



Council of the
European Union

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ADD 1 DCL 1

JAI 782
USA 95
RELEX 1009
DATAPROTECT 69
ECOFIN 699

DECLASSIFICATION

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Subject:	Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Programme ("SWIFT" Agreement)
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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

RESTREINT



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ADDENDUM TO NOTE

from :	Presidency
to :	Delegations
prev.doc.:	13429/09 JAI 598 USA 72 RELEX 804 DATAPROTECT 59 ECOFIN 570 RESTREINT UE 13765/09 JAI 622 USA 80 RELEX 839 DATAPROTECT 61 ECOFIN 597 RESTREINT UE
Subject :	Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Programme ("SWIFT" Agreement)

Further to bilateral contacts between the most concerned parties, the Presidency has received an alternative version of Article 4 of the draft Agreement, which is recorded in this Addendum.

Article 4

1. Pursuant to Article 8 of the Agreement on Mutual Legal Assistance between the European Union and the United States of America, signed at Washington on 25 June 2003, and related bilateral mutual legal assistance instrument between the United States and the Member State, in which the Designated Provider is either based or where it stores the requested data, the U.S. Treasury Department shall issue a request based on an ongoing investigation concerning a specific conduct referred to in article 2 that has been committed or where there is, based on pre-existing information or evidence, a reason to believe that it could be committed.

2. The request will identify as clearly as possible data stored by a Designated Provider in the territory of the European Union which is necessary to this end. Data may include identifying information about the originator and/or recipient of the transaction, including name, account number, address, national identification number, and other personal data.

The request shall substantiate the necessity for the data and shall be tailored as narrowly as possible in order to minimize the amount of data requested, taking due account of geographic, threat and vulnerability analyses.

3. The request shall be transmitted by the U.S. Department of Justice to the central authority of the Member State in which the Designated Provider is based or where it stores the requested data.

4. The U.S. Department of Justice shall simultaneously transmit a copy of the request to the central authority of the other Member State. The U.S. Department of Justice shall also simultaneously transmit a copy of the request to national members of Eurojust of these member States.

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5. On receipt of the substantiated request in accordance with paragraph 3, the central authority of the requested State shall verify the admissibility of the request according to this Agreement and the requirements of the bilateral mutual legal assistance agreement. Where the central authority has so verified, the request shall be transmitted to the competent authority for its execution under the law of the requested State.

If the request has been transmitted to the central authority of the Member State in which the Designated Provider is based the Member State where the data are stored shall give assistance to the execution of the request.

The requested measure shall be executed as a matter of urgency.

6. If the Designated Provider is not able to identify the data that would respond to the request because of technical reasons, all potentially relevant data shall be transmitted in bulk to the competent authority of the requested State.

7. The data shall be transferred between the designated authorities of the requested State and of the US.

8. The EU shall ensure that Designated Providers keep a detailed log of all data transmitted to the competent authority of the requested State for the purpose of this Agreement.

9. The data that have been transmitted lawfully on the basis of this provision may be searched for the purpose of other investigations concerning the same type of conducts, with full respect of article 5 of this Agreement.
