



6.7.2023

MISSION REPORT

following the mission to Washington, D.C., United States of America, from 15 to 18 May 2023

Committee on Civil Liberties, Justice and Home Affairs

Members of the mission:

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| Juan Fernando López Aguilar | (S&D) (Leader of the mission) |
| Javier Zarzalejos | (PPE) |
| Karlo Ressler | (PPE) |
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I. Introduction

The scope of this mission covered matters related to protection of personal data, internal security, counter-terrorism, visa reciprocity and women's rights, for which the LIBE Committee is competent.

The delegation was composed of elected Members of 5 different nationalities and of 5 different political groups of the "Committee on Civil Liberties, Justice and Home Affairs" of the European Parliament.

The mission to Washington allowed LIBE Members to gain a better understanding of the direction in which the US is heading with respect to privacy and data protection, internal security, counter-terrorism, visa reciprocity and women's rights.

On Justice Affairs, the delegation discussed data protection and recent trends towards enacting state/federal privacy laws. In particular, LIBE Members focused on the developments surrounding the Data Privacy Framework, on which the European Parliament has recently adopted a resolution.

With respect to women's rights, the delegation discussed implications of the recent US Supreme Court Dobbs ruling.

On digital privacy and electronic communications, LIBE Members discussed the EU-US cooperation on electronic evidence, especially in light of the Second Additional Protocol to the Budapest Convention and EU-US agreement under the Cloud Act.

On Home Affairs, the delegation discussed topics such as the fight against child sexual exploitation online in the light of the draft CSAM regulation, the fight against terrorism (including counter-terrorism and domestic terrorism) and hate crime. The state of play of the Visa waiver program was discussed, including works on the Enhanced Border Security Partnerships (EBSPs).

The LIBE delegation met different stakeholders relevant to the aforementioned topics such as Members of Congress, representatives from the Department of State, Department of Justice, Department of Homeland Security, Federal Trade Commission, Federal Bureau of Investigations, Department of Commerce, the Judiciary, civil society and companies.

II. Summary account of meetings

Meetings on Monday, 15 May 2023

BRIEFING MEETING WITH THE EUROPEAN PARLIAMENT LIAISON OFFICE IN THE UK

The LIBE Members listened to briefings provided by experts from the EU Delegation in Washington: Rainer WESSELY, First Secretary, Competition and Justice, Peter FATELNIG, Minister Counsellor for Digital Economy Policy and Alexandra CAIN, Human Rights Policy Officer

MEETING WITH STAVROS LAMBRINIDIS, EU AMBASSADOR TO THE USA (TOGETHER WITH

AFET AND BUDG COMMITTEES)

The LIBE Members met with the EU Ambassador to the USA. The exchange focused on the current economic and political situation in the USA.

Meetings on Tuesday, 16 May 2023

Meeting with NGOs

Meeting with National Center for Missing and Exploited Children (NCMEC): Michelle C. DELAUNE, President and Chief Executive Officer, John SHEHAN, Senior Vice President; Center for Democracy & Technology (CDT): Samir JAIN, Vice President of Policy, Eric NULL, Co-Director of the Privacy and Data Project, and Jake LAPERRUQUE Deputy Director of the Security and Surveillance Project; American Civil Liberties Union (ACLU): Ashley GORSKI, Senior Staff Attorney, National Security Project (via Webex link)

LIBE Members discussed issues related to Child Sexual Abuse Material (CSAM) and privacy (including Data Privacy Framework, FISA's section 702 and the potential for a federal data privacy law). Regarding the possibility of a federal data privacy law, some NGOs expected a federal law on children online safety to be adopted first. With respect to the FISA Amendments Act's section 702, the discussion focused mostly on what will happen once this section expires, which is supposed to take place at the end of this year. One NGO pointed out that besides section 702, there is also the US President's Executive Order 12333 - section 702 deals with rules for the US government to conduct targeted surveillance of foreign persons located outside the United States, with the compelled assistance of electronic communication service providers, while Executive Order 12333 deals with everything else such as data purchases, hacking, espionage. Therefore, there is a risk that if section 702 expires, more surveillance activities will be moved under Executive Order 12333. One NGO argued that a broad understanding of "targeted surveillance" under Section 702, basically leads to general scanning of communication and significantly undermines privacy.

When discussing CSAM, NCMEC presented their activities regarding fighting child abuse online and how they work on the removal of child content from the web. Only last year NCMEC submitted 1,5 million reports of child sexual abuse online in the EU. LIBE Members discussed with NCMEC issues such as self-generated materials, the missing children register, the overall number of reports submitted by NCMEC - the top 3 countries were India, Pakistan and Indonesia and a possible establishment of a center similar to NCMEC in the European Union. Among other topics mentioned, was cooperation between NCMEC and EU enforcement agencies such as Europol.

ACLU highlighted that it would make sense to delay the Data Privacy Framework adequacy finding until the EU knows whether the US federal privacy law can be passed in the near future. ACLU was also of the opinion that the Data Privacy Framework does not meet the Court of Justice requirements, as established in the Schrems II case. In ACLU's opinion, a step forward

could be codifying the US President Executive Order on the Data Privacy Framework.

Meeting with Representative Anna G. ESHOO

During the meeting with Representative Eshoo, LIBE Members discussed issues pertaining to privacy. The Representative, who represents California, stressed that her state has very high data privacy standards and that any possible federal law would be weaker than the level of protection of privacy ensured by the Californian state legislation. She expressed the view that the California privacy laws should become a federal standard and that federal legislation should be the floor not a ceiling, i.e. allowing stricter rules to be passed by states. Representative Eshoo stressed that California, with Silicon Valley and many start-ups is a good example of a place where it is possible to protect privacy without hindering businesses.

Meeting with Senator Marsha W. BLACKBURN

Senator Blackburn was of the opinion that federal data privacy laws can be adopted early next year, after the online safety act, which aims to protect children online. Senator Blackburn stressed the importance of protecting children on social networks, mentioning safety by design and safety by default principles and the need for a higher level of responsibility of online platforms. She also discussed Section 230 of Communications Decency Act of 1996, considering some of the actions taken by social networks, such as shadow banning, as censorship.

Meeting with Ms Lina M. KHAN, Chair of the Federal Trade Commission (FTC) and FTC staff

During the meeting, FTC representatives stressed that there is a high level of awareness within the US Congress that a federal data privacy law is needed. The main obstacle preventing US lawmakers from adopting such a law is civil penalties, which could be very high in the US legal system. Among other things, LIBE Members discussed with Lina Khan, the Federal Trade Commission's modified order in the Meta case issued in the FTC's attempt to completely prohibit Meta from monetizing children's data, actions aimed at breaking up Facebook as a monopolist and FTC responsibilities with respect to Artificial Intelligence. FTC representatives were positive about DSA, DMA and praised good cooperation with the European Commission in the area of enforcement.

Meeting with Representative Colonel Ted W. LIEU and Representative Diana Louise DEGETTE

Representatives Lieu and Degette, who are Co-Chairing the Congressional Privacy Caucus, in opposition to views expressed by some of the other members of the US Congress, were convinced that a federal privacy law will not be adopted any time soon, as Republicans do not want it. Among the challenges to privacy and data protection, they mentioned age verification, which makes protection of children more difficult. They stressed that TikTok ownership is not a problem, what concerns them was the business model of all online platforms, who often have

similar issues / similar practices to TikTok.

Meeting with Representative Lois Jane FRANKEL

The meeting was dedicated to the topic of women's rights. Representative Frankel, a Democrat from Florida and the Co-Chair of the Democratic Women's Caucus presented the situation regarding women's rights in Florida and a number of other states. Representative Frankel showed LIBE Members a map of the states where abortion is banned, she also mentioned Texas legislation that allows charges to be made against individuals that e.g. give a ride to an abortion clinic and legislation in Florida that banned teaching about diversity in school and limited freedom of companies, such as Disney to operate in this state.

Meeting with the Atlantic Council on the European Parliament's perspective on transatlantic data protection

Participants: Members of the Atlantic Council

The discussion focused on the European Parliament's resolution on Data Privacy Framework, as well as the e-Evidence proposal. The interlocutors were arguing that LIBE in its resolution on the Data Privacy Framework did not take into account the remarkable change on the US government side - the US government has never established something similar in the past. LIBE Members answered the questions that they received and explained the main concerns regarding the DPF they had. Moreover, the EU-US data transfers, e-Evidence, the US Cloud Act and issues related to China and TikTok were mentioned.

Meetings on Wednesday, 17 May 2023

MEETINGS WITH US ADMINISTRATION:

- MEETING ON DIGITAL FREEDOM

Meeting with Cari McCachren, Acting Senior Coordinator for Digital Freedom at the State Bureau of Cyberspace and Digital Policy and her team & Brian Daigle Advisor, Data Policy and Data Governance, U.S. Department of State

Ms McCachren presented the role of the State Bureau of Cyberspace and Digital Policy, including their tasks related to fighting disinformation and propaganda. During the meeting, the following topics were raised: digital inclusion, content trust and safety, open internet, capacity building and cybersecurity. As regards to the probability of a federal data privacy law being adopted, it was stressed that the US administration wants to avoid too many state acts being adopted, which might create problems with respect to enforcement and possible conflicts of law. With respect to disinformation, the US government is witnessing an economic model promoting disinformation, this is something that raises concern for the US government. Tackling disinformation requires actions on an international level, for example OECD business hub was mentioned as a forum where disinformation can be addressed. The idea of sanctioning

disinformation was mentioned as some states raised the issue, e.g. currently in the context of Russian disinformation.

INTERNAL SECURITY, COUNTER TERRORISM, SCREENING & VETTING, AND VISA WAIVER PROGRAM

Meeting with Hillary Batjer Johnson Deputy Coordinator for Homeland Security, Screening, and Designations in the Bureau of Counterterrorism at the U.S. Department of State, Regina Garza, Acting Deputy Assistant Secretary, Screening and Vetting Office, DHS, Anjum Agarwala, Director, Visa Waiver Program, DHS, Vlad Lipschutz, Office Deputy Director, EUR Bureau for Policy and Global Issues (PGI), DoS and their staff

Among the biggest challenges, the Department of Homeland Security mentioned ISIS, Al-Kaida and racially motivated extremism. In this context, information sharing for law enforcement purposes and data retention is very important. Another topic that was discussed was the Visa waiver programme, in particular in the context of Bulgaria, Cyprus, Romania, which are still outside the US visa-waiver programme and Enhanced Border Security Partnerships (EBSPs). With respect to EBSPs, the US argued that it would speed-up the process of checking whether immigration benefits can be applied. EBSP will be taken into account for the visa-waiver programme. The US administration stressed that EBSP is compliant with OECD privacy principles and that the Privacy Impact Assessment of SP is publicly available. US representatives expressed their opinion that Visa requirements must evolve as the security environment is evolving. At the same time, removing a country from a visa-waiver programme would also be losing a security partner.

WOMEN'S RIGHTS

Meeting with Vanita Gupta, United States Associate Attorney General, Varina Winder, Deputy Senior Official and Senior Advisor in the Secretary's Office of Global Women's Issues at the Department of State, Margaret Pollack, Director of the Office for the Bureau of Population, Refugees, and Migration's Office of Multilateral and External Coordination at the U.S. State Department, Jennifer Klein, Director of the White House Gender Policy Council, Varina Winder, Senior Advisor for the U.S. State Department's Office of Global Women's Issues

The US government identified 10 areas in which improvements are needed, such as childcare, women's access to jobs, access to healthcare, preventing violence against women. The US DoJ established a task-force to deal with implications of the Dobbs ruling. During the meeting it was stressed that the US Supreme Court ruling does not reflect priorities of the Biden-Harris administration. The US administration acts via legislation, federal laws, two executive orders, including one focusing on the medication abortion. There is a federal law against those who try to obstruct access to abortion clinics. It was stressed that in states where referendums were held, Americans support the Roe vs Wade approach. The US government also discusses women's rights on an international level, such as during G7 and G20, where they discuss initiatives of investing in healthcare and dealing with the digital divide.

MEETING WITH THE COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS, JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting the Honorable Judge David G. CAMPBELL, Chair of the Committee on International Judicial Relations, Judicial Conference of the United States, and Senior Federal Judge on the United States District Court for Arizona, the Honorable Judge Anthony SCIRICA, Senior United States circuit judge of the United States Court of Appeals for the Third Circuit, Omar BADAWI, Senior Attorney, Judicial Services Office, Administrative Office of the US Courts and staff of the Committee including staff from the Federal Judicial Center.

During the meeting, LIBE Members discussed the functioning of the US court system, in particular the judicial independence. US federal judges are appointed for a lifetime and can only be impeached, in a procedure similar to the US President impeachment. There have been less than 10 successful impeachments of federal judges in US history. As regards to women's rights, these cases are almost entirely decided on the state courts level, by state supreme courts. For example, as regards to violence against women, the US federal courts can only deal with cases from Indian reservation, as they apply federal law. As regards to the cases in the US in which schools banned books, the judges stressed that these were private bans done by individual schools.

MEETING WITH THE FBI

LIBE Members listened to a number of presentations provided by the FBI, dedicated to CSAM, hate crimes, crimes against humanity and domestic terrorism.

Regarding CSAM, the FBI provided information about crimes such as sextortion, stressing that child sexual abuse could only be effectively eliminated if there is a cooperation on an international level and that no country can resolve it alone. The FBI highlighted that companies do not want to be associated with CSAM so they try to prevent it, including upon requests from NCMEC. At the same time, a number of organised crime groups dealing with sexual exploitation operate from Africa, which makes law enforcement more difficult. The FBI stressed that already now they do not have sufficient resources to deal with all CSAM cases they detect and they need to prioritize some of them. From this perspective, mass scanning of communication would not result in an increase in law enforcement. The FBI stressed the role of facial recognition in fighting paedophiles, as it allows them to identify people even from old pictures. The FBI stressed that, as regards to technology used, criminals will be always ahead of law enforcement. During the second presentation, the FBI explained laws addressing hate crimes in the USA and actions taken by the US government to prevent such crimes. The third presentation was dedicated to crimes against humanity, including war crimes in Ukraine. Among others, the US provides advice to the Ukrainian Prosecutor General in areas such as evidence collection and conducting investigations, they expect a number of proceedings to be launched after the war in Ukraine. With respect to domestic terrorism, the FBI described how the First Amendment is being applied in the USA and what are the safeguards protecting freedom of speech, LIBE Members were briefed about the situation in the US regarding ethical

and racially motivated violent extremism, including white supremacists and the spreading of this ideology outside of the US. LIBE Members stressed that in the EU freedom of speech has certain limits, thus people expressing certain views can be prosecuted even if they do not commit any acts of violence.

Meetings on Thursday, 18 May 2023

MEETING WITH DPRC AND ODNI, FBI - CYBER LIBERTIES UNIT

Meeting with Peter A. WINN, Acting Chief Privacy and Civil Liberties Officer (CPCLO), Department of Justice (DoJ), Bruce C. SWARTZ, Deputy Assistant Attorney General and Counselor for International Affairs Rebecca RICHARDS, ODNI Civil Liberties Protection Officer & staff members

The representatives of the US government provided LIBE Members with information about the Data Protection Review Court. The documents specifying the redress procedure were issued in December 2022 and the remaining procedures will be finalised in the coming weeks. The US Department of Justice will work with the EU national Data Protection Authorities to discuss details of the procedure, including so-called “selectors” - information that allows a complainant to be identified. According to the DoJ, DPRC was established under the executive branch, because in the US courts cannot provide advisory opinions, there must be a dispute. The executive branch is not subject to a so called “Lopez standard”. The independence of DPRC judges is protected; no one can interfere with the actions of the judges during their term of office. As regards to the role of the DPRC and what the proceedings will look like: the DPRC will collect evidence, talk to the special advocate, the advocate will discuss the case with the complainant, DPRC will hold a hearing, in case either a complainant or US intelligence services are not satisfied, the DPRC will issue an opinion; the court decision is binding on the executive branch of the US government. Names of special advocates will be public. A complainant does not receive any information about the proceeding, but they can challenge the outcome without getting any information. DPRC judges are appointed by the US Advocate General, after consultation with Privacy and Civil Liberties Oversight Board (PCLOB), the same procedure applies to special advocates; the functioning of the mechanism will be annually reviewed by PCLOB. Currently, the candidates for judges are undergoing background checks, some of the candidates played important roles in the US judicial system in the past; they must have been away from the federal government for a minimum of 2 years. DPRC will be deciding in 3 judge system not with a single judge, because it performs a kind of an appeal role in the whole DPF system. Similar types of administrative judges deal with appeals in immigration cases. When designing the Data Privacy Framework, the US administration was looking at the Schrems II ruling; for issues not addressed by the CJEU in Schrems II they were checking European Court of Human Rights case law. On that matter, the US government works closely with the European Commission. The US government continues to engage with European DPAs, EDPB, NGOs. LIBE Members were asking about the timeline of the DPF. US government believes that the Framework should be operational this autumn, the Executive Order requires 6 judges and 2

special advocates, 3 of the judges are already cleared. LIBE Members were stressing that a number of issues remain, for example the Executive Order can be changed anytime, they were also raising concerns as regards to principles of necessity and proportionality. The US government was highlighting that this is an unprecedented mechanism; US government has never established something similar in the past and the EU should consider the DPF as a big success.

MEETING WITH BIGTECH REPRESENTATIVES (MERIDIAN)

During the last meeting of the mission, the LIBE Chair gave a presentation regarding the legal framework for data protection in Europe, followed by a discussion. The discussion focused on the LIBE Data Privacy Framework resolution and the works on EU e-Evidence regulation and the US Cloud Act. The Chair also appreciated that the discussions LIBE Members had in the US helped them to develop a better understanding of the Data Privacy Framework.