

EL PRESIDENTE DEL GOBIERNO

Madrid, January 26 th 2010

Mr. Jerzy Buzek
President of the European Parliament
Brussels

Dear President,

In response to your letters of 21 December 2009, 15 and 21 January 2010 to the President of the Council in office, I have, on behalf of the Council, the honour to inform you of the following.

The Council is committed to co-operating with the European Parliament, both with regard to the Interim Agreement signed on 30 November 2009 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 (TFTP) and to a future longer-term TFTP Agreement.

To that end the Interim Agreement, together with a draft Council decision on conclusion, has been submitted to the Parliament on 25 January 2010, as was promised already in the letter of State secretary Diego Lopez Garrido of 20 January 2010.

At the Coreper meeting of 17 December 2009 there was a principal decision to refer this and six other agreements to the European Parliament as soon as possible in order to seek your institution's consent to the conclusion thereof. On 17 December the Commission adopted and sent a proposal for a Council Decision to seek Parliament's consent for conclusion of the Interim Agreement in English. However, since all other 21 language versions of the Commission proposal for the Council decision on conclusion have been made available by the Commission only on 15 January 2010, the lawyer-linguist revision could start only on that date. That process has now been completed and on 25 January 2010 the Council has forwarded the draft Council decision on conclusion together with the text of the Interim Agreement to which it pertains, to the European Parliament.

In accordance with the Vienna Convention on the Law of Treaties the Contracting Parties can agree to apply an Agreement provisionally as from the date of signature or from another date prior to the formal conclusion of the Agreement. This is also provided for in Article 218 § 5 of the TFEU which states that "the Council, on a proposal by the negotiator, shall adopt a decision authorising the signing of the Agreement and, if necessary, its provisional application before entry into force".

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Also before the entry into force of the Lisbon Treaty, this possibility existed (cf. Article 300 TEC), also with regard to Agreements that have been negotiated and signed under Articles 24 and 38 of the previous Treaty on European Union.

Provisional application has been explicitly provided for in the TFTP Agreement, in order not to undermine existing cooperation and in view of its crucial security impact for the citizens of both the European Union and the United States.

Such an application is "provisional" since it depends on the ultimate conclusion of the Agreement. This provisional application therefore in no way affects the prerogatives of the European Parliament under Article 218 TFEU. If the internal procedures for conclusion lead to a rejection of the Agreement by the instances which have to give their approval to it, the Party concerned is not able to express its consent to be bound by it and has to notify this to the other Party. Consequently, the "provisional application" of the Agreement will be terminated forthwith.

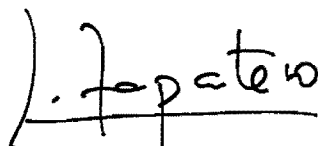
"Provisional application" has to be distinguished from "entry into force". An Agreement can only enter into force after having been concluded. The TFTP Agreement can therefore be applied provisionally but it can only be concluded and enter into force after the European Parliament has given its consent.

As a result of the signature of the TFTP Interim Agreement the Contracting Parties are obliged to refrain from acts that would defeat the object and purpose of the Agreement. It is therefore legally impossible to suspend the provisional application which would imply an unilateral breach of the Interim Agreement by the Union, as far as it would require a formal modification of the agreement itself.

As far as the future longer-term TFTP Agreement is concerned, the Council has not yet received recommendations from the Commission for the opening of negotiations with the United States. The Council is therefore not yet in a position to express a view with regard to the content of the negotiating directives it will adopt further to such recommendations. The Council is, however, aware of the European Parliament's resolution on the subject.

Information of the European Parliament will take place in accordance with paragraph 10 of Article 218 TFEU. In this respect, I would like to draw your attention to the Joint Declaration adopted by the Council and the Commission on 30 November 2009, which was entered in the minutes of that Council meeting, in which both institutions committed themselves to inform the Parliament immediately and fully at all stages of the procedure.

Yours faithfully



José Luis Rodríguez Zapatero