

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

Report No. JSB/Ins. 11-07
Brussels, 1 March 2011

TABLE OF CONTENTS

I. INTRODUCTION.....3
II. GENERAL COMMENTS AND METHODOLOGY4
III. GENERAL CONCLUSIONS.....5
IV. RECOMMENDATIONS.....6
V. ANNEX

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.

II. GENERAL COMMENTS AND METHODOLOGY

A. GENERAL COMMENTS

In accordance with the mandate conferred upon it by the JSB, an inspection team visited Europol in The Hague on 11 November 2010.

The inspection team was composed of seven data protection experts including members and alternate members of the JSB and the secretariat.

The inspection team was welcomed by Mr T. Oerting, Assistant Director of Europol.

The inspection team was rendered every service it needed in preparing and conducting the inspection.

B. METHODOLOGY

1. In accordance with the special arrangement with Europol concerning visits and setting out the guidelines for Europol visits and inspections by the JSB, advance notice of the inspection was given.

2. The JSB seeks to ensure that Europol processes personal data in accordance with relevant data protection principles: namely, the relevant provisions of the Europol Council Decision together with the principles of the Council of Europe Convention (ETS No 108) of 28 January 1981 and of Recommendation No R (87) 15 of the Committee of Ministers of the Council of Europe. The JSB also monitors compliance with the internal procedures for handling operational information. The JSB also checked whether the processing is in accordance with the provisions of the TFTP Agreement, and the document containing the technical modalities for Europol's verification process with regard to the TFTP Agreement.

In particular, the JSB aims to ensure that the following requirements are met:

Data should be adequate, relevant, not excessive, correct and accurate in relation to the purposes for which they are collected and subsequently processed.

3. The inspection team developed provisional checklists setting out the checks to be carried out during the *in situ* inspection. These checks covered personal data, audit logs, source documents and procedures and information systems available in Europol.

The inspection team was divided into three sub-teams, each covering one of the following objects of inspection:

- * Europol's tasks under the TFTP Agreement, and how these are undertaken.
- * Audit logs and security.
- * The content of requests made under the TFTP Agreement.

The findings of the inspection and the JSB evaluation are described in the Annex to this report. Europol was given the opportunity to comment on a draft version of the report. These comments are also included in the Annex. Since Europol classified all documents related to the processing of TFTP requests as EU Secret, the annex is classified as EU Secret-Secret UE.

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.

IV. RECOMMENDATIONS

Based on its evaluation of the findings of the inspection, the JSB recommends that Europol should:

1. Inform the JSB on the results of the review of policies and procedures related to Europol's tasks under the TFTP Agreement.
2. Ensure the ability of the Europol Data Protection Officer to carry out his role, particularly in view of the short period of time in which Europol is expected to react to requests received under Article 4 of the TFTP Agreement.
3. Ensure hard-deletion of Article 4 data which were inputted into some of Europol's information processing systems (iBase and SIENA) before the upgrading of the security level.
4. Contact the US Treasury Department to ensure that requests made under Article 4 of the TFTP Agreement comply with the criteria laid down in Article 4 (2) of the Agreement. Requests must contain more detailed information, specific to each request, in order to allow Europol to verify whether the requests comply with the requirements of Article 4 (2) of the Agreement. Taking into account the fact that - under the current TFTP Agreement - Europol receives copies of the requests sent to SWIFT by the US Treasury Department, certain additional information may need to be provided by the US Treasury Department to Europol in supplementary documents.
5. Ensure that verifications are made based on the written requests - along with any supplemental documents - in order to allow proper internal and external supervision, by Europol's Data Protection Office and the JSB respectively.