EXPLANATORY MEMORANDUM ON EUROPEAN UNION DOCUMENT

Joint Review Report 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

Submitted by HM Treasury on 06 February 2017

SUBJECT MATTER

The report from the EU Commission outlines the outcomes of a joint review of the EU-US Terrorist Finance Tracking Program (TFTP). This is a regular review of the TFTP, and contains no new proposals from the Commission and is for information only.

The TFTP is an EU-US agreement that enables law enforcement and Financial Intelligence Units to request data searches, via Europol, on financial transactions using the SWIFT network. The purpose is to help with terrorist financing investigations. TFTP was originally set up by the US Treasury Department shortly after the terrorist attacks of 11 September 2001. The searches were based on data that was stored on two identical servers, located in Europe and the US. In order to access SWIFT data held in the EU, a data-sharing agreement between the EU and US was approved and came into force on 1 August 2010.

The Agreement provides, under Article 13, for a periodic review of the implementation of the Agreement. The report document is the fourth joint review (covering a period between 1 March 2014 and 31 December 2015) between the EU and the US, using information provided by the US Treasury, Europol and SWIFT.

The aim of the Commission’s review is to assess how the TFTP is working, by looking at the number of requests that are being processed, how effective the agreement is, looking at cases when the TFTP has been used for the prevention, detection, prosecution, investigation of terrorist financing investigations, and ensuring continued compliance with the relevant data sharing obligations.

The review teams were made up of officials from the EU Commission, US Treasury, as well as representatives from two data protection authorities from EU Member States (Belgium and Hungary) and representatives from other US agencies.

The Commission report is positive about the Agreement. It states that based on information and explanations received from US Treasury, Europol, independent overseers, as well as 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. The Commission confirms that the findings of the previous third joint review have been followed up by the US Treasury and in particular, the Commission reports that it is satisfied with the outcome of the discussions on the interpretation of Article 15 of the Agreement concerning individuals’ right of access confirmation that their data has been processed under the Agreement. The Commission also confirms its satisfaction as to the manner in which the US Treasury continues to assess the necessity of retaining extracted data obtained in the course of the Agreement.

The report confirms the US Treasury’s continued assurance that since the TFTP Agreement entered into force in August 2010, the US Government – including all departments and agencies – has not collected financial payment messages from the Designated Provider (SWIFT) in the European Union, except as authorized by the TFTP Agreement. As part of the review US Treasury have also confirmed that, during that time, the US Government has not served any subpoenas on SWIFT in the EU or in the United States requesting the production of data stored in the EU, except as authorized by the Agreement. The US 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.

The report goes on to say that the outcome of the review is that the EU Commission believes that TFTP remains an important tool in combatting terrorism, and underlines the value in close US-EU cooperation in assessing and communicating on terrorism-related threats.

The rest of the report is also positive about the usefulness of the Agreement and outlines how data was obtained and securely handled. It also contains a detailed annex from US Treasury on how exactly, and when, TFTP is used, and on what cases it has proved useful. The Commission confirms that in the period under review (1 March 2014 and 31 December 2015), the EU has been able to benefit more from the TFTP than during the periods considered in previous reviews. It confirms that in some cases, the information provided under the Agreement has been instrumental in bringing forward specific investigations relating to terrorist attacks on EU soil. The Commission also confirms that the US authorities have extensively made use of the possibility under Article 9 of the Agreement to spontaneously provide information from the TFTP to EU authorities.

The Commission’s report recommends that Member States provide feedback on the TFTP data received in order to improve the quality of information and to make it even more useful. The Commission also encourages Europol to continue raising awareness of TFTP in Member States, to ensure they make full use of the tools available to them when conducting terrorist financing investigations. The Report confirms that the next review will be at the beginning of 2018.

**SCRUTINITY HISTORY**

The Government has previously submitted EMs on files 17702/09, 11048/10, 11172/10, 11173/10 relating to the draft, conclusion and signing of the Agreement; 8142/11, 17971/12 and 17064/13 on reports of the first, second and third joint reviews of TFTP; and 12957/11 and 17063/13 on options for an EU Terrorist Finance Tracking System.
MINISTERIAL RESPONSIBILITY

The Chancellor of the Exchequer has responsibility for United Kingdom policy on European Union monetary and economic issues. The Home Secretary is responsible for security and terrorism. The Foreign and Commonwealth Secretary and the Secretary of State for Exiting the European Union are responsible for overall United Kingdom policy towards the European Union.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

The EU-US Agreement on the Terrorist Finance Tracking Program is a reserved matter under the UK's devolution settlements and no devolved administration interests arise. The devolved administrations have therefore not been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

i. Legal basis

Article 13 of the Agreement provides that following its introduction and an initial review after (at the latest) 6 months, the Parties shall jointly review the safeguards, controls, and reciprocity provisions set out in the Agreement on a regular basis, with additional reviews scheduled as necessary. This review was the fourth joint review since the Agreement came into force and covered a period of 22 months between 1 March 2014 and 31 December 2015.

In accordance with Article 13(3) of the Agreement, the review was conducted by review teams from the European Union and the United States, including the European Commission, the US Treasury Department, and representatives of two data protection authorities from EU Member States (on this occasion Belgium and Hungary).

In accordance with Article 13(2) of the Agreement, the review had particular regard to (a) the number of financial payment messages accessed, (b) the number of occasions on which leads have been shared with Member States, third countries, and Europol and Eurojust, (c) the implementation and effectiveness of this Agreement, including the suitability of the mechanism for the transfer of information, (d) cases in which the information has been used for the prevention, investigation, detection, or prosecution of terrorism or its financing, and (e) compliance with data protection obligations specified in this Agreement.

ii. European Parliament Procedure

As required by Article 13(2) of the Agreement, following the review, the European Commission presented its report to the European Parliament and the Council. The Commission presented its report on 20 January 2017.

iii. Voting procedure

None. As noted above the report has been presented by the Commission to the European Parliament and Council and is as a result of a regular review of the TFTP. It contains no new proposals from the Commission and is for information only.
iv. Impact on United Kingdom Law

None. See narrative in iii above.

v. Application to Gibraltar

None.

vi. Fundamental rights analysis

None. See narrative in iii above.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

None.

SUBSIDIARITY

The Government is of the view that the report accords with the principles of subsidiarity.

POLICY IMPLICATIONS

The Government fully supports the EU-US TFTP Agreement. It is a vital tool in the global fight against terrorism and its financing. Furthermore, the Agreement provides for robust safeguards for the protection of personal data as part of the oversight of the Programme.

The Government welcomes this report on the fourth joint review of the implementation of the EU-US TFTP Agreement, which, in line with previous reviews, finds that the TFTP program is functioning well, and its safeguards and controls are properly respected and implemented. We are grateful to the US for its continued cooperation in providing good evidence of the use and importance of the TFTP for the EU and globally.

The Government supports the recommendations made by the review and will work with the Commission to provide feedback on the UK’s use of TFTP under the Agreement.

The Government is analysing the implications of the UK’s exit of the European Union on the TFTP.

CONSULTATION

None.

IMPACT ASSESSMENT

Not applicable.
FINANCIAL IMPLICATIONS

None.

TIMETABLE


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