



Implementation of the TFTP Agreement: assessment of the follow-up of the JSB recommendations

Ref. 13-01

In November 2012 an inspection team mandated by the Europol Joint Supervisory Body (JSB) carried out the third inspection at Europol of the implementation of the Terrorist Finance Tracking Program (TFTP) Agreement. During the inspection, five members of the team have assessed all the Article 4 requests sent by the US Department of the Treasury to Europol since the last inspection took place, as well as a sample of the requests sent in the previous years for comparative reasons. The team also conducted interviews with several staff members of Europol involved in the carrying out of Europol's tasks with regard to the TFTP Agreement.

In their plenary meeting of December 2012 the members of the JSB were informed of the findings and conclusions of the inspection team. Subsequently, Europol was given the opportunity to comment on the draft report.

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

Progress seen

Since the entry into force of the TFTP Agreement, the JSB has supervised Europol's implementation of its task under the agreement. Three on-the-spot inspections were carried out and a number of recommendations were made. This supervision, combined with regular meetings, workshops and continuous dialogue between the JSB and Europol, has played a key role in the improvement of the implementation of the agreement, in particular with regard to the Article 4 request mechanism.

The JSB welcomes the progress made after the first two inspections, which clearly demonstrates the importance and effectiveness of on-the-spot supervision by data protection supervisors. Europol now implements its task, under the terms of the current agreement, in line with the JSB's recommendations to the best of its abilities.

In this respect, it is also acknowledged that the US Department of the Treasury has substantially improved its Article 4 request. The JSB noted clear improvements in content, relevancy, accuracy, accountability and readability.

As the TFTP is implemented since August 2010, the JSB recommends that Europol develops a retention policy for the Article 4 requests and supplementary documentation.

The JSB will continue to supervise Europol's implementation of its task under the agreement. Furthermore, the JSB repeats and stresses the importance of key points made in its previous public statement.¹

Issues requiring further consideration

Due to the nature of the TFTP, the situation in terms of mass data transfer is unchanged. For the avoidance of doubt, the JSB repeats 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.

These are political issues and it is up to the legislators to balance the transfer of massive data sets – mostly of non-suspects- with proportionality.

Brussels, 18 March 2013

¹ “Europol JSB inspects for a second year the implementation of the TFTP Agreement” Public statement 14 March 2012