

Wednesday 23 October 2013

P7_TA(2013)0449

Suspension of the SWIFT agreement as a result of NSA surveillance**European Parliament resolution of 23 October 2013 on the suspension of the TFTP agreement as a result of US National Security Agency surveillance (2013/2831(RSP))**

(2016/C 208/14)

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 (TFTP Agreement),
- 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 ⁽¹⁾,
- 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 ⁽²⁾ and 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 ⁽³⁾,
- having regard to its position 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 ⁽⁴⁾,
- 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 ⁽⁵⁾,

⁽¹⁾ Texts adopted, P7_TA(2013)0322.

⁽²⁾ OJ L 195, 27.7.2010, p. 3.

⁽³⁾ OJ C 224 E, 19.8.2010, p. 8.

⁽⁴⁾ OJ C 341 E, 16.12.2010, p. 100.

⁽⁵⁾ OJ C 81 E, 15.3.2011, p. 66.

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- having regard to its position 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 ⁽¹⁾, and to the recommendation of its Committee on Civil Liberties, Justice and Home Affairs,
 - having regard to the Commission 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-011200/2010, E-002166/2011, E-002762/2011, E-002783/2011, E-003148/2011, E-003778/2011, E-003779/2011, E-004483/2011, E-006633/2011, E-008044/2011, E-008752/2011, E-000617/2012, E-002349/2012, E-003325/2012, E-007570/2012 and E-000351/2013,
 - having regard to Rule 110(2) and (4) 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;

⁽¹⁾ OJ C 351 E, 2.12.2011, p. 453.

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- C. whereas in its aforementioned resolution of 4 July 2013 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, having rejected the temporary TFTP Agreement, a majority of the European Parliament gave its consent to the current TFTP Agreement only on account of the strengthened protection it afforded with a view to safeguarding EU citizens' personal data and privacy rights;
- 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 has stated that while the Agreement sets out strict safeguards regarding the transfer of data;
- 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 and, no later than 1 August 2013, a progress report on the development of an equivalent EU system under Article 11 of the Agreement;
- 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;
- J. whereas talks between Commission services and the US administration cannot be considered to count as an investigation, and nor does mere reliance on statements by the US;
1. Takes the view, given that the EU's core aim is to promote freedom of the individual, that security measures, including counterterrorism measures, 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 that any transfer of personal data must comply with EU and Member State law and with fundamental rights obligations, including those relating to privacy and data protection;
 3. Is seriously concerned about recently revealed documents on the NSA's activities as regards direct access to financial payment messages and related data, which would constitute a clear breach of the Agreement, in particular Article 1 thereof;
 4. Calls for a full on-site technical investigation into allegations that the US authorities have had unauthorised access or created possible back doors in the SWIFT servers; deplores the fact that no Member State has launched, or asked for, an investigation, in the absence of which the 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 with regard to 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 those laid down in Articles 1, 4, 12, 13, 15 and 16 thereof;
 7. Strongly urges the three institutions to deliberate carefully on the human rights implications of any future data exchange alternatives which fully respect data protection principles, especially the necessity and proportionality test;

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8. Points out that the test of the necessity and proportionality of any measure that limits fundamental rights and freedoms needs to take into account the entire body of existing security measures targeting terrorism and serious crime; believes that blanket justification of every security measure by a general reference to the fight against terrorism or serious crime is not sufficient;
 9. Asks the Council and the Member States, in the light of the above, to authorise an investigation by the Europol Cybercrime Centre into the allegations of unauthorised access to financial payment data governed by the Agreement;
 10. Calls on the special inquiry by the Committee on Civil Liberties, Justice and Home Affairs into the mass surveillance of EU citizens to further investigate the allegations of unlawful access to financial payment messages covered by the Agreement;
 11. Considers that, although Parliament has no formal powers under Article 218 TFEU to initiate the suspension or termination of an international agreement, the Commission will have to act if Parliament withdraws its support for a particular agreement; points out that, when considering whether or not to give its consent to future international agreements, Parliament will take account of the responses of the Commission and the Council in relation to this Agreement;
 12. Asks the Commission, in the light of the above, to suspend the Agreement;
 13. Requests that all relevant information and documents be made available immediately for Parliament's deliberations;
 14. Instructs its President to forward this resolution to the Council, the Commission and Europol.
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