

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

2010/0178(NLE) - 15/06/2010 - Document attached to the procedure

PURPOSE: to sign a new 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 purposes of the Terrorist Finance Tracking Program.

PROPOSED ACT: Council Decision.

BACKGROUND: the JHA Council of 30 November 2009 authorised the Presidency of the Council of the European Union to sign an [interim agreement between the EU and the United States on the processing and transfer of Financial Messaging Data from the EU to the U.S.](#) for purposes of the TFTP. The interim agreement, also signed on 30 November 2009, was to have a maximum duration of 9 months.

However, on 11 February the European Parliament adopted its Resolution withholding consent for the TFTP Interim Agreement. A letter signed by the President of the Council was delivered to the US Secretary of State on 22 February 2010 stating that as a consequence of the Parliament's Resolution, the EU could not become a party to the Interim Agreement and terminating the provisional application of the Agreement. No data were ever transferred under the Interim Agreement.

On 24 March 2010, the Commission adopted a Recommendation from the Commission to the Council to authorise the opening of the negotiations 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 terrorism financing. On 11 May 2010, the Council adopted a Decision, together with negotiation directives, authorising the Commission to open negotiations on behalf of the European Union. On 10 May 2010, the European Parliament adopted a [resolution](#) on the Recommendation from the Commission to the Council to authorise the opening of the negotiations. The Agreement was initiated by the Parties on 11 June 2010. The Agreement has a duration of 5 years.

The Terrorist Finance Tracking Program (TFTP) has generated significant intelligence which has benefitted Member States' fight against terrorism. The purpose of the Agreement is to ensure the continuation of the TFTP by making available to the United States Treasury Department financial messaging data stored in the EU for the purposes of the Terrorist Finance Tracking Program (TFTP). Since the new systems architecture of the Society for Worldwide Interbank Financial Telecommunication (SWIFT) (hereinafter referred to as the "designated provider") became operational on 1 January 2010, a significant volume of the data which were previously received by the U.S. Treasury Department under the TFTP, have not been available, undermining the benefits of the TFTP not least for the European Union.

This Agreement is therefore necessary to enable the functioning of the TFTP without the limitations derived from the designated provider's new systems architecture and ensure that the TFTP can produce EU - and wider global - security benefits.

Following the termination of the provisional application of the Interim Agreement, data stored by the designated provider in its EU server remains inaccessible to the Treasury Department for the purposes of the TFTP. It is necessary to sign this Agreement as rapidly as possible in order to make these data available to the United States Treasury Department for the purposes of preventing and combating terrorism and terrorist financing.

IMPACT ASSESSMENT: no impact analysis was carried out.

LEGAL BASIS: Articles 87(2)(a) and 88 (2), in conjunction with Article 218 (5) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the proposed signature of the new Agreement the European Union and the United States aims at preventing and combating terrorism while respecting fundamental rights, and notably the protection of personal data. The Agreement aims to ensure full respect for fundamental rights enshrined in Article 6 (2), of the Treaty on European Union, in particular the right to privacy with regard to the processing of personal data as stipulated in Article 16 of the Treaty on the Functioning of the European Union and for the principles of proportionality and necessity regarding the right to respect for private and family life and the protection of personal data as set out in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union.

In addition, the Agreement provides for:

- significant safeguards for those whose data is processed by the designated provider within the European Union if it is transferred to the Treasury Department under this Agreement;
- transparency of the use of data;
- measures concerning access, blocking and rectification of data;
- measures on administrative redress on a non-discriminatory basis and the availability of a process for seeking judicial redress under U.S. law, regardless of nationality or place of residence.

Where leads resulting from the data are shared with third parties, the Member State concerned will be consulted as appropriate.

The Agreement offers a strengthened process for the European Union to review its functioning, and to monitor the independent oversight of the TFTP.

The Agreement should be approved by the European Parliament.

BUDGETARY IMPLICATION: this proposal has no implication for the European Union's budget.