

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 elements:

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

On the basis of the information and explanations received from the Treasury, Europol, the Designated Provider and the independent overseers, verification of relevant documents and of a representative sample of the searches run on the TFTP provided data, the Commission is satisfied that the Agreement and its safeguards and controls are properly implemented.

The review shows efforts by the Treasury to collect, analyse and make available to the review team and to the public examples demonstrating the important value of the TFTP for counterterrorism investigations worldwide, despite the limitations given by the highly sensitive nature of these investigations.

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. Europol is fully accomplishing its tasks and it is important that such cooperation continues to remain independent from the verification role of Europol.

The Commission suggests that the Member States consider providing regular feedback to Europol, for onward sharing with the Treasury as appropriate, on the added value of the TFTP leads received from the Treasury which could further improve the quality and the quantity of information exchanged.

Follow-up

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. It has been agreed between the Commission and the Treasury to carry out the next joint review at the beginning of 2021.