



**COUNCIL OF
THE EUROPEAN UNION**

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**JAI 9
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OUTCOME OF PROCEEDINGS

from : General Secretariat of the Council

to : Delegations

Subject : EU-US informal JHA senior level meeting (09-10 January 2008, Ljubljana)

Introduction

Presentation of the JHA External Relations Multi-Presidency Programme

The EU side (Presidency and Commission) sketched out the priorities in the field of JHA external relations, emphasising the parts on EU-US cooperation, including plans for an EU-US ministerial meeting in March (see also the final item on the agenda)

Institutional developments for JHA pursuant to the Lisbon Reform Treaty

The Presidency gave an oral presentation of the state of play with respect to the Lisbon Treaty, emphasising the need for swift ratification. The US side would be eager to receive any written information once it became available.

Session 1: Migration, border and visa issues

1. Visa reciprocity – implementation of US Visa Waiver Program reform (US lead)

The US side recalled the changes in the Visa Waiver Program after its amendment by Congress in mid-2007. The US, for its part, continued to regard the VWP as a bilateral programme between the US and individual Member States while understanding the Community wide competences at EU level and the importance of the issue for the Union and its Member States collectively. The US Administration was pursuing a dual mandate in terms of continuing to administer the existing VWP while preparing the measures necessary to enable the revised VWP to come into effect. The administration of the existing programme would involve the biannual review of the Member States participating in the programme as well as a site visit to Greece in the case of Member States not yet participating in the programme. With regard to the reformed programme, the basic philosophy was a move from a visa policy which was nationality-driven towards a policy led by a security focus. . The US side foresaw the new programme being implemented through Memoranda of Understanding between the United States and Member States beginning with candidate Member States but extending in course to Member States already participating in the programme. The US offered to share its schedule of study visits with the Presidency and the Commission. The introduction of ETA (Electronic Travel Authorization), which formed an essential part of the measures accompanying the revised VWP was on schedule for June 2009. The US indicated that it was likely that the information required for this purpose would be comparable to that required by forms currently in use. Consideration was being given to how ETA should also allow for last-minute applications and to the level of fees which would apply. The EU underscored that this issue was of interest to all Member States and would be included on the agenda of the Ministerial meeting in March with a view to making the case for all Member States to be part of the Visa Waiver Program. EU Member States were also concerned that ETA might prove to be an additional hindrance to travelling to the US, apart from the additional cost of a fee, which had not yet been set. The EU side also indicated that it would continue to reflect on the implications of the revised US programme with a view to coordinating a response.

2. Lost and stolen passports, Interpol database (EU lead)

In a common (EU and US) meeting on 17-18 September 2007 an assessment had been made of the effective use of - and follow up to - the Interpol database on stolen and lost travel documents (SLTD).

The US reported further encouraging results of the project, which had been launched in several airports and allowed for direct queries from there in the Interpol database. That project would be extended to all US airports. However, the US noted substantial differences in response times between EU Member States and called for additional work on data integrity.

The Commission announced that it would propose common EU principles for the use of and reporting to ASF/SLTD.

3. Discussion on comprehensive immigration reform – EU and US experiences (US lead)

The US side reported on measures directed to immigration reform in the US following the failure of legislative initiatives supported by the Administration in Congress in May. The legislation had been intended to effect comprehensive immigration reform addressing legal migration, border controls, illegals residing in the US as well as the link between migration and security. They believed that the failure of the legislation was the absence of public confidence in the effectiveness of border controls. . The Department of Homeland Security had subsequently decided in August to proceed with non-legislative measures to the extent possible. These initiatives focused *inter alia* on border control through the deployment of additional staff, technology, and infrastructure, the provision of additional detention facilities with a view to the ending of catch and release practices, combating document fraud through initiatives such as the Western Hemisphere Travel Initiative, improving the effectiveness of procedures for returning illegals, and streamlining intergovernmental processes in the area of legal migration.

The EU delegation detailed the recent achievements and prospects of the Comprehensive European Migration Policy and the related Global Approach to Migration. The December 2007 European Council anticipated the further development of the comprehensive approach by way of a renewed political commitment based on a number of common overarching principles. The Commission would be bringing forward ideas for this purpose directed to economic migration, integration, combating illegal immigration, external actions, and ensuring policy coherence. The EU side also

outlined the scope of the initiatives directed to legal migration on which discussion had got underway in Council .

4. Lifting of internal border controls – Schengen enlargement (EU lead)

The EU sketched out the process that had eventually led to the enlargement of the Schengen area. The US expressed its admiration for this historic step.

5. Update on Frontex (EU lead)

The Frontex representative sketched out the main developments Frontex had undergone in the last year, from both an operational and financial point of view, its external activities as well as the priorities for the immediate future. Following a visit by US experts to Warsaw, several avenues of cooperation had been explored, such as border management, training, science and technology, with a focus on air and maritime borders and on return policies. Evaluations of FRONTEX were also to be prepared by the Commission in accordance with the mandate of the Hague Programme and by the Management Board in accordance with the requirements of the FRONTEX Regulation in 2008. The US subscribed to the idea of working on the six or seven avenues of cooperation that had been defined. The US also asked for cooperation on issues that currently fell outside the remit of Frontex such as the fight against terrorism in relation to border controls and the handling of major events such as the Austrian-Swiss 2008 European football competition.

A joint risk assessment could be envisaged once the conditions for exchanging information had been defined.

Session 2: Law enforcement information sharing

6. EU-US PNR agreement – modalities for joint review; move to 'push' (US lead)

Both sides agreed on the objective of the PNR review, namely to undertake a common assessment of how the system functioned. The second semester of 2008 would be the right moment to issue this assessment. Both sides agreed too that the public should be informed and receive credible assurances on the use of the system.

7. High Level Contact Group on data protection principles for law enforcement exchanges – status update (EU lead)

The EU and the US valued the progress made so far in the informal talks of the HLCCG and expressed readiness to invest all necessary effort in pursuing the list of principles. Issues other than those currently listed might have to be addressed.

The US were eager to conclude this process and to learn which format (Agreement, Council Decision, etc) the EU would like to give to these agreed principles.

The EU, however, underlined that the Member States first had to be informed and sounded out.

That would happen soon. Stocktaking would be possible at the next EU-US Ministerial in Slovenia on 13 March.

8. Proposal for a Framework Decision on personal data protection in the framework of law enforcement cooperation – info (EU lead)

Despite reassurances by the EU side on the objectives, scope and modalities of the Framework Decision on data protection in the police and criminal justice sector, the United States delegation remained concerned that the current level of cooperation and exchange of information would no longer be possible as it had been before. The adequacy statement was an issue, as were the legal criteria for existing arrangements. The EU side kept reassuring the partners that the new rules would not represent a set-back compared to the previous formats of cooperation.

Session 3: Counter-terrorism and security

9. New/proposed US legislation regarding the intelligence agency's surveillance program (FISA), distinguished from law enforcement's surveillance laws and procedures; impact on EU citizens (US lead)

At the request of the EU side, the American delegation outlined the legal aspects of the FISA legislation on electronic surveillance. It distinguished between aspects relating to criminal justice and those relating to intelligence (national security threats). The legislation, dating back to 1978 and a clear consequence of Watergate, had a system of warrants which must be obtained for the authorisation of a wiretap. The changes introduced in 2007 did not affect the objective or

methodology of the system, nor did they extend its scope; discussion focused on the internal constitutional aspects with respect to US citizens.

The EU noted that the latter point was indeed an issue of concern for the EU; the question was whether EU citizens had fewer rights under the FISA legislation than US citizens, who had been given reassurances by the recent amendments.

10. Recent EU legislative initiatives to enhance the fight against terrorism (proposal for an EU PNR system; proposal to amend the Framework Decision on combating terrorism; Action Plan on enhancing the security of explosives) (EU lead)

The EU delegation presented the three legislative proposals presented by the Commission in November 2007 ("the terrorism package") and emphasised the focus on prevention.

The US was very keen to cooperate on these issues, since it had a lot of experience in countering explosives (both abroad and in airline security) and in PNR. The US saw cooperation on explosives as a possible deliverable for the EU-US Ministerial meeting in March. Expert meetings and a possible common threat assessment should be considered.

11. Exchange of views on the links between drug trafficking and terrorism (Afghanistan, Colombia) (US lead)

The US delegation was of the opinion that classified information from NATO and ISAF clearly pointed at direct links between drug trafficking and terrorism. Even in comparison with Columbia, Afghanistan's national revenue was said to be far more influenced by the traffic in drugs. The US had successfully extradited four main drug traffickers in order to prosecute them in the US, and urged the EU Member States to consider domestic prosecution in those cases in which the Afghan justice system was not able to handle these threats.

The Presidency will meet in March with both the UN and the US to discuss issues relating to the link between drug trafficking and terrorism. The scope of the debate would be widened to include trafficking routes outside Afghanistan. Council conclusions might be envisaged. Additionally, the Commission underscored the need to consider alternative development and also the rule of law. More efforts should be put into coordination of operational activities and most appropriate use of money.

The Director of Europol mentioned that Europol had not yet received much forensic evidence from the FBI or the DEA on the links between traffickers and terrorists. Europol would be available to participate in an operational and strategic discussion.

Session 4: Justice and law enforcement issues

12. Cybercrime / cyber-security (EU lead)

The EU debriefed extensively on its activities in the field of cybercrime, underscoring the cooperation with the private sector, the cybercrime platform, the concern over massive attacks and the protection of children.

The US hoped to be able to report to the Ministers in March that concrete cooperation was taking place on investigations and also on training, possibly together with Europol and Eurojust.

13. Mutual Legal Assistance/ Extradition agreements (state of play of ratifications) (US lead)

The US reported on progress on the bilateral instruments with Bulgaria and Romania and considered that the Senate was likely to vote later this year on the ratification of the whole package. The US expressed concern over the ratification process in Belgium, Greece and The Netherlands, which seemed to lack a clear timetable.

Moreover, the US suggested that training should be envisaged for those who would have to work with the implementation of these agreements and who may be unfamiliar with the judicial systems in other countries.

The EU side confirmed that it would table the process of ratification as a priority matter and that the issue will be dealt with at the Informal Ministerial meeting at the end of January. Progress would be reported at the next EU-US Ministerial troika. As far as training was concerned, the question would be submitted to Eurojust.

14. Eurojust – the way forward (EU lead)

The EU sketched out ongoing discussions with respect to the future of Eurojust and various proposals to enhance its functioning.

The US recalled a prosecutors meeting sponsored by Eurojust which had focused on organised crime. They suggested that Eurojust might replicate that kind of meeting, possibly in the context of the terrorist threat and/or in relation to countries around the EU.

15. US-EU coordination in advance of the 2nd Conference of State Parties (COSPP) to the UN Convention Against Corruption (US lead)

The US urged the EU to begin coordination as soon as possible in advance of the Bali conference.

The review mechanism, asset recovery and technical assistance were mentioned among the issues to be discussed. Also one individual case related to Nigeria was addressed.

The EU agreed to any form of coordination, as it would also coordinate internally every day in Bali. It noted however that on the review mechanism, the EU and the US might have diverging views.

Session 5: Western Balkans

The EU side presented its objectives and initiatives for the Western Balkans in the months to come:

16. Future of the SECI Center (draft SELEC Convention; data protection issues; funding of SECI) (EU lead)

The EU gave a presentation of the prospects for the SECI centre as a well-functioning police and customs cooperation centre in South-Eastern Europe, which would have close relations with Europol. It is important for the EU that the new Convention gives an adequate level of Data protection in order to allow SECI to build up its own database and to function in a multilateral environment. The Vienna Police Convention is seen as a useful additional dimension to cooperation in South Eastern Europe.

The US wondered why SECI's future should be made dependent on new rules for data protection, still to be established, whereas the centre was currently able to function well as it was. The US has

invested a lot in SECI, which hosts a resident legal advisor and staff from FBI and DEA. The US calls for a strategic (re-)thinking over the future role of SECI.

17. Fight against organised crime

- a) Organised crime threat assessment for the Western Balkan States (also known as SEE OCTA) (EU lead)

The US offered to contribute to the SEE OCTA threat assessment, using the knowledge gained by its 40 prosecutors on duty in the area. SEE OCTA would be drafted in cooperation with, among others, SECI, Europol, Frontex.

It was agreed that US Liaison Officers would be invited to join the meeting of EU Liaison Officers stationed in the Western Balkans, who would meet on 14-15 February.

- b) EU and US projects in the Western Balkans (EU and US)

The US delegation underscored that it was under pressure from Washington to reconsider many of its projects in the Western Balkans and that it therefore needed to coordinate with the EU regarding the choice of projects for assistance and training it should continue to support.

The EU gave indications of the financial figures involved in EU assistance and which priorities had been designated.

Delegations agreed that the meeting of the Liaison Officers mentioned earlier would serve as a platform for discussing the current level of assistance and the US objective to rationalise it.

18. Any Other Business

- The incoming French Presidency confirmed its willingness to pursue the coordination of efforts between the US and the EU in the same spirit as over the past two days in Slovenia. A meeting of the JHA Senior level officials forum might be scheduled for July in Paris.
- The Director of Europol recalled that he had mentioned at the previous meetings that two questions were outstanding in relations between Europol and the US; as far as US participation in the Analytical Work Files was concerned, an agreement had been found. However, Europol was still not satisfied by the lack of classified information from the FBI. The US promised to work on it in order to resolve it.

Other topics addressed during the meeting

EU update on the Prüm Decision – prospects of Prüm-style cooperation between the EU and the US once the EU-US MLA agreement is in force

The EU presented the main characteristics of Prüm cooperation. The US welcomed it as a highly innovative format of cooperation, in particular the hit-no hit DNA mechanism. The US could offer a similar hit-no hit connection to the FBI database on DNA, despite the stringent rules of data protection in the USA in that respect

Preparation of discussion topics for the EU-US JHA Ministerial

Data protection, visa reciprocity, Western Balkans, border management, radicalisation and recruitment and explosives were envisaged among possible issues for the EU-US Ministerial meeting scheduled for 13 March 2008. Further steps to agree on a definitive agenda would be launched by the Slovenian Permanent Representation in Brussels.



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EU-US Informal Justice and Home Affairs Senior Level Meeting,

Ljubljana, 9-10 January 2008

Slovenian Presidency	
Nina Gregori	Undersecretary Ministry of the Interior
Anton Travner	Senior Police Superintendent Ministry of the Interior
Melita Močnik	Head of Division for Compensatory Measures Ministry of the Interior
Matjaž Dovžan	Undersecretary Ministry of the Interior
Hinko Privšek	Head of Interpol Division Ministry of the Interior
Andrej Grošelj	Head of JHA Unit Permanent Representation of the Republic of Slovenia to the EU
Jana Kulevska	Counsellor JHA Permanent Representation of the Republic of Slovenia to the EU
Albert Černigoj	Deputy Head of Counter Terrorism Unit

	Ministry of the Interior
Katja Rejec Longar	General Director of the Directorate for International Cooperation and International Legal Assistance Ministry of Justice
Luka Kremžar	Undersecretary Ministry of Justice
Petra Sešek	Senior Counsellor Ministry of Justice
Nuša Anuška Videtič	Senior Counsellor Ministry of Justice
Barbara Sušnik	Division for North and Latin America and the Caribbean, Minister Plenipotentiary, COTRA National delegate Ministry of Foreign Affairs
Andrej Bratkovič	Secretary Government Office for EU Affairs
Liza Sitar Magrinya	Counsellor Government Office for EU Affairs
Barbara Binder	Advisor Government Office for EU Affairs
Gregor Malec	Undersecretary Ministry of Labour, Family and Social Affairs
U.S. Delegation	
Susan Burk	Deputy Coordinator for Homeland Security U.S. Department of State
Elizabeth Verville	Deputy Assistant Secretary U.S. Department of State
Alessandro Nardi	Foreign Affairs Officer Office of European Union Affairs U.S. Department of State
Kenneth Propp	Deputy Assistant Legal Adviser U.S. Department of State
Negah Angha	Foreign Affairs Officer U.S. Department of State Bureau for International Narcotics and Law Enforcement Affairs
Michael Scardaville	Deputy Director, European Affairs U.S. Department of Homeland Security
John Kropf	Deputy Chief Privacy Officer

	U.S. Department of Homeland Security
Bruce Swartz	Deputy Assistant Attorney General U.S. Department of Justice
Ken Mortensen	Acting Chief Privacy and Civil Liberties Officer U.S. Department of Justice
Thomas Burrows	Associate Director Office of International Affairs U.S. Department of Justice
Mary Lee Warren	U.S. Department of Justice, Senior Counsel for the European Union and international Criminal Matters U.S. Mission to the European Union
Becky Bosley	FBI Legal Attaché U.S. Mission
Jacquelyn Bednarz	Attaché to the U.S. Mission to the EU and NATO U.S. Department of Homeland Security U.S. Mission to the European Union
James McAnulty	U.S. Department of State Counsellor of Mission for International Narcotics and Law Enforcement Affairs U.S. Mission to the European Union
Paul Fitzgerald	U.S. Senior Consular Representative to the EU
Paul Schultz	Consul U.S. Embassy in Ljubljana
EU Commission	
Tung-Lai Margue	Director
Cecilia Verkleij	Head of Sector Directorate General Justice, Freedom and Security
Frank Schmiedel	First Secretary European Commission, Delegation in Washington DC
Heike Buss	Deputy Head of Unit Directorate General Justice, Freedom and Security
Martin Schieffer	Head of Sector Immigration Directorate general Justice Freedom and Security
Nora Rolle	Desk Officer Directorate General RELEX

General Secretariat of the Council	
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Thierry De Wilde	Commissaire Principal de Police Ministère de l'Intérieur Direction Generale de la Police Nationale
Jean-Cristophe Peaucelle	Chef du Service des Affaires Européennes Ministère de l' Immigration, de l'intégration, de l'identité nationale et du codéveloppement
Marie-Ange Balbinot	Ministry of Foreign Affairs
Europol	
Max-Peter Ratzel	Director
Eurojust	
Malči Gabrijelčič	National Member for Slovenia
Frontex	
Rick Weijermans	External Relations Officer