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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Delegations
Subject:	Outcome of the EU – US Justice and Home Affairs Senior Officials Meeting, Valletta, 1-2 March 2017

1. Welcome by the EU Presidency

The Presidency underlined the political and operational importance of the topics on the agenda. Today's challenging times call for cooperation and exchange of best practices between partners and hence the relevance of pursuing EU-US dialogue on issues pertaining to Justice and Home Affairs.

The US delegation agreed broadly with the Presidency's introductory remarks and highlighted in particular the practical value of EU-US cooperation on JHA matters. This operational dimension was a recurring theme of US interventions throughout the two days of meetings, also with a view to the upcoming Ministerial meeting in June.

2. Security and Counter-terrorism

a) Foreign Terrorist Fighters - return and reintegration

The US delegation praised the cooperation at various levels between American law enforcement agencies and EU counterparts, especially Europol. The Mutual Legal Assistance (MLA) agreement was also mentioned as a crucial instrument for counter-terrorism cooperation, as well as the set up of joint investigation teams. Looking into future cooperation, the US delegation recalled recent statements by the new Secretary of Homeland Security John Kelly on the need to bring down barriers between intelligence communities. In practice, the US and the EU should explore the possibility of exchanging experiences in the collection of API and PNR data and screening. Both sides should also continue to exchange information on measures aimed at combatting extremism and radicalisation.

The EU delegation highlighted in particular the recent progress towards a more operational phase of cooperation with the US on counter-terrorism. Europol has developed into an important hub for information sharing on counter-terrorism matters and for bringing the counter-terrorism and law enforcement actors together. The upcoming deployment of Europol personnel to Operation Gallant Phoenix is an important development for a wider sharing of field data. The EU delegation also mentioned Europe's current concern with the return of Foreign Terrorist Fighters and its implications for justice and correction systems, as well as social welfare and rehabilitation systems. An exchange with US relevant counterparts on judicial procedures and the reintegration of vulnerable groups would be particularly useful.

b) Interoperability of information systems and information exchange

The EU delegation informed of the conclusion of the High Level Expert Group expected for May this year. The Group's conclusions should contain important actions and more effective technological solutions for better interoperability solutions across the JHA area. The EU highlighted a number of actions foreseen for the next couple of years: automated screening of data quality, the European search portal, the more systematic use of biometric data for tracking multiple identities, the set up of a common identity repository with alpha-numeric data and the adoption of ETIAS.

The US delegation expressed interest in receiving regular information on the upcoming developments mentioned by the EU and recommended a more systematic use of Interpol databases by border authorities.

c) Anti-money laundering and terrorism financing

The US delegation expressed interest in receiving more information on the content of the Commission's proposals for an amendment to the 4th Anti-Money Laundering Directive (AMLD) and for a new Directive on countering money laundering by criminal law, so as to understand how they can contribute to reinforce EU-US cooperation in this field. The US delegation acknowledged differences between the US and EU on anti-money laundering, the former a lot more focused on active enforcement action. In this regard, the US offered to share experience of embedding financial investigation units in law enforcement agencies, thus contributing to a more harmonised practice across the EU. The US delegation also expressed interest in working with Europol in the tracking of Western Union transfers, in the context of combatting terrorism financing and migrant smuggling.

The EU delegation highlighted the good cooperation under the Terrorism Financing Tracking Programme (TFTP) as shown by the latest report on implementation. This should pave the way for developing a system on transactions, which the Commission should be in a position to share with US partners at the Ministerial meeting in June. The EU also took good note of the US offer for sharing experience of integrating financial investigation units in law enforcement agencies.

d) PNR

The EU delegation informed that the ECJ opinion on PNR Canada is still pending. Whatever the content of that opinion, it would not have any direct effect on the EU-US PNR agreement. On the implementation of the EU-US PNR agreement, the EU side made a positive assessment of the first exchange of analytical information and invited the US to explore the possibility of further exchanges on the analysis of output.

The US delegation expressed its availability to further exchanges with the EU on the use of PNR data. It also conveyed its apprehension with the potential effects of a negative ECJ opinion on PNR Canada, since the issues being examined by the Court would apply, *mutatis mutandis*, to EU-US PNR exchanges. In that sense, it called for both sides (also with Canada) to launch informal consultations on possible scenarios and eventual mitigating measures.

e) Recent and upcoming initiatives and expert meetings

The EU delegation informed about the preparation for the upcoming security workshop (follow-up to last year's workshop) and for a meeting on transport security. Regarding CBRN, the EU made a positive assessment of joint analysis and expressed its intention to continue cooperating, also on explosives assembling and the protection of soft targets.

The US delegation took good note of the EU proposals for CBRN cooperation. It also informed of a meeting in Washington in April between the Commission (DG MOVE) and the Transport Security Agency (TSA) to discuss topics of mutual interest. It recommended to involve all relevant actors and, to this effect, suggested the participation of the Department of Homeland Security (DHS) in the Washington meeting.

3. Cybercrime and cybersecurity

The EU delegation informed about the broad lines of the current review of the 2013 Strategy and its intention to develop a more strategic angle to exchanges on the subject with US counterparts, also in the context of the new US Administration and its reassessment of priorities in the field of cybersecurity. These discussion should include also the EEAS, DG CONNECT and DG JUST. The end goal should be the agreement on joint response tools.

The US delegation expressed its willingness to explore a wider strategic dialogue with the EU, which should also include a concertation of views on the ongoing discussion in the UN Intergovernmental Expert Group on Cybercrime for new international legal instruments for cyber issues.

4. Border management and migration

a) ETIAS and ESTA

The EU delegation informed about progress on the negotiation of the ESTA Regulation. Given the fact that the examination of the Commission proposal begun recently, it is not possible to anticipate at this stage the final content of the Regulation, including the duration of the travel authorisation. In any case, the EU is ready to engage with US counterparts to regularly provide information on the progress of negotiations.

The US delegation expressed its support for the setting up of ETIAS and suggested a conference on the issue to take place when the file is sufficiently mature, which could also involve Canadian partners.

b) EU-US Readmission experts meeting

The EU delegation informed about the EU-US readmission experts meeting that took place in Brussels on 16 February. It represented a good opportunity for exchanging experiences on practical measures for more effective return policies, that should be further explored in future experts' meetings.

The US delegation shared the positive assessment of the meeting's outcome and expressed its willingness to continue exchanges, especially regarding countries where both sides have strong inside information.

c) Visa issues

The US delegation begun by showing appreciation for the EU's balanced handling of the visa reciprocity issues and for its willingness to continue engaging with the US on what is clearly a thorny item in bilateral relations. It reiterated well known views on the 5 EU Member States non-fulfilment of the criteria for visa free travel. The US delegation also expressed its availability to continue providing training and technical assistance to the countries in question, so that a permanent solution can be reached.

Regarding Executive Order 13767 (Border Security and Immigration Enforcement Improvements), Section 3, the US delegation confirmed that it would not impose restrictions on the Visa Waiver Programme (VWP) as regards EU citizens. However, the US delegation used the opportunity to stress the new baseline for US immigration policy currently being developed, something that it is keen to discuss with partners such as the EU.

The EU delegation thanked the US delegation for its reassurances regarding Executive Order 13767 in what concerns EU citizens. On the issue of visa reciprocity, the EU delegation regretted the lack of progress and reminded US delegates that legal action remains an option if a solution is not found. For the time being, the EU delegation expressed its willingness to support and complement US efforts with a view to helping the remaining 5 EU Member States reach the minimum standards of the US VWP.

d) Tackling migrant smuggling

The EU delegation informed of recent developments on one of the current major priorities for EU action in the Central Mediterranean, including the outcome of the Malta Summit on 3 February. It provided information on its capacity building and training efforts in Libya, stressing the need for consultation and cooperation with other actors present in the region. This includes the US but also international organisation such as UNODC and Interpol. EU-US cooperation on anti-smuggling should be built upon existing cooperation on combatting other forms of organised crime.

The US delegation expressed interest in receiving more information on the extension of Frontex mandate and what it could imply for cooperation with third parties. The US delegation was also open to explore further exchanges on best practices of its Coast Guard on anti-smuggling activities.

e) Refugees and migration

The US delegation informed that it would continue its resettlement programme with the new cap set at 50 000 refugees per year. However, further changes to the programme are not to be excluded. The US delegation informed that the US remains committed to the EU-US Platform on migration and to develop new programmes of cooperation between relevant border management agencies, including Frontex. Regarding the UN Summit on Addressing Large Movements of Refugees and Migrants, the US delegation informed of ongoing outreach efforts, identification of gaps and seeking financial support.

The EU delegation gave an overview of its own efforts for the follow-up to the UN Summit and the establishment of Global Compacts, while asking the US to remain committed to what is a strong global effort for a better management of migration flows.

Regarding practical cooperation, the EU delegation expressed its availability to explore an experts' exchange programme through which Frontex could host US Coast Guard personnel.

5. Data Protection

The US delegation expressed its satisfaction with the entry into force of the Umbrella Agreement, paving the way for enhanced US-EU cooperation. It further informed that instructions are now being prepared for full implementation by the relevant agencies. The US delegation also informed that the Presidential Executive Order 13768 has no effect on US obligations under the Umbrella agreement or the Privacy Shield on transatlantic commercial transfers.

The EU delegation thanked the US for confirming that the Executive Order does not encroach upon the Privacy Shield and the Umbrella Agreement, but it also requested the US side to provide further assurances to this effect. The EU delegation also underlined the importance of full implementation of both instruments and offered to organise experts' meetings to discuss implementing aspects.

6. E-evidence

The US delegation expressed its wish for more efficient cooperation regarding requests under the MLA agreement and reiterated its readiness to work at technical level with the Commission and Member States, also to develop alternatives to the MLA. In particular, it highlighted the rather sensitive issue of collaboration with ISPs for the release of data, where US action is limited by the Electronic Communications Privacy Act. The US delegation ruled out changes to US law in this respect, but mentioned the possibility of executive agreements with EU Member States to overcome current limitations, in line with the agreement currently being negotiated with the UK.

The EU delegation shared the US intention to devise practical tools for enhancing cooperation in this field and to agree on common principles, something that could be further discussed at the next Ministerial meeting. The issue of collaboration with ISPs could be discussed at experts' group level.

7. Cooperation in criminal law

a) MLA

The EU delegation underlined the importance of expanding training and training material, since the EU could greatly benefit from US expertise. It also mentioned the usefulness of gathering information on the type of cooperation being carried out by different Member States.

The US delegation mentioned the usefulness of the joint investigative teams and how it facilitated the establishment of bilateral joint investigative teams with EU Member States. The US delegation also referred to the need for further action on bank account provisions (where much needs to be done as there is no practice of communication between relevant authorities), e-evidence, dealing with *de minimis* requests and hate speech investigations.

b) Extradiction

The EU delegations informed of recent developments on internal discussions regarding the Petruhhin judgement and indicated that any action now would be premature, as we expect upcoming ECJ decisions to provide further clarity. The current position of Member States is that the outcome of the Petruhhin case should not be automatically valid towards the US.

The US delegation expressed its apprehension with the potential effect of the Petruhhin judgement and asked whether any guidance was being prepared for Member States. It also informed that a non-paper on the issue was being prepared by the US DoJ and that it would expect to have consultations with the EU based on this non-paper.

8. Preparation of the EU-US Ministerial Meeting in Valletta, June 2017

The EU delegation informed that exchanges between both sides on an agenda for the Ministerial meeting would be launched in Brussels, based also on the outcome of the present SOM. The Presidency confirmed that the Ministerial meeting would take place on 15-16 June.

The US delegation confirmed its agreement to the dates of the Ministerial and shared its preference for a short number of agenda items, focused as much as possible on examples of practical EU-US cooperation.

9. Presentation by the incoming Estonian Presidency work plan

The Estonian delegation gave a broad overview of the topics it wishes to take forward on EU-US JHA cooperation: criminal justice in cyberspace, interoperability of databases, PNR, data protection (implementation of Umbrella and Privacy Shield), migration, terrorism as well as the impact of the internal security situation in Ukraine for the EU. It also informed that the next EU-US Senior Officials Meeting is planned for 20-21 September in Tallinn.
