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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,
Amsterdam, 1 – 2 June 2016

Summary: The meeting took place in a constructive atmosphere. Highlights were the signing of the Umbrella agreement allowing for protection of personal data in the context of cooperation between US and European law enforcement authorities and the endorsement of the review of the Mutual Legal Assistance (MLA) Treaty, including recommendations. Views were exchanged on issues of concern to both parties, in particular visa issues and data protection. The parties also addressed recent developments of mutual interest (e.g. migration, counter terrorism, money laundering, child sex offenders) and expressed their commitment to further cooperation. Finally, a presentation was made of the first case of a EU-US Joint Investigation team on organised crime, money laundering and terrorist financing. A joint press statement reflecting the achievements and the discussions was published.

1. Welcome by the Dutch Presidency

In their opening statement, the Dutch Presidency, on behalf of the EU delegation, referred briefly to the main recent developments in common challenges, such as migration and terrorism. It highlighted also the positive steps taken strengthening transatlantic relations, namely the finalisation of the Umbrella agreement and the endorsement of the MLA review.

The US delegation pointed to a year of great change and progress on a number of files, punctuated by violence in the EU, but also in the US. The US delegation underlined the excellent EU-US relationship and well-developed methods of cooperation in addressing common challenges: terrorism, organised crime and mass migration. Progress on information sharing was noted here.

2. Migration and Cross Border Movement of People

On migration and asylum issues, the EU gave an overview of the situation while underlining that the migration crisis was not only a European phenomenon, being addressed only by the EU, but much more so a global issue, involving the entire international community (G7, G20, UN fora and the upcoming US initiative in September 2016). New measures in the areas of border security and interoperability of databases were mentioned to illustrate the efforts made to increase security and control at the external borders.

The US side reiterated its commitment to resettle Syrian refugees and to continue its contribution to settle the crisis in the Middle-East. Migration as a global challenge affects national security. The US had observed that smuggling networks also facilitated persons of concern, including across to the US. It commended the EU collection of biometric data which had facilitated the fight against terrorism and the work of US law enforcement. The US offered to cooperate closely with European partners on collected data.

With regard to visa waiver and visa reciprocity, the US cautioned on the significant interest from the Senate's side to terminate the Visa Waiver Program (VWP). The US delegation confirmed however its policy to defend and expand the existence of the VWP to more countries, including EU Member States. However, the US delegation cautioned on the consequences of an imposition of visa obligations on US travellers which would probably have adverse economic consequences for the countries in the VWP and the US.

The EU side referred to numerous recent meetings on the issue and reaffirmed its willingness to continue discussing possible solutions. There were legal obligations and requirements on both sides. The EU side confirmed its intention to keep the US side duly informed of developments.

3. Counterterrorism

The US delegation expressed strong support for the many initiatives on the EU side in the area of counter terrorism. The US had since 9/11 gained much experience in creating integrated and interactive databases, facilitating the work of law enforcement, while protecting the privacy of its citizens and foreigners. The US delegation expressed great support for the cooperation with the EU side and commended the steps taken, in particular concerning criminalisation of terrorist financing and travels. Information sharing as well as sharing of best practices was key and much information had been exchanged already. It highlighted the extreme usefulness of European Counter Terrorism Centre (ECTC) and Europol, and had deployed more US personnel to Europol. The US concurred with the grave concern expressed by the EU in relation to chemical, biological, radiological and nuclear material (CBRN) and suggested additional international cooperation in this area as well. It was important to consider the lessons learned and regulate the possession, use and deployment of these materials.

The EU delegation expressed interest in more cooperation with the US whose expertise was much appreciated. More terrorist related offences would be criminalised when the draft Directive on combating terrorism would be adopted, e.g. travel, training, financing. The scope of the ECTC would be expanded further. On the issue of CBRN, the risk of attacks was lower but there was no reason to be complaisant. As regards the US travel alert in Europe, the EU delegation reassured the US side that many preventive measures were in place to protect public safety. In addition, mention was made to on-line counter terrorism narratives, local prevention, CT partnerships with all the countries surrounding the Mediterranean and the Council endorsement in June of the roadmap on databases information exchange. The EU side expressed a need for more efforts to secure and share digital evidence in cases where the use of the MLA would not be efficient, and the hope that the US would keep blocking the Justice Against Sponsors of Terrorism Act. Account was made of the work of Europol assisting Member States and cooperating with many relevant agencies in the US. Interoperability of police and CT databases were crucial issues as a new dynamic was observed, connecting organised crime (people smuggling) and terrorism.

4. Money laundering and terrorist financing

The EU side informed of the forthcoming legislative proposals concerning terrorist financing, e.g. addressing the anonymity of pre-paid instruments, digital currency and improving the cooperation between the Financial Intelligence Units (FIUs) and transparency of beneficial ownership. With FIUs now being connected to the ECTC, financial intelligence would increase whilst complying with EU data protection rules. The EU delegation expressed interest in feedback from the US on customer due diligence of financial institutions. It was deemed necessary also to engage further with G7, G20 and the Financial Action Task Force.

The US side supported all adequate measures to cut off the flow of money to terrorist organisations. More efforts were deployed in strengthening prosecution of cases and ensuring the integrity of financial systems. Also with regard to customer due diligence, rules to enhance transparency would make it easier to collect and verify information on individuals behind corporate activity. The US delegation commended the Terrorist Financing Tracking Programme (TFTP) as a most useful tool to investigate and prosecute terrorist organisations, as it was done after the Paris attacks.

5. Data Protection

Before moving to the signing ceremony of the "Umbrella Agreement", there was an exchange of views on data protection issues. Both sides welcomed the signature of the agreement and praised the efforts of the teams involved.

The EU side underlined that the transatlantic data flows were to be fully achieved through the Umbrella Agreement and, soon, the Privacy Shield. Consent by the European Parliament was required to conclude the Umbrella Agreement and work was undertaken in that regard to accommodate concerns on this complex and sensitive issue, being under constant political scrutiny. As most of the concerns raised related to US law, in particular the issue of judicial redress, continued close cooperation with the US was of the essence. In addition, the EU side informed of the next steps in the implementation of the data protection package and gave an outline of important activities to come, inter alia, to ensure consistency between current EU internal rules and the new package, establish explanatory guidelines, conceive public awareness campaigns, etc.

The US side was also pleased with President Obama's signing into law of the Judicial Redress Act. Close cooperation was sought on the next steps on the package and concerning the Privacy Shield. On the first matter, the US side expressed concern with some significant issues to be solved before the delay for implementation in 2018, namely that there be no restriction on the enforcement of US court orders on US companies with activity in Europe.

6. Cooperation in the Field of Criminal Law - including results of MLA Review and recommendations

The US side commended the positive results of the MLA review. Indeed, the agreement worked well, while some aspects of its implementation could be improved, including facilitating identification of bank accounts. More staff had been allocated to reduce the response time since speed was of the essence in many cases. Mention was made of the traditional police to police cooperation which should be used also as an efficient means of exchanging information, and not only rely on MLA.

The EU side concurred with the positive assessment of the agreement and emphasised in particular the outstanding cooperation on e-evidence in emergency cases. With almost every single criminal investigation involving the analysis of emails and other electronic communications, alternatives to the normal MLA channel for certain types of data were explored on EU level, to be presented by the Presidency in the June JHA Council. The delegation informed of the recent code of conduct on hate speech with IT companies and also made some remarks on fighting cybercrime and the challenges currently faced ("going dark" because of encryption and the dark net, loss of location of data).

The recommendations were endorsed. The EU side noted that the US and EU Member States were now to implement them.

7. Child Sex Offenders

The US side provided information on the different campaigns initiated to raise awareness on child sex trafficking, preventing convicted child sex offenders to travel in anonymity by notifying country of destination. The US side was in contact with EU Member States to conclude bilateral agreements on this issue as had already been done with the UK. The experts meeting in September 2015 had produced a series of recommendations that were now to be endorsed.

The EU delegation also addressed the virtual form of child sex offences and concurred with the US view of making the recommendations operational, to set up protocols to treat referrals from the US and review formats of alerts on such individuals arriving in the EU. It informed of plans to check against existing EU databases. The EU side moreover referred to the meeting of police liaison officers in Bangkok on 4 June on the same subject and the Global Alliance against child sex abuse online.

8. Transnational Organised Crime - presentation of a practical example of US-EU cooperation (Cedar-case).

The EU and US made a presentation of the first Joint Investigation Team's results in a case of massive money laundering channelling funds to the military wing of Hezbollah. Several Member States and the US were involved in a cooperation facilitated by Europol and Eurojust.

9. Priorities of the Slovak Presidency

The incoming Presidency informed of its priorities which mainly were a continuation of the Dutch priorities, in particular concerning migration, visa reciprocity and terrorism.

10. Any other business

In view of the presidential elections in the US, the EU side inquired for the US plans for the next ministerial meeting in Washington. There was no confirmation of the date, but it would most likely take place end of November or beginning of December 2016. The next Senior Officials Meeting would take place in Bratislava on 8-9 September.
