

**REPORT ON THE INSPECTION OF EUROPOL'S IMPLEMENTATION OF
THE TFTP AGREEMENT, CONDUCTED IN NOVEMBER 2010 BY
THE EUROPOL JOINT SUPERVISORY BODY**

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I. INTRODUCTION

On 28 June 2010, the European Union and the United States of America signed an agreement on the processing and transfer of Financial Messaging Data from the European Union to the United States. This agreement foresees the transmission of financial payment messages referring to financial transfers for use in the Terrorist Finance Tracking Program (TFTP). The financial payment messages are held by the Society for Worldwide Interbank Financial Telecommunication (SWIFT).

The TFTP Agreement gives Europol a specific role to check whether requests from the US Treasury Department for SWIFT data comply with the terms of the TFTP Agreement. The requests and the necessary conditions are defined in Article 4 of the TFTP Agreement.

Pursuant to Article 34(1) of the Europol Council Decision, the Europol Joint Supervisory Body (JSB) has the task of reviewing the activities of Europol in order to ensure that the rights of the individual are not violated by the storage, processing and utilisation of data held by Europol. To that end, at its meeting of 11 October 2010, the JSB mandated an inspection group to carry out an inspection.

The scope of the inspection was to check Europol's implementation of the TFTP Agreement, including all related items.

In accordance with the protocol between the JSB and Europol on the special arrangements with Europol concerning visits and inspections by the JSB, the inspection group fixed the dates for the inspection visit to Europol and informed Europol in advance. The inspection took place on 11 November 2010. This was the twelfth inspection of Europol by the JSB.

III. GENERAL CONCLUSIONS

This report presents the results of the Joint Supervisory Body's twelfth inspection of Europol. This inspection covered the processing of data related to the requests made by the US Treasury Department under the TFTP Agreement, and included an assessment of Europol's verification of these requests.

The JSB is aware that Europol had little time to prepare for its new tasks under the TFTP Agreement. Additionally, at the time of the inspection Europol had been carrying out its TFTP-related tasks for less than six months. Procedures are still being finalised and, in some cases, reviewed.

At the time of the inspection, Europol had received four requests for SWIFT data. Those four requests are almost identical in nature and request - in abstract terms - broad types of data, also involving EU Member States' data. Due to their abstract nature, proper verification of whether the requests are in line with the conditions of Article 4(2) of the TFTP Agreement - on the basis of the available documentation - is impossible. The JSB considers it likely that the information in the requests could be more specific.

Information provided orally - to certain Europol staff by the US Treasury Department, with the stipulation that no written notes are made - has had an impact upon each of Europol's decisions; however, the JSB does not know the content of that information. Therefore, where the requests lack the necessary written information to allow proper verification of compliance with Article 4(2) of the TFTP Agreement, it is impossible to check whether this deficiency is rectified by the orally provided information.

The significant involvement of oral information renders proper internal and external audit, by Europol's Data Protection Office and the JSB respectively, impossible.

The JSB has formulated some recommendations to improve this situation, and stresses that compliance with these recommendations is vital if Europol is to properly fulfil its role in accordance with the TFTP Agreement.