

EU/USA Agreement: processing and transfer of Financial Messaging Data for purposes of the Terrorist Finance Tracking Program

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This Commission services presents a working document on the joint review report 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.

To recall, the Terrorist Finance Tracking Program (TFTP) Agreement entered into force in August 2010.

This working document focuses on the following element:

Review process: according to the Agreement, the review should have particular regard to:

- the number of financial payment messages accessed;
- the number of occasions on which leads have been shared with Member States, third countries, and Europol and Eurojust;
- the implementation and effectiveness of the Agreement, including the suitability of the mechanism for the transfer of information;
- cases in which information has been used for the prevention, investigation, detection, or prosecution of terrorism or its financing;
- compliance with the data protection obligations specified in the Agreement.

The Agreement also states that the review shall include a representative and random sample of searches in order to verify compliance with the safeguards and controls set out in this Agreement, as well as a proportionality assessment of the Provided Data, based on the value of such data for the investigation, prevention, detection, or prosecution of terrorism or its financing.

The report establishes all of the procedures applicable to the review process and the different stages of the process.

Recommendations: in general, the staff working document states that the Agreement and its safeguards and controls were properly implemented and that the findings of the second joint review have been followed up by the Treasury.

According to the results of the review, it was reiterated that the U.S. Government – including all departments and agencies – has not collected financial payment messages from the Designated Provider in the European Union, except as authorized by the TFTP Agreement.

The Commission acknowledges the benefits of the close cooperation between the U.S. authorities, Europol and EU counter-terrorism authorities in assessing and communicating on terrorism-related threats ensuring that the TFTP also addresses the threat from the EU perspective.

The Commission suggests that the Member States consider providing regular feedback on the TFTP data received from the Treasury which could further improve the quality and the quantity of information exchanged under the Agreement.

In addition, the Commission encourages Europol to continue its efforts to actively promote awareness of the TFTP and to support Member States.

The Commission will continue discussion on the interpretation of Article 15 concerning the right of access in light of the actual responses Treasury will provide in the future.

Lastly, the Commission recommends that the Treasury continues to assess the necessity of the extracted data in the sense of Article 6 (7) of the Agreement (in particular as regards the data retention periods).

The Commission states that a regular review of the Agreement is essential to ensure its proper implementation, to build up a relationship of trust between the contracting parties and to provide reassurances to interested stakeholders on the usefulness of the TFTP instrument.

The next joint review should take place in the second half of 2015.