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*Vice-President of the European Commission*

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*Jean Arimón, Señor Carlos,*

*I would like to thank you again for the very interesting debate which took place on Monday 13 February in the temporary Committee TDIP.*

*During the discussion, certain Members of the committee referred to the possible existence of an EU-US agreement on the facilitation of the transit of criminal aliens which would have been signed in Athens in January 2003. I can confirm that such an agreement does not exist.*

*The confusion could result from a note of the General Secretariat of the Council entitled "New Transatlantic Agenda. EU-US meeting on Justice and Home Affairs. Athens, 22 January 2003". This note reports on a meeting held between the representatives of the US Ministry of Justice and the State Department and the chairman of the Article 36 Committee and the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA), assisted by the General Secretariat of the Council and the Commission. In point 4 of the note, "Border Controls and Travel Documents", there is a paragraph 4.1 "Cooperation in the context of SCIFA (12.04.02) conclusions, identifying areas for further activities" with the following sentence:*

*"Both sides agreed on the areas where cooperation could be improved i.a. the exchange of data between border management services, increased use of European transit facilities to support the return of criminal/inadmissible aliens, co-ordination with regard to false documents training (US side will provide the EU with a paper suggesting modalities for the coordination of false documents training) and improving the cooperation in removals".*

*Mr Carlos COELHO*

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*This sentence has fuelled some misunderstandings which I am happy to clarify.*

*The note of the Council Secretariat General only presents the conclusions on the progress of the cooperation between the EU and the US in the fields of border control and migration management. After having indicated the areas where there was "important progress", the note underlines the areas where both parties agree that cooperation "could be improved", such as the use of European transit facilities for the return of illegal immigrants. It does not say that there is an EU-US instrument on this issue.*

*This reference to the question of European transit facilities does not concern the fight against terrorism (which is covered in a different point on the agenda), but relates to EU-US cooperation in the fight against illegal immigration and border control management. The return of illegal immigrants from the US territory to their country of origin was a matter of concern for the US who considered that transit procedures in some European airports were too rigid and requested Member States concerned to study possibilities to facilitate transit of returning illegal migrants. This issue of the return of illegal immigrants from the US to their country of origin is clearly totally different from that of the "rendition" currently under discussion.*

*In the same context, the reference to "criminal/inadmissible alien" should be understood in the light of immigration law as referring to a person who does not, or no longer, fulfils the conditions in force for entry to, presence in, or residence on the territory. It does not concern criminal or terrorist activities. In these discussions with the US the European Union has underlined that these issues should be kept separate from immigration law issues and that they did not fall under the competence of the SCIFA.*

*Finally it should be stressed that this issue of the transit of illegal immigrants being returned to their home country has not been given a substantial follow-up. An EU-US instrument on this matter has not been agreed and does not exist.*

*In order to provide you with the relevant information, you will find attached the note of the Secretariat General of the Council.*

*On a different issue, as regards your request to have access to the data communicated by Eurocontrol to Dick Marty, it should be noted that the request was made directly by the Council of Europe and that for confidentiality reasons these data have been transmitted only to the Council of Europe. Therefore, I would encourage you to ask Eurocontrol directly for these data and the Commission is ready to support your request if necessary as the Commission did for the request that the Council of Europe made to Eurocontrol.*

*I hope that this information is useful.*

*I would also like to reiterate my willingness to cooperate with the Committee and my confidence in the success of its work.*

*Sincerely yours*



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 27 January 2003**

**5762/03**

**JAI 20  
USA 5**

**NOTE**

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from : the General Secretariat of the Council  
to : the Article 36 Committee and the Strategic Committee on Immigration, Frontiers and Asylum

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Subject : **New Transatlantic Agenda. EU-US meeting on Justice and Home Affairs. Athens, 22 January 2003**

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1. On 22 January 2003, Chairmen of the Article 36 Committee and the Strategic Committee on Immigration, Frontiers and Asylum, assisted by the General Secretariat of the Council, and the Commission met with representatives from the US Ministry of Justice and the State Department. A list of participants as well as the agenda of the meeting are appended.

**2. INFORMATION ON THE PROGRAMME OF THE GREEK PRESIDENCY AND ON THE MULTIANNUAL PROGRAMME ON EXTERNAL RELATIONS IN THE JHA FIELD**

The Presidency introduced and handed over the External Relations programme of the Greek Presidency (5333/03). A possible Justice and Home Affairs ministerial meeting was mentioned on the occasion of the signature of the MLA/extradition EU/US agreement. The US side welcomed the programme.

### **3. MIGRATION AND DEVELOPMENT**

#### *Integrating migration issues in the European Union's relations with third countries*

##### *Debrief on the Commission's Communication*

The Commission presented its communication to the Council and the European Parliament: Integrating migration issues in the European Union's relations with third countries (15284/02). US side expressed a strong interest for the approach set out in the Commission's communication. It indicated that the US government seeks to co-ordinate efforts by various ministries (Department of Justice, Department of State etc.) in order to ensure an integrated approach in the development policy of the US towards its southern neighbours.

### **4. BORDER CONTROLS AND TRAVEL DOCUMENTS**

#### **4.1. Cooperation in the context of SCIFA (12.04.02) conclusions**

##### *Identifying areas for further activities*

The Presidency welcomed the efforts made by the Danish Presidency which have strengthened the cooperation between the EU and the US in the fields of border control and migration management. It recalled the importance the EU attaches to the combating of illegal immigration and the strengthening of border controls which are, in line with the Seville conclusions, high priority issues. Reference was made to the SCIFA meeting with the US on 9 December 2002, when both parties discussed the follow-up to the 9 US proposals (13803/01) for cooperation on border control and migration management. The Presidency pointed out the important progress that has been made in various areas i.a. the setting up of an airports alert mechanism by the exchange of contact points, the increased cooperation in border control (the organisation of a seminar on sea border control hosted by the US at the end of October 2002) and the exchange of information on false documents. Both sides agreed on the areas where cooperation could be improved i.a. the exchange of data between border management services, increased use of European transit facilities to support the return of criminal/inadmissible aliens, co-ordination with regard to false documents training (US side will provide the EU with a paper suggesting modalities for the coordination of false documents training) and improving the cooperation in removals.

US side asked whether the new architecture for the Schengen Information System (SIS II) as well as the Visa Information System (VIS) would allow third states to get access to the information stored in the system or, at least, to query the system on particular individuals. The Commission indicated that the SIS has been conceived as a flanking measure for the lifting of internal borders control within the EU and that only the Member States which shared that objective could be connected to it and get access to the information related to migration. Things are getting slightly different with the law enforcement information of the SIS after the accession of the UK and IRL to the third Pillar part of the Schengen acquis. The Commission proposed that the US put their detailed questions with regard to the SIS on paper. This paper could serve as a basis for a further dialogue, possibly by means of an experts' meeting.

#### **4.2. Travel documents (Biometrics)**

US side undertook to provide the Presidency and the Commission with the (long awaited) report on the choice of biometric data for US travel documents from the National Institute on Technical Standards to the Attorney-General as soon as it has been completed (likely in February). It indicated that ICAO will likely opt for facial recognition as the standard biometric data to be integrated into passports. It also suggested that the US and the EU appeal jointly to ICAO to get a final report on this matter at the ICAO plenary session in February/March 2003. Until the new Homeland Security department is up and running, US side indicated that the US' SCIFA contact point would remain the appropriate contact point.

### **5. COOPERATION IN THE FIGHT AGAINST TERRORISM**

#### **5.1. Financing of terrorism [reflect as to whether the current statutory framework (mla/extradition agreements) is satisfactory to fight against anticipatory-type activities (aiding, abetting etc.)]**

US side emphasized the need for greater cooperation in identifying individuals and entities in the fight against terrorism in the context of UNSCR 1373. It suggested that EU/US experts explore whether the current statutory framework (mla/extradition agreements) is satisfactory to fight against anticipatory-type activities (aiding, abetting, conspiring, planning, attempting).

## **5.2. Critical infrastructure protection [experts meeting to look at the Europol report on the measures taken by MS to protect critical infrastructures]**

US side mentioned the G8 initiative for a conference in March in Paris on CIP in the context of computer systems. However, CIP was a cross-cutting issue and US would like to take it beyond computer related issues: it would like to develop and explore physical infrastructure as well. The Commission responded that part of these issues falls beyond the limit of Justice and Home Affairs. Physical CIP was primarily the responsibility of Member States, the Council and the Commission playing only a coordinating role. The Commission also indicated that the draft proposal for the EU Cyber-security Task Force would hopefully be adopted by the Commission by the end of January.

## **5.3. Technical assistance to third countries [presentation by Cion; US side asks how to avoid duplication]**

The Commission referred to the July GAC Conclusions which had called for the identification of specific actions to assist third countries in implementing their commitments under UNSCR 1373, and the identification of a small number of countries where pilot projects could be launched. As to the latter, missions to Indonesia and the Philippines had been carried out and a mission to Pakistan would soon take place. Preliminary results of the two completed missions pointed to EU assistance in areas such as support to combat financing of terrorism, strengthening law enforcement capacities and the development of integrated border management policies. Commission reconfirmed its resolve to work closely with the UN's CTC and mentioned in this respect the planned special meeting on 7 March between the CTC and regional organisations. As to possible cooperation with US, Commission mentioned that contact points had already been exchanged in a recent COTER/US Troika meeting and that in Commission's view there was scope for coordination to avoid overlapping.

US side suggested that the forthcoming EU mission to Pakistan might wish to contact the US Embassy in order to ensure adequate coordination of efforts.

## **6. COOPERATION IN THE FIGHT AGAINST DRUG-TRAFFICKING – PREPARATION OF THE FORTHCOMING MID-TERM REVIEW OF THE GLOBAL PLAN FOR ACTION ON DRUGS IN APRIL 2003 IN VIENNA**

The EU side indicated that it actively takes part in the preparation of the ministerial meeting especially in Vienna, where the European Union Member States, the Commission and the United States are members of the same group (WEOG). The Horizontal Working Party on Drugs has discussed twice the ministerial meeting. The position of the European Union has not yet been agreed. But the attitude of the European Union will be guided by its own report on the mid-term evaluation of its 2000-2004 Action Plan that was presented to the meeting of the European Council of Copenhagen. The report stresses that future EU actions should be evidence based and guided by increased application of target dates, defined responsibilities and measurable success criteria. EU actions against drugs should be focused and based upon proactivity, continuity, coherence and efficiency. Heroin, cocaine and crack cocaine should remain at the center of European efforts to combat drugs. US side indicated that it will defend a similar approach in Vienna.

## **7. JUDICIAL COOPERATION**

### **7.1. NEGOTIATIONS ON EXTRADITION/MLA AGREEMENT**

The Presidency indicated that it aimed at finalising negotiation at the January session in Athens, arriving at political agreement in the February Council and having signature by the end of the Greek Presidency. It indicated that some provisions have to be fine-tuned after receiving the last comments from Member States. Special courts remains a sensitive issue for the Member States. Treaty law questions (exact nature of this agreement under Article 24 TEU - relationship to present and future bilateral treaties) was discussed in Coreper on 22 January. EU side recalled that it was agreed between the US and the DK Presidency that there should be further confidence building measures between EU and US in order to further the understanding of each other's legal system.



This question has especially sprung up in the context of the assessment of the probable cause requirement in extradition proceedings in the United States of America. A first meeting between US authorities and EU judicial authorities has already taken place in Denmark in the beginning of December 2002. The Greek Presidency is willing to further such contacts and is willing to look at any suggestions in this field.

- Asset seizure and forfeiture

This issue was eventually not included in the draft EU-US agreement on mutual legal assistance. The Greek Presidency indicated that it would be desirable for the EU Member States to have better co-operation in this field with the United States of America. US side indicated that it had not taken a final decision on whether to ratify the 1990 Council of Europe convention on money laundering or to enter into the negotiation of a separate Agreement with the EU on this topic. Both sides agreed to hold an experts meeting on this question as soon as possible.

### **7.2. Next steps in developing a G-8/EU database on child exploitation**

Both sides noted with satisfaction that the commitment to combat child pornography on the Internet, that has also been referred to in the conclusions of the Gothenburg EU-US Summit of June 2001 has been fruitful so far. The Final report of a Feasibility Study had just been received by all sides and would be further discussed at the next meeting of the G8 Lyon Group in Paris in February. Commission said that it would shortly present the results of the Study to Member States.

### **7.3. Further steps to be taken for EU-US cooperation on Eurojust**

The Presidency noted that there have been no formal contacts since the last co-ordination meeting on terrorism on 14 May 2002. This information has to be placed in a broader perspective in which if the number of coordination meetings decreased the last 6 months but they were more operational orientated.

Coordination meetings were focused on specific cases and for some of them took place on the countries where the main investigations have been carried out. The development of new investigations which will be reported during the next strategic meeting on terrorism will give the opportunity to make new progress on this issue. US stated that it hoped it could move quickly, on the basis of the Europol agreements, to get something formal with Eurojust.

#### **8. EXPLORE POSSIBLE VENUES OF COOPERATION BETWEEN EU AND US IN DEALING WITH ORGANISED CRIME IN THE WESTERN BALKANS: FOLLOW-UP TO THE OUTCOME OF THE LONDON CONFERENCE ON ORGANISED CRIME IN THE WESTERN BALKANS**

The Presidency informed the US side of the priority given to combat organised crime in the Western Balkans. It intends to focus on specific JHA issues of significance to the region, by following up on the London Conference on organised crime in SE Europe (25 November 2002) and the declaration made by the SG/HR by implementing existing measures or adopting new initiatives on Justice and Home Affairs issues in the area. It will explore ways to address the issues of return of refugees, of border controls, of drugs. Since the US is heavily involved in many programmes in this region, both sides agree to find ways to reinforce the cooperation between the EU and the US in this region and also co-ordinate the numerous efforts that are made to fight organised crime in the Western Balkans. It was agreed to ask Europol/Olaf to work out with the FBI a joint survey on the best practices developed in the fight against organised crime in this region and possible ways to cooperate closer together. Commission explained about the EU approach to fighting organised crime in the Western Balkans and the need to follow up consistently .

#### **9. EXCHANGE OF VIEWS BETWEEN EU AND US REGARDING ORGANISED CRIME IN EASTERN EUROPE**

On organised crime and Russia, the Presidency indicated its willingness to continue the efforts made in the past years, actually since it was decided in 2001 to concentrate on a limited number of topics related to organised crime, like trafficking in women, stolen cars, drugs and money laundering.

The Commission has supported financially several projects in this respect and generally explained about EU's instruments and efforts to fight organised crime.. It recalled the EU and US are engaged together in a project aiming at combating trafficking in women, attracted to the West by false promises of legal work. It has lasted very long before the Russian side entrusted an official with the leadership over this process. The Commission considered it useful to exchange views with US on how to get the Russians to move forward. The EU had an effective network of liaison officers in Moscow. The Commission suggested that the Presidency might invite representatives from the US Embassy to these meetings. Talks between the EU delegation and US Embassy in Moscow to set up informal contacts could be considered.

US side agreed and said it would like to discuss concrete steps.

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## AGENDA

1. Adoption of the agenda
  
2. Information on the programme of the Greek Presidency and on the multiannual programme on external relations in the JHA field (EU/Pcy lead).
  
3. Migration and Development (EU/Cion lead)  
*Integrating migration issues in the European Union's relations with third countries*  
*Debrief on the Commission's Communication*
  
4. Border controls and travel documents
  - 4.1. Cooperation in the context of SCIFA (12.04.02) conclusions (EU/Cion lead)  
*Identifying areas for further activities*
  - 4.2. Travel documents (Biometrics) (US lead)
  
5. Cooperation in the fight against terrorism
  - 5.1. Financing of terrorism (US lead)
  - 5.2. Critical infrastructure protection (US lead)
  - 5.3. Technical assistance to third countries (EU/Cion lead)
  
6. Cooperation in the fight against drug-trafficking . Preparation of the forthcoming mid-term review of the global plan for action on drugs in April 2003 in Vienna (US lead)
  
7. Judicial Cooperation
  - 7.1. Negotiations on extradition/mla agreement (EU/Pcy lead)  
*State of play and Information on Presidency's intentions*  
*Confidence building measures*  
*Asset seizure and forfeiture*
  - 7.2. Next steps in developing a G-8/EU database on child exploitation (joint US/Cion lead)
  - 7.3. Further steps to be taken for EU-US cooperation on Eurojust (EU/Pcy lead).
  
8. Explore possible venues of cooperation between EU and US in dealing with organised crime in the Western Balkans: follow-up to the outcome of the London Conference on organised crime in the Western Balkans. (EU/Pcy lead)
  
9. Exchange of views between EU and US regarding organised crime in Eastern Europe (US lead)

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**LIST OF PARTICIPANTS**

**US SIDE**

**MARK RICHARD** – Department of Justice - Senior Counsel – US/EU Rep. - Brussels

**FRANK KERBER** – JHA Counselor, USEUR Brussels

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**BRUCE SWARTZ** – Deputy Assistant Attorney General for Criminal Matters at DOJ

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