

EU/USA agreement: processing and transfer of Financial Messaging Data for purposes of the Terrorist Finance Tracking Program

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Following the vote on 4 February 2010 by the LIBE Committee on the TFTP Agreement, the Spanish Presidency proposes this draft declaration:

- in June 2009 the Commission presented draft negotiation guidelines for a short-term TFTP Agreement to the Council. At the end of July 2009, the Council adopted negotiation guidelines for such an Agreement, knowing that in the absence of such short-term Agreement an important security gap would arise in which there would be a risk of losing the benefit of important leads obtained through the Terrorist Finance Tracking Programme from European financial transactions for future terrorism investigations;
- as SWIFT had clearly indicated that it would redesign its database at the latest by the end of 2009, it was impossible to wait for the entry into force of the Lisbon Treaty before starting the negotiations for such Agreement. The important value of the TFTP, a United States Treasury Department counter-terrorism programme, for Member States' investigation and disruption of terrorism has been amply demonstrated, including in the second Bruguère Report which was provided to the European Parliament on 1 February 2010;
- being aware of the entry into force of the Lisbon Treaty, the Council, when authorising the signing of the Agreement with the United States on the processing and transfer of financial messaging data for the purposes of the Terrorist Finance Tracking Programme ("TFTP"), decided that the Agreement should have a transitional nature and should be applicable only for a very short term, having a maximum duration of nine months. This period is even shorter than the maximum of twelve months that was called for in the European Parliament's Resolution of 17 September 2009;
- the Council would also like to point out that the short term Agreement already contains an important number of the guarantees which were called for in the European Parliament's Resolution of 17 September 2009, as it was requested during negotiation by Member States. The demands for a judicial authorisation as well as for a "push" system are also being complied with by the current short-term Agreement. The Agreement also clearly prohibits the use of any SWIFT data for purposes other than that those linked to the financing of terrorism. The short-term Agreement is, as the Parliament had asked for, based on the 2003 EU-US Mutual Legal Assistance Agreement, and at the same time provides for a significantly higher level of data protection than the 2003 Agreement;
- as regards the longer term EU-US TFTP Agreement, the Council shares the Parliament's concerns regarding the need to strike the right balance between security measures and the protection of civil liberties and fundamental rights, while ensuring the utmost respect for privacy and data protection.

The Council calls on the Commission to adopt in February draft negotiation guidelines that fully take into account those concerns.. The Council is of the opinion that a longer-term Agreement should contain strong guarantees concerning the deletion of data and greater specificity regarding the sharing of TFTP-derived information with national authorities and third countries. The significant data protection safeguards already set out in the short term agreement, such as the strict purpose limitation and the absolute prohibition on data mining, will also feature prominently in any future TFTP Agreement.

The Council is looking forward to the new situation which has been created by the Lisbon Treaty and to work together with the Parliament, which needs to be informed fully and immediately at all stages of the procedure. This will allow the Parliament to fully exercise its role provided in the Treaty, in order to achieve that the longer term TFTP Agreement meets its concerns regarding the protection of personal data, while ensuring that the TFTP can continue to provide EU Member States with significant lead information to investigate and disrupt terrorism.

The Council understands the need of the European Parliament to have easier access to the classified parts of international Agreements in order to carry out its assessment. In that perspective the Council commits itself to negotiate an inter-institutional Agreement with the Parliament on the sharing of classified information.