-avec-le-president-barack-obama/>

⁷ Press Conference by Chancellor Angela Merkel, 24 October 2013 <http://www.bundesregierung.de/ContentArchiv/DE/Archiv17/Mitschrift/Pressekonferenzen/2013/10/2013-10-24-merkel-er.html>

⁸ <http://www.spiegel.de/politik/deutschland/edward-snowden-politiker-und-prominente-wollen-asyl-fuer-whistleblower-a-931468.html>

⁹ <http://www.europarl.europa.eu/news/en/news-room/content/20131021IPR22725/html/MEPs-call-for-suspension-of-EU-US-bank-data-deal-in-response-to-NSA-snooping>

¹⁰ Speech by Viviane Reding, Vice-President of the European Commission and EU Justice Commissioner at Yale, 30 October 2013, http://europa.eu/rapid/press-release_SPEECH-13-865_en.htm

¹¹ Remarks by the President on Review of Signals Intelligence, 17 January 2014, <http://www.whitehouse.gov/the-press-office/2014/01/17/remarks-president-review-signals-intelligence>

¹² Remarks by President of the European Council Herman Van Rompuy following the EU-US summit, 26 March 2014, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/141919.pdf

¹³ Remarks by President Obama and President Hollande of France in Joint Press Conference, 11 February 2014, <http://www.whitehouse.gov/photos-and-video/video/2014/02/11/president-obama-holds-press-conference-president-hollande-france#transcript>

¹⁴ <http://www.europarl.europa.eu/news/en/news-room/content/20131021IPR22725/html/MEPs-call-for-suspension-of-EU-US-bank-data-deal-in-response-to-NSA-snooping>

¹⁵ European Commission assessment based on a study commissioned by the Centre for Economic Policy Research, http://trade.ec.europa.eu/doclib/docs/2013/sepember/tradoc_151787.pdf

¹⁶ Transatlantic Majorities oppose Domestic Surveillance, GMF Trends Brief, http://trends.gmfus.org/files/2013/11/TTBrief_DomesticSurveillance_Nov13.pdf

¹⁷ Remarks by President Obama and German Chancellor Merkel in Joint Press Conference, 2 May 2014, <http://www.whitehouse.gov/the-press-office/2014/05/02/remarks-president-obama-and-german-chancellor-merkel-joint-press-confere>