

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

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Alexander ALVARO (ALDE, DE) recommending that the European Parliament consents to 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.

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 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 on the negotiation mandate, outlining a number of improvements that the new Agreement should include (see in particular [RSP/2010/2649](#)). 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.

In addition to the improvements within the Agreement in terms of data protection and proportionality, 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 medium 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. The envisaged three-step approach is most welcomed by Members and involves the following:

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;

Step 3: Possible termination of the Agreement after 5 years, if the EU extraction system has not been set up.

Although the Agreement could be further improved, according to Members, in particular with regard to the 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), Members recommend that Parliament gives its consent to the conclusion of the Agreement. Nevertheless, they consider Parliament should be involved in the selection process of the independent EU person who will be responsible for the monitoring and supervision of the strict limits on data searches with the single purpose of counter-terrorism.

The final Agreement, in combination with the legally binding commitments in the Council Decision, meets most of Parliament's demands. The committee therefore recommends that the European Parliament gives its consent to the conclusion of the Agreement.