



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 3 March 2004**

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**JAI 60  
USA 20**

**NOTE**

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from : the General Secretariat of the Council  
to : the Article 36 Committee

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Subject : **New Transatlantic Agenda. EU-US meeting on Justice and Home Affairs.  
Dublin, 23 February 2004**

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1. On 23 February 2004, the Chairman of the Article 36 Committee, assisted by the General Secretariat of the Council, and the Commission met with representatives from the US Department of Justice and the State Department. A list of participants as well as the agenda of the meeting is appended.

**2. INFORMATION ON THE PROGRAMME OF THE IRISH PRESIDENCY AND ON  
THE MULTIANNUAL PROGRAMME ON EXTERNAL RELATIONS IN THE JHA FIELD**

The Presidency gave a brief overview of the External Relations programme of the Irish Presidency (5097/04), emphasising in particular the imminent enlargement of the European Union (with reference to the European New Neighbourhood policy) and the EU Security Strategy. The US welcomed the programme and pointed to some very important developments on its side over the last years.

In that context, the movement towards a more centralised law enforcement apparatus, in which the setting up of the Homeland Security Department is a crucial step, was highlighted. The US also indicated the importance of the work carried out under the aegis of the G8 and the strong interrelationship with the EU JHA agenda and the need to co-ordinate activities. The Commission concurred that it was necessary that the Member States be fully informed of the work of the G8.

### **3. JUDICIAL COOPERATION IN CRIMINAL MATTERS**

#### **3.1. EXTRADITION/MLA AGREEMENT: STATE OF PLAY**

The US stated that it was seeking to finalise the negotiations with the 15 current Member States, at the latest by the EU-US Summit to be held at the end of the Irish Presidency. The Presidency agreed with this goal and said that it would be a strong signal of good EU-US cooperation in criminal matters if, one year after the signature of the EU-US Agreements of 25 June 2003 on extradition and mutual legal assistance, the EU and US were to be able to finalise the bilateral instruments required under Articles 3 of both agreements. At the same time, the finalisation of the bilateral instruments with the current Member States would allow the US to commence the negotiations with the Acceding States. It was acknowledged that the US and a number of EU Member States will still have to go through a ratification process following completion of the negotiations on the bilateral agreements. It was also agreed that it would be desirable for the progress achieved in relation to the bilateral negotiations to be reflected in the Summit declaration.

#### **3.2. THE EUROPEAN ARREST WARRANT: STATE OF PLAY**

The Presidency informed the US of the state of play with regard to the implementation of the Framework Decision on the European Arrest Warrant and on the indications it had received in that regard at the latest JHA Council meeting. The Commission stated that the first indications on the practical operation of the EAW were very positive and that it hoped to be in a better position to give an overview of the operation of the EAW in the report that it would draw up by the end of the year. The US offered the Commission the possibility to use US data on extradition in order to compare them with the data on the operation of the EAW that the Commission would use in drawing up its report.

#### **4. SKY MARSHALLS**

The Commission stated that it was aware of the high priority that the US Administration accorded to this topic, but at the same time indicated that it thought that it should be looked at in the more general context of aviation security measures. It emphasised the need to go beyond the pillar structure and pointed to the seminar Austria is organising on this topic and to the work of the G8 as well as to the letter that had been written by the Presidency to ICAO. The Commission also announced that it was considering whether to make a proposal for a harmonised approach in this regard and a possible role for Europol. The US responded by saying that air marshals were obviously only a means of last resort and referred to other types of measures, such as the sharing of information. The US also underscored the importance of the work that was being carried out under the umbrella of the G8; it hoped that significant progress would be made on the Secure and Facilitated Travel Initiative (SAFTI) by the end of 2004 (i.e. the end of the US Presidency of the G8). This initiative is three-pronged and involves: (1) interoperability of information (biometrics, information technology, passport security), (2) information sharing (e.g. on stolen passports) and (3) co-operation and capacity building.

As far as the information sharing and co-operation is concerned, the US contended that some of the problems that had been witnessed over the last months (cancelled flights) were in part due to the fact that the US did not always know whom to contact in the Member State concerned. In that context, the US representatives queried how Europol could play a role in this matter as this was essentially bilateral information sharing. The Commission responded that whilst Europol could probably not be involved in concrete cases where there was a high degree of urgency; there might be a role for Europol for the purposes of general data analysis. At any rate, the Europol Management Board would have to look into that. The Commission also clarified that Member States would remain free to adopt certain measures (e.g. for information sharing).

#### **5. CONFIDENCE BUILDING MEASURES**

The Presidency recalled earlier discussions on this issue and the common understanding that there is a need for a better understanding by practitioners on both sides of the Atlantic of each other's (criminal) justice and law enforcement systems. The Presidency referred to three possible ideas that had been discussed so far:

- (1) Organising an EU seminar for a group of 10-20 US law enforcement officials, which would introduce them to EU criminal justice system
- (2) A seminar course to be taught at a Brussels/Washington DC educational institution on the EU and US criminal justice system
- (3) Establishing EU-US Forums (or centres of excellence) which could deal in a reflective way with a number of topics (e.g. data protection, handling sensitive information, high-tech, sentencing - penalties).

The US was in agreement with this and added that it was also seeking EU support to teach in regular law enforcement programmes in the US, on features of the EU criminal justice system. The US also suggested that developments in this area might be reflected in the Summit Communiqué.

It was agreed that practical arrangements would be further discussed at informal level between the Presidency, the Commission, the incoming Presidency and the Council Secretariat on the one hand and representatives from the US Mission to the EU in Brussels on the other hand.

## **6. DRUGS/MAY CONFERENCE/EU ACTION PLAN**

The Presidency referred to the Drugs Conference it is organising on 10–11 May 2004 in Dublin and explained the concept of the conference (Member State representatives, representatives from civil society, different workshops). It indicated that the conference would lay the ground work for an updated Drug Strategy with the formal revision of that strategy taking place during the Dutch Presidency, in the second half of 2004. The Presidency indicated that the US would be among a number of third countries invited to the conference.

The Presidency and the Commission also briefly explained a number of initiatives it has taken/plans to table shortly in the field of combating drugs.

The US enquired whether the conference would also deal with the links between illicit drug trafficking and terrorism. The Presidency responded that this issue was not specifically on the conference agenda. Any concerns in relation to such links would be likely to emerge through the work of Council Working Parties and Europol.

## 7. EUROPOL VISIT TO THE US

The US explained that, whilst the Europol visit to the US had confirmed that there are generally good mutual relationships with the US law enforcement agencies, there are also some areas where there were outstanding issues in these relationships.

A first issue relates to the routing of information requests. The Federal Bureau of Investigation (FBI) has continuing difficulties with the routing of requests from Europol's Liaison Office in Washington on behalf of EU Member countries because those requests are considered to jeopardise the bilateral legal attachés network of the FBI established in EU Member States. It has on occasion replied to those requests through the FBI legal attachés in the Member State concerned. The FBI follows the policy that all information requests should be dealt with by the respective legal attaché, in charge of the co-operation within the concerned EU Member State. The FBI would prefer to answer all queries only via their staff responsible for the respective EU Member State. In addition, although when the request originates from a Member State and is channelled via Europol's Liaison Office in Washington, the FBI chooses to answer the Member State authority in question directly, via their competent field legal attaché. Europol's Liaison Office is copied with the reply in some of the cases.). The Drug Enforcement Administration (DEA), on the other hand, uses its legal attaché network only to answer or generate information queries and insists that the DEA analyst seconded to the US embassy in The Hague act as a clearing point for all operational information requests (and the replies thereto) from Europol representing EU Member States. This means that the DEA wishes all operational information requests to be channelled directly via the contact point in The Hague (not through Europol's Liaison Office in Washington). The US stated that the difficulties regarding the non use of FBI legal attaches also gave rise to problems in case of EU states who had their own liaison officers in the US and who did not use the Europol liaison officers.

A second issue relates to the fact that there have been several cases where the information requests from EU Member States were routed through different channels in parallel at the same time (e.g. via Europol's Liaison Bureau, EU Member States' bilateral liaison posts seconded to the US or legal attaché network in EU Member States).

A third issue raised by the US was the question of sharing information from intelligence services. The US agencies will only provide "intelligence information" to sister intelligence services and do not recognise Europol as an intelligence service although Europol wishes to be treated as such.

The Presidency, with regard to the use of Europol Liaison Officers by Member States, explained the background to this practice by reference to relevant Council Decision. It also stated that it understood that the Europol visit to Washington had been constructive in terms of addressing some of the issues which had arisen in the relationship and in terms of building understanding. That process was ongoing.

## **8 G-8/EU DATABASE ON CHILD EXPLOITATION**

The US gave an overview of the state of play in this regard and mentioned, inter alia, the need of an agreement between Europol and Interpol for the purpose of using the database. The Commission clarified that, while it was funding the two-year feasibility study project, which was currently being undertaken, it could not fund the operational continuity of the database after that period, so that other funding sources would need to be found in the longer term.

## **9. TERRORISM PREVENTION MEASURES**

The US expressed three concerns regarding State's abilities to fight terrorism.

The first concern was that states' legal systems should allow their law enforcement authorities to take action against preparatory acts for terrorism at a stage where no terrorist acts had been committed. The second concern related to the ability of states to afford mutual legal assistance and extradite persons for preparatory acts. Here the US referred to the work that was being carried out in the context of the G8, which were involved in drawing up a Manual/Guidelines of Best Practices. The third and probably most difficult issue which was raised by the US was how to share intelligence information related to terrorism for use in a criminal proceeding in another country, while ensuring that the intelligence would be protected.

This question is two-pronged: (1) have states the legal ability to protect intelligence information, and (2) how can the (prosecutorial) authorities of a state be informed of the fact that another state holds intelligence information which is relevant to the terrorist case that is being prosecuted. The US clearly signalled that it was seeking to cooperate with the EU and its Member States on this issue. As a first step it suggested drawing up a document that would collate information from the US and the Member States, which would lay out to what extent and how states can protect intelligence information received from another country. The G8 had already started work on this by way of a questionnaire that had been sent out to and replied by all G8 members. The US suggested that the EU might consider following up on this questionnaire in relation to use of intelligence information.

In response, the Presidency pointed to the Member States' obligations under the Framework Decision of 13 June 2002 on combating terrorism to incriminate membership of a criminal organisation and accessory acts to terrorism. The implementation of these obligations would facilitate investigatory measures at a stage in advance of the commission of terrorist acts and also potentially for the purpose of mutual assistance. With regard to the G8 initiative in relation to the sharing of intelligence information, the EU could consider a parallel initiative when the result of work at G8 level was made available.

## **10. FOLLOW-UP TO THE BRUSSELS CONFERENCE ON WITNESS PROTECTION IN THE WESTERN BALKANS**

The US explained the witness protection project, which had been presented at the Brussels conference. This project was conducted in the context of a group of prosecutors from 12 Western Balkans jurisdictions, chaired by the Serbian Attorney General. The focus of the project is on the short-term protection of witnesses, mostly (former) members of criminal organisations who are prepared to testify against leading figures or other members of those organisations. These witnesses may in some cases themselves be in custody. The purpose of the short-term witness protection does not consist of final, but very short (e.g. 40 days) relocation, so as to allow the witness to testify without being subject to threats at the time they deposit their testimony. The modus operandi of the project is based on standards developed in the context of the Council of Europe.

The US was supportive of this project, in particular as efforts made in the context other international fora, had so far failed to arrive at a witness protection system for the Western Balkans region. The US also indicated that it saw this as a first step in a series of measures.

A new meeting of this prosecutorial group is scheduled for April and would take place at Belgrade. The US had been invited to attend the meeting and had already pledged its support to the project. It was also indicated that an EU Member State had been approached to serve as the project team leader.

It was agreed that this issue would be further discussed at an informal level between representatives from the Presidency, the Incoming Presidency, the Commission, the Council Secretariat and the US Mission to the European Union.

## **11. ASSISTANCE TO COUNTRIES FACED WITH GRAND-SCALE CORRUPTION**

The US briefly informed the EU representatives of an initiative under consideration, which is geared at countries which have become victim of grand-scale corruption, to assist them in their efforts to trace and recover the assets that been looted from them.

This assistance can take three forms:

- (1) Sending experts to the countries concerned to assist them to draw up mutual legal assistance /extradition requests;
- (2) Setting up coordination between countries where looted assets are (supposedly) located; and
- (3) Assisting in the freezing/seizing of assets.

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**AGENDA**

1. Adoption of the Agenda
2. Information on Irish Multiannual Presidency Programme on external relations in the JHA field (EU Pres).
3. Judicial cooperation in criminal matters
  - (1) Extradition/MLA agreements: state of play (EU Pres)
  - (2) EAW: state of play (EU Pres)
4. Sky Marshals (Cion)
5. Confidence building measures/joint training (Pres/Cion)
6. Drugs/May conference/EU Action Plan (EU/US)
7. Europol visit to the US (US)
8. Child pornography data base (US)
9. Terrorist prevention measures (US)
- 10 Follow up to Brussels conference on witness protection in the Balkans (US)

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**EU-US Troika JHA Informal / SCIFA Informal**  
**Dublin, 23 February 2004**

**List of Delegates**

**Presidency**

Mr Paul Hickey  
Mr Richard Ryan  
Mr Jimmy Martin  
Mr Hugh Boyle  
Mr Martin McDonald  
Mr Kevin Dowling (Dept of Foreign Affairs)  
Ms Lylia Crossan  
Ms Yvonne Furey  
Mr Dale Sunderland

**Commission**

Mr Tung-Lai Margue, acting Director of General Affairs Directorate  
Mr Diederik Paalman

**Council Secretariat**

Mr Guy Stessens

**Netherlands**

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Mark Richard            Senior Counselor for Criminal Justice Matters,  
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