



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 15 February 2013

6397/13

LIMITE

**DOCUMENT PARTIALLY
ACCESSIBLE TO THE PUBLIC
(01.03.2013)**

JAIEX	16
RELEX	127
ASIM	12
CATS	6
JUSTCIV	28
USA	4

OUTCOME OF PROCEEDINGS

from:	General Secretariat of the Council
to:	Delegations
Subject:	Outcome of the EU-US JHA Informal Senior Officials Meeting, Dublin, 6-7 February 2013

6 February

Session 1:

- *Update on recent developments in Justice and Home Affairs*

In their opening statements, the EU side (Presidency and Commission) referred to the potential for cooperation on JHA matters to contribute to growth and job creation in keeping with the overall focus of the Irish Presidency on stability, growth and jobs. Insolvency procedures and EU-wide data protection rules are examples of such measures. It was noted how much EU-US JHA cooperation had developed in the period since the last such meeting in Dublin in 2004 as evidenced by the scope of the agenda and the participation of the JHA Agencies. The EU-US MLA and Extradition Agreements had still to be brought into operation in 2004 whereas the discussion now would focus on the experience gained from their implementation.

The US subscribed to this analysis, emphasising the progress made so far while supporting the objectives of growth and economic recovery. This was one of the issues the US would address later on the agenda in connection with the draft Data Protection Regulation. Other issues on the agenda would allow EU-US cooperation to be extended and efforts coordinated to combat global threats.

Session 2: Data protection

- *State of Play*

The US gave a debriefing on the state of play of negotiations for an EU-US data protection umbrella agreement. A new two-day round of talks had been held to discuss the provisions of a potential umbrella agreement **DELETED**

DELETED

The EU noted that the negotiations for the umbrella agreement were making steady, if slow, progress. Common grounds had been found for several issues, but some other difficult matters remained, **DELETED**. The EU side pointed to strong support for its position in these negotiations on these issues in the European Parliament.

The EU side equally pointed to the potential benefits which the draft Regulation, on which good progress was made in the Council, would represent including a simplification of duties for businesses. The draft-Directive would, in addition, not be very different from the current Framework Decision, in particular as far as third countries are concerned. The EU saw these measures as belonging to a package to be brought forward in the Council and in the EP.

Session 3: Judicial cooperation in criminal matters

- *Report on October seminar at Eurojust*

The US and the EU highlighted the seminar held at Eurojust on 25-26 October, which was considered a success. Practitioners discussed ways to enhance judicial cooperation, which was generally still considered too slow. The lack of resources was problematic on both sides, particularly in circumstances where the number of requests being made was increasing, and was an issue which needed to be addressed, including through using the most efficient tools. Some information is available on-line (such as a guide on the implementation of the agreements and a guide on obtaining electronic evidence). There was recognition that some differences of use of the instruments also existed, such as on Article 4 (Central bank registers, which are not available in all EU MS), de minimis cases (which are not handled in the US), the difficulty to obtain cyber evidence in the US (partly due to the First Amendment).

DELETED

Eurojust confirmed that its report on this seminar would be issued soon; it also mentioned the working party that was set up in 2009 to promote the implementation of the agreements. This working party would continue its work based on the existing checklist of issues. It was suggested that work might focus on two priorities, being the best means to address the volume of requests and the method for cooperation with ISP's.

Session 4: Judicial co-operation in civil law matters

- *Update on recent developments*

The EU side welcomed the possibility of addressing civil law matters at EU-US Senior Official level. The EU presented the e-Justice project, announcing that it would be given a legal basis and reinforced by a data protection framework.

Referring to the next annual meeting of the Council on General Affairs and Policy of the Hague Conference, the EU and the US agreed to meet beforehand for a coordination meeting. Similarly, the EU and the US would soon arrange a meeting on the Judgments Project. The EU expressed its support for the latter, whereas the US preferred a narrower approach for the Judgments Project, in line with what had already been envisaged by the Hague Conference some years ago.

Session 5: Drugs

- *State of Play on EU-US co-operation in fights against illegal drugs*
- *New psychoactive substances (legal highs)*

The EU and the US shared a positive assessment of their cooperation on drugs issues. The six-monthly dialogues were fruitful and allowed problems to be discussed on the basis of evidence. Recently, cooperation had focused on West Africa (both from a law enforcement and alternative development' perspective), and on Central America and Afghanistan. The EU introduced its new Strategy for 2013-2020 and subsequent Action Plan while the US referred to President Obama's ambition to reduce illegal drug use by 15% by 2015.

The US side reported a positive trend of reduced cocaine smuggling, but both sides were extremely worried by the growing number of new psychoactive substances each year; the EU will discuss legislation on this issue soon whereas the US adopted legislation on the matter last July. The US also mentioned the abuse of prescription drugs and possibilities for cooperation with the pharmaceutical industry on this issue.

Finally, the US mentioned the importance of international dialogues with key players outside the traditional production regions, such as China, India and Pakistan.

February 7

Session 6: Cyber Crime

- *Cyber Security/Cyber Crime, state of play, including Update on European Cybercrime Centre*

The EU outlined its efforts to combat cybercrime and presented the cyber security strategy adopted by the Commission on the day of the meeting. The key messages are that security and freedom are entirely compatible, and that all efforts must be made to develop the appropriate response capacity.

A presentation was also given of the new EC3 at Europol, which will become the focal point of EU action on this issue and would facilitate a more coordinated and structured approach. Its programme board will be open to external partners such as Interpol and the representatives of private actors. Cooperation with US agencies was also considered important and was already being developed.

DELETED

The EU-US working group that was established at a previous summit was continuing its work in three subgroups and would present an action plan for 2013-2014. Child protection, awareness raising and Safer Internet Day had recently been discussed.

Work on incident management was also progressing and lessons would be drawn from the table top exercise held in 2011.

- *Update on US-EU coordination for the UN expert working group on 25-28 February 2013*

The EU and the US agreed to coordinate their position in view of the meeting of the UN Expert Group on Cybercrime in Vienna on 25-28 February. **DELETED**

The importance of the Budapest Convention was underlined. The US feared that its already limited staff resources would have to be allocated to any new UN Convention in this area whereas the Budapest Convention should be seen as already offering adequate global solutions. This Convention should therefore further be promoted in Central and Latin America. The United States had prepared, together with Canada, Australia and the UK a guide containing frequently asked questions in relation to the Convention. That guide could be used in promoting the Convention. The US side also drew attention, against that background, to the fact that six EU Member States have yet to ratify the Convention.

- *Global Alliance against Child Sexual Abuse Online - report, next steps*

On the Global Alliance, the US expressed its appreciation for the leadership shown by Commissioner Malmström. The EU side reported that, as part of the follow-up to the launch of the Global Alliance, the 48 Member States belonging to the Alliance had been requested to describe the actions they have already taken in connection with victim support, coordination of investigations and prosecutions, raising public awareness and reducing online vulnerability. The next step will be a review and a forward looking ministerial conference in July 2014.

DELETED

Session 7: Transnational organised crime

- *Report on UNTOC Conference of the Parties regarding negotiation of a review mechanism*
- *Next Steps in co-operation*

The EU and the US were satisfied by their coordination of positions in the framework of UNTOC and by the use made of the Convention itself to fight the smuggling of migrants, weapons or cultural goods.

The absence of agreement in UNTOC on the review mechanism of the Convention, neither on its financing nor on the role of civil society was raised.

DELETED

The EU, which had not so far adopted a unanimous position of the question of financing, indicated that it would also consider, amidst other possibilities, the same method as the one applied for the UNCAC Convention with a reinforced permanent secretariat and specific actions.

The strengthened cooperation between Europol and the Department of the Treasury, which would focus on confiscation and forfeiture, was welcomed.

Session 8: Counter-terrorism and security

- *Counter violent extremism*

The EU side highlighted its recent efforts to fight violent extremism (radicalisation) including the recent ministerial conference on sharpening Europe's tools for preventing violent extremism. The JHA Council will devote a debate to the security situation in the Sahel / Maghreb in March and in the autumn the Lithuanian Presidency intends to draw lessons from the CVE policy conducted so far.

The US mentioned the new interagency working party established at the White House to counter online radicalisation to violence, under the leadership of the National Security Staff. This group will be responsible for developing plans for an Internet safety approach to addressing online violent extremism, with a focus on policies, technologies and online awareness raising.

The US and the EU should pursue their efforts using the methods already agreed by raising awareness among first responders such as police officers on the street, who may encounter early signs of radicalisation.

The US also highlighted the role of the Abu Dhabi Centre of Excellence on Countering Violent Extremism. This centre has a threefold objective:

- provide training to stakeholders to design effective programs and policies to counter violent extremism;
- facilitate dialogue among community leaders, teachers and other educators as well as relevant national and local actors involved in CVE;
- conduct research to enhance understanding of the forces driving violent extremism, and which approaches are effective in countering it.

Finally, the US announced that two workshops would be held in Washington on 19-21 March 2013 on community engagement proposals and community policies, with the participation of experts on the Sahel, the Horn of Africa and South-East Asia; EU experts were also invited to participate.

- *Controlling precursors for Improvised Explosive Devices*

The EU referred to the Regulation adopted in December 2012 on the marketing and use of explosive precursors, which establishes a common framework for access to certain explosive precursors. The legislation will be in place within the next 18 months.

Both sides agreed to enhance their efforts on the global security chain, which aims to prevent the smuggling of precursor chemicals that could be used to build improvised explosive devices (IEDs). The US noted that it is bound by law to focus its financial efforts on Afghanistan and Pakistan and asked the EU and its Member States to consider focusing their help on other partners in the WCO.

DELETED

The EU emphasised the importance of pursuing mutual recognition of companies working according to the technical requirements. So far, more than 4000 companies have made use of the facilities available when transporting goods to the United States.

The US suggested addressing these issues at ministerial level, including the issues of access to each other's databases and data protection requirements.

- *Critical infrastructure protection, Global supply chain*

On the related issue of critical infrastructure, the EU referred to the established cooperation pursued together with the United States and Canada. It was also reviewing its policy by discussing a draft Directive to ensure a high common level of network and information security (NIS). Many competences relating to critical infrastructure are held by the Member States.

- *TFTP – Way forward*

The EU had made a positive assessment of the TFTP agreement as shown by the report presented by the Commission last year. Added value has been provided for the EU, its Member States and the US. The EU was now more engaged in contacts with the US Treasury than before and this trend should continue for the next review. Some parties in the European Parliament remain critical of the agreement and contacts between the US administration and the EP would help give reassurances.

- *NDAA*

DELETED

Session 9: Mobility, Borders and Migration issues

- *EU-US Platform on Migration, including International migration, next steps*

The EU expressed its satisfaction with the progress achieved so far in the implementation of the Migration Platform, as well as with the cooperation between the US and Frontex. All components of the migration policies have been addressed through the platform. For the future, it was recommended to focus on certain sectors, such as human trafficking. Also, the link between economic activity, migration and growth could be further explored, for instance by addressing obstacles to mobility.

As for the international context, the EU was in favour of regular consultations ahead of the UN High-Level Dialogue on Migration and Development in October 2013, as well as sharing experiences of migration policies relating to neighbourhood partners.

The US shared these objectives; it also emphasised the recent proposal of President Obama on immigration and the goal of creating a path to citizenship for an estimated 11 million immigrants. Draft legislation was expected in the Senate in April 2013.

- *Eurosur*

The EU gave a briefing on the state of the draft EUROSUR Regulation.

Both sides agreed to further discuss experiences with the national centres of Member States and the US national fusion centres, insofar as the latter are competent for border issues. The issue of surveillance and detection of small vessels should also be addressed.

- *VWP, ESTA*

The EU side recalled that the 2011 EU-US Summit had agreed to complete secure and visa-free travel between the US and the EU as soon as possible but that, unfortunately, this objective has still to be achieved in the case of four Member States. It stressed the importance of making early progress in this area.

The US stressed that the VWP was open to all countries that fulfil the statutory requirements and that it remained committed to see all Member States as part of the VWP as soon as possible. It pointed to the fact that decisions on this cannot not be taken by the Administration without the approval of Congress. The US side drew attention to the fact that new legislative bills, introducing some flexibility as far as the refusal rate is concerned, had recently been introduced in both the House and the Senate which the Administration would be supporting. It recognised, however, that opinions in Congress on the matter were strongly divided.

DELETED

The US also informed that progress was being made on the final rule for ESTA which they hoped it would be possible to issue in 2013. They indicated that the final rule would probably not represent any substantial change compared to the interim rule. **DELETED**

Session 10: Conclusions

- *Preparation of the next EU-US JHA Ministerial Meeting*

The parties agreed that it was necessary to have a ministerial meeting this semester, after a failed attempt to plan one last autumn. The Irish Presidency would conduct the necessary consultations in order to determine the time and the place of the meeting.

- *Presentation of the incoming Lithuanian Presidency priorities in the JHA area*

Lithuania introduced its priorities for the Presidency of the Council of the European Union.

In the area of justice, Lithuania mentioned the objective of fundamental rights and freedoms, and integrity of the person while guaranteeing security in Europe. Mutual recognition should remain a cornerstone of judicial cooperation to increase mutual trust, particularly since 2013 has been declared the European Year of Citizens. Lithuania also referred to protection of the EU's financial interests through criminal law and the establishment of a European Public Prosecutor's office.

In the civil law area, efforts will focus on the proposal on a Common European Sales Law, and on the revision of the Regulation on insolvency proceedings. The data protection package was also highlighted, as were the proposals on protection of the euro against counterfeiting with criminal law sanctions and on dispensing with the formalities for the legalisation of documents between Member States.

In the area of home affairs, Lithuania mentioned as priorities the second EU policy cycle for organised and serious international crime and legislative activities in the field of organised crime, including the regulation of EU agencies, the Passenger Name Record, the effective protection of external borders, migration issues, inter alia legal migration (directives on seasonal workers, intra-corporate transferees, students and researchers), visa policy and civil protection.

On the external dimension of justice and home affairs, Lithuania will seek to further all aspects of cooperation with all strategic partners, including with Eastern Partnership countries (first Eastern Partnership JHA ministerial meeting) as well as with the Western Balkans, the US and Russia.
