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RECOMMENDATION

on the draft Council decision on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program
(11222/1/2010/REV 1 and COR 1 – C7-0158/2010 – 2010/0178(NLE))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Alexander Alvaro

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the draft Council decision on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program
(11222/1/2010/REV 1 and COR 1 – C7-0158/2010 – 2010/0178 (NLE))**

(Consent)

The European Parliament,

- having regard to the draft Council decision (11222/1/2010/REV 1 and COR 1),
 - having regard to the text of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program, which is attached to the above-mentioned draft Council decision,
 - having regard to its resolution of 5 May 2010 on the Recommendation from the Commission to the Council to authorise the opening of negotiations for an agreement between the European Union and the United States of America to make available to the United States Treasury Department financial messaging data to prevent and combat terrorism and terrorist financing¹,
 - having regard to the opinion of the European Data Protection Supervisor of 22 June 2010²,
 - having regard to the opinion expressed by the Article 29 Data Protection Working Party and the Working Party on Police and Justice on 25 June 2010,
 - having regard to the request for consent submitted by the Council pursuant to Article 218 (6)(a) in conjunction with Articles 87(2)(a) and 88(2) of the Treaty on the Functioning of the European Union (C7-0158/2010),
 - having regard to Rules 81 and 90(8) of its Rules of Procedure,
 - having regard to the recommendation of the Committee on Civil Liberties, Justice and Home Affairs (A7-0224/2010),
1. Consents to conclusion of the Agreement;
 2. Invites the Commission, in compliance with Article 8 of the European Charter of Fundamental Rights, which requires that personal data be under the control of "independent authorities", to submit to the European Parliament and to the Council as

¹ Texts adopted, P7_TA(2010)0143.

² Not yet published in the Official Journal.

soon as possible a choice of three candidates for the role of the EU independent person referred to in Article 12(1) of the Agreement; points out that the procedure is to be, *mutatis mutandis*, the same as that followed by the European Parliament and the Council for the appointment of the European Data Protection Supervisor as provided for by Regulation (EC) No 45/2001¹ implementing Article 286 of the EC Treaty;

3. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States and the government of the United States of America; further instructs its President to enter into inter-parliamentary dialogue with the Speaker of the United States House of Representatives and the President pro tempore of the United States Senate on the future framework agreement on data protection between the European Union and the United States of America.

¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 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 (OJ L 8, 12.1.2001, p. 1).

EXPLANATORY STATEMENT

On 11 February 2010 the European Parliament withheld its consent to the conclusion of the EU-US Financial Messaging Data Agreement (FMDA) in the first consent vote on an international agreement after the entry into force of the Lisbon Treaty. At the same time, the European Parliament requested the European Commission to immediately submit a new recommendation for a negotiation mandate to the Council with a view to a long-term EU-US Agreement. On 11 May 2010 the Council authorised the Commission to open negotiations, on behalf of the European Union, with the United States to make available to the United States Treasury Department financial messaging data to prevent and combat terrorism and terrorism financing (EU-US FMDA Agreement). The Commission concluded the negotiations on 11 June and on 28 June the agreement was signed and at the same time the Council requested the consent of the European Parliament on the draft Council decision on the conclusion of the above mentioned agreement.

The European Parliament has consistently expressed its views in previous resolutions, and most recently on 5 May (B7-0243/2010)¹ on the negotiation mandate, outlining a number of improvements that the new Agreement should include, notably:

- that a twin-track approach can be accepted, if strict safeguards are included in the envisaged EU-US agreement, and, that in the longer term a durable, legally sound European solution to the issue of the extraction of requested data on European soil be envisaged;
- that a judicial public authority should be designated in the EU with the responsibility to receive requests from the United States Treasury Department;
- that the agreement should also provide for evaluations and safeguard reviews by the Commission at set times during its implementation;
- that the specific rights of European and US citizens (e.g. access, rectification, deletion, compensation and redress) are put in place on a non-discriminatory basis, regardless of the nationality of any person whose data are processed pursuant to it.

Your rapporteur would like to take into account all previous resolutions adopted by Parliament, as they establish a coherent benchmark for evaluating the Agreement. Compared to the first Agreement, rejected by Parliament, the present Agreement represents an improvement that has been achieved due to Parliament's consistent demands for solutions to the key issues outlined above.

The new Agreement contains *inter alia* the following improvements:

- Access to and extraction of data on US soil by US agencies will be monitored and when required blocked by a European official (Art. 12(1)). This procedure will prevent the possibility of data mining and economic espionage.
- The procedure regarding judicial redress for European citizens is regulated in greater

¹ European Parliament resolution on the Recommendation from the Commission to the Council to authorise the opening of negotiations for an agreement between the European Union and the United States of America to make available to the United States Treasury Department financial messaging data to prevent and combat terrorism and terrorist financing

detail (Art. 18).

- The right to rectification, erasure, or blocking is more comprehensive (Art. 16).
- The regulation on transparency of the US TFTP has become more detailed (Art. 14).
- The procedure regarding onward data transfers to third countries is regulated more precisely (Art. 7).
- The scope for fighting terrorism is defined and clarified as requested by the Parliament (Art. 2).
- Europol shall verify whether the US request for financial data meets the requirements of the Agreement as well as whether it is tailored as narrowly as possible, before the Data Provider is authorized to transfer the data (Art. 4).
- If financial data which was not requested is transmitted (e.g. for technical reasons), the U.S. Treasury Department is obliged to delete such data (Art. 6).
- SEPA (Single Euro Payments Area) data are excluded from the transfers.

In addition to the improvements within the Agreement, Council and Commission have made the legally binding commitment to set up the legal and technical framework allowing for the extraction of data on EU soil. This commitment will in the mid-term ensure the termination of bulk data transfers to the US authorities. The establishment of a European extraction system represents a very important improvement, as the continued transfer of data in bulk is a departure from the principles underpinning EU legislation and practice. Therefore, the envisaged three steps approach is most welcome:

- Step 1: The Commission will present a proposal for the legal and technical framework after one year.
- Step 2: Progress report by the Commission on the EU extraction system after three years. This report will not only allow the currently elected Parliament to verify whether the commitments by Commission and Council have been fulfilled, but also to demand changes to the Agreement according to the progress of the EU extraction system (the Agreement provides for adjustments if the EU decides to set up its own extraction system (Art. 11)).
- Step 3: Possible termination of the Agreement after 5 years, if the EU extraction system is not set up.

Furthermore, the Commission declares that once the future EU-US framework agreement on data protection has been concluded, this (TFTP) Agreement will be assessed in the light thereof.

Your rapporteur welcomes the improvements, while wanting to highlight that some provisions should still be clarified when the precise modalities are chosen. As Europol is not the judicial authority envisaged by Parliament, it needs to be ensured that there is independent oversight of Europol in its handling of US requests, which for the duration of the Agreement could be ensured e.g. by the posting of an EDPS official. Also, the involvement of the European Parliament in the selection process of the independent EU person as mentioned in Art. 12(1) must be ensured.

The final Agreement in combination with the legally binding commitments in the Council Decision meets most of Parliament's demands. It caters for both security and privacy concerns

for EU citizens and ensures legally binding solutions for the commonly known problems. The agreement also marks a new step in Parliament's powers, ensuring European democratic oversight over international agreements.

In light of all the mentioned improvements your rapporteur suggests to give consent to the conclusion of the Agreement.

MINORITY OPINION

pursuant to Rule 52(3) of the Rules of Procedure
by J. Albrecht, R. Tavares, J. Sargentini, H. Flautre, T. Zdanoka and Cornelia Ernst

The EU-US agreement on TFTP does not meet the guarantees requested by the EP in its previous resolutions. Some of them were real red lines.

The whole agreement concerns massive transfer of bulk data of unsuspecting EU citizens. A hypothetical setting up in a 3 years period of an EU-TFTP would not solve the question. The practical solution of targeted data transfer on a case by case basis under judicial authorisation was simply never taken seriously into consideration. The role of supervision of Europol is unclear and will imply a modification of its mandate and Europol is not a judicial authority.

Such an agreement represents a clear violation of EU legislation on data protection. It will undermine the negotiations on an EU-US data protection agreement. Data retention period is far too long. We also regret the absence of a genuine sunset clause. The provisions of the agreement on data-subject rights, in particular as regards redress rights do not at all meet the European criteria.

We definitely want to cooperate with the US in the fight against terrorism and terrorism finance. Such policy can and therefore must be pursued in full respect of EU Treaties provisions on fundamental rights and privacy.

MINORITY OPINION

pursuant to Rule 52(3) of the Rules of Procedure
by Gerard Batten

This proposed legislation is democratically illegitimate for three main reasons:

- 1) All legislation enacted under the Lisbon Treaty is democratically illegitimate because the people of Europe were denied a referendum on the adoption of the Treaty.
- 2) The draft Agreement was only made available on 27th May to a restricted number of MEPs; this was during a 'Green Week' when MEPs are expected to be at home in their constituencies so few were available to read it; those who did read it were required to sign a 'Declaration of Honour' agreeing not to disclose its contents.
- 3) This confidential and private financial data belongs to the individual not to the European Union or the Parliament. If such an Agreement is required then it should be by international agreement entered into by democratic governments elected and answerable to their voters.

Such legislation may also be illegal under existing national legislation on data protection concerning the sharing of information with overseas third parties.

Therefore I, and my UK Independence Party colleagues will vote against and we urge all MEPs from all nations who believe in democratic national sovereignty to do the same

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	5.7.2010
Result of final vote	<div style="display: flex; justify-content: flex-end; align-items: center;"> <div style="text-align: right; padding-right: 10px;"> + : 41 - : 9 0 : 1 </div> </div>
Members present for the final vote	Jan Philipp Albrecht, Sonia Alfano, Roberta Angelilli, Gerard Batten, Rita Borsellino, Emine Bozkurt, Simon Busuttil, Philip Claeys, Carlos Coelho, Rosario Crocetta, Agustín Díaz de Mera García Consuegra, Cornelia Ernst, Hélène Flautre, Kinga Gál, Kinga Göncz, Nathalie Griesbeck, Sylvie Guillaume, Ágnes Hankiss, Anna Hedh, Salvatore Iacolino, Sophia in 't Veld, Teresa Jiménez-Becerril Barrio, Timothy Kirkhope, Juan Fernando López Aguilar, Baroness Sarah Ludford, Monica Luisa Macovei, Clemente Mastella, Véronique Mathieu, Nuno Melo, Louis Michel, Claude Moraes, Carmen Romero López, Judith Sargentini, Birgit Sippel, Csaba Sógor, Rui Tavares, Wim van de Camp, Daniël van der Stoep, Axel Voss, Manfred Weber, Renate Weber, Tatjana Ždanoka
Substitute(s) present for the final vote	Magdi Cristiano Allam, Alexander Alvaro, Edit Bauer, Anne Delvaux, Ioan Enciu, Iliana Malinova Iotova, Ernst Strasser, Marie-Christine Vergiat
Substitute(s) under Rule 187(2) present for the final vote	Jens Geier