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Committee on Civil Liberties, Justice and Home Affairs
Committee on Economic and Monetary Affairs

Public Hearing

THE INTERCEPTION OF BANK TRANSFER DATA FROM THE SWIFT SYSTEM BY THE US SECRET SERVICES¹

Wednesday, 4 October 2006 from 09:00 to 12:30

*European Parliament,
Altiero Spinelli Building, Room 3E2
Rue Wiertz 60, Brussels*

- 09:00 - 09:10 -** **Opening remarks** by the two Chairpersons of ECON and LIBE Committees - Mrs. Pervenche Berès and Mr. Jean-Marie Cavada.
- 09:10 - 09:25 -** **SWIFT**
Mrs. Blanche Cousteaux (General Counsel) and
Mr. Francis Vanbever (Chief Financial Officer)
- 09:25 - 09:40 -** **The European Central Bank**
Mr. Jean-Claude Trichet (President)
- 09:40 - 09:55 -** **National Bank of Belgium**
Mr. Peter Praet (Director of the NBB)
Mr. Joseph De Wolf (Head of Legal Department) and
Mr. Johan Pissens (Head of Oversight Department)
- 09:55 - 10:45 -** **Question and Answer Session**

¹ Based on the European Parliament resolution on the interception of bank transfer data from the SWIFT system by the US secret services, adopted on 6 July, 2006

- 10:45 - 10:55 - Working party, Article 29**
Mr. Peter Schaar (Chairman of the Working Party)
- 10:55 - 11:05 - The European Commission**
Mr Alain Brun (Head of the Unit on data protection, EU Commission)
- 11:05 - 11:15 - European Data Protection Supervisor**
Mr. Peter Hustinx
- 11:15 - 11:25 - Belgium Senate**
Mrs. Anne-Marie Lizin (President)
- 11:25 - 12:25 - Question and Answer Session**
- 12:25 - 12:30 -** Closing remarks by the Presidents
- 12:30 - 13:00 -** Press Conference

BACKGROUND NOTE

In June 2006, European and US media revealed the existence of the Terrorist Finance Tracking Program, put in place by the US administration, which has allowed US authorities to access a limited set of the financial data stored by SWIFT (Society for Worldwide Interbank Financial Telecommunications).

The SWIFT information to which the US authorities may make targeted searches - acting in the name of the fight against terrorism - potentially concerns hundred of thousands of EU citizens. It is reported that some central banks knew this programme and had been kept informed by SWIFT.

In July 2006, the European Parliament adopted a resolution requiring in particular that the Committee on Civil Liberties, Justice and Home Affairs together with the Committee on Economic and Monetary Affairs hold a joint hearing with the private and public parties involved in the affair in order to ascertain what information they may have had.

THE BROAD OBJECTIVES OF THE HEARING ARE THEREFORE:

- 1. to ascertain the legal framework of data collection from SWIFT according to US law, EC and Union law, and national law respectively***
- 2. to determine the information the parties may have had in order***
 - to have a first idea whether the regulations related to data protection have been complied with***
 - to have a first idea whether some gaps might exist in regulations related to data protection***

* * *

1. The legal framework

See the point 1 above.

2. To determine the information the parties may have had

SWIFT, the Society for Worldwide Interbank Financial Telecommunication, is a limited liability cooperative company, registered in Belgium, that supplies secure messaging services in more than 200 countries and to more than 7500 financial institutions (banks, brokers dealers, investment managers, market infrastructures). SWIFT is owned and controlled by its members.

As SWIFT is neither a bank, nor a payment or settlement system, it is not, as such, regulated

by central banks or bank supervisors. However a large and growing number of systemically important payment systems have become dependent on SWIFT which has thus acquired a systemic character. Because of this, the central banks of the Group of Ten countries (G10) have set up a system of cooperative oversight of SWIFT with the National Bank of Belgium as lead overseer, since SWIFT is incorporated in Belgium.

OBJECTIVE OF THE HEARING

- *to inquire about the request by the US authorities (scope, date, developments), the processing by SWIFT of this request, the exact framework of transmission of data*
- *to know the assessment of this request by SWIFT from a compliance point of view*
- *to inquire about the European and non European authorities that were informed by SWIFT about the program and their reactions to this information*
- *to know the assessment by NBB of the risks involved by knowledge of the data transferred*

National Bank of Belgium (NBB):

The NBB is the lead overseer of SWIFT since SWIFT is incorporated in Belgium. **No G10 central bank currently has direct statutory instruments to formally enforce decisions upon SWIFT.** But overseers can still exercise influence ("moral suasion") via a series of mechanisms to ensure that SWIFT takes into account their recommendations, including informing SWIFT users and their supervisors about oversight concerns related to SWIFT. The objectives of the oversight of SWIFT centre on the security, operational reliability, business continuity and resilience of the SWIFT infrastructure.

The oversight of SWIFT is based on a protocol arrangement between SWIFT and the NBB:

The NBB also concluded bilateral Memoranda of Understanding (MoUs) with each of the other central banks participating in the oversight of SWIFT.

The NBB monitors SWIFT developments on an on-going basis. It identifies relevant issues through the analysis of documents provided by SWIFT and through discussions with the management. The NBB serves as the G10 central banks' entry point for the cooperative oversight of SWIFT. The NBB chairs the senior policy and technical groups that facilitate the cooperative oversight, notably the SWIFT Cooperative Oversight group, comprising G10 central banks and the ECB, and the Executive Group, comprising the NBB, the ECB, the Bank of Japan, the Bank of England, the US Federal Reserve Board.

OBJECTIVE OF THE HEARING:

- *to inquire about the information received by the NBB from SWIFT*
- *to know the assessment by NBB of this request to SWIFT from a compliance point of view and the NBB reactions*
- *to inquire about the European and non-European authorities that were informed by the NBB about the programme and their reactions to this information*

- *to know the assessment by the NBB of the risks involved by knowledge of the data transferred*

ECB:

The Eurosystem of Central Banks has the statutory task of promoting the smooth operation of payment systems. As such, the ECB participates in the cooperative oversight of SWIFT together with G10 central banks, notably as a member of the SWIFT Cooperative Oversight Group and the Executive Group.

OBJECTIVE OF THE HEARING:

- *to inquire about the information received by the ECB from SWIFT*
- *to know the assessment by the ECB of this request to SWIFT from a compliance point of view and the ECB reactions*
- *to inquire about the European and non-European authorities that were informed by the ECB about the programme and their reactions to this information*
- *to know the assessment by the ECB of the risks involved by knowledge of the data transferred*

The Council Presidency:

When speaking to the Plenary in July, Ms. Paula LEHTOMÄKI, the Finnish Minister for European Affairs, currently holding the EU Presidency, stated that the Council was at that stage unable to confirm reports in the media about exchanges of information between SWIFT and the American authorities and reminded the MEPs that it is up to the national authorities to establish what has actually happened. The minister added however, that the EU would be ready to act "if it turns out that things have taken place that requires legislation at the European level".

OBJECTIVE OF THE HEARING IS:

- *to explain fully the extent to which were the Member States aware of any secret agreement between SWIFT and the US government*
- *to examine the proposal for a framework decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (COM 2005/0475) in order to ensure that European citizens enjoy a uniform and high level of data protection throughout the Union's territory*
- *to examine what measures should be taken to avoid future repetitions of privacy breaches*

The European Commission:

Justice, Freedom and Security Commissioner Franco Frattini noted in his speech before the Plenary in July that the European Commission - having only partial information on the matter

- has requested additional reports on how the American authorities obtained access to data on financial transactions held by SWIFT.

Since it is national authorities who are primarily responsible for the proper application of data protection rules, it is important that they take all the necessary action to ensure that their national data protection legislation is properly applied and rigorously enforced. Should developments in the SWIFT affair confirm the lack of respect of the rules applicable in this domain, the Commission would be expected to make full use of its powers under the treaties.

OBJECTIVE OF THE HEARING IS TO ESTABLISH:

- *was the Commission informed about the transfer of information? If not, when and by what means did the Commission learn about its existence?*
- *what steps does the Commission propose to take should the investigations currently under way confirm that the authorities did not act according to the existing rules?*
- *whether there is a need for an evaluation of the relevant EU anti-terrorist legislation that has been adopted from the point of view of efficiency, necessity, proportionality and respect for fundamental rights.*

The Data protection authorities

The European Union is based on the rule of law and therefore, all transfers of personal data to third countries are subject to data protection legislation at national and European level. This provides that any transfer for security purposes must **in principle** be authorised by a judicial authority and that any derogation from this principle must be proportional and founded on a law or an international agreement.

The European Data Protection Supervisor:

the European Data Protection Supervisor to verify whether, in accordance with existing EU rules, the ECB was "obliged to react" to the possible violation of data protection which had come to its knowledge.

OBJECTIVE OF THE HEARING IS TO ESTABLISH:

- *whether, in accordance with Regulation (EC) No 45/2001, the ECB was obliged to react to the possible violation of data protection which had come to its knowledge*

Working Group of the Article 29 of the Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data

For this reason, the Working Group of the Article 29 was created on the Protection of Individuals with regard to the Processing of Personal Data.

OBJECTIVE OF THE HEARING IS TO ESTABLISH:

- *When had the WG 29 first been informed of data processing by SWIFT at the request of the US authorities*
- *If the WG 29 did not know about the data processing, does it think that this*

information should have been communicated between the ECB and the Commission, given its role in protection of individuals with regard to the data processing

- *whether there is a legal lacuna at national level and that Community data protection legislation also covers central banks*
- *what further steps should be taken*

ANNEX

Secretariat of the Hearing:

| In charge | Telephone | Address | Electronic address |
|---------------------------------------|------------------|---|--|
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Important notice to the persons wishing to attend the Hearing

This seminar is open to the public. However, for security reasons, participants who are not in possession of a European Parliament access card must acquire a pass in advance. The persons wishing to obtain a European Parliament pass are requested to contact the seminar secretariat before 28 September 2006.

There will be simultaneous interpretation in 12 languages (EN, FR, DE, IT, ES, NL, EL, HU, DA, SV, FI, PL)