



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 22 June 2010

11350/10

**JAI 570
USA 92
RELEX 576
DATAPROTECT 54**

NOTE

from: Presidency
to: COREPER/Council

No. prev. doc.: 11222/10 JAI 556 USA 86 RELEX 561 DATAPROTECT 49
11223/10 JAI 557 USA 87 RELEX 562 DATAPROTECT 50

Subject: Declarations to be adopted upon the adoption of the Council Decision on
signature of the TFTP Agreement

The Presidency proposes that the following declarations be adopted together with the Decision on signing regarding the TFTP Agreement.

Draft Council Declaration
regarding the future framework agreement on Data Protection

Once the future EU-USA framework agreement on data protection has been concluded, this (TFTP) agreement will be assessed in the light thereof.

**Declaration by the Council and the European Commission concerning
the setting up of an EU system equivalent to the Terrorist Finance Tracking Programme
(TFTP)**

Article 11 of the EU-US TFTP Agreement acknowledges the twin track approach called for in the European Parliament's Resolution of 5 May 2010. Accordingly, while the Agreement sets out strict safeguards regarding the transfer of data, it acknowledges in the longer-term, the ambition for the European Union to establish a system equivalent to the TFTP, which could allow for the extraction of data to take place on EU soil. The United States has committed in the Agreement to cooperate and provide assistance and advice to contribute to the effective establishment of such a system.

The European Commission will begin in the second half of 2010 work on a Study into the possible introduction of an EU system equivalent to the TFTP system allowing for a more targeted transfer of data from the European Union to the United States. The output of this Study will form an important part of the Commission Communication, already announced for 2011 in the Commission's Action Plan Implementing the Stockholm Programme¹, on the feasibility of an EU system equivalent to the TFTP. This communication will assess the legal, technical, cost and other implications of establishing an EU system equivalent to the TFTP and set out a timeframe for the introduction of such a system. The Commission will present the proposal for the introduction of such a system as soon as possible.

If, following five years after the entry into force of the TFTP Agreement, the EU equivalent system has not been set up, the Union will consider the termination of this Agreement in accordance with Article 21 (2) thereof.

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions delivering an area of freedom, security and justice for Europe's citizens Action Plan Implementing the Stockholm Programme COM (2010) 171 of 20.04.2010.

Council and Commission Declaration
concerning Article 4 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 purposes of the terrorism finance tracking programme

1. The technical modalities of the verification process referred to in Article 4, paragraph 9 of the Agreement shall ensure an efficient functioning of the verification process and shall by no means affect the rules laid down in the agreement. They shall cover issues such as (a) the setting up of a distinct and dedicated unit within Europol, under appropriate supervision and with the involvement of the Data Protection Officer of Europol (b) elements needed for the verification, (c) the normal duration of the verification process, (d) confidentiality arrangements and (e) the form and motivation of the decisions to be adopted under Art. 4.
2. The technical modalities shall be established before the Agreement enters into force.
3. Europol is requested to come forward with practical suggestions for the establishment of the technical modalities. The Management Board of Europol shall be regularly informed in detail and be closely consulted, in particular as to the functioning and supervision of the unit in charge of the verification process.
4. The Commission shall regularly report to the Council on the preparation of the technical modalities as well as on the progress of the consultation with the US on these modalities.