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LIMITE

**JAIEX 130
RELEX 836
USA 30
ASIM 146
VISA 299
FRONT 395
CYBER 274
CRIMORG 155
DATAPROTECT 245
EUROJUST 149
COTER 159**

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, 8-9 November 2018)

Summary: An open and results-oriented discussion on a wide range of Justice and Home Affairs matters, confirmed EU and US commitment to continue and in some cases expand transatlantic cooperation. The meeting covered areas of longstanding dialogue between the two sides, such as information exchange, visa reciprocity or narcotics, together with emerging challenges like the removal of terrorist content online or the resilience of electoral systems.

The US delegation was headed by Acting Attorney General Matthew Whitaker and Secretary for Homeland Security Kristjen Nielsen. The EU was represented by Ministers Josef Moser and Herbert Kickl (Austrian Presidency), Minister Carmen Daniela Dan and Secretary of State Sebastian Costea (incoming Romanian Presidency) and by Commissioner Dimitris Avramopoulos.

At the end of the meeting, a joint press statement was issued (**Annex**).

1. Counterterrorism

a) Information sharing (including battlefield information, PNR, TFTP, aviation security)

Both sides praised the good level of operational cooperation between EU and US agencies involved in counterterrorism measures. Recent initiatives between US departments and some EU Member States to facilitate the judicial use of battlefield information were mentioned by both delegations as promising and deserving of further development, including through the involvement of all Member States. The importance of PNR information for counterterrorism was underlined by the two delegations, who also updated each other on measures to raise the global level of aviation security, including technical cooperation with relevant third partners.

b) Terrorist content online

The EU delegation briefed on recent developments, namely ongoing discussions on the Commission's proposal on preventing the dissemination of terrorist content online. The US delegation reiterated its policy of voluntary cooperation with service providers and raised some concerns regarding the possible implications of the legislation that the EU is currently negotiating. Both sides, however, agreed that addressing online terrorist content is a mutual challenge and should therefore continue to be the object of joint efforts.

2. Resilience of electoral systems

The EU delegation provided a broad overview of the various measures contained in the Commission's September package "Securing free and fair European elections", as well as on how the Council expects to examine the various aspects of the package. The US delegation briefed on the different strands of work carried out by its agencies to secure election infrastructure and curb foreign interference, with a particular focus on cyberattacks and disinformation campaigns. Given the similarity of challenges faced on the two sides of the Atlantic, the EU and the US delegations agreed to set up a dialogue on the resilience of electoral systems, which should allow experts to exchange information and best practices.

3. Security and judicial cooperation in cyberspace

a) Cooperation on cybersecurity/cybercrime

Europol and the US Department of Justice presented some practical aspects of their cooperation to address crime in cyberspace. The two delegations provided updates on their respective action plans to enhance cybersecurity and underline the importance of current work on the additional protocol to the Budapest Convention.

b) Cross-border access to electronic evidence

The EU delegation informed about ongoing discussions on the proposals for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters and a Directive laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings. As in previous discussions, both sides expressed their intention to explore the possibilities of a comprehensive agreement between the EU and the US to allow direct access to service providers by law enforcement authorities on both sides, taking into account their respective legal constraints. In this context, the EU delegation reiterated the EU's exclusive competence in these matters, as well as its willingness to engage in negotiations with the US, on the basis of a negotiating mandate to be adopted soon.

c) Encryption

Both sides acknowledged the challenges posed by encryption to the capacity of investigators investigating and solving criminal offences. The EU delegation briefly explained the set of measures presented in October 2018 to support law enforcement and judicial authorities' ability to access encrypted information in criminal investigations, as a follow-up to the June 2018 European Council Conclusions.

4. Migration (including smuggling), border management and visa reciprocity

Both sides provided updates on recent developments regarding migration and border management policies, including measures to combat smuggling of migrants and trafficking in human beings. The EU delegation underlined the importance of cooperation among countries of origin, transit and destination to address the challenges posed by migration and provided an overview of dialogues the EU has established with partner countries and regions to that end.

Regarding visa policies, the EU reiterated its position on the urgency of extending the US Visa Waiver Programme (VWP) to all EU Member States as a matter of reciprocity. The US acknowledged the efforts made by the EU Member States not yet covered by the VWP to meet the criteria, and both sides agreed to pursue their joint work, including at technical level, towards full reciprocity.

5. Cooperation on counter narcotics efforts

Both delegations praised the excellent level of cooperation between agencies responsible for addressing narcotics, which has led to a significant number of joint operations including in the Dark Net. The US delegation updated on the situation regarding the opioid (fentanyl) crisis in their country and the measures adopted to counter it. Both delegations underlined the importance of dialogues on drugs issues with relevant partners to reduce the supply of illegal drugs.

6. Priorities of the incoming Romanian Presidency

The incoming Romanian Presidency gave a brief presentation of its priorities in the Justice and Home Affairs area, with a particular emphasis on those issues of interest for EU-US cooperation.

Joint EU-U.S. statement following the EU-U.S. Justice and Home Affairs Ministerial Meeting

Washington DC, 9 November 2018

On 9 November 2018, the EU-U.S. Ministerial Meeting on Justice and Home Affairs took place in Washington DC. The United States of America hosted the meeting and was represented by the U.S. Acting Attorney General Matthew G. Whitaker and Secretary for Homeland Security, Kirstjen Nielsen.

The European Union was represented by the Commissioner for Migration, Home Affairs and Citizenship Dimitris Avramopoulos, as well as by the Austrian Federal Minister for the Interior Herbert Kickl, the Austrian Federal Minister for Constitutional Affairs, Reforms, Deregulation and Justice Josef Moser, the Romanian Minister of the Interior Carmen Daniela Dan and the Romanian Secretary of State for Justice Sebastian Costea on behalf of the current and incoming Presidencies of the Council of the European Union.

The United States and the European Union reaffirmed their commitment to jointly address common challenges in the areas of justice and home affairs and praised the excellent level of exchanges and operational cooperation, for the benefit of the security of citizens on both sides of the Atlantic.

The United States and the European Union underlined the importance of effective information sharing for their shared efforts to combat terrorism, focusing on battlefield information, Passenger Name Records (PNR) and aviation security. Participants emphasised the importance of PNR information sharing as a tool for the prevention of terrorist travel and agreed to prepare for a joint evaluation in 2019, in compliance with the provisions of the EU-US PNR Agreement. The United States and the European Union recognised the need to enhance their efforts to address the challenge of terrorists' use of the internet to direct and inspire attacks, while respecting individual rights, including freedom of speech. Both sides shared information on their respective initiatives, including efforts to better engage and partner with service providers.

The United States and the European Union recognised that electoral systems in democratic states face unprecedented challenges that require innovative and comprehensive solutions, as well as cooperation and best practice exchanges between like-minded countries. On that topic, participants briefed each other on current actions to build more resilient electoral systems. In order to promote exchanges between relevant experts from both sides on current challenges to elections, including such challenges as disinformation campaigns and other forms of online and offline interference, the United States and the European Union agreed to set up a regular dialogue on these matters, the details of which should be developed at the next Senior Officials meeting in 2019.

The United States and the European Union reiterated the priority they attach to fighting cybercrime and enhancing cybersecurity. They recognised the need to maintain a global, open, stable and secure cyberspace for the promotion of economic and social development and, in this context, stressed the valuable contribution of joint work conducted by U.S. and EU law enforcement agencies to combat, deter and prevent cybercrime and called for the expansion of such cooperation, as appropriate. Participants also acknowledged the challenge in obtaining timely and lawful access to encrypted data, in accordance with individual rights and civil liberties, by those investigating and solving criminal offenses and exchanged views on their respective practices to counter such challenges. Participants took note of the dialogue that took place in Brussels between the cybersecurity experts at DHS and the EU and agreed to continue to collaborate to strengthen the cybersecurity posture on both sides of the Atlantic.

The United States and the European Union agreed on the importance for both law enforcement and judicial authorities of swift cross-border direct access to electronic evidence, as demonstrated by recent legislation approved or under examination in the United States and the EU. Participants further recognised the benefit of exploring, and agreed to discuss, the possibility of an EU-US agreement to facilitate access to electronic evidence.

The United States and the European Union exchanged information on developments in the area of migration and border management, with a particular focus on efforts to prevent and combat migrant smuggling and trafficking of human beings. The United States and the European Union agreed on the importance of advancing towards reciprocal visa free travel under their respective legal frameworks and, following the most recent tripartite meeting on visa reciprocity, welcomed the progress of the five concerned Member States towards meeting the statutory requirements of the Visa Waiver Program, in order to be considered for designation in the programme.

The United States and the European Union underscored their shared concerns about the major international drug-control threats posed by illicit synthetic opioids , including fentanyl and its derivatives. Both sides took note of the U.S.-EU Political Dialogue on Drugs held on October 18, 2018.

Reiterating the progress made and the need to face global challenges together, the European Union and the United States remain committed to reinforce their partnership and meet again in the first half of 2019 in Bucharest, Romania.