



inofficial consolidated version prepared by Jan Philipp Albrecht after adoption in Plenary on 23 October 2013

JOINT MOTION FOR A RESOLUTION

pursuant to Rule of the Rules of Procedure

replacing the motions by the following groups:

PPE

S&D

ALDE

Verts/ALE

GUE

Juan Fernando Lopez Aguilar, Claude Moraes, Birgit Sippel on behalf of the S&D
by Alexander Alvaro, Sophie In't Veld, Renate Weber, Gianni Vattimo, Marielle
de Sarnez, Ivo Vajgl on behalf of the ALDE Group
Jan Albrecht on behalf of the Verts/ALE Group

On : the Suspension of the TFTP agreement as a result of NSA surveillance

The European Parliament,

- Having regard to Art. 16 TFEU;
- Having regard to Art. 87 TFEU;
- Having regard to Art. 225 TFEU;
- Having regard to Art. 226 TFEU;
- Having regard to Art. 218 TFEU;
- Having regard to Art. 234 TFEU;
- Having regard to Art. 314 TFEU;
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- Having regard to 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 ("the Agreement"),
- Having regard to European Parliament resolution of 4 July 2013 on the US National Security Agency surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' privacy (2013/2682(RSP));
- Having regard to Council Decision of 13 July 2010 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 and the accompanying declarations by the European Commission and the Council.
- Having regards to its resolution of 17 September 2009 on the envisaged international agreement to make available to the United States Treasury Department financial payment messaging data to prevent and combat terrorism and terrorist financing ,
- Having regards to its resolution of 11 February 2010 on the proposal for a 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 purposes of the Terrorist Finance Tracking Program
- Having regards 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 financing
- Having regards to its resolution of July 2010 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

and the recommendation of the Committee on Civil Liberties, Justice and Home Affairs (A7-0224/2010),

- Having regard to the reports on the joint review of the implementation 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 of 30 March 2011 (SEC(2011)438) and of 14 December 2012 (SWD(2012)454),
 - Having regard to the inspection report of 1 March 2011 of Europol's implementation of the TFTP Agreement, conducted in November 2010 by the Europol Joint Supervisory Body,
 - Having regard to the public statement of Europol Joint Supervisory Body of 14 March 2012 on the implementation of the TFTP Agreement,
 - Having regard to the assessment of the outcome of the its third inspection of Europol's implementation of its tasks under the TFTP Agreement by the Joint Supervisory Body of Europol of 18 March 2013,
 - Having regard to the letter of Paul Breitbarth of the Dutch Data Protection Authority to the head of delegation of the EU Joint Review Team TFTP of 18 April 2011,
 - Having regard to the letter of Jacob Kohnstamm on behalf of the Article 29 Data Protection Working Party to Ms Melissa A. Hartman, Deputy Assistant Secretary, US Department of the Treasury of 7 June 2011,
 - Having regard to the letter of Jacob Kohnstamm on behalf of the Article 29 Data Protection Working Party to Juan Fernando López Aguilar, the Chair of the LIBE Committee, of 21 December 2012,
 - Having regard to the letter of Commissioner Malmström to Under Secretary Cohen of 12 September 2013 and the answer of Under Secretary Cohen of 18 September 2013,
 - Having regard to the Communication from the Commission to the European Parliament and the Council of 13 July 2011 on A European terrorist finance tracking system: available options (COM(2011)429),
 - Having regard to Written Questions E-11200/2010; E-2166/2011; E-2762/2011; E-2783/2011; E-3148/2011; E-3778/2011; E-3779/2011; E-4483/2011; E-6633/2011; E-8044/2011; E-8752/2011; E-617/2012; E-2349/2012; E-3325/2012, E-7570/2012 and E-000351/2013,
- A. Whereas 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 entered into force on 1 August 2010.
- B. Whereas press reports indicate that the National Security Agency (the NSA) of the United States of America has had direct access to the IT systems of a number of private companies and gained direct access to financial payment messages referring to financial transfers and related data by a provider of international financial payment messaging services currently covered by the TFTP agreement.

- C. Whereas the European Parliament in its resolution of 4 July 2013 on the NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' privacy (2013/2682(RSP)) instructed its Committee on Civil Liberties, Justice and Home Affairs to conduct an in-depth inquiry into the matter in collaboration with national parliaments and the EU-US expert group set up by the Commission and to report back by the end of the year
- D. Whereas, after rejecting the temporary TFTP Agreement, the majority of the European Parliament only gave its consent to the current TFTP Agreement due to strengthened protections to safeguard the personal data and privacy rights of EU citizens.
- E. Whereas the US Treasury classified a large quantity of relevant information regarding this Agreement as EU Secret.
- F. Whereas, according to the Article 29 Data Protection Working Party, the current procedure of right of access may not be adequate and the right to rectification, erasure, or blocking may not be exercised in practice.
- G. Whereas the European Commission declared that while the Agreement sets out strict safeguards regarding the transfer of data.
- H. Whereas the Commission was invited to submit to the European Parliament and the Council, no later than 01 August 2011, a legal and technical framework for the extraction of data on EU territory and, no later than 01 August 2013, a report of progress on the development of the equivalent EU system with regard to Article 11 of the Agreement.
- I. Whereas instead of submitting the legal and technical framework for the extraction of data on EU territory, the Commission presented on 13 July 2011 a description of different steps it has taken to move towards establishing such a legal and technical framework, communicating preliminary results and some theoretic options of a European terrorist finance tracking system without going into detail;
- J. (deleted)
- K. Whereas talks between the services of the EC and the US administration cannot be considered to count as an investigation, nor does the mere reliance on statements by the US;
 - 1. Recalls that since the EU's core aim is to promote freedom of the individual, security measures, including counterterrorism measures must be pursued though the rule of law and subject to fundamental rights obligations, including those related to privacy and data protection;
 - 2. Reiterates that any transfer of personal data shall comply with EU and Member States law and with fundamental rights obligations, including those related to privacy and data protection; (2 ALDE mod.);
 - 3. Is seriously concerned about the recently revealed documents on the activities of the NSA concerning direct access to financial payment messages and related data which would constitute a clear breach of the TFTP agreement, in particular of Article 1 thereof;

4. calls for a full on-site technical investigation of allegations of the US authorities having unauthorised access or having created possible back doors in the SWIFT servers; deplors that no Member State has launched or requested investigations, in the absence of which facts cannot be verified;
5. Reiterates the need to base any data sharing agreement with the US on a coherent legal data protection framework offering legally binding personal data protection standards, including on purpose limitation, data minimisation, information, access, correction, erasure and redress;
6. Is concerned that the Agreement has not been implemented in accordance with its provisions, in particular as laid down in Articles 1, 4, 12, 13, 15 and 16;
7. (deleted)
8. Strongly urges the three institutions to deliberate carefully on the human rights implications of any future data exchange alternatives that fully respect the data protection principles, especially the necessity and proportionality test;
9. Reminds that the test of necessity and proportionality of any measure that limits fundamental rights and freedoms needs to take into account the entire body of already existing security measures aimed at targeting terrorism and serious crime; and believes that blanket justifications of every security measure by generally referring to the fight against terrorism or serious crime is not sufficient;
10. Requests, in the light of the above, the Council and the Member States to authorize an investigation into the allegations of unauthorized access to financial payment data governed by this Agreement by the Europol Cyber Crime Centre;
11. Calls on the Civil Liberties Committee special inquiry into the mass surveillance of EU citizens to further investigate the allegations into the unlawful access to the financial payment messages covered by this Agreement;
12. Considers that, although the Parliament has no formal powers under Art 218 of the TFEU to initiate a suspension or termination of an international agreement, the Commission will have to act if Parliament withdraws its support for a particular agreement; point out Parliament will take account of the response of the Commission and the Council in the case of the Agreement, when considering giving its consent or not to future international agreements;
13. Requests, in the light of the above, the Commission to suspend the Agreement;
14. Requests that all relevant information and documents must be made immediately available for the deliberations in the European Parliament;
15. Instructs its President to forward this resolution to the Council, the Commission and Europol.