

Commissioner Věra Jourová

cc: U.S. Secretary of Commerce, Wilbur Ross

Ms Isabelle Falque-Pierrotin
Chairman of Article 29 Working Party

MEP Claude Moraes
Chair of the Committee on Civil Liberties, Justice, and Home Affairs

HE Ms Marlene Bonnici
Ambassador Extraordinary and Plenipotentiary Permanent Representative of Malta
to the EU

28 February 2017

Re: Coalition of Civil Liberties Organisations call for EU Lawmakers to Push for US
Surveillance Reform to Ensure a Right-respecting Framework for Non-US persons

We represent a coalition of human rights organisations based in the Member States of the European Union and around the world. We urge you to ensure that the United States substantively reforms its surveillance laws this year to protect the rights of non-US persons including Europeans. Organizations of this coalition have repeatedly pointed out the flaws in the US redress and oversight mechanisms for privacy violations, the inadequacies in the limitation on collection, access and use of personal data, and the uncertainty of written assurances serving as a basis for the EU-U.S. Privacy Shield data transfer arrangement. Without meaningful surveillance reforms we believe that it is your responsibility to, at a minimum, suspend the Privacy Shield. We urge you to make that position clear to your counterparts in the United States during your upcoming visit.

Title VII of the U.S. FISA Amendments Act (FAA) will expire on 31 December 2017 unless Congress acts to extend the law. This is the provision of U.S. law which includes the authority known colloquially as “Section 702.” Section 702 is very broad, providing authorisation for the PRISM and UPSTREAM surveillance programmes that violate international human rights standards.¹ Without significant reform, Section 702 will continue to threaten the free flow of information overseas, and negatively impact global data protection and privacy.

Surveillance under Section 702, including the under the abovementioned programmes, was at the heart of the Court of Justice of the European Union’s decision to strike down the “Safe Harbour” data transfer arrangement between the United States and the European Union.²

¹ <https://www.accessnow.org/new-call-u-s-surveillance-reform/>

² <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30d5852f28e96d934651aa32917a242c53e3.e34KaxiLc3qMb40Rch0SaxyKch10?text=&docid=169195&pageIndex=0&doclang=EN&m ode=lst&dir=&occ=first&part=1&cid=633385>

Consequently, the 702 reform is a prerequisite, even if not sufficient as a stand alone measure, to meet the Court's standard.

Safe Harbor has been subsequently replaced by the Privacy Shield. At the time of the adoption of this arrangement several groups pointed out that U.S. law as it stands was inadequate to protect Europeans' data and did not meet the "essentially equivalent" criteria set out by the CJEU.³ Since then, several developments have seriously undermined the US' commitment to protect the rights of non-US persons.⁴

There are many ways the U.S. could reform Section 702 and the FAA to better protect human rights without undermining the security of U.S. citizens or others around the world.⁵ Despite this, the predominant reform being considered now is a limitation on back-end searches for U.S.- persons' data without limiting in any way the suspicionless surveillance targeted at the hundreds of millions of people globally. If no reforms - or reforms that only provide greater protections for U.S. persons - are passed this year, we believe the U.S. will have sent a clear message to the European Union that our rights are inconsequential. We urge you to stand up for the privacy and data protection of people throughout the EU and communicate that the Privacy Shield will be suspended without meaningful reform.

Sincerely,

Access Now
Bits of Freedom
Chaos Computer Club
Civil Liberties Union for Europe
Electronic Frontier Foundation
European Digital Rights
FITuG
Föreningen för Digitala Fri- och Rättigheter
Initiative für Netzfreiheit
IT-Political Association of Denmark
La Quadrature du Net
OpenMedia
Open Rights Group
Panoptikon Foundation
Son tus datos
Statewatch
Vrijdschrift

³ <https://www.accessnow.org/cms/assets/uploads/2016/03/Priv-Shield-Coalition-LtrMar2016.pdf>.

⁴ <https://www.accessnow.org/cms/assets/uploads/2017/02/Letter-to-Jourova.pdf>;
<https://www.accessnow.org/cms/assets/uploads/2016/09/StepanovichWrittenTestimony-GermanBundestag1stCol.pdf>

⁵ <https://www.accessnow.org/new-call-u-s-surveillance-reform/>.