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Foreign Desk; SECTA

## **BANK DATA SIFTED IN SECRET BY U.S. TO BLOCK TERROR**

By ERIC LICHTBLAU and JAMES RISEN; Barclay Walsh contributed reporting for this article.

3840 words

23 June 2006

The New York Times

Late Edition - Final

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English

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WASHINGTON, June 22 -- Under a secret Bush administration program initiated weeks after the Sept. 11 attacks, counterterrorism officials have gained access to financial records from a vast international database and examined banking transactions involving thousands of Americans and others in the United States, according to government and industry officials.

The program is limited, government officials say, to tracing transactions of people suspected of having ties to Al Qaeda by reviewing records from the nerve center of the global banking industry, a Belgian cooperative that routes about \$6 trillion daily between banks, brokerages, stock exchanges and other institutions. The records mostly involve wire transfers and other methods of moving money overseas and into and out of the United States. Most routine financial transactions confined to this country are not in the database.

Viewed by the Bush administration as a vital tool, the program has played a hidden role in domestic and foreign terrorism investigations since 2001 and helped in the capture of the most wanted Qaeda figure in Southeast Asia, the officials said.

The program, run out of the Central Intelligence Agency and overseen by the Treasury Department, "has provided us with a unique and powerful window into the operations of terrorist networks and is, without doubt, a legal and proper use of our authorities," Stuart Levey, an under secretary at the Treasury Department, said in an interview on Thursday.

The program is grounded in part on the president's emergency economic powers, Mr. Levey said, and multiple safeguards have been imposed to protect against any unwarranted searches of Americans' records.

The program, however, is a significant departure from typical practice in how the government acquires Americans' financial records. Treasury officials did not seek individual court-approved warrants or subpoenas to examine specific transactions, instead relying on broad administrative subpoenas for millions of records from the cooperative, known as Swift.

That access to large amounts of confidential data was highly unusual, several officials said, and stirred concerns inside the administration about legal and privacy issues.

"The capability here is awesome or, depending on where you're sitting, troubling," said one former senior counterterrorism official who considers the program valuable. While tight controls are in place, the official added, "the potential for abuse is enormous."

The program is separate from the National Security Agency's efforts to eavesdrop without warrants and collect domestic phone records, operations that have provoked fierce public debate and spurred lawsuits against the government and telecommunications companies.

But all the programs grew out of the Bush administration's desire to exploit technological tools to prevent another terrorist strike, and all reflect attempts to break down longstanding legal or institutional barriers to the government's access to private information about Americans and others inside the United States.

Officials described the Swift program as the biggest and most far-reaching of several secret efforts to trace terrorist financing. Much more limited agreements with other companies have provided access to A.T.M. transactions, credit card purchases and Western Union wire payments, the officials said.

Nearly 20 current and former government officials and industry executives discussed aspects of the Swift operation with The New York Times on condition of anonymity because the program remains classified. Some of those officials expressed reservations about the program, saying that what they viewed as an urgent, temporary measure had become permanent nearly five years later without specific Congressional approval or formal authorization.

Data from the Brussels-based banking consortium, formally known as the Society for Worldwide

Interbank Financial Telecommunication, has allowed officials from the C.I.A., the Federal Bureau of Investigation and other agencies to examine "tens of thousands" of financial transactions, Mr. Levey said.

While many of those transactions have occurred entirely on foreign soil, officials have also been keenly interested in international transfers of money by individuals, businesses, charities and other groups under suspicion inside the United States, officials said. A small fraction of Swift's records involve transactions entirely within this country, but Treasury officials said they were uncertain whether any had been examined.

Swift executives have been uneasy at times about their secret role, the government and industry officials said. By 2003, the executives told American officials they were considering pulling out of the arrangement, which began as an emergency response to the Sept. 11 attacks, the officials said. Worried about potential legal liability, the Swift executives agreed to continue providing the data only after top officials, including Alan Greenspan, then chairman of the Federal Reserve, intervened. At that time, new controls were introduced.

Among the safeguards, government officials said, is an outside auditing firm that verifies that the data searches are based on intelligence leads about suspected terrorists. "We are not on a fishing expedition," Mr. Levey said. "We're not just turning on a vacuum cleaner and sucking in all the information that we can."

Swift and Treasury officials said they were aware of no abuses. But Mr. Levey, the Treasury official, said one person had been removed from the operation for conducting a search considered inappropriate.

Treasury officials said Swift was exempt from American laws restricting government access to private financial records because the cooperative was considered a messaging service, not a bank or financial institution.

But at the outset of the operation, Treasury and Justice Department lawyers debated whether the program had to comply with such laws before concluding that it did not, people with knowledge of the debate said. Several outside banking experts, however, say that financial privacy laws are murky and sometimes contradictory and that the program raises difficult legal and public policy questions.

The Bush administration has made no secret of its campaign to disrupt terrorist financing, and

President Bush, Treasury officials and others have spoken publicly about those efforts. Administration officials, however, asked The New York Times not to publish this article, saying that disclosure of the Swift program could jeopardize its effectiveness. They also enlisted several current and former officials, both Democrat and Republican, to vouch for its value.

Bill Keller, the newspaper's executive editor, said: "We have listened closely to the administration's arguments for withholding this information, and given them the most serious and respectful consideration. We remain convinced that the administration's extraordinary access to this vast repository of international financial data, however carefully targeted use of it may be, is a matter of public interest."

Mr. Levey agreed to discuss the classified operation after the Times editors told him of the newspaper's decision.

On Thursday evening, Dana Perino, deputy White House press secretary, said: "Since immediately following 9/11, the American government has taken every legal measure to prevent another attack on our country. One of the most important tools in the fight against terror is our ability to choke off funds for the terrorists."

She added: "We know the terrorists pay attention to our strategy to fight them, and now have another piece of the puzzle of how we are fighting them. We also know they adapt their methods, which increases the challenge to our intelligence and law enforcement officials."

Referring to the disclosure by The New York Times last December of the National Security Agency's eavesdropping program, she said, "The president is concerned that once again The New York Times has chosen to expose a classified program that is working to protect our citizens."

Swift declined to discuss details of the program but defended its role in written responses to questions. "Swift has fully complied with all applicable laws," the consortium said. The organization said it insisted that the data be used only for terrorism investigations and had narrowed the scope of the information provided to American officials over time.

#### A Crucial Gatekeeper

Swift's database provides a rich hunting ground for government investigators. Swift is a crucial gatekeeper, providing electronic instructions on how to transfer money among 7,800 financial

institutions worldwide. The cooperative is owned by more than 2,200 organizations, and virtually every major commercial bank, as well as brokerage houses, fund managers and stock exchanges, uses its services. Swift routes more than 11 million transactions each day, most of them across borders.

The cooperative's message traffic allows investigators, for example, to track money from the Saudi bank account of a suspected terrorist to a mosque in New York. Starting with tips from intelligence reports about specific targets, agents search the database in what one official described as a "24-7" operation. Customers' names, bank account numbers and other identifying information can be retrieved, the officials said.

The data does not allow the government to track routine financial activity, like A.T.M. withdrawals, confined to this country, or to see bank balances, Treasury officials said. And the information is not provided in real time -- Swift generally turns it over several weeks later. Because of privacy concerns and the potential for abuse, the government sought the data only for terrorism investigations and prohibited its use for tax fraud, drug trafficking or other inquiries, the officials said.

The Treasury Department was charged by President Bush, in a September 2001 executive order, with taking the lead role in efforts to disrupt terrorist financing. Mr. Bush has been briefed on the program and Vice President Dick Cheney has attended C.I.A. demonstrations, the officials said. The National Security Agency has provided some technical assistance.

While the banking program is a closely held secret, administration officials have held classified briefings for some members of Congress and the Sept. 11 commission, the officials said. More lawmakers were briefed in recent weeks, after the administration learned The Times was making inquiries for this article.

Swift's 25-member board of directors, made up of representatives from financial institutions around the world, was previously told of the program. The Group of 10's central banks, in major industrialized countries, which oversee Swift, were also informed. It is not clear if other network participants know that American intelligence officials can examine their message traffic.

Because Swift is based overseas and has offices in the United States, it is governed by European and American laws. Several international regulations and policies impose privacy restrictions on companies that are generally regarded as more stringent than those in this country. United States law establishes some protections for the privacy of Americans' financial data, but they are not

ironclad. A 1978 measure, the Right to Financial Privacy Act, has a limited scope and a number of exceptions, and its role in national security cases remains largely untested.

Several people familiar with the Swift program said they believed that they were exploiting a "gray area" in the law and that a case could be made for restricting the government's access to the records on Fourth Amendment and statutory grounds. They also worried about the impact on Swift if the program were disclosed.

"There was always concern about this program," a former official said.

One person involved in the Swift program estimated that analysts had reviewed international transfers involving "many thousands" of people or groups in the United States. Two other officials placed the figure in the thousands. Mr. Levey said he could not estimate the number.

The Swift data has provided clues to money trails and ties between possible terrorists and groups financing them, the officials said. In some instances, they said, the program has pointed them to new suspects, while in others it has buttressed cases already under investigation.

Among the successes was the capture of a Qaeda operative, Riduan Isamuddin, better known as Hambali, believed to be the mastermind of the 2002 bombing of a Bali resort, several officials said. The Swift data identified a previously unknown figure in Southeast Asia who had financial dealings with a person suspected of being a member of Al Qaeda; that link helped locate Hambali in Thailand in 2003, they said.

In the United States, the program has provided financial data in investigations into possible domestic terrorist cells as well as inquiries of Islamic charities with suspected of having links to extremists, the officials said.

The data also helped identify a Brooklyn man who was convicted on terrorism-related charges last year, the officials said. The man, Uzair Paracha, who worked at a New York import business, aided a Qaeda operative in Pakistan by agreeing to launder \$200,000 through a Karachi bank, prosecutors said.

In terrorism prosecutions, intelligence officials have been careful to "sanitize," or hide the origins of evidence collected through the program to keep it secret, officials said.

The Bush administration has pursued steps that may provide some enhanced legal standing for

the Swift program. In late 2004, Congress authorized the Treasury Department to develop regulations requiring American banks to turn over records of international wire transfers. Officials say a preliminary version of those rules may be ready soon. One official described the regulations as an attempt to "formalize" access to the kind of information secretly provided by Swift, though other officials said the initiative was unrelated to the program.

### The Scramble for New Tools

Like other counterterrorism measures carried out by the Bush administration, the Swift program began in the hectic days after the Sept. 11 attacks, as officials scrambled to identify new tools to head off further strikes.

One priority was to cut off the flow of money to Al Qaeda. The 9/11 hijackers had helped finance their plot by moving money through banks. Nine of the hijackers, for instance, funneled money from Europe and the Middle East to SunTrust bank accounts in Florida. Some of the \$130,000 they received was wired by people overseas with known links to Al Qaeda.

Financial company executives, many of whom had lost friends at the World Trade Center, were eager to help federal officials trace terrorist money. "They saw 9/11 not just as an attack on the United States, but on the financial industry as a whole," said one former government official.

Quietly, counterterrorism officials sought to expand the information they were getting from financial institutions. Treasury officials, for instance, spoke with credit card companies about devising an alert if someone tried to buy fertilizer and timing devices that could be used for a bomb, but they were told the idea was not logistically possible, a lawyer in the discussions said.

The F.B.I. began acquiring financial records from Western Union and its parent company, the First Data Corporation. The programs were alluded to in Congressional testimony by the F.B.I. in 2003 and described in more detail in a book released this week, "The One Percent Doctrine," by Ron Suskind. Using what officials described as individual, narrowly framed subpoenas and warrants, the F.B.I. has obtained records from First Data, which processes credit and debit card transactions, to track financial activity and try to locate suspects.

Similar subpoenas for the Western Union data allowed the F.B.I. to trace wire transfers, mainly outside the United States, and to help Israel disrupt about a half-dozen possible terrorist plots there by unraveling the financing, an official said.

The idea for the Swift program, several officials recalled, grew out of a suggestion by a Wall Street executive, who told a senior Bush administration official about Swift's database. Few government officials knew much about the consortium, which is led by a Brooklyn native, Leonard H. Schrank, but they quickly discovered it offered unparalleled access to international transactions. Swift, a former government official said, was "the mother lode, the Rosetta stone" for financial data.

Intelligence officials were so eager to use the Swift data that they discussed having the C.I.A. covertly gain access to the system, several officials involved in the talks said. But Treasury officials resisted, the officials said, and favored going to Swift directly.

At the same time, lawyers in the Treasury Department and the Justice Department were considering possible legal obstacles to the arrangement, the officials said.

In 1976, the Supreme Court ruled that Americans had no constitutional right to privacy for their records held by banks or other financial institutions. In response, Congress passed the Right to Financial Privacy Act two years later, restricting government access to Americans' **banking records**. In considering the Swift program, some government lawyers were particularly concerned about whether the law prohibited officials from gaining access to records without a warrant or subpoena based on some level of suspicion about each target.

For many years, law enforcement officials have relied on grand-jury subpoenas or court-approved warrants for such financial data. Since 9/11, the F.B.I. has turned more frequently to an administrative subpoena, known as a national security letter, to demand such records.

After an initial debate, Treasury Department lawyers, consulting with the Justice Department, concluded that the privacy laws applied to banks, not to a banking cooperative like Swift. They also said the law protected individual customers and small companies, not the major institutions that route money through Swift on behalf of their customers.

Other state, federal and international regulations place different and sometimes conflicting restrictions on the government's access to financial records. Some put greater burdens on the company disclosing the information than on the government officials demanding it.

Among their considerations, American officials saw Swift as a willing partner in the operation. But Swift said its participation was never voluntary. "Swift has made clear that it could provide data only in response to a valid subpoena," according to its written statement.

Indeed, the cooperative's executives voiced early concerns about legal and corporate liability, officials said, and the Treasury Department's Office of Foreign Asset Control began issuing broad subpoenas for the cooperative's records related to terrorism. One official said the subpoenas were intended to give Swift some legal protection.

Underlying the government's legal analysis was the International Emergency Economic Powers Act, which Mr. Bush invoked after the 9/11 attacks. The law gives the president what legal experts say is broad authority to "investigate, regulate or prohibit" foreign transactions in responding to "an unusual and extraordinary threat."

But L. Richard Fischer, a Washington lawyer who wrote a book on banking privacy and is regarded as a leading expert in the field, said he was troubled that the Treasury Department would use broad subpoenas to demand large volumes of financial records for analysis. Such a program, he said, appears to do an end run around bank-privacy laws that generally require the government to show that the records of a particular person or group are relevant to an investigation.

"There has to be some due process," Mr. Fischer said. "At an absolute minimum, it strikes me as inappropriate."

Several former officials said they had lingering concerns about the legal underpinnings of the Swift operation. The program "arguably complies with the letter of the law, if not the spirit," one official said.

Another official said: "This was creative stuff. Nothing was clear cut, because we had never gone after information this way before."

Treasury officials said they considered the government's authority to subpoena the Swift records to be clear. "People do not have a privacy interest in their international wire transactions," Mr. Levey, the Treasury under secretary, said.

#### Tighter Controls Sought

Within weeks of 9/11, Swift began turning over records that allowed American analysts to look for evidence of terrorist financing. Initially, there appear to have been few formal limits on the searches.

"At first, they got everything -- the entire Swift database," one person close to the operation said.

Intelligence officials paid particular attention to transfers to or from Saudi Arabia and the United Arab Emirates because most of the 9/11 hijackers were from those countries.

The volume of data, particularly at the outset, was often overwhelming, officials said. "We were turning on every spigot we could find and seeing what water would come out," one former administration official said. "Sometimes there were hits, but a lot of times there weren't."

Officials realized the potential for abuse, and narrowed the program's targets and put in more safeguards. Among them were the auditing firm, an electronic record of every search and a requirement that analysts involved in the operation document the intelligence that justified each data search. Mr. Levey said the program was used only to examine records of individuals or entities, not for broader data searches.

Despite the controls, Swift executives became increasingly worried about their secret involvement with the American government, the officials said. By 2003, the cooperative's officials were discussing pulling out because of their concerns about legal and financial risks if the program were revealed, one government official said.

"How long can this go on?" a Swift executive asked, according to the official.

Even some American officials began to question the open-ended arrangement. "I thought there was a limited shelf life and that this was going to go away," the former senior official said.

In 2003, administration officials asked Swift executives and some board members to come to Washington. They met with Mr. Greenspan, Robert S. Mueller III, the F.B.I. director, and Treasury officials, among others, in what one official described as "a full-court press." Aides to Mr. Greenspan and Mr. Mueller declined to comment on the meetings.

The executives agreed to continue supplying records after the Americans pledged to impose tighter controls. Swift representatives would be stationed alongside intelligence officials and could block any searches considered inappropriate, several officials said.

The procedural change provoked some opposition at the C.I.A. because "the agency was chomping at the bit to have unfettered access to the information," a senior counterterrorism

official said. But the Treasury Department saw it as a necessary compromise, the official said, to "save the program."

Photos: Financial data from the Swift program led to the capture of Hambali, a Qaeda operative, in 2003. (Photo by Associated Press); The Swift data helped convict Uzair Paracha on terrorism-related charges last year in New York. (pg. A10)

Chart: "A Money Transfer"

The Brussels-based Society for Worldwide Interbank Financial Telecommunication, also known as Swift, provides electronic messaging services that direct financial transactions worth about \$6 trillion a day among some 7,800 institutions worldwide. A look at a typical transaction:

SENDER instructs a bank, or other financial institution, to send money to a desired recipient, often in another country.

SENDER'S BANK sends detailed payment instructions to receiver's bank through Swift.

SWIFT processes the message that includes names and numbers of accounts involved and a description of the asset being transferred. It does not actually move money with the message.

IN THE UNITED STATES

107 institutions are members of Swift.

588 institutions use the system.

When the transaction is settled, the sender's bank transfers the money to the recipient's bank.

RECIPIENT'S BANK credits the amount to the recipient's account according to the message.

RECIPIENT collects the amount.

(pg. A10)

Document NYTF000020060623e26n0005I

A Section

## **Bank Records Secretly Tapped; Administration Began Using Global Database Shortly After 2001 Attacks**

Barton Gellman, Paul Blustein and Dafna Linzer

Washington Post Staff Writers

1296 words

23 June 2006

The Washington Post

FINAL

A01

English

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The Bush administration, relying on a presidential declaration of emergency, has secretly been tapping into a vast global database of confidential financial transactions for nearly five years, according to U.S. government and industry officials.

Initiated shortly after Sept. 11, 2001, the surveillance program has used a broad new interpretation of the Treasury Department's administrative powers to bypass traditional banking privacy protections. It has swept in large volumes of international money transfers, including many made by U.S. citizens and residents, in an effort to track the locations, identities and activities of suspected terrorists.

Current and former counterterrorism officials said the program works in parallel with the previously reported surveillance of international telephone calls, faxes and e-mails by the National Security Agency, which has eavesdropped without warrants on more than 5,000 Americans suspected of terrorist links. Together with a hundredfold expansion of the FBI's use of "national security letters" to obtain communications and **banking records**, the secret NSA and Treasury programs have built unprecedented government databases of private transactions, most of them involving people who prove irrelevant to terrorism investigators.

Stuart Levey, undersecretary of the Treasury for terrorism and financial intelligence, said in an interview last night that the newly disclosed program -- the existence of which the government

sought to conceal -- has used the agency's powers of administrative subpoena to compel an international banking consortium to open its records. The Brussels-based cooperative, known as the Society for Worldwide Interbank Financial Telecommunication, or SWIFT, links about 7,800 banks and brokerages and handles billions of transactions a year.

Terrorism investigators had sought access to SWIFT's database since the 1990s, but other government and industry authorities balked at the potential blow to confidence in the banking system. After the 2001 attacks, President Bush overrode those objections and invoked his powers under the International Emergency Economic Powers Act to "investigate, regulate or prohibit" any foreign financial transaction linked to "an unusual and extraordinary threat."

Levey and other officials emphasized that the government has confined its financial surveillance to legitimate terrorism investigations and tightly targeted searches.

After identifying a suspect, Levey said, "you can do a search, and you can determine whom he sent money to, and who sent money to him."

"The way the SWIFT data works, you would have all kinds of concrete information -- addresses, phone numbers, real names, account numbers, a lot of stuff we can really work with, the kind of actionable information that government officials can really follow up on," Levey said.

He spoke about the program after it became clear the New York Times was planning to publish an article about it. The Times and other news organizations posted articles online last night.

Levey maintained that the government has "put into place very robust controls to make sure we are only using this information for anti-terrorism purposes."

He added: "We can only search the data we receive in furtherance of a terrorism lead. In fact, the analysts who have access to the data can't even access the database unless they type in the search they want to do and articulate why it's connected to terrorism."

The program is "on rock-solid legal ground," Levey said, and is based on the IEEPA, which he said "specifically gives us the authority to conduct this type of investigation if there is an emergency declared by the president."

In addition, the administration informed major central banks, including the Federal Reserve and the European Central Bank, of the program. "They were all briefed so they could exercise

appropriate oversight," Levey said. "We have kept it confidential but made sure the appropriate people knew about it," including members of Congress involved in intelligence matters, he said.

The White House complained last night that the disclosure could hurt anti-terrorism activities.

"We are disappointed that once again the New York Times has chosen to expose a classified program that is working to protect Americans," spokeswoman Dana Perino said. "We know that al-Qaeda watches for any clue as to how we are fighting the war on terrorism and then they adapt, which increases the challenge to our intelligence and law enforcement officials."

Levey said it was no secret that investigators tried to follow terrorist money flows, but had been "trying to keep confidential . . . precisely how we do that." Because SWIFT is not a well-known source of financial information, "we're very disappointed that this source has now been revealed, because it will make our job much more difficult."

Levey's boss, outgoing Treasury Secretary John W. Snow, underlined those arguments in a statement the department issued late yesterday. Treasury's Terrorist Finance Tracking Program, he said, is an essential tool in the war on terror that has helped government officials "locate operatives and their financiers, chart terrorist networks, help bring them to justice, and save lives."

"It is not 'data mining,' or trolling through the private financial records of Americans. It is not a 'fishing expedition,' but rather a sharp harpoon aimed at the heart of terrorist activity," he said.

Levey declined to discuss instances in which the data gleaned from SWIFT had aided the crackdown on terrorism. He said that information is classified but added he could confirm that the information has been used to "confirm the identity of a major Iraqi terrorist facilitator."

Asked whether any high-ranking administration officials had expressed reservations about the program, Levey said: "Not that I've ever heard. This is a program which, to my knowledge, has been universally embraced and praised."

Intelligence analysts from the CIA and the FBI, working with Levey's office, have been poring over the financial transactions for the past several years in search of more links to al-Qaeda operatives. Officials said investigators now seek financial data on individuals and companies whose names first appear in documents, intercepted communications and other evidence gathered by intelligence agencies around the world.

"You can't type in a random name of someone" and search his data, said one intelligence official who spoke on the condition of anonymity. "The program only works for names already within the intelligence system that were collected elsewhere and are identified as being part of an open investigation."

That was not the case when the program began in the weeks after Sept. 11, 2001, when Bush signed Executive Order 13224 going after al-Qaeda's finances. Officials said far more information was collected early on, often on people who had nothing to do with al-Qaeda but whose Muslim names or businesses were similar to those used by suspected members of al-Qaeda. That method flooded the intelligence community with reams of material that was laborious to go through and repeatedly misled investigators.

"It has narrowed over time as our expertise has increased," one official said in describing a "higher bar" for searches that now depend on intelligence collected elsewhere.

Intelligence officials were eager to distance this program from the NSA's eavesdropping operation, saying repeatedly that the technology employed does not allow for the broad sweeps the NSA can conduct.

In a statement, SWIFT said it "responded to compulsory subpoenas for limited sets of data from the Office of Foreign Assets Control of the United States Department of the Treasury. Our fundamental principle has been to preserve the confidentiality of our users' data while complying with the lawful obligations in countries where we operate. Striking that balance has guided SWIFT through this process with the United States Department of the Treasury."

Staff writers Terence O'Hara and Peter Baker contributed to this report.

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NEWS

**Europe doubts legality of bank monitoring by U.S.**

Eric Lichtblau

The New York Times

612 words

27 September 2006

International Herald Tribune

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English

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A European Union working group is expected to conclude this week that the Bush administration's monitoring of international financial transactions may violate European banking law and that an independent auditor should be required to prevent possible privacy abuses.

"We have doubts" about the legality of the American bank- monitoring program under European privacy regulations, Peter **Schaar**, a German official who leads the commission's working group, said in a telephone interview Monday.

"We don't see the legal basis under the European law, and we see the need for some changes."

The program, started in secret by the Bush administration only weeks after the Sept. 11 attacks, allows CIA analysts and other American intelligence officials to search for possible terrorist financing activity among many millions of largely international financial transactions that are processed by a Belgian data-banking cooperative, known as Swift.

The Bush administration has strongly defended the effectiveness and legality of the once-secret program, and it sharply criticized The New York Times for disclosing its existence in June.

But critics, including many privacy advocates and some executives within the banking industry,

have questioned the propriety of allowing American intelligence officials access to wide swaths of sensitive financial data. Investigations into the program have been opened in Europe and Canada.

The European Union working group, which comprises representatives from 25 countries and is formally known as the Article 29 data protection working party, would be the first international group to weigh in on the legal issues, and its findings are expected to carry considerable influence, officials say.

The group was to begin meeting in Brussels on Tuesday, and **Schaar** said he expected it to adopt a report based on a draft that has already been circulated among the members.

While he would not discuss the exact language of the report because it had not yet been finalized, he said that the report would be "critical" of the legal basis for the American government's use of the Swift data. The Treasury Department has used broad administrative subpoenas to get access to large volumes of transactions from Swift, often millions at a time. The operation, while highly unusual, appears to fall into a gray area in American law protecting the banking privacy of customers.

But legal experts said the program appears to conflict more directly in Europe with banking privacy restrictions, issued by the European Union and others, that impose tighter restrictions on how private banking data can be shared.

"The main item from my point of view," **Schaar** said, "is that the fundamental civil rights of the European citizens have to be safeguarded."

The group's report is being prepared at a time of rising tension between European leaders and the United States over American counterterrorism policies concerning such issues as the CIA's operation of prisons for "high value" terrorism suspects in Europe, and the United States' access to passenger data on trans-Atlantic flights.

The European Union's highest court in May struck down an agreement giving the United States access to personal details about incoming passengers, forcing the United States to rework the agreement.

Privacy advocates, who brought formal complaints over the Swift program in 40 countries after its disclosure, say they hope that a critical ruling from the European Union working group will lead to

similar changes.

**Schaar** said that he would not recommend that the program be stopped altogether, but rather that tighter safeguards be enforced.

The Treasury Department has used a Washington firm to act as an independent auditor on the program to guard against abuses.

Document INHT000020060927e29r0000p

NEWS

## EU panel to question U.S. spying on banks

Eric Lichtblau

The New York Times

619 words

26 September 2006

International Herald Tribune

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English

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The European Union's highest court in May struck down an agreement giving the United States access to personal details about incoming passengers, forcing the United States to rework the agreement.

Privacy advocates, who brought formal complaints over the Swift program in 40 countries after its disclosure, say they hope that a critical ruling from the European Union working group will lead to similar changes.

**Schaar** said that he would not recommend that the program be stopped altogether, but rather that tighter safeguards be enforced. The Treasury Department has used a Washington firm to act as an independent auditor on the program to guard against abuses.

Document INHT000020060926e29q00001



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WP**

**Press Release on the SWIFT Case**

**26 September 2006**

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC.

The secretariat is provided by Directorate C (Civil Justice, Rights and Citizenship) of the European Commission, Directorate General Justice, Freedom and Security, B-1049 Brussels, Belgium, Office No LX-46 01/43.

Website: [http://ec.europa.eu/justice\\_home/fsj/privacy/index\\_en.htm](http://ec.europa.eu/justice_home/fsj/privacy/index_en.htm)

The Data Protection Commissioners of the EU, represented in the Article 29 Working Party, held a first plenary discussion today (26 September) about the circumstances under which SWIFT has made personal banking information available to US authorities for the purpose of the fight against terrorism.

The Working Party heard from the Belgian Data Protection Authority about progress with its investigations, reflecting SWIFT's status as a Belgian-based entity.

This issue is complex, both factually and legally. Recognising the seriousness of the questions that have been raised, the Working Party agreed to continue fact-finding and conduct further analysis based on all relevant factual and legal elements in order to be in a position to adopt a formal position at its next Plenary meeting in November 2006. The Working Party did however express immediate concerns about the lack of transparency which has surrounded these arrangements.

The Working Party's priority is to safeguard European data protection rights.

Done in Brussels, on 26 September 2006

*For the Working Party*  
The Vice-Chairman  
José Luis Piñar Mañas



## **BANKING : SWIFT CLAIMS TO RESPECT EU PRIVACY LAWS**

244 words

2 October 2006

[Europolitics](#)

3160

English

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**Replying to criticism in a report by Belgium's data protection authority**, SWIFT claimed it has done its «utmost» to comply with EU data privacy principles. SWIFT was heavily criticised by the Belgian authority for - secretly - transferring financial transaction data from European banks to the United States Department of the Treasury (see Europolitics 3159).

Industry-owned cooperative SWIFT provides messaging services to nearly 8,000 financial institutions in over 200 countries. The group called for the US and EU to develop an improved framework for data privacy protection. SWIFT's US branch was subject to "valid and compulsory subpoenas," forcing transferal of a "limited subset" of data to the US. SWIFT CEO Leonard Schrank admitted, in a press statement, that SWIFT's actions had raised "important issues" concerning consumer data privacy and the use of financial data for security and counter-terrorism purposes.

The Belgian report, issued on 28 September, indicated the lack of power by either EU member states or financial institutions to stop continued illegal data transfer. Belgian Premier Guy Verhofstadt admitted that SWIFT will not be asked to stop and stressed the legitimate purpose of countering terrorism. SWIFT will also not stop transfers even on express requests by an EU bank. On 9 August, SWIFT refused to comply with the request from its client, the Niederösterreichische Landesbank. SWIFT noted that it must apply valid and enforceable US warrants, even in the European Union.

Document EURREP0020060929e2a200017

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## INTERNATIONAL NEWS

### **Fresh drive to tackle dispute on data from passengers TRANSATLANTIC TRAVEL.**

By DOUG CAMERON and SARAH LAITNER

543 words

5 October 2006

Financial Times

London Ed1

Page 6

English

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Washington and Brussels will today seek to overcome an impasse over US demands for personal data on passengers flying from the European Union to the country.

There have been weeks of wrangling over the counter-terrorism accord, through which Washington receives up to 34 pieces of information on transatlantic travellers.

The debate over how to balance demands for personal information with privacy rights was highlighted yesterday when a controversial scheme to give bank transaction details to US officials investigating terror finance came under scrutiny in the European parliament.

Concerns over data protection have also dogged the airline data pact. The US sees the extension of a 2004 accord, which expired at the end of September, as crucial to fighting terrorism.

The agreement, struck after the September 11 2001 attacks, gives Washington information such as names, addresses and payment details but was struck down by the EU's highest court on a legal technicality.

However, European diplomats say US calls for more information on transatlantic passengers have exacerbated concerns in the EU about privacy, delaying a new deal.

In addition, Michael Chertoff, head of US homeland security, has made it clear that his officials hope to share **passenger** data with intelligence agencies in the US and elsewhere.

The air data accord and the bank transfer case have called into question the scope of EU privacy legislation. These laws prevent the sending of personal data to jurisdictions that do not have safeguards equal to those in the union.

A European parliament hearing yesterday scrutinised the decision by **Swift**, a Brussels-based global messaging service for bank transfers, to give data to US anti-terror investigators.

Since the September 11 attacks the US Treasury has used subpoenas to gain access to a database maintained by the company.

Belgium's privacy commission last week said **Swift** had not fully respected national and European protection laws, a claim to which the company takes exception.

Jean-Claude Trichet, president of the European Central Bank, told the Brussels hearing yesterday that the ECB had known since 2002 about US demands for data from **Swift**. But he said the bank did not have the power to stop bank records being transferred to US anti-terror investigators.

"We could not be responsible for anything but financial stability and ensuring that risk management was correctly implemented," he said.

In the face of criticism for failing to tell privacy regulators or EU institutions about the transfer programme, he said: "Should we have informed European institutions? We did not consider it was our duty to . . . inform any other institution that would be competent."

Mr Trichet called for a "global understanding" on the role of financial institutions and regulators in such situations.

**Swift** said its compliance with the US Treasury was legal and it called on European authorities to work with their US counterparts to find a solution to the legislative conflict.

\*US diplomats could require visas to enter certain EU countries under a suggestion made by the European Commission yesterday. Washington has failed to lift visa requirements for nationals from Greece, Cyprus, Malta and seven central European nations that joined the union in 2004.

20061005L106.114

Document FTFT000020061005e2a500014

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NEWS

**Swift faulted over data transfers to U.S. Belgian commission cites privacy breaches**

Dan Bilefsky

International Herald Tribune

812 words

29 September 2006

International Herald Tribune

3

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English

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The Belgian banking consortium Swift breached European privacy rules when it aided the U.S. anti-terrorism program by providing confidential information about money transfers, Belgium's privacy protection commission concluded Thursday. "It has to be seen as a gross miscalculation by Swift that it has, for years, secretly and systematically transferred massive amounts of personal data for surveillance without effective and clear legal basis and independent controls in line with Belgian and European law," the report said.

Swift, or the Society for Worldwide Interbank Financial Telecommunications, has come under scrutiny for participating in a Bush administration program that allows analysts from the Central Intelligence Agency and officials from other U.S. agencies to search for possible terrorist financing activity among the millions of confidential financial transactions it oversees. Washington has defended the secret program, which began after the Sept. 11, 2001, terrorist attacks in New York and Washington. But critics in Europe argue that it placed U.S. security interests ahead of European civil liberties. A European Union working group debated this week whether the program violates European banking law and is considering whether an independent auditor should be appointed to prevent possible privacy abuses. Presenting the findings of the investigation, Prime Minister Guy Verhofstadt of Belgium said he recognized that sharing data on financial transfers was essential in the global fight against terrorism. But he took Swift to task for passing on confidential financial information without adequate safeguards that European privacy rules would

be respected. "Swift finds itself in a conflicting position between American and European law," Verhofstadt said. "But it should have received stronger guarantees of privacy protection based on European standards not by American standards, which are not as strong." Such guarantees should have included stronger safeguards that the information was being used only for terrorism investigations, Belgian officials said. Under European law, companies are forbidden from transferring confidential personal data to another country unless that country offers adequate protections. The EU does not consider the United States to be a country that offers sufficient legal protection of individual data. The commission report said Swift had transferred confidential information to the United States without establishing a sufficient legal basis to do so in Belgium and the European Union. Swift has defended the transfers on the grounds that it has offices in the United States and was meeting its legal obligations by upholding U.S. laws.

But the commission rejected this argument. It said Swift was still subject to Belgian rules, regardless of whether the data transferred to U.S. authorities came exclusively from the company's U.S. subsidiary rather than its global headquarters in Brussels. Referring to the broad administrative subpoenas issued to Swift by the U.S. Treasury, the commission said "Swift should have realized that exceptional measures based on American rules do not legitimize hidden, systemic violations of fundamental European principles related to data protection over a long period of time." Verhofstadt said Belgium's privacy protection commission had not yet moved to take legal action against Swift. Instead, he said, Belgium would push its EU partners to open talks with the United States on a new agreement on the transfer of financial records to be used in terror investigations. Swift dismissed criticism that it had done anything unlawful, saying it received strong assurances that the data would be used exclusively for terrorism investigations. But the chief executive of Swift, Leonard Schrank, agreed that the United States and Europe needed a common framework to reconcile data protection with the fight against terrorism. "We need an agreement between the EU and the U.S. that recognizes the global threat of terrorism but has a comfort level for those seeking to guarantee data protection," he said. "We are caught between complying with the U.S. and European rules and it's a train wreck. But what we have done saves lives in the U.S. and Europe and we must not lose sight of that." Asked why Swift had not notified European authorities about the data transfers a criticism made by the Belgian commission Schrank said that Swift had satisfied disclosure rules but had taken the decision "not to notify broadly" out of fear of harming global security by tipping off terrorists.

He declined to say whether Swift was still transferring such data to the United States, but said that the consortium was still obligated to answer subpoenas from the U.S. authorities because it conducted substantial business in America. The EU and the United States are increasingly at odds over how to reconcile civil liberties with the fight against terrorism. Recent allegations that

the United States kidnapped terrorist suspects on European soil and detained them in secret detention centers has sparked fierce criticism from European legislators.

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