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MOTION FOR A RESOLUTION

to wind up the debate on statements by the Council and Commission

pursuant to Rule 103(2) of the Rules of Procedure

by Martine Roure

on behalf of the PSE Group

on access to transferred bank data by the US secret services

B6-0386

European Parliament resolution on access to transferred bank data by the US secret services

The European Parliament,

- having regard to the European Convention on Human Rights and, in particular, its Article 8,
 - having regard to the Charter of Fundamental Rights of the European Union, and, in particular, its Articles 7 and 8,
 - having regard to Council of Europe Convention 108 on the protection of individuals with regard to automatic processing of personal data,
 - having regard to Article 6 of the Treaty on European Union and Article 286 of the EC Treaty,
 - having regard to Directive 95/46 on the protection of individuals with regard to the processing of personal data and on the free movement of such data,
 - having regard to Regulation 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data,
 - having regard to Rule 103(2) of its Rules of Procedure,
- A. whereas the European and US media have recently revealed the existence of the Terrorist Finance Tracking Programme introduced by the US Administration, which appears to have given the US authorities access to all financial data held by the international banking cooperation company SWIFT (Society for Worldwide Interbank Financial Telecommunications), a Belgian enterprise which groups more than 8000 commercial banks from 200 countries, as well as numerous central banks,
- B. whereas the information held by SWIFT to which the US anti-terrorist authorities appear to have had access concerns hundreds of millions of EU citizens, since all European banks use SWIFT for transfers of funds between banks worldwide, and SWIFT thus daily manages data on millions of bank transfers and transactions,
- C. whereas access to data managed by SWIFT makes it possible to detect not only transfers linked to illegal activities, but also information on the economic activities of the individuals and countries concerned, and this could give rise to large-scale forms of economic and industrial espionage,
- D. whereas some of the data obtained from the SWIFT system are processed on US soil, even though any transfer of data for handling outside the EU should be subjected to, at least, an 'adequacy finding' in the context of personal data protection,

1. Recalls its strong commitment to the fight against terrorism and its belief in defending a fair balance between security measures and the protection of fundamental rights and freedoms;
2. Recalls that in the EU the rule of law prevails, and that all transfers of personal data to third countries are regulated under national law and the EU directives on data protection, under which all transfers must be authorised by a judicial authority and any exception to that principle has to be proportionate and laid down by a law and/or an international agreement negotiated and concluded in due and proper form;
3. Considers that, pursuant to Article 8 of the ECHR and, under Community law, specifically Article 13 of Directive 95/46/EC, Member States may, on grounds of state security, defence or public safety, derogate from the principle of commercial purposes as justifying the collection of personal data by private parties, and place limits on protection by adopting legislative measures that are necessary, proportionate and compatible with a democratic society;
4. Welcomes the forthcoming adoption of a regulation on data relating to the payer accompanying transfers of funds, since this could help provide a legal framework for such data transfers; deplures, nonetheless, the failure to inform Parliament at the time of the negotiations by the other institutions and bodies, especially the ECB, regarding the existence of transfers of this type;
5. Asks the Commission, the Council and the ECB to provide explanations regarding any information which may have been in their possession on the secret agreements between SWIFT and the US Administration;
6. Is concerned, in particular, over the role and function of the ECB in this affair, and calls on the European Data Protection Supervisor to verify as soon as possible whether, under Regulation 45/2001 and the resultant data protection obligations on the Community institutions, the ECB should not have taken steps to denounce breaches of which it must have been aware;
7. Recalls that it was the ECB's duty to determine in what ways the central banks grant access to SWIFT data on the basis of legitimate exceptions;
8. Calls on the Member States to check that there are no legislative gaps at national level, to take steps to apply the Community data protection legislation to their own central banks, and to forward the results of the checks carried out to the Commission, the Council and Parliament;
9. Calls on the Council, as a matter of urgency, to proceed to the rapid examination and adoption of a framework directive on data protection in the context of judicial and police cooperation, so as to ensure that EU citizens have a high and uniform level of protection everywhere in the Union;

10. Draws the Council's attention, in particular, to Amendments 26 and 58 of its report on the framework decision on data protection, seeking to extend the regulation of data protection to cases where data is collected by private parties on public interest grounds;
11. Reiterates its disappointment at the Council's unwillingness to move beyond the present legislative impasse by which there is a dual decision-making system for the protection of a single fundamental right, depending on whether it falls under the first or the third pillar; repeats its call for an end to this dual system, via activation of the 'passerelle' which has applied since the Treaty of Maastricht under Article 42 of the TEU;
12. Instructs its President to forward this resolution to the Council, the Commission, the Governments and Parliaments of the Member States, the European Central Bank, the US Administration, and the two Houses of the US Congress.