

America is watching EU

Cédric Laurant and Mauro Sanna

A lot of ink has been spilled on the NSA affair and new disclosures are continuously breaking in the news. This article summarizes and analyses the most discussed spying scandal in history.

On October 23rd the German Chancellor Angela Merkel learned that her mobile phone had been monitored by US intelligence for years. Two days before, the French newspaper “Le Monde” reported that French citizens have been spied on by the United States and the previous day, former Mexican president Felipe Calderón’s email was also added to the long list of observed subjects. Needless to say that this list could be endless, and as surprising as it may be, we are not in the middle of some James Bond movie: this is reality. In order to clarify what has been going on over the last few years let’s think back to what happened some months ago.

On June 6th, The Guardian published an article based on leaked documents from the NSA (National Security Agency), disclosed by an American citizen named Edward Snowden – a former contractor for this agency. The whistleblower explained to the journalist Glenn Greenwald that the acknowledgement of these abuses committed by the agency convinced him that certain “things need to be determined by the public”. The story gave birth to a great scandal: as the British newspaper revealed, NSA was collecting “metadata” on millions of American customers’ phone calls by spying on Verizon, one of the biggest American telecommunications companies.

But things got even worse: on June 7th The Guardian and The Washington Post also unveiled the existence

of PRISM, a surveillance program designed to gather data on digital communications all over the world. In order to achieve this aim, the United States extracted information from well-known American internet companies such as Microsoft, Yahoo!, Facebook, Google, Apple

France, Japan, South Korea, India, etc. Spying operations were also directed at EU embassies.

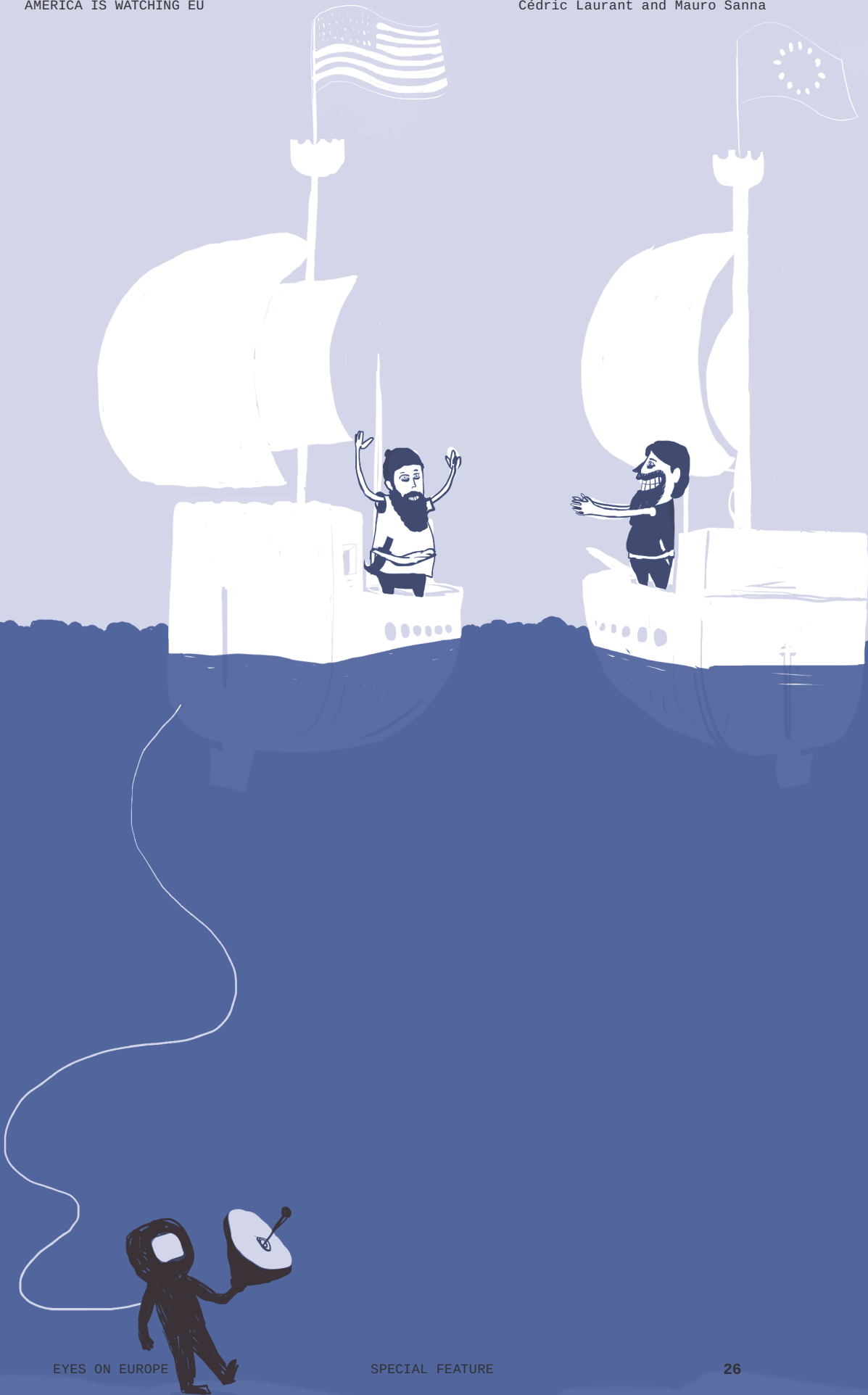
The American president Barack Obama defended the program in Berlin on June 19th, stating that the United States are not “rifling through the ordinary emails of German citizens or American citizens or French citizens or anybody else”, but are leading operations of great importance in order to fight terrorism. Obama also maintained that “You can’t have 100% security and 100% privacy”.



But reality is far more complex than the president’s speech. As Cédric Laurant, a lawyer specialized in Internet rights and data protection, explained us in an interview: “Generally, we believe that electronic surveillance is only operated in a restricted number of cases. But the NSA can monitor Internet communications not only to fight against terrorism, but also for political and industrial reasons. (...) This espionage has an enormous scope”. In fact, he explained, “This is made possible by the FISA (Foreign Intelligence Surveillance Act) Amendments Act of 2008”. As Caspar Bowden, a former privacy adviser at Microsoft, wrote in a briefing note addressed to the European Parliament, this amendment makes “any data of assistance to US foreign policy (...) eli-

and Dropbox. These completely denied or minimized the scope of these procedures. The countries hit by this espionage are numerous and this despite the fact that some of them are classified as “allies” by the United States: Germany, Italy,

gible” to be spied on, “including expressly political surveillance over ordinary lawful democratic activities.” Bowden also noted that the fourth amendment of the American constitution, that guarantees the protection of privacy, does not apply



for non US citizens. European citizens are therefore “particularly fragile” in this context, and “their fundamental rights have been continuously disregarded.”

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As a matter of fact, on the European shore, the legislative arsenal is totally inadequate. Laurant argues that “the old European directive on data protection did not consider this kind of spying and therefore there is no law strong enough to avoid that”. The European Union “has never considered espionage as extensive as it was revealed by Snowden”. However, the European Union has been working for three years on a new and more effective legislation, which should be approved in the next year. But, as Laurant complained, “The problem is the following: American industrial lobbies have put a lot of pressure on the legislative process, and now we have over 4000 articles, just for this text – a disproportionate number”. This will inevitably slow down the legislative procedure and perhaps make the new rules less efficient.

The implications of this “datagate” scandal for the relationship between the United States and the European Union could be enormous. The NSA story will probably be remembered as a diplomatic earthquake: millions of people all over the world realized that their government - and maybe themselves - has been spied upon, but whether this will have tangible consequences on transatlantic relationships is far from being certain.

In fact, this story was disclosed at a particularly delicate moment for EU-US business: the two most advanced economies in the world are currently working on a huge trade deal, called Transatlantic Trade and Investment Partnership (TTIP). The agreement might create the biggest free trade area in history, by removing trade barriers in order to facilitate the exchange of goods and services. This could boost the European economy by roughly 120 € billion, the American one by 90 € billion and the rest of the world's economy by 100 € billion. Politics

are driven by economics and as the German member of the European Parliament Axel Voss (EPP) asserted in an interview accorded to EuroparlTV, “When it comes to the actual facts, it doesn't make sense to hold off transatlantic consultations, because we also benefit from the agreement. Why should we cause ourselves more damages after being spied upon?”

A slightly different answer came from the Dutch member of the European Parliament Sophia In 't Veld (ALDE), who stated that “until we have full clarifications of the situation and solutions (her) signature will not be on any free trade agreement”.

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Besides, “datagate” has some noticeable effects on the cloud industry. As a reminder, the term “cloud” refers to the fact that data are stored on the Internet (the cloud) rather than on physical devices; it is cheaper and more convenient for firms, but as the NSA affair has demonstrated, it is also a lot more risky with regard to data protection. Actually, the scandal had an “impact on European investors, that transmit their doubts on American negotiators” claims Cédric Laurant. In fact, non-US companies do not feel safe leaving sensible data in the hands of American providers. According to the Financial Times, the cloud computing industry could lose up to \$35 billion due to NSA disclosures. In this scenario “American companies are stuck between the US and UE” noted Laurant. On the one side, “due to the fact that they are American, they have to obey the national security agency” and on the other side they are obliged to contravene the European laws. “However pressure is currently much stronger in US territory”.

While writing this article, new details on the spying program are continuously being revealed in the media. On October 29th, the head of the NSA, General Keith B. Alexander

rejected every allegation of spying on allies, insisting that “we and our NATO allies have collected information in defense of our countries and in support of military operations”. Later, on October 31st, Obama “ordered the National Security Agency to stop eavesdropping on the headquarters of the International Monetary Fund and the World Bank” according to Reuters. But is there going to be a more profound change after this scandal?

This is fairly unlikely: intelligence has always existed and will always exist. “Politics have no relation to moral”, said the politician and diplomat Niccolò Machiavelli about 500 years ago. Oddly enough president Obama has often been defined as Machiavellian, due to his talent to spread the consensus by silently mixing diplomacy and war. Like him, every political leader firstly defends the interests of his nation, regardless of other nations' welfare. Nothing is going to change in the spying habits of the United States: if Europe were in a position of strength, mastering the Internet as the US currently does, the story would be exactly the same, with inverted players. To conclude, intelligence has always existed and will always exist and “datagate” is unlikely to change that. However, the existence of whistle-blowers such as Snowden is essential to democracy. Thanks to his disclosure, the press has exercised its “fourth estate power” and people can – in theory - vote consequently. The principles of democracy are all there. Whether it is effective or not is another debate.

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