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SURVEILLE

Surveillance: Ethical issues, legal limitations and efficiency

Collaborative Project

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CO	Confidential, only for members of the consortium (including the Commission Services)	

Table of Contents

Executive summary

Introduction

Section 1. Day 1 of the State of the Union and SURVEILLE Final Conference

- 1.1 Presentation of the Main Results of the SURVEILLE Project – Part I
- 1.2 Presentation of the Main Results of the SURVEILLE Project – Part II
- 1.3 SURVEILLE Panel Discussion: Privacy by Design and its Alternatives
- 1.4 SURVEILLE Panel Discussion: Technology, Security and Freedom in an Urban Context

Section 2. Day 2 of the State of the Union and SURVEILLE Final Conference

- 2.1 The State of the Union Address
Martin Scheinin, Professor of International Law and Human Rights, EUI
- 2.2 State of the Union Panel Discussion: Surveillance and Freedom in Europe

Section 3. Other Events and Media Exposure

- 3.1 List of media covering SURVEILLE and the State of the Union Conference

Section 4. Annexes

- 4.1 PowerPoint presentations of the SURVEILLE Consortium members
- 4.2 Official Report of the State of the Union Conference, EUI

Executive summary

As foreseen already in the Grant Agreement, the Final Conference of SURVEILLE was merged with the State of the Union conference, organised by the European University Institute (EUI). This is an annual event for high-level reflection on the European Union. The conference's fifth edition brought together leading academics, policy-makers, civil society representatives, business and opinion leaders to discuss four main topics, all confronting the future of Europe.

The merger provided a high-impact and high-visibility opportunity for the SURVEILLE Final Conference, serving a dissemination function. One of the main topics discussed throughout the State of the Union Conference was that of the impact of surveillance in Europe. The SURVEILLE project thus featured as a key contributor to the discussions on this theme and was included within the discussions panels; providing therefore a broad platform for dissemination of the project's key research findings at the end of the 41-month project lifecycle.

Introduction

The SURVEILLE Final Conference, which took place on 7-8 May 2015, as had been envisaged already in the DOW, was incorporated into the EUI's annual State of the Union Conference 6-9 May 2015.

This report covers the sessions within the combined event that relate to SURVEILLE and the theme of surveillance in Europe. As such, the report provides an account only of those presentations and panel discussions relating to this theme (which constituted the SURVEILLE Final Conference), rather than providing an account of the entire proceedings of the State of the Union event.

1.1 Presentation of the Main Results of the SURVEILLE Project – Part I

This opening session presented the main results of the SURVEILLE project. Representatives of the lead partners of WPs 2, 3 and 4 presented the work and results of SURVEILLE, followed by comments by the representatives of two important recipients, the European Commission and The presentation covers a multidimensional and civil society organisations.

Chair:

Martin Scheinin, Professor of International Law and Human Rights, EUI

Michelle Cayford, Researcher, TU Delft

Francisco Fonseca Morillo, Director for Criminal Justice Issues, DG Justice and Consumers, European Commission

Jens-Henrik Jeppesen, Director for European Affairs, Centre for Democracy and Technology

Tom Sorell, Professor of Politics and Philosophy, Warwick University

Prof. Martin Scheinin began the plenary session by welcoming the guests to the event and thanking the panel members for their participation. Prof. Scheinin outlined the basis of the SURVEILLE project in the FP7 Commission programme on security research. It was noted that the panel represented both the three main strands of the project: law, ethics and engineering/technology and, in addition, recipients of the research itself conducted by SURVEILLE (the two additional panel members: one from the Commission, the other from civil society). Prof. Scheinin then introduced the panel members in turn: Michelle Cayford, Researcher, TU Delft; Francisco Fonseca Morillo, Director for Criminal Justice Issues, DG Justice and Consumers, European Commission; Jens-Henrik Jeppesen, Director for European Affairs, Centre for Democracy and Technology; Tom Sorell, Professor of Politics and Philosophy, Warwick University. Prof. Scheinin affirmed that DG Justice and Consumers, European Commission, was a principal recipient and benefactor of the research work completed by SURVEILLE, while also noting that civil society at large had also found the contribution made by the work within SURVEILLE useful.

Prof. Scheinin then noted that the SURVEILLE project had taken place over three-and-a-half years and brought together ten project partners, and proceeded in outlining the respective substantive work packages (WPs) of the project. The description of the WPs noted the basis of WP2's use of 3 parallel assessments that covered law, ethics and technology. Prof. Scheinin then spoke of deliverable D4.10, which involved an analysis of the three separate scenarios covered in WP2 to produce a synthesis. He discussed the paper's general conclusions. He would soon shed light on the methodology of the legal assessment of the scenarios but wanted to note already at this point that the legal assessments made by SURVEILLE were based upon judgments of both the European Court of Human Rights (ECtHR) and the European Court of Justice (ECJ). Prof. Scheinin then mentioned in his presentation the work in WP6 regarding stakeholder interaction, outlining the role of EFUS and its work with the end-user panel bringing together the municipalities, and the additional work of the parallel end-user panel (EUP) for law enforcement officials, convened by project partner MERPOL. The SURVEILLE Advisory Service (AS) overseen by the University of Warwick (UW) was also highlighted for its work with businesses in providing counsel, predominantly in the form of ethics-related advice.

Ms. Michelle Cayford, Researcher, TU Delft then continued the panel session with an introduction of the work performed by TU Delft in SURVEILLE in which technology assessments were performed. Ms. Cayford then discussed the role of the matrix developed in respect of these assessments, noting that the matrices scored technologies based on ethical, legal and technological aspects of their performance and operation. It was noted in the context of the technology assessment that four factors were integral to the score provided, namely its effectiveness, costs, privacy by design capability (PbD) and whether

it had been proven to be effective in real life use to date. It was then noted in respect of the usability scoring for the technology that the attributes were further assessed in respect of its ability to deliver the intended required results of the surveillance, the context of its implementation and operation, and its sensitivity in terms of the delivery of granularity in the data produced and whether it was prone to error, or whether the data produced might be subjective in its nature. Regarding the scoring of proven efficacy, it was noted by Ms. Cayford that in terms of a technology being 'proven', it would have to demonstrate this capability both on a scientific basis and in its actual operation.

Ms. Cayford then introduced the project's serious crime scenario and explained how a technology would be rated in respect of its use in different parts of the scenario being assessed. It was noted that in certain respects the use of a surveillance technology might need to balance simplicity of use with it being suitably rigorous in terms of the data its use provides. An assessment, it was further noted, of user-friendliness often required that certain thresholds be established by which to benchmark the different technologies against each other; in this manner the usability scores were developed and refined using a template applied to each surveillance tool.

Ms. Cayford then outlined the work of the SURVEILLE project as regards the assessment of the technologies that the revelations made by Edward Snowden had revealed in respect of the activities of the US intelligence community. It was outlined in the presentation that two distinct categorisations of the technologies could broadly be made; targeted and mass surveillance. Wiretaps, as cited within the terrorism scenario developed by SURVEILLE, were stated to be one of the basic methods on which the NSA in the US conducted surveillance activity. Taps were placed on the backbone of the internet infrastructure (networks) to allow for the agency to gather data, filter and conduct deep-packet inspection (DPI). It was explained that the software known as 'X-Keyscore' was used by the US intelligence services to set parameters around the data gathered, and thereby to determine which of the data collected would be retained within NSA agency databases. Ms. Cayford further noted that the US government had interpreted its actions not to constitute 'mass surveillance' as its criteria for such a term to be applied would recognise that distinctions were drawn as to what data was retained (some data would not be stored and only collected on a temporary basis), and as such that bulk data retention was not the norm. A further distinction drawn by the US concerned whether data was subject to analysis by either a human being, an analyst, or subject to review and processing by automated means (primarily the algorithmic analysis of software). Ms. Cayford affirmed that certain members of the intelligence community firmly held the belief that any analysis conducted by way of automated algorithmic means would not be privacy invasive.

The session then continued with a presentation made by Prof. Tom Sorell

(University of Warwick). Prof. Sorell outlined how the work of SURVEILLE analysed surveillance in counter-terrorism and transnational organized crime; the efficiency of various surveillance technologies; the international and regional legal requirements on deployment of technologies, and the ethics of deployment of technologies, preventive policing measures. Prof. Sorell outlined the work of SURVEILLE in relation to the use of surveillance technology in real cases of organized crime: drugs importation and firearms and counter-terrorism; NSA-type surveillance; Urban security - regular crime, public order, smart city surveillance, and further analysis based on scenarios extended in time (the serious crime scenario extends over years, it was noted). Prof. Sorell noted that the scenarios were multifaceted and devised in consultation with police and urban security experts. Prof. Sorell then discussed the approach of the ethicists on the SURVEILLE project to the concerns raised by the use of the different surveillance technologies available, noting that moral philosophy provided a framework for considering whether surveillance could be justified using large scale and widely developed theories. It was stated that serious crime might warrant more invasive surveillance techniques, but that the notion of 'serious crime' remained indistinct and subject to interpretation across different jurisdictions and disciplines.

Prof. Sorell noted the importance to ethicists of the consideration of whether citizens are able to live autonomous lives where they may be subject to surveillance. The presentation then considered this consideration in respect of the terrorism prevention scenario, noting how the different elements of the arguments made both for and against surveillance were categorised, so that a traffic light system could be deployed to flag different risk levels based on the ethicists' assessments. In terms of the results provided by the ethicists of their assessments, it was highlighted that technologies used in the government and commercial sectors such as FinSpy and Phantom Viewer could be considered 'red' on the traffic light scale; asserting therefore that these techniques presented grave risks to citizens should they be implemented. Prof. Sorell then discussed in his presentation the notion of the compatibility of surveillance in a liberal democratic society with the need for citizens to preserve their autonomy. It was asked in connection with autonomy whether surveillance might overly interfere with a person's welfare. It was noted by Prof. Sorell that whilst ethicists and lawyers often agreed in their conclusions while studying surveillance issues, this was not always the case. It was underscored that the two parties used different approaches to review the technologies; the ethicists' method was primarily based upon utilitarianism, whereas the lawyers used a methodology based on a rights-based approach to analysis of interferences. As such, it was highlighted by Prof. Sorell that the lawyers and ethicists often ascribed different scores to the assessments conducted. In particular, in this respect there were frequently different views expressed as regards to the ascription of 'yellow' traffic light signals to a technology to indicate a cautionary approach should be taken to its use in surveillance. Also, it was underscored by Prof. Sorell that their analysis based on ethical arguments could

be more permissive than that of the lawyers as regards the use of surveillance vis-à-vis serious crimes (in the pursuit of a greater good).

The presentation of Prof. Sorell then reviewed the analysis conducted by the SURVEILLE project in relation to the urban crime scenario that was developed. Prof. Sorell noted that the scenario envisaged relatively routine and familiar types of policing techniques, such as CCTV, smart data collection and number plate recognition (NPR). It was noted that the analysis conducted had by and large ascribed a process of applying caution to the use of surveillance in the urban setting; a yellow traffic light indicating the need for caution to be applied in many of the assessments of specific technology uses. Prof. Sorell then proceeded to discuss the distinctions drawn between public and private spaces in relation to citizens' sense of privacy.

The session then continued with the presentation of Prof. Scheinin, in which he outlined the legal assessments conducted in SURVEILLE based on the scenarios. It was stated that the most pertinent results were those that considered the scenario relating to terrorism prevention. Electronic mass surveillance in this context scored poorly, in that it was awarded the maximum of sixteen, suggesting that its use could not be justified. In contrast, other more established traditional surveillance techniques could be targeted in a way that would allow them to be used without too great a risk of adverse effects on people's fundamental rights. It was noted in the context of electronic surveillance that social network analysis based on publicly available information from people's profiles could be seen as only moderately intrusive. Prof. Scheinin then outlined the methodology of the fundamental rights assessment based upon the work of Prof. Alexy, in which criteria for assessing the intrusion on fundamental rights are articulated. The framework and matrix developed allowed for an assessment of the proportionality of any interference, taking into account factors such as the usability of a technology and the score placed on any intrusion into rights that occurred. It was stated that the work of D4.10 intended to provide a decision support system, rather than a rigid guide for reviewing particular surveillance systems; it was noted that the use of technologies is contextual and dependent upon the specifics of a particular situation. As with the ethics analysis, the final analysis reconciling the three separate assessments adopted a traffic light style measure: the criteria assessed allowing for the assignation of one of three recommendations: 'reject', 'revise and reassess' or 'implement' the technology.

Prof. Scheinin then introduced Francisco Fonseca Morillo, Director for Criminal Justice Issues, DG Justice and Consumers, European Commission. Francisco Fonseca Morillo noted that DG Home was the main funder of the SURVEILLE⁷ project and congratulated the consortium for the quality of its research, noting that the project constituted a strong example of work across Europe that can constitute to policymaking based upon sound methodologies and exacting analysis. Francisco Fonseca Morillo asserted that we should not

consider security versus privacy, but that the two criteria both be attainable in conjunction. Francisco Fonseca Morillo then noted that citizens often would ask of themselves in this context what concessions they might be prepared to make, given a choice. As such, Francisco Fonseca Morillo noted that balancing of concerns requires an assessment that aptly considers all the available information in making an analysis as to whether measures are proportionate. In this respect it was highlighted that Article 52 of the EUCFR, and indeed the difficulties experienced in the negotiation of the drafting of the convention, underscored the basis for a proper and thorough analysis based on the legal framework present at a regional level in Europe. Francisco Fonseca Morillo then considered other concerns regarding how the public perceives surveillance, noting that assessments by citizens need consider whether the users of the technology could be held accountable, and whether the public is duly informed as to when and how technologies are being used for surveillance. As such, it was stated that in this context we should consider that the public has a minimum 'right of information'. Francisco Fonseca Morillo then highlighted the case of the development of predictive analytics used to determine individual behaviours, noting that the techniques employed could yield useful intelligence. Further, Francisco Fonseca Morillo highlighted too that it was necessary to distinguish the 'Internet of Things' (IoT) as a technology, but not *per se* a surveillance tool in itself. However, IoT could lend itself to covert monitoring, and can allow for surveillance of populations by private companies on an unprecedented scale.

Prof. Scheinin then introduced panel member Jens-Henrik Jeppesen, Director for European Affairs, Centre for Democracy and Technology. Jens-Henrik Jeppesen described the work of the Centre for Democracy and Technology as being that of both a think-tank and an NGO; it considers the ethics of technology use and provided input to decision makers responsible for policy making. Recent work of the organisation had influenced policy makers on issues such as net neutrality, data protection, copyrights, government surveillance and issue pertaining to big data and data retention. The Centre for Democracy and Technology had been involved in particular in respect of discussions most recently on mass surveillance and the collection by the US government of metadata in the United States and overseas. The organisation had been engaged in discussions and providing insight at various for a including the UN, the US Congress and the European Parliament. Furthermore, the Centre for Democracy and Technology had also provided *amicus* briefs in support of cases brought by plaintiffs before the European Court of Human Rights in Strasbourg. Most recently the Centre for Democracy and Technology also provided its views in the consideration of new legislation by the French parliament and in legal cases brought before the courts in both Hungary and the UK.

Jens-Henrik Jeppesen noted in his remarks that his comments would focus in particular on the counter terrorism scenario analysed by the SURVEILLE

project. Jens-Henrik Jeppesen underscored his belief that the fundamental concern in respect of the increase in use of surveillance by government authorities should be the indiscriminate collection of citizens' data, noting that this represented a shift in approach from particularized and targeted surveillance toward that of mass surveillance. Jens-Henrik Jeppesen noted that two phenomena contributed to this tendency; the lowering cost of technology and storage, and the lack of legislation tasked with proscribing the over-use of surveillance methods. Prof. Scheinin had suggested that the SURVEILLE methodology could perhaps assist advocacy groups and civil society in their work to influence legislators. Jens-Henrik Jeppesen affirmed that policymakers and lawmakers still tended to react only at the times of dramatic events taking place, such as when terrorist attacks occurred; this therefore influenced the type of laws being passed by parliaments. The response to the Charlie Hebdo attacks was then cited in respect of the French government's latest legislative efforts; the fast tracking and expediting of the law possibly resulted in too extensive powers being given law enforcement and the intelligence services, Jens-Henrik Jeppesen contended. Jens-Henrik Jeppesen noted that a methodology such as that used by SURVEILLE could prove of benefit in striking the correct balance, but that it would need to be used in any assessment in a measured way; a quantitative approach carried its own risks, Jens-Henrik Jeppesen asserted. Jens-Henrik Jeppesen suggested that point values and scoring methods could be relied upon too heavily in certain cases.

As regards court cases and legal decision-making, Jens-Henrik Jeppesen was unsure whether the quantitative approach was the correct one, considering the subjective nature of certain scoring-based tasks that it inheres. Jens-Henrik Jeppesen noted that use of such a scoring system would require oversight. Further, Jens-Henrik Jeppesen also raised an additional point as regards the cost element that featured in the SURVEILLE assessment process; it was noted that mass surveillance could inhere a notionally more positive cost assessment, because the incremental cost is lower when surveillance is more widely used; this would appear counter-intuitive, Jens-Henrik Jeppesen asserted.

Prof. Scheinin then opened a question and answer session in which the audience was invited to participate. Prof. Scheinin began this part of the discussion in putting a question to the panel, asking: "Should quantification in respect of the assessment of surveillance technologies be regarded as subjective?"

Ms. Michelle Cayford responded in noting that indeed subjective assessments did come into play in any review of technologies, noting that costs could also be assessed in different ways; how might thresholds be applied for applying cost criteria, for example? Ms. Cayford asked in this regard how we might attempt to make assessments more objective, if need be. Effectiveness, Ms. Cayford asserted, was likely to be especially subjective an assessment in many instances.

Prof. Scheinin and Prof. Sorell then discussed the use of the ‘traffic light’ assignation to different technologies. Prof. Sorell noted in particular in this regard that the assessments conducted need be considered in the light of the entire work conducted in WP2 of the SURVEILLE project, rather than just the work of D4.10 on its own. It was noted that the traffic light system in effect summarised a lot of assessments conducted in terms of ethics, legal and technical analyses. Prof. Sorell also underscored that the analysis conducted reflected a need to adopt a generalized approach, as the SURVEILLE project did not focus specifically on certain jurisdictions. A further consideration that also need be considered was that of technology cost; it was noted by Prof. Sorell that more expensive technologies might only be available to richer countries with the means to afford their purchase. Prof. Sorell then suggested that perhaps more consideration needs be given as to how norms are evolving, and whether indeed privacy is really being attacked as a value in liberal democracy. Prof. Sorell then cited the example of the work conducted by the SURVEILLE project on the NSA as an example where the privacy of citizens was clearly being challenged, as the surveillance of the NSA was subject to too little oversight and democratic accountability. Prof. Sorell also asserted that the example of the research conducted in relation to the NSA’s surveillance also highlighted how the US legislature had too little access to information relating to the surveillance being conducted.

Prof. Scheinin then referred to the work of Prof. John Mueller of Ohio State University and a member of the SURVEILLE Advisory Board. Prof. John Mueller has been working on cost-benefit analyses of investment in security measures related to counter-terrorism. Prof. Scheinin noted that his work had highlighted that much counter-terrorism investment by governments cannot be shown to be cost effective. An analogy was drawn between Eisenhower’s ‘military industrial complex’ created in the Cold War era and the emergence of a ‘surveillance industry complex’ following the War on Terror evolving post-9/11. Prof. Scheinin noted that the SURVEILLE research had shown whilst the use of law enforcement officers in tracking and monitoring suspects proved effective and would likely be more rights compliant when conducted appropriately, but that costs were higher and thus the measure was proving less popular when surveillance was conducted on targeted individuals.

Prof. Scheinin again highlighted in his analysis of the SURVEILLE research that it should be borne in mind that the work on legal analysis conducted therein was jurisdiction neutral. Addressing the issue raised earlier regarding subjectivity, Prof. Scheinin noted that the legal analysis should ideally prove objective, as the application of the law in jurisdictions should indeed be objective. Adding to this point, Prof. Sorell noted that the work of TU Delft had endeavoured to be rational and apply in a fair manner the assessment of effectiveness, but that the results should be considered an initial basis on which to build – as such it offers a framework and thresholds for further research and

refinement of the methodology.

Jens-Henrik Jeppesen noted that technology companies are increasingly themselves adopting end-to-end encryption to help protect the privacy of their customers, and that this would have an impact on law enforcement, increasing the costs of their monitoring activity where they will need apply more resources to break the encryption.

Prof. John Mueller then raised a point regarding cost-benefit assessment and the principle by which economists apply monetary valuations to notions such as personal privacy, citing various means by which this can be achieved legitimately. Prof. Mueller noted that more emphasis needs be given how security and surveillance measures in fact reduce the incidences of terrorist attacks, and this needs to be better quantified and assessed.

Mr. Stephen Otter of the HMIC (UK) and a member of the SURVEILLE Advisory Board asked the panel whether the project intended to conduct further engagements with law enforcement. Mr. Stephen Otter acknowledged that while such a potential for greater engagement existed, certain parties in the law enforcement community might perceive the academic work as possibly an attack on the methods used by those conducting surveillance. However, Mr. Stephen Otter suggested that the measures of effectiveness elaborated by SURVEILLE could be analysed further by the police forces and seen as a positive opportunity to improve efficiency.

Prof. Scheinin responded to Mr. Stephen Otter's suggestions in noting that the deliverable 'D5.7 Proposal of a training course for law enforcement professionals on legal and ethical issues' of SURVEILLE was intended as a guide to assist in the delivery of training for law enforcement officers. Francisco Fonseca Morillo stated that law enforcement as a whole would need in the future to carefully balance citizens' concerns regarding the protection of their privacy and their data protection rights. Francisco Fonseca Morillo also noted that across Europe it may be possible to achieve in the future more harmonised rules at the European level, creating standards that allow citizens remedies should their fundamental rights be infringed.

Prof. Sorell noted in respect of the first crime scenario developed by the SURVEILLE consortium that the law enforcement end user panel had been involved in its development. Further, Prof. Sorell noted that it was hoped that the work thus far in the SURVEILLE project would spur greater interaction and discussion between the law enforcement agencies and academics in respect of reviewing surveillance technologies vis-à-vis their utility, effectiveness and the best means by which they may be implemented.

Prof. Claudia Diaz of KU Leuven and a member of the SURVEILLE Advisory Board asked the panel whether they might discuss further the general

background of the surveillance industry and its relationship with policy makers. Prof. Diaz suggested that they consider the relationship between lobbyists and policy makers, and the influence that they had on procurement decisions by government agencies; her concern was expressed that there was little transparency as to their impact on how decisions were made. Prof. Scheinin responded to Prof. Diaz's question in noting that SURVEILLE had indeed in part addressed this issue in its review of perception studies conducted by other FP7 projects. Prof. Scheinin then invited Prof. Reinhard Kreissl to speak on the matter.

Prof. Reinhard Kreissl (IRISS FP7, Director, Institute for the Sociology of Law and Criminology (IRKS)) noted that studies of the influences of lobby groups had been completed by NGOs and civil society groups such as Statewatch. SURVEILLE was complemented in its approach that included the input of EUPs and its guidance given to policy makers by Prof. Kreissl.

Katrin Huber from the European Parliament remarked that the law often does not adapt to tech developments, and that on occasion it struggles to deal with new advancements - citing as an example new technologies used in airport screening that were possibly problematic. Ms. Huber then asked whether SURVEILLE had analysed whether law needs to be more specific vis-à-vis references to particular technologies.

Prof. Scheinin answered Ms. Huber's question in stating that SURVEILLE did not directly address the issue of the specificity of law in respect of certain technologies, but noted in connection with this issue that it was often stated by public and authorities and law enforcement that the need for secrecy was paramount – and that this claim often overstated the case for not divulging how surveillance worked. Prof. Scheinin then stated that a balance need be established between law's regulation of surveillance based on specific requirements whilst not becoming quickly out-dated on the basis of evolution and advancements in technologies. Prof. Scheinin further clarified his point in stating that it flows from the requirement that intrusions into fundamental rights must be 'prescribed by law' that the law needs to define the restrictions upon rights that result from surveillance, not *per se* list specific technologies.

Prof. Peter Burgess, SOURCE Coordinator and Research Professor at PRIO, asked the panel whether the criticism that the SURVEILLE project utilised three separate assessments made independently was a valid one, noting that it could be said that the technology assessment on efficiency did not fully appreciate the impact of human operators. Prof. Peter Burgess also added that one needs to further reflect on the role of artificial intelligence in processing data collected by surveillance technologies.

Prof. Sorell responded to the comments by Prof. Peter Burgess in noting that the research of SURVEILLE was inter-disciplinary, and that in the course of

the assessments lawyers, ethicists and technologists discussed their findings collectively while drawing conclusions. Prof. Sorell noted too that the intended audience of the research findings of SURVEILLE were policy makers, the general public and academics.

Prof. Scheinin added in response to Prof. Peter Burgess that it was correct to assert that some overlap existed in the assessment of lawyers and ethicists as perspectives evidenced in certain situations some degree of correlation in their criteria set for the analysis of surveillance technologies. Prof. Scheinin then noted that PbD also featured in both the technology and fundamental rights assessments. Prof. Scheinin added in conclusion that it was found that in conducting the research a rational discourse developed that allowed a degree of objectivity in the assessment of the results gained.

1.2 Presentation of the Main Results of the SURVEILLE Project – Part II

This panel focused on the results of the legal research strand directed by the EUI within the framework of the SURVEILLE project, on assessing the intrusion into privacy and other fundamental rights through the use of surveillance technologies.

Chair:

John Mueller, member of the SURVEILLE Advisory board

Speakers:

David Anderson, UK independent reviewer of terrorism legislation

Simon Chesterman, Professor, National University of Singapore

Nancy Gertner, former United States federal court judge

Prof. John Mueller, member of the SURVEILLE Advisory Board, welcomed the audience members to the SURVEILLE panel session and began by introducing the members of the panel.

The first member of the panel to be introduced was Mr. David Anderson, the UK's independent reviewer of terrorism legislation. Mr. David Anderson spoke first of his role on the panel in representing a perspective, that of the UK, that at times differed from that of peers in continental Europe. Mr. David Anderson noted in his comments that UK judges in the courts had at times taken different views in relation to surveillance matters and the interpretation of the provisions relating to fundamental rights when compared with the opinions of the judges

of the ECJ and ECtHR. That said, Mr. David Anderson noted, the courts in the UK often cited the decisions of the ECJ and the ECtHR in their rulings. An example though of the often wide differences in opinion was given in respect of the case *S. Marper v. United Kingdom*, in which the UK's highest court ruled very differently in its judgment than that given by the Strasbourg court. Further examples were cited by Mr. David Anderson, including the case *Gillan and Quinton v. United Kingdom* and the *Digital Rights Ireland* case in the ECJ.

Mr. David Anderson then continued in his presentation by congratulating the SURVEILLE project for its rigorous intellectual enquiry. Mr. David Anderson further noted the importance of the work of Ross Bellaby in the UK in developing a theory of "the ladder of escalation" vis-à-vis the ethics of intelligence, noting that his research broadly includes looking at historical and contemporary use of intelligence along with the rise of the surveillance state. As regards the role of GCHQ in the UK, Mr. David Anderson highlighted that the intelligence services are indeed beginning to be more open about how they conduct their surveillance work, noting that after the Snowden revelations that had been poor in explaining the value and purpose of the surveillance work. Mr. David Anderson then referred to the work of the UK Parliament's Intelligence Committee in reviewing the intelligence activities of the agencies in the UK, and noted that bulk data collection had allowed for the identification of suspects and furnished a criterion for subsequent targeted monitoring. Mr. David Anderson further added in his comments that frequently assessments of the efficacy of surveillance measures were based on 'worst case scenarios', and that such an approach was ineffective. Mr. David Anderson then noted that at present the *Weber* case heard before the ECtHR remained the most pertinent case in respect of the precedent established at a European level for the lawful use of mass surveillance, based upon the judgment's articulation of an effective analysis of the proportionality of the means of monitoring deployed with regard to fundamental rights. Mr. David Anderson finished his presentation in noting that perhaps the assessments in SURVEILLE due to their methodology gave too much deference to past precedents established in case law, referring to the case *Weber* at the ECtHR, Mr. David Anderson suggested that case law proved inconsistent. *Digital Rights Ireland* was then cited as a case before the ECJ that whilst establishing certain precedents vis-à-vis the lawfulness of data retention it had not *per se* provided much clarification in respect of the use of profiling in surveillance activity.

The Chair, Prof. John Mueller, then introduced Prof. Simon Chesterman of the National University of Singapore. Prof. Simon Chesterman began his delivery in noting that SURVEILLE's establishment of a reasoned framework for the evaluation of surveillance technologies was most valuable. Prof. Simon Chesterman then noted that while the US was considering reigning in the scope of its surveillance activity, other countries such as France were considering expanding them. A further example of the increase in pervasive monitoring by law enforcement was cited by way of the uptake by law enforcement officers in

Singapore of body mounted cameras; the authorities in Singapore had contended that such devices were not so sinister looking as previous monitoring technologies. Prof. Simon Chesterman asserted that the work of SURVEILLE would hopefully benefit public authorities in that its research could better inform the rollout of new technologies by them. Prof. Simon Chesterman then spoke of the need to consider the investments being placed in surveillance technologies, noting that huge sums were being spent annually, and that it is often extremely complex a task to discern whether such spending on security is worthwhile and delivers the required results. Prof. Simon Chesterman asserted that the correct approach to this problem should be based upon rational reflections and the consideration of whether alternative solutions might be implemented that would yield better results. It was stated that in connection with this point that policy decisions were too often made in times of crisis, and that in doing so the wrong choices were made: a more balanced approach to decision making is required therefore. Prof. Simon Chesterman added that we need consider too that surveillance was not just a concern regarding the state, but also private actors. The privacy rights of citizens, Prof. Simon Chesterman affirmed, were vital in ensuring the legitimacy of a liberal democratic society.

Regarding terrorist attacks, Prof. Simon Chesterman asserted that these need to be assessed using a rational and analytical approach that makes a sober assessment. It was further noted that technology now allowed for a greater use of more mass surveillance that isn't targeted at individuals; a concern therefore being that access to the data collected also needed to be considered. In this respect, it was suggested, we might also consider further not just how data is collected, but how and by whom it is analysed. Prof. Simon Chesterman commented then on the need to consider generational shifts in attitudes toward surveillance: young people are generally more accepting of monitoring as a whole. Prof. Simon Chesterman remarked that CCTV use appeared to be widely accepted, as was the opening of luggage by customs officials, but when considering the analogy of opening letters with opening emails – this was still open to debate. Prof. Simon Chesterman also noted that there appeared to be a disconnect with the outrage expressed by privacy advocates post-Snowden and their use of social media. Prof. Simon Chesterman commented at this point that the debate should not focus on privacy versus security, as the former will most likely always lose – and that privacy was essential to citizens' liberty.

Prof. Simon Chesterman then continued his delivery in noting that liberty was at times viewed as a platitude and an amorphous construct: SURVEILLE would hopefully encourage a more rational debate with more rigour. Prof. Simon Chesterman then spoke of the SURVEILLE project and its use of a matrix for evaluating technologies. With its use by policy makers Prof. Simon Chesterman expressed the hope that it would encourage more transparency and allow for better decision making. More generally, Prof. Simon Chesterman

noted, it should be considered that security and liberty were not dissimilar and shared some common traits.

Prof. Simon Chesterman then spoke of the main findings of the SURVEILLE project, noting that its analysis had determined that the surveillance of objects rather than persons was often less intrusive; that mass surveillance always fails vis-à-vis breaching rights; that profiling of individuals and groups was often a suspect activity; that PbD could mitigate privacy intrusions; and that frequently distinctions made between content and metadata were erroneous. Assessing the findings of the SURVEILLE project, Prof. Simon Chesterman noted that its work might have distinguished more clearly between the surveillance activities of law enforcement and those of the intelligence services. In addition, Prof. Simon Chesterman also noted that the research of SURVEILLE could have looked further at the distinctions between procedural and substantive safeguards in respect of surveillance; the latter had proven the main focus of the work to date. It was also noted at this point that it was important to consider the different parties involved in authorizing surveillance within the judicial authorities and other public authorities. Prof. Simon Chesterman then referred to the issue of cognitive biases displayed by members of public authorities, and noted that the use of a framework for decision making such as that established by SURVEILLE could help provide a record for monitoring how decisions were made.

Prof. Simon Chesterman then raised a further point regarding the need to consider that certain vulnerable groups may be more affected than others by surveillance measures, therefore this impact should be considered. An additional point was then raised in respect of the investment already made in existing surveillance technologies, such as the sunk costs in CCTV. As such, we need recognize that it may prove difficult to convince parties that surveillance already in place should not be retained; the threshold for their removal may thus be higher than anticipated.

Prof. Simon Chesterman noted too that society should consider the role that technology can play in keeping communities safe; as such it should not only be considered as an enabler of the surveillance state. Prof. Simon Chesterman cited as an example the future role of police cameras in keeping a check on law enforcement activity and protecting the public from excessive use of force by agents of the state.

Prof. John Mueller then introduced the panel member Nancy Gertner, former United States federal court judge. Nancy Gertner noted in her introduction the challenges presented in preserving privacy in the United States where the Supreme Court's standard of a "reasonable expectation of privacy" established in its precedents through case law applied contextual reasoning. Nancy Gertner noted that this reasoning developed a type of feedback loop that created difficulties where the notion of privacy was an evolving concept. Nancy

Gertner noted that, in particular, the reliance on the concept of ‘pen registers’ and the identification of numbers called by a person using the fixed landline phone service was dated; it could not be meaningfully applied as a principle to modern date notions of content and metadata in the internet era. Nancy Gertner spoke of the SURVEILLE methodology and its framework for assessing new technologies and noted that its efficacy and utility as a tool for assessment might depend partly on the court in which it may be used in judicial decision-making (noting that the FISA court in the US was, in her opinion, too one-sided). Nancy Gertner then made the observation that as a judge she had frequently signed search warrants then, once an indictment had been issued, discovered that the reality in the case concerned (in hearing further arguments) was quite different from that which had at first been presented. Reflecting on the SURVEILLE methodology, Nancy Gertner asserted that a particular strength was its transparency, and this stood in contrast to some of the decision making in lower courts in the US, particularly in respect of the assessment of technologies. As a framework, Nancy Gertner asserted that the SURVEILLE methodology mirrored good judicial analysis. Nancy Gertner then commented upon the need for the analysis of privacy intrusions to reflect upon normative differences vis-à-vis interferences; noting that the depth of an intrusion might be perceived differently by different parties based upon cultural and value judgments. Nancy Gertner highlighted as an example of particular concern the notion that a computer conducting an analysis of data not being intrusive, whereas one by an analyst would be: this was deemed overly simplistic. Nancy Gertner also addressed the assertion made earlier that judges, given the same information, would always arrive at the same conclusions in their judicial reasoning; her view was that this approach did not adequately take into account judges’ different backgrounds and subjective opinions.

As to whether the SURVEILLE methodology could prove a useful tool in the courtroom, Nancy Gertner warned of the danger of framework tools and matrices for decision making, citing examples in the use where too rigid application of frameworks could inhibit the necessary discretion vital to decision making judges valued. Nancy Gertner affirmed that numbers and frameworks can obfuscate, and that too formulaic an approach to decision making could prove dangerous; quantitative approaches risked minimizing normative evaluation. Furthermore, Nancy Gertner also noted that quantitative approaches could lack precision, and further added that the question of relying on precedent in judicial thinking needs be highlighted as a concern – too often, Nancy Gertner asserted, precedent was subject to reification.

Nancy Gertner summarised her points in noting that the framework used in SURVEILLE could help foster further discussion, and that it could well prove a useful tool for legislatures and policy makers. Judges might also use the tool to check on the effective implementation of a surveillance method that has been authorised, Nancy Gertner suggested.

Prof. John Mueller then noted in respect of the comments made by Nancy Gertner that indeed privacy can be measure in financial terms, and cited as an example a valuation method that considers expenditure on encryption methods by citizens. Prof. John Mueller also noted that in the US there had been many cases in which the NSA had claimed that the analysis of metadata had been critical to preventing terrorist attacks, but that subsequent analysis of these claims had shown that these assertions were questionable.

David Anderson, UK independent reviewer of terrorism legislation, asserted that the question of balancing and the application of proportionality remained complex, noting that the *Digital Rights Ireland* case had highlighted the subjectivity of evaluations and judgments made by parties that would assert, for example, 'that citizens feel they are under surveillance', without any empirical research to support such a statement. Proportionality is, David Anderson asserted, not a hard-edged legal tool, but a nebulous concept which could be applied subjectively by different parties. David Anderson stated that courts can apply independent analysis, and that in fact this is what the FISA court in the US had been doing, though the court's methods might still be improved.

Prof. Simon Chesterman then spoke of cases in the US before FISA where it was questionable whether the threat posed by parties had been properly assessed in terms of the risks they presented to national security. Prof. Simon Chesterman then discussed how precedents had been established historically that might nowadays prove difficult to apply in a contemporary setting; the concept of 'reasonable expectation of privacy' was such a concept, he asserted: it remains difficult to formulate in an era of mass surveillance by private actors. Prof. Simon Chesterman asserted that we need consider further whether government should be allowed greater access to data collected by private parties; more oversight here is thus required.

Nancy Gertner added that in principle the FISA court could attempt to apply a framework such as that developed by SURVEILLE, and also noted that at present too often courts do not allow for defendants in surveillance and monitoring cases to argue their side of the case. Nancy Gertner concurred that proportionality indeed could appear a fuzzy concept at times, but the work of SURVEILLE helped provide an assessment that afforded more clarity; whilst it must be acknowledged that its work raised questions as to value judgements its approach inheres, it represents a positive start and should be continued and developed as a method.

Prof. Sorell then responded to questions raised about the SURVEILLE methodology and the scoring system, noting that the assessment of technologies was based on their use in the scenarios developed by SURVEILLE. It was noted that future assessments of technologies should also apply to scenarios and consider context therefore. Prof. Sorell noted that indeed

as a philosopher it could prove difficult to apply numerical values to concepts such as autonomy, lives, etc. but such a tension did not exclude its possibility. Prof. Sorell finished in noting that criticism of the framework for assessment was welcome, and that it should not be seen as being too prescriptive or formulaic. Nancy Gertner then added that the SURVEILLE framework for developing assessments of technologies in part did emulate the work of courts in which they adopted a framework to discern the application of proportionality and assess the efficacy of measures.

Prof. Scheinin noted that a notion of ‘reasonable expectation of privacy’ to an extent did also exist in European law, and commented that the SURVEILLE deliverable D4.7 had addressed this point. It had concluded that in the private sphere people (by definition) expect privacy, and that the aforementioned notion should not apply; rather that providing informed consent should. Hence, the proper scope of any discussion on whether ‘reasonable expectation of privacy’ should be a part of the test for permissible limitations, should be applied only when dealing with privacy rights in *public* space. For instance, CCTV cameras with adequate warning signs might be permissible, while secret listening devices catching up conversations in the street would not be.

Maria Grazia Porcedda of the SURVEILLE project at the EUI then asked the panel that they consider that prior case law on privacy issues was often problematic; Ms. Porcedda cited the ECJ case *Willemss* regarding the issue of the retention of fingerprints as an example of poor judicial judgment in respect of its consideration of biometric technologies; it was then suggested that in such instances it might be preferable for subsequent legal decisions to deviate from prior precedent. Nancy Gertner responded in noting that often in the US the laws were rather vague, and as such judges needed to evaluate and provide an interpretation, noting too that the ECHR was itself somewhat vague in her opinion in some of its articulations. Nancy Gertner then spoke of recent cases regarding mobile phones, noting that existing law was problematic where one considers how access to such a device may be granted – and that the authorisation might change depending on whether it require a fingerprint, a passcode or other means to access it. Similarly, Nancy Gertner noted, the case of *Jones vs. United States* regarding the use of GPS tracking by law enforcement also appeared already to be questionable in terms of its judgment and the application of the precedent established. Nancy Gertner asserted in this context that the Supreme Court often wished to apply very traditional elucidations of constitutional principles, and this proved awkward.

David Anderson then spoke at the conclusion of the session in noting that the courts had not necessarily always arrived at the correct decisions. As such, it should be appreciated, he affirmed, that the SURVEILLE framework could prove valuable. David Anderson noted that in the case of the UK it might be preferable in the future for a court appointed expert to provide more technical advice to the judges in their consideration of surveillance matters.

1.3 SURVEILLE Panel Discussion: Privacy by Design and its Alternatives

One of the main findings of the SURVEILLE project is that properly addressing the privacy concerns surrounding a technology creates a win-win result by improving the technological usability of the product while simultaneously mitigating or eliminating the ethical and human rights concerns. This panel discusses the concept of Privacy by Design and its alternatives.

Chair:

Christiane Höhn, Adviser to the EU Counter-terrorism Coordinator

Speakers:

Ann Cavoukian, three-term Ontario Privacy Commissioner, now Executive Director of the Privacy & Big Data Institute, Ryerson University

Alberto Pietro Contaretti, Programme Officer for EU Policies, DG Enterprise and Industry, European Commission

Claudia Diaz, Professor at the Faculty of Engineering Science, KU Leuven

George Katrougalos, Alternate Minister for Administrative Reforms and Electronic Governance of Greece and Professor of Public Law at Thrace University

Elisa Orrù, Professor, Centre for Security and Society, Freiburg University

Dr. Christiane Höhn opened the session by noting the interesting mix of expertise represented by the SURVEILLE panels of the day. She introduced the topic of the panel, namely privacy by design (hereafter PbD), by mentioning that the EU Counterterrorism Coordinator believes trading privacy for security creates a tension, and that integration should be sought after instead, through standards on privacy by design and data protection by design. Dr. Höhn invited the panellists to give their views on how to operationalize the concept of PbD into standards.

Dr. Höhn introduced the first speaker, Dr. Ann Cavoukian, hailed as the inventor of PbD. Dr. Ann Cavoukian thanked the project for the invitation to speak. She opened her speech by noting this is a crucial moment to discuss surveillance, which, in her view, is the antithesis of privacy. Dr. Cavoukian asserted that privacy does not concern secrecy, but rather the control of one's

personally identifiable data, which leads to informational self-determination. Privacy has also an important societal weight, which is often forgotten; solitude and reserve are fundamental to exist in society. Thus, surveillance robs people of their 'cognitive bandwidth'. While she said the NSA made it easier to prove this point, Western states seem nonetheless to be broadening the scope of surveillance by adopting new intrusive laws.

Dr. Cavoukian then introduced PbD as a paradigm to go beyond the concept of privacy versus security. The model is based on the idea of preventing privacy breaches, whose majority remains unchallenged. PbD maps onto the OECD's Fair information practice principles, but goes beyond them in that it abandons the zero-sum approach inherent in the concept of balancing, whereby an interest is decreased in order to elevate another one. Instead, PbD opts for a win-win solution. She mentioned PbD was successful in many respects: it was unanimously approved as an international standard at the Jerusalem data protection commissioners' conference; it has been translated into 37 languages; and features in the proposed EU Data Protection Regulation. Dr. Cavoukian then referred to the fact that the Privacy and Big Data Institute of the Ryerson University is starting a Privacy by Design certification process.

Dr. Cavoukian explained that, in practice, privacy is built into the system, entrenched at the time code is written or the technology designed. Dr. Cavoukian presented the seven foundational principles: i) proactivity; ii) privacy as the default setting; iii) privacy embedded into the design; iv) full functionality; i) end-to-end security; vi) visibility and transparency, openness; vii) user-centric privacy. Dr. Cavoukian explained the inherent comparative advantage of privacy by design, since the cost of investing in privacy upfront is, in fact, much lower than addressing the costs of privacy breaches.

Dr. Cavoukian subsequently gave examples of practical areas of operationalization of privacy protective measures. The first was big data, which Dr. Cavoukian claimed has mostly been collected in the past 2 years. Big data is a promising development with the potential to deliver many results, but could fail substantively. PbD can be used to the effect of reaping the benefits of big data without having citizens pay for the damage. Her second example was the Internet of Things, which is perhaps even more worrying than big data protection, as shown in the declaration adopted at the meeting of the data protection commissioners' conference in Mauritius, and the recently released report by the Federal Trade Commission on the matter. Discussions on how to implement PbD on the Internet of Things are ongoing.

Dr. Höhn then invited Mr Alberto Pietro Contaretti, who works at the DG Migration and Home Affairs (Unit B.4, Innovation and industry for security), to explain how privacy by design will play at the EU level. Mr Contaretti clarified he was giving a presentation on behalf of his colleague Aleksandra Oczko-Dolny, who could unfortunately not take part in the event.

Mr. Contaretti explained the origins of the Union's approach to privacy by design. In particular, Action 8 of the security industrial policy (26.07.2012, COM 417 final) consisted in supporting the adoption of a voluntary standard on privacy by design and privacy by default. The underlying idea was the increased demand for and use of security technologies, together with the need for a better protection of privacy to meet customers' demands, thus becoming a key selling point. The Commission concretized such action by issuing a mandate to the European Standardisation Organisations (hereafter ESOs) within the recently published European Agenda on Security (28.04.2015, COM 185 final).

Mandate 530 consists in supporting the implementation of privacy and personal data protection management in the design, development, production and service provision processes of security technologies and services. Mr Contaretti noted that defining the standard includes as difficult a task as providing a definition of security services and technologies, but the standard will also be coupled with tools for training manufacturers and customers to use meaningfully the products and services.

Mr. Contaretti explained that, after having accepted the mandate, ESOs would define its work programme by Autumn 2015. The deadline for the standard is January 2019. The final standard should apply across sectors and be technologically neutral.

After thanking Mr. Contaretti for his contribution, Ms. Höhn introduced Professor Elisa Orrù (Centre for Security and Society, Freiburg University). Prof. Orrù gave a presentation of an alternative framework to PbD developed within the SURVEILLE project, namely 'minimum harm' by design. The idea is that surveillance (features) cannot be completely eliminated; therefore, we should rather aim at reducing the negative impact of surveillance on the individual and society. Prof. Orrù pointed out that the minimum harm framework differs from PbD in three ways:

1. More than privacy: surveillance effects a whole series of negative consequences, which involve freedom of expression, freedom of information, discrimination etc.
2. Decentralisation and anonymisation: data should be kept for as long as possible in the hands of the data subject, and anonymisation should be implemented prior to collection. Examples include electronic petition systems (as developed by Claudia Diaz), and electronic toll pricing system.
3. Feeling of surveillance: the feeling of being under surveillance (also known as the 'chilling effect') counts as much as the collection of data itself.

Dr. Höhn then passed the discussion to Professor Claudia Diaz (KU Leuven), who was called to comment upon Prof. Orrù's paper. Prof. Diaz started by reminding that perceptions are heterogeneous, and change according to socio-cultural factors.

Dr. Diaz noted she appreciated the definitions used by Prof. Orrù. Minimum harm underlines the fact that surveillance always brings about privacy intrusions, which can be mitigated but not eliminated. This is the case, especially, when the functionality of a system is intrusive by default, in that it aims at collecting personal data. Prof. Diaz noted that PbD, on the other hand, misleadingly leads to believe that privacy harms can fully be eliminated.

Prof. Diaz then acknowledged that data minimization, a concept she used as an alternative to PbD, is insufficient, because the amount of data collected does not change, rather it is the kind of information processed that changes. She noted she would further revise her own work by focussing on minimizing disclosure, replicating data etc. Prof. Diaz concluded by noting that transparency in the model should also be applied to the software, and that technology neutrality is a sensitive issue, and very difficult to reach.

Finally, Dr. Höhn introduced Professor George Katrougalos, who is Alternate Minister for Administrative Reforms and Electronic Governance of Greece and Professor of Public Law at Thrace University.

Professor Katrougalos started by praising the success of SURVEILLE in integrating Robert Alexy's theory of rights with American pragmatism (efficiency). Professor Katrougalos said that the strength of SURVEILLE consists in avoiding abstract balancing. However, he recommended amending the legal assessment by taking into account the different perceptions of permissibility in the different countries. Professor Katrougalos's presentation revolved around the importance of cultural perceptions.

Professor Katrougalos gave the example of the United Kingdom, where introducing an ID card is more controversial than existing surveillance systems. At the same time a law allows people with serious health issues to leave prison provided they wear the electronic bracelet; an example of one such person was an infamous terrorist responsible for the murder of British citizens – in this case the inmate refused to use the bracelet based on religious objections.

The case of Greece indicates the peculiarities of cultural attitudes (e.g. as developed following its civil war), as well as the potential shift in attitudes determined by reaction to existing strategies. To this effect, Minister Katrougalos showed a map from Privacy International dating back to 2007, where Greece appears to be the most privacy-friendly country in Europe. Greece owed its place to the commitment of the Data Protection Authority. Professor Katrougalos explained how the authority allowed using a system

purchased from Siemens for the Olympic games for surveillance purposes given the exceptional circumstances. However, at the end of the games the authority made it clear that such system could only be allowed for traffic control. The Minister of Interior then asked the authority to authorize the use of the system for purposes of general surveillance even after the games. Based on a negative usability assessment, and human rights intrusion argument, the DPA turned down the request of the ministry of the interior (58/2005) for generalized surveillance, which should instead be allowed when there is sufficient evidence of a case. The data protection authority was wary of creating a ‘panopticon’.

However, later on the authority rejected to publish the names of some suspects of tax evasion in newspapers, because of the principle of the presumption of innocence. While this was a formally correct decision, it gave a first serious blow to the authority, which went against a serious interest of society. The legislator decided that the data protection authority was to be deprived of the competence from deciding on CCTV in 2007.

After the last presentation, Dr. Höhn allowed a last round of comments, which sparked a lively discussion. Dr. Cavoukian stated that data minimization is not about the amount of data, but the type of data collected; and that protection is not about the data controller. Mr. Contaretti reminded the audience that privacy by design is not something we can do without, because it responds to consumers’ wishes.

Prof. Orrù challenged the idea that surveillance does not carry privacy risks, but that we should start from the assumption the surveillance endangers privacy. Prof. Diaz stated that data minimization sometimes means not collecting certain attributes. Prof. Diaz said we should be careful with claims that we can introduce surveillance technology that enhances privacy. The data controller-based model ignores different models of trust. Prof. Katrougalos concluded the discussion by saying that we must protect privacy, and mould the other needs around this imperative. Dr. Höhn summed up the discussion by stating that whilst PbD is a fully established concept the debate will now be about its different interpretations and implementation.

1.4 SURVEILLE Panel Discussion: Technology, Security and Freedom in an Urban Context

This panel focused on the use of technological innovations in urban security by European local authorities. The SURVEILLE project covers end-user perspectives and has involved a panel of European police officers as well as the

European Forum for Urban Security (EFUS). This panel asked how mayors can play a role in the European discussion on security and freedom. Participants were asked how their cities make use of new opportunities and technologies to improve the quality of life and the security of citizens.

Chair:

Sebastian Sperber, Programme Manager, European Forum for Urban Security

Speakers:

Ahmed Aboutaleb, Mayor of Rotterdam

Ramon Espadaler Parcerisas, Minister of Home Affairs, Government of Catalonia

Dario Nardella, Mayor of Florence

Guilherme Pinto, Mayor of Matosinhos and President of the European Forum for Urban Security

Leen Verbeek, Vice President of the Congress of Local and Regional Authorities, Council of Europe

The Chair, Sebastian Sperber, Programme Manager, European Forum for Urban Security, began the session by welcoming the members of the audience and introducing the panel. Sebastian Sperber highlighted how the panel members would in their presentations provide a perspective of how technologies were being used at the local level by public authorities in tackling issues of urban security.

Dario Nardella, Mayor of Florence, noted that positive actions were required to address citizens' concerns regarding their security, but also acknowledged that a further issue to be considered was that of perceptions of insecurity and crime. The major noted that European cities are collective spaces; that they are spaces for families and for communities. The major also noted that in considering evidence bases we also consider the built environment and, furthermore, we consider the role of businesses: as such we need to consider the role of multiple actors in the urban space.

The major spoke of how we need to consider the control of the symptoms of crime. The major noted that Italian legislation has in part addressed various issues of urban security. It was noted that video surveillance could compromise the rights of citizens and result in a very strong control of public spaces. The major noted the European union was considering new draft laws on data protection: it was currently dealing with how best to balance security, protection and privacy. It was noted that assessments are needed to assess the impact of surveillance technologies, For example the use of CCTV. The major noted that the city of Florence was obliged to follow the Ministry of Home Affairs directive from 2012; as such, the major noted the importance of understanding how national level laws applied to local municipalities. It was noted then by the major that EFUS had been involved very much in developing

a wider discussion of European level use of CCTV and analysis is following the recommendations made by EFUS. EFUS has been involved in developing much greater discussion around understanding the local context of security. The major noted it was important to consider principle of necessity when contemplating the use of surveillance. The major further noted the importance of evaluation and monitoring, and discussed the value of checking the effectiveness after implementation. It was also noted that staff training was especially important. The major and then noted how surveillance could be used in activities that prevent crime; he noted that technologies work continuing to develop. It was explained by the mayor that we need to continue to assess the value brought by such advancements. Furthermore, it was noted by the major that data retention capabilities had also improved significantly. With regard to smart cities, it was noted by the major that new surveillance technologies could also bring positive results in terms of energy saving and environmental protection. In this way, the major asserted, smart use of technologies could deliver many benefits for citizens.

Sebastian Sperber, the Chair, then raised the issue of providing for needs assessments and evaluation. He then introduced the next speaker, Ahmed Aboutaleb, Mayor of Rotterdam. Mr. Ahmed Aboutaleb noted that Rotterdam was the first City to sign the promise on CCTV established by EFUS. Rotterdam has developed an extensive system of CCTV cameras that are networked across the city. The mayor then spoke of the diversity of the city of Rotterdam, Noting that the city had a population of 660.000 residents, and that the population represented 174 nationalities. The mayor noted however that diversity also presented certain problems. Increasingly, the mayor said that law enforcement had to be particularly strict. In Dutch cities it was the case that the mayor was considered primarily responsible for safety, however the mayor had to work in conjunction with the police, the public prosecutor and the citizens.

Mr. Ahmed Aboutaleb noted that he frequently had meetings with the citizens from the different districts within the city. The mayor noted that the mayor's office worked in conjunction with local police forces regarding the operation of CCTV. It was also stated by the mayor that CCTV was frequently used in prosecutions and courts. In the Netherlands it was the case that the use of CCTV in public spaces required that signs be displayed to indicate their use. The use of the recorded images was restricted, and under normal circumstances data was retained for one week. Mr. Ahmed Aboutaleb highlighted that in Rotterdam public transport also implemented CCTV, and also that first responders used CCTV footage to assist in their work. Mr. Ahmed Aboutaleb stated that CCTV had made his citizens feel safer today; Rotterdam was considered increasingly a safe city to live. Mr. Ahmed Aboutaleb noted that the future of legislation regarding surveillance was increasingly being discussed at the national level. The mayor also put into context the situation that had existed in the city 20 years ago; it was said that the high crime rate had worried citizens, and that they had called for greater action. Mr. Ahmed Aboutaleb also

raised the fact that in the Netherlands it was the case that the mayor has a lot of power over law enforcement, and that they played a prominent role in working with chief prosecutors. Mr. Ahmed Aboutaleb stated that certain neighbourhoods in the city had a very high immigrant population; this was a principle source of much of Rotterdam's new economic power. Regarding the use of CCTV, it was noted by the mayor that much of the current CCTV system was installed for the Euro 2000 football tournament. The CCTV in this case was aimed at ensuring crowd control, rather than for crime prevention. The city now has a system of smart CCTV, which can be accessed by law enforcement. There are 400 cameras in public spaces, and additional cameras on public transportation. All cameras are monitored 24/7, with an analyst viewing up to 30 to 40 images at a one time. Mr. Ahmed Aboutaleb noted that citizens were increasingly collecting their own images and sharing them with public authorities in Rotterdam. This issue presented its own problems, Mr. Ahmed Aboutaleb confirmed. Mr. Ahmed Aboutaleb finished his presentation in noting that in his opinion, CCTV should be considered a normal tool, and therefore it shouldn't require excessive regulation. Furthermore, the mayor suggested that where citizens have concerns they could always bring them to the courts to seek redress.

Guilherme Pinto, Mayor of Matosinhos and President of the European Forum for Urban Security, thanked the organisers for their having invited him.

The major began his presentation noting that he was responsible for an area in the second largest city in Portugal, the city of Oporto. Also, in his role with EFUS, he oversaw an organisation that worked with 250 city and regional municipalities. The major noted that it was essential that cities inspire trust between elected officials and citizens. It was noted by the major that cities continue to grow and attract many new citizens with jobs and prosperity. The major noted that there existed a tendency for technologies from conflict and war to be adapted for use in urban settings; this technology could be particularly intrusive on citizens' rights and was of concern. The major noted that in his role he frequently referred to the manifesto of EFUS on CCTV for guidance in the use of CCTV. He noted that the principles of transparency, accountability and participation were of great importance to citizens. The major then noted that the research of SURVEILLE had helped to update the principles developed by EFUS. In July there would be further discussion at the EFUS General Assembly regarding how to progress from the existing charter. The major then suggested that the European Parliament should pass legislation and regulate as a whole the use of technology in surveillance, noting that in his opinion it was best if decisions and regulation were made at the European Union level.

Ramon Espadaler Parcerisas, Minister of Home Affairs, Government of Catalonia, then addressed the audience. The Minister of Home Affairs thanked the organizers for his invitation to speak at the event. The Minister of Home

Affairs noted that in Catalonia the region had a special police force of 17,000 police officers. The largest municipality in the region was that of Barcelona. The Minister of Home Affairs then spoke of the issue of security, noting that technology could provide greater security and freedom - in his opinion the two concepts are linked. The Minister of Home Affairs asserted that freedom could be enhanced. As such, the minister asserted, public authorities had an obligation to ensure they examine how technology can best be utilised.

In Catalonia two types of CCTV are used: public and private. In using CCTV the fundamental rights of citizens must be protected, this includes respect for freedom of religion, freedom of assembly, freedom of expression and freedom of movement. It was noted furthermore that Catalonia had a specific body to regulate CCTV; this body was responsible for vetting and approving the use of CCTV. The specific body is made up of a prosecutor, mayor, persons from local authorities, and lawyers. In addition, there also exists a compulsory report system that assists in the evaluation of whether the CCTV is effective. In certain instances CCTV cameras had been removed where they have not proved effective. At present 112 municipalities operate 950 CCTV cameras. The Minister of Home Affairs noted that as many applications for cameras have been rejected as approved. Due regard must be given to the private sector use of CCTV, as at present no laws exist specifically to regulate their use.

The Chair then thanked Ramon Espadaler Parcerisas for his presentation and introduced the next speaker, Leen Verbeek, Vice President of the Congress of Local and Regional Authorities, Council of Europe. Mr. Verbeek began his presentation by noting that he was a governor in Amsterdam in the Netherlands between 2003 and 2008. The Congress of Local and Regional Authorities, Council of Europe, is made up of 200.000 communities and as part of its work it considers security issues; the safety of the public and private spaces, which includes public parks, transportation, etc. Technology remains a major focus and provides many benefits, said Leen Verbeek. Mr. Verbeek however noted that technology and its use can have implications for human rights; technology was not always effective - for example it had shown to have little effect in preventing suicide bombers. Mr. Verbeek noted that it was important to consult citizens so that they could understand the aims and means of surveillance; monitoring at all times must be proportionate. Mr. Verbeek noted the role of the CCTV Charter as a useful tool for public authorities. The two principles of necessity and proportionality were important in ensuring that surveillance techniques were used in a reasonable manner. Mr. Verbeek identified as a principal problem the question of violence, which is often increased at night; in fact citizens had asked for CCTV cameras to be installed in connection with this problem to prevent and fight crime. The mayor then referred to the group known as the Lonsdale youth; these were youngsters between the ages of 10 and 20 years old. The problem became particularly grave when a young person was murdered. In connection with the murder it was found that the best evidence for the conviction of those responsible was found in data made

available from downloads from their mobile telephones. The events also led to an increase in interaction between public authorities and parents, which led to parents monitoring more closely their children. It was also realized that grass roots preventive work could prove more effective in preventing crime. Mr. Verbeek asserted that the key to success was to have the citizens' backing and for them to be engaged in consultation. In addition, there was a backlash from the extreme right, Mr. Verbeek noted, but by and large citizens approved of the new measures. Mr. Verbeek identified three principal roles of public authorities: to provide security on the local level; to provide an interface of citizens in managing the security of the local area whilst respecting citizens freedoms; and to bring together people for creating social cohesion, participation and dialogue. Mr. Verbeek in conclusion noted that no single factor could solve the problems of urban insecurity. It was important to evaluate, engage citizens, apply safeguards and to strike the correct balance to achieve security.

Sebastian Sperber thanked Mr. Verbeek for his contribution to the debate and invited the panel to react each other's comments. Mr. Verbeek noted that the collection of data is increasing from mobile phones. Ahmed Aboutaleb, Mayor of Rotterdam, noted that many images were collected in Rome when a Dutch football team visited the city and some of its fans were involved in violence. In general Ahmed Aboutaleb noted that violence and high impact crimes were down in Rotterdam. Ahmed Aboutaleb, Mayor of Rotterdam, stated that the reduction of crime was due in part to raising the education level of citizens; the mayor stated that he had increased spending on safety and security, and also on playgrounds - youth violence prevention programs were also important in this respect. Sebastian Sperber then thanked Ahmed Aboutaleb for his comments.

Ramon Espadaler Parcerisas spoke of websites in Catalonia that enable citizens to interact on public order issues, which encourages discussion with politicians. Dario Nardella, Mayor of Florence, said that it was important to consider the risks of citizens in controlling society and community, further noting that it is important to consider the mindset of citizens as part of the community. Dario Nardella stated in this regard that it was important to combat public indifference to crime and insecurity; as such, modern technology must be used in addition to achieving a cultural change and to improving social relations. Mr. Verbeek added that it was important to take positive steps to ensure that citizens took ownership of the problems in communities. Guilherme Pinto, Mayor of Matosinhos, stated that for a long time that participation of citizens was lacking and that technology alone cannot solve the problem of the perception of insecurity.

Ahmed Aboutaleb, Mayor of Rotterdam, noted that while crime is in fact dropping people still feel unsafe. The reason for this he believes is the prevalence of crime on television. Another problem cited is the question of statistics and the dissemination of them; frequently officials manipulate

statistics - as such we need to question their validity. Ahmed Aboutaleb suggested that we need to rethink privacy; as such, proportionality is simply 'what is needed'.

A researcher from the EUI in the audience then asked a question: "Can you describe the new technologies being used?"

Dario Nardella, Mayor of Florence, responded in noting that the city was working with Thalys on new systems. Dario Nardella noticed that progress was being made in the use of CCTV, and also stated that it should be understood that local state police are involved in monitoring the use of images by the city authorities. However, it should be understood that the systems require a lot of investment.

Ahmed Aboutaleb responded stating the problem is not the technology, and that in his opinion the problem is the perception of the technology by the citizens. As such, Ahmed Aboutaleb believed that mayors should be given more powers, and that the use surveillance should not be governed at EU level: the powers should be granted locally.

Guilherme Pinto, Mayor of Matosinhos, stated that technology couldn't solve all problems: human rights must be considered and the rule of law is crucial. The Chair, Sebastian Sperber, then thanked the panel and audience and closed the session.

Section 2. Day 2 of the State of the Union and SURVEILLE Final Conference

President Weiler noted in his welcome speech that surveillance was one of the main themes of the State of the Union this year and congratulated the SURVEILLE project for having been farsighted in its approach, considering the issues of surveillance a European priority long before recent incidents in Europe connected to terrorism and serious crime. President Weiler noted that it was important to consider also issues beyond surveillance for democracies; democracies are in a fight with enemies with one hand tied behind their back. This hand is committed to human rights, dignity and liberal democracy - as such, we need to understand that this commitment is deep. President Weiler stated that in studying surveillance and its impacts we need to consider how democracy is being tested at this time.

The State of the Union Address
**Martin Scheinin, Professor of International Law and
Human Rights, EUI**

When delivering the 2015 State of the Union Address, Prof. Martin Scheinin spoke of the work of the SURVEILLE project and on the issue of surveillance more broadly in the European Union, noting:

It is an honour to have been selected as the EUI professor who will present the annual State of the Union Address to this distinguished audience of policy-makers, scholars, media professionals and others. The reason for this choice is that one of the main themes of the State of the Union Conference this year is *Surveillance and Freedom in Europe*, when a large European research project on surveillance, headed by myself over the last three and half years, is coming to an end and can present its results.

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Let me nevertheless start with the theme of *Surveillance and Freedom in Europe*. It is soon two years since former CIA and NSA contractor Edward Snowden went public with his revelations about massive and systematic surveillance conducted by the United States and other countries, affecting the confidential communications and personal data of millions and millions of fully law-abiding citizens. Throughout this time I have had the privilege to lead the European research project SURVEILLE funded from EU's Seventh Framework Programme – *Surveillance: Ethical Issues, Legal Limitations, and Efficiency*.

Yesterday at the Badia Fiesolana we had a full day of events related to the SURVEILLE project. And just before this address we were offered some reflections on the outcomes of the project by excellent panelists. At this stage, as the consortium leader of SURVEILLE, I only want to offer three quick reflections on the project. The first one of them is that we hope to have demonstrated the strength of multi-disciplinarity in academic research. Economists may be right in saying that the probability of dying of a terrorist attack is so low that it is not worth all the money that is spent in dubious efforts marginally to reduce that probability. Data scientists may be right in saying that realistic estimates of false negatives and false positives show that proper identification of real terrorists through mass surveillance is doomed to fail. Ethicists may be right in identifying various moral hazards that result from creating what is often referred to as the surveillance society. And lawyers, like myself, may be right in saying that mass surveillance through combining various categories of so-called metadata of innocent people amounts to legally impermissible intrusions into the fundamental rights of privacy and data protection. But not one of these people will alone be able to convince the population or the policy-makers that it is high time to dismantle mass surveillance. Through the multidisciplinary approach of SURVEILLE we hope

to have paved a way for a more rational and holistic assessment of how the famous “balance” between privacy and security can be struck. In SURVEILLE, we gave to surveillance technologies the benefit of doubt by having our technology experts assess their capacity to deliver what they are designed to deliver. And then we compared the resulting security benefit – the usability score – against the ethical harm and the fundamental rights intrusion. In many cases we said yes to the question whether surveillance was acceptable. But in many cases we came to a negative conclusion, and perhaps most importantly we concluded that electronic mass surveillance is one of the areas where the proper way to strike the famous ‘balance’ is to say no to surveillance.

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Europe must fight against terrorism and other organised crime, and prevention is always better than reaction. If mass surveillance fails, then the question is what methods do work, and whether they are ethically and legally acceptable. An easy answer is found in targeted surveillance, as experience shows that in most of the high-profile terrorist attacks in Europe and elsewhere the perpetrators were already known to the authorities. But are there ways to identify the proper targets through other methods than mass surveillance or discriminatory profiling? This is the hard question, and SURVEILLE research suggests that the answer is affirmative.

The European Agenda on Security 2015-2020, adopted as a Communication by the Commission last week, contains important lessons learned and strategic insights but also some worrying items. The document identifies terrorism, organised crime and cybercrime as three interlinked threats for EU’s internal security. Rightly, it then affirms full compliance with fundamental rights as the first one of five key principles in confronting the threats. However, when the document moves to the plan to formulate during the next month or two “common risk indicators” for Member States that are controlling the EU’s external borders, one has to ask whether this reflects a plan to repeat the post-9/11 mistake of trying to construct “terrorist profiles.” And instead of drawing clear lessons from the 8 April 2014 ruling by the Court of Justice of the EU in the Data Retention Directive case, lessons that might be quite important in curtailing electronic mass surveillance by following the guidance of the Court concerning the requirements of legality, necessity and proportionality that flow from the fundamental rights of privacy and data protection, the Commission declares that it “will continue monitoring legislative developments at national level”. This sounds like *laissez-faire* to me. As a positive observation, I want to note the mention in the Security Agenda document of work towards a Privacy by Design standard in technology development. This is very much in line with the outcomes of SURVEILLE, and I hope our work, and the special place proposed for Privacy by Design in the SURVEILLE Decision Support System will inform the elaboration of the standard.

2.2 State of the Union Panel Discussion: Surveillance and Freedom in Europe

This session concentrates on Europe's choices in respect of better security through surveillance with or without compromising privacy, data protection and other fundamental rights. The discussion marks the publication of the final results of the SURVEILLE project, gathers representatives of EU institutions and member states, disseminates the results of the project and discusses their policy implications.

Chair:

Miguel Poiares Maduro, Minister in the Cabinet of the Prime Minister and for Regional Development of Portugal

Gilles de Kerchove, Counter-terrorism coordinator, EU Council

Gus Hosein, Executive Director, Privacy International

Marietje Schaake, Member of the European Parliament

Miguel Poiares Maduro, Minister in the Cabinet of the Prime Minister and for Regional Development of Portugal, opened the session by welcoming the panel members and the audience to Palazzo Vecchio. Miguel Poiares Maduro began by noting the question of surveillance was a question about the nature of democracy; terrorism can threaten democracy, but so can surveillance. Miguel Poiares Maduro stated that democracy has to answer key challenges, and that a balance needs to be achieved. The instruments of surveillance, such as drones, present risks. New technologies allow monitoring of intimate aspects of our lives: for example mobile phones allow for geolocation; keystroke logging software can monitor activities; social media analytics can examine behaviour - all this new technology is being used today. These technologies present a threat to privacy and our freedom - they can have a chilling effect and result in self-censorship.

Gilles de Kerchove, Counter-terrorism coordinator, EU Council, thanked the audience for their presence at the event. Gilles de Kerchove began by noting that striking a balance on security issues was a complex task, and noted in this respect that there existed a divergence of views between the EU Parliament and the Council in achieving this aim. The balance needs to be achieved while considering the rights of citizens based on the EU Charter of Fundamental Rights. Gilles de Kerchove noted that the EU Parliament is not convinced of the need for law enforcement agencies to get access to PNR data, but that this measure was needed to detect suspicious travel of would be foreign terrorist fighters. In fact, as a result, Gilles de Kerchove noted that Member States were instead building their own databases: this proved less effective and less efficient. Furthermore, these efforts avoid the benefits of greater cooperation between Member States. Gilles de Kerchove stated in this regard that the data collection mechanisms have been created, that no vision allowed for a coherent

approach: this was increasingly a problem the EU needed to tackle. The Counter-terrorism coordinator then outlined that the EP raises the problem of a slippery slope, whereby increasing amounts of data not are collected just on suspects but also on innocent people. This also applies to data held by the private sector - for example in the financial services industry. More and more data is being collected, but we need to think about how data can be shared more effectively. The Counter-terrorism coordinator noted that it is his role to inform the European Parliament of the threat terrorism presents, and that it is critical to counter this threat. The Counter-terrorism coordinator then spoke of common risk indicators; across Europe a threat existed from Europeans returning from Iraq and Syria with terrorist training. The intelligence services managed to stop two thirds before they leave. To counter threats, the Counter-terrorism coordinator stated that we need to use better systems of detection and be more systematic; if we fail, the population will demand to re-establish internal border controls - which will counter one of the best achievements in the EU. As such, more efforts are needed to secure our external borders.

The Counter-terrorism coordinator then spoke of the issue of the Snowden leaks, stating that they had proven a serious issue. Gilles de Kerchove stated that the US and the EU had differences in their approaches; he noted that in the US, government was expected to provide 100% security. The European Union however, was more resilient; Gilles de Kerchove asserted that 100% security is impossible to achieve. The Counter-terrorism coordinator then spoke of how the United States have developed an approach that required a large amount of data, and also referred to the fact the European Union doesn't have an intelligence competence; this is the mandate of the individual Member States. The Counter-terrorism coordinator then referred to the fact that increasingly the Obama administration and Congress in the United States were moving to reduce data collection. Furthermore, the Counter-terrorism coordinator also noted that the EU and United States were continuing with discussions on an agreement between the two parties regarding sharing of data. It was also noted that the United States Privacy Act would allow European Union citizens to challenge the United States' data collection. Regarding the revelations of Edward Snowden, the Counter-terrorism coordinator noted that the NSA had been aided in part by US technology companies. It was then suggested that the European Union might invest more in research and keep security technology in Europe. The Counter-terrorism coordinator then noted that internet companies in the United States were increasingly using encryption, which made the work of law enforcement more complicated and time-consuming. However, the Counter-terrorism coordinator acknowledged that encryption was a positive factor for many parties, but law enforcement and intelligence services still needed to intercept the communications of terrorists and organised crime under the conditions defined by law. It was suggested that more dialogue was needed with Internet companies; the commission would soon be setting up a Forum to discuss the use of the Internet in criminal activity and terrorism. The Counter-terrorism coordinator then took the opportunity thank the SURVEILLE project

for its work and also mentioned the need to consider Privacy by Design. However, PbD was not a black-and-white approach; it required careful consideration in its implementation. It was further noted by the Counter-terrorism coordinator that the new European Agenda for Security would consider PbD.

The presentation continued with the Chair introducing Gus Hosein, Executive Director, Privacy International. Gus Hosein began by noting that for many years Europe was considered a beacon and issues like data protection and cryptography, however nowadays people want know how the issues of data retention and biometrics will influence their lives in Europe. Furthermore, it was also highlighted that oppressive regimes around the world were using European technology. Initially, post-9/11 we in Europe were protective of our data, but since this time things have changed, asserted Gus Hosein. Gus Hosein noted that the research project SURVEILLE had worked on complicated concepts. Gus Hosein then noted are many policymakers do not understand technology; as such they continue to think about phone lines, for example, rather than fully appreciate complexities of modern day technologies. Gus Hosein then asserted that this represented a 1990's approach. Gus Hosein also noted profiling was becoming increasingly powerful, and that algorithms were expected to provide predictions, whilst their deficiencies were rarely acknowledged. Gus Hosein did however acknowledge that, we were fortunate that the United States and European courts have ruled against unlawful legislation. Gus Hosein noted that we need to confront the opportunities that future technology presents; the Internet of Things, smart technology, and wearable technology all present challenges. The nature of surveillance today is such that data on our heartbeats, interactions and location is openly accessible to the government. Gus Hosein noted that in this respect greater and greater databases were being created. Gus Hosein then warned of the danger of government funding backdoors to access our homes and medical records; such an approach is being proposed, he asserted: in essence the government might gain the capability to search our lives and opinions. Gus Hosein noted that this technology already exists in the form of social media monitoring. It was stated that this activity was taking place without a clear legal basis, and absent too the required political discussion.

Gus Hosein then noted that in his opinion he was not pessimistic, actually optimistic. However, Gus Hosein warned that the internet remained a powerful tool that was increasingly being used for surveillance. Great innovation was required to counter this phenomenon, said Gus Hosein.

The Chair of the session then introduced Marietje Schaake, Member of the European Parliament. Marietje Schaake began by thanking SURVEILLE for its work, noting that politicians must be informed by research. Marietje Schaake asserted that knee-jerk reactions resulted in grave consequences. Marietje Schaake highlighted that SURVEILLE had drawn the conclusion that mass

surveillance was always disproportionate; Marietje Schaake then noted that she had spoken about this issue to the UN Special Rapporteur on freedom of expression. Marietje Schaake stated that open societies must defend themselves against attacks, but we also need to protect ourselves from the erosion of rights. Marietje Schaake asserted that we need to think about Europe's role in the world, and that freedom and security are mutually reinforcing. Furthermore, it was stated that we need to give more consideration to the role of private actors; greater democratic oversight is required. Marietje Schaake stated that she believed greater resilience is required in Europe, and that we need consider seriously the concerns relating to the proliferation of surveillance technology globally; this will in the future have a serious impact on international relations. Industry currently remains largely unregulated but nonetheless has a huge impact, and technology is only becoming cheaper. Marietje Schaake cited examples of Italy and United Kingdom exporting to regimes in Egypt and Bahrain that were responsible for human rights abuses; this undermines our own security and welfare in Europe.

Marietje Schaake stated that she was of the opinion that restrictions on arms exports should also extend to surveillance technologies. Marietje Schaake also noted that often law enforcement commissions technology and then in turn promotes its use. It was also noted that the NSA had weakened encryption which could have protected infrastructure; this problem shows the linkage of mutual dependence noted Marietje Schaake. Marietje Schaake then questioned whether the new law adopted in France would have prevented the recent terrorist attacks in Paris. Marietje Schaake also highlighted the concept of internet black boxes, noting that we need to know more that what is being done by governments gain access to internet data - as citizens we should have a human rights protected, in turn this will serve as a model and example to countries such as China and Russia. Marietje Schaake then noted that it was an illusion that the European Union and the United States would forever be the leaders in information technology; thus we need to be concerned that any backdoors will be exploited other countries. As such, Marietje Schaake suggested, we should adopt an approach that integrated freedom and security involving the corporation of civil society, private industry and government working together to develop technologies. It was stated that new regulation needs to be transparent, and that a new stakeholder contract be developed between all parties so that we do not repeat the mistakes of the past.

Miguel Poiares Maduro, Minister in the Cabinet of the Prime Minister and for Regional Development of Portugal and Chair of the session, then asked the panel members how international cooperation could lead to better standards.

Marietje Schaake responded by noting that she was not convinced that decision-makers understood the impact of technology, stating that too much attention was given to the collection of data rather than establishing actual targets. As such, Marietje Schaake believed that surveillance was the easier

option, but that a targeted approach was needed. Marietje Schaake also noted that budget cuts of intelligence services were impacting their abilities, but that more money spent on mass surveillance is not the correct option. Marietje Schaake cited the case of Egypt, noting that the European Union needed to question what it was promoting in its external relations; is it seeking trade benefits in its trade policy rather than promoting human rights? Marietje Schaake asserted that one needs to consider what is necessary and proportionate to maintain security.

Gilles de Kerchove responded by saying that the way forward was through legislation that incorporated privacy by default as a concept, noting that the EU was not a foreign policy superpower yet, but that when it enacts legislation, it has influence on third States ("normative power"). Gilles de Kerchove stated that PbD should be considered similarly as the European Union's pollution standards; these can give the European Union a competitive edge in the technology industry.

Miguel Poiares Maduro cited the work of Lawrence Lessig and stated that the author was pessimistic in that code constituted the power over the Internet; do the security agencies have too much power? Should we indeed be focusing on PbD?

Gus Hosein responded to the question stating that international cooperation will help in developing safeguards. Gus Hosein noted that in the past the US legal system was strong, but that in the current climate the only remedy was to raise the bar - and address issues of inconsistencies between states such as United States, the United Kingdom and others. For example, Gus Hosein noted that United States law currently discriminates against other countries and foreigners - the United States Constitution does not apply outside its borders. PbD was in part limited in its efficacy; member states already have systems deployed that can circumvent measures to increase privacy. As such, Gus Hosein asserted that PbD may in fact constitute a ruse: governments may just introduce more surveillance.

Miguel Poiares Maduro then asked the panel whether then encryption was going to be a key issue. Marietje Schaake responded by stating that it was her belief that privacy can be ensured by encryption; she also highlighted the contradictions in allowing government hacking when we had concerns regarding cyber attacks from adversaries.

Gilles de Kerchove noted that one needs to consider organised crime, the methods of criminals and terrorists; we must remember that the security community needs to be able to intercept communications under the conditions determined by law. As such, we need to consider that end to end encryption can hamper intelligence services' work. Gilles de Kerchove also suggested that one needs to have the privacy community working together with the

security specialists (Privacy by Design), and that parliaments should be setting the limits on surveillance.

Miguel Poiares Maduro asked who should make the decisions on the level of surveillance, and who should determine the level of transparency. It was suggested perhaps that there was not enough democratic accountability. Further, it was asked whether citizens could allow mass surveillance in a democracy.

Gus Hosein responded to the question in asking: “What were the applicable laws?” and noted that it was unlikely that legislation the European Union would address government hacking.

Marietje Schaake expressed the view that mass surveillance is always disproportionate and cannot be human rights compliant; as such targeted surveillance is required. In the past, Marietje Schaake stated, surveillance has taken place on the basis of secret courts and secret laws. However, it would be better if we established effective norms based on the technologies’ capabilities.

Miguel Poiares Maduro then asked the audience whether had any questions.

Jens-Henrik Jeppesen, Director for European Affairs, Centre for Democracy and Technology stated that in his opinion that the new French law did not inspire confidence and the European regimes governing intelligence were not better than those in the United States. Jens-Henrik Jeppesen asked Gilles de Kerchove if he could facilitate debate with the United States to ensure better compliance and better legal safeguards.

Marietje Schaake responded that recently private companies had over-reached, and that rapid technology advancements whilst offering opportunities also create potential problems and disadvantages. As such, Marietje Schaake affirmed, it was vital that we protect our societies and defend democratic values. Gus Hosein stated that European Union intelligence reform is required

A further comment was made by Anna Kocharov, an EUI researcher. The panel was invited to comment on whether the European Union should have an IT policy at the regional level.

A third comment came from Prof. John Mueller, who suggested that mass surveillance does not do much good - it was ineffective. Prof. Mueller suggested that the haystack approach of United States had failed, that the European Union was increasingly moving in the same direction.

Marietje Schaake responded that mass surveillance was problematic because of concerns of mission creep; data can be used for other investigations, such as for example enforcing copyright. Further, it was stated that human rights impact

assessments could be used in technology research phases to help ensure fundamental rights compliance.

Gilles de Kerchove stated that we need to remember that the new French law creates a legal framework. Furthermore, Gilles de Kerchove also added that Parliamentary oversight of intelligence is needed. However, Gilles de Kerchove highlighted that the member states are the sole responsible for national security (Art. 4 TEU). It was also noted that the European Parliament works to establish best practices in surveillance and work to promote them.

The chair of the session, Miguel Poiars Maduro, then thanked the panel and audience and closed the session.

Section 3. Other Events and Media Exposure

The above text covers the sessions at the State of the Union Conference that also constituted the Final Conference of the SURVEILLE project. It is to be noted, however, that the themes of SURVEILLE and even the project itself, were referred to also in other sessions of the State of the Union Conference. The Conference also included an “open day” on Saturday 9 May 2015, intended for the general public. For that occasion, the EUI launched an art competition “Surveillance and Democracy in Europe”. The artwork was on display at EUI’s Villa Salviati, and the award ceremony constituted one element in the “open day” programme. *See:*

<https://stateoftheunion.eui.eu/programme-9-may-2015>

<https://stateoftheunion.eui.eu/photo-gallery> (see the photos under 9 May)

<https://www.youtube.com/watch?v=hO70WtU65mw> (interview with the winner)

<http://www.eui.eu/Research/HistoricalArchivesOfEU/News/2015/05-15-Morethan1500visitorsatthe2015OpenDayoftheHAEU.aspx>

<http://www.eui.eu/Research/HistoricalArchivesOfEU/News/2015/03-26-FinalistsSurveillanceandDemocracyinEuropeartcontest.aspx>

<http://www.eui.eu/Research/HistoricalArchivesOfEU/News/2015/01-12-CompetitionforanartinstallationatVillaSalviati.aspx>

3.1 List of media covering SURVEILLE and the State of the Union Conference

In German:

SURVEILLE, Prof. Scheinin and Gilles de Kerchove:

http://fazjob.net/ratgeber-und-service/karriere-im-ausland/faz-archiv/126275_Ein-Krisenkontinent.html.

In Italian:

Theme on surveillance and freedom:

<http://www.intoscana.it/site/it/articolo/Renzi-a-Firenze-con-i-leader-europei-live-da-Palazzo-Vecchio/>.

Interview with EUI- SG Ferrara main theme on surveillance

<http://www.stamptoscana.it/articolo/politica/ferrara-iue-leader-europei-a-firenze-per-rilanciare-lunione>.

Theme on surveillance and freedom during the second day:

<http://www.gonews.it/2015/04/20/torna-lappuntamento-con-i-protagonisti-dellue-per-discutere-del-futuro-dellunione/>.

Theme on surveillance and freedom:

[http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CD0QFjAD&url=http%3A%2F%2Fwww.festivaldeuropa.eu%2Fwp-content%2Fuploads%2F2015%2F04%2F02-EUI-PRESS-RELEASE-Open-Day-FDE-27-](http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CD0QFjAD&url=http%3A%2F%2Fwww.festivaldeuropa.eu%2Fwp-content%2Fuploads%2F2015%2F04%2F02-EUI-PRESS-RELEASE-Open-Day-FDE-27-04.docx&ei=zLxZVe3nM8X5ywPB24HwBg&usg=AFQjCNH9tu6tsncSnPZG)

[04.docx&ei=zLxZVe3nM8X5ywPB24HwBg&usg=AFQjCNH9tu6tsncSnPZG](http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CD0QFjAD&url=http%3A%2F%2Fwww.festivaldeuropa.eu%2Fwp-content%2Fuploads%2F2015%2F04%2F02-EUI-PRESS-RELEASE-Open-Day-FDE-27-04.docx&ei=zLxZVe3nM8X5ywPB24HwBg&usg=AFQjCNH9tu6tsncSnPZG)
[tkIQVHapSetHvw](http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CD0QFjAD&url=http%3A%2F%2Fwww.festivaldeuropa.eu%2Fwp-content%2Fuploads%2F2015%2F04%2F02-EUI-PRESS-RELEASE-Open-Day-FDE-27-04.docx&ei=zLxZVe3nM8X5ywPB24HwBg&usg=AFQjCNH9tu6tsncSnPZG). (WORD file)

Theme on surveillance and freedom: <http://www.forexinfo.it/The-State-of-the-Union-Renzi>.

Theme on surveillance and freedom: <http://www.nove.firenze.it/the-state-of-the-union-dal-6-al-9-maggio-tanti-appuntamenti-a-firenze.htm>.

Theme on surveillance and

freedom: <http://www.progettoitalianews.net/news/aperta-conferenza-conclusiva-di-the-state-of-the-union/>.

In English:

Surveillance project: <http://www.lapietradialogues.org/blog/?p=4362>.

SURVEILLE and Prof. Scheinin: <http://www.tribuna.com/eportale/it/2014-03-20-23-48-00/23454-eui-state-of-the-union-address-condemns-europe-s-response-to-migration>.

Regarding the award ceremony for the art competition on “Surveillance and Democracy in Europe”, one of the main topics of this year’s international conference “The State of the Union”:

<http://www.eui.eu/Research/HistoricalArchivesOfEU/News/2015/05-15-Morethan1500visitorsatthe2015OpenDayoftheHAEU.aspx>

Jens Henrik Jeppesen, ‘Can a Quantitative Approach Help Address Government Surveillance?’ Available at: <https://cdt.org/blog/can-a-quantitative-approach-help-address-government-surveillance/>

The Florentine: A review of the 5th State of the Union:

<http://www.theflorentine.net/articles/article-view.asp?issuetocId=10030&browse-by=News&level=Florence-News%20Page%201%20of%202>

Video coverage of the event including SURVEILLE panels:

<https://stateoftheunion.eui.eu/video-recordings-of-previous-sessions>

<https://stateoftheunion.eui.eu/live-interviews>

Section 4. Annexes

4.1 PowerPoint presentations of the SURVEILLE Consortium members


Presentations from the session where the main results of SURVEILLE were presented (attachments)

Martin Scheinin

Tom Sorell

Michelle Cayford

SURVEILLE



SURveillance: **Ethical Issues,** **Legal Limitations,** **and Efficiency**

An FP7 project funded by the European Commission under SEC-2011.6.1-5

2012-2015; 10 partners



www.surveille.eu



Some lines of **SURVEILLE** work



- WP2: Survey of surveillance technologies
 - D2.6 Organised crime scenario
 - D2.8 Terrorism prevention scenario
 - D2.9 Urban security scenario (and synthesis)
- WP3: Effectiveness of surveillance
 - D3.8 Results of effectiveness research
- WP4: Law and ethics of surveillance
 - D4.10 Synthesis
- WP5: Stakeholder interaction
 - Advisory service (D5.9 & D5.10 soon out)

SURVEILLE D2.8: Terrorism prevention scenario



Matrix			
Technologies and techniques	Usability	Fundamental Rights Intrusion	Ethical risks
1. Fiber-optic Cable Splitting	5	16	Red
2. Phantom viewer	5	16	Red
3. Social network-ing analysis	8	8	Yellow
4. Opening of baggage	8	$\frac{3}{4}$	Green
5. Covert surveillance team	6	$\frac{3}{4}$	Yellow
6. Finspy	4	16	Red



www.surveillance.eu



Fundamental Rights Intrusion Score



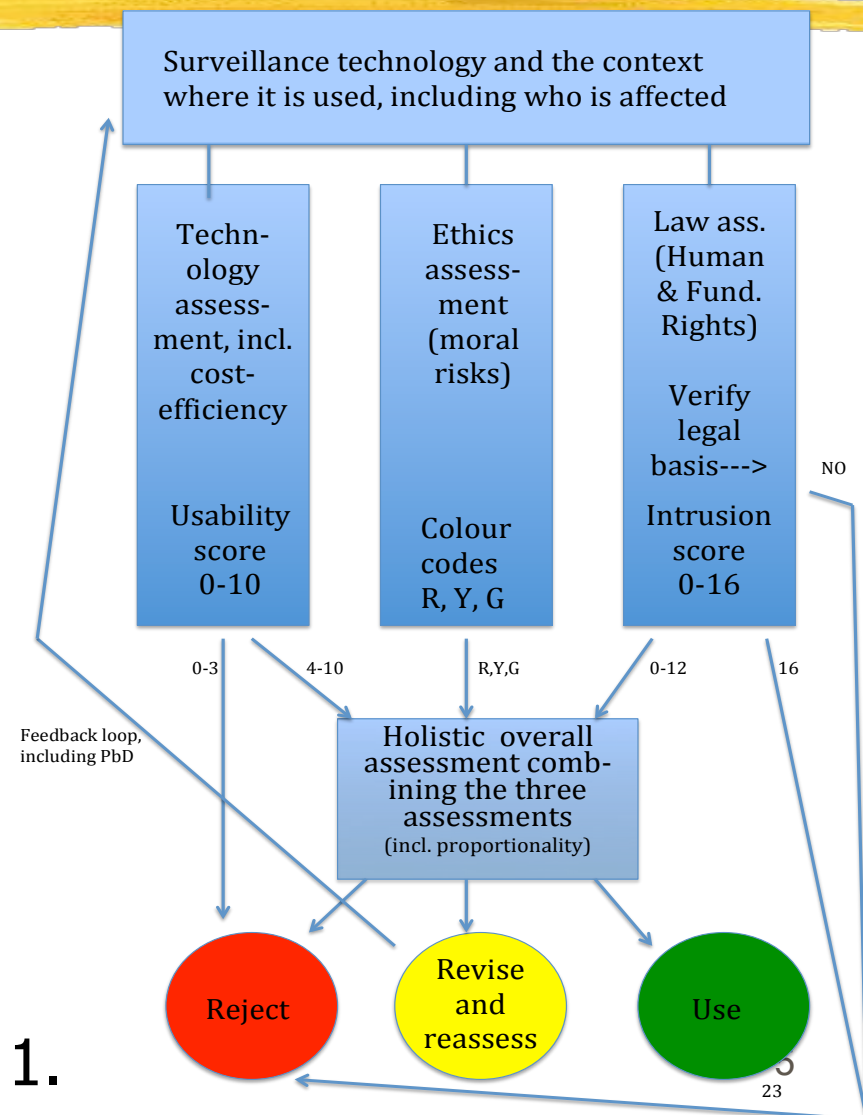
$$W_{i,j} = \frac{I_i \cdot W_i \cdot R_i}{I_j \cdot W_j \cdot R_j}$$

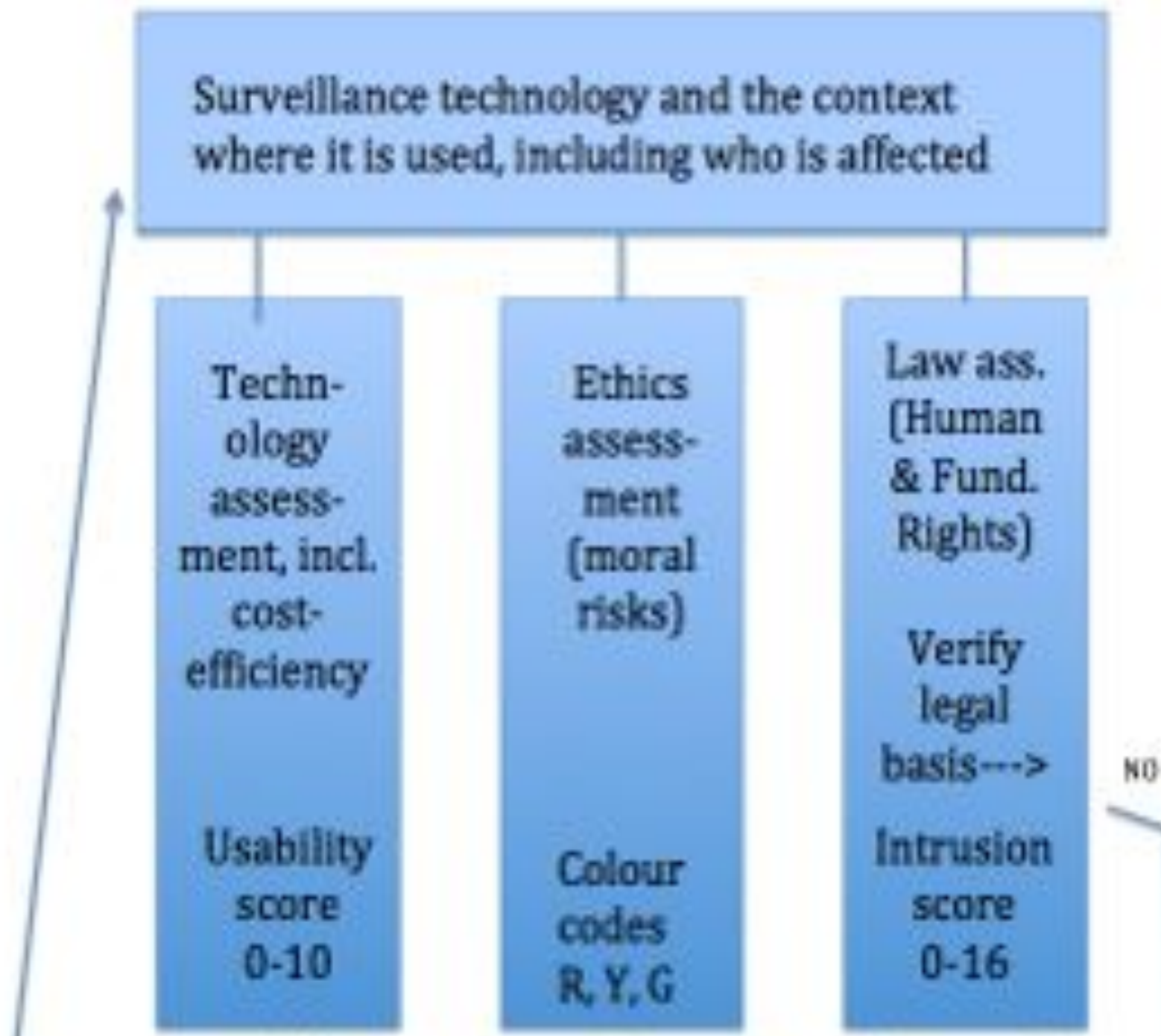
- This is known as Robert Alexy's Weight Formula
- Legal assessment in SURVEILLE simplifies it by focusing on the nominator and letting the technology assessment replace the denominator
- W = weight of a fundamental right (0,1,2,4)
- I = intensity (depth) of the interference (0,1,2,4)
- R = reliability of these assessments ($\frac{1}{2}$, $\frac{3}{4}$, 1)
 - For us, based on the existence of clear ECtHR case-law₄

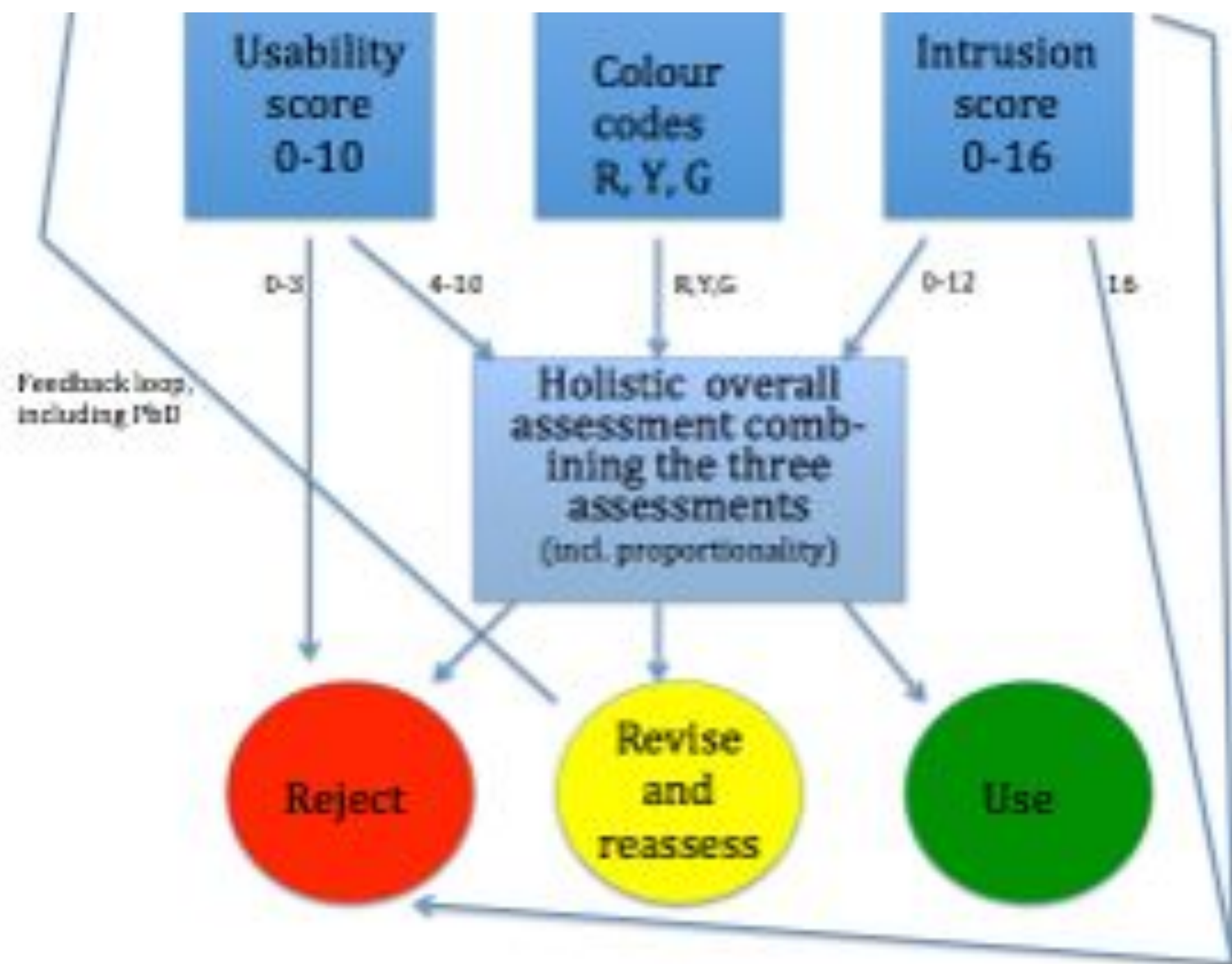
SURVEILLE Decision Support System



1. Description of the context
2. Three parallel assessments by three expert teams, with an intention to 'score' how a particular technology works. In some cases, rejection as result.
3. Reconciliation of the three assessments, including proportionality
4. Three possible outcomes, including going back to phase 1.









SURVEILLE

Prof. Tom Sorell

SURVEILLE

2012-2015

Surveillance in Counter-Terrorism and Transnational Organized Crime

Efficiency of various Surveillance technologies

International and Regional legal requirements on deployment of technologies

Ethics of deployment of technologies, preventive policing measures



SURVEILLE SCENARIOS

THE UNIVERSITY OF
WARWICK

POLITICS AND
INTERNATIONAL

SURVEILLE SCENARIOS

Use of surveillance technology in real cases of

- organized crime: drugs importation and firearms
- counter-terrorism: NSA-type surveillance
- Urban security: regular crime, public order, smart city surveillance

Scenarios extended in time (serious crime scenario extends over years)

Scenarios multifaceted, devised in consultation with police, urban security experts



SERIOUS CRIME SURVEILLANCE

THE UNIVERSITY OF
WARWICK

POLITICS AND
INTERNATIONAL

SERIOUS CRIME SURVEILLANCE

The more serious the crime, the more justified surveillance, including intrusive surveillance, might be

Some crimes serious not only because of their direct effects

- Drug trafficking and debilitating addiction
- Indirect: burglary and robbery rate
- Indirect: importation of firearms
- Indirect: gang crime



NSA TYPE SURVEILLANCE

THE UNIVERSITY OF
WARWICK

POLITICS AND
INTERNATIONAL

NSA TYPE SURVEILLANCE

- Collection of US person telephone meta-data for counter-terrorism with permission of FISA court
- Collection of US - non US person content with permission of FISA court
- On some interpretations of Executive Order 12333 NSA can also collect US person content
- Selection of target on the basis of name and internet traffic content, possibly coded

PERSONS OF INTEREST

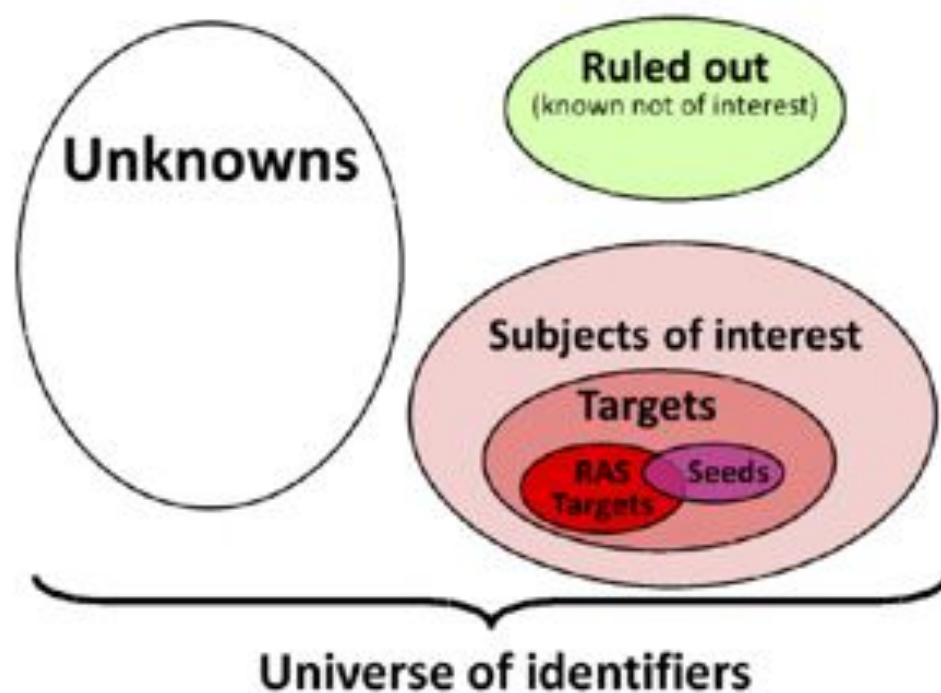


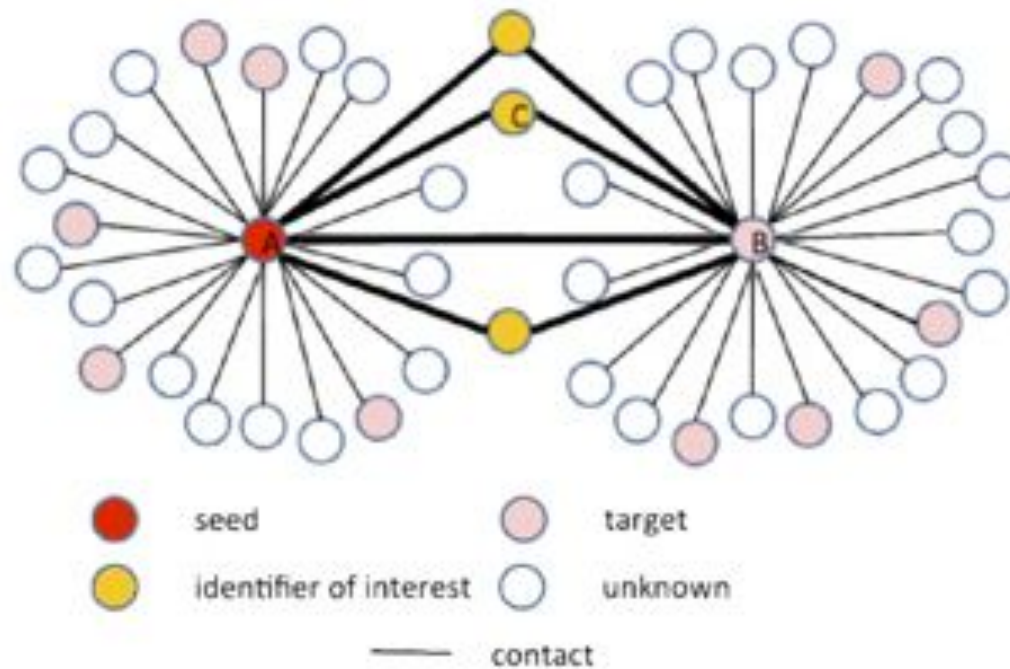
FIGURE 2.2 Classification of identifiers used in signals intelligence analysis.

TELEPHONE RECORDS

TABLE 2.1 Hypothetical Call Detail Records as They Might Appear in a Signals Intelligence Database

Caller	Called	Call Start Time	Call Duration
+1-617-555-0131	+1-703-555-0198	2014:10:3:15:45:10	3:41
+1-703-555-0198	+1-703-555-0013	2014:10:3:15:49:10	1:10
+1-415-555-0103	+963 99 2210403	2014:10:3:16:01:43	73:43
+1-603-555-0141	+1-603-555-0152	2014:10:3:22:10:03	3:01
+1-617-555-0183	+1-413-555-0137	2014:10:3:22:33:48	7:03
+1-802-555-0141	+1-802-555-0108	2014:10:3:22:41:17	3:02

META-DATA AND TELEPHONE CHAINING





URBAN SECURITY

THE UNIVERSITY OF
WARWICK

POLITICS AND
INTERNATIONAL
RELATIONS

URBAN SECURITY

Ordinary urban security

- Public order
- Robbery
- Car theft

One-off events

- Demonstrations
- Large scale entertainment
- Attacks

URBAN SECURITY TECHNOLOGIES

- CCTV in public places
- CCTV in transport
- ANPR
- Mobile phone location-tracking
- Crime reporting portals

URBAN SECURITY ISSUES

- Urban government close to citizens
- Urban government mandates might be clearer
- Urban authorities respond to mandates independently of commitments of state party commitments under treaties
- Urban authority measures might actually violate international law commitments

SURVEILLE – Usability scoring

Matrix						
		HUMAN RIGHTS AND ETHICAL ISSUES				
Technology	Usability	Moral risk of error leading to significant sanction	Fundamental right to protection of personal data	Fundamental right to privacy or private and family life (not including data protection)	Other Fundamental Rights	Moral Risk to Trust and Chilling Effect
				Moral Risk of Intrusion		
1. Predpol	5.5			$\frac{3}{4}$	$1\frac{1}{2}$ <i>Non-Discrimination</i>	
2. Cybels Intelligence	6		8	8	12 <i>Liberty</i>	
3. ANPR	6.5		2 or 8	2 or 8		
4. RFID in transport ticket	6		2 or 8	2 or 8		
5. CCTV	3		0 (Niall), 2 (others)	4 (Neil), 1 (Kezia)	3 (Leonard)	
6. Smart CCTV	7		2	1		
7. Automatic detection of abnormal behaviour ADABTS	2		2	1	2 <i>Non-Discrimination</i>	

Usability Scoring

- Technology – specific case use
- Scale of 0-10 – 10 being the highest
- Rating based on 4 factors: Effectiveness, Cost, Privacy-by-Design, Proven technology

Scoring

- Effectiveness
- Cost
- Privacy-by-design
- Proven technology

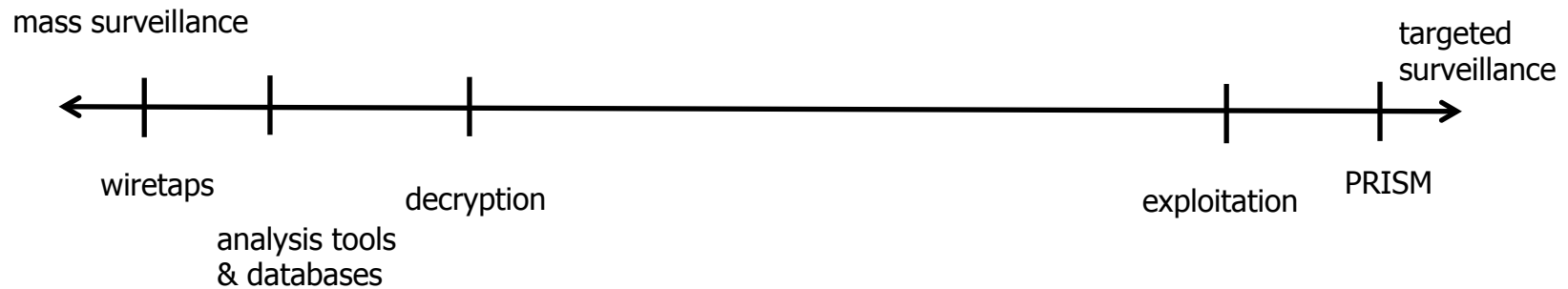
Factor	Attribute	Sub-category	Sub-category yes/ no	Score
Effectiveness				0-3
	Delivery			0-1
	Context			0-1
	Sensitivity			0-1
Cost				0-3
	Initial cost			0-1
		Purchase price	y/n	
		Installation cost	y/n	
		Space requirement cost	y/n	
	Personnel requirements			0-1
		Number of personnel	y/n	
		Training required	y/n	
		External partners	y/n	
	Additional running costs			0-1
		Maintenance & sustainability	y/n	
		False-positive rate	y/n	
		Other (power, transport, etc.)	y/n	
Privacy-by-design				0-3
	Data collection			0-1
		Selective	y/n	
		Minimized	y/n	
		Overt or covert	y/n	
	Data access & use			0-1
		Who has access	y/n	
		Clear regulations	y/n	
		Protection against function creep	y/n	
	Data protection			0-1
		Encryption or otherwise access protected	y/n	
		Protected against manipulation	y/n	
		Secure against theft	y/n	
Proven technology				0-1

Challenges

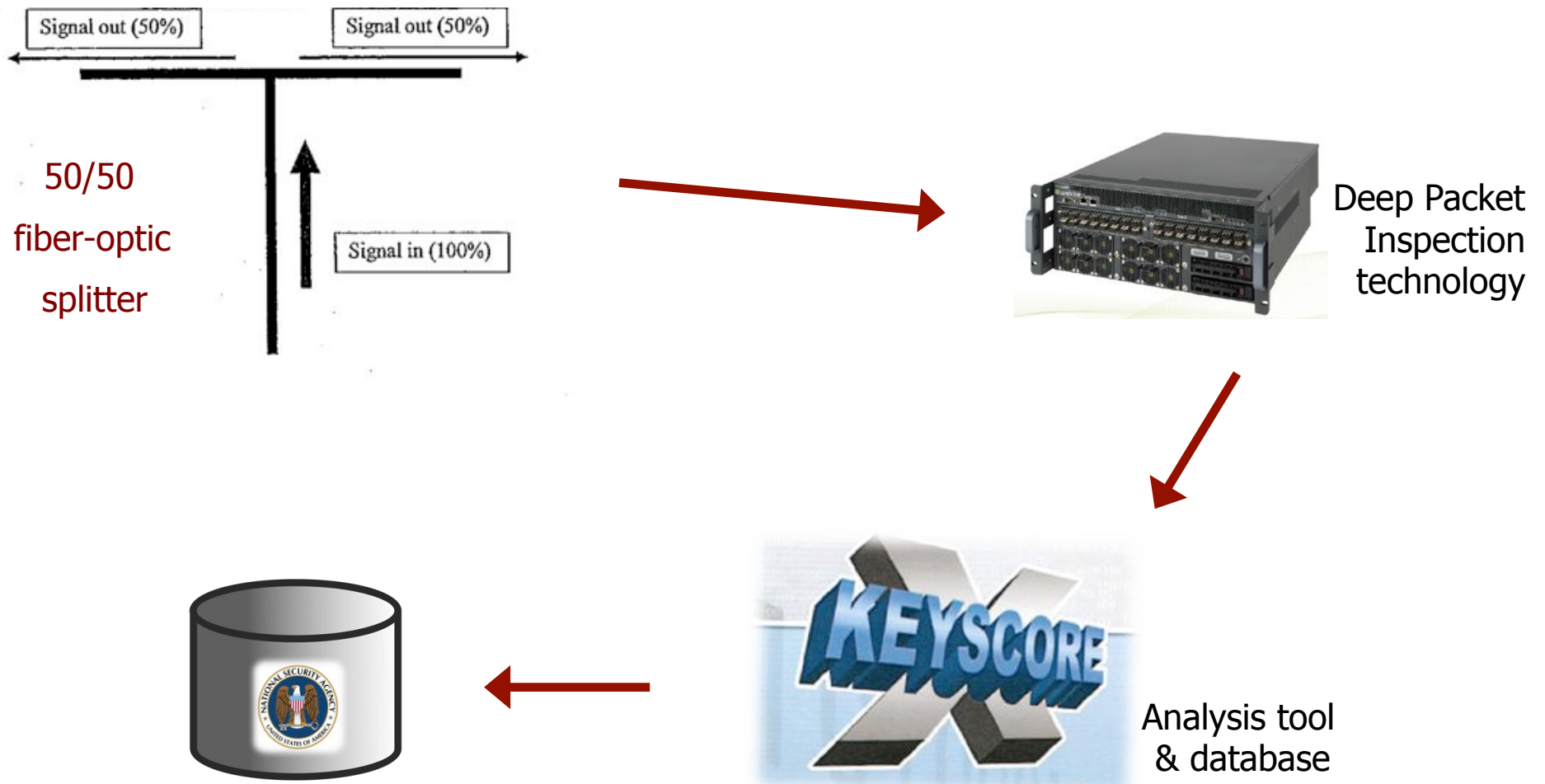
- Balance between simplicity and details
- Setting thresholds

Usability scoring serves as framework

NSA surveillance technology



Anatomy of a wiretap



NSA

- “The United States will therefore impose new limits on its use of signals intelligence collected in bulk... **The limitations contained in this section do not apply to signals intelligence data that is temporarily acquired to facilitate targeted collection.**” (Presidential Policy Directive -- Signals Intelligence Activities, Jan. 17, 2014)
- Computer’s search vs. analyst’s examination –
i.e. computer vs. human



THE STATE
OF THE UNION

6-9 MAY
FLORENCE

THE STATE OF THE UNION 2015

LAST UPDATE: 16 JUNE 2015

In collaboration with



Funded by the
7th Framework Programme
of the European Union

The Surville project has received funding from the European Union
Seventh Framework Programme under grant agreement n° 244725.

INDEX

1. Format and themes
2. Participation
3. Attendance on 6-8 May
 - 3.1 Speakers
 - 3.2 Delegates
 - 3.3 Press participation
 - 3.4 Other personnel involvement
4. Press coverage
5. Advertisement
6. Patronage
7. Visibility on the web
 - 7.1 Statistics about the website
 - 7.2 Statistics about the live streaming
 - 7.3 Statistics about Twitter

1. FORMAT AND THEMES

The State of the Union conference, organised by the European University Institute (EUI), is an annual event for high-level reflection on the European Union and is a reference point in the EU agenda for policy-makers, civil society representatives, business and opinion leaders, and academics. In the last editions it has seen the participation of the President of the European Commission, the President of the European Parliament, Presidents, Prime Ministers and Foreign Ministers.



The conference's fifth edition took place in Florence over four days: on **6 May** the sessions were held at the Historical Archives of the European Union in Villa Salviati and in the Church of the Badia Fiesolana; on **7 May**, plenary and parallel sessions were held at the Badia Fiesolana; on **8 May**, the event took place in the historical city hall of Florence, Palazzo Vecchio; on **9 May**, the anniversary of the Schuman Declaration was celebrated with an Open Day at Villa Salviati and the Badia Fiesolana.

The fifth edition of The State of the Union, whose slogan was ***Confronting the future of Europe***, focused on four main topics:

- *The Alcide De Gasperi Research Centre*
- *A New Schuman Declaration*
- *The Interface of Europe with the World*
- *Surveillance and Freedom in Europe*

The conference's scientific programme was elaborated and supervised by The State of the Union Scientific Committee: **Stephan Albrechtskirchinger**, Director of the EUI's Communications Service; **Pasquale Ferrara**, Secretary General of the EUI; **Ulrich Krotz**,

Professor and Chair in International Relations at the EUI and the RSCAS; **Martin Scheinin**, Professor of International Law and Human Rights at the EUI; **Dieter Schlenker**, Director of the Historical Archives of the European Union; **Anna Triandafyllidou**, Professor and coordinator of the Research Area on Cultural Pluralism at the RSCAS Global Governance Programme; **J.H.H. Weiler**, President of the EUI; **Jennifer Welsh**, Professor and Chair in International Relations at the EUI.

The State of the Union 2015 was organised by the **EUI Communications Service**, with the assistance of the **EUI Real Estate and Facilities Service**.



2. PARTICIPATION¹

The first three days of The State of the Union conference have seen a total participation of over **1,700 people** (including staff members, delegates, members of the press and people working on logistics).

The Open Day at the EUI Campus on 9 May saw the participation of about **1,600 participants**,² mainly people from the local community, broken down as follows:

- **780 participants** to the guided visits to the gardens led by *Associazione Citta Nascosta*
- About **300 children** taking part in the activities promoted by *Circo en Piste*
- About **300 accompanying parents**
- **100 individual guests**
- **50 students and professors** from *Accademia delle Belle Arti di Firenze* and *Accademia delle Belle Arti di Carrara*
- **50 staff members**, including volunteers, security and EUI personnel in service

The State of the Union conference and the Open Day were organised in the framework of the third edition of **Festival d'Europa**, which aims to stimulate knowledge and debate on Europe among the citizens in Florence through a series of events organised and promoted, among others, by Regione Toscana, Comune di Firenze, and Fondazione Sistema Toscana.

¹ All the numbers included in this section are final. Last data update: May 15th.

² Data provided by the Historical Archives of the European Union.

3. ATTENDANCE ON 6-8 MAY

3.1 SPEAKERS

The event welcomed **82 speakers and moderators** – listed in alphabetical order:

- **Ahmed Aboutaleb**, Mayor of Rotterdam Ramon
- **Giuliano Amato**, former Prime Minister of Italy
- **Giovanni Amendola**, Head of Relations with International Authorities, Telecom Italia
- **David Anderson**, UK independent reviewer of terrorism legislation
- **Tony Barber**, Europe Editor, Financial Times
- **Mats Berdal**, Professor of Security & Development, King's College London
- **Guy Berger**, Director for Freedom of Expression and Media Development, UNESCO
- **Mogens Blicher Bjerregård**, President of the European Federation of Journalists
- **Lorena Boix Alonso**, Head of Unit for Converging Media and Content Unit, DG Connect, European Commission
- **Laura Bononcini**, Head of Public Policy, Facebook Italy
- **Ann Cavoukian**, three-term Ontario Privacy Commissioner, now Executive Director of the Privacy & Big Data Institute, Ryerson University
- **Michelle Cayford**, Researcher, TU Delft
- **Simon Chesterman**, Professor, National University of Singapore Nancy Gertner, former United States federal court judge
- **Wassim Chourbaji**, Vice President of Government Affairs, Qualcomm
- **Alberto Pietro Contaretti**, Programme Officer for EU Policies, DG Enterprise and Industry, European Commission
- **Maria Romana De Gasperi**, Honorary President, De Gasperi Foundation
- **Raffaella Del Sarto**, Professor, Robert Schuman Centre for Advanced Studies, EUI; and Adjunct Professor, Paul H. Nitze School for Advanced International Studies, SAIS Europe, Johns Hopkins University
- **Sandra Destradi**, Jean Monnet Fellow, Robert Schuman Centre for Advanced Studies, EUI; and Senior Research Fellow, German Institute of Global and Area Studies (GIGA)
- **Claudia Diaz**, Professor at the Faculty of Engineering Science, KU Leuven
- **Mohamed El Baradei**, Director General Emeritus, International Atomic Energy Agency
- **Andrea Enria**, Chairman, European Banking Authority Jonathan Faull, Director General, DG Financial Stability, Financial Services and Capital Markets Union, European Commission
- **Eilís Ferran**, Professor of Company & Securities Law, University of Cambridge
- **Francisco Fonseca Morillo**, Director for Criminal Justice Issues, DG Justice and Consumers, European Commission
- **Klaus-Dieter Frankenberger**, Foreign Editor, FAZ
- **Anthony L. Gardner**, U.S. Ambassador to the European Union
- **Paolo Gentiloni**, Minister of Foreign Affairs and International Cooperation of Italy
- **Sandro Gozi**, Italian State Secretary for European Affairs
- **Jean-Marie Guéhenno**, President, International Crisis Group, Brussels
- **Heidi Hardt**, Visiting Fulbright Fellow, EUI and Assistant Professor of Political Science at University of California, Irvine
- **Masha Hedberg**, Jean Monnet Fellow, EUI and Adjunct Professor of European and Eurasian Studies, School of Advanced International Studies (SAIS Europe), Johns Hopkins
- **Stephanie C. Hofmann**, Associate Professor in Political Science, Graduate Institute Geneva and Deputy Director of the Centre on Conflict, Development and Peacebuilding
- **Christiane Höhn**, Adviser to the EU Counter-terrorism Coordinator
- **Gus Hosein**, Executive Director, Privacy International
- **Danuta Maria Hübner**, Chair, Constitutional Affairs Committee, European Parliament

- **Jens-Henrik Jeppesen**, Director for European Affairs, Centre for Democracy and Technology
- **George Katrougalos**, Alternate Minister for Administrative Reforms and Electronic Governance of Greece and Professor of Public Law at Thrace University
- **Gilles de Kerchove**, Counter-terrorism coordinator, EU Council
- **Ulrich Krotz**, Professor of International Relations and Director, Programme on Europe in the World, Robert Schuman Centre for Advanced Studies, EUI
- **Brigid Laffan**, Director of the Robert Schuman Centre for Advanced Studies and Director of the Global Governance Programme, EUI
- **Karel Lannoo**, Chief Executive Officer, Centre for European Policy Studies
- **Nicklas Lundblad**, Senior Director for Public Policy and Government Relations for Europe and the EU, Google
- **Pedro Magalhães**, Scientific Director of the Fundação Francisco Manuel dos Santos
- **Stefania Maurizi**, Journalist, L'Espresso
- **Hans-W. Micklitz**, Professor of Economic Law, EUI
- **Federica Mogherini**, High Representative of the Union for Foreign Affairs and Security Policy
- **John Mueller**, member of the SURVEILLE Advisory board
- **Giorgio Napolitano**, former President of the Italian Republic
- **Dario Nardella**, Mayor of Florence
- **Kalypso Nicolaïdis**, Professor in International Relations, University of Oxford
- **Elisa Orrù**, Professor, Centre for Security and Society, Freiburg University
- **Przemysław Palka**, Researcher, European University Institute
- **Espadaler Parcerisas**, Minister of Home Affairs, Government of Catalonia
- **Pier Luigi Parcu**, Director of the Communications & Media Area of the FSR and Director of the Centre for Media Pluralism and Media Freedom, EU
- **Pedro Passos Coelho**, Prime Minister of Portugal
- **Guilherme Pinto**, Mayor of Matosinhos and President of the European Forum for Urban Security
- **Miguel Poiares Maduro**, Minister in the Cabinet of the Prime Minister and for Regional Development of Portugal
- **Stefano Polli**, Deputy Director, ANSA
- **Romano Prodi**, former Prime Minister of Italy
- **Matteo Renzi**, Prime Minister of Italy
- **Federico Romero**, Professor of History of Post-War European Cooperation and Integration, EUI
- **Olivier Roy**, Chair in Mediterranean Studies, EUI
- **Marietje Schaake**, Member of the European Parliament
- **Martin Scheinin**, Professor of International Law and Human Rights, EUI
- **Dieter Schlenker**, Director of the Historical Archives of the European Union, EUI
- **Kasiviswanathan Shanmugam**, Minister of Foreign Affairs of Singapore
- **Pierpaolo Sinconi**, International Affairs Office Chief and International & Humanitarian Law Chair, Centre of Excellence for Stability Police Units
- **Weiqing Song**, Associate Professor of Political Science, University of Macau; Management Committee, European Union Academic Programme Macao; Visiting Scholar, Robert Schuman Centre for Advanced Studies, EUI
- **Tom Sorell**, Professor of Politics and Philosophy, Warwick University
- **Sebastian Sperber**, Programme Manager, European Forum for Urban Security
- **James Sperling**, Fernand Braudel Fellow, EUI; and Professor of International Politics, University of Akron
- **Anthony Teasdale**, Director General of the European Parliamentary Research Service, European Parliament
- **Frans Timmermans**, First Vice- President of the EC
- **Danilo Türk**, former President of Slovenia

- **Gaby Umbach**, Director of GLOBALSTAT, Robert Schuman Centre for Advanced Studies, EUI
- **Juan Maria Vázquez**, Secretary General of Universities, Ministry of Education, Culture and Sport of Spain and President of the EUI High Council
- **Leen Verbeek**, Vice President of the Congress of Local and Regional Authorities, Council of Europe
- **Vaira Vīķe-Freiberga**, former President of Latvia
- **J.H.H. Weiler**, President of the European University Institute
- **Jennifer Welsh**, Professor of International Relations, EUI

3.2 DELEGATES³

The opening ceremony of the Alcide De Gasperi Research Centre on 6 May at the Historical Archives of the European Union was attended by **over 100 people, about half of which consisting of academics**.

The sessions held in the afternoon of 6 May in the Church of the Badia Fiesolana, consisting in the debate around the document *Towards a “New Schuman Declaration”* and the closing remarks by Sandro Gozi, gathered about **280 people, about 60% of which consisting of academics**.

The parallel and plenary sessions held on 7 May at the Badia Fiesolana were attended by **about 350 people**, the majority of which consisting of academics.

The sessions in Palazzo Vecchio on 8 May saw the participation of **over 560 registered participants** (upon invitation only). The majority of participants came from academic institutions, followed by national institutions, European and international institutions, associations, diplomatic representations and a wide range of other organisations.

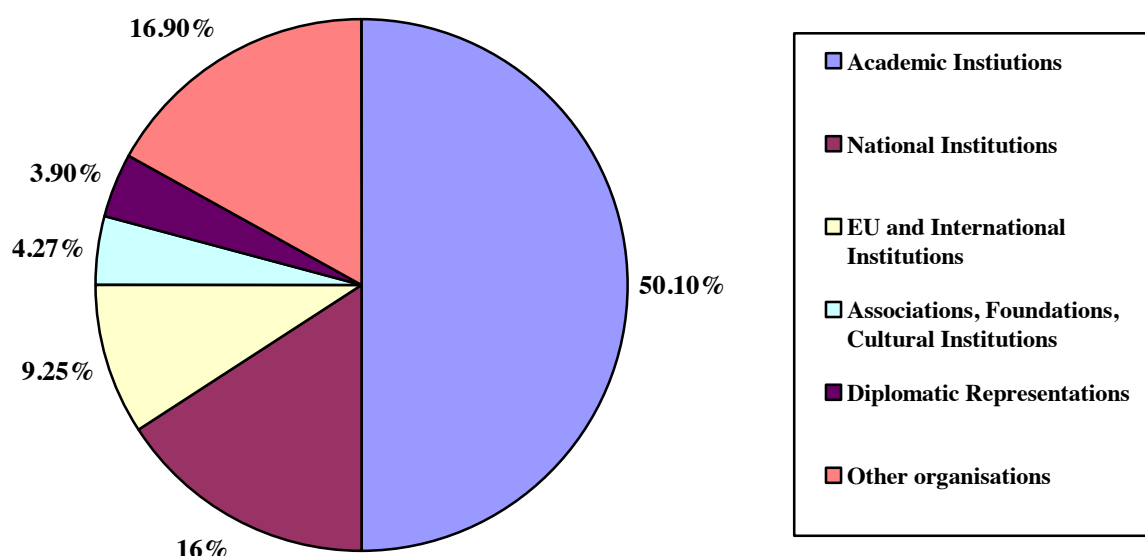
28% of the participants to the two sessions in Palazzo Vecchio belong to the **EUI community**. The majority of them are researchers or research assistants (45%), followed by fellows (19%) professors (18%), staff and other members of the EUI community.

Participants from **39 different countries** attended the sessions in Palazzo Vecchio on 8 May.

Participation on May 8th. Statistics divided per category

State of the Union 2015 – Participants on 8 May	
Affiliation	%
Academic institutions (of which EUI)	50.1% (28%)
National Institutions	16%
European and International institutions	9.25%
Associations, Foundations, Cultural Institutions	4.27%
Diplomatic Representations	3.9%
Other organisations	16.9%

³ Numbers presented in this session include delegates, speakers as well as speakers' delegations.



3.3 PRESS PARTICIPATION

In total, **190 journalists and operators** attended the three days of the conference, as follows:

- 6 May, Villa Salviati: 34 accredited press members
- 6 May, Church: 80 accredited press members
- 7 May, Badia Fiesolana: about 90 accredited press members for all the sessions
- 8 May, Palazzo Vecchio: about 140 accredited press members

The conference was attended by journalists and media operators from leading international and national media organisations, among others: The Financial Times, FAZ, Le Monde, Bloomberg, The Asahi Shimbun, Il Sole 24 Ore, SKYTG24, ANSA, La Nazione, RAI, Corriere della Sera.

About half of the accredited press members came in representation of national media organisations, while the remaining are evenly distributed among international and local media organisations.

Press participation at The State of the Union 2015

The State of the Union 2015– Registered Press	Participants	%
International Press	45	23.68%
National Press	89	46.84%
Local Press	44	23%
Not specified	12	6.31%
TOTAL	190	

3.4 OTHER PERSONNEL INVOLVEMENT⁴

- **104 people** worked under the coordination of the Conference Secretariat over the course of the four days of the fifth edition of the State of the Union conference:
 - 66 members of the EUI Community, including staff and people employed with auxiliary contracts
 - 38 externals, including interns, volunteers and members of the press agency.
- **144 people** had access to the conference venues for logistical and organisational purposes. This includes technicians, personnel from the transport services, personnel from the catering service and of the various organisations involved in the tasting sessions.
- About **80 police officers and security personnel** (Questura, Prefettura) were in service in Palazzo Vecchio on May 8th.

4. PRESS COVERAGE

The State of the Union 2015 was widely covered by the accredited media representatives. The media coverage produced **more than 230 articles** in various media, including leading international newspapers (Financial Times, Le Figaro, Le Monde, Euractiv, Noticia ao Minuto, The Irish Times, El Moudjahid and others) as well as local and national press (ANSA, RAI, La Nazione, Corriere Fiorentino) in both their paper and online editions.

In addition, **15 video reportages** were broadcasted on international, national and local televisions, such as RAI and RAI Toscana, Italia 7, RTV38, Toscana TV, Tele Iride and Telecinco.

5. ADVERTISEMENT

The EUI signed Knowledge Partnership agreements with the **Frankfurter Allgemeine Zeitung** and the **Financial Times**, and Media Partnership agreements with **ANSA**, the main Italian news agency, and **Le Monde**.

Through these agreements, the EUI secured a worldwide advertisement campaign in print and online media, as well as coverage for the event. The FAZ ran four advertisements (each one-third of a page) in its print edition from late March to late April. The Financial Times ran advertisements in various formats on its print edition in late April and during the days of the conference. ANSA ran an advertisement campaign on its webpages, which included various banners, links and content, from early April to the days of the conference.

A Technical Partnership agreement with the **Airport of Florence** granted the possibility of installing two permanent banners and one totem in the gate area and arrival hall of the Airport of Florence. Moreover, the agreement allowed for a promotional video of the Conference to be displayed, among other advertisements, on the monitors in the arrival hall. This campaign began on March 20th and all advertisement will remain displayed until September 20th, 2015.

A similar agreement with the **Airport of Pisa**, obtained through **Toscana Promozione**, granted the possibility to install two banners in the extra-Schengen arrival halls, one in the extra-Schengen departure hall and one at the entrance of the main passenger terminal. The advertisement was displayed from March 20th to May 15th.

⁴ Definitive numbers, updated on May 12th

Backlit banner at the Airport of Florence, departure area, 10x2.4 metres



Banner at the Airport of Pisa, extra-Schengen arrival area, 2.5x2.5 metres

6. PATRONAGE

The State of the Union 2015 received the following patronage:

- High Patronage of the President of the Italian Republic
- Patronage of the Italian Presidency of the Council of Ministers
- Patronage of the Department of European Affairs at the Italian Presidency of the Council of Ministers
- Patronage of the Italian Ministry of Foreign Affairs and International Cooperation
- Patronage of the Representation in Italy of the European Commission

7. VISIBILITY ON THE WEB

7.1 STATISTICS ABOUT THE WEBSITE⁵

Before and during the conference, the official website of the conference attracted a total of **85,100 page views** (the most visited pages were the home page and the programme pages, which combined represent 64% of all page views).

The highest numbers of page views was reached on the days of the conference, as follows:

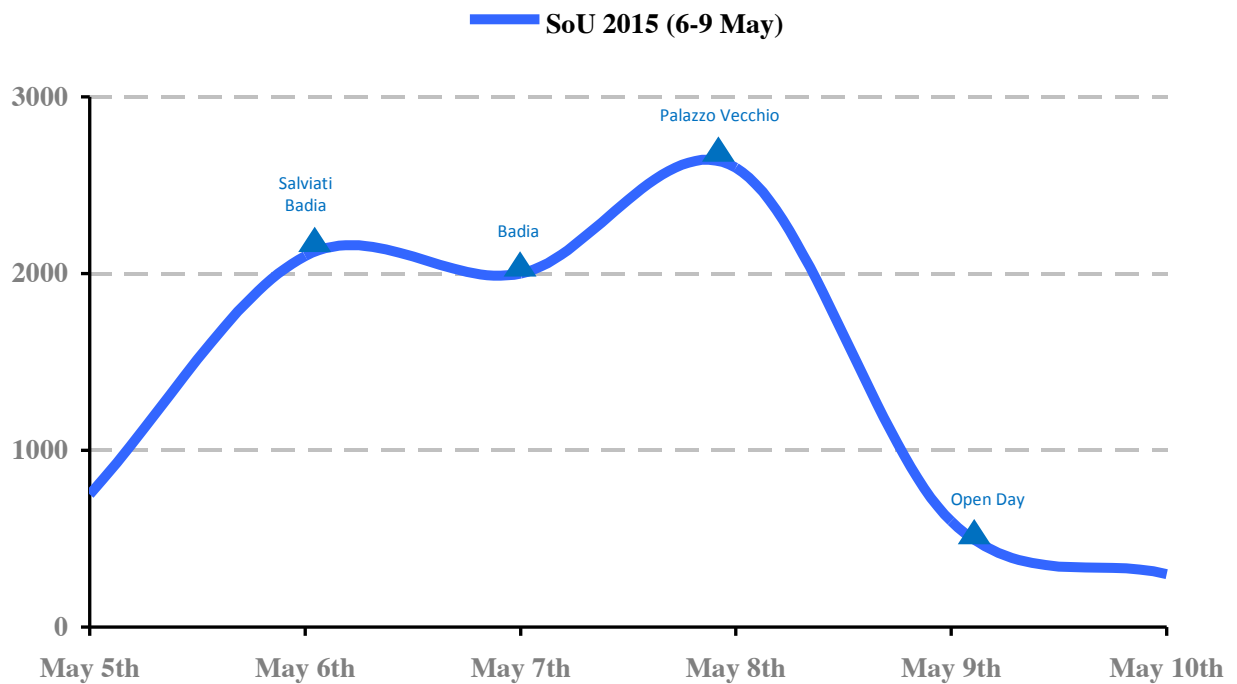
- 6 May, Villa Salviati and Church of the Badia Fiesolana: **7,300 page views**
- 7 May, Badia Fiesolana: **6,100 page views**
- 8 May, Palazzo Vecchio: **7,000 page views**

Countries with the higher number of sessions on The State of the Union website from March to May 2015

	2015
1 Italy	14,350
2 Belgium	1,400
3 United Kingdom	850
4 Germany	750
5 France	650
6 United States	550
7 Netherlands	500
8 Spain	450
9 Portugal	400

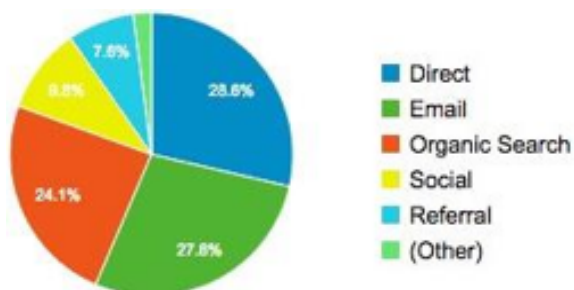
Trends in sessions logged on the website of The State of the Union during the days of the conference (Days and locations of the sessions are marked)

⁵ All figures presented in this paragraph are final. Last data update: May 26th.



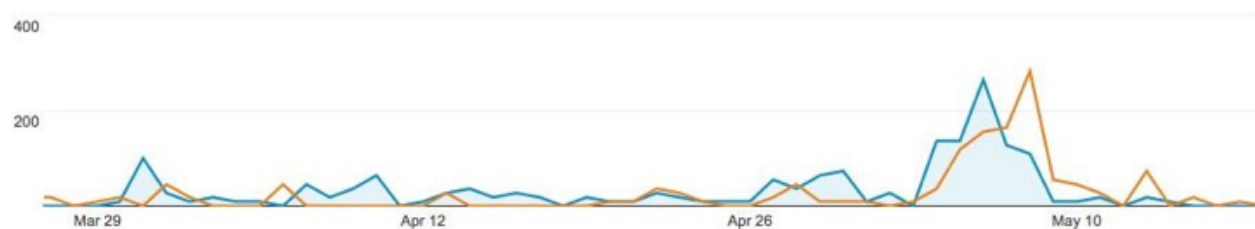
More than three quarters of the acquisitions came from direct visits to the Conference website, emails and organic searches on Google. These numbers imply that the emailing campaigns have been particularly successful in attracting visits to the conference website, while the number of acquisitions from direct sources is a sign that the address of The State of the Union website has received high visibility.

Acquisitions from various sources



The programme pages on The State of the Union website were viewed more than 30,900 times, while the PDF version of the programme was downloaded in total 1,800 times, especially during the days of the conference and at the opening of registrations.

Download trends of the PDF programme for *The State of the Union 2015* (blue line) and *2014* (orange line)



The traffic to the Conference website came mainly from desktop devices.

	Visits
Desktop	79.07%
Mobile	13.68%
Tablet	7.23%

7.2 STATISTICS ABOUT VIDEOS AND LIVE STREAMING

The **videos of *The State of the Union* and the live streaming of the conference were seen in total 20.641 times.**⁶

The most viewed sessions in live streaming were:

1. 8 May – Morning Session, Palazzo Vecchio (**18%** of the total views)
2. 6 May – Afternoon Session, Church (**11%** of the total views)
3. 6 May – Opening of the De Gasperi Centre (**9%** of the total views)
4. 8 May – Afternoon Session, Palazzo Vecchio (**7.8%** of the total views)

The average duration of a single view is 6 minutes and 45 seconds. However, the average view duration of the most viewed sessions is more than double, with a peak of 15:53 for the Morning Session in Palazzo Vecchio.

The biggest portion of the views originated from computers (86%), followed by mobile phones (7.8%) and tablets (5.6%). Most of the views came from the YouTube watch pages (60%), while 39% came from external pages where the streaming and other videos were embedded (The State of the Union website, online newspapers, etc.)

Total minutes watched on the EUI YouTube channel during the days of the conference

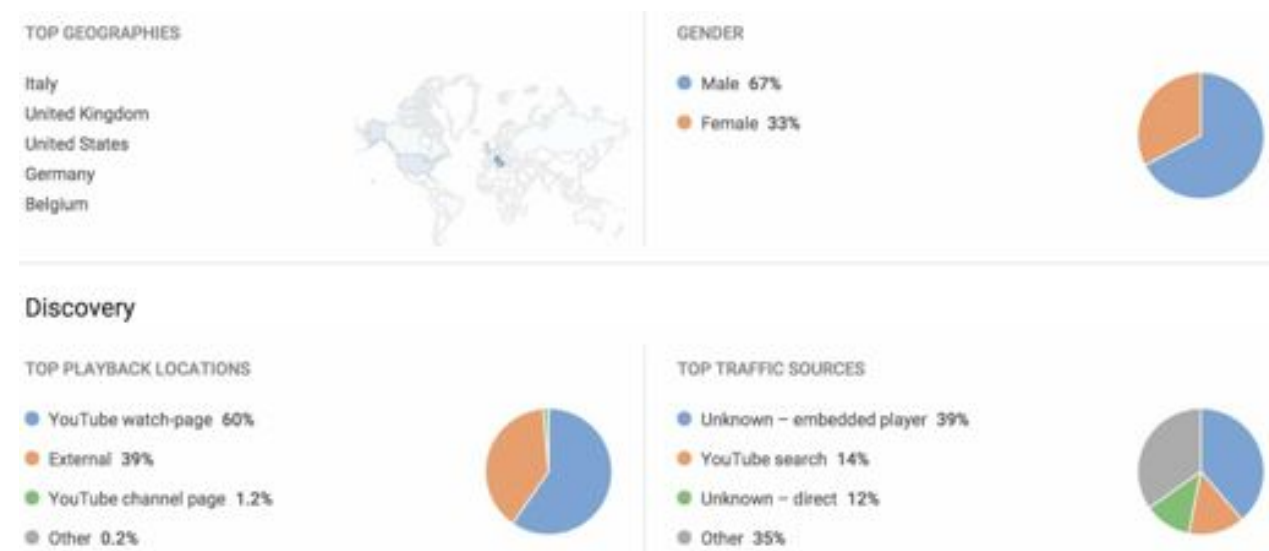


⁶ All the figures presented in this paragraph are extracted from YouTube. Last data update: May 26th. Due to YouTube's policy, the number of video auto-plays is not calculated in these figures.

Statistics about videos and live streaming



Statistics about countries with most views, demographics and traffic sources

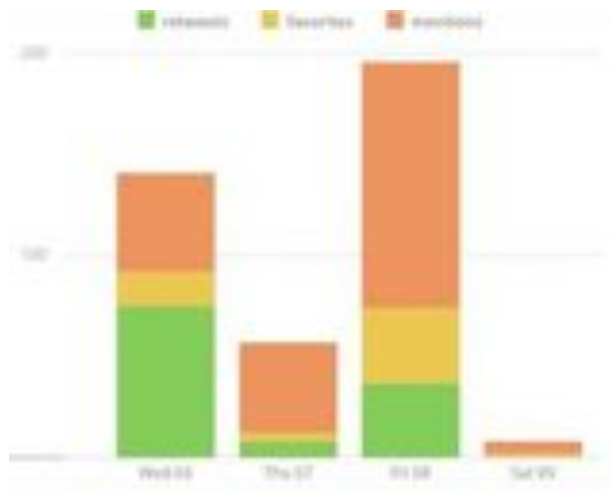


7.3 STATISTICS ABOUT TWITTER

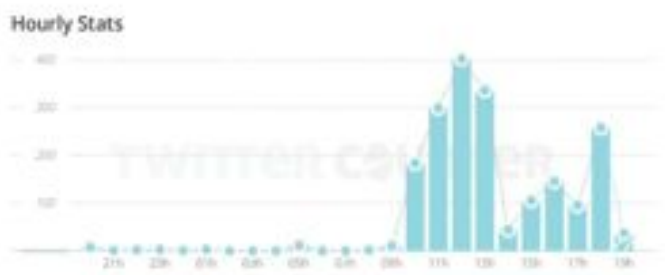
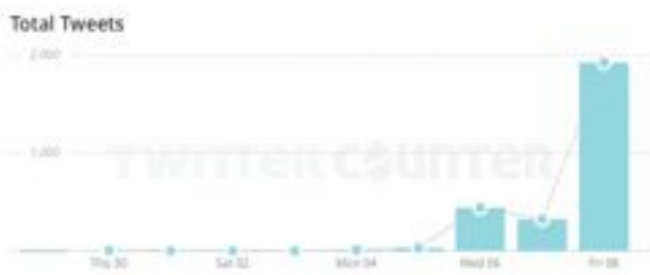
The **total number of Tweets** with the official hashtag of the conference **is about 3,200**.

The highest number of Tweets was reached on Friday, May 8th, when about **2.200 tweets** were published with the official hashtag of the conference #SoU2015, which became a trending topic various times over the course of the day.

Interactions on Twitter during the four days of the conference, including number of tweets retweeted, mentioned and favorited



Trends on Twitter (daily and hourly stats, tweets by the accounts with the highest number of followers and highest number of mentions)



Most Followers

		@ukrpravda_news
554k	RT @EU_Commission: First Vice-President @TimmermansEU at #SoU2015 in Florence to discuss the State of the Union - Live 10AM CET here https://t.co/dPP7N2x58n	
		@EU_Commission
386k	First Vice-President @TimmermansEU at #SoU2015 in Florence to discuss the State of the Union - Live 10AM CET here https://t.co/dPP7N2x58n	
		@Palazzo_Chigi
337k	#SoU2015 l'intervento del Presidente Matteo Renzi http://t.co/kgAa2o7yKx	
		@pdnetwork
165k	RT @YouDem: #SoU2015 @matteorenzi 'Problemi Italia dovuti a incapacità politica di fare riforme. Ma ora abbiamo voltato pagina' https://t.co/...	
		@eu_eas
98k	@FedericaMog speaks about EU foreign policy at #SoU2015 in magnificent Palazzo Vecchio in Florence at +1- 16:45 CET https://t.co/mNyhH6trS2V	

Most Mentioned By

		@enzoilefevre
163	Almost in #Florence to take part to #SoU2015 "Confronting the future of Europe" organized by @EuropeanUni https://t.co/4f8kgD11s	
		@EuropeanUni
147	RT @SURVEILLE_EU: Presentation of SURVEILLE results will be one of the main themes of #SoU2015 next week at @EuropeanUni Florence, see https://t.co/...	
		@PrzemekPaika
95	Hey, I'm a panelist today at #SoU2015 at 16:30, follow live streaming! http://t.co/3UfBAEMH	
		@MartinoFirenze
83	Getting close to #SoU2015 the European integration process is ongoing. Is alive. I am European. https://t.co/...	
		@JMU_EUPS
79	RT @EuropeanUni: https://t.co/retod857f9 Now Live #SoU2015	

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