

**5437/05**

**LIMITE**

**JAI 20  
RELEX 24  
USA 4**

**NOTE**

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from :	Council Secretariat
Subject :	Outcome of proceedings of the informal High Level EU-USA Freedom, Security and Justice meeting on 13 <sup>th</sup> (dinner) and 14 <sup>th</sup> January 2005 in Luxembourg

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**1. Introduction**

- **Results of the November 2004 European Council and presentation of the “Hague programme”**

The EU Chair gave an overview of the Hague programme.

The US side underlined the interrelation between these objectives and the fight against terrorism. It is prepared to cooperate in various initiatives, which are specifically dealt with under other points of the agenda.

- **Presentation of the Freedom, Security and Justice External Relations programme**

The EU Chair introduced the JHA External relations programme, which has been made available to the United States.

The US, which has several resident legal attachés and law enforcement officers in the EU's external partners like in Ukraine and in the Balkans, would welcome periodic consultations with the EU on emerging crime trends in third states.

The next PDBTS meeting (Policy dialogue on border and transport security) is now envisaged for April this year.

## **2. Terrorism**

### **- Presentation of the December 2004 European Council Conclusions**

The conclusions of the European Council were presented by Luxemburg and by the Commission.

The US was particularly interested in consultations on sharing classified information on the one hand, and on recruitment and radicalisation of terrorists on the other. Different approaches may be considered, e.g. the motivation of suicide bombers, the problem of sanctions, etc.

The incoming UK Presidency envisages giving specific attention to issues like social cohesion.

### **- Financing of terrorism: Report of the Practitioners Workshop Terrorism Financing of November 2004**

Luxemburg will organize a follow up session to the workshop on financing terrorism that was held under Dutch Presidency. The aim is to gather both the prosecutorial/investigative aspects of fighting terrorism and the designation issues. It has additionally been suggested to bring together the EU and the US Financial Intelligence Units.

Details of the programme of the workshops remain to be worked out, whereby a case-based approach would be welcomed by the US side.

Europol is in consultation with US Mission to the EU on the development of joint analysis of frozen bank accounts.

- **Treatment of classified information in criminal proceedings**

The meeting addressed the difficulty of using security intelligence on alleged terrorists if the source of this intelligence cannot be disclosed in courts. The Presidency will invite Member States to answer as soon as possible the questionnaire drawn up in the G8 context. The United States offered to submit a paper outlining what the obstacles are and how they could be overcome. The EU side will then consider the possibility of involving Eurojust and national policy-makers in a workshop on this issue, which is seen by the US as vital for the credibility of counter-terrorism.

- **Lost and stolen passports**

The EU Chair informed the partners about the state of play with respect to sharing information with Interpol and the role of SIS II. The Commission added that much work has to be done before full operationality of SIS II by 2007, including on its legal base. The US, which had entered, by the end of 2004, almost half a million stolen passports into the Interpol database, was wondering how often the data base was indeed checked, considering the very low number of hits.

- **Terrorist Recruitment**

Both the EU and the US consider the issue of recruitment of terrorists to be crucial. It is addressed by the EU Action Plan. The UK will make it an important issue during its Presidency. In the United States, 12 million dollar will be devoted to financing studies on this phenomenon.

The US offered that the FBI and the intelligence services would co-draft a paper containing US views and possible proposals.

An EU position on whether the CoE convention should address the issue of recruitment will be discussed by the Article 36 Committee on 17 January when preparing the next CODEXTER meeting.

- **Data retention within the EU – state of play**

The state of play within the EU on this complex issue was sketched. It was underlined how important it is for all signatories to ratify the CoE convention on Cybercrime.

### **3. EU-US Agreements on Mutual legal assistance and on Extradition**

- **Adoption of the written instruments by old Member States**
- **State of play as regards new Member States**

The state of play of the implementation of the EU-US agreements was given. Efforts will concentrate on finalizing procedures with the old Member states, while negotiations just started with the 10 new Member states.

### **4. Law enforcement cooperation**

- **Europol:**
  - **Presentation by Europol on US-Europol practical cooperation & review of the US-Europol Agreement**

The deputy-director of Europol sketched the progress that has been achieved in implementing the two Europol-US agreements. The number of communications and cases has dramatically increased over the past 2,5 year. The main partner on US side is the FBI, followed by the US-Interpol bureau and the Department of Homeland Security. Drugs, terrorism, trafficking in human beings and child pornography form the main topics of cooperation. The use of the Europol Liaison officers is frequent by the Member states that do not have their own L.O., but it is common practice as well for many of the other Member states. One substantial difficulty remains in relation to the Drugs Enforcement Agency,

which continues to make use of channels of its own. Europol further states that it hasn't noticed any misuse of data, which have been made available to the US partners. A joint EU/US assessment of the agreements will be completed in March 2005. Europol looks forward to the task assigned to it in the Hague programme as from 2006, namely to draft a yearly European Threat Assessment, which will be based on information from Member states, Olaf, Eurojust, the Border agency and other external sources.

The US side shares this positive assessment and considers that one should now improve the exchange and use of classified information. It was added that the secondment of a DEA senior official - in charge of the whole Europe - to Brussels may facilitate the processing of cases. The US side announced that the secondment of an FBI representative to The Hague would probably accompany the implementation of new tasks assigned to Europol in the framework of counter-terrorism.

- **Eurojust:**

- **Presentation by Eurojust on US-Eurojust practical cooperation**

The President of Eurojust stated that his organisation had completed its enlargement successfully and is in a position to cope with the many tasks it has been assigned by the Hague programme. In the coming period, meetings are planned on key issues, e.g. bringing together practitioners involved in terrorist cases to discuss investigation and prosecution experiences or, in April, to discuss counterfeiting. Eurojust has developed a very useful network of Contact points, e.g. in Russia, the Balkans, Israël and it would welcome a similar approach in respect of the United States. According to the President of the College, time has come to start the negotiation of a formal agreement between Eurojust and the USA, comparable to the one signed with Norway. This agreement could enter into force at the same time as the two EU-US agreements on extradition and mutual legal assistance. In the short term, Eurojust would like to see US side designating a permanent contact person with a prosecutorial background. A concrete drugs case was presented by the Luxemburg member of Eurojust, underlining the added value of coordinating the processes of letters rogatory in a complex multinational case.

The US is ready to provide expertise to the workshops that Eurojust will organize on 10 February 2005. It invited Eurojust to cooperate with the United States on concrete cases, whereby the designation of a contact point in Washington may be an effective tool.

- **Other issues:**

- **US dialogue with PCTF (Police Chiefs' Task Force) and CEPOL (European Police College)**
- **Discussion of the SECI Center in Bucharest**

These other issues were not addressed in plenary.

**5. Travel document security**

- **Update on biometrics**
- **Interoperability of systems**
- **Visa Waiver Program – debriefing on the results of the review report presented to the U.S. Congress**

The EU side updated the US on the progress that has been achieved within the EU on biometrics, visas and residence permits issued to third country nationals as well as on the Visa Information System. The Commission insisted on the importance of obtaining an extension of the 26 October 2005 deadline to implement all these new features.

The US side sketched the measures taken enabling it to introduce new biometrics identifiers in all its passports by early 2006. Details about the new features will be made available to the Commission. The US would welcome the designation of one single contact point on these issues in the EU.

The US delegation further expressed its willingness to inform the Congress about the progress that has been made by the EU on biometrics, in order to increase the chance of having the 26 October deadline extended. Also, the US confirmed the DHS commitment to send advance information to the EU at the time of completion of the review report on the Visa Waiver Program.

## **6. Practical cooperation (dinner discussion)**

- **Management of international events with a public security impact and exchange of best practices**

The delegations agreed to exchange the handbooks they have produced as recommendations or best practices linked to the organisation of major international political or sports events. The US side invited the EU to consider setting up a Body of experts (International Rapid Response force). The EU suggested to consider the involvement of the Task Force of Chiefs of Police

- **Workshop on public security communications**

The technological backing of the policies, i.a. in border areas, biometrics or telecommunications in crisis situations, is seen as a cornerstone of the success of their implementation. The Hague programme strongly emphasises the operational implementation of policy measures. It was therefore agreed to organise a seminar or workshop on such technological choices.

- **US-EU cooperation as regards criminal aspects of intellectual property offences**

Both the EU and the US face the damaging consequences of intellectual property theft. The US is starting a STOP (Strategy to Tackle Organised Piracy)-programme, which it would like to share with the EU and/or its interested Member states. Eurojust is presently engaged in related issues, e.g. counterfeiting of the euro. The EU Chair agreed to sound out the Member states and Eurojust on their possible increased involvement in this combat, which the US view as affecting both criminality and national security.

- **US-EU cooperation in the fight against organised crime – US proposal for an EU secondment in the USA organised crime section**

The US envisage to reinforce mutual cooperation in the fight against organised crime, either through joint technical assistance or through the secondment of an Organised Crime expert to Washington. The essential requirement for such a person, whether he has a prosecutor's or a police background, would be to facilitate the setting up of joint investigation teams and the integration of multidisciplinary task forces operating on both sides against organised crime. The two Europol liaison officers could be involved in this initiative. Given the possible involvement of either Europol or Eurojust, the EU chair announced that it would hold consultations on this issue.

- **Briefing by the US on grand corruption**

Both partners have experienced that the handling of grand corruption cases originating in third states is complex due to the multiple jurisdictions involved and the problems arising when returning the assets. The US would welcome the setting up of a rapid force that would better coordinate the processing of requests emanating from these states. The EU could widen the acquis it has developed in freezing assets and confiscation.

- **April 2005 UN Crime Congress**

After the Council of Europe convention on cybercrime, it is now envisaged to negotiate the same issue at UN level. The United States do not favour such a proposal, since it would might constitute a disincentive for states to ratify the CoE convention. Other possible UN conventions are under consideration, in particular in the field of Money laundering or Extradition. The EU Chair announced that it will discuss these issues at the next art. 36 committee meeting.



## **7. Confidence building measures (dinner discussion)**

### **- Seminar organised by the Commission and the Presidency in April 2005**

A first seminar for US law enforcement officials will be held 6-8 April 2005 in Brussels and The Hague with a view to materialising the objective of increasing confidence through better knowledge and understanding.

This seminar is to be seen as a first step in the process of improving the dialogue between practitioners from both parties.

### **- US conference in Bucharest: EU invited to make a presentation on EU action in the Balkans**

The US Mission in Brussels is coordinating the organisation of a seminar at the SECI center in Bucharest for resident legal advisors, police trainers and other interested law enforcement professionals involved in fighting organised crime in the Balkans on 21 March. The EU accepted the invitation to send speakers and participants in this conference, where the concrete results of the Friends of the Presidency-report on the EU's involvement in fighting organised crime in the Balkans could be presented.

### **- Integration of migrants - Voluntary visit groups to exchange experiences**

The EU and the US are paying more and more attention to the crucial issue of integration of migrants and to question of social cohesion. Important financial means are being made available to that end. Given the interest shown by the EU, the United States will offer to 10 participants a first visit programme to study the concrete environment in which integration takes place; this offer may be renewed in the second part of the year.

**8. Discussion of the new EU Drugs Strategy 2005-2012 and Action Plan  
(dinner discussion)**

The US side positively assessed the EU Drugs strategy that was adopted by the European Council in December 2004, and which will be developed in an Action Plan.

It is agreed to continue to cooperate in the existing fora, among which CND (Commission on Narcotic Drugs), where the resolutions under scrutiny should form part of EU-US coordination.

**9. Transatlantic legislators' dialogue: involving US Congress and the European Parliament in Freedom, Security and Justice issues (dinner discussion)**

Both parties assessed the value of increasing mutual understanding between key players from both Congress and the European Parliament in the field of Justice and Home Affairs. It is therefore welcomed to encourage mutual visits by a limited number of those interested parliamentarians.

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## List of participants EU USA FSJ Meeting 13 and 14 January 2005 in Luxembourg

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### Presidency

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Roland Genson, Chairman Committee on Article 36

Sylvain Wagner, Chairman Strategic Committee on Immigration, Frontiers and Asylum

Charles Elsen, Counsellor of the Minister

Jean Mischo, Chairman Horizontal Drug Group

Claudine Konsbrueck, Ministry of Justice

Carlos Zeyen, Prosecutor's Office

Alain Origer, Ministry of Health

Raoul Ueberecken, JHA Counselor

Véronique Dockendorf, Ministry of Foreign Affairs

Sophie Billon, JHA External Relations, Luxembourg Permanent Representation

### United Kingdom

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Peter Storr, Director (International), Home Office

Christophe Prince, Deputy Head, European and International Unit, Home Office

Emily Maltman, JHA, UK Permanent Representation

Laura Guy, Transatlantic Relations, UK Permanent Representation

### USA

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#### *US Department of Justice:*

Bruce Swartz, Deputy Assistant Attorney General

#### *US Department of State:*

John Barger, Deputy Director, Office of Policy Coordination, INL Bureau

Paul Fitzgerald, Director, Border and International Programs

Shearer Kimber, Political and Global Affairs Officer

#### *US Department of Homeland Security:*

Elaine Dezenski, Deputy Assistant Secretary

#### *US Mission to the EU*

Mark Richard, Senior Counsel

Frank Kerber, Counsellor for Narcotics and Law Enforcement Affairs

Marc Meznar, Refugee & Migration Affairs Officer

Jennifer Underwood, Economic Officer

*US Embassy in Luxembourg:*

Peter Terpeluk, US Ambassador

Daniel Piccuta, Deputy Chief of Mission

James K Connell, EU Coordinator

*US Embassy in London:*

Jean Bonilla, Minister for Economic Affairs, Acting

*US Embassy in Brussels:*

Fred Wong, Legal Attaché

### **Commission**

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Tung-Lai Margue, Director DG JLS

Luc Véron, Deputy Head of Unit DG External Relations

Diederik Paalman, DG JLS

Telmo Baltazar, JLS Counsellor

### **Council General Secretariat**

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Gilles de Kerchove, Director DG H

Wouter Van de Rijt, Principal Administrator

### **Europol**

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Jens Henrik Højbjerg, Deputy Director, Europol

### **Eurojust**

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Michael G. Kennedy, President of the College of Eurojust

Georges Heisbourg, National Member for Luxembourg