

## Study calls for more mass data interception scrutiny

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13 November 2018



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A report on legal safeguards against bulk surveillance regimes has urged more judicial oversight in protecting civil rights.

The 8 November report by German technology thinktank Stiftung Neue Verantwortung says the recent European Court of Human Rights decisions on Swedish and British surveillance regimes suggest bulk data interception is likely to continue, meaning checks and balances must improve.

But bulk surveillance methods, the report's authors say, can be "difficult to reconcile with the fundamental principles of democratic governance, such as rule of law, transparency, and accountability".

Improvements in data interception technology and the general rise in consumption and sharing of personal data has made bulk surveillance the "crown jewels" within the intelligence community,

the report says, quoting the US National Security Agency as saying it is currently the “golden age” for such surveillance.

Oversight bodies, which ensure that surveillance and data interception is properly approved and happens only within the confines of the law, therefore need to improve, the report’s authors say, arguing that “independent and tech-savvy judicial mechanisms” are needed.

One of the study’s authors, Kilian Vieth, told GDR that the organisations overseeing surveillance regimes often lack resources; when talking to oversight bodies, he said, “money always comes up”. Some countries implement a rule where 1% of funding towards intelligence surveillance is put into oversight, Vieth said, but he added that most “aren’t even close to that”.

The report’s authors compared the regimes in Europe, America and Australasia in the context of vague demands for robust safeguards from courts, and the expectation of continuing interception programmes, Vieth told GDR. Because of these issues, Vieth said, a comparative review of oversight regimes and identification of good practices was necessary.

By making these comparisons, Vieth said, the report assesses what “good looks like when it comes to safeguards and oversight”. The conclusion, he said, is that things could be “much better” on a practical level.

“The law is one thing, but you also need to have the right people, with the right skills and mindset,” he said.

Graham Smith, a partner at Bird & Bird in London, said there are questions around what sort of decisions should be handed to oversight bodies, or what should be specified in legislation. If laws lay down what has to be done in specific terms, he said, that leaves oversight bodies with less discretion on how to safeguard individual rights.

The study also highlights some of the differences in the way that oversight bodies operate in different countries, the Bird & Bird partner noted. Though they do not all operate in the same way, there is “no expectation” for them to do so, he said.

Vieth said interception oversight bodies could take inspiration from data protection – where authorities with vocal leadership have had a positive impact, and their use of technical specialists is something surveillance oversight bodies could look to emulate.