



Questions to the European authorities concerning the agreement between the EU and the United States on the processing of financial messaging data from the EU to the USA

Brussels, February the 15th, 2010

AEDH protests against¹ the enforcement of the temporary agreement between the EU and the USA on the processing of Financial Messaging Data² from the European Union to the United States. In the present document, the AEDH asks about the content and the implications of this agreement. Detailed answers would allow us to be really informed and to determine whether a new agreement is possible from our standpoint.

1. Why does, through this agreement, the European Union have to join the Terrorism Finance Tracking Program (TFTP) implemented by the U.S. Department of the Treasury?
2. Why does the European Union have to rely on the U.S authorities to process financial data located and kept on its own territory, knowing that SWIFT has arranged to house them in Europe³ ? Doesn't the European Union have the means and capacity to process the data on its own? Is the EU that dependent on the processing capacities of the U.S Department of the Treasury?
3. Do European authorities, Europol, Eurojust, police and intelligence services of the member States have special agreements with U.S authorities? Can they freely access the data in possession of the U.S authorities in relation to the fight against terrorism?
4. Why do the transmitted data go further than the simple identification of the transmitter and the receiver of financial data?⁴ ?
5. Why are financial data, said to be potentially interesting, transmitted in bulk⁵, therefore without any direct link to the finality of the agreement? Why can't financial data be transmitted ex post, i.e. after having identified people suspected of terrorist activities?
6. SWIFT does not process all financial transactions data, as financial institutions may not use the services of SWIFT, or other societies, for certain transactions. In this case, how can the TFTP identify financial transactions linked to terrorist activities that haven't been processed by

¹ Refer to the EADH press release of 11th February 2010

² Agreement on 30th novembre 2009, Official Journal of the European Union dated 13th January 2010

³ Since the revelation in 2006 that SWIFT had been transmitting the data in its possession to the U.S authorities through its American branch, SWIFT has been processing its data on its Amsterdam site, and keeping a copy of the data in Zürich. Since then, U.S authorities have lost direct access to European financial databases, including transactions with third countries.

⁴ Article 4 paragraph 5 : name, account number, address, national identification number, other personal data

⁵ Article 4 paragraph 6

SWIFT? If those transactions cannot be identified, doesn't this mean that the system implemented is porous?

7. Today, what concrete and precise results in the fight against terrorism have the American authorities reached by processing financial data? Aren't European citizens entitled to know the real dangers threatening them, and if results have been achieved? Or are we simply trying to reassure and protect them? In this case, aren't they treated as minors?
8. Has the U.S. Department of the Treasury made an assessment of the use of the processed financial data coming from the European Union, concerning data protection, the fact that this data should not be released, the control of people with access to the data, the fact that the data should be used exclusively in the fight against terrorism and concerning its efficiency at preventing terrorist actions?
9. In his reports Mr. Jean-Louis Bruguière says he has obtained from the American authorities complete guarantees concerning the protection of financial data and the usefulness of their processing in the fight against terrorism. These reports are classified and therefore secret. Knowing that the commitment to freedoms of this French anti-terrorism judge has been harshly criticized by many French Human rights defense associations, can we trust what this eminent European personality⁶ says?
10. Why is the definition of terrorism⁷ used in the agreement, the very broad one prevailing in the U.S., and not the more restrictive but nevertheless questionable definition in use in the European Union⁸ ?
11. Is the sole purpose of this agreement really the fight against terrorism? If this is the case, with the potential processing of millions of pieces of personal data coming from more than 8000 financial institutions that use the services of SWIFT, are the violations of privacy proportional to the stated objectives? Are users of those financial services informed?
12. Does the agreement respect the European directive concerning the protection of personal data⁹? Particular references are made to article 6 about processing data fairly and lawfully, collecting data for explicit and legitimate, specific purposes, and to articles 25 and 26 about transferring data to third countries.
13. Does the agreement take into account the observations made by the Art.29 Data Protection task group¹⁰, and the opinions of the European Data Protection Supervisor¹¹?
14. Does the agreement respect the criteria set by the European Parliament in September 2009¹²?

⁶ Mr. Jean-Louis Bruguière was appointed, in his status as an eminent European personality, High Representative of the European Union to the U.S in the fight against the financing of terrorism under the « Terrorism Finance Tracking Program/ SWIFT ».

⁷ Article 2

⁸ Framework decision, 13th June 2002

⁹ The 95/46/EC Directive of the European Parliament and Council dated from 24th October 1995 concerning the protection of individuals with regard to the processing of personal data and the free movement of such data

¹⁰ The 10/2006 report by the Art.29 Data Protection Working Party, concerning personal data processing done by the Society for Worldwide Interbank Financial Telecommunication (SWIFT)

¹¹ EDPS comments addressed to the European Commission, the Council and the European Parliament on 3rd July 2009, and the intervention at the LIBE and ECON commission of the European Parliament on 3rd September 2009

¹² European Parliament resolution dated 17th September 2009

15. Was the European Parliament immediately informed of all the stages of the procedure (article 218 of EU Treaty)? Why is it that the confidential appendix to the Agreement was not forwarded to MEPs? What does it contain?
16. Why is the possibility of a judicial remedy¹³ for the people concerned by the transmission of their personal data mentioned knowing that the citizens of the European Union will not benefit from this possibility, which is open only to citizens and permanent residents of the U.S?
17. Which independent authority body will be responsible, at EU level, of controlling the proper execution of the agreement, both in terms of the protection of personal data and its purpose?
18. Under which conditions will it be possible to share data and files with third countries¹⁴ ?
19. Have European banks and firms reacted to having to send their financial data to the U.S? Have U.S. Authorities given real guaranties concerning the permanent possible misuse of the data that are held and then sent in bulk to the U.S. Department of the Treasury?
20. Whereas it is usually possible to avoid getting one's personal data filed up in most daily life actions, in the case of financial transaction no one can avoid it. Having a bank account is nowadays almost mandatory. Knowing this, isn't it right to consider that citizens are trapped without a way to escape in a system that violates their privacy?

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¹³ Article 11 paragraph 3

¹⁴ Article 5 paragraph 2 alinéa h