

ROADMAP	
TITLE OF THE INITIATIVE	European Terrorist Financing Tracking Programme (European TFTP)
TYPE OF INITIATIVE	<input checked="" type="checkbox"/> CWP <input type="checkbox"/> Non-CWP <input type="checkbox"/> Implementing act/Delegated act
LEAD DG – RESPONSIBLE UNIT	DG HOME
EXPECTED DATE OF ADOPTION	Q3 2011
VERSION OF ROADMAP	No: 2 Last modification: 10/2010

This indicative roadmap is provided for information purposes only and is subject to change. It does not prejudge the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.

A. Context, problem definition	
(i) What is the political context of the initiative? (ii) How does it relate to past and possible future initiatives, and to other EU policies? (iii) What ex-post analysis of the existing policy has been carried out and what results are relevant for this initiative?	<p>(i) The political context of the initiative is the Agreement of 28 June 2010 between the European Union and the United States of America on the processing and transfer of financial messaging data for the purpose of the Terrorist Financing Tracking Programme (EU-US TFTP Agreement). The Council Decision on the conclusion of that Agreement specifies that the Commission must submit a "legal and technical framework for the extraction of data on EU territory" by 1 August 2011. This request is also supported by the European Parliament.</p> <p>(ii) The EU-US TFTP Agreement forms an important part of the relations between the EU and the US in the area of combating terrorism. Combating the financing of terrorism is also one of the priorities of the EU's Counter-Terrorism Strategy of 2005, in particular its "Pursue" strand.</p> <p>(iii) The TFTP arrangements applied before the formal EU-US agreement have been examined by an eminent EU person, the French counter-terrorism judge Jean-Louis Bruguière. He produced 2 reports, one in December 2008 and a second one in January 2010 concluding, inter alia, that TFTP has been instrumental in preventing terrorist attacks within the EU of the magnitude of the Madrid, London or Bali attacks.</p>
What are the main problems which this initiative will address?	<p>The main problems identified are the issues surrounding the usage of financial messaging data for the purpose of investigating terrorism cases, and in particular financing of terrorist activities. Under the EU-US TFTP Agreement, such financial messaging data is provided in bulk form to US authorities, who then proceed to extract from this data the relevant information and intelligence. There is a strong wish from both the Council and the European Parliament for this system to be replaced with one where the sending of bulk data can be replaced with more specific, targeted information. For that to be possible, a European system for collecting and analysing the financial messaging data will be required.</p>
Who will be affected by it?	<p>All citizens making use of banking services can conceivably be affected, since a European TFTP system would cover financial messaging data of a large portion of populations both within the European Union and abroad. Such data would be collected and analysed for relevant information by a European authority. The most likely candidate for doing this work will be Europol, the European Police Agency. The banking sector would be indirectly involved – the main private party affected would be the company currently used by all major banks to process such financial messaging data.</p>
(i) Is EU action justified on grounds of subsidiarity? (ii) Why can Member States not achieve the objectives of the proposed action sufficiently by themselves? (Necessity Test) (iii) Can the EU achieve the objectives better? (Test of EU Value Added)	<p>(i) - (iii) EU action is justified since this issue is directly related to the EU-US TFTP Agreement. Since the European TFTP programme will have a direct impact on how the obligations of this Agreement are implemented, it is not possible for the Member States to take this task on-board – this has to be tackled at the EU level. From a point of view of substance, a combination of national approaches would not work since the financial messaging data need to be analysed centrally for maximum benefit. For these reasons the objectives can really only be obtained following an EU approach.</p>

B. Objectives of the initiative

What are the main policy objectives?

The main policy objectives are twofold – to provide for a novel approach to combat terrorism and its financing through centralised collection and analysis of financial messaging data, and to create the possibility to provide more targeted data to US authorities under the EU-US TFTP Agreement.

Do the objectives imply developing EU policy in new areas?

The area of combating terrorism and its financing as such is not new, but the approach proposed is. The issue is of strategic importance for EU-US relations, given the high-level interest in this topic from the side of the US authorities as well as from the side of the Council and the European Parliament.

C. Options

- (i) What are the policy options being considered?
- (ii) What legislative or 'soft law' instruments could be considered?
- (iii) How do the options respect the proportionality principle?

(i) At this stage the policy options have not been defined in detail but, given the clear request for a legislative proposal contained in Art. 2 of the Council Decision on the conclusion of the agreement, "doing nothing" is not an option anymore (although it will still be considered in the IA). What is likely to be required in any case is a legal obligation on the private company currently responsible for handling the financial messaging data to provide such data to an EU authority, a legal framework providing adequate data protection provisions for handling the data by that authority, and a clear legal framework describing for what purposes the data can be used, how long it can be stored and with whom it can be shared. Confidentiality and security requirements will need to be taken into consideration as well. The consequences of each option for the EU-US TFTP Agreement will also need to be assessed carefully.

(ii) The action proposed will require cooperation with a number of different Commission Departments, in particular DG JUST, DG MARKT, DG INFSO, OLAF and the Legal Service and the General Secretariat.

(iii) At this stage it is too early to go into detail on this point.

D. Initial assessment of impacts

What are the benefits and costs of each of the policy options?

To be assessed in the impact assessment.

Could any or all of the options have significant impacts on (i) simplification, (ii) administrative burden and (iii) on relations with other countries, (iv) implementation arrangements? And (v) could any be difficult to transpose for certain Member States?

(i) At this stage it is too early to assess the significant impacts. What can be seen in any case is that the most significant impacts will centre around fundamental rights (esp. privacy and data protection). There will be no major economic or environmental impacts.

(ii) There will be no significant impacts on simplification or on the administrative burden – however the options could well have a significant impact on relations with the US.

(i) Will an IA be carried out for this initiative and/or possible follow-up initiatives? (ii) When will the IA work start? (iii) When will you set up the IA Steering Group and how often will it meet? (iv) What DGs will be invited?

(i) An impact assessment is planned.

(ii) The Impact Assessment Steering Group will be set up at the start of the IA work, in September.

(iv) DG's to be invited are DG JUST, DG MARKT, DG INFSO, OLAF, the General Secretariat and the Legal Service.

(i) Is any of options likely to have impacts on the EU budget above €5m?

(ii) If so, will this IA serve also as an ex-ante evaluation, as required by the Financial regulation? If not, provide information about the timing of the ex-ante evaluation.

(i) The consequences for the EU budget will depend on which authority is chosen for the role of data collection and analysis. Investment will be required in the automated tools necessary for the analysis of the data. It will depend to what extent existing tools can be used and whether this will entail significant costs – this will have to be part of the impact assessment study.

E. Evidence base, planning of further work and consultation

- (i) What information and data are already available? Will existing impact assessment and evaluation work be used?
- (ii) What further information needs to be gathered, how will this be done (*e.g. internally or by an external contractor*), and by when?
- (iii) What is the timing for the procurement process & the contract for any external contracts that you are planning (*e.g. for analytical studies, information gathering, etc.*)?
- (iv) Is any particular communication or information activity foreseen? If so, what, and by when?

(i) There is information available on how the TFTP system works in the US, and on how effective this system has been to combat terrorism. This has been investigated and confirmed by an independent expert assigned by the Commission – his reports will feed into the impact assessment work.

(ii) Further information will need to be gathered from the US authorities, the company currently responsible for processing financial messaging data, Europol and possibly national authorities which have relevant experience. Information will also need to be gathered on the costs associated with setting up the EU TFTP programme, both in terms of investment and sustainability. At the moment it is foreseen to use an external consultant to assist with the gathering of this information.

(iii) Since the proposal will need to be ready by July 2011, the IA report will need to be submitted to an IAB meeting in March. The external consultant can start work half November.

(iv) Given the very wide interest in this topic, there will need to be dedicated communication and information activities both during the preparation of the proposal and at the time of its adoption.

Which stakeholders & experts have been or will be consulted, how, and at what stage?

Consultations will be necessary on aspects related to the possible effectiveness of the programme to combat terrorism, which will require consultation with national expert on combating terrorism and its financing. Expertise will also be required on data protection aspects, and therefore data protection experts will be consulted as well. The company currently responsible for processing financial messaging data will need to be closely involved, as well as the EU authority which will be responsible for the collection and analysis of the data.