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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**On the 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 purpose of the Terrorist Financing Tracking Program**

{SWD(2024) 252 final}

On 1 August 2010, 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') entered into force<sup>1</sup>.

## **Procedural aspects**

Article 13 of the Agreement provides for regular joint reviews of the safeguards, controls, and reciprocity provisions to be conducted by review teams from the European Union and the United States, including the European Commission, the U.S. Treasury Department (hereinafter "the Treasury"), and representatives of two data protection authorities from EU Member States, and may also include security and data protection experts and persons with judicial experience.

This report concerns the seventh joint review of the Agreement since it entered into force and covers a period between 1 December 2021 and 30 November 2023. The previous joint reviews of the Agreement were conducted in February 2011<sup>2</sup>, in October 2012<sup>3</sup>, in April 2014<sup>4</sup>, in March 2016<sup>5</sup>, in January 2019<sup>6</sup> and in March 2022<sup>7</sup>. On 27 November 2013, the Commission adopted the Communication on the Joint Report from the Commission and the Treasury regarding the value of TFTP Provided Data pursuant to Article 6 (6) of the Agreement<sup>8</sup>.

In line with Article 13 (3) of the Agreement, for the purposes of the review, the European Commission represented the European Union, and the Treasury represented the United States. The EU review team was headed by a senior Commission official and in total consisted of two members of Commission staff, as well as representatives from two EU national data protection authorities.

The seventh joint review was carried out in two main stages: on 27 February 2024 in The Hague at Europol's premises and on 19 and 20 March 2024 in Washington DC at the Treasury.

This report is based on the information contained in the written replies that the Treasury provided to the EU questionnaire sent prior to the review, information obtained from the discussions with Treasury personnel and members of the US review team, as well as information contained in other publicly available Treasury documents. In addition, the report considers information provided by Europol staff during the review. To complete the information available, the Commission also met with and received information from the Designated Provider financial payment messaging services and organised a meeting on 18 January 2024 to receive feedback from Member States on the reciprocity provisions of the Agreement.

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<sup>1</sup> OJ L 195/5 of 27.7. 2010.

<sup>2</sup> SEC(2011) 438 final.

<sup>3</sup> SWD(2012) 454 final.

<sup>4</sup> COM(2014) 513 final and SWD (2014) 264 final of 11.8.2014.

<sup>5</sup> COM(2017) 31 final and SWD (2017) 17 final of 19.1.2017.

<sup>6</sup> COM(2019) 342 final, and SWD (2019) 301 final of 22.7.2019.

<sup>7</sup> COM(2022) 585 final and SWD (2022) 357 final of 11.11.2022.

<sup>8</sup> COM(2013) 843 final of 27.11.2013.

## **New developments and main findings**

The designated provider of financial payment messaging services is since March 2023 in the process of upgrading a new messaging architecture (ISO 20022). The migration to a new standard, results in that the US requests to obtain data from the provider now require the production of two types of messages (MX messages (new) and the initial MT messages). As messages using the new standard are since March 2023 stored in the territory of the European Union, there has been a substantial increase in the geographical scope covered by Article 4 requests. This transition is estimated to take place over the course of two years until November 2025, during which time financial institutions will gradually change from the previous MT format to MX format.

Based on the information and explanations received from the Treasury, Europol, the Designated Provider and the independent overseers, verification of relevant documents and of a randomly selected sample of requests of production orders and searches run on the TFTP provided data, the Commission is overall satisfied that the Agreement and its safeguards and controls are properly implemented.

Europol is accomplishing its verification tasks in full compliance with Article 4 on the basis of detailed and regularly updated supporting documentation received from the Treasury. The delayed verification of the Article 4 requests that followed the Designated Provider's transition from MT to MX format messages, demonstrates that Europol makes all efforts to verify that these requests clearly substantiate the necessity of the data requested and that the safeguard set out in Article 4(4) works well.

The oversight mechanism is functioning smoothly and is effective in ensuring that the processing of data complies with the conditions laid down in Article 5 including that data has only been searched where there is pre-existing information or evidence which demonstrates a reason to believe that the subject of the search has a nexus to terrorism or its financing. All non-extracted data is deleted at the latest five years from receipt, in accordance with Article 6 (4) of the Agreement.

The TFTP remains a key instrument to provide timely, accurate and reliable information about activities associated with suspected acts of terrorist planning and financing. It helps to identify and track terrorists and their support networks worldwide. In some cases, the information provided under the Agreement has been instrumental in bringing forward specific investigations relating to terrorist attacks on EU soil.

The average number of leads per month decreased from 1 631 to 566 during the review period. This reduction of 33%, can partly be explained by the reduced number of completed, failed, foiled terrorist attacks in the EU (decreased by 19%) and arrests on suspicion of terrorism (decreased by 23%). The number of searches per month decreased from 828 searches to 721, or by 13% compared with the previous review period.

## **Recommendations and conclusions**

The Commission welcomes the report by the EU Article 13 Review Team that is included in Section 3 and 4 of the accompanying Staff Working Document and its recommendations. In terms of potential for further improvement, the Commission support these recommendations:

1. Continuing the joint efforts to demonstrate the value of the TFTP. The Commission encourages Europol to continue its efforts to demonstrate the value of the reciprocity provisions set out in the TFTP Agreement and actively promote awareness of the TFTP and to support Member States seeking its advice in devising targeted Article 10 requests.
2. Explaining the value of requested financial message types. The Commission recognises that the Treasury, in the annual evaluation of its Article 4 Requests, assesses the message types and geographic regions that are the most and least responsive to searches, but suggests that the outcome of such an assessment should be explained in more details in subsequent Article 4 requests, notably since the transition to a new message standard that started in March 2023 requires the production of two types of messages (MX messages (new) and the initial MT messages). Such more detailed explanations could better demonstrate that the Treasury's has narrowly tailored its request to minimise the amount of data requested from the designated provider.
3. Reviewing the necessity of retaining "extracted data". The Commission recognises the US efforts to minimise the amount of extracted data and the potential value of the newly introduced mechanism that should reduce the volume of extracted data by ensuring that the TFTP system does not retain a message unless an end user positively marks the individual messages as responsive to a search. The Commission further suggests that the Treasury continue its efforts to improve its mechanisms to review the necessity of retaining "extracted data" to ensure that this data is only retained for as long as necessary for the specific investigation or prosecution for which they are used. The Commission suggests that the Treasury establishes written procedures for the review of such data retention in time for the next review.
4. More feedback from EU Member States to the Treasury. The Commission requests Member States to increase their efforts to inform Europol as a Single Point of Contact (SPoC) when a case has been finally disposed of, for the subsequent provision of such information to the Treasury, which should in principle lead to the deletion of extracted data relating to that case, unless there are other investigations based on the extracted data. The Commission welcomes and support Europol's suggestion to develop a standard evaluation/reply form that will be sent together with the leads.
5. Europol's role and support to EU Member States – promotion and advice. Europol is encouraged to continue its efforts to actively promote awareness of the TFTP and to support Member States seeking its advice and experience in devising targeted Article 10 requests. The Commission invites the Treasury's to share its requirements for establishing a nexus to terrorism and its written guidelines to TFTP users/analysts with Europol to support Europol's outreach activities with Member States and to ensure that these have a better

understanding of what is required to demonstrate a reason to believe that the subject of the search has a nexus to terrorism or its financing.

6. Facilitating the processing of leads (digitalisation). Member States' authorities submitted that the leads that are disseminated as physical copies on paper by the Treasury could be more efficiently processed if they were provided digitally. However, it can be noted that the original leads that are extracted from the TFTP database, are exclusively printed on paper, and that converting these into a digital format would require an additional declassification process. The Commission invites the Treasury, and Europol, to consider possible ways to rationalising the rather lengthy declassification processes of converted digital leads to facilitate the processing of leads, in compatibility with the security arrangements of the TFTP.
7. Verification of data protection rights. The Commission notes that the procedures to process requests from persons to ensure that their data protection rights have been respected in compliance with the Agreement appear to function efficiently. The Commission also notes that the U.S. Privacy and Civil Liberties Oversight Board, in November 2020, stated in the context of an oversight review of the TFTP that the review indicates that the programme is thoughtfully designed, provides significant value for counter-terrorism, and appropriately protects individual privacy. The Commission welcomes the Treasury's consideration and work to address non-binding recommendations made by the U.S. Privacy and Civil Liberties Oversight Board and would welcome further updates on how they have been addressed. The Commission underlines the importance that the Privacy Officer of the U.S. Treasury Department, charged with the implementation of Articles 15 and 16 of the Agreement, continues its efforts to make right of access and redress more easily available to persons and that it also considers how procedures can be tested in the absence of specific requests.

The Commission welcomes the continued transparency of the United States' authorities in sharing information illustrating the value of the TFTP in international counter-terrorism efforts. The detailed information about how the TFTP Provided Data can and is being used and concrete cases thereof provided in the Joint Value Report and in the context of this review clearly explain the functioning and demonstrate the added value of the TFTP for security on both sides of the Atlantic as it remains an essential tool to support counter-terrorism analysts and investigations, for example in identifying previously unknown terrorist operatives and financial supporters.

In the period under review, the US authorities have extensively made use of the possibility under Article 9 of the Agreement to spontaneously provide information from the TFTP to EU authorities. In addition, Europol has continued to proactively initiate a series of requests under Article 10 of the Agreement in the period under review and supported investigations in partner countries with TFTP searches and leads. 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 value of the TFTP instrument. The Commission and the Treasury agreed to carry out the next joint review according to Article 13 of the Agreement in the beginning of 2026.

The functioning of the Agreement, the joint review process, its outcome and recommendations are described in detail in the Staff Working Document attached to this Report.