



## Analysis

### EU-USA Justice and Home Affairs cooperation: an honest and equal relationship?

***“reciprocity rarely applies, i.e. the EU almost never gets access to any US held database”***

***“Umbrella Agreement” on data protection: chances of changes in US law to give equal rights to EU citizens “quite uncertain” nor can it “endanger.. [existing] memorandum of understanding and other forms of cooperation” with EU Member States***

***Visas: “The U.S is worried by the EU rule on reciprocity”***

***“In the absence of EU-PNR” the USA gathers personal data from “passenger info units of the Member States”***  
(Council of the European Union)

**Tony Bunyan**  
(July 2015)

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In June 2015 the Council of the European Union and the USA adopted a “Renewed EU-US Statement Enhancing transatlantic cooperation in the area of Justice, Freedom and Security” at the EU-US JHA Ministerial meeting in Riga on 2-3 June 2015 under the Latvian Council Presidency. [1] The Agreement will run for five years and follows on from the “Washington Statement” adopted in 2009. [2]

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<sup>1</sup> EU-USA Statement, Riga, 2015:

<http://www.statewatch.org/news/2015/jun/eu-council-eu-usa-statement-9637-15.pdf>

Draft: <http://www.statewatch.org/news/2015/may/eu-council-usa-jha-coop-8674-15.pdf>

<sup>2</sup> The Washington Statement:

<http://www.statewatch.org/news/2015/may/eu-usa-washington-statement-15184-09.pdf>

## Background

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Formal EU-USA cooperation on justice and home affairs issues began in 1995. The USA side met with EU leaders in Madrid and signed the New Transatlantic Agenda (NTA) and the Joint EU-US Action Plan on 3 December 1995.[3] Details of the meetings of the two groups set up to put into effect the NTA - the Senior Level Group and the EU-US Task Force – are summarised here together with the battle to get access to the Agendas. [4] Then, as now, every attempt is made to conceal any embarrassing differences between the two sides - the history of EU-US justice and home affairs from 1995-2010 is set out in “*The Shape of Things to Come*” (Chapter 8, p47-55) [5]

After 11 September 2001 EU-US cooperation moved to an entirely different level following the “Bush Letter to the EU” [6] The underlying assumption, as spelt out in the 2009 Statement and often repeated, is that:

*“The European Union (EU) and the United States of America (U.S.) share common values of democracy, rule of law and respect for human rights and fundamental freedoms.”*

This begs the questions: which “common values” and are they shared? There is no doubt that for the most part governments and officials believe this is true. And there is little doubt too that this is the view of the multinationals, the law enforcement, security and intelligence agencies and the military. Equally, there are many people in Europe and the USA who do believe we share these “common values”, but not the policies and practices of our governments. [7]

## The 2009 Washington Statement”

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Much of the Statement has subsequently been agreed and quite a lot of the conclusions have been acted on. A number of issues are however still relevant today or remain to be resolved.

First, it is not often understood that prior to 2009 many bilateral agreements between the USA and the law enforcement and intelligence agencies of EU Member States had been put in place and they are ongoing.

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<sup>3</sup> <http://www.statewatch.org/news/2008/aug/eu-usa-nta-1995.pdf>

In the same month G8 (founded in 1975) expanded its remit from economic issues to terrorism, organised crime and drugs at a meeting on 12 December in Ottawa, Canada: At this meeting the UK's position was expressed as being concerned: “*not just about those engaged in terrorist activities but about other political activists who promoted unconstitutional change or destroyed the good relations enjoyed by the UK with other governments*”.

<sup>4</sup> <http://www.statewatch.org/news/2002/jan/03Ausveto.htm> This information was compiled after a battle to get access to the Agendas: US government vetoes Statewatch request for access to EU-US agendas: <http://www.statewatch.org/news/2002/jan/03usveto.htm>

<sup>5</sup> <http://www.statewatch.org/analyses/eu-future-group-the-shape-of-things-to-come.pdf>  
by Tony Bunyan. See Chapter 8, pp47-55

<sup>6</sup> <http://www.statewatch.org/news/2001/nov/06Ausalet.htm>

<sup>7</sup> See earlier Statewatch assessment of EU-USA JHA meetings: EU/US security “channel” - a one-way street?: <http://database.statewatch.org/article.asp?aid=28301>

*“We take note that transatlantic cooperation between the U.S. and EU and EU’s Member States takes place in many ways, **formal and informal, and on a daily basis**, including through ongoing operational cooperation.” [emphasis added]*

A number of the mutual assistance agreements which are in place, including those with Germany and the UK. [8] The only record so far of the extent of EU Member State cooperation with US agencies was set out in a document produced in 2012. [9]

Second, there is visas-free travel and border controls:

*“We acknowledge the social and economic benefits to EU and U.S. citizens from visa-free travel in a secure environment between our two continents. We will work together to complete visa-free travel between the US and the EU as soon as possible and increase security for travellers.” [10]*

and:

*“We look forward to close cooperation and the exchange of best practices, as we develop and implement technical border entry and exit systems.” [11]*

Third, another ongoing issue: counter-terrorism:

*“The prevention of violent radicalisation and recruitment is critical to enhancing citizens’ safety from the threat of terrorism. The misuse of the Internet for disseminating violent and radicalizing messages is a worrisome phenomenon that we need to consider within the context of legal restraints and operational needs.” [12]*

Fourth, the exchange of personal data:

*“The fight against transnational crime and terrorism often requires the sharing of personal data for law enforcement and public security purposes, **which***

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<sup>8</sup> Member States’ mutual legal assistance agreements with the USA: <http://www.statewatch.org/news/2015/jun/eu-usa-mlas.htm> and see Footnote 9

<sup>9</sup> Answers to: Questionnaire in preparation for the workshop on the application of the mutual legal assistance (MLA) and extradition agreements between the European Union and the United States of America (Eurojust, 25-26 October 2012): <http://www.statewatch.org/news/2015/jul/eu-council-eu-usa-mla-requests-14253-rev2-12.pdf> and Handbook on the practical application of the EU-U.S. Mutual Legal Assistance and Extradition Agreements 2011): <http://www.statewatch.org/news/2015/jul/eu-council-eu-usa-mla-handbook-8024-11.pdf> and see: UK House of Lords Selection Committee report (2003): <http://www.statewatch.org/news/2015/jul/eu-hol-sel-comm-2002-3-no-153.pdf>. Background: EU-USA agreement on mutual legal assistance and extradition: <http://www.statewatch.org/news/2003/jun/useu09153.pdf> and Implementation of the MLA/Extradition Agreements with the US – next steps: <http://www.statewatch.org/news/2011/aug/eu-council-eu-usa-mla-agreement-13341-11.pdf> and: <http://database.statewatch.org/article.asp?aid=30471>

<sup>10</sup> The Washington Statement: <http://www.statewatch.org/news/2015/may/eu-usa-washington-statement-15184-09.pdf>, p3

<sup>11</sup> The Washington Statement: <http://www.statewatch.org/news/2015/may/eu-usa-washington-statement-15184-09.pdf>, p3

<sup>12</sup> The Washington Statement: <http://www.statewatch.org/news/2015/may/eu-usa-washington-statement-15184-09.pdf>, p4

***compels us to protect the human rights, fundamental freedoms and civil liberties in all fields of transatlantic cooperation.***” [13] [emphasis added]

The last commitment looks rather hollow, to say the least, in the light of the Snowden revelations from June 2013.[14]

The EU and USA also state that:

*“the negotiation of a binding international EU-U.S. agreement should serve as a solid basis for our law enforcement authorities for even further enhanced cooperation, while ensuring the availability of full protection for our citizens.”*  
[15]

This 2009 objective to create a EU-USA “Umbrella” Agreement is still pending. When negotiations started the Commission’s Negotiating Mandate was made public by Statewatch. This brought a strong reaction from the European Commission which became very angry and threatened to fine the Netherlands government unless the Dutch Senate removed the documents from its website.[16] Later, the European Parliament declared that the new Regulation on Data Protection should be in place before the “Umbrella” Agreement” is considered.

### **Riga, June 2015: The Renewed Statement [17]**

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Five years on from the Washington Agreement many of the same issues re-occur.

First, to:

*“Conclude the review of the Safe Harbor Framework and negotiations of the “Umbrella” Agreement concerning law enforcement transfers of personal information between the European Union and the United States, in order to ensure effective protection of such information when transferred across the Atlantic”*

There are three problems still blocking the “Umbrella” Agreement:

a) The Council of the European Union and the European Parliament still have to adopt the new EU Regulation on Data Protection. The Council of the European Union and the European Parliament started, secret, trilogue discussions in July and will seek to agree a “compromise” text by Christmas.

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<sup>13</sup> The Washington Statement:  
<http://www.statewatch.org/news/2015/may/eu-usa-washington-statement-15184-09.pdf>, p5

<sup>14</sup> See: EU-UK-GCHQ-USA-NSA: Data surveillance (June 2013 - ongoing)  
<http://www.statewatch.org/eu-usa-data-surveillance.htm>

<sup>15</sup> The Washington Statement:  
<http://www.statewatch.org/news/2015/may/eu-usa-washington-statement-15184-09.pdf>, p6

<sup>16</sup> See: Statewatch, the European Commission and the Dutch Senate:  
<http://www.statewatch.org/analyses/no-239-statewatch-com-dutch-senate.pdf>

<sup>17</sup> Draft Riga Statement:  
<http://www.statewatch.org/news/2015/may/eu-council-usa-jha-coop-8674-15.pdf>

b) the USA has to meet the promise of Attorney-General Holder in June 2014 to amend the 1974 US Privacy Act [18] to give EU citizens equal rights to US citizens (this is said to mean judicial review and a right of redress).[19] However, as we shall see below this is not certain to be forthcoming.

Moreover, the US Congress has now adopted the US Freedom Act which while intended to limit the surveillance of US citizens leaves in place the surveillance of “foreigners”. [20] As *The Intercept* observed:

*“It won’t in any way limit the agency’s mass surveillance of non-American communications.”* [21]

c) the draft text of the Agreement has yet to be presented to and agreed by the European Parliament and may well throw up some unforeseen issues.

The second key issue for EU-USA relations seems to be alluding to the crisis in the Mediterranean with a particular focus on the current EU initiative to increase the number of deportations:

*“Promote dialogue on voluntary and **forced return and readmission**, in accordance with the international protection standards including cooperation with third countries.”* [emphasis added]

The third issue is visas and pre-clearance: [22]

*“continue tripartite meetings with the aim of achieving full visa reciprocity as soon as possible in a secure environment”*

and to reflect on: *“the feasibility of the U.S. preclearance in the EU Member States”*.

Fourth is a new and contentious proposal from the US side:

*“Explore the possibilities for enhancing reciprocal law enforcement authorities’ access to the criminal records systems of their partners”* [23]

This is presumably a reference for giving US authorities/agencies access to national criminal records via ECRIS (European Criminal Record System) accessible to US law enforcement and intelligence agencies.

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<sup>18</sup> The Holder statement: June 2014:

<http://www.statewatch.org/news/2014/dec/eu-us-dp-agreement-holder-statement.pdf>

NB: The Privacy Act 1974 only covers federal agencies and “Exemptions for “law enforcement purposes” are scattered throughout the Privacy Act” see: EPIC: <https://epic.org/privacy/1974act/>

<sup>19</sup> US: Judicial Redress Bill:

<http://www.statewatch.org/news/2015/jul/usa-judicial-redress-act-of-2015-congress.pdf>

<sup>20</sup> US Freedom Act: <http://www.statewatch.org/news/2015/apr/usa-freedom-act-2015.pdf>

<sup>21</sup> The Intercept: <https://firstlook.org/theintercept/2015/06/02/one-small-step-toward-post-snowden-surveillance-reform-one-giant-step-congress/>

<sup>22</sup> Riga Statement, p5

<sup>23</sup> Riga Statement, p7: ECRIS only holds criminal records of EU nationals but not of third country nationals (TCNs) and stateless people.

## Update on JHA transatlantic cooperation 2009-2014

### – The “Background” Document

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As often is the case with Council draft “Conclusions” and “Statements” there are often much more illuminating document behind formal policy statements. This is such an instance where a “Working Document” was circulated to EU national delegations two months before the “Draft Statement” discussed above.

But in this case there are two versions of the same document. There is a “PUBLIC” version (6489-15) [24] and a “LIMITE” version dated 4 March 2015. [25] The PUBLIC version was made “Partially accessible to the public on 11 May 2015. “Partially accessible” means it has been censored and a section or text blanked out. The LIMITE version means that the complete text is not released to the public.[26]

#### - What does the PUBLIC version of the Working Document tell us and what has been censored?

The EU-US “Statements” are general, aspirational, policy documents whereas the “Working Document” gives more detail on what has actually happened over the previous five years. What does it say?

##### i) Cybercrime:

*“EU and the U.S. cooperation between the cybercrime unit at Europol and its counterparts in the U.S. (Secret Service, FBI and ICE) was and still is successful. Since 2014 the Europol EC3 entre hosts a permanent U.S. cyber liaison officer.”*

In the interests of “reciprocity” it might be expected that Europol would have liaison officers based in the US Secret Service, FBI and ICE and also in the case below. [27]

##### ii) Foreign terrorist fighters: The PUBLIC version says:

*U.S. have three agencies represented in Europol (ICE, secret service and customs & border protection) to exchange data with their EU counterparts [deleted Footnote]”*

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<sup>24</sup> Working document: “PUBLIC” version:of the:document

<http://www.statewatch.org/news/2015/may/eu-council-eu-usa-updating-transatlantic-cooperation-pa-6489-15.pdf>

<sup>25</sup> Background document: LIMITE version of the document:

<http://www.statewatch.org/news/2015/may/eu-council-eu-usa-updating-transatlantic-cooperation-6489-15.pdf>

<sup>26</sup> The term “LIMITE” is applied for documents which are circulated to Member State governments. They are **not** classified documents. The Council has tried to suggest that LIMITE documents are “sensitive non-classified documents”. Many such documents find their way into the public domain.

<sup>27</sup> On the other hand: EU-US International cooperation “*in the Western Balkans went beyond the level of only information exchange, the EU and the U.S. adopted an approach of advanced planning. The U.S. gave technical assistance to the (EU requested) reforms for the Western Balkan countries*”

This is the first rephrasing and deletion.

The LIMITE version reads as follows:

*“The U.S. have three agencies represented in Europol (ICE, secret service and customs & border protection) to exchange data with their EU counterparts, **but, they have no access (yet) to Europol’s Focal Point Travellers.** [1]”* [Bold text has been deleted]

And Footnote 1 which is deleted, states damningly:

*“ **In general, the reciprocity rarely applies, i.e. the EU almost never gets access to any US held database.** One might discuss internally how to better approach this.”* [emphasis added]

iii) **EU-USA PNR Agreement:** The Council of the European Union and the US side are publicly pushing for the EU PNR scheme to be agreed and launched. However:

*“**In the absence of an EU PNR, the U.S. cooperated with national passenger info units of the Member States.**”* [emphasis added]

In other words where a formal EU-wide agreement is not in place US agencies simply gather personal data under bilateral agreements from individual EU Member States.

iv) **“Migratory pressures”:**

*“a platform was established to exchange information and best practices in relation to a very wide series of subjects, in line with the EU Global Approach to Migration to Migration and Mobility and its pillars (legal migration, irregular migration, migration and development, international protection). In this framework, the two Parties exchanged information on migration pressure, regional protection, resettlement, the fight against criminal networks who traffic people and the particular protection needed by minors.”*

See details of US involvement through the EU-US Cooperation Platform on Migration and Refugee issues (launched in 2010). [28]

v) **The Visa Waiver Programme**

The Visa Waiver Programme allows nationals of most EU Member States to enter the USA without a visa.

This paragraph has been changed. The 3<sup>rd</sup> and 4<sup>th</sup> sentences have been deleted in the PUBLIC version. The LIMITE version reads as follows:

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<sup>28</sup> <http://www.statewatch.org/news/2015/jun/eu-council-hlwg-gamm-13605-14.pdf> pp20-21

*“In the last years, the EU systematically requested from the U.S. reciprocity regarding the Visa Waiver Program for all its members. However, currently five EU members still lack visa-free access (Bulgaria, Croatia, Cyprus, Poland, Romania). **Technical consultations have taken place but the political mood in Congress makes the widening of the Visa Waiver Program less likely. The U.S. is worried by the EU rule on reciprocity.**”*

[Bold text deleted]

Reciprocity is an ongoing issue, which the European Commission is looking into. EU nationals entering the USA under ESTA (Electronic System for Travel Authorisation) have to make an application and are

*“required to go through an electronic check and to pay an administrative fee, the so-called ESTA system. The Commission is waiting for the publication of the ESTA rules so as to evaluate whether it can be considered as a visa.”*

In addition, visa-free EU nationals have to **submit to having their fingerprints taken as a condition of entry**. “Reciprocity” would suggest that US travellers will have to do the same under the proposed EU Entry-Exit System (EES).

Indeed the EES is directed at visa “overstayers” and includes those who are nationals of third states exempt from the visa requirement to visit on the “white list” which includes the USA, Canada and Australia who stay beyond the permitted visitor time limit (sometimes for months and years).[29]

#### **vi. The “Umbrella Agreement”**

The third substantial deletion is likely to create concern in the European Parliament and outside regarding the planned EU-USA “Umbrella” Agreement on the exchange of personal data.

Discussions at the EU-US Justice and Home Affairs Ministerial Meeting of 12-13 November 2014 in Washington set out the key points. [30]

The EU side recalled the “need to rebuild trust with the United States” on data exchange and that successfully completing the Umbrella Agreement and improving that on Safe Harbour would “significantly contribute to this objective”. [31]

To suggest that the “Umbrella” Agreement will meet the concerns of critics emanating from the Snowden revelations is at best naive and at worst a PR exercise. The revelations concerned the activities of the NSA, an intelligence-

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<sup>29</sup> *“It is estimated that there were up to 8 million undocumented “illegal” immigrants within the EU25 in 2006. An estimated 80% were within the Schengen area. It is likely that over half of illegal immigrants enter the EU legally but become illegal due to overstaying their right to stay”:*

<http://www.statewatch.org/news/2015/may/eu-com-ia-border-man.pdf>

<sup>30</sup> <http://www.statewatch.org/news/2015/may/eu-council-EU-USA-ministerial-washington-12-13-nov-14-15509-14.pdf>

<sup>31</sup> Op.cit p4

gathering agency, whereas the Umbrella Agreement only concerns law enforcement agencies.

The concerns of the European Parliament were noted over the need for judicial review and redress. On this point the US:

*“outlined its efforts in Congress to come up with a politically acceptable legislative proposal to grant the right of redress to EU citizens”*

and:

*“Emphasised that a positive outcome should lead to the conclusion that the rules on both sides are adequate for any future agreement between law enforcement authorities. It also stated that **any agreement could not endanger previous successful agreements (PNR, TFTP) memoranda of understanding or other forms of cooperation.**”* [emphasis added]

Thus where there is no EU-USA deal yet in place the USA has and will simply continue to gather the data from EU Member States’ agencies.

The telling quote, deleted, from the text of the Working document concerns the proposed “Umbrella Agreement” on the exchange of personal data:

*“After intense negotiations, the judicial redress issue progressed in 2014, as Attorney General Eric Holder announced that EU citizens would be given the same rights to redress as US citizens, provided Congress would accept this. **The latter is quite uncertain.**”* [Bold text deleted in PUBLIC version] [<sup>32</sup>]

Thus the view of the senior EU negotiators in March this year was that the key demands coming from the European Parliament for the right of judicial review and redress being delivered are “quite uncertain”.

At the end of June it was reported that the new proposal to give equal rights to EU citizens the US Senate still left a number of questions open.<sup>[33]</sup> For example, would the new measure apply to everyone living in the EU or only citizens? Moreover:

*“European’s ability to sue for data access would be curbed by the US Privacy Act, which exempts American law enforcement agencies.”*

A Study commissioned by the European Parliament throws up more fundamental issues. [34] Professor Bignami observes that the proposed legislation has two limitations:

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<sup>32</sup> Op.cit, p7 in LIMITE version.

<sup>33</sup> <http://www.politico.eu/article/europeans-data-protection-rights-snowden-senate>

<sup>34</sup> These and other concerns are considered in: European Parliament Study: [The US legal system on data protection in the field of law enforcement. Safeguards, rights and remedies for EU citizens](#) and throws up new questions, for example: “Unlike EU law, US law does not contain a general prohibition on transfers of personal data to jurisdictions without adequate data protection guarantees”

*“EU citizens would not have a right to sue for damages caused by wrongful government determinations) and it is subject to the extensive carveouts that exist for law enforcement agencies and purposes.”*

And there are few limitations for the onward transfer of personal data to and by the myriad of US law enforcement and Department of Home Security agencies. [35]

## Conclusions

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The lessons are clear: EU-US Justice and Home Affairs cooperation since 2001 has been largely a “one-way street” for meeting US demands for access to personal data and databases in the EU. While these meetings are occasionally used by the EU to meet its own needs when it does it often faces intransigency.

This Analysis shows that there is no reciprocity when it comes to sharing databases on the US side which is now demanding access to criminal records across the EU. Furthermore bilateral agreements between the USA and EU Member States are routinely used to by-pass the absence of EU-wide laws, for example EU-PNR.

Crucially the EU-USA “Umbrella Agreement” on the exchange of personal data for law enforcement purposes is by no means certain to include basic rights for EU citizens – such as judicial review and redress. Even if it does there will still have to be a decision, in the light of the limits of the new EU Regulation on Data Protection, whether the protections offered by the USA provide “adequate” safeguards.

On the other hand what is certain is that the “Umbrella Agreement” - which will only cover law enforcement agencies - will in no way answer the myriad of issues thrown up by the Snowden revelations which concern the intelligence and security agencies.”

Tony Bunyan, Statewatch Director, comments

*“The USA role in justice and home affairs is like that of the 29<sup>th</sup> EU state. Year after year since 2001 there have been regular meetings of Ministers and Senior Officials in Brussels and Washington - it also attended the six-monthly G6 meetings of EU Interior Ministers (and its preparatory meetings).[36]*

*The USA is a major, unseen, influence on EU justice and home affairs policies and practices and uses the meetings to lobby for direct access to EU and Member State databases.*

*These meetings take place on the oft-repeated assumption that the USA and the EU “share common values of democracy, the rule of law and respect for human rights*

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<sup>35</sup> At the time of writing, the end of Jul 2015, we await the final form of both the new EU Regulation on data protection and of the proposed EU-US “Umbrella Agreement.

<sup>36</sup> <http://statewatch.org/news/2014/jul/g6-barcelona.htm> and <http://www.statewatch.org/analyses/no-83-remote-computer-access.pdf>

*and fundamental values". However, there are many people, in Europe and the USA, who do indeed believe we share these "common values", but not the policies and practices of our governments."*

## **ANNEX**

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Yet another example of a LIMITE document [37] and a PUBLIC document [38] hiding the views of senior EU officials can be seen in the Outcome of proceedings of the EU - US Justice and Home Affairs Senior Officials Meeting, 3-4 February 2015, Riga.

The following three points are censored in the PUBLIC document:

On counter-terrorism and security:

*"The EU was also well aware of some difficulties that hamper EU-US cooperation in this area, such as the exclusion of the US from Europol's focal point "Travellers". This would be scrutinised urgently by relevant stakeholders. Europol and the US would in the meantime continue to cooperate on the financing of terrorism, on firearms and on ways to make referrals to major internet companies regarding content on their platforms which supports, encourages or legitimises terrorism.*

*The US was eager to intensify cooperation on at least six issues: the abovementioned focal point "Travellers", cooperation with Interpol, both through the lost and stolen passports database and other databases, on ECRIS (criminal records), border management, firearms and explosive devices.*

*The US reiterated its view that the follow-up to the Paris incidents had shown how valuable immediate access to information between law enforcement practitioners can be, quite apart from the use of mutual legal assistance requests.*

*The US was also ready to share information on specific cases where PNR information had proven decisive."*

Second, the whole section on the "Umbrella" Agreement (and Safe Harbour agreement) is deleted:

*"The EU recalled the objective to conclude negotiations on both the data protection umbrella agreement and the Safe Harbour scheme in the course of 2015. It had reviewed the draft Bill on redress submitted by the US delegation and noted that it met several, though not all, of the EU's expectations. The EU*

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<sup>37</sup> EU LIMITE doc:

<http://www.statewatch.org/news/2015/jun/eu-council-eu-us-senior-off-riga-6101-15.pdf>

<sup>38</sup> EU PUBLIC doc:

<http://www.statewatch.org/news/2015/jun/eu-usa-senior-officials-riga-feb-pa-6101-15.pdf>

also called for the Safe Harbour talks to begin again promptly, in light of recent answers from the US to its questions.

*The US urged the EU to acknowledge the considerable steps the US had taken to accommodate EU wishes. The Administration had, on Presidential instructions, tried to meet EU demands to the greatest possible extent. EU citizens could be given the same practical possibilities to access and rectify data as US citizens. A Republican Member of Congress was willing to sponsor this legislation.*

*On Safe Harbour, the US recalled that President Obama himself had made a commitment to restrictive use of this data for national security reasons. The US also considered that current practice in several Member States in this respect should be taken into account.”*

Third: Eleven issues the USA wanted to be “taken into account” when drafting the Renewed Statement:

*“The US agreed to this approach and envisaged a list of specific actions that could be taken into account. As a preliminary reaction, it mentioned further cooperation with Europol and Eurojust, strengthening the connection with Interpol, cooperation on criminal records, traveller programmes, firearms, explosives, judicial assistance, asset recovery, assistance for victims, data protection and safe harbour.”*

In order not to raise issues of free speech a voluntary agreement with service providers is the preferred option for the surveillance of communications:

*“It stated that it was crucial to be able to carry out live interceptions of communications and to work directly and on a voluntary basis with internet providers to that end.”*

An uncensored US position is highly revealing in the light of this comment above by the USA concerning the removal of content from the internet:

*“The US was open to a discussion on removing content from the internet which raised both constitutional questions and issues of appropriateness from a law enforcement perspective:”*

This approach was later confirmed by Europol:

*“Europol is expected to establish a European response concerning internet content referral activities with **concerned private industry companies**, with Member States envisaging support to the EU IRU by appointing national EU IRU contact points. **Referral activities will not constitute an enforceable act, thus the decision and related implementation of the referral is taken***

***under full responsibility and accountability of the concerned service provider.***" [p8, emphasis added] [39]

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<sup>39</sup> <http://www.statewatch.org/news/2015/jul/eu-cosi-ct-9418-15.pdf>