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 Jeanine HENNIS-PLASSCHAERT (ALDE, NL) recommending that Parliament withhold its consent to the conclusion of the interim Agreement between the EU and the USA on the processing and transfer of Financial Messaging Data from the EU to the USA for purposes of the Terrorist Finance Tracking Program.

The report adopted in committee called on the Commission to submit immediately recommendations to the Council with a view to a long-term agreement with the USA dealing with the prevention of terrorism financing, and stressed that any new agreement in this area should comply with the new legal framework established by the Treaty of Lisbon and the now binding EU Charter of Fundamental Rights. It also renewed the requests made in the resolution adopted by Parliament on 17 September 2009, particularly in paragraphs 7 to 13 (see procedure file 2009/2670(RSP)).

Background

After the terrorist attacks of 11 September 2001, the US Treasury developed the 'Terrorist Finance Tracking Program' (TFTP) under which it subpoenaed the Belgian-based SWIFT company, a secure messaging provider for financial transactions, to get access to bank transactions. SWIFT handles 80% of the world's electronic financial transfers, including those by most of Europe's banks.

SWIFT's cooperation with the US Treasury programme was disclosed in the press in 2006 and caused a furore. Following demands from European data protection authorities that EU privacy laws should not be violated, an agreement was signed in 2007.

Until recently, SWIFT stored messages on two identical ("mirror") servers, located in Europe and the USA. However, it decided to make changes in its structure and announced that, as from January 2010, intra-EU message data would be exclusively processed and stored within Europe. This new architecture - which would have shut off US access to much of the SWIFT data it received under the former messaging architecture - led to a request from the US to the Council to negotiate a fresh EU-US agreement on the processing and transfer of financial messaging data for the purposes of the US Terrorist and Finance Tracking Program. On 30 November 2009 the Council signed an interim agreement with the USA, which would provisionally be applied as from 1 February 2010 and expire on 31 October 2010.

Under the provisions of the Lisbon Treaty, the European Parliament's consent to the formal conclusion of this interim agreement is required. The withholding of consent would render the agreement legally void.