



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2012)

Opinion

Title **DG HOME – Impact Assessment on a Communication from the European Commission to the European Parliament and the Council on a European Terrorist Financing Tracking System (TFTS)**

(draft version of 19 September 2012)*

(A) Context

When approving the conclusion of the Agreement between the EU and the US on the processing and transfer of Financial Messaging Data from the EU to the US for the purposes of the Terrorist Financing Tracking Program (TFTP), the Council called upon the Commission to submit a legal and technical framework for extraction of data on EU territory. Likewise the Parliament asked at various occasions to envisage a durable, legally sound European solution regarding the extraction of requested data on European soil. As a first stage of its response to these calls and the contents of Article 11 of the EU-US TFTP Agreement, the Commission published a Communication to the Parliament and the Council “A European terrorist financing tracking programme: Available options” on 13 July 2011. Based on the subsequent discussions and an external study the Commission has prepared this Impact Assessment.

(B) Overall assessment

The report requires significant further work on several important aspects. Firstly, it should clarify, on the basis of evaluation results, to what extent the current situation and the functioning of the US EU TFTP Agreement leads to concrete problems that require EU action. Secondly, it should develop a full and up to date baseline scenario by showing how effectively Member States are likely to use the US-EU TFTP over the coming years to fight terrorism activities in the EU. Thirdly, the report should better design and present options, for instance by immediately discarding unrealistic alternatives. Fourthly, policy options should be assessed in a consistent and transparent way, underpinned by robust evidence and compared against a set of criteria clearly linked to the objectives. Finally, the report should better reflect the views of stakeholders on all key elements, particularly when their views are divergent or conflicting.

Given the nature of these recommendations, the Board asks DG HOME to submit a revised version of the report, on which it will issue a new opinion.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

(C) Main recommendations for improvements

(1) Improve the problem definition. The report should clarify, on the basis of evaluation results, to what extent the current situation and the functioning of the US EU TFTP Agreement leads to concrete problems that require EU action. It should better present the policy context by setting out the effects on society of terrorist activity in the EU, clarifying up-front the "purpose" of an EU TFTS (i.e. terrorism only or broader to include organised serious crime), and by providing a comprehensive account of the adequacy of "traditional instruments" currently used for the purpose of tracking financial trails of terrorist groups and the institutions involved. The report should clearly set out underpinning evidence of the impact and effectiveness of the TFTP in tracking financial transactions of terrorists by using data and conclusions from existing joint reviews (or by explaining why this information is not available). In addition to figures and references regarding the impact of acts of terrorism in the EU, the report should also explain the effects these acts have on the vital functions of society. In addition to figures and references regarding the impact of acts of terrorism in the EU, the report should also explain the effects these acts have on the vital functions of society. The report should clarify why the results of the forthcoming joint review of the implementation of the US EU TFTP Agreement could not have been awaited.

(2) Strengthen the baseline scenario. The report should develop a full and up to date baseline scenario by demonstrating how effectively Member States are likely to use the US-EU TFTP over the coming years to combat terrorism (including information provided in the comparison section). The most up to date figures available on usage by Member States should be provided (or explained if this information is not publicly available). The report should provide clear and robust evidence underpinning the conclusion that under the baseline scenario the current level of personal data protection would be maintained.

(3) Improve the design of the options. The report should discard unrealistic options up-front (i.e. fully centralised and fully decentralised EU TFTS). The options in relation to "scope" and "purpose" of an EU TFTS represent only implementing choices should therefore be presented as delivery sub-options. Given that three of the options considered (A2.Status Quo plus; B4.Data Retention regime; B5.Data retention and extraction system) were not included in the July 2011 Communication the report should explain their inclusion. More generally, the presentation of options should be improved to enable readers to distinguish them more clearly, for instance by using a tabular representation setting out which authority level (EU, national or both) would be responsible for the core functions of the system for the different options.

(4) Better assess and compare impacts of options. The report should provide a robust and balanced assessment of all relevant costs and benefits of the various options underpinned by robust evidence. Where this does not exist or is confidential, this should be explained. The report should explain the source, underlying assumptions and methodology used for the cost calculations. It should fully assess the impact of each option on Fundamental Rights and data protection. Finally the report should better compare options by using the standard criteria of effectiveness, efficiency and coherence, and by presenting the outcomes in tabular form.

(5) Better present stakeholders' views. The report should provide stakeholders' views throughout the report in relation to all key elements of the report (particularly the problem definition, policy options and impacts) particularly when their views are divergent or conflicting. In these instances, the report should explain how their concerns

have been taken into account. The report should also justify why an open public consultation was not carried out.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report

(D) Procedure and presentation

Annexes to the report should include summaries of stakeholders' views as expressed in the targeted consultation events and questionnaires to the extent that this information is not confidential.

(E) IAB scrutiny process

Reference number	2011/HOME/003
External expertise used	No
Date of IAB meeting	17 October 2012