



Viviane REDING

Vice-President of the European Commission
Justice, Fundamental Rights and Citizenship

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Dear Attorney General,

I have serious concerns about recent media reports that United States authorities are accessing and processing, on a large scale, the data of European Union citizens using major US online service providers. Programmes such as PRISM and the laws on the basis of which such programmes are authorised could have grave adverse consequences for the fundamental rights of EU citizens.

The respect for fundamental rights and the rule of law are the foundations of the EU-US relationship. This common understanding has been, and must remain, the basis of cooperation between us in the area of Justice.

This is why, at the Ministerial of June 2012, you and I reiterated our joint commitment to providing citizens of the EU and of the US with a high level of privacy protection. On my request, we also discussed the need for judicial remedies to be available to EU citizens when their data is processed in the US for law enforcement purposes.

It is in this spirit that I raised with you already last June the issue of the scope of US legislation such as the Patriot Act. It can lead to European companies being required to transfer data to the US in breach of EU and national law. I argued that the EU and the US have already agreed formal channels of cooperation, notably a Mutual Legal Assistance Agreement, for the exchange of data for the prevention and investigation of criminal activities. I must underline that these formal channels should be used to the greatest possible extent, while direct access of US law enforcement authorities to the data of EU citizens on servers of US companies should be excluded unless in clearly defined, exceptional and judicially reviewable situations.

*Mr Eric H. Holder, Jr.
Attorney General of the United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001
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Trust that the rule of law will be respected is also essential to the stability and growth of the digital economy, including transatlantic business. It is of paramount importance for individuals and companies alike. In this context, programmes such as PRISM can undermine the trust of EU citizens and companies in the Safe Harbour scheme which is currently under review in the EU legislative process.

Against this backdrop, I would request that you provide me with explanations and clarifications on the PRISM programme, other US programmes involving data collection and search, and laws under which such programmes may be authorised.

In particular:

- 1. Are PRISM, similar programmes and laws under which such programmes may be authorised, aimed only at the data of citizens and residents of the United States, or also – or even primarily – at non-US nationals, including EU citizens?*
- 2. (a) Is access to, collection of or other processing of data on the basis of the PRISM programme, other programmes involving data collection and search, and laws under which such programmes may be authorised, limited to specific and individual cases?*
(b) If so, what are the criteria that are applied?
- 3. On the basis of the PRISM programme, other programmes involving data collection and search, and laws under which such programmes may be authorised, is the data of individuals accessed, collected or processed in bulk (or on a very wide scale, without justification relating to specific individual cases), either regularly or occasionally?*
- 4. (a) What is the scope of the PRISM programme, other programmes involving data collection and search, and laws under which such programmes may be authorised? Is the scope restricted to national security or foreign intelligence, or is the scope broader?*
(b) How are concepts such as national security or foreign intelligence defined?
- 5. What avenues, judicial or administrative, are available to companies in the US or the EU to challenge access to, collection of and processing of data under PRISM, similar programmes and laws under which such programmes may be authorised?*
- 6. (a) What avenues, judicial or administrative, are available to EU citizens to be informed of whether they are affected by PRISM, similar programmes and laws under which such programmes may be authorised?*
(b) How do these compare to the avenues available to US citizens and residents?
- 7. (a) What avenues are available, judicial or administrative, to EU citizens or companies to challenge access to, collection of and processing of their personal data under PRISM, similar programmes and laws under which such programmes may be authorised?*
(b) How do these compare to the avenues available to US citizens and residents?

Given the gravity of the situation and the serious concerns expressed in public opinion on this side of the Atlantic, you will understand that I will expect swift and concrete answers to these questions on Friday 14 June, when we meet at the EU-US Justice Ministerial. As you know, the European Commission is accountable before the European Parliament, which is likely to assess the overall trans-Atlantic relationship also in the light of your responses.

Yours sincerely,

A handwritten signature in black ink, consisting of a series of fluid, connected strokes. The signature is centered horizontally on the page.