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Suspension of the SWIFT agreement as a result of NSA surveillance

Greens/EFA motion for resolution

Tabled by Jan Philipp Albrecht on behalf of the Greens/EFA Group The European Parliament, – having regard to Article 16 of the Treaty on the Functioning of the European Union (TFEU), – having regard to Article 87 TFEU, – having regard to Article 225 TFEU, – having regard to Article 226 TFEU, – having regard to Article 218 TFEU, – having regard to Article 234 TFEU, – having regard to Article 314 TFEU, – 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(1), – having regard to its 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(2), – having regard to Council Decision 2010/412/EU 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(3), and to the accompanying declarations by the Commission and the Council, – having regard 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(4), – having regard to its legislative 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(5), – having regard 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(6), – having regard to its legislative resolution of 8 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(7), and to the recommendation of its Committee on Civil Liberties, Justice and Home Affairs, – having regard to the reports of 30 March 2011 (SEC(2011)0438) and of 14 December 2012 (SWD(2012)0454) 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, – having regard to the report of 1 March 2011 on the inspection of Europol's implementation of the TFTP Agreement, conducted in November 2010 by the Europol Joint Supervisory

Body, – having regard to the Europol Joint Supervisory Body’s public statement of 14 March 2012 on the implementation of the TFTP Agreement, – having regard to the assessment of 18 March 2013 by the Europol Joint Supervisory Body of the outcome of its third inspection of Europol’s implementation of its tasks under the TFTP Agreement, – having regard to the letter of 18 April 2011 from Paul Breitbarth, of the Dutch Data Protection Authority, to the head of delegation of the EU Joint Review Team TFTP, – having regard to the letter of 7 June 2011 from 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, – having regard to the letter of 21 December 2012 from Jacob Kohnstamm, on behalf of the Article 29 Data Protection Working Party, to Juan Fernando López Aguilar, Chair of the Committee on Civil Liberties, Justice and Home Affairs, – having regard to the letter of 12 September 2013 from Commissioner Malmström to David Cohen, Under-Secretary of the US Department of the Treasury for Terrorism and Financial Intelligence, and to Under-Secretary Cohen’s answer of 18 September 2013, – having regard to the Commission communication of 13 July 2011 entitled ‘A European terrorist finance tracking system: available options’ ([COM\(2011\)0429](#)), – 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](#), – having regard to Rule 110(2) of its Rules of Procedure, 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 (hereinafter ‘the Agreement’) entered into force on 1 August 2010; B. whereas press reports indicate that the US National Security Agency (NSA) 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 Agreement; C. whereas, in its 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, Parliament 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, unfortunately the majority of the European Parliament only gave its consent to the current TFTP Agreement even though it did not provide safeguards to ensure the prevention of the transfer of bulk data and lacked independent judicial control; E. whereas the US Treasury has 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 for exercising the right of access may not be adequate and in practice it may not be possible to exercise the right to rectification, erasure and blocking; G. whereas the Commission acknowledges that the European Union should establish a system which allows for the extraction of data to take place on EU soil; H. whereas the Commission was invited to submit to Parliament and the Council, no later than 1 August 2011, a legal and technical framework for the extraction of data on EU territory; I. whereas instead of submitting the legal and technical framework for the extraction of data on EU territory, on 13 July 2011 the Commission presented a description of the different steps it has taken to move towards establishing such a legal and technical framework, communicating preliminary results and some theoretical options for a European terrorist finance tracking system without going into detail; 1. Takes the view that, given that the EU’s core aim is to promote freedom of the individual, security measures, including counterterrorism measures, in support of that freedom must be pursued through the rule of law and must be subject to fundamental rights obligations, including those relating to privacy and data protection; 2. Reiterates its objection to the Agreement as it fails to provide sufficient safeguards against the bulk transfer of personal data or independent oversight; 3. Underlines the need to base data-sharing agreements 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; 4. Interprets that the interception of SWIFT data by the NSA outside the Agreement may in itself present a breach of Article 4 of the Agreement, and should therefore automatically lead to a call for termination of the Agreement; 5. Deplores the fact that not a single Member State has requested the help of the Europol

cybercrime unit in conducting an investigation into the allegations of the US authorities having unauthorised access or having created possible back doors to the SWIFT servers; 6. Is convinced that in general the Agreement has not been implemented in accordance with its provisions, in particular as laid down in Articles 4, 12, 13, 15 and 16 thereof, and has therefore failed to respect the data protection principles of purpose limitation, necessity and proportionality; 7. Requests the Commission to take the necessary steps in order to terminate the Agreement immediately; 8. Expects the Commission to present a proposal for a legal and technical framework for the extraction of data on EU territory without any further delay; expects this proposal to guarantee: (a) full compliance with European data protection legislation; (b) that no Single Euro Payments Area (SEPA) or national financial data, regardless of the system in which they are processed, are extracted; (c) that no data are extracted or retained without prior authorisation; (d) that instead of Europol an independent judicial authority will verify on a case-by-case basis whether requests to extract data are justified in accordance with the provisions of the proposal; 9. Requests that all relevant information and documents must be made immediately available for examination to the national parliaments and the European Parliament, including the underlying intelligence; 10. Instructs its President to forward this resolution to the Council, the Commission and Europol. [\(1\)](#) OJ L 195,

27.7.2010, p. 5.

[\(2\)](#) Texts adopted,
[P7_TA\(2013\)0322](#).

[\(3\)](#) OJ L 195,
27.7.2010, p. 3.

[\(4\)](#) OJ C 224 E,
19.8.2010, p. 8.

[\(5\)](#) OJ C 341 E,
16.12.2010, p.
100.

[\(6\)](#) OJ C 81 E,
15.3.2011, p. 66.

[\(7\)](#) OJ C 351 E,
8.7.2010, p. 453.

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Jan Philipp Albrecht

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