



**COUNCIL OF
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NOTE

from : Council Secretariat

Subject : Report of the EU-US informal High Level meeting on Freedom, Security and Justice on 2-3 March 2006 in Vienna

Presidency was represented by Wilhelm Sandrisser, Peter Widermann, Kurt Hager and Roland Miklau, incoming Presidency by Kari Rantama and Antti Peltari, Commission by Tung-Lai Margue and Lotte Knudsen, Council Secretariat by Gilles de Kerchove. US side was led by Elisabeth Verville (State Department), Elaine Dezenski (Homeland Security Department) and Bruce Swartz (Department of Justice).

Passenger Data - Push System / PNR Agreement

The US delegation provided an update on the progress being made towards the "push system" as allowed for in the EU-US PNR Agreement. They noted that three European airlines had already migrated to "push" while emphasising the importance they attached to the ability to be able to refer to the air carrier with queries arising from the information received.

There was agreement that it would be important to coordinate the EU and US response, and to continue contingency planning, with a view to the forthcoming European Court of Justice ruling on the European Parliament actions relating to the EU-US PNR Agreement. The US delegation confirmed that guidance had issued to the Bureau of Customs and Border Protection as to the purpose for which PNR data could be used. The Cion also raised a suggestion previously mentioned that the US might seek to renegotiate aspects of the PNR agreement which had been hinted at during the February EU-US Task Force meeting, indicating that it was unlikely that the Court ruling would create scope for greater flexibility. The US side indicated that they felt comment on any such possibility would be premature in advance of the Court ruling.

Visa Reciprocity

The EU recalled the importance of this issue for the Community and its Member States. The Conclusions adopted by the Council on 21 February following the Commission's report on the visa reciprocity mechanism were further evidence of the importance which the EU attached to the issue and of the need to make tangible progress. The Cion was being asked to report again by 1 July and it would be important to demonstrate that concrete results had been achieved in the meantime. Progress by way of the extension of visa waiver to additional Member States, reduction in the visa fee, and a clearer definition of benchmarks were mentioned as possibilities for this purpose.

The US side indicated they shared the goal of full reciprocity but the key question for them was how to achieve it. They recalled the constraints under which they operated by reference to the applicable legislation and the attitude of Congress in the aftermath of 9/11. They also indicated their willingness to explore the scope for harnessing technology to improve visa-issuing processes and meet their security concerns. The US side also raised the question as to whether the results of the Schengen evaluation process could be made available for the purpose of the country reviews they were required to prepare for those Member States not yet part of the visa waiver programme. The EU side emphasised the specific nature of that evaluation and the need for the consent of the Member States concerned.

The US side also confirmed that a roadmap had been completed in the case of Cyprus.

Document Security

The EU side provided an update regarding developments in relation to passports and the Visa Information System. The arrangements and the requirement which would apply for the purpose of basic and extended access control to biometric data were explained with specific reference to the need for readers to comply with the basic access control requirements in order to be able to access facial image and alphanumeric data and to the need for bilateral agreements before third countries could have access to fingerprint data. The importance of technical cooperation in order to ensure the readers operated effectively and properly was stressed. The US side also provided information on their e-passport.

The US side was asked about reports that it was contemplating taking ten fingerprints instead of two under its VISIT and Biometric Visa programmes and was examining the possibility of doing so at ports of departure in the case of visa waiver programme travellers. The US side confirmed that the question was being examined but stressed that it was a long-term project. With regard to the possibility of taking prints at ports of departure, the US side stressed that no formal policy decision had been taken in this regard but that, if it was possible to capture such data on a voluntary basis, it was something to be examined.

EU Counter-terrorism Strategy

Presidency explained the nature and scope of the EU Strategy (14469/4/05) and handed over the Action Plan on combating terrorism (5771/1/06). It invited the US side to indicate the measures which could be the subject of closer co-operation.

Follow-up to June 2005 EU-US Summit

Among the various items mentioned in the Declaration (10359/05), both sides agreed that consequence management and the protection of critical infrastructures were areas where closer EU/US co-operation should take place. The Austrian Presidency proposed that the topic consequence management be put on the agenda of the ministerial meeting on 3 May 2006.

Radicalisation and recruitment

The Presidency indicated how it planned to implement the strategy (14781/1/05) and the Action Plan (14782/05) adopted by the Council : empowering moderate Muslim voices through intercultural dialogue (Conference in Vienna on 19 May 2006 on "Dialogue of cultures and religions" as well as the "Second Conference of European Imams and Islamic Religious Leaders" in Vienna on 7/8 April 2006), the role of prisons for Islamist Network and the threat of returning Jihadists (Seminar organised in Trier on 20/21 March 2006 to which US side is invited), use of the Internet (Seminar organised by Europol on 28/29 March 2006) and integration (study to be undertaken by the Commission). The Commission informed the participants that it is about to set up a network of academic researchers with which experts from third States could be associated. It also indicated that a conference on the role of the media would be organised in the coming months. Finally, answering a remark made by US side on the importance to incriminate properly incitement to terrorism, the Commission indicated that it was reviewing the Framework Decision on terrorism to determine whether it had to be supplemented. US side explained the US strategy to counter radicalisation and recruitment: more than 75 meetings with Muslim leaders have been organised in recent years by the Civil Rights Division of DoJ, the FBI field offices have been instructed to meet Muslim leaders, more than 700 hate crimes have been investigated, action has been taken against support for terrorist networks (financing, material support, training etc.).

The Austrian Presidency proposed to put the item on radicalisation and recruitment on the agenda of the ministerial meeting in May.

Terrorist financing

While welcoming the various seminars planned (Seminar in The Hague organised by NL on 15 March, workshop at Europol on new systems of payments (pre-paid credit cards) at the end of March, EU/US Troika on terrorist financing in Washington on 17 May, EU/US Workshop on financial sanctions in Vienna on 1 and 2 June), US side asked for a calendar of the various events to be drawn up so as to ensure that as many different experts as possible could attend. It suggested that the role of charities (e.g. financial reward to the family of suicide bombers) be examined.

Extremists' use of Internet

The Presidency indicated that it would organise on 28 and 29 March together with Europol a seminar on the terrorist use of Internet. It also referred to the G8/EU seminar on cybercrime which would take place in Vienna next June. US side made a distinction between questions of substance (how to draw the line between free speech -protected by the First Amendment to the US Constitution- and criminal incitement to terrorism) and questions of procedure (how to track and trace terrorist use of Internet). The latter would be significantly improved when the Council of Europe Cybercrime Convention entered into force. US side is worried by the proposal recently made to negotiate a Protocol to this convention. All efforts should be devoted to the ratification of the Convention. The Presidency indicated that it would defend this position at the forthcoming meeting of the CDPC in Strasbourg. US side indicated that it was considering approaching each Member State to ensure that the data collected on the basis of the recently adopted Directive on data retention be accessible to them. The Presidency and the Commission replied that these data were accessible like any other data on the basis of the existing MLA agreements (bilateral as well as EU/US agreement). The Commission would convene an expert meeting on this subject.

Information on CT and Human Rights

EU side underlined the fundamental importance and expressed its wish to intensify the ongoing dialogue on this subject (SG/HR Solana's meeting with the AG Gonzales, John Bellinger's recent visit to Brussels).

Both sides agreed that it was a very important issue and proposed to put it on the agenda of the ministerial meeting.

SIS II

The Presidency updated the participants on the recent developments with regard to the SIS II and VIS projects.

Lost and Stolen Passports/Interpol database

US side gave an update and a short report on the joint visit at Interpol last January. The US was preparing a pilot project, which would be set up in spring 2006. IP SG Ron Noble would visit US this year. Improving minimum standards in order to ensure reliability of data and timeliness of requests should be a common goal of EU and US. US would like this topic to be touched upon at the ministerial meeting.

The Presidency reported on the state of implementation of the Common Position on the exchange of certain data with Interpol:

- 1) Member States are complying with their obligation to forward data to Interpol.
- 2) Many Member States are querying the Interpol data base. In this regard there are two approaches to be considered:
 - a) query the IP database for law enforcement purposes during an investigation –all EU MS are also IP members and make use of this possibility via their IP NCBs.
 - b) query the IP database systematically during e.g. a border inspection at BCPs – in this regard the successful implementation of the project in Switzerland and the experiences from the US pilot project should be noted.

The Presidency has given an oral and written information on the visit to EU member states, stressing also the US pilot project and the expectations from the US side. It was agreed that the Presidency would:

- further discuss this topic when Commission presented its report on the implementation of the Common Position
- also promote the Swiss model, inter alia by giving a lecture at the International Border Police Conference in May in Siófok/Hungary.

Conclusions:

Many goals have been achieved so far. Taking into account that feeding and querying the IP database will be integrated into the SIS II, the “Swiss solution” can be seen as an interim solution. Nevertheless, the Presidency will keep on informing the Member States and will further promote the “Swiss solution”. The improvement of minimum quality standards is in the interest of the EU and US, but should be set up under the umbrella of IPSPG to ensure global implementation. Maintaining constant mutual exchange of information between EU and US is deemed necessary.

Sharing of classified information

Participants agreed that the G8 questionnaire sent to Member States was much too detailed. US side undertook to simplify it. Eurojust would then examine the possibility of organising a seminar on this subject.

Eurojust Co-operation agreement

Mike Kennedy acknowledged that the negotiations were stuck due to very divergent approaches on the protection of personal data. Both sides agreed that it was difficult to understand why an agreement could have been reached with Europol, while Eurojust's core business is not to produce data but to co-ordinate prosecutions. A new approach based on the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, adopted on 23 September 1980, will be suggested by Eurojust. US side expressed some scepticism, since the OECD Guidelines were designed for commercial data and have been superseded by the EC Safe Harbour Agreement. Both sides agreed to make all possible efforts in the coming weeks to secure an agreement by the May Ministerial meeting.

Mutual Legal Assistance and Extradition Agreements

US side indicated that it had reached an agreement on the bilateral instruments with all Member States and that 20 instruments have already been signed. Problems remain with two Member States (MT and PO). The Presidency undertook to remind the 21 Member States which have made a declaration on the basis of Article 24(5) TEU of the need to fulfil their constitutional requirements as soon as possible so that the two agreements could be concluded by the end of this year. US Government plans to submit the two agreements to the Senate for ratification after the summer break. The two agreements should enter into force in January 2007.

Framework Decision on Data Protection - State of Play

US side expressed serious concerns about the negative impact that the draft Framework Decision on data protection would have on its bilateral relations with Member States if it was to be adopted in its present form (see in particular Article 15 of the draft). The Presidency indicated that agreements already concluded would not be affected by the new legislation. In addition, Member States were divided on the need for such a provision.

Western Balkans

The Presidency explained the work planned to improve the fight against organised crime in and from the Western Balkans (liaison officers' meetings in Zagreb on 14/15 February 2006, in Belgrade in June to which a US liaison officer will be invited, Action Oriented Paper, May Meeting in Vienna on Security etc.). The Commission referred to the assistance provided to the SECI Center. US side expressed concern about the legal framework contemplated for SECI which seems to replicate the excessively cumbersome rules on data protection applicable to Europol.

Drugs

The Presidency and the Commission explained the work going on to improve the fight against the production of heroin in Afghanistan and its trafficking towards the EU through the Balkans and via the silk roads (London Conference, Action Oriented Paper, capacity building projects in Afghanistan, Trust Fund etc.). US side indicated that the two US prosecutors seconded to Kabul were ready to provide any legal assistance needed. Both sides agreed to work closely together to prepare the June meeting (Paris Pact II) in Moscow on the trafficking routes.

Europol-US operational Co-operation

While praising the development of Europol (which explains the decision of the US Secret Service, the FBI and, soon, the US Postal Inspection Service and the Bureau for Alcohol, Tobacco and Firearms to second a liaison officer to Europol), US side expressed deep regret that the FBI liaison officer was denied access to the 16 December 2005 meeting on travelling Jihadists organised by Europol (owing to the fact that the amendment to the Europol Convention which will provide the basis for third States to be associated with AWF still awaits 7 ratifications). It would be really disappointing if the FBI had to reach once again the conclusion that it was not worth keeping a liaison officer at Europol. The Presidency indicated that all efforts were being made to ensure that the three Protocols to the Europol Convention entered into force in October 2006. The General Secretariat added that Europol is exploring alternative solutions with the Member States participating in the AWF "Islamic Terrorism". An operational meeting on the problem of returning Jihadists will be organised by Europol mid 2006 with the participation of the FBI. Europol is also examining with Member States the possibility of inviting the FBI to a High Impact Operation on cash couriers to be launched in 2006. Finally, the Presidency indicated that it would be interesting to share with US side the findings of the forthcoming OCTA on the basis of reciprocity.

Co-operation in the field of law enforcement training

Both sides agreed that the Balkans were ideal for co-operation on this subject. Following the meeting between Vice-President Frattini and FBI Director Mueller, the FBI was exploring with Cepol possible subjects of cooperation. The Presidency mentioned the Atlas project as another possible subject of joint training.
