

PRESS RELEASE

Swift agreement not in line with privacy legislation

European Data Protection Authorities not satisfied with safeguards in EU-US financial transactions agreement

The European Data Protection Authorities (the Article 29 Working Party) and the Working Party on Police and Justice today expressed their strong concerns regarding the data protection standards in the Terrorist Finance and Tracking Program (TFTP) II Agreement in a joint letter to the European Parliament. They call upon the Members of European Parliament to take these concerns into account when discussing the Agreement in their forthcoming plenary session from 5 to 8 July 2010.

The TFTP II Agreement, more commonly known as the Swift agreement, was concluded early June on behalf of the European Union by the European Commission and the United States Treasury Department and sees to the transfer of financial transactions data from the EU to the US. The data may be used by US authorities to prevent and combat terrorist actions. An earlier agreement on the same subject was rejected by the European Parliament last February because of the lack of data protection safeguards.

Although the EU Data Protection Authorities welcome the fact that the TFTP II agreement will contain additional safeguards with regard to the protection of personal data compared to the previous agreement, they find that the agreement is not in line with EU legislation. Several provisions imply serious data protection risks and undermine the current EU standards of data protection, both as regards the rights of individuals and the powers of the EU data protection authorities.

Most importantly, the right to non-discriminatory judicial redress in the US for individuals whose personal data are processed in the EU is not guaranteed in full. The agreement does state it will respect this right, while at the same time setting out that it shall not create or confer any new right or benefit on any person. Since current US law does not provide any redress rights to non-US citizens, the EU Data Protection Authorities seriously question if judicial redress will indeed be available to non-US citizens.

Furthermore, the EU Data Protection Authorities see the powers they enjoy under EU law limited by the agreement. Under the agreement, they are merely to act as a postbox for assessments made by US Treasury Department's employees, instead of being able to obtain themselves all relevant information, to independently assess such information and to assess full data protection compliance. Consequently, the EU Data Protection Authorities will not be able to guarantee that the rights of an individual are at all times respected.

Besides, the EU Data Protection Authorities have strong concerns about bulk transfers of financial information to the US, which may subsequently be widely distributed to law enforcement agencies in both the US and the EU. The conditions for onward transfer do not meet the guarantees demanded by EU law, including the data retention limitation (up to five years) and the lack of purpose limitation.

The EU Data Protection Authorities have decided that were the agreement to enter into force, they will endeavour to make sure the bulk transfer and onward transfer of financial transactions data are included in the first joint review. They also want to make sure that the strictly internal European financial transaction data, the so-called SEPA-data (Single

European Payment Area) are not transferred, because the agreement is ambiguous on this matter.