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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Delegations
Subject:	Outcome of proceedings of the EU - US Justice and Home Affairs Senior Officials Meeting, 24-25 February 2016, Amsterdam

1. Introductory remarks

In their opening statement, the EU delegation referred briefly to the main recent developments, as reflected in the agenda items. Moreover, the EU side mentioned positively a number of past and future joint meetings and events in the home affairs area (the EU-US experts meeting on resettlement, possible upcoming meetings of the Migration and Refugee Platform on resettlement, readmission and return) as well as the EU-US PNR joint review for which the preliminary conclusions would be shared soon in order to enable exploratory talks before summer. In the justice area, the issue of protection of unaccompanied minors in the current migratory crisis was given much attention and EU efforts to counter hate crime, hate speech and anti-Muslim sentiments were intensifying. The US delegation acknowledged the current migration crisis in the EU and pointed to the challenge of terrorism, new types of narcotics, wild life trafficking as a major source of funding for organised crime, and cyber crime. It expressed interest in discussing limits to freedom of speech in relation to hate speech/crime, possibly in the next meeting.

2. Migration and mobility

In its introductory remarks, the EU recalled the different instruments at its disposal to tackle the migration crisis, instruments that were all deployed in parallel to stem the flow of migrants: management of borders, hotspot approach, relocation, resettlement, fight against human smuggling, return and addressing root causes in countries of origin. The EU referred to the Valetta Summit, the Trust Fund (which is also open to third countries) as well as the cooperation with Turkey and NATO. The EU urged for more support in terms of resettlement from the region to the US and inquired about next steps in view of the US co-sponsored conference in September in the margins of the UNGA. In the area of readmission, the tailor-made package approach was underlined in view of closer cooperation with the US and complementary action. The EU proposed to address security concerns by concrete EU-US cooperation through Europol and suggested that the EU-US Migration and Refugee Platform caters for more cooperation on migration issues.

The US emphasised the global and permanent phenomenon of migration of which they had their own flow, and expressed interest in cooperating on a number of issues concerning border management, capacity building in countries of origin, information sharing and capacity building with regard to human smuggling, and working together on Turkey to find a way forward on issues such as the rule of law, terrorism and human smuggling.

The ineffective way, in which Congress viewed EU efforts in dealing with the crisis from a security aspect, was not helpful in terms of advancing on the visa waiver program. The US warned of considerable security risks that should not be underestimated. It offered to take a more pro-active look at US-EU cooperation and mentioned the experience of vetting 25.000 resettled refugees to Canada against US databases. This also had a political aspect as it reassured the population that migrants were no risk. Furthermore, the US side urged to coordinate interventions with the countries in the neighbourhood, in particular with Turkey. Concerning the EU-US Migration and Refugee Platform, a Steering Committee meeting was planned soon and programs have been planned on resettlement (April) and return as well as an initiative in June on integration. Resettlement was a particular important subject as one of three top priorities of the US co-sponsored conference in September.

On the issue of additional participatory rights for the EU within UNHCR, the US informed that the State Department had no objection to these rights being granted to the EU, if there was agreement in the EU on the wording proposed by the US.

3. Visa

The US side explained the new safety measures integrated in the ESTA procedure as a reflection of the increased concern of the US Government towards the issue of foreign fighters. On 23 February, the new questions concerning the applicants' presence in Syria, Iraq, Iran and Sudan after 1 March 2011 and dual citizenship went on-line. Exceptions were foreseen for persons having worked in these countries for their government or army, but they were also expected for certain categories of professions. On 18 February, Libya, Somalia and Yemen were added to the list of countries of concern. In reply to the EU remarks below, the US underlined that the VWP was a very good programme allowing 20 million visitors, mostly EU citizens, to the US every year. However, secure external EU borders were important. The US was committed to expanding the VWP to the five remaining EU Member States and stressed the interest to avoid an automated tit-for-tat visa war. The US side thought it would be useful for the EU Delegation to make these points more frequently in Congress and recommended that Congress and European Parliament have more interaction on this matter.

The US side made the point of more frequent contact between these institutions on several issues in the meeting.

The EU side expressed understanding for the reasons behind the new measures, but underlined the need for more clarity and legal certainty and regretted the difficulty in ensuring full visa reciprocity. A security workshop in Europol on 31 March would be an occasion to exchange information on the measures. Furthermore, the EU side informed of the next steps in the procedures concerning the EU visa reciprocity mechanism, including a forthcoming Commission proposal.

4. Security

The EU side provided a state of play on its activities related to counter terrorism (CT) and countering violent extremism (CVE) by inter alia strengthening of external border control, extension of ECRIS to third country nationals, improving information exchange, supporting the work of the new European Counter Terrorism Centre (ECTC) at Europol, adoption of the EU PNR Directive, advancing on discussions on strengthening the directive to combat terrorism and stricter control of firearms. On prevention, the EU referred to its engagement with internet companies, the Radicalisation Awareness Network (including, since January 2016, a centre of excellence), EU Fundamental Rights Agency (integration efforts to avoid radicalisation of newly arrived migrants), the Internet Forum launched in December 2015 to support the work on DAESH counter-narratives and the work of the European Internet Referral Unit (IRU) at Europol. A thorough introduction of the ECTC was given and good US cooperation was stressed. Close cooperation with the FBI would be further ensured through the signing of an agreement, hopefully in April.

The TFTP was confirmed by the US side to be of tremendous value to both parties. In connection to the Paris attacks, 1500 leads were identified, some in real time. The US side stressed the importance of close operational cooperation with Europol and Eurojust, including in the areas of cyber/social media and removing terrorist content. The US strategy towards internet service providers was one of dialogue and information on security threats, being unable to go further due to the protection of the freedom of speech. The US side also expressed interest in sharing information with the EU on experiences on counter-messaging.

Concerning cooperation on on-going cases, the US side was willing to speed up its assistance. It was recommended that EU Member States go directly to service providers to get access to meta-data, e.g. data on internet traffic. On the issue of encryption, this was a different matter and litigation was on-going (the San Bernadino case). The US side also recommended to continue EU-US cooperation concerning workshops and research on strategies to counter radicalisation as well as prison radicalisation. They also mentioned the need for cooperation in third countries where the US had programs in this area. Links between organised crime and terrorism were obvious and therefore cooperation with Europol (arms, human smuggling, drugs and document/ID fraud) was important to the US. It was suggested that the EU-US meeting in June could be used as an occasion to remind ministers of the daily cooperation between the parties.

5. Emerging or on-going threats

5a. Cybercrime

The US side underlined the need for cooperation in other areas than terrorism, such as on fighting cybercrime and mentioned the on-going cooperation with EC3 in the area of child abuse. It was critical to work together and increase the speed and flexibility in working methods. The US side referred positively to 'Operation Angel Watch', an intelligence-driven program targeting registered sex offenders traveling abroad that has led to such persons not being allowed entry in certain countries. It was proposed to continue cooperation in order to ensure reciprocity. This would entail overcoming legal hurdles and obstacles on policy level.

The last EU-US meeting on child sex offenders was commended by the EU side. Europol illustrated the good EU-US cooperation in a number of cybercrime cases. The EU delegation recalled the recently concluded negotiations on the draft Trade Secrets Directive for which a vote was expected by the European Parliament in April. Concerning cyber crime investigations, access to evidence was based on the Budapest Convention and the MLA Treaty but there was a need to work on practical and pragmatic solutions.

5b. Drugs

The US made reference to the good progress on the UNGASS outcome document of Vienna. Different approaches to drug-related crime were gaining ground in the US. On the one hand, a non-criminal justice response, to invest in demand reduction, alternatives to incarceration and supporting alternative development of regions with major drug growing/production industries. On the other hand, a criminal justice response concentrated on distributors, heroine trade, New Psychoactive Substances and on increasing the cooperation with India and China on these drugs.

The EU side recalled that the crucial issue of abolition of the death penalty was still missing in the UNGASS outcome document. Moreover, stronger language on risk and harm reduction measures was sought while keeping a balanced approach towards public health. The EU side recommended that the video-conferences between the two parties to discuss the outcome document should continue.

5c. Wildlife trafficking

The US side recalled the importance of the wildlife trafficking dialogue taking place in Brussels and Washington to build up cooperation. The interest had risen sharply in the US, as it was seen as an increasing source of income for criminal organisations. This had led to a new implementation strategy in 2015, including cooperation with third countries. In this light, the item needed a higher profile in EU-US cooperation. The US added that for all emerging or on-going threats, discussed in today's meeting, there was a significant link to China and messages should be coordinated.

The EU delegation informed that a first EU Action Plan in this field would be submitted for endorsement by Member States by summer. It was suggested to present the work done in this respect at a later stage when the Action Plan would be ready.

6. Data Protection

The US delegation announced the signing into law by the US President of the Judicial Redress Act (JRA) the day before the meeting and commended the EU negotiators. It was a major achievement to have rights granted to non-US citizens through a legislation that touched on the Privacy Act to such an extent. The next step would be to have the Umbrella Agreement come into force without delay, otherwise the JRA would have no effect. The same would apply to the Privacy Shield, a fact worth pointing out to the European Parliament. The US delegation warned that the European Parliament and Congress should avoid entering into a tit-for-tat on this matter as well.

The EU delegation congratulated the US on the JRA but expressed some concern regarding the amendments by the Senate. On the Umbrella Agreement, all efforts would be done to move as fast as possible but much was in the hands of the European Parliament to whom it was important to provide technical information on JRA for non-US citizens and the Privacy Shield. Hopefully, the Umbrella Agreement could be signed in June at the EU-US ministerial meeting and adopted in autumn. However, if an opinion by the ECJ was deemed necessary by the European Parliament, there would be a delay.

7. Cooperation in criminal law

The EU recalled that the MLA Treaty must work swiftly in order to allow for prosecution and conviction of criminals, in particular to ensure evidence. The review was timely and should lead to concrete recommendations, notably using the outcome of the Eurojust seminar, including video-conferences, e-evidence and joint investigations. The report would be adopted soon. An EU-US reflection group on e-evidence was planned to identify solutions. The EU side pointed out that the implementation of the Treaty reflected the differences in the legal landscape of the Member States. Concerning rights of victims, the EU recommended to intensify the cooperation that had just started.

On the legal assistance issue, the requests were overwhelming but additional funding had not been granted by Congress. A specialised group had been created to handle requests concerning e-evidence but other, more direct, channels could be used, e.g. informal police cooperation in the event of a terrorist attack. Another problem regarding obtaining content data was that US standards were frequently higher due to 'probable cause' and the first amendment, than in EU Member States. Again, alternative, limited channels could be explored to address this but legislation would have to be modified, probably on a country-by-country basis, and would therefore need involvement by Congress. There should be a common reflection on how to remove de minimis requests from the system. In general, the Treaty was not the problem, but its possibilities should be maximised. The US side hoped that both parties would be able to present a final set of recommendations for the ministers in June. On victims rights, the US welcomed further joint engagement.

8. Counter-terrorism

In response to the current threat, the US informed that formal and informal cooperation had evolved, in particular the ability to intercept foreign fighters on the basis of financial contributions. A new section in the criminal division had been established to deal solely with sophisticated money-laundering organisations. Also here, EU-US exchange of experiences would be useful. On radicalisation and CVE in prisons, the US informed of its overseas' work in capacity building and seconding advisers to development or post-conflict countries. The EU was most welcome to send experts to activities such as the US/UNODC workshop with third countries in Malta. Another area of increasing importance and possible future cooperation was tackling terrorist financing through digital currencies and the dark net. The US was in particular concerned about purchases of firearms online. Some training activities had taken place with Europol.

The EU delegation referred to the Commission action plan for strengthening the fight against terrorist financing, issued earlier in February. It included actions concerning anonymous pre-paid instruments and virtual currencies, measures taken in respect of financial transactions involving third countries (high-risk), improving cooperation of Financial Intelligence Units and amending the fourth Anti-Money Laundering Directive to include a list of compulsory checks (due diligence measures) that financial institutions should carry out on financial flows from countries having strategic deficiencies in their national anti-money laundering and terrorist financing regimes.

9. Cooperation on justice issues in international organisations

As regards the Judgements project, the delivered draft text was a good basis for negotiations concerning the future Convention. Both sides looked forward to a mandate being given to start negotiations. The US side pointed to the challenges in this context stemming from its federal system and diverging views on harmonisation.

10. Preparation of EU-US ministerial meeting in Amsterdam (1-2 June 2016)

The US side confirmed the intention of Attorney General Lynch to attend. Concerning the agenda, it was suggested to have a case study that would encompass several issues, e.g. terrorism and transnational (cyber) crime. It was also deemed useful to discuss internal security, VWP, movement of foreign fighters (from EU to US) and screening of travellers. The Umbrella Agreement could hopefully be signed at this occasion.

The EU side proposed to include results and findings of the MLA review, the EU-US reflection group on e-evidence, the Migration and Refugee Platform as well as to discuss migration and VWP.

11. Priorities of the Slovak Presidency

The Slovak delegation outlined the main priorities for its Presidency, including migration, return and readmission policy, border management, counter-terrorism and fight against cybercrime. In terms of priorities in EU-US relations, the delegation pointed to the statement adopted at the ministerial meeting in Riga setting out an excellent framework for cooperation. It underlined the formats and means of cooperation on data protection, the Judgements project, cybercrime, cyber security, migration issues, counter-terrorism, foreign fighters, mutual legal assistance and information exchange to be utilised fully for the benefit of security and protection of EU and US citizens. On the Visa Waiver issue, the incoming Presidency expressed hope that progress would be reached in extending the programme to remaining Member States.

Lastly, the delegation informed that the next EU – US Senior Officials Meeting is planned for 8 - 9 September in Bratislava.
