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**NOTE**

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From: Presidency  
To: Working Party on JHA Information Exchange (IXIM)  
Subject: US Enhanced Border Security Partnership – Way Forward

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**I. CURRENT SITUATION**

So far the coordination within the Working Party on JHA Information Exchange (IXIM WP) on the US Enhanced Border Security Partnership (EBSP) has consisted of a tour de table where on one side all Member States have had the opportunity to give a state of play of their recent bilateral contacts with the US and where, on the other side, the Commission regularly provides an update on their technical meetings with the US.

During these exchanges of information, it emerged that there is consensus among the Member States that there is a need for this coordination within the IXIM WP. However, there is no consensus on how to proceed with this file. As there is at least a practical link between engaging with the EBSP and membership of the Visa Waiver Program (VWP), in so far that the US confirmed at several occasions that not taking part in the EBSP could have an influence on the inclusion in the VWP from 2027 onwards, there is no clear understanding whether negotiating on the EBSP is a Union or a Member States' competence. It also became clear that the Member States are at different stages regarding the EBSP: several Member States have started bilateral negotiations, some are already well advanced in their negotiations while others have yet to engage in bilateral talks.

As the amount of (legal and technical) preparation needed to meet the 2027 deadline makes the need for clarity and stronger coordination more pressing, the Presidency wishes to try to provide more clarity on the content of the EBSP and propose a way forward.

## **II. GET MORE CLARITY ON THE CONTENT OF THE EBSP**

The lack of clarity on what exactly the US wants and the extent to which EBSP is linked to the VWP, makes it difficult to determine whether or not the Commission should ask for a mandate to negotiate on behalf of the Union or if it is up to the Member States to have bilateral negotiations. The Member States should at least get more clarity on:

- which databases the US wants access to;
- in what way they want access, for the initial as well as for the follow up information;
- for which purposes the information will be used.

The US extended an invitation, proposing to host an informal meeting with the Member States and the EU Institutions where they will go into detail on what the EBSP entails. During this gathering, they aim to address all remaining questions Member States might have. It is an opportunity for the Member States to receive identical information simultaneously from the US.

More information about this meeting can be found below. We would like to use the IXIM meeting of 17 January 2024 to prepare this information session at the US embassy.

## **III. TRANSPARENCY AND OPENNESS FROM THE MEMBER STATES**

We will continue to use the IXIM meetings to facilitate an exchange of information regarding the state of play of the bilateral contacts the Member States have with the US. We expect the Member States to be open and transparent about this.

Additionally, we would be interested to hear from Members States, who are well advanced in the negotiations, about the steps taken to ensure compliance with existing EU legislation, in particular the General Data Protection Regulation and the Law Enforcement Directive.

#### **IV. THE WAY FORWARD**

- Common vision

Based on the information provided by the US, the Member States and the Commission, the IXIM WP will seek to develop a common vision and determine the appropriate course of action.

The Presidency's aim is to have a discussion on this during the IXIM meeting of 23 February 2024.

- Analysis and guidance

A first and necessary step is to have a thorough legal analysis based on the available information. Member States need to receive clarity on the extent to which they have the authority to conclude bilateral EBSP agreements, taking into account the data and objectives formulated by the United States, as well as on the limits in terms of competence and data protection within which this should be done.

On the base of this legal analysis, decisions on further steps can be taken. There is a sense of urgency since some Member States are well advanced in the negotiations.

#### **V. INFORMAL MEETING ORGANISED BY THE UNITED STATES**

The US has offered to organise an informal information meeting on the EBSP. We hope to announce a date soon.

The Member States are invited to ask all relevant questions regarding EBSP. In order to get the most out of this meeting, the Presidency requests the delegations to submit their questions ahead of the information meeting with the US.

Drawing on the questions formulated by the delegations, the Presidency will prepare a document intended for advance distribution to the US so that they can properly prepare the meeting and can guarantee the presence of the competent experts.

**Delegations are kindly asked to provide answers to the following questions, orally during the meeting or in writing ([ixim.be2024@ibz.be](mailto:ixim.be2024@ibz.be)).**

- Do you agree with the proposed way forward ? Do you see any other elements that should be considered?
  - Are you planning to attend the information meeting that the US Embassy is willing to organise, most likely in early February? Do you agree to submit your questions for the US by 31 January 2024 in writing ([ixim.be2024@ibz.be](mailto:ixim.be2024@ibz.be)), so that the Presidency can pass them on to the US experts in advance?
  - Have you had any recent contacts with the US? If so, which lessons learned should we take into account when preparing the information meeting with the US and deciding on how to take this matter forward?
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