

# US CHEATS ON SWIFT AGREEMENT WITH ORAL REQUESTS

I have tracked the American negotiations with the post-Lisbon EU to get continued access to the SWIFT database, the database that tracks international money payments.

Basically, after the Lisbon Treaty went into effect last year, the EU Parliament balked at giving Americans free run of the SWIFT database. The EU and US put an interim agreement in place. Which the EU Parliament then overturned in February. The US then granted EU citizens privacy protections Americans don't have.

As part of the Terrorist Finance Tracking Program agreement negotiated between the US and EU, the Europol Joint Supervisory Body was tasked with auditing whether the US was complying with the data protection requirements of the agreement.

Back in November, JSB did their first audit; they just released their report.

The report revealed that the Americans have been submitting largely identical requests—but then supplementing them with oral requests.

The oral requests, of course, make it impossible to audit the requests.

At the time of the inspection, Europol had received our requests for SWIFT data. Those four requests are almost identical in nature and request—in abstract terms—broad types of data, also involving EU Member States' data. Due to their abstract nature, proper verification of whether the requests are in line with the conditions of the Article 4(2) of the TFTP Agreement—on the basis of the available

documentation—is impossible. The JSB considers it likely that the information in the requests could be more specific.

Information provided orally—to certain Europol staff by the US Treasury Department, with the stipulation that no written notes are made—has had an impact upon each of Europol’s decisions; however, the JSB does not know the content of that information. Therefore, where the requests lack the necessary written information to allow proper verification of compliance with Article 4(2) of the TFTP Agreement, it is impossible to check whether this deficiency is rectified by the orally provided information.

And boy are the Europeans P-I-S-S-E-D mad at the Americans for betraying the spirit of the agreement.

“As Members of Parliament we feel betrayed reading this report”, said Alexander Alvaro (ALDE, DE), Parliament’s rapporteur on the TFTP agreement. “We voted in favour [of this agreement last year] in the trust that both parties would apply the adopted agreement”, which “concerns the transfer of sensitive data belonging to our citizens”, he stressed, adding that “the credibility of Parliament and of this committee are being jeopardised. This is about trust and confidence of the public in what the EU did and is capable of doing here”.

“We have given our trust to the other EU institutions, but our trust has been betrayed”, said Sophia in’t Veld (ALDE, NL), rapporteur on the EU-US Passenger Name Record (PNR) agreements. “This should be kept in mind when they want our approval for other agreements”, she declared.

"Somehow I am not surprised", said Simon Busuttil (EPP, MT), recalling that "at the time of the negotiations last year we were not satisfied with having Europol controlling it – we wanted additional safeguards". He added that **"the agreement is not satisfactory", since it involves the transfer of bulk data**, and insisted that "we need an EU TFTP".

For Claude Moraes (S&D, UK), the US demands are "too general and too abstract". He also recalled that MEPs had insisted at the time that it must be specified how the US request would be made and that they needed to be "narrowly tailored". A written explanation should accompany each request, he added.

This agreement is not in line with Member States' constitutional principles and with fundamental rights, argued Jan Philipp Albrecht (Greens/EFA, DE). He highlighted **the problem of bulk data transfer, "which is exactly what we have criticised before"**. [my emphasis]

Now, it's bad enough that the Americans granted Europeans better data protection than they give us. And then they basically cheated on that agreement.

But think about what this reveals about their collection of **our** own data. As the pissy Europeans reveal, the problem with these almost-identical requests backed by oral requests is that they're bulk transfers. These are not requests for one suspected terrorist's financial transfers. They're something much more general—the old Hoovering they were doing under the illegal wiretap program. And they're doing **that** with oral requests.

It sounds rather like the abusive exigent letters they were requesting with Post-It notes

... eight years ago.