



Frequently Asked Questions on the TFTP ("SWIFT") Agreement

Q: Does the agreement meet the criteria set by Parliament in its resolution of 17 September 2009, which had been adopted by a wide majority?

A: No. As the legal service of Parliament has confirmed in its opinion of 2 February, several criteria are not met. For example, there is no prior judicial ruling needed for transfer of data, the definition of "terrorism" is wider than the established EU definition, and there is no legal redress for EU citizens in the U.S. against data transfers or possibly serious consequences thereof.

Q: How much data is actually transferred?

A: A lot. Because of the technical set-up of SWIFT, the company can not limit data searches to specific individuals. In effect, it will have to (and has in the past) transfer data about *all transactions* from a certain country on a certain date. There have been reports that the U.S. Treasury has received up to 25% of all SWIFT transactions. This is beyond any proportionality and also puts the EU at risk of wide-scale economic espionage.

Q: Does the agreement protect against onward transfers to 3rd countries?

A: No. The agreement excludes transfer of raw data to third countries or agencies, but allows transfer of "leads". While "leads" is not an established legal term in the EU, this of course will contain personal information about EU citizens and their business partners in other countries.

Q: Does the agreement meet EU data protection and privacy standards?

A: No. The European Data Protection Supervisor and several other data protection authorities have repeatedly published detailed analysis showing the agreement does not comply with established EU privacy principles, including minimization of retention periods, purpose limitations, data minimization, subject rights to access and correct data, and independent oversight. In effect, the agreement would violate established EU and national law in this field, including the European Convention on Human Rights and the EU Charter of Fundamental Rights.

Q: But there are security gains for the EU from the data transfer?

A: No. The confidential reports by Judge Bruguière have not shown evidence that there has been one case of terrorism that was prevented or prosecuted based on the financial data alone. The reports even make false claims by e.g. referring to the German IJU case from 2007. The German Federal Criminal Police Office (BKA) has publicly confirmed that financial data was not needed at all in this case.

Q: Has Council adhered to the Treaty on the Function of the European Union?

A: No. Article 218 TFEU in the version of 1 December 2009 requires that "Parliament shall be immediately and fully informed at all stages of the procedure".



Parliament has *not been immediately informed*. As the legal service of Parliament has confirmed in its opinion of 2 February, Council has acted "*in breach of the spirit of article 218(6)(a) TFEU*" by submitting the agreement to Parliament only 5 working days before its provisional application on 1st February and without having reacted to repeated requests by Parliament to do so since December. Requests for discussions by MEPs to Council and Commission have also repeatedly not been answered until a few days ago.

Parliament has also *not been fully informed*. There is still a confidential annex to the agreement that has not been made available, which designates the financial transaction providers and therefore is crucial for the scope of the agreement. It is also unclear if and how Parliament would be informed if this annex is modified in the future.

Q: Should Parliament give its consent to the interim agreement if Council and Commission present a negotiation mandate for the long-term agreement that fully meets the substantial criteria set by Parliament?

A: No. Parliament has full responsibility to *vote on the actual text of the current interim agreement*. It can not shy away from this based on promises of future achievements which may or may not be reached. Parliament will also have to vote on any long-term agreement based on the actual text if there is one, not on the negotiation mandate.

Q: What will happen to terrorist investigations if Parliament withholds its consent to the agreement?

A: The provisional application of the agreement will be suspended after 10 days and it will terminate after 30 days. U.S. authorities will still be able to request data for specific investigations, but with higher protections, under mutual legal assistance agreements.

Q: What will happen to transatlantic relations if Parliament withholds its consent to the agreement?

A: The U.S. government will understand that it cannot negotiate another agreement in the future, including any long-term agreement, without respecting the clear criteria spelled out by Parliament 5 months ago. This will in effect strengthen Council's negotiation position vis á vis the United States and ensure better protection for EU citizens.

Q: What will happen to EU inter-institutional relations if Parliament withholds its consent to the agreement?

A: Council will understand that it can not negotiate another agreement in the future, including any long-term agreement, without respecting the clear criteria spelled out by Parliament 5 months ago. Council and Commission will also make sure that Parliament is immediately and fully informed in international negotiations in the future. This will in effect ensure that inter-institutional relations are handled according to the new provisions of the TFEU, thereby strengthening democracy in the European Union.