

Brussels, 12 November 2001

13803/01

LIMITE

**ASIM 21
USA 24**

OUTCOME OF PROCEEDINGS

of : Strategic Committee on Immigration, Frontiers and Asylum
- Meeting with the United States
dated : 26 October 2001

1. On 26 October 2001, the **Strategic Committee** met with a delegation from the United States in order to examine the US proposals aimed at strengthening cooperation between the EU and the US in the wake of the events of 11 September 2001. The meeting gave the US the opportunity to explain its proposals in greater detail and the Member States were able to put supplementary questions or to make known their initial reactions.

2. **Closer scrutiny of transit passengers and of transit areas of international airports by immigration police. Boarding gate checks.**

The **United States delegation** pointed out that the US has terminated airside transit operations and all passengers now have to pass through immigration and customs controls on arrival. It called on the Member States to increase police presence in airport transit areas with a view to preventing document and identity swapping in those areas and to tightening the screening of all passengers entering or departing from transit areas in international airports in Europe.

While expressing sympathy for the position of the US, **several Member States** said that terminating airside transit would have major repercussions for European hub airports and underlined the need to distinguish between intelligence based policing of transit areas and the blanket control of all passengers. The Chicago Convention did not provide for the control in transit areas of third country nationals (or in the case of the Schengen area of non-Schengen passengers), although Member States did carry out controls, including boarding-gate checks in the case of "risk flights".

The United States delegation suggested expanding ILO/ICO/ALO joint activities in risk flight screening.

3. **Identification of a list of data to be exchanged between border management services of the Member States and of North America - modalities for such exchanges.**

The **United States delegation** listed various types of data which might be exchanged with a view to increasing border control capabilities, including intelligence driven data (review of passenger lists), data on persons known to be inadmissible due to involvement in criminal activity (trafficking, dealing in false documents, etc.), customs data (e.g. on drugs smuggling), harder intelligence data on terrorist threats, data on visas, data on migration flows. It stated its willingness to meet with Member States' experts on data with a view to seeing which type of data could be exchanged on a reciprocal basis. The US has entered into a statement of mutual understanding with Canada on data exchange and was willing to provide a copy subject to Canada's agreement.

With regard to visas, given the high number of visa applications (10 million/year), the US had invested heavily in developing a data base, held by different US agencies, which was available to visa-issuing services. The data base includes subsets of names of persons involved in various kinds of activities giving rise to concern. The information held by the different agencies is protected and confidential and visa-issuing services have access only to names. Once a visa is issued, information (name, type of visa, photo) is stored in a central computerised system. When processing a visa application consular officers consult the visa data base and receive a red, yellow or green signal, whereby yellow can require consultation of the central authorities in Washington. The consular officer will then receive a message

indicating simply whether a visa can be issued or not but will not be in possession of the detailed grounds for such a decision.

Prior to 11 September 2001 such information could not be exchanged, but a subsequent change in the law means that that information can now be shared with other governments.

The **Commission representative** provided information on the work being undertaken by his Institution following the wish expressed by the Justice and Home Affairs Council on 20 September 2001 that the Commission develop an on-line information system on visas issued. He asked the US to provide further information on its experience in the area of local consular cooperation. Finally he echoed the views of Member States that the sharing of information could give rise to difficulties at the level of data protection requirements.

The **United States delegation** indicated that the level of local consular cooperation was idiosyncratic and irregular and felt that this was an area where cooperation should be stepped up and carried out on a more fulsome basis. Concerning data protection, data concerning US residents was protected unlike data pertaining to temporary visitors. Data could be used in legal proceedings but the rules governing such use were complex.

4. **Broadened European carrier participation in APIS (Advanced Passenger Information System).**

The **United States delegation** recounted its experience with APIS, stating that it received information through this system on 85% of all persons arriving by air which enabled the names of the persons to be checked against the "watch list" held by the entry authorities. The intention was to expand the system to entering and exiting passengers and perhaps to make such a system mandatory as is already the case under the Visa Waiver Program. It stated furthermore that it was considering following the Australian practice of using APIS for pre-boarding intervention especially in the case of "watch-list" persons. In response to queries from delegations with regard to the handling of personal data, the United States delegation indicated that the data in question is limited to the information that passengers would in any case have to give when filling out landing cards. Using APIS enables real time transmission so the data is to hand before the passengers arrive in the country of destination.

5. **Keeping open European transit facilities to support the return of criminal/inadmissible aliens from the United States to Europe or the country of origin.**
Improve cooperation in removals of status violators/criminals/inadmissibles.
More fulsome use of immigration laws to effect removals of fugitives without recourse to extradition.

These proposals were discussed jointly. The **United States delegation** explained that it was seeking greater cooperation from its European partners in assisting in the return of inadmissible persons to their countries of origin. The US was faced with increasing rigidity in the application of transit procedures in European airports. 2 000 returns (out of a total of 180 000 removals) had been carried out via European transit hubs to the Middle East and to Africa, but those 2 000 returns had proven difficult due to obligations concerning advanced notification, information on the type of carrier, type of ticket, etc. The US immigration service was under increasing pressure to carry out removals, but was largely dependent on Europe for assistance with regard to certain countries of origin. Furthermore, the US wanted the Member States to make fuller use of the expulsion possibilities contained in their aliens legislation rather than having to have recourse to extradition procedures.

Member States generally felt that the question of transit required further in-depth discussion at the operational level since various aspects were involved ranging from the role and status of escorts, to the need to respect international obligations under the Geneva Convention (principle of non-refoulement) and the European Convention on Human Rights. One delegation queried the link between transit, which fell more into the area of illegal migration, and terrorism. With regard to the use of expulsion procedures rather than extradition, **Member States** were reserved and insisted on the need to keep the two concepts separate, since their finality, objectives and legal consequences were totally different.

The United States delegation indicated that since the events of 11 September 2001, the whole system of visas, border controls, management of legal migration, etc. had come under close scrutiny and there was consensus in the US on the need for an effective system across the board, not targeted specifically at terrorism, but taking the events of 11 September as the trigger for developing a new approach. The US would welcome the opportunity to pursue discussions of transit arrangements at an operational level. With regard to expulsion procedures, the aim pursued by the US was not to abridge normal procedures but to make fuller usage of immigration proceedings to avoid having to have recourse to extradition.

Any removal from the United States in application of immigration law would be carried out in full respect of international protection obligations.

6. **Coordination USA/EU cooperation projects in the area of border security.**

The aims pursued by the US in this area were to engage in bilateral or, if possible EU-wide twinning projects in the field of training and support for enhanced border security infrastructure. Information could be exchanged on activities underway in third countries with a view to avoiding duplication of effort and to identifying any further requirements.

The Chair noted Member States support for such an approach.

7. **Encourage adherence by other States to ICAO standards in passport/visa issuance. Immediate information of USA and other key partners when a breach/theft of passport/visa security is detected. Coordination of false document training - creation of a shared data base.**

The **United States delegation** expressed the hope that agreement could be reached rapidly on these issues on either a bilateral or a multilateral basis. With regard to compliance with ICAO standards, the US felt a greater sense of urgency to use machine-readable documents and was envisaging introducing an obligation, from October 2003, for persons exempt from a visa requirement under the visa waiver programme to be in possession of a machine-readable travel document failing which they would be required to request a visa. The US suggested exchanging information on trends in the use of false documents. With regard to stolen passports and stolen blank passports, the US would like a more regular exchange of information with the Member States with a view to entering such information into its data base in order to facilitate the identification of the holders of such documents. The US was developing a new visa sticker with increased security features.

From the side of the Member States, it was pointed out that any imposition of machine-readable travel documents would require early official notification so that the necessary adaptations could be undertaken given the large numbers of non machine-readable documents still in circulation. The US was informed of the latest state of play on improving the security features of the EU model visa.

On the subject of the training of officials and airline staff in the detection of false documents, the US pointed out that although much had already been done it was now looking for intensified activity in this area. It wanted to promote greater ILO cooperation along the lines of what was already being done in Johannesburg, Nairobi and Bangkok where collective cooperation had led to round-the-clock coverage.

8. In conclusion, the **United States delegation** stated that the list of proposals could evolve as the US sought to intensify efforts not only to counter terrorism but also to combat all forms of illegal migration movements. It stated its willingness to provide further clarifications and its availability to enter into renewed discussions.

The Chair indicated that the Strategic Committee would evaluate the information given by the United States delegation and asked the US to provide further information in writing.

Following further consideration of the US proposals during the next meeting of the Committee, the Presidency would contact the US administration with a view to pursuing the dialogue.
