

DIGITAL SUMMIT FOR GROWTH

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Data protection rules delayed at EU summit talks

France and Germany responded to escalating rows over espionage by the US by announcing a review of security relations to be completed by the end of the year. Meanwhile, the adoption of a proposed EU data protection regulation was delayed until 2015.

The surprise announcement on the “no spying” agreement was the result of an earlier bilateral meeting between Merkel and Hollande that took place shortly after the pair arrived at the summit, and was then presented to the remaining member states.

The development came in response to a barrage of condemnation following reports of Merkel’s phone being bugged, amplified by further revelations of alleged bugging of leaders, including Italy’s Prime Minister, Enrico Letta, by the US National Security Agency.

Attempts to bring forward the implementation of a proposed new data protection regulation (DPR) – strongly pushed by France and the European Commission in advance of the summit



Photo: The Council of the European Union

– foundered however, with a new commitment to introduce the rules by 2015.

Merkel: ‘Words are not enough’

In a briefing following the summit Merkel said that she was not expecting an apology from the US for the fact her phone may have been tapped, but added: “We need to rebuild the basis of trust. Words will not be enough. Change is necessary.”

The agreement between France and Germany to review their espionage relations with the US will be attached as an annex to the summit conclusions, and signed by all 28 member states, who will acknowledge the intention of the two countries to carry out the task.

Merkel said that other member states would be welcome to join the process. Asked what exactly it would involve, the German Chancellor said: “I think that [US, French and German] intelligence services need to come to agreements with each other on yardsticks and norms about how they relate to each other and to their citizens.”

The UK’s David Cameron was apparently not involved in the initiative. A senior EU official said that – given that the UK had not been subject to similar reports of intelligence incursions - that was a natural situation. Reports in the Italian newspaper L’Espresso, published today, allege UK intelligence involvement in attempts to bug the Italian government.

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Data protection: from 2014 to 2015

The omission of the UK from the joint Franco-German statement, added to the fact that Cameron left the summit without briefing the press, suggested some tension.

Cameron did achieve a major UK goal in delaying the date of implementation of a new data protection regime, however.

Lawmakers in the European Parliament's civil liberties committee voted on Monday (21 October) to strengthen Europe's data protection laws, including plans to impose fines of up to €100 million on companies such as Yahoo!, Facebook or Google if they break the rules.

The Parliament, and Justice Commissioner Viviane Reding, have consistently tied the need for stronger data protection to acknowledge alleged privacy

abuses arising from information leaked by former US espionage contractor Edward Snowden.

Early drafts of the European Council conclusions called for the DPR to be completed by "Spring 2014". That was later changed to "during 2014", an amendment that was strongly criticised by the Commission.

A high-ranking EU official said before the summit that the European Commission hoped that the wording would change back to "next Spring", rather than "next year" to give more impetus to the proposal.

The final conclusions have now been amended to read "by 2015", wording interpreted by France's President, François Hollande, as signifying the beginning of that year.

Cameron fought hard for delay to data protection

The French President put a positive gloss on the delay, claiming that some countries had been calling for the DPR to be introduced "as soon as possible". Since such a formulation was meaningless, he said, it was far better to have a firm date than none.

Merkel for her part acknowledged she had supported the delay to the DPR, though she distanced Germany's motivations from those of the UK.

"The UK wanted to delay the DPR because they feel that it may harm the interests of business," she said after the summit. "Germany had reservations on not moving too quickly to ensure that it can reconcile the existing rights of its citizens," she explained.

A senior EU official told EurActiv on condition of anonymity that Cameron had fought hard for the 2015 date, and began the summit negotiations arguing that it would be better to have no deadline at all.

EU to push ahead on data protection despite UK opposition

The European Commission is set to ignore attempts to delay the implementation of a proposed new data protection regulation (DPR) suggested at last week's EU summit, claiming that the meeting's conclusions have been misinterpreted.

EurActiv has learned that the EU executive instead believes that a mandate to push forward with new rules by spring next year remains possible, and that this can be achieved even in the face of strong



opposition from the UK.

Last week saw a tussle over the wording of the European Council conclusions – before the summit started – with the Commission calling for the DPR to be completed by "spring 2014".

The move is seen as critical since delaying the agreement of new rules until later next year risks passing the dossier to

new commissioners who will take up their posts at the beginning of 2015.

Conclusions suggested delay until 2015

Many analysts believe that the proposed DPR would need to be redrafted from scratch by a new Commission, leaving the current proposal effectively wasted.

The final conclusions adopted last week suggested that the DPR should be introduced "by 2015". Indeed France's president, François Hollande, told a post-summit briefing that the new wording meant that the new rules should be in place by the beginning of that year.

The French president put a positive gloss on the delay, claiming that some countries had been calling for the DPR to be introduced "as soon as possible". Since such a formulation was meaningless, he said, it was far better to have a firm date than none.

EU sources have told EurActiv, however,

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that the wording of the conclusions leaves open the opportunity to introduce the DPR earlier than 2015.

Leaders agreed: “The timely adoption of a strong EU General Data Protection framework and the Cyber-security Directive is essential for the completion of the Digital Single Market by 2015.”

EU sources said that this meant that the single market for telecommunications should be in place by 2015, but left the data protection paper to be adopted in a ‘timely’ way.

Senior EU sources told EurActiv that only the UK – with the support of Sweden – opposed the swift introduction of the DPR.

UK and Sweden isolated?

A senior EU official told EurActiv on condition of anonymity that British Prime Minister David Cameron had fought hard for the 2015 date, and began the summit negotiations arguing that it would be better to have no deadline at all.

“If the DPR is now pushed forward the situation will not be like the European Council, where a compromise was reached, but will be carried out according to qualified majority voting, and the UK and Sweden alone will not be able to hold the paper up,” said the EU source.

The Commission believes that on a qualified majority vote, the paper could be adopted by the ministers by next spring, even in the face of UK and Swedish opposition, since on a qualified majority vote these two countries could not combine to veto it.

Lawmakers in the European parliament’s civil liberties committee voted last week Monday (21 October) to strengthen Europe’s data protection laws, including plans to impose fines of up to €100 million on companies such as Yahoo!, Facebook or Google if they break the rules.

The Parliament, and Justice Commissioner Viviane Reding, have consistently tied the need for stronger data protection to acknowledge alleged privacy abuses arising from information leaked by former US espionage contractor Edward Snowden.

Data protection: France, UK lead rival camps at summit

EU Justice Commissioner Viviane Reding is looking to France to spearhead a move to pull the data protection regulation up the agenda at today’s EU leaders’ summit, fearing that the current conclusions leave the proposals exposed to delay.



The summit draft statement states that the adoption “next year” of the EU general data protection regulation “is essential for the stability and growth of the Digital Single Market”.

A high-ranking EU official said the European Commission hoped that the wording would change to “next Spring”, rather than “next year” to give more impetus to the proposal and ensure that it is adopted by then.

On Monday (21 October) lawmakers in the European Parliament’s civil liberties

committee voted to strengthen Europe’s data protection laws, including plans to impose fines of up to €100 million on companies such as Yahoo!, Facebook or Google if they break the rules.

“Parliament is ready to negotiate with the Council, so to say ‘next year’ is no more significant than saying the sun rises in the east,” said the official.

France, Poland leading data protection push

EU sources made clear that they believe France’s president, François Hollande, and Poland’s prime minister, Donald Tusk, will lead the support amongst member states keen to give added impetus to the data protection regulation.

Poland is believed to be supportive as a result of its legacy as a Soviet satellite,

when its citizens were subject to heavy surveillance.

Meanwhile the Commission views the UK as the leader of a group of countries seeking to delay the passage of the regulation, and convert it into a directive to dilute its impact.

Hungary, the Czech Republic and Sweden are also believed to be supportive of this position.

The Commission source said that the

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UK's position appeared contradictory: "On the one hand they claim that they favour a regime that encourages more free trade, on the other they are actively seeking to preserve a fragmented regime in which there are 28 data protection authorities across the EU," said the EU official.

The UK will not support a change in the wording of the conclusions to speed up the progress of the data protection regulation.

The Parliament, and Reding, have consistently tied the need for stronger data protection to acknowledge alleged privacy abuses – including by member states – arising from data leaked by former US espionage contractor Edward Snowden.

In an interview with EurActiv, Hosuk Lee-Makiyama, the director of Brussels-

based think-tank the European Centre for International Political Economy (ECIPE), said: "Intelligence is like underwear, everyone has it but you are not supposed to show it off... The problem is that the Parliament does not have an intelligence agency and they are furious."

Germany's position pivotal

Nevertheless with allegations of US attempts to bug the phone of German Chancellor Angela Merkel surfacing today, the impact of the Prism scandal on the data protection debate could prove significant.

The position of Germany in the tussle between the UK and France will be pivotal, with Europe's largest economy remaining ambiguous on the proposed data protection

regulation.

There is widespread support for the Commission's proposed regulation amongst private sector German companies, whilst the public sector – keen to protect its federal level powers – is less keen.

Lee-Makiyama told EurActiv that the impact of the data protection regulation on European trade would be significant and had not been properly accounted for by the Commission.

"I did a study based on the Commission's own figures complemented by some numbers from the UK to see what this would entail, and found that the result would be a GDP drop by at least 0.3 %, because if you cut off data you increase the cost to the EU manufacturing and services industry," he said.

Brussels to set up security, business networks in push for European cloud

The Commission is setting up new expert groups to advise on security and business related-issues to accelerate the establishment of a unique "European cloud" capable of challenging global rivals in a sector where the EU has been lagging behind.

Yesterday (28 October), the EU executive announced the formation of an expert group to work on safe and fair terms for cloud computing contracts, to identify best options for consumers



and small companies, often reluctant to purchase cloud computing services because contracts are unclear.

The Expert Group is part of the Commission's push to enhance trust in cloud computing services and unlock their potential for boosting economic productivity in Europe. The group will be drawn from academics, lawyers, and consumers and providers of cloud computing services.

It is one of the key actions under the Commission's Cloud Computing Strategy, which was adopted last year (IP/12/1025, MEMO/12/713) and is meant to tackle cloud-related issues.

"We are asking experts to provide a balanced set of contract terms for consumers and small and medium-sized enterprises to use cloud computing

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services with more confidence. Trust is bankable – citizens need to be able to trust that the services they use are fair and reliable,” said vice president Viviane Reding, the EU’s justice commissioner, announcing the group’s establishment.

Expert group will convene in November

The first meeting is scheduled for 19-20 November 2013 and the group is expected to report back in spring 2014. The input will feed into a policy paper launching a broad public consultation on possible ways forward on cloud computing contracts for consumers and SMEs.

Meanwhile the “European Cloud Partnership” – which will meet in Berlin under the auspices of Neelie Kroes, the commissioner for the digital agenda, in two weeks’ time – will set about a more commercial strategy to unleash European cloud services.

The Partnership is a group of industry and public sector stakeholders with a steering board, chaired by Toomas Hendrik Ilves, the President of Estonia, which advises the Commission on options for converting cloud computing into economic growth opportunities.

The steering group is currently working on a strategy paper which will be discussed in Berlin, and will also consider new instructions to create a pan-European group of “digital co-ordinators” from each member state.

This was a specific request of heads of state and government at last week’s summit, which they spelled out in the conclusions: “The European Council calls for the establishment of a strong network of national digital coordinators which could play a strategic role in cloud, Big Data and Open Data development.”

Questions over “Fortress Europe” approach

However, the drivers to push for a specific “European cloud” are

controversial, since they come on the back of a diminution of US cloud services, following the US espionage Prism scandal.

In June and July 2013, the Cloud Security Alliance, an industry group, surveyed members and other cloud computing stakeholders about their reactions to the US Prism spying scandal.

One in ten of non-US residents responding indicated that they had cancelled a project with a US-based cloud computing provider, in the wake of Prism; and 56% said that they would be less likely to use a US-based cloud computing service.

The Alliance predicted that US cloud computing providers might lose as much as €26 billion by 2016, equivalent to the loss of 20% of its share of cloud services in foreign markets.

“If European cloud customers cannot trust the United States government, then maybe they won’t trust US cloud providers either,” said Neelie Kroes, the EU’s digital agenda Commissioner. “If I am right, there are multibillion-euro consequences for American companies. If I were an American cloud provider, I would be quite frustrated with my government right now,” Kroes said in July.

Europeans hope to use the Prism scandal to win a share of this market, indeed this was one of the key issues on the agenda when Neelie Kroes met with the European Cloud Partnership last July in Estonia.

It is certainly true that US-based cloud service providers – including Google, Amazon and Microsoft – currently account for the lion’s share of cloud services, with around 85% of global markets.

Other foreign-based companies which are fast expanding into cloud services include China’s Huawei, whose chief executive for carrier networks, Ryan Ding, recently told EurActiv: “Our future investment strategy is SoftCOM, based on cloud, and that will be the basis of future investments in our products.”

Picture is not so bleak as appears

There is some fear that Europe’s enthusiasm to build up a cloud capability may move in a protectionist direction, however.

John Higgins, the director General of DigitalEurope points out that the key to enabling cloud services is to keep open global models and markets, since cloud computing relies heavily on international data flows.

Higgins is more optimistic on Europe’s current cloud capabilities, saying that the economic benefits of cloud for companies and governments do not depend on who is providing the service.

There are also many European SMEs which are involved in cloud services, he says, in addition to larger players such as SAP, meaning that the picture of Europe being inundated by foreign suppliers is not quite accurate.

However, arguments about “fortress Europe” will persist, especially since cloud is connected heavily to a number of sensitive policy issues including data protection, copyright and environmental concerns surrounding energy expenditure required to cool large data centres.

Cloud policy will be a fine balance

Various clauses within the proposed data protection regulation would impact on the larger US companies, such as Google and Amazon, offering so-called “over-the-top” data services, and more significantly on the burgeoning cloud computing sector.

These are all sensitive issues in the context of the EU’s ongoing negotiations with the US for for the Transatlantic Trade and Investment Partnership (TTIP), where rivalry between the two trade blocs in the critical booming data sector threatens to spoil any deal.

Finding a balance between pushing for Europe’s own cloud capability, without appearing to freeze out rivals unfairly, will be a key challenge facing policymakers in the coming weeks.

Digital summit seeks to move away from snooping debate

Heads of government meeting tomorrow (24 October) for the first European-level summit dedicated to the digital agenda will seek to focus on single market issues and steer the debate away from the controversial NSA snooping scandal and data protection.

Draft conclusions from the summit, seen by EurActiv, confirm that member states would rather focus on the “digital single market” than engage in an open dispute over the controversial data protection regulation.

The draft conclusions focus heavily on the new telecoms single market package published by the European Commission and still under consideration by the Parliament.

“The European Council welcomes the presentation by the Commission of the “Connected Continent” package and encourages the legislator to carry out an intensive examination with a view to its timely adoption,” the conclusions say.

Within the ambit of the telecoms single market, however, contentious issues appear within the conclusions. The need to harmonise spectrum frequency allotment is backed, but with the caveat that this should “respect spectrum as a source of national revenue”.

Google tax likely to cause friction

Although the Commission’s plans do give member states the right to continue to raise money from spectrum licenses,



this would be hemmed in, subject to new harmonised limits, and subjected to decisions made ultimately in Brussels, according to the proposals.

France, Germany and the UK are all thought likely to resist allowing Brussels ultimate control over spectrum.

French-backed proposals for a new so-called “Google tax”, a levy on so-called ‘over-the-top’ service providers, are alluded to in pledges within the conclusions to look more closely at taxation across the digital sector.

“The on-going work to tackle tax avoidance, tax base erosion and profit shifting is important also for the digital economy. Member States should coordinate their position in order to achieve the best possible solution for the EU,” the conclusions say.

They also charge the Commission, in the context of its ongoing VAT review, to consider “differentiated tax rates for digital and physical products” and report back to leaders at a December summit, which will consider a raft of taxation issues.

The French minister for the digital economy, Fleur Pellerin, has pushed hard for such a proposal, reprising her calls in Brussels recently when she told a conference that the top five US-based internet companies were stifling European innovation in new technologies and should be more tightly regulated and taxed.

The Google tax proposal is likely to be strongly resisted by many member states’ leaders at the summit however.

Popular proposals to cut telecoms roaming charges across Europe, another

essential element of the single market for telecoms proposal, is also thorny, since member states with large incumbent telecoms operators, such as France, Italy and Germany, might seek to protect the interests of these companies. In addition, groups representing the interests of the telecoms sector have bitterly complained that fading out roaming charges will deprive them of income at a time their profits are declining.

Data protection the elephant in the room

The elephant in the room at the summit, however, will be data protection. The conclusions currently bury the issue beneath the telecoms proposals, referring only to the importance of fostering “trust of citizens and businesses in the digital economy, including through a strong data protection framework.”

The Council draft adds that the adoption “next year” of the EU general data protection regulation “is essential for the stability and growth of the Digital Single Market”.

Council President Herman Van Rompuy will be hoping that progress on the digital single market is not waylaid by disputes underlying these simple conclusions, but the Parliament and Justice Commissioner Viviane Reding will be hoping for a more detailed debate on the issue.

On Monday (21 October) lawmakers in the European Parliament’s civil liberties

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committee voted to strengthen Europe's data protection laws, including plans to impose fines of up to €100 million on companies such as Yahoo!, Facebook or Google if they break the rules.

Moreover the Parliament, and Reding, have consistently tied the need for stronger data protection to acknowledge alleged privacy abuses – including by member states – arising from data leaked by former US espionage contractor Edward Snowden.

Prism scandal not mentioned in the conclusions

Issues of substance in the data protection dossier – including controversial provisions on data-transfers from outside the EU, which would require US operators to seek authorisation from European data

authorities to access EU citizens data – are unmentioned in the conclusions. Nor is there any mention of the Prism scandal.

Speaking at a press briefing in Strasbourg yesterday, German Green MEP Jan Philipp Albrecht, the rapporteur on the data protection regulation, said: “On the Snowden revelations I am not the only one really surprised that after Snowden's revelations – which also touch on abuses by EU intelligence agencies – no government took action on the fundamental breaches of human rights.”

“I realise that you have to be a pragmatist, but the fact that there has been no message [about Prism] at EU level is the wrongest message possible... and I wish the EU would find a new self-confidence,” Dimitrios Droutsas, a Greek socialist MEP who also sits on the LIBE committee added.

“The European Parliament has thrown

down the gauntlet – European leaders must now rise to the challenge. Heads of state and government should make clear that common European data protection rules are very much needed and that they are needed now,” Viviane Reding added in a statement.

However, these arguments could be swamped at the summit.

Hosuk Lee-Makiyama, a director of the Brussels based European Centre for International Political Economy (Ecipe), a think-tank, told EurActiv that he believed focusing on digital single market issues was a Council strategy, designed to yield success and avoid leaders becoming mired in dispute.

In relation to the Snowden allegations, Lee-Makiyama said: “The problem is that the member states all have intelligence agencies, but the Parliament and the Commission do not, which is why they are more exercised about the issue.”

Think tank analyst: ‘Intelligence is like underwear’



the data protection debate are unlikely to be successful, according to Hosuk Lee-Makiyama. The political expert believes the data protection package will take a back seat to the telecoms single market proposal.

Hosuk Lee-Makiyama is a director of the Brussels based European Centre for International Political Economy (ECIPE), a think-tank. He spoke to EurActiv's Jeremy Fleming.

What do you see emerging from this summit, which has placed digital agenda issues at the top of the agenda?

This summit is the first of its kind. It becomes an issue of priority for the Commission and Council. The cloud and data privacy issues are being seen in the light of the follow the Prism scandal. My take is that the telecoms single market is the easier issue to go for. It has broad political appeal, it has immediate consumer value, and less than 3% of turnover in the telecoms sector is in intra-European trade meaning there is no single market. There is outright collusion

between some of the telecoms operators where they have agreed not to intrude on each others' markets. If roaming is removed, operators will be forced to form airline-style alliances, which will create an incentive for them to merge and work together.

How will operators be able to replace profits from roaming?

Roaming represents a cost. If many foreign mobiles are operating in your market you need to settle that cost between the operators. If the settlements are then blocked, you have to control revenue streams at both ends. So, for example, a Croatian mobile operator in Germany represents a cost for itself and a German operator. If they are not allowed to settle the balance you create an incentive to merge, because that way the cost and the revenue are in the same firm. This would create larger market concentration, but only across borders, which would not affect competition.

Do some member states want to protect their telecoms operators?

At today's summit of heads of EU state and government, attempts to use the Prism scandal to reinforce

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The big telcos have access to the regulatory bodies of the member states which goes back decades, so the proposal of creating a European network regulator that can be governed by Brussels would be pointless.

Are there any other controversial issues on the telecoms package you would highlight?

Peripheral questions about net neutrality may be controversial, with some countries claiming the Commission is going too far or not far enough. The central question here is whether if you see bad market practice it should be a matter of consumer choice or an issue of law.

And as for data protection, how do you see the discussion going there?

Data privacy is extremely controversial. There is, I believe, a choice for the Council between moving forward on telecoms or data protection, and I think they should move forward on the telecoms package. Both from a timing perspective and also, as I see it, the data privacy issue is an extremely uninformed debate. If we start demanding data localisation in Europe [by foreign internet companies] people have not started thinking about the consequences. I did a study based on the Commission's own figures complemented by some numbers from the UK to see what this would entail, and found that the result would be a GDP drop by at least 0.3%, because if you cut off data you increase the cost to the EU manufacturing and services industry.

Do you think that the proposals to increase Europe's cloud capabilities will be successful?

Europe does not have the entrepreneurship or the business friendly environment for the cloud. Ten years ago the European economy had the chance to become an efficient provider of internet network or over-the-top services, or to



focus on infrastructure, and we chose infrastructure, and there are many reasons, to do with culture and the business climate why we chose not to be good at the internet.

So you are not optimistic about the chances of the data protection regulation?

The impression I have is that the Council could ask for a new draft from Viviane Reding, whilst the Parliament position moves further and further from the mainstream. Can these positions be reconciled? Let's say France and likeminded countries roll over the free traders like the UK and Sweden, there would still be outstanding issues with the Parliament. And unlike the Tobin tax, the impact has not been researched properly, and that makes me extremely concerned.

Is there not popular appeal in taking action to counteract the effects of the Prism scandal though?

This exclamation against the Prism scandal primarily came from people who do not have intelligence services. Even France refused the Bolivian president [Evo Morales] permission to fly through its airspace [when there were suspicions that former US espionage contractor Edward Snowden was being smuggled out of Russia]. Even though they were publicly outraged, there is a cooperation between the US and European countries under the

public layer. Intelligence is like underwear, everyone has it but you are not supposed to show it off, and there are channels between governments and the US National Security Agency and that's the way it should be. The problem is that the Parliament does not have an intelligence agency and they are furious. It is like those countries without access to trade are upset by international trade. It's just the way it is.

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