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United States Department of State

Washington, D.C. 20520

November 23, 2009

RELEASE IN PART
1.4(B), B1, 1.4(D), B6

SENSITIVE BUT UNCLASSIFIED

ACTION MEMO FOR THE SECRETARY

FROM: EUR – Nancy McEldowney, Acting

SUBJECT: Call to German FM Westerwelle on the Terrorism Finance Tracking Program

Recommendation:

That you call German Foreign Minister Westerwelle to press for an extension of the Terrorism Finance Tracking Program (TFTP).

Approve _____ Disapprove _____

Background:

Negotiations to continue data transfer under the TFTP are at a critical stage. The program will end January 31, 2010, unless we can reach agreement with the EU to continue it. We must conclude an agreement before the December 1 entry into force of the Lisbon Treaty. The TFTP is a difficult issue for Merkel's new coalition: data privacy protection is part of the new government's coalition agreement and a signature issue for the Free Democratic Party (FDP). German Justice Minister Leutheusser-Schnarrenberger (FDP), a committed advocate of data protection (she resigned from the Kohl government over its data protection policies), is pushing changes to the agreement that are unacceptable to the United States and some EU members. As FDP chairman, Foreign Minister Westerwelle can override Leutheusser-Schnarrenberger on this issue.

On November 30, EU justice ministers will consider the matter. NSA Jones, AG Holder, and Secretary Geithner have all weighed in, and you mentioned the issue to Westerwelle last week on the margins of Karzai's inauguration.



B1
1.4(B)
1.4(D)

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Classified by Director A/GIS/IPS, DoS on 04/28/2017 ~ Class: CONFIDENTIAL ~ Reason: 1.4(B), 1.4(D) ~ Declassify on: 04/27/2027

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B1
1.4(B)
1.4(D)

The EU's review of the program, published in February 2009, confirmed that the program's strict data protections were in line with European and American privacy laws. Leutheusser-Schnarrenberger seeks changes that would go well beyond existing protections and would violate U.S. and European prohibitions on releasing law enforcement sensitive information to private persons who may be the subject of investigation. Most fundamentally, she seeks establishment of a broad right to correct or delete data, including through judicial redress, which we find unacceptable.

Austria, France, Greece, Finland, and the Czech Republic have expressed similar concerns about data privacy, but resolution of Germany's concerns are likely to resolve theirs as well. Additionally, the Dutch and Belgians, who will have the largest roles to play under the agreement, continue to discuss the specific legal mechanism to transmit the data to Treasury.

Attachment:

Call Sheet for FM Westerwelle

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Approved: EUR: Nancy McEldowney

Drafted: EUR/ERA - Jenna Purl, ext. 7-1605, cell

B6

Cleared: EUR/FO: Stu Jones ok
EUR/FO: Rob Silberstein ok
EUR/FO: Vincent O'Brien ok
EUR/ERA: Bill Lucas ok
EUR/WE: Stuart Dwyer ok
EUR/CE: Chris Hodges ok
L/LEI: Ken Propp ok
E: John Duncan ok
S/CT: Marc Norman ok
P: Tamir Waser ok
S/P: Eric Gaudiosi ok
D(S): Amy Scanlon ok (will contact S staff directly if
D(S) has any changes)