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LIMITE

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RELEX 1005
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CATS 96
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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 Ministerial Meeting,
Washington, 4 – 5 December 2016

Summary: Meeting with the out-going administration conducted in good spirit by the host, US Attorney General Loretta Lynch, assisted by Secretary Jeh Johnson, Department of Homeland Security. Continuity of EU-US relations was the overall theme of the meeting and the importance of further developing EU-US cooperation was underlined in the discussions on counter-terrorism, cooperation in criminal law and security issues related to migration and border management. Positive signals by the Attorney General assuring that the final procedural steps for the entry into force of the Umbrella Agreement would be taken before the end of her term.

1. Welcome by the US

The Attorney General gave a warm welcoming speech highlighting the productive nature of the work being done by the two parties at these meetings. She underlined the continued EU-US cooperation, that remained a constant despite changes in the political leadership both in the US and in EU Member States, with the common goal of protecting their citizens. Secretary Johnson commented on the possible shifts in policy emphasis that the new administration might bring, noting the importance of the support for on-going files by officials that stay on.

The EU side reiterated its commitment for future cooperation underlining the last couple of years' positive development, built on trust. The US partners were invited to convey a message to the incoming administration on the importance of the EU-US cooperation.

2. Counter-terrorism

On the issue of foreign terrorist fighters (FTF), the EU delegation stressed the potential threat posed by the returning fighters and the work being done to identify, screen and deal with such individuals. At EU level, enhancing information exchange and information management including interoperability solutions were important steps taken, but for the EU collectively more data, more variety of data and more tempo were needed. This would also enhance information exchange with the US partners. The good cooperation on the ground was noted and a testimony of political leadership on both sides of the Atlantic.

The US side expressed concern with the situation on the ground but also gratitude that it was possible to exchange information effectively. There was mention of a coalition program for FTFs in battlefields that had contributed much information and the cooperation in the aftermath of the Brussels attacks in March 2016. The US side assessed that the global terrorist threat remained and that the likelihood of continued attacks was high. From traditional attacks, the threat had evolved significantly in the last eight years into complicated patterns of terrorist-enabled attacks and terrorist-validated attacks. The threat had also evolved differently in Europe and the US. In Europe, IS was making active attempts to infiltrate, while in the US it would outsource to home grown extremists to conduct attacks. It was underlined that, even with a different threat environment, the EU and US could still be of assistance to one another. Another worrying phenomenon was the passport production capabilities by IS which needed to be countered by effective use of PNR and API data to prevent infiltration of FTFs. The US recalled its continued initiative of sharing information and best practices, and conduct training in different fields, e.g. aviation security and border security, as well as access to the secure real time platform. The US side also emphasized its work in public awareness and vigilance.

Concerning terrorist financing, the US briefly informed of their efforts to combine law enforcement and treasury tools to identify financial sources supporting terrorism. The US authorities had used experiences from money-laundering investigations of criminal networks to build investigative skills concerning terrorist financing and offered to share this expertise.

The EU side presented its initiatives, i.a. the Action Plan for strengthening the fight against terrorist financing, a reflection on an EU terrorist finance tracking system to complement the TFTP. The EU side also referred to good experiences in Member States of aligning the fight against terrorism with the fight against corruption.

Community partnerships and anti-radicalisation efforts were important elements for the US, not so much for returning fighters but rather for the home grown radical extremists. Building stronger community partnerships was a top priority for the US authorities who underlined that prevention of violence was the main focus, carried out by peers and local community leaders who were best placed to be vigilant. Smaller programs focused efforts on social media companies creating contests on counter narratives or had various agencies engage directly with tech-companies to encourage them to support CVE-efforts (Countering Violent Extremism). As a preventive measure, the US also placed experts in source countries working on capacity-building.

The EU delegation noted the similarities between the US and EU approaches. It underlined the need for research and policy tools in this field. Mention was made of the work of the Internet Forum with a view to removing terrorist content from the Internet. The second high-level meeting of this Forum would be held on 8 December 2016.

As was agreed during the last ministerial meeting, participants had an exchange on Chemical, Biological, Radiological and Nuclear weapons. The EU side informed of an EU-US experts meeting in October between the Commission and US experts. It had been agreed to organise a larger meeting (EU 28) in spring 2017 to discuss transatlantic cooperation.

The US concurred with the EU on low probability of an attack with catastrophic consequences. However, IS had used chemical weapons in Syria and Iraq and could launch attacks in Europe. The US considered this initiative timely and would recommend to the incoming administration to continue this work. It was also deemed important to work together on the relevant treaties.

3. Cooperation in criminal law

Europol and Eurojust presented a joint action between EU law enforcement and judicial authorities, and the US FBI, which after four years led to the dismantling of 'Avalanche', a sophisticated criminal network active on cross-border cybercrime, with victims in over 180 countries.

The US side underlined that one of the challenges of cybercrime was the need for the investigative model to adapt to this type of crime. The EU highlighted the need for a common approach vis-à-vis service providers and explained its on-going work on e-evidence, including streamlining mutual legal assistance procedure and enforcement of jurisdiction, as well as on how to deal with encryption.

4. Border management, migration and related security aspects

The US gave a presentation on interoperability of databases after 9/11 the lessons learned during the 15 year long process of relevant agencies sharing data. The process was still ongoing as some issues endured and other emerged (e.g. biometrics, use of social media).

The US offered its assistance in this matter.

The EU delegation reaffirmed the goal of creating an interoperable system with a single search interface. It welcomed the US offer for assistance as this was a very complex undertaking.

The EU outlined its latest proposals on border management and mobility, including the new regulation on the European Border and Coast Guard and ETIAS. It also referred to the cooperative efforts on airport security and acknowledged the US training in third countries in this area as a good practice.

The EU raised the issue of visa reciprocity as an on-going priority but noted also that after the US elections no quick breakthrough could probably be expected. It underlined, nevertheless, that the citizens of the five remaining Member States did not pose a threat to US security and that the US had screening possibilities via ESTA. The EU invited the US delegation to highlight to the transition team the considerable pressure from the European Parliament to continue the legal procedures, which would have detrimental effects for EU-US relations.

The US expressed appreciation for EU efforts so far. It understood that the EU continued to press for inclusion of EU 28 in the Visa Waiver Programme. It warned, however, that the proposals to scrap the whole programme had not entirely disappeared.

5. Umbrella Agreement - conclusion and entry into force

Both parties expressed great satisfaction and appreciation of the fact that very little remained to be done before the agreement could enter into force. The EU had finalised its procedures. The Attorney General assured that she would personally make sure that procedures would be finalised on their side before the end of her term, including the necessary designations under the Judicial Redress Act.

6. Cybercrime

The question of the mandate of the Working Group on Cybercrime and Cybersecurity should be prepared by the officials.

7. Priorities of the incoming Maltese Presidency and preparation of the EU – US SOM in Valetta, March 2017

The incoming Maltese Presidency briefly presented the tasks ahead for its term at the helm of the EU, highlighting migration and terrorism as the main challenges and listing the different legislative and policy initiatives that it would take forward to continue the work.

The EU-US SOM was provisionally scheduled for 1-2 March 2017, the Ministerial meeting for 15-16 June 2017.
