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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Delegations
Subject:	Outcome of proceedings of the EU - US Justice and Home Affairs Ministerial Meeting (Washington, 13 November 2015)

1. INTRODUCTION

In their opening statements the US (Attorney-General Loretta Lynch and Assistant Secretary Alan Bersin) referred to the Riga Declaration and the strong commitment of the US to cooperate on enhancing transatlantic cooperation in the area of Justice, Freedom and Security, and welcomed the progress in its implementation so far. In the area of data protection, the US expressed disappointment with the recent decision of the European Court of Justice ("Schrems ruling") as protection of privacy interests was a common goal for both parties and a strong priority of the Obama administration. With the Umbrella Agreement initialled, work would continue on the Judicial Redress Bill. The US delegation also mentioned the importance of the EU-US relationship at this point in time where the world seemed to consist of two parallel worlds colliding, one developed and one disintegrating.

It highlighted that the EU-US relationship covered a wide range of commonalities and the present meeting was an opportunity to reaffirm this important relationship.

The EU side made reference to the unprecedented refugee crisis which was a top priority of the political agenda and a global problem, challenging the EU, but also the international community. In addition, counter-terrorism and anti-drugs policy, in particular the UNGA's special session on drugs, as well as progress on the 'passenger name record' (PNR) file were mentioned. Also the Riga Declaration, data protection and cooperation on civil matters were briefly referred to.

2. DATA PRIVACY

The EU delegation explained the existing possible bases for transatlantic transfer of data even after the invalidation of the Safe Harbour decision and ensured of its commitment to work out practicable solutions in light of the Schrems ruling and recent statements by European and national data protection authorities. Action by the US side was however also required.

The US side noted that they were working with senators on the Judicial Redress Bill which was strongly supported by the Obama administration, and invited the Commission to speak with Congress and senators while in Washington. US officials were still reviewing the Schrems ruling but found already now that the ruling seemed to rely on a fundamental misunderstanding and not take fully into account the material that had been provided. The US delegation underlined the US' strong capacity to adequately protect data. It expressed concern that the collateral consequences would be a limitation of US law enforcement on US soil. The solution would need to be global and consistent.

3. COOPERATION IN THE FIELD OF CRIMINAL LAW

The US underlined the increased speed of information exchange and the need to maintain the possibility of direct cooperation between law enforcement authorities . The Mutual Legal Assistance Agreement (MLA) was being reviewed after 5 years and the teams worked closely together to that end. In general, the MLA worked well, as did the EU-US extradition agreement and information sharing. It was vital to have effective channels of communication.

However, the US side expressed grave concern that the MLA was overburdened. In the context of the human trafficking and terrorism agenda, the need to share information quickly was imperative to prevent e.g. terrorist attacks. The US reaffirmed its strong commitment to be more responsive by increasing its resources and staff to the MLA department. The recommendations of the Eurojust seminar were also appreciated.

The EU side agreed that the MLA worked well, but could be refined. It proposed to take stock of the review process in the next Senior Officials Meeting and possibly finalise the review by June 2016. Six issues had been identified that would be further addressed, of which three should be looked with priority: delays in execution, improving electronic means of communication in the MLA context and access to electronic evidence. The president of Eurojust presented briefly the main outcome of the practitioners' seminar which had confirmed an unprecedented level of judicial cooperation. Much focus was on modalities for exchanging and use of electronic evidence and improving financial investigations.

4. CYBER SECURITY/CYBER CRIME

The US side, now also represented by Secretary General Jeh Johnson, Dep. of Homeland Security, confirmed that cyber crime was a top priority and an area of grave concern. EU-US cooperation was deemed extraordinary and in particular the practical cooperation with Europol was highly appreciated. US agents had been placed within Europol's cyber crime centre (EC3) to support its mission and the efficient cooperation had saved lives. Moreover, a US prosecutor had been assigned to both Eurojust and Europol. However, issues of data protection came up in nearly every regard and impeded severely the cooperation. The US appealed to the EU to keep an eye on the larger issues at stake.

The EU reiterated its commitment to tackle, with the US, the issue of transnational child sex offenders for which more effective and deepened cooperation would be the only response. It underlined the need to look at the communication/data protection problem and suggested that EU Member States set up adequate protocols, that the format of the information to be provided could be reviewed and that PNR could be helpful in Member States' efforts to apprehend travelling child sex offenders. The US responded that these issues could be taken up in the joint meetings in the context of Operation Angel Watch.

5. COUNTER-TERRORISM/FOREIGN FIGHTERS

The EU delegation updated on its recent counter-terrorism measures, the so-called short term actions, *i.a.* on curbing trafficking of firearms, border management and the establishment of the European Counter-Terrorism Centre (ECTC) by January 2016. Also efforts in terms of prevention of radicalisation (Internet Referral Unit, Syrian Strategic Advisory Team, Radicalisation Awareness Network), PNR, e-evidence and anti-money laundering measures were referred to, as well as the work on Fundamental Rights and in particular the upcoming appointment of coordinators on anti-semitism and on islamophobia and the work with Internet providers. Europol informed in more detail on the mandate of the ECTC as well as the involvement of US authorities in the different parts of Europol's counter-terrorism capabilities.

In the view of the US delegation, a new phase in terrorist threats had started with terrorist attacks committed by persons born in the homeland. US estimates that of 280 persons leaving the US to join IS, 40 had returned and are being followed by the FBI. The number of foreign fighters leaving the US was decreasing, for unknown reasons. Profiles were not alike but law enforcement efforts had been very successful in averting and tracking terrorist plots. The success was due to enhanced border security (e.g. more features in Visa Waiver Programme). Also, advanced passenger information and name records were deemed to be useful tools in this respect. The US side highlighted the importance of information sharing as part of the future fight and of explaining to the EU stakeholders and citizens the value of the US-EU cooperation in these matters. Softer measures included outreach to the public to be aware and vigilant and a CVE initiative to visit Muslim communities. Counter-narratives were very important to place, in particular on-line and an offer was made to place US agents in Europol to this effect.

6. MIGRATION - Migration and asylum, resettlement, migrant smuggling and trafficking in human beings, smart borders and visa reciprocity

The EU outlined the many initiatives to manage the migratory crisis, underlining that it was a global problem, *i.a.* creation of new funds, strengthening of the agencies, agreements on relocation and resettlement, and more proposals to come to adapt the asylum and border systems to the current situation. Efforts by other countries in the neighbourhood of Syria were minimal in some cases, e.g. the Gulf countries. US help on this issue would be welcome.

Cooperation with the US was also suggested to join EU efforts in addressing the root causes of the migratory flows, as the US was a major donor to the countries covered by the Madad Trust Fund. The EU side recognised that the US had increased the number of resettlements and encouraged further efforts. In connection to these comments, the EU delegation expressed its position on the EU having participatory rights in UNHCR. The EU side also informed of its legal obligation to impose restrictions by April 2016, if the US did not lift its visa requirement for five EU Member States. Europol made comments on increasing criminal activities in connection to the migration crisis, in particular migrant smuggling, but had not seen evidence on a systematic link to terrorism.

The US side explained that their intelligence indicated a well-founded concern that IS would exploit the efforts made in Europe for hosting refugees. The US delegation confirmed President Obama's commitment to enhance support, in terms of more resettlement and more financial support to humanitarian agencies, albeit having some challenging financial constraints. Furthermore, the US agreed to enhance cooperation on migrant smuggling, although again, resources were strained.

7. PRIORITIES OF THE UPCOMING DUTCH PRESIDENCY

The Dutch delegation briefly informed the meeting of the objectives for its Presidency, which would be much in line with those of the current Presidency, i.e. migration and counter-terrorism as well as bringing forward the EU legislative agenda and a special focus on cybersecurity and cybercrime. It would wish to discuss with the US in particular the latter subjects, as well as continue the dialogue on data protection matters. An invitation was extended for the EU-US Ministerial meeting in Amsterdam on 1-2 June 2016.

At the end of the meeting, a joint declaration was agreed emphasising a deeper cooperation to fight terrorism, migrant smuggling and cyber crime, and pursue common efforts in the areas of migration and data protection.
