

EUROPOL JSB INSPECTION OF THE IMPLEMENTATION OF THE TFTP AGREEMENT¹

Report 15/28

In May 2015, the Europol Joint Supervisory Body (JSB) carried out the fourth inspection at Europol of the implementation of the Terrorist Finance Tracking Program (TFTP) Agreement. The TFTP Agreement gives Europol a specific role to verify whether requests from the US Treasury Department for data comply with the conditions set out in Article 4 of the TFTP Agreement. During the inspection, the JSB assessed all the Article 4 requests sent by the US Treasury Department to Europol since the last inspection took place (November 2012). In order to conduct a comparative analysis, some requests received and verified in different time frames after the entry into force of the TFTP Agreement were also checked.

The TFTP Agreement also provides for other forms of data exchange. Information can spontaneously be provided by the US Treasury Department (Article 9) or provided based on an EU request (Article 10). The data processing following these exchanges were also checked.

The JSB interviewed several staff members of Europol involved in the carrying out of Europol's tasks with regard to the TFTP agreement. Internal regulatory documents and the follow-up of the recommendations of the JSB Europol made in the previous inspections, were also subject of review by the JSB.

Europol was given the possibility to comment on the draft report.

This document reflects the assessment of the JSB and draws attention to the issues requiring further consideration.

Article 4 TFTP Agreement

Since the entry into force of the TFTP Agreement, the JSB has supervised Europol's implementation of its tasks as defined under Article 4 of the TFTP Agreement. In total four on-the-spot inspections were carried out and recommendations have been made. This supervision, combined with the continuous dialogue between the JSB and Europol, has played a key role in the improvement of the implementation of the agreement, in particularly with regard to the Article 4 request mechanism.

Given the framework of the TFTP, the JSB assesses the procedures introduced by Europol to deal with the Article 4 requests as sufficient. The progress seen in the 2012 inspection and especially the clear improvements in the content of the requests, relevancy, accuracy, accountability and readability has been maintained.

The recommendation made during the last inspection to adopt a retention policy for Article 4 requests and supplementary documentation has been taken over by Europol and such a policy is implemented.

¹ In June 2010, the European Union and the United States of America signed an agreement on the processing and transfer of financial messaging data held by SWIFT (Society for Worldwide Interbank Financial Telecommunication), the designated provider located in the EU to the US, for the purpose of the Terrorist Finance Tracking Program (TFTP)

The inspection made clear that the handling of Article 4 requests by Europol and the content of those requests is a continuation of the situation as checked by the JSB in the last inspection in November 2012. That means that what was stated then - Europol implements its task, under the terms of the current agreement, in line with the recommendations of the JSB Europol to the best of its abilities - is still valid.

Nevertheless, the JSB would like to highlight the importance of substantiating Article 4 requests, especially in situations when such a request is done in a different context than the usual requests. When the substantiation is not sufficient, Europol must ask for additional information.

Reiterating the necessity of the inclusion of sufficient information from the US Treasury Department allowing the proper verification of Europol, the JSB noted some room for improvement in the motivation of the relevancy of the data requested. Some old information that might not be relevant anymore for justifying the requests should be re-evaluated.

The present assessment of the JSB is focussed on how Europol fulfils its task under the TFTP Agreement. In this respect, the JSB likes to restate its assessment that due to the nature of the TFTP, the situation in terms of mass data transfer remains unchanged. The JSB restates that, in view of the nature of the TFTP and the scope of the agreement there is a massive, regular, data transfer from the EU to the US. There is a clear tension between the idea of limiting the amount of data to be transmitted by tailoring and narrowing the requests and the nature of the TFTP.

Articles 9 and 10 TFTP Agreement

The JSB checked all data processed as a result of the activities pursuant to Article 9 and 10 of the TFTP Agreement. The processing period covered by the inspection is 1st December 2012 - 6 May 2015. The choice for this period is linked to the date of the previous inspection in November 2012. The procedure of receiving information has not changed since November 2012: all exchange is done via the Europol Liaison Bureau in Washington.

According to Article 9 of the TFTP Agreement, the US Treasury Department shall spontaneously provide information to the European Union Member States, Europol and Eurojust relating to terrorism or its financing.

The JSB was informed about the increase in information received since December 2012: from no information in 2012 to 4 communications containing together 8 leads received and processed by Europol in 2013. This number further increased in 2014 amounting to 47 communications containing 904 leads. In 2015, at the time of the inspection, 37 communications containing in total 1202 leads were received. Each communication contains in addition to the string of transaction data very limited free-text information on targets.

Member States to whom the communications were addressed sometimes provide Europol with feedback.

According to Article 10, Europol, Eurojust and Member States may request a search for relevant information obtained through the TFTP. When Europol requests for information, it will inform the Member State(s) concerned when it receives an answer that is also of relevance of that State.

In December 2012, Europol only processed 2 requests based on Article 10 of the TFTP Agreement, This number increased in 2013: 51 requests were sent to the US Treasury Department. In reaction to

these requests, 29 positive and 18 negative replies were obtained. 4 requests were rejected by the US Treasury Department. In 2014, 65 requests and subsequent replies containing altogether 4414 leads were processed. Of 63 replies 43 contained some leads and 20 had a negative result. In 2015, at the time of the inspection by the JSB, 42 requests were sent by Europol and altogether 1796 leads were received back and processed by Europol. Information in the requests only relate to current cases; leads are related to individuals or to companies.

The data processed in accordance with the articles 9 and 10 of the TFTP Agreement were checked and assessed by the JSB.

Requests containing a high volume of leads were fully checked as well as an appropriate sample of records with a low number of leads. Furthermore, all requests rejected by the US Treasury Department as being not sufficiently substantiated were checked.

The JSB notes that due to the variations in which names may be composed (a combination of names used for the surname of a person), the result of a query in TFTP that is sent to Europol must be verified by Europol and the Member State concerned. Both Europol and the Member States - each within their competences - share a responsibility for the quality of the data processed in the fight against terrorism.

Brussels, 8 September 2015