



**COUNCIL OF
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NOTE

from : Council Secretariat

Subject : Report on the EU / US JHA High Level meeting in Helsinki on 18 July 2006

The Presidency was represented by Antti Peltari (Interior) and Matti Joutsen (Justice), the incoming Presidency by Günter Krause and Michael Grotz, the Commission by Tung-Lai Margue and the Council Secretariat by Gilles de Kerchove and Paul Hickey. The US delegation was led by Elisabeth Verville (Department of State), Paul Rosenzweig (Department of Homeland Security) and Jane Horvath and Mark Richard (Department of Justice).

Counter-Terrorism and Security

1. Update on the implementation of the EU Counter-Terrorism Strategy

The EU side described the most recent developments related to the setting up of SIS II, the protection of critical infrastructures, the detection of explosives, the fight against terrorist financing and the possible criminalization of the espousing of terrorism. The US side asked that the architecture for SIS II be designed in a way that would not prevent future exchanges of information with third countries.

2. Radicalisation and Recruitment

Both sides reiterated their wish to better coordinate the financing of studies devoted to the phenomenon of radicalisation and recruitment and to share more on lessons learned about responses (e.g. French "contrat d'intégration", civic education). Europol and FBI will meet at Europol in November to share experiences on the subject. Germany presented the German initiative on the monitoring of the Internet ("Check the Web").

3. Terrorist financing, including asset recovery

Europol indicated that a joint Europol/FBI seminar would take place in autumn on the investigation of cases involving terrorist financing. The US side suggested the holding of a seminar on FATF explanatory note VIII (charities).

4. Counter-Terrorism and human rights

Both sides expressed their appreciation of the constructive on-going dialogue on the subject. A new meeting will take place in the margins of the forthcoming meeting of the 6th Committee in New York. The US side gave a short explanation of the consequences of the recent decision of the US Supreme Court in the Hamdan case on the application of Common Article 3 of the Geneva Convention to detainees as well as on the fact that the military commissions were not consistent with US constitutional law. The US side indicated that a new position had recently been created within the Department of Justice (DoJ) to ensure that civil liberties and privacy are sufficiently protected and promoted in the work of the DoJ as well as the many law enforcement agencies linked to it.

Justice and law enforcement issues

5. Use of intelligence in criminal investigation and prosecution

Eurojust indicated that it would do its utmost to collect the information so as to provide the Americans with detailed responses to the G8 (simplified) questionnaire sent some months ago. Both sides agreed that the work should be completed by the end of the Finnish Presidency.

6. Eurojust - US co-operation agreement

Eurojust indicated that the draft agreement would be submitted to its Joint Supervisory Board already in July and to the College in September so that the JHA Council could agree on it in October. Since this agreement does not require approval by the US Senate, the agreement could be signed in the margins of the EU/US ministerial meeting in November.

7. Mutual Legal Assistance and extradition agreements

The EU side indicated that, according to the information available to it, 15 Member States (the exceptions being AT, DK, ES, FR, LV (for the MLA Protocol), LT, HU, SE, SI and SK) still needed to complete their constitutional procedures with regard to these bilateral instruments. Twelve of these have indicated that they will have finalised this procedure by autumn 2006 (the exceptions being PL, IT and NL). Regarding the EU-US instruments themselves, 12 Member States still need to complete these procedures. The EU side emphasised the need for diligent action from the US side on this, in particular in relation to the ratification of the 2003 US-UK Extradition Treaty. The US side answered that it was confident that the Senate would complete its work by the end of 2006. The ratification of the 2003 US-UK Extradition Treaty is more advanced. The US side, the Commission and the EU Presidency agreed to meet after the summer break to reflect on possible initiatives to be taken to train the officials who will have to implement these agreements.

8. Europol-US operational co-operation

The Director of Europol expressed appreciation of the improvement in relations between its agency and the US law enforcement agencies (the recent international operation against persons exchanging pedo-pornographic material on the Internet was mentioned as an example of successful co-operation) but indicated that more efforts still needed to be done for the evolvement of a mutually beneficial relationship.

The closeness of relations varies from one agency to another. The DEA still needs to be convinced of the added value of multilateral exchanges. Procedures on how to process requests from either side need to be better defined. The EU side indicated that the three Member States (FR, IE, PT) which have not ratified the three Protocols to the Europol Convention should have completed their procedure by the end of 2006.

9. Organised crime and corruption

UN Convention against corruption

With regard to the December meeting of the State Parties to the UN Convention against Corruption, the US side expressed some reluctance towards the setting up of a worldwide "Greco-type" monitoring mechanism. Priority should be given to the implementation of the Convention; the US is providing significant assistance to the UNODC in order to help signatories to ratify the Convention as soon as possible.

Western-Balkans/SECI

Both sides agreed that there should be co-ordination of their bilateral assistance on the ground. The US side reiterated its views that the draft Convention prepared by an expert financed by the Commission contained data protection rules which would preclude SECI from sharing information with the US. The US finds this worrying considering the efforts and money invested by the US Government in setting up this organisation. The EU side took note of the concern expressed and indicated that no formal position had been decided yet as to the future of SECI and its relations with Europol.

10. Drugs, counter-narcotics in Afghanistan

The US side welcomed EU engagement in Afghanistan in the field of justice (IT), police (DE) and the fight against drugs (UK). The Action Oriented Paper and the matrix of EU assistance to Afghanistan was particularly noted with appreciation.

The US side asked whether Member States could not endeavour to prosecute major drugs traffickers on the basis of evidence collected in Afghanistan as had recently been done by the US : two Afghan traffickers (Baz Mohammad and Bashir Noorzai) were recently extradited to the US on the basis of the UN Narcotics Convention and tried there. If the EU Member States could do the same, this would sent a very strong signal to the traffickers in heroin. Eurojust expressed willingness to help but indicated that it would not be easy to find sufficient links to try such cases in a Member State.

11. Current developments in JHA

The EU side updated the US side on the current developments in the field of Justice and Home Affairs : the European Evidence Warrant, the draft framework decision on data protection, the directive on data retention, the future of the Prüm Treaty. The US side reiterated the serious concern raised by Article 15 of the framework decision on data protection. If adopted as it stands, it would jeopardize the informal excellent contacts developed over time by the US law enforcement agencies with their opposite numbers in the Member States.

12. Further cooperation in the field of law enforcement

Intellectual property rights (IPR)

The US side offered to share its experience with China on IPR. The EU side gave information on the state of negotiations on the draft Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights.

Following up a suggestion made by Vice-President Frattini when he met Director Mueller, officials of Cepol and of the FBI met on 10 July 2006 to explore possible forms of cooperation. The EU side expressed the interest of the EU in the conclusion of a formal co-operation agreement between Cepol and all the US law enforcement agencies.

Migration, borders and visa issues

13. Passenger name records (PNR)

The US side is currently examining the draft agreement sent by the EU. Negotiations have to take place as soon as possible. The US side asked whether the agreement could enter into force provisionally if some Member States were availing themselves of the possibility foreseen by Article 24.5 to "comply with the requirements of (their) own constitutional procedures". The EU side indicated that the draft contains a specific provision to that end.

14. Visa reciprocity and the VWP roadmap

The EU side recalled the importance of this issue which was a matter of Community competence and recalled that the Vienna Summit had recognised the need for tangible progress to be made towards the establishment of visa free travel for all EU citizens. Member States were anxious to see evidence of such progress. The EU side also reported that the second report on visa waiver reciprocity would be submitted by the Commission to the Council in September.

The US side underlined their wish to continue to work on this issue. The US side also reported that they had now received and validated most of the electronic chip passports and that they would shortly be providing guidance on the reporting of lost and stolen passports.

15. Document Security

E-passports

The US side thanked the Union for the recent report on the state of play with regard to common security standards and biometrics in passports. The US side also reported on developments in relation to the issuance of e-passports on its side where diplomatic and official passports had been prioritised for this purpose. The programme would be extended to the passport issuing centres in the course of the remainder of the year beginning with the Colorado in August. The US side also referred to the fact that the new temporary passport issued outside the US to replace lost and stolen passports would not be an e-passport and would be of limited validity. Proposals were also being developed as part of the "Western hemisphere initiative" for regulations on a passport card which would have application for the purposes of Canada and Mexico.

The EU side noted the efforts required by Member States to comply with the Regulation on common security standards and biometrics and passports and other travel documents. All Member States should therefore be in a position to issue biometric passports with digital photographs by the end of August 2006. The EU side also noted that the technical specifications for the inclusion of fingerprints had been recently adopted and that EU Member States would be required to issue passports including fingerprints as the second biometrics identifier, by the end of June 2009. It was recalled that access to that data would require readers to basic access control requirements.

Lost and Stolen Passports

The US side welcomed the progress being made on lost and stolen passports but believed a good deal of work remained to be done on timely reporting and single points of contact before the system was fully effective. The US underlined the fact that it was required to validate the arrangements third States put in place in this respect for the purpose of the visa waiver programme, including for the purpose of review and recertification, and expressed concern that some Member States were falling behind in this regard. The US side also referred to a pilot project directed to screening historical entry data against the Interpol data base with a view to assessing its potential value and signalled that they would be happy to brief the EU side on findings in due course.

The EU side referred to the progress made on the transfer of national data to the Interpol stolen travel documents system where entries from EU Member States now accounted for 8m of the 11m. The level of searches being conducted by the EU was low but beginning to increase and would expand significantly when the proposed link between SIS II and the Interpol data base was established thus allowing direct searches by end users.

16. Recent developments on the US Immigration Bill

The US side reported on developments in the US on immigration law reform with reference to the ongoing discussions on the House of Representatives and Senate Bills in this area. The two Bills emphasised different approaches although they also contained some common elements. Both envisaged significant increases in the resources and equipment to combat illegal migration as well as reinforced measures to prevent the employment of illegal migrants and smuggling of illegal migrants. The Senate Bill also made provision for regularisation of illegals already present in the US in certain circumstances and for temporary work visas. The relevant legislative procedures required the two Bills to be reconciled before submission to the President for signature but the timescale for this process was still uncertain.

17. FRONTEX

The EU side reported on Frontex noting that it was a young organisation with responsibility for managing operational cooperation at the external borders of the Community. The EU drew attention to the work of Frontex in the area of risk analyses as well as its involvement in major sporting events such as the Winter Olympics and the World Cup and the coordination role it was playing in responding to developments such as those in the North Atlantic / Canary Islands and the Mediterranean in the recent past. The possibility for Frontex to work with third countries and relevant competent bodies in areas covered by its activities and to the extent required for the fulfilment of its tasks was mentioned.

The US side expressed its interest in developing closer cooperation with Frontex by way of exchanging experiences on best practice and with a view to a possible cooperation agreement in the longer term. It expressed interest in hosting a group from Frontex for a discussion on best practices in the area of border security as well as a dedicated meeting on best practice in the area of sea migration where Frontex might be able to benefit from the experience of the US Coast Guard in the Caribbean.

18. International aviation entry and exit screening and pandemics

The US side referred to its developing thinking on the role exit screening might play as a containment measure in the event of a pandemic. It was interested in that context in developing screening protocols as an important component of a risk based approach to international travel and in circumstances where it feared that the absence of such protocols could result in calls for the cessation of international air travel. The US had formed a joint team bringing together border and health experts to develop protocols covering such matters as screening, quarantine, transit etc. The US side invited the EU side to consider whether it was interested in developing a common set of protocols which would ensure screening to a common standard. The US side also indicated that its thinking was open on the channel for taking forward work on any such proposal - G8, ICAO, or the US/EU channel.

The EU side noted that it was reflecting on how best to coordinate the preparedness planning for public health emergencies at the EU level and pandemic influenza preparedness and would take account of what the US had reported in that context.
