



**COUNCIL OF
THE EUROPEAN UNION**

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INST 533
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NOTE

from: General Secretariat of the Council
to: Delegations

Subject: European Parliament plenary session in Strasbourg on 9 October 2013:
Commission statement Suspension of the SWIFT agreement as a result of NSA
surveillance (debate)

Commissioner Malström presented the actions she had undertaken following allegations in the press about possible access of the US National Security Agency (NSA) to the data exchange through the EU-US Terrorist Finance Tracking Programme Agreement (TFTP). She had immediately contacted the US authorities in July and requested substantial clarifications from Under-Secretary for the Treasury Department, Mr Cohen. In September she requested the opening of consultations under Article 19 of the TFTP. She met with Mr Cohen on 7 October and during the meeting he was able to clarify a number of points, namely that since the entry into force of the TFTP Agreement the US Government has not collected financial messaging from SWIFT in the EU and that the US Government has not served any subpoenas on SWIFT in the EU during that period. The

Commissioner had asked to have this information in writing. They also discussed the existing established channels through which the US obtained financial information in SWIFT format used by financial institutions in third countries. She asked for further explanations in writing in order to assess that there had been no conflict with the TFTP. She stressed that for the time being there was no evidence of TFTP infringements and that the process of consultations would continue before reaching final conclusions. She promised to keep the EP informed.

The following comments were made on behalf of the political groups:

- speaking on behalf of the EPP group, Mr Diaz de Mera (ES) said that since serious allegations had appeared in the press, there had not been any solid evidence for this. In light of the fact that reasonable doubts exist as to the veracity of these allegations, any suspension or termination of the TFTP would be premature. The TFTP had proved useful and any problems should be discussed and resolved between the two contracting parties. Nevertheless concerns about privacy violations and breach of citizen's rights were legitimate and needed to be investigated thoroughly;
- speaking on behalf of the S&D group, Ms Sippel (DE) reminded the Commissioner that the US had been using SWIFT data long before the TFTP was concluded or any allegations in the media had appeared. She found it odd that Mr Cohen was saying that TFTP was useful in order to obtain the SWIFT data the US cannot get from other means, maybe from third countries. She criticised the Commission for its failure to prepare a proposal for EU extraction of data which had been promised long ago. She called for an immediate suspension of the TFTP in order to be able to exert pressure and thoroughly investigate the facts;
- speaking on behalf of the ALDE group, Ms in 't Veld (NL) was outraged that not a single Member State had requested the EC3 cyber-crime unit of Europol to investigate the alleged incidents. Europe must carry out its own investigations since the US could not be trusted. She pointed out that the US side has never actually denied the accusations. The fact that they reserved the right to have access not authorised under the agreement itself was a breach of

the agreement. She called for the TFTP to be suspended pending investigation or simply terminated. She warned the Council in its absence that TFTP was the first international agreement approved under the Lisbon Treaty on which the EP had given consent. She pointed out that after giving consent the EP had no powers over terminating an agreement so that this would be a test case. Should the EP call for the suspension or termination of the TFTP, and the Commission and the Council do not react accordingly, that would have consequences for the approval of any future agreements;

- speaking on behalf of the Greens/EFA, Mr Albrecht (DE) expressed shock at the fact that Commissioner was satisfied with the clarifications provided by the US counterpart. He pointed out, echoing Ms Sippel's intervention, that Mr Cohen had avoided giving clear explanations regarding compliance with the TFTP. In his view it was clear that they do not comply, and the fact they referred to authority under their own laws to access this data was reason enough to suspend the TFTP and investigate further. He could not believe that no EU Member State or EU authority has been investigating an alleged cyber-attack on the SWIFT company and the data of EU citizens. He called for a suspension of the TFTP and renegotiation of the terms of police and justice cooperation with the US;
- speaking on behalf of the ECR, Mr Kirkhope (UK) said threatening to suspend anti-terrorist legislation was not in the best interests of the EU or its citizens. He said he spoke in the name of those citizens who want a safe and secure Europe. He called on the appropriate authorities to investigate any breach of data protection legislation and possibly strengthen data protection. He called on the EP to be more responsible and opposed any parliamentary action that was unmeasured and irresponsible and that would be detrimental to EU's international relations and world security;
- speaking on behalf of the GUE/NGL, Ms Ernst (DE) said that the facts were not fully available and the matter was shrouded in secrecy. She criticised Commissioner Malström for relying on a letter from US side as hard evidence. She could not understand her position not to suspend the TFTP, at least temporarily. The TFTP should preferably be terminated altogether, as it made EU look ridiculous;

- speaking on behalf of the NI, Ms Morvai said violations of law should carry legal consequences. Referring to the previous report on Echelon she said that nothing had been done, no concrete legal steps had been taken, and that the EU should now address this.

In the subsequent debate, MEPs expressed views along similar lines as the contributions on behalf of the various political groups. Mr Voss (EPP, DE) said the TFTP could only be suspended if the EU had an alternative system to track terrorist financing; anything less would be clearly irresponsible. Should the NSA allegations prove real than we would demand our own TFTP. Mr Moraes (S&D, UK), Rapporteur for the *LIBE surveillance inquiry*, recalled the limitations of the ongoing inquiry in the EP, and stressed that the Commission should carry out a thorough investigation. Only then would it be possible to make an assessment and take a political decision on temporary suspension and renegotiation.

In her concluding remarks, Ms Malström stressed that the TFTP was an international agreement with clear provisions on scope and data protection. The review carried out by the Commission, to be presented to the EP in the near future, showed that it has helped tracking terrorist financing and had been useful in investigations. She stressed that an agreement could not be suspended on the basis of media allegations. The US side has assured her that there had been no breach of the TFTP and that the NSA did not have direct access to the SWIFT database in Europe. She had asked for some additional clarifications and written confirmations. She stressed that the Commission had been participating in a working group together with the Council Presidency and had been following the work of *LIBE surveillance inquiry* as well as developments in the US and various announcements made by President Obama. She expressed the hope that all this would lead to concrete proposals on how to improve data protection for European citizens. For the time being she did not intend to propose a suspension of the TFTP.

A resolution on the issue is to be adopted at the next Plenary Session (October II).
