



Council of the
European Union

Brussels, 3 September 2014
(OR. en)

12719/14

JAI 642
USA 18
RELEX 697
DATAPROTECT 115

COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 12 August 2014

To: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

No. Cion doc.: COM(2014) 513 final

Subject: 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 purposes of the Terrorist
Finance Tracking Program

Delegations will find attached document COM(2014) 513 final.

Encl.: COM(2014) 513 final



EUROPEAN
COMMISSION

Brussels, 11.8.2014
COM(2014) 513 final

**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 purposes of the Terrorist Finance Tracking Program

{SWD(2014) 264 final}

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 purposes of the Terrorist Finance Tracking Program

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 on 1 August 2010¹.

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, 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.

The first joint review of the Agreement conducted in February 2011² covered the period of the first six months after the entry into force of the Agreement (1 August 2010 until 31 January 2011) and the second joint review conducted in October 2012³ covered the subsequent period of twenty months (1 February 2011 until 30 September 2012). On 27 November 2013 the Commission adopted the Communication on the Joint Report from the Commission and the U.S. Treasury Department regarding the value of TFTP Provided Data pursuant to Article 6 (6) of the Agreement⁴.

This third joint review covers a period of seventeen months (1 October 2012 until 28 February 2014). In line with Article 13 (3), for the purposes of the review, the European Union was represented by the European Commission, and the United States was represented by the U.S. Treasury Department. The EU review team was headed by a senior Commission official and in total consisted of three members of Commission staff and representatives of two data protection authorities, one of whom was also the team's judicial expert.

¹ OJ L 195/5 of 27.7. 2010

² SEC(2011) 438 final

³ SWD(2012) 454 final

⁴ COM (2013) 843 final of 27.11.2013

As to its schedule, the third joint review was carried out in two main steps: on 1 April 2014 in The Hague at Europol's premises and on 8 and 9 April 2014 in Washington at the U.S. Treasury Department (hereinafter “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 as well as information contained in other publicly available Treasury documents. In addition, information provided by Europol staff during the review was used and the inspection report of Europol's Joint Supervisory Body (JSB) from March 2013 was considered. To complete the information available to it, the Commission also met and received information from the Designated Provider.

Recommendations and conclusion

The TFTP remains an important 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.

The Commission welcomes the increased transparency of the U.S. authorities in sharing information illustrating the value of the TFTP for international counter-terrorism efforts. The detailed information about how the TFTP Provided Data can and is being used and various concrete cases thereof provided in the Joint Value Report and in the context of this review constitute a considerable step forward in further explaining the functioning and the added value of the TFTP.

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 and that the findings of the second joint review have been followed up by the Treasury.

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 oversight mechanism is functioning smoothly and is effective in ensuring that the processing of data complies with the conditions laid down in Article 5. All non-extracted data is deleted on a semi-annual basis in order to ensure that all non-extracted data is deleted at the latest five years from receipt. Treasury's regular evaluation of the extracted data includes an assessment of the data retention periods. The relevant information about the process of rectification of data has been included on the Treasury's website.

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 Articles 9 and 10. The Commission encourages Europol to continue its efforts to actively promote awareness of the TFTP and to support Member States seeking its advice and experience in devising Article 10 requests.

It is important that Europol continues fulfilling its verification role under Article 4 as thoroughly and independently as at present. 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. Finally 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 the context of the review the Treasury confirmed in writing the validity of the assurances given during the 2013 consultations. It stated that since the TFTP Agreement entered into force in August 2010, 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 Treasury also stated that, during that time, the U.S. Government has not served any subpoenas on the Designated Provider in the EU or on the Designated Provider in the United States requesting the production of data stored in the EU, except as authorized by Article 4 of the TFTP Agreement. The Treasury also confirmed that the United States has remained and intends to remain in full compliance with all of its commitments under the TFTP Agreement.

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 according to Article 13 of the Agreement in the second half of 2015.

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.