EUROPEAN COMMISSION
DIRECTORATE-GENERAL HOME AFFAIRS

Directors-General

Brussels, 08 AVR. 2013
DG HOME/SM

Dear Mr Kohnstamm, Lieber Herr Kohnstamm,

I wish to thank you for the very useful meeting we held on 25 March in DG HOME, which offered an excellent opportunity to discuss in depth and to clarify matters in relation to a number of issues pertaining to the EU-US TFTP Agreement.

We both agreed that our joint efforts to ensure a proper implementation of the TFTP Agreement have been key to success so far. I am deeply convinced that our constructive cooperation has allowed a rigorous and thorough implementation of the guarantees and safeguards under the Agreement. The contribution of the Data Protection Authorities in this process is absolutely essential and the positive role of the JSB has been explicitly recognized in the 2nd Review Report.

We also concurred on the fact that the "double hatting" of some of the Joint Review Team members – i.e. the fact that they are members of both the Review Team and of the JSB- might raise questions as to the credibility of both processes. This is because the Joint Review mechanism under Art. 13 of the Agreement reviews the overall functioning of the Agreement, while the JSB focusses on the role of Europol under Art. 4. This may place the members in question in the position to have to make judgements on actions they did themselves in another capacity.

As we recalled, the 2nd Review Report recognized this situation and underlined the need to clarify the relation between both processes: "*It is recommended that in the future, a consultation and coordination takes place between JSB (notwithstanding its independent status), Europol and the Commission on the planning, timing and focus of possible inspections aside the Article 13 review proper in order to avoid overlapping activities and misleading public statements (2.2).*" The Joint Review Team members all approved the text of the report and subscribed to this recommendation.

In his statement in the LIBE Committee on 18 December 2012, the Commission's representative meant to refer to this situation and to the need to address the Joint Review Team's recommendations. As I mentioned during our encounter, I reiterate that it has never been the intention of the Commission to question the personal integrity of the Review Team members.

We also agreed that the Review Team should informally meet in the coming weeks with a view to conduct an assessment of the 2nd review and its follow-up and draw lessons as appropriate ("post mortem" analysis).

We should also carefully prepare for the next review. It was the Commission's initiative to rely on Article 29 Committee to suggest names for the review team members from the Data Protection Authorities. We concurred on the usefulness of this practice, but we also underlined the need to avoid similar difficulties, for the next review. I personally draw your attention on the opportunity to think about the feasibility of establishing a light code of conduct inspired by these existing in all institutions and bodies of the EU.

I would be grateful to receive your suggestions on how best to achieve this, and I stand ready, together with my services, to meet again to further discuss future cooperation.

I copy this letter to Mr Lopez Aguilar, chairman of the LIBE committee, to whom you addressed a letter on 21 December 2012 on the same subject.

Sincerely,

Stefano Manservisi