

EUROPEAN PARLIAMENT

1999



2004

Session document

16 March 2000

B5-0302/2000

MOTION FOR A RESOLUTION

further to the Council and Commission statements

pursuant to Rule 37(2) of the Rules of Procedure

by the following Members: Paul Lannoye, Heidi Hautala, Johannes Voggenhuber, Ilka Schröder, Patricia McKenna, Ozan Ceyhun and Alima Boumediene-Thiery

on behalf of the Verts/ALE Group

on Echelon

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B5-0302/2000

Resolution on Echelon*The European Parliament,*

- having regard to Article 286 of the EC Treaty and to Articles 6(2), 11 and 12 of the Treaty on European Union
 - having regard to Directive 95/46/EC of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹,
 - having regard to Directive 97/66/EC of the European Parliament and the Council concerning the processing of personal data and the protection of privacy in the telecommunications sector²,
- A. whereas a report from STOA (Scientific and technological Options Assessment) carried out at the request of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, published in 1999, and entitled 'Development of surveillance technology and risk of abuse of economic information' notes the existence of a system called Echelon which enables the USA's National Security Agency (NSA) to intercept private telecommunications (fixed and mobile phones, fax and e-mail) throughout the world,
- B. whereas one of the main surveillance posts for Europe is alleged to be at Menwith Hill, Yorkshire (UK),
- C. whereas this espionage system, originally created for military purposes, has been converted to use for political and economic objectives for the benefit not only of the USA but also of Canada, New Zealand, Australia and the UK,
- D. whereas the information contained in the report was recently confirmed by the publication of top secret documents released by the NSA,
- E. whereas the substance of this information represents at the least 'alleged contraventions of Community law' within the meaning of Rule 151 of the Rules of Procedure which governs the establishment of temporary committees of inquiry,
- F. whereas Article 286 of the EC Treaty lays down that the application of Community acts on the protection of individuals with regard to the processing of personal data shall be subject to monitoring by an independent body,

¹ OJ L 281, 23.11.1995, p. 31.

² OJ L 24, 30.01.1998, p. 1.

- G. whereas Article 1(1) of Directive 95/46/EC specifies that ‘Member States shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data’,
- H. whereas Directive 97/66/EC concerning the processing of personal data and the protection of privacy in the telecommunications sector (OJ L 24, 23. 01.1998) is even more clearly relevant: ‘service providers must take appropriate measures to safeguard the security of their services’; ‘measures must be taken to prevent the unauthorised access to communications in order to protect the confidentiality of communications by means of public telecommunications networks and publicly available telecommunications services’; ‘where the rights of the users and subscribers are not respected, national legislation must provide for judicial remedy; sanctions must be imposed on any person, whether governed by private or public law, who fails to comply with the national measures taken under this Directive’,
- I. whereas the purpose of the above-mentioned directive is ‘the harmonisation of the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy, with respect to the processing of personal data in the telecommunications sector’,
- J. whereas, regarding the confidentiality of communications, Article 5(1) of the said directive lays down that ‘Member States shall ensure via national regulations the confidentiality of communications by means of a public telecommunications network and publicly available telecommunications services. In particular, they shall prohibit listening, tapping, storage or other kinds of interception or surveillance of communications, by others than users, without the consent of the users concerned, except when legally authorised, in accordance with Article 14(1)’,
- K. whereas, while it is true that the abovementioned directives apply only to policies and activities covered by Community law, the Community’s institutions and bodies, in their capacity as service providers, may legitimately be deemed to have failed in their duty to ‘take appropriate measures to safeguard the security of their services’,
- L. whereas Commissioner Bangemann, when questioned by Parliament at the plenary sitting on 14 September 1998, stated in reply to the concerns expressed by many Members on all sides of the House regarding the existence and capabilities of Echelon: ‘If the system existed in such a form, that would naturally represent a blatant violation of rights, the individual rights of citizens, and of course an attack on the security of the Member States. That is absolutely clear. The Council, and naturally the Commission and the Parliament as well, would have to respond the instant something of that kind was officially confirmed’;
- M. whereas the proportionality principle – enshrined in the case law of the European Court of Human Rights – is violated by the imbalance between the resources made available by the Echelon network and the objectives it seeks to achieve,

1. Considers that the existence of an economic espionage system, from which one Member State in particular benefits at the expense of the others, constitutes a violation of Community law, and in particular of
 - Article 10 of the EC Treaty: ‘Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks. They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty’, and of
 - Title VI of the EC Treaty, ‘Common Rules On Competition, Taxation And Approximation Of Laws’, where Article 81(1) (ex. Article 85(1)) lays down that: ‘The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market’;
2. Considers that the alleged instances of industrial espionage carried on through the Echelon system at the expense of continental European firms, which have thereby lost major contracts to businesses from the English-speaking world, represent a distortion of competition in the internal market and thus a breach of Community law;
3. Considers that the Echelon system violates Article 6(2) of the EU Treaty which states that : ‘The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms’ Article 8 of which enshrines respect for privacy;
4. Considers that the Echelon system also represents a violation of Articles 11 and 12 of the EU Treaty: ‘The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations. The Council shall ensure that these principles are complied with’.
5. Considers that the Union must acquire a binding legal instrument, widening the scope of Directives 95/46/EC and 97/66/EC in order to provide adequate protection for the European institutions and for natural and legal persons in the face of surveillance technologies;
6. Calls for the establishment of an independent European surveillance instrument with the task of providing effective protection for personal data and the respect for privacy, in accordance with Article 286 of the EC Treaty;
7. Is particularly concerned at Council initiatives to organise the interception of telecommunications;
8. Is concerned at the draft convention between 20 states (the EU, the USA, New Zealand, Australia, Norway and others) resulting from an agreement between the EU

and the FBI on mutual assistance in criminal matters; sees this initiative as an attempt to provide *a posteriori* legitimacy for Echelon;

9. Considers, in accordance with the precautionary principle, that it is not only legitimate but essential - in the light of the information at our disposal on the existence of Echelon and the real or potential risks which this system represents for the European Union, its institutions and bodies, for certain Member States and firms, as well as for natural and legal persons - that an inquiry be carried out to separate fact from fiction and, where necessary, that the necessary legal and technical means be acquired for the effective protection of fundamental freedoms and rights and the full respect for Community law;
10. Calls, to that end and pursuant to Rule 151 of the Rules of Procedure, for the establishment of a committee of inquiry to look into the allegations of violations of Community law resulting from the existence and presumed use of Echelon;
11. Instructs its President to forward this resolution to the Council and the Commission.