



Brussels, 23 April 2015
(OR. en)

8148/15

JAI 244
USA 14
RELEX 311
DATAPROTECT 53

"I" ITEM NOTE

From:	Presidency
To:	Permanent Representatives Committee
No. prev. doc.:	7956/15 JAI 231 USA 12 RELEX 299 DATAPROTECT 46
Subject:	Draft reply to a letter from the Article 29 Data Protection Working Party concerning the Renewal of the TFTP Agreement between EU and US

1. On 23 March 2015, Ms Isabelle Falque-Pierrotin, Chairperson of the Article 29 Data Protection Working Party sent a letter ¹ to the Latvian Minister for the Interior, Mr Rihards Kozlovskis, with copies to Ms Věra Jourová Commissioner for Justice, Consumers and Gender Equality, Mr Dimitris Avramopoulos, Commissioner for Migration, Home Affairs and Citizenship and Mr Claude Moraes, Chairman of the LIBE Committee in the European Parliament.
2. In this letter, the Chairperson referred to the renewal of the Terrorist Tracking Finance Programme (TFTP) Agreement between the EU and US which entered into force on 1 August 2010 for a period of 5 years. In particular, the Working Party enquired about the process the Council has chosen to allow it to consider whether this Agreement should be renewed in light of the experience gained to date.

¹ 7956/15 JAI 231 USA 12 RELEX 299 DATAPROTECT 46

3. The Presidency wishes to issue a written response to the Article 29 Working Party, highlighting that the procedures on international agreements set out in Article 218 TFEU provide that the Council can only authorise the opening of negotiations, the signing and the conclusion of agreements, as well as the termination of agreements on foot of a proposal from the Commission.
 4. The reply indicates that the Council is not in a position to take any decision on the termination of the TFTP Agreement as the Commission has not made any proposal to this effect. Consequently, the Agreement will automatically be renewed for a period of 1 year from 1 August 2015.
 5. *The Presidency invites COREPER to approve the wording of the letter set out in the Annex to this note.*
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Ms Isabelle Falque-Pierrotin
Chairperson, Article 29 Data Protection Working Party
c/o Directorate C of the European Commission
B-1049, Brussels
Belgium

Dear Ms Falque-Pierrotin,

Thank you for your letter of 23 March 2015 regarding the renewal of the EU-US Agreement on the processing and the transfer of Financial Message Data from the European Union to the United States for the purposes of the terrorist finance Tracking program (hereafter "TFTP Agreement").

You refer to the fact that Article 2 of the Council Decision of 13 July 2010 on the conclusion of the TFTP Agreement states that if "five years after the date of entry into force of the Agreement, the equivalent EU system has not been set up, the Union shall consider whether to renew the Agreement in accordance with Article 21(2) thereof". To date, no equivalent EU system has been set up.

Article 21(2) of the TFTP Agreement allows either contracting party to terminate the Agreement at any time. Article 23(2) of the Agreement states that the Agreement shall automatically be extended for subsequent periods of one year after the expiration of the five-year period following its entry into force (on 1 August 2010). It follows from the combined reading of both provisions that the Agreement shall be automatically prolonged with a one-year period as from 1 August 2015 unless one of the parties terminates the Agreement.

Under the procedure on international agreements established by Article 218 TFEU, the Council can only authorise the opening of negotiations, the signing and conclusion of agreements, as well as the termination of agreements where it has received a proposal from the Commission (or of the High Representative for Foreign Affairs and Security Policy).

As the Commission has so far not proposed to the Council to terminate the Agreement, the Council is institutionally not in position to consider whether to renew the Agreement or to terminate it. Consequently the Agreement will be automatically renewed with a one-year period as from 1 August 2015.

At this stage the Council can only indicate that, on the basis of the evaluation reports provided by the Commission in the past, it has no reason to doubt the necessity of continuing the operation of the Agreement. As you are undoubtedly aware, under Article 13 of the TFTP Agreement, the Union is represented by the European Commission for the purposes of the regular reviews of the operation of Agreement. Consequently, when the Union has to reconsider the renewal of the Agreement it should do so on the basis of reports made by the Commission.

I hope this adequately addresses your query,

Yours sincerely,

On behalf the Council,

Ms Ilze Juhansone
Permanent Representative to the European Union
