

Cecilia Malmström, European Parliament, debate on SWIFT 2010-02-10

Ladies and Gentlemen,

I am grateful for the opportunity to address the important issue of sharing information with the US for the purpose of combating terrorism, this time in relation to the Terrorist Finance Tracking Programme or TFTP.

The European Parliament has shown a strong interest in this matter. This is totally accurate, since the TFTP confronts us once again with the challenge to reconcile data sharing with data protection and by taking up this challenge, assisting us to provide to our citizens security, privacy and data protection.

One of the aims the Interim Agreement has been to ensure implementation of the conditions in the European Parliament's Resolution of 17 September 2009. We firmly intend to strengthen further the data protection part when negotiating the long term agreement, particularly with regard to the right to receive information about whether one's rights have been respected under the agreement and stronger guarantees about effective redress, lawful data processing and the deletion of data.

The second Bruguière Report which was made available to MEPs on Monday of last week demonstrates the significant value of the TFTP in the investigation and disruption of terrorism including in the European Union. The Report confirms that TFTP has been used to identify and arrest individuals who have subsequently been convicted of terrorist offences in our Member States. The Report highlights that the TFTP is an important source of reliable information necessary for the fight against terrorism. Specific examples where TFTP-derived information has helped investigate and disrupt terrorism highlighted in the Report include the Mumbai attacks of November 2008 and the 2006 Heathrow Airport transatlantic liquid bomb plot.

In some of our Member States remains as high as ever, I am sure that you can see that rejection of the Interim Agreement by this House would represent a serious blow to EU security.

Some of our Member States have made it very clear that they want the TFTP to continue because they have benefited from it in the past and continue to do so. They have told us that the reliable information which the TFTP provides on known and suspected terrorists is an important source of legitimate intelligence needed to address the complex threat most notably from Al-Qaida inspired terrorism. This Interim Agreement is not a favour to the US; it is in our common interest.

Much has been said about the level of data protection in the Interim Agreement, and this is of course a key concern. I encourage Members to look closely at the Interim Agreement in that respect – you will see that it contains significant and detailed legally binding commitments on the way the US Treasury Department can process data under the Agreement. These include, for example, a strict limitation on the purpose of processing which is limited to the investigation, detection and prosecution of terrorism; an absolute prohibition on data mining – searches of the database can only be undertaken where it is possible to show a reason to believe that the subject of the search is engaged in terrorism. This means that data held on the TFTP database are effectively ANONYMOUS; only if there is reason to believe that an identified person is a terrorist can the data of that person be seen and extracted from the database. This is important. The Interim Agreement obliges the Treasury Department to delete data within five years of receipt – a period which is in keeping with the retention period in EU legislation on terrorist financing. The Interim Agreement also provides for a detailed EU review in which some of our own Data Protection Authorities will participate to ensure that these and many other data protection obligations are fully complied with.

The Interim Agreement does NOT involve the transfer of "virtually all SWIFT data" to the US Treasury Department, as some have claimed. I can assure you that only a fraction of these data will be transferred under the Interim agreement.

The Interim Agreement does not in any way affect the powers of Data Protection Authorities with regard to the processing activities performed in the EU by SWIFT or financial institutions.

Refusal of consent will bring an end to the Interim Agreement including the significant data protection safeguards it contains. If the US are able to access the data by other means

– for example through bilateral relations with the Netherlands - those safeguards will no longer apply.

If the Interim Agreement falls, it is likely to take considerable time before any alternative can be put in place. So refusal of consent risks to lead to both a data protection gap and a security gap.

The Interim Agreement is a temporal agreement. It can and will be improved. The Commission is now finalising the draft negotiation guidelines for the long term agreement and will adopt them swiftly.

I personally commit to ensure that the European Parliament concerns will be addressed and that we seek a strong data protection and a strong protection of privacy.

The European Parliament will be fully informed at all stages of this procedure.

I hope this answer some of your questions.