



UNDER SECRETARY

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

November 8, 2013

Commissioner Cecilia Malmstrom
European Commission
B-1049 Brussels
Belgium

Dear Mme. Malmstrom:

Thank you for the opportunity to meet with you and your staff in Brussels recently to discuss the media allegations regarding the Terrorist Finance Tracking Program (TFTP) Agreement. I greatly appreciate the opportunity to consult closely and intensively with you about the Program and to address your concerns with respect to this Agreement.

As we discussed, Article 1 of the Agreement declares that the "purpose of this Agreement" is to create a mechanism to "provide[] to the U.S. Treasury" "financial payment messages... stored in the territory of the European Union by" the Society for Worldwide Interbank Financial Telecommunication (SWIFT). And as I emphasized to you during our meeting in Brussels, since the Agreement entered into force, the U.S. Government has not collected financial payment messages from SWIFT in the EU, except as authorized by the Agreement. I can also confirm that, during that time, the U.S. Government has not served any subpoenas on SWIFT in the EU or on SWIFT in the United States requesting the production of data stored in the EU, except as authorized by Article 4 of the Agreement. Any media report alleging the contrary is not correct. As I have made clear to you and other EU officials, the United States has remained and will remain in full compliance with all of its commitments under the Agreement.

As a part, and on top of what is required by, the Agreement, we have multiple layers of government and independent control and auditing in place to protect privacy and to ensure that all prescribed procedures are strictly followed. These instruments have not revealed any shortcomings in the implementation of the Agreement. We are open to share results of these verifications with you, as we have during the first two joint reviews of the implementation of the Agreement. I can reassure you that all safeguards with respect to the processing of provided data are strictly respected.

The Agreement does not curtail information sharing between the United States and the EU and its Member States with respect to law enforcement investigations of, for example, serious and organized crime. This is in line with the preamble to the Agreement, which affirms that it "is without prejudice to other law enforcement or information sharing agreements or arrangements between the Parties or between the United States and Member States." In this context, we discussed during our meeting specific circumstances and examples in which the U.S.

Government could obtain from parties other than SWIFT certain SWIFT-formatted messages – potentially involving EU persons – that fall outside of the Agreement. For instance, the U.S. Treasury Department could obtain SWIFT-formatted messages when a U.S. or foreign bank attempts to send a financial transaction to a U.S. bank or through the United States that violates our WMD proliferation sanctions involving Iran or North Korea. In this case, the bank that received a financial transaction is obligated to freeze the transaction and report it to Treasury's Office of Foreign Assets Control (OFAC). Typically, OFAC then would follow up and request that the U.S. bank provide it with the specific information about the transaction, which generally would include the SWIFT-formatted message. Cases concerning large-scale violations of sanctions laws usually involve direct cooperation between OFAC and EU and/or other foreign regulators of the banks under investigation. Authorities in each jurisdiction ensure that the documents turned over to OFAC by the foreign banks comply with all applicable data protection rules.

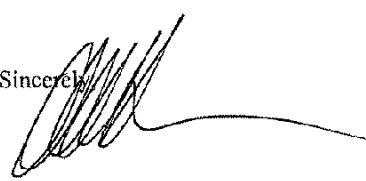
Furthermore, in 2010 the United States and the EU entered into a mutual legal assistance agreement with bilateral implementing instruments, which modernized the long-standing mutual legal assistance treaties (MLATs) between the United States and most Member States and which established new treaty relationships between the United States and the others. Each year, the United States makes a few dozen requests for bank records located in EU Member States through the MLAT process, a process that Article 20 of the Agreement explicitly contemplated would continue.

I appreciate the good partnership that we have established with the EU in implementing the Agreement. We regularly see the important benefits to our collective security that the TFTP provides, and we believe these benefits will be clearly demonstrated to the public in our upcoming U.S.-EU joint report on the value of the TFTP.

I am happy to continue to consult with you regarding our implementation of the Agreement, including as part of the upcoming third joint review of the Agreement that we have agreed to schedule for next spring. As we have discussed, the U.S. Treasury Department will continue to work with you to explore ways of providing all possible transparency on this important security program.

I look forward to continuing our partnership in the months and years to come.

Sincerely,



David S. Cohen