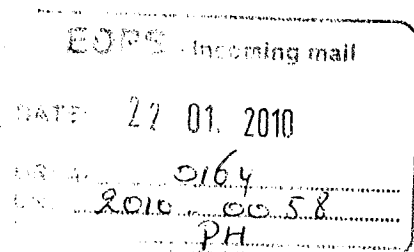




EUROPEAN COMMISSION  
DIRECTORATE-GENERAL JUSTICE, FREEDOM AND SECURITY

Director General

Brussels, **22 JAN, 2010**  
JLS/F3/MK mb D(2010) 737



**Mr Peter HUSTINX**  
**European Data Protection**  
**Supervisor**  
**Rue Wiertzstraat 60 (MO 63)**  
**1047 Brussels**

**Subject: Recommendation from the Commission to the Council to open negotiations for an agreement between the European Union and the United States of America to make available to the United States Treasury Department financial payment messaging data for the purposes of the Terrorist Finance Tracking Programme (TFTP II agreement)**

Dear Mr. Hustinx,

I am pleased to enclose a draft Commission Recommendation to the Council to authorise negotiations for an agreement between the European Union and the United States of America to make available to the United States Treasury Department financial payment messaging data for the purposes of the Terrorist Finance Tracking Programme (TFTP II).

The purpose of the agreement is to succeed the interim agreement signed on 30 November 2009 and thus to ensure the sustainability of the Terrorist Finance Tracking Programme.

The agreement would be based on Articles 82 and / or 87 of the Treaty on the Functioning of the European Union.

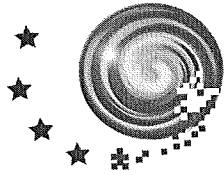
A Council Declaration of 30 November 2009 calls on the Commission to submit as soon as possible, and at any rate no later than February 2010, a recommendation to the Council for the negotiation of a long-term EU-US Agreement. The recommendation is envisaged to be adopted by the Commission soon. I would therefore be grateful to receive your opinion by 29 January 2010 at the latest in order to provide my department with the time necessary to duly consider your opinion. I would ask that your opinion takes account of the fact that the Recommendation and annexed negotiation directives are EU Restricted.

Yours sincerely,

Jonathan Faull  
*P. C. P. Peria*

[REDACTED]

Enclosure: Commission Recommendation (EU RESTRICTED)



EUROPEAN DATA  
PROTECTION SUPERVISOR

PETER HUSTINX  
SUPERVISOR

Mr Jonathan Faull  
European Commission  
B-1049 Brussels

Brussels, 15 February 2010  
PH/AS/ab D(2010)188 C 2010-0058

**Subject:** EDPS informal comments on the draft Recommendation from the Commission to the Council to open negotiations for an agreement between the European Union and the United States of America to make available to the United States Treasury Department financial payment messaging data for the purposes of the Terrorist Finance Tracking Programme (TFTP II agreement)

Dear Mr Faull,

Further to your letter of 22 January 2010, please find attached the EDPS informal comments on the draft Recommendation from the Commission to the Council to open negotiations for an agreement between the European Union and the United States of America to make available to the United States Treasury Department financial payment messaging data for the purposes of the Terrorist Finance Tracking Programme (TFTP II agreement).

We appreciate this consultation at an early stage and hope that the attached comments will contribute to enhancing the protection of personal data, which will be a crucial element in the negotiations and adoption of the new agreement.

In any case, we expect to be consulted pursuant to Article 28(2) of Regulation (EC) No 45/2001 on the final Commission recommendation. This letter is without prejudice to the formal opinion that may follow.

Taking account of the fact that the draft Recommendation and annexed negotiation directives have been classified as EU Restricted, we have classified also these EDPS comments as EU Restricted.

Yours sincerely,

Peter HUSTINX  
Annex: Informal comments

cc:  
Mr Joaquim Nunes De Almeida  
Mr Aurel Ciobanu-Dordea  
Mrs Marie-Hélène Boulanger

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**EU Restricted**

**EDPS informal comments on the draft Recommendation from the Commission to the Council to open negotiations for an agreement between the European Union and the United States of America to make available to the United States Treasury Department financial payment messaging data for the purposes of the Terrorist Finance Tracking Programme (TFTP II agreement)**

As a preliminary comment, the EDPS considers that both in the memorandum and in the negotiating guidelines, it would be preferable and more correct to refer to the right to the protection of personal data as a *fundamental right*.

Explanatory memorandum:

[REDACTED]

- The EDPS suggests that the agreement is based also on Article 16 TFEU, for the reasons already mentioned in the EDPS letter of 25 January 2010 to Mr López Aguilar.

[REDACTED]



PETER HUSTINX  
SUPERVISOR

Mr José Manuel BARROSO  
President of the European Commission  
BRU-BERL 13/057  
B-1049 Brussels

Brussels, 13 April 2010  
PH/ACL/amv D(2010)0526 C2010-0058

**Subject: EDPS comments on the Recommendation from the Commission to the Council to authorise opening of negotiations between the European Union and the United States of America for an international agreement to make available to the United States Treasury Department financial payment messaging data for the purposes of the Terrorist Finance Tracking Programme (TFTP II agreement)**

Dear Mr President,

With regard to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of data by the Community institutions and bodies and on the free movement of such data, and in particular its Article 41, I send you my comments on the Recommendation from the Commission to the Council to authorise opening of negotiations between the European Union and the United States of America for an international agreement to make available to the United States Treasury Department financial payment messaging data for the purposes of the Terrorist Finance Tracking Programme (TFTP II agreement).

Taking account of the fact that the Recommendation and annexed negotiation directives are EU Restricted, I have decided to classify also these EDPS comments as EU Restricted.

I have sent these comments to the President of the European Parliament and the President of the Council as well, as EU Restricted documents.

Yours sincerely,

Peter HUSTINX

Annex: Comments

cc: Mrs Viviane Reding, Vice-President of the Commission  
Mrs Cecilia Malmström, Member of the Commission  
Mr Jonathan Faull  
Mr Reinhard Priebe  
Mr Aurel Ciobanu-Dordea  
Mrs Marie-Hélène Boulanger  
Mr Joaquim Nunes De Almeida  
Mr Philippe Renaudière

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## EU RESTRICTED

### **EDPS Comments on the Recommendation from the Commission to the Council to authorise opening of negotiations between the European Union and the United States of America for an international agreement to make available to the United States Treasury Department financial payment messaging data for the purposes of the Terrorist Finance Tracking Programme (TFTP II agreement)**

#### **I. Introduction**

The EDPS was consulted by the European Commission on 26 March 2010 about its Recommendation to Council for the negotiation of an international agreement to make available to the United States Treasury Department financial payment messaging data for the purposes of the Terrorist Finance Tracking Programme ("TFTP II agreement").

[REDACTED]

#### **II. Analysis of the proposal**

##### ***II.1. General comments***

*Principle of necessity.* The EDPS is fully aware that the fight against terrorism and terrorism financing may require restrictions to the right to the protection of personal data as well as to banking secrecy provisions. This is already the case in a series of EU instruments<sup>1</sup> containing a number of measures aimed at combating the misuse of the financial system for the purpose of money laundering and terrorist financing. These instruments also contain specific provisions allowing exchange of information with third countries authorities as well as safeguards for the protection of personal data, in line with Directive 95/46/EC. Furthermore, the agreement on mutual legal assistance between the EU and the US explicitly allows the exchange between law enforcement authorities of information relating to bank accounts and financial transactions, and it provides conditions and limitations with regard to this exchange. In addition, instruments for the exchange of data between the US and Europol and Eurojust are already in place, ensuring at the same time exchange of information and protection of personal data.

[REDACTED]

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<sup>1</sup> In particular Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and Regulation (EC) 1781/2006 on information on the payer accompanying transfers of funds.