



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 15 February 2010

6443/10

**JAI 137
USA 25
RELEX 137
DATAPROTECT 22
ECOFIN 98**

“I/A” ITEM NOTE

From: General Secretariat
To: COREPER/Council

Subject: Agreement of 30 November 2009 between the European Union and the United States of America on the processing and the transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Programme
-Termination of the provisional application

1. On 30 November 2009, the Council adopted the Decision 2010/16/CFSP/JHA on the signing, on behalf of the European Union, of the Agreement between the European Union and the United States of America on the processing and the transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Programme¹. The Agreement was signed on the same date.
2. After the entry into force of the Lisbon Treaty Article 218 § 6 of the TFEU provides that "the Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement". In cases where agreements cover fields to which either the ordinary legislative procedure applies, or the special procedures where consent of the European Parliament is required, the Council can adopt the Decision to conclude only after obtaining the consent of the European Parliament (Article 218 § 6(v) TEU).

¹ OJ, 13.1.2010, L 8/9.

3. On 18 December 2009 the Council received the Commission proposal for a Council decision on conclusion of this Agreement. The 21 other language versions were received on 15 January 2010. Following lawyer-linguist scrutiny of the draft decision on conclusion, the Council on 25 January 2010 approved the transmission to the Parliament of this decision and of the Agreement. The transmission took place on the same day.
4. On 4 February 2010, the LIBE Committee voted by 29 votes against 23 (with 1 abstention) in favour of a draft resolution, by which the European Parliament withheld its consent to the Agreement. On 11 February 2010, the Plenary of the European Parliament adopted this resolution with a majority of 378 against 196 votes (with 31 abstentions). The Parliament has thus refused to give its consent to the conclusion of this Agreement.
5. Article 3 of the Council decision on signing states that, further to Article 15 of the Agreement, the provisions of the Agreement shall be applied on a provisional basis in conformity with existing domestic law as from 1 February 2010, pending its entry into force. The European Union also made a declaration to that end at the time of signing. This declaration was attached to the Decision on signing and published in the Official Journal.
6. In the absence of the required consent of the European Parliament, the Council cannot adopt a decision approving the conclusion of the Agreement. Consequently the European Union cannot become a Party to this Agreement and the provisional application thereof is to be terminated forthwith. The Council should notify the US Government as soon as possible.
7. *In view of the above, Coreper is requested to invite the Council to approve the draft letter by which the Presidency, on behalf of the Council, will notify the US government of the immediate termination of the provisional application of the Agreement.*

The Presidency of the Council of the European Union presents its compliments to and has the honour to state the following.

On 30 November 2009, the Agreement between the European Union and the United States of America on the processing and the transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Programme was signed between the European Union and the United States of America.

Article 15, paragraph 2 of the Agreement states that the provisions of the Agreement shall be applied on a provisional basis in conformity with existing domestic law as from 1 February 2010, pending its entry into force.

On 11 February 2010, the European Parliament adopted a resolution withholding its required consent to the Agreement. Consequently, in the absence of the consent of the European Parliament, the Council is legally unable to adopt a decision approving the conclusion of the Agreement on behalf of the European union. Therefore, the European Union cannot become a Party to this Agreement.

The Council of the European Union accordingly notifies the US Government of the immediate termination of the provisional application of the Agreement of 30 November 2009 between the European Union and the United States of America on the processing and the transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Programme.

(Diplomatic formula of politeness)

For the Council of the European Union
