



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 15 September 2011

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NOTE

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| from: | Presidency |
| to: | Council |

No. Cion prop.: 12957/11 GENVAL 81 JAI 522 ECOFIN 523 DATAPROTECT 75
ENFOPOL 245

Subject: Communication from the Commission to the European Parliament and the Council - A European terrorist finance tracking system: available options (COM (2011)429)
- Orientation ministerial debate on the TFTS

I. Background to the Commission Communication

On 13 July 2011, the European Commission issued a Communication on the options available as regards the setting up of a Terrorist Finance Tracking System (TFTS) in the European Union. The preparations were preceded by consultations with Member States and a study carried out by an external contractor.

The Commission Communication responds to a call made in the Decision of 13 July 2010 on concluding the TFTP Agreement, in which the Council, at the request of the European Parliament, instructed the Commission to study a "legal and technical framework for extraction of data on EU territory". The Parliament requested such study because it had serious qualms about the bulk transfer of personal data to a third country. It is essential to understand that the Parliament's objections were aimed both at the transfer to a third country and the storage of bulk data of personal data of innocent individuals.

The stated principal objectives of the proposed system by the Commission are:

- 1) ensuring an effective instrument to prevent and to fight the financing of terrorism, and
- 2) limiting personal data flow to third countries.

II. Way forward

At the CATS meeting of 5-6 September 2011, an orientation debate was held on the aforementioned Communication. Member States in general welcomed the Communication and the possibility to contribute to the work of the Commission on the legislative proposal in this respect.

The initial observations of the majority of delegations indicate that there is a preliminary but general positive attitude towards the TFTS but also expressed the necessity to work over the legislative proposal with this regard.

However, there has been a general consensus expressed that further in depth analysis is still required and therefore an impact assessment needs to be conducted by the Commission. This should provide Member States with a comprehensive picture of the practical, financial and legal aspects of a possible future TFTS and its added value.

The issue of the costs of the system was also raised. A vast number of delegations indicated the need to have a detailed estimation of the costs in the impact assessment, including in the case of a possible extension of the scope of the TFTS to serious threats to the internal security other than terrorism.

Some Member States expressed their concerns not to hinder the good cooperation under the 2010 EU-US TFTP Agreement, especially given the positive assessment of the cooperation with the US TFTP, which was indicated both by Europol and the EU Counter Terrorism Coordinator (CTC)¹, in particular taking into account the experiences connected with the attacks in Norway in July this year.

Therefore, the Presidency deems it necessary that the Council indicate, at a political level, the direction that the Commission is expected to take regarding a possible legislative proposal on a European TFTS.

As was expressly indicated during the September CATS meeting, the Presidency intends to have a discussion at Ministerial level, in order to support the Commission in its work regarding a possible future TFTS legislative proposal. Simultaneously, the Presidency considers the need to further explore this issue with economic and financial experts.

The Council is requested to reflect on the following questions:

- 1. Do the Ministers think there is an operational need to establish a Terrorist Financing Tracking System and are they convinced of its potential added value, comparing it with the already existing mechanism?*
- 2. If yes, what are the key outstanding issues the Commission should address in its further preparatory works?*
- 3. For a possible future European Terrorist Financing Tracking System, what do Ministers expect regarding the impact on and the interaction on the cooperation conducted with the US TFTP under the 2010 EU-US TFTP Agreement?*

¹ In its periodical report (EU Counter-Terrorism Strategy - Discussion paper. 10622/11 of 27 May 2011) CTC also indicated the importance of the initiative connected with a European TFTS.