The European fight against terrorism financing: Professional fields and new governing practices

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Notes

1 The first English edition appeared in 1902.
2 Laplace’s firm belief in the power of science is illustrated by the anecdote in which Laplace is said to have responded to Napoleon’s question regarding the absence of a creator in his explanation of the system of the universe by saying he: ‘does not need this hypothesis’ (Rouse Ball, 1960, p. 343).
5 The cooperation between the FBI and First Data and Western Union is sometimes described as a ‘mini version of the TFTP’ (interview 13).
6 In Bigo’s work (for instance Bigo 2005, Bigo et al. 2006; 2007) and more generally that of the CHALLENGE research programme the importance of technology is certainly acknowledged and they have included a number of migration related databases on the European level in their field map of European Security Agencies (Bigo et al. 2007). However, I believe that our understanding of the political significance and the agency of financial data can be developed further by building on works from Science and Technology Studies.
9 Is available at http://www.g8.utoronto.ca/terrorism/terror98.htm
10 See www.swift.com
11 These numbers steadily increased during the first decade of the twenty-first century. In September 2011, 10,005 banks and financial institutions in 209 countries make use of the SWIFT network, sending a total of 3,314 billion messages during the first nine months of the year (SWIFT, 2011).
12 Although the SWIFT affair was also front-page news outside the US and the EU, for instance in Australia, Canada, and Switzerland, the specifics of these debates will not be taken into account here. It may be noted however that the privacy of financial data played an important role in all these countries.
13 It needs to be emphasized, however, that the notions of politicization and depoliticization, just like the notions of politics and the political, are not always defined in the same manner. In fact the notions are closely intertwined and the distinction between them is a subject of societal struggle and different academic interpretations. Moreover, in democracies political and public debates are rarely completely homogenous and dissent or holding marginal opinions is of course possible. Understanding a debate in terms of politicization or depoliticization therefore refers to the dominant discourse at a certain moment in time. Since the publication of the SWIFT affair, there have been attempts to repoliticize a depoliticized debate and attempts to depoliticize a politicized debate.
14 The First Amendment reads as follows: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” The Fourth Amendment reads as follows: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”
15 On 7 July 2006 the Congressional Research Service of the Library of Congress published a report for Congress addressing the issues that were raised in the American debate on the TFTP and on 11 July a hearing on the TFTP was organised by the House Financial Services Committee’s Oversight and Investigations Subcommittee. However, these events did not reopen the debate but confirmed the conclusions that the programme was legal.
16 This is the text of the official minutes of the European Parliament. The literal text as pronounced in the plenary session of the EP as translated by the translator of the European Parliament reads: “The situation now with the Americans is that of secret flights, the abduction of people accused of certain offences, the removal of people from European territory. . . And now we discover that our powerful friend and ally is rifling through our private bank accounts. What will happen next, I ask you? It is high time that the Parliament puts its foot down and brings this state of affairs to an end.”
The Group of Ten (G-10) consists of 11 industrial countries: Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom and the United States. The Bank of International Settlements (BIS), the European Commission, the IMF, and the OECD are official observers to the G-10.

The literal text as pronounced during the plenary session reads: ‘Citizens were never informed about the transfer of their financial records. I wonder whether Europe would be as tolerant had it been Russia or China collecting the data.’

The law in question was the Privacy law (loi de la Vie Privée) of 8 December 1992 regarding the protection of privacy with regard to automatic processing of personal data (DPL) and Directive 95/46/EG of the European Parliament and the Council dated 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (95/46/EG Directive). It is interesting to note here that in 2010 Guy Verhofstadt was a member of the European Parliament and an active opponent of the 2010 agreement.

The qualification used in Dutch is ‘ongeloofwaardig’.

For the significance of the word ‘vital’, see the discussion on ‘lifeblood’ in chapter 3.

The 25 members of the Executive Board hold functions at: JP Morgan Chase Bank (US), UBS AG (Switzerland), SECB Swiss Euro Clearing Bank GmbH (Germany), Euroclear SA/NV (Belgium), The Standard Bank of South Africa (South Africa), Fin-Force (Belgium), ING (the Netherlands), The Royal Bank of Scotland (UK), Deutsche Bank AG (Germany), Raiffeisen Zentralbank (Austria), NATIXIS (France), The Bank of New York (US), DnB NOR Bank ASA (Norway), The Bank of Tokyo-Mitsubishi UFJ Ltd. (Japan), Credit Suisse (Switzerland), BNP Paribas (France), CLS Services (Australia), SIA Ced Borsa SpA (Italy), The Bank of Nova Scotia (Canada), Banco Bilbao Vizcaya Argentina (Spain), HSBC Asia Pacific (Hong Kong), Nordea Bank AB (Sweden), Deutsche Bank (UK), Clearstream International (Luxembourg), and The Association of Banks in Singapore (Singapore). SWIFT Annual Report 2006, pp. 26-27.

This Oversight Group includes the G10 countries and the European Central Bank.

These include: the Belgian Privacy Commission, the European Data Protection Supervisor, the Article 29 Group, Canada, Switzerland, and Hong Kong. Under the current EU-US agreement also a permanent independent overseer appointed by the EU participates in the verification of the searches on the SWIFT data. According to the report of the first review of the agreement ‘all overseers, including the EU appointed one, had blocked searches to request additional information’ (European Union, 2011, p. 10)


The TIDE database is used to compile various different watch lists requiring various forms of action. The No Fly List contained 50,000 persons in 2008 and denies people air transport. The Selectee list contains names of people that are allowed to fly but require more careful searches at airports. The terrorist watch list is the most general and broadest list and contains anyone who is thought capable of harming the US. The US terrorist watch list is very controversial for several reasons, not the least for its inclusion of many false positives.


An updated version of this list is publicly available as part of the US Treasury’s FAQ on the TFTP. This list also mentions three more recent terrorist attacks ‘in which the TFTP provided valuable lead information’, the Nigerian Independence Day car bombings in Abuja, Nigeria in 2010, the Jakarta hotel attacks in 2009, and the hijacking and hostage operations by Al Shabaab, including the hijacking of the Belgian vessel MV Pompei in 2009.

As will be discussed, the Directive lists a number of financial and non-financial professions. The focus in this chapter will be on banks, since they are dealing with by far the most transactions and issue the most suspicious transaction reports.

For contestation over this claim, see chapter 3.

These sources do not always classify all EU member states and do not classify them in the same way. Masciandaro (2007), for instance, includes the Romanian model in the category of hybrid model, while the IMF (2004) qualifies the Romanian FIU as an administrative model. For the compilation of this table, the information of the IMF has been privileged.

Directive 2006/70/EC defines the criteria according to which these procedures should be applied. This Directive also provides for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

These are: Belgium, the Czech Republic, Greece, Finland, France, Ireland, Luxembourg, Malta, the Netherlands, Poland, Portugal, Spain, Sweden and Slovakia. La Semaine Juridique Notariale et Immobilière, n° 24, 13 Juin 2008, act. 521.

These include, for instance: reports from OECD, World Bank, Amnesty International, Transparency International, local NGOs and government reports (interview 14).

This number was communicated to the author in a private conversation with a representative of the FIU of Malta.


It might be noted here that the perpetrator of the 2011 attacks in Oslo, Anders Breivik, hired a farm as a cover to obtain large quantities of fertilizers.

Some other sources (House of Lords, 2009c) estimate the costs of the 2005 London attack higher, at around or below £ 8000.

The UK FIU speaks of Suspicious Activity Reports (SARs) instead of Suspicious Transaction Reports, but the meanings of these terms overlap.

It is telling to note that the number of countries making use of SWIFT’s services largely exceeds the number of UN members (212 vs. 193).

The leeway given to banks under the risk-based approach is illustrated in the US Senate’s report on the HSBC case. The report reveals that HSBC continued business relations with Al Rajhi Bank, despite several serious public allegations of the bank’s links to terrorism financing. However, HSBC did classify Al Rajhi Bank as a “Special Category of Client” (SCC), its highest risk designation. This designation was due to the bank’s location in Saudi Arabia, which HSBC classified as a high risk country and to the fact that the bank was owned in part by a Politically Exposed Person (PEP), Abdullah Abdul Al Rajhi, who was a major shareholder, a member of the bank’s board of directors, and a member of the Northern Borders Provincial Council in Saudi Arabia (US Senate, 2012, p. 204).

Some new examples of the added value of the TFTP in combating terrorism and its financing are, however, provided in the 2012 report on the second joint review of the implementation of the 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 the purposes of the Terrorist Finance Tracking Program (European Union, 2012).