



Brussels, 24 March 2023
(OR. en)

7725/23

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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Delegations
Subject: Outcome of proceedings of the EU-US Senior Officials Meeting on Justice and Home Affairs (Stockholm, 16-17 March 2023)

Summary

Held in a constructive, unscripted atmosphere, this EU-US Senior Officials Meeting (SOM) on Justice and Home Affairs covered a wide array of topics of mutual interest on which both sides wish to pursue cooperation. The meeting was also an opportunity to identify potential areas of interest for more in-depth discussions at technical level, as well as to prepare the ground for the next EU-US JHA Ministerial meeting.

The US delegation comprised representatives from the Departments of Justice, Homeland Security and State. The EU delegation included representatives from the Swedish Presidency of the Council of the EU (which hosted the event), the incoming Spanish Presidency, the European Commission, the European External Action Service (EEAS), Europol, Eurojust and the EU Counterterrorism Coordinator.

The Swedish Presidency confirmed that it would host the next Ministerial meeting in Stockholm on 21 June 2023.

1. Joint response to Russia's war of aggression against Ukraine

The Parties held a detailed exchange on *Security threats stemming from the war*. The US delegation identified cyberattacks and disinformation as top threats and outlined the work underway to support the Ukrainian authorities on the prevention of weapons diversion, including by unannounced inspections on the ground. The US Department of Justice remains heavily engaged in supporting Ukraine's efforts to counter corruption and its resident legal advisor is set to return to the US Embassy in Kyiv in the months to come. The EU delegation concurred that no large-scale firearms trafficking was observed for the time being, but vigilance remained high. It confirmed that the EMPACT community was fully mobilised and informed on ongoing exchanges on internal security matters with the Ukrainian Interior ministry. Both sides shared an interest in further exchanges in relation to the developments in Moldova.

Discussing *Support to people fleeing the war in Ukraine*, the EU delegation expressed appreciation for the close cooperation with US partners through the Solidarity Platform, including on humanitarian assistance and flows projections, and shared the reflections underway on shifting towards a longer-term perspective when handling integration and return issues. The US delegation voiced admiration for the present level of EU support to Ukraine. The US has admitted over 283,000 Ukrainians and is currently extending the 1-year humanitarian paroles for another year. The 'United for Ukraine' sponsorship programme continues to benefit from strong public support, with 3,000 new applications to become hosts under the programme screened every week.

The US delegation lauded the remarkable transatlantic cooperation on *Enforcement of sanctions and confiscation of assets* through the REPO taskforce. Its KleptoCapture Task Force is expanding its focus on facilitators of sanctions violations and on enforcing export controls (e.g., transshipment points), and invited further close cooperation with the EU on these aspects. The EU delegation expressed an interest in further discussions on beneficial ownership, financial investigation, unexplained wealth, and civil forfeiture. It updated the US side on efforts to harmonise the grounds for the confiscation of assets across the EU and referred to the reflection underway in the EU on the use of Russian assets, including the work of the new dedicated ad-hoc Council working party.

On *Accountability and the collection of evidence of core international crimes*, all participants welcomed the recent signing in Kyiv on 3 March 2023 of a memorandum of understanding (MoU) between the US and the members of the Joint Investigative Team supported by Eurojust. The US delegation praised the trans-Atlantic cooperation in this area and was looking forward to operationalising this MoU. The US teams on the ground in Ukraine which had long been involved in helping reform the Ukrainian judiciary were now pivoting to assist in the collection of war crimes evidence and the pursuit of investigations. Calls for a special tribunal for the crime of aggression are being closely followed, and in that context both sides welcomed the establishment in The Hague of the International Centre for the Prosecution of the Crime of Aggression Against Ukraine (ICPA). The EU delegation underlined the role of the Eurojust's new Core International Crimes Evidence Database (CICED) and noted the preparations for a Claims Register which according to current plans would be set up in the Netherlands by means of an Enlarged Partial Agreement of the Council of Europe that would be open from the very beginning to all countries. It referred to the need to assist the Ukrainian authorities and the ICC in the field of forensics. The EU continues to encourage Ukraine to adhere to the ICC Rome Statute.

A brief point on *Environmental crime* in the context of the war in Ukraine allowed parties to take note of a joint capacity building project that the European Commission and the US Department of Justice are developing with the Office of the Ukrainian Prosecutor General, and the European Network of Prosecutors for the Environment (ENPE).

2. Counter-Terrorism and Information Sharing

A discussion on *Violent extremism* opened with a presentation of the main findings from a conference on this theme hosted prior that week in Stockholm by the Swedish Presidency. It recalled that right-wing terrorism is on the rise, with, in some cases pandemic-driven, anti-government conspiracy movements becoming more visible. The blurring of traditional loyalties on the right-wing terror scene is making the threat picture more complex. The EU delegation underlined the need to understand how extremism works to prevent it. A whole-of government approach was needed, looking also at facilitators. Identifying the actors involved, and ensuring platforms uphold their responsibilities remained a challenge. Reflections were underway on how to address anti-system violence, and on the possible listing of violent right-wing organisations, bearing in mind high-level legal standards established by the CJEU in regard to listings. The US delegation joined the EU side in welcoming a study visit to New York of the Radicalisation Awareness Network (RAN) which was taking place at the same time as this meeting. It recognised the influence that the US violent extremist scene could have beyond US borders and concurred on the challenges arising from the increasingly complex nature of the terrorist threat, which it would be useful to further discuss. Prosecutions of perpetrators responsible for the 6 January 2021 events were ongoing. The US delegation noted that rapid demographic change has been identified as a predictor of radicalisation (as per research of Robert Pape, UChicago) and referred to concerns on radicalisation among police forces. The US delegation asked for EU support in global fora to maintain a focus on “terrorist” or “violent” extremism (and ensure these adjectives are not dropped) to prevent oppressive regimes using it against freedom of expression.

In the context of discussions on *Information sharing*, the US delegation informed that it had managed to identify data sets, including fingerprint data of Afghan terror suspects that the US can hand over to Europol, as previously promised. The EU delegation welcomed this sharing of battlefield information. With respect to the Enhanced Border Security Partnership (EBSP), the Parties took note of the intention to have a first set of data transferred under a ‘proof of concept’ currently being developed (as presented to Member States at the Working Party on JHA Information Exchange). Both sides welcomed a promising pilot project between Europol and the US Department of Homeland Security, relating to the sharing of ESTA denials on terrorism grounds. The Parties also discussed the ongoing returns to Iraq from the Al-Hol Camp, in light of the EU Counter-terrorism Coordinator’s recent visit to the region.

3. Access to electronic evidence

The Parties welcomed the resumption of the EU-US negotiations on an e-evidence agreement, held in the margins of the SOM 15-16 March in Stockholm. This opening session had allowed both sides to identify issues for further reflection. The next session will take place in June 2023 in Washington, DC. Both sides concurred on the need to closely coordinate in the context of negotiations on the UN cyber-crime convention to isolate China and Russia in their quest for internet regulation. The US delegation warned against the creation of a parallel data protection regime under the new UN agreement and stated its preference for using existing bodies to oversee the implementation of the Convention over establishing a new conference of parties. The EU delegation reiterated the need for high-level safeguards and welcomed the US reference to the Budapest Convention and its Second Protocol as a ‘gold standard’. A brief presentation by Eurojust highlighted the ongoing cooperation on the ANOM case, with the setting up of a ‘casework restricted area’ allowing prosecutors to share non-sensitive information on cases and court rulings.

4. “Going dark”: challenges for crime fighting in the digital era

The EU delegation provided an update on reflections underway in the EU on this longstanding issue (a priority for the Swedish Presidency) and on the plans for a High-Level Expert Group to address the question holistically. The EU’s conviction of the need to reinforce (also in in public discourse) law enforcement’s legitimacy to investigate was echoed by the US delegation, which concurred on the need to mirror privacy by design with lawful access by design. A point of reference in this regard is the 2021 G7 Statement which speaks of ‘maintaining tightly controlled lawful access to data’; indeed, law enforcement is not seeking new powers but to preserve its ability to investigate. On end-to-end encryption, the US delegation noted a certain hypocrisy in the position of web platforms that resisted constructive engagement on lawful access with liberal democracies, while being liable to bow to pressure in more repressive jurisdictions. Beyond encryption, data retention and data processing were also identified as areas of focus by the US delegation. It confirmed that the fight against online child exploitation and abuse remained a national priority.

5. Countering serious organized crime, including arms and drugs trafficking and resulting violence

The US delegation referred to the situation in Mexico where the heavily armed drug cartels that ship fentanyl to the United States are now branching out to Europe. The US considers the situation no longer a matter of bilateral anti-narcotic cooperation in North America but of global concern. The US delegation praised the good cooperation between the US Drug Enforcement Agency (DEA) and Member State police forces, called for a heightened concerted effort with the EU and Member States on stemming the flow of precursors, on money laundering, and on asset forfeiture, and bearing in mind that the opioid crisis might reach the EU too. With respect to synthetic drugs, notably fentanyl, the US was now placing a stronger emphasis on prevention and of public health protection, though more resources were needed to reduce drugs demand locally. The US delegation asked for support for a global coalition on synthetic drugs, with a Ministerial event planned in June and a side event at the UN General Assembly in September. The US was calling upon China to take responsibility and cooperate with US customs and shipping experts on the trade of precursors, so far to little avail.

The EU delegation highlighted its strong commitment to fighting organised crime, and its operational focus, encompassing a holistic approach to high-value targets, financial investigations, logistics chains, tackling corruption, fighting firearms trafficking, and cooperating with private and international actors. It recalled the on-going work on a new mandate for EMCDDA to conduct broad and topical risk analysis and EU-wide early warnings (on new substances, routes, modus operandi, etc.). The EU delegation informed that the EMCDDA report on synthetic drugs will be ready ahead of the EU-US Ministerial meeting in June. It underlined the importance of engagement with partners in the Western Balkans and in Central and Latin America. Cooperation on security issues will be a priority for the EU-CELAC Summit in July 2023.

6. EU-US MLA and extradition agreements

The parties concurred on the usefulness of the expert workshop on the MLA Agreement held in February and agreed to hold the next meeting planned after the summer break.

7. Update on progress towards Visa Reciprocity

Both sides agreed to continue working in the framework of the tripartite process to ensure that all EU Member States can enjoy visa-free travel to the United States as soon as the technical conditions allow. The upcoming tripartite meeting is foreseen to take place on 7 June in Washington, DC.

8. Priorities of the incoming Spanish Presidency

The incoming Spanish Presidency briefly presented the priorities it intends to pursue during the next semester in the JHA area.
