

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

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This 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 (TFTP) covers the period from 1 February 2011 until 30 September 2012.

Recommendations and conclusions: based on the review findings, the EU review team is satisfied that the recommendations presented in the report of March 2011 on the first Joint Review have, to a large extent, been followed up. Providing more verifiable insights into the actual added value of the TFTP, preferably by public information without endangering the effectiveness of this instrument and whilst respecting the need for confidentiality of the methods and procedures used, still remains a challenge. As already stated in the first report, transparency on the added value of the programme for the fight against terrorism would go a long way in convincing a wider audience of the real benefits of the TFTP and the Agreement and would raise the level of trust in the programme, and that such transparency should be sought wherever possible without endangering the effectiveness of the programme as such.

The EU review team is of the opinion that the review mechanism is a valuable tool for the assessment of the implementation of the Agreement and the safeguards included therein. In view of the longer period of application of the Agreement, this second review allowed a much deeper insight into the functioning of the TFTP than the first and confirmed the clear value added of this instrument in fighting against and preventing terrorism.

Overall the implementation of the agreement more than two years after its entry into force has reached a very satisfactory level with the EU increasingly profiting from it under the specific reciprocity arrangements.

To further enhance the quality of the implementation of the Agreement, the EU review team presents the following recommendations:

1. that the US Treasury continues to make requests (together with any supplementary documents) with detailed and regularly updated justification as currently provided, and that Europol continues to carry out its tasks pursuant to Article 4 following the high verification standards currently agreed upon;
2. that the overseers of the Designated Provider and the EU overseers continue to carry out their supervisory tasks in a complementary way, and that the EU deputy overseer quickly becomes fully operational and integrates into the team of overseers;
3. that the Treasury specifies more in detail to the Commission how the on-going evaluation process is carried out in practice, and that the practice of deletion of data in particular is monitored continuously;
4. that information on the Treasury website referring to the right of rectification of data explains what a rectification means in this context due to technical constraints, and that the Treasury continues to update the website regularly, where necessary, with the support of the Commission;
5. that Member States and, where relevant, Eurojust regard Europol as the EU's single reference point for Article 10 requests, and that, in all law enforcement cases in which requests are submitted directly to the Treasury, Member States inform Europol of such requests in a systematic and timely manner;
6. that any technical modalities and security arrangements agreed upon with the Treasury for the transfer of information are respected, which includes seeking prior consent from the data owner before disseminating such information, and that in the future, a consultation and coordination takes place between Europol's Joint Supervisory Body (notwithstanding its independent status), Europol and the Commission on the planning, timing and focus of possible inspections in order to avoid overlapping activities and misleading public statements;

According to the Agreement, the Commission and the Treasury shall prepare a joint report regarding the value of TFTP provided data no later than three years from the date of entry into force of the Agreement (1/8/2013). By that same date, the Commission will present a report of progress on the development of an equivalent EU system with regard to Article 11 of the Agreement, as invited by the Council.