



**COUNCIL OF
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OUTCOME OF PROCEEDINGS

from: Council Secretariat

Subject : EU-US informal JHA senior level meeting (22-23 January 2007, Berlin)

Introduction

The EU side sketched its main objectives for the months ahead, as they appear in the written programmes for JHA External Relations, Migration and Police and Judicial Cooperation, which were made available to the US partners. The Multi-Presidency character of these programmes was underlined, as well as the need to implement the existing acquis and to make it more operational. The United States will participate in several events that are planned.

The US were especially interested in efforts with respect to the Western Balkans and Afghanistan, cooperation with Europol and Eurojust and the enhanced exchange of information originating from several databases. The EU underlined that the latter, especially when it deals with access by law enforcement authorities, is always to be conceived in connection with data protection requirements.

Session 1: Migration, border and visa issues

1. Visa reciprocity/Visa Waiver Programme developments

The EU side regretted that the US in this matter is not dealing with the EU as a whole but looks at each EU State individually and emphasised that the issue of visa reciprocity is of the utmost importance for the EU. High expectations arose from the announcement by President Bush in Tallinn in November 2006 that the Visa Waiver Programme would be modified. The EU, however, thought that these modifications should not lead to new requirements with consequences also for EU Member States already being VWP countries. The Commission would do a third report on visa waiver reciprocity by 31 March 2007 (in advance of the EU US summit in April 2007).

The US recognised that this issue is difficult and said that the original idea to move forward through country-by-country "Road Maps" was dropped. New draft legislation was about to be submitted to Congress. This was based on several security concerns and related inter alia to airport security, air marshals, reporting on lost - and stolen passports, passenger, information exchange, electronic travel authorisation etc. The system should have some similarities with Australia's Travel Authorisation System. The US said that if they were to move away from a country based approach they would need to look at the individuals travelling and referred in this respect to the PNR. The US stated that they did not expect in the long run to have a need for a distinction between different EU States regarding VWP but that there would be a transitional period.

The issue will be addressed at the next PDBTS (Policy Dialogue on Transport and Border Security), now scheduled for 27 February 2007.

2. US exit/entry systems

The United States continues to promote the use of e-passports, as already introduced by 24 Visa Waiver Programme countries. Recent tests with some countries have proven successful and more passport readers are to be deployed at other US airports. Congress, increasingly asks for exit controls at land borders, which could be difficult to meet, in particular regarding land borders.

The EU is following developments and trends in the US, such as the "Registered travelers" and "Trusted travellers" programmes, also in relation to consistent recording of entries and exits. The Commission is about to carry out a feasibility study on the possible creation of general entry and exit control system.

The US side sees possibilities to exchange data in this field since entry data in one country corresponds to exit data for another country.

3. Frontex cooperation with US

4. Common Border Risk Analysis Program

After an introduction on its competences, Frontex showed interest in a sustainable and growing cooperation with the United States, in line with EU political guidelines. Frontex's main output is currently operational cooperation between Member States' border guards and risk analysis provided to the Institutions and to the Member States.

The US would be interested in exchanging experiences gained regarding sea border (sea borne migration), land border screening and readmission and also to the controls in the Mediterranean area.

It was underlined that the main threats originate now from Africa (south-west and south-east Mediterranean), the eastern route and the Baltic route. Frontex also focuses on airports. Europol is closely involved in analysing threats and vulnerabilities, through its OCTA.

5. US-EU Cooperation on asylum

The US side wished to explore the possibility of exchanging data with Eurodac, both for analysis and for searching people. Recent bilateral tests with Canada and with the United Kingdom have proven successful.

The EU underlined that any talks about this possibility would certainly raise questions of data protection. The EU would however be interested in learning more about the recent experiences to which reference was made.

6. PDBTS: Status of future meetings

The discussion about the PDBTS addressed issues of timing (poss. 27 February) rather than questions of status or content.

Session 2: Counter-terrorism and security

7. Update on the implementation of EU counter-terrorism strategy and measures against terrorist financing

The EU side briefly sketched the state of play with respect to the implementation of the Action Plan against terrorism, with a particular focus on money-laundering, money transfers and the misuse of charities, as well as the fight against the financing of terrorism in general and the effectiveness of these actions.

Europol will initiate a new seminar on this issue to which the USA will be invited; the seminar could possibly take place in the second half of 2007.

8. Radicalisation and recruitment, including terrorist use of the internet

9. EU Terrorism Working Group

Building on the EU Strategy on Radicalisation and Recruitment, the German Presidency has launched a "Check the Web" initiative, which was presented to the US partners.

Despite their interest in such an initiative, the US wonder whether they could launch something similar, given the obligations imposed on them by the First Amendment on freedom of speech.

However, both parties see an interest in continuing and enhancing the academic dialogue that has started among them on various factors underlying Recruitment and Radicalisation and on terminology issues (Lexikon)

The Commission announced that it envisages proposing amendments to the Framework Decision on Terrorism, inter alia on incitement and the criminalisation of incitement

Session 3: Justice and law enforcement issues

10. EU civil liberties organisation: role in justice and law enforcement matters

The EU sketched the progress made towards turning the current Vienna Monitoring Centre on Racism and Xenophobia into an Agency for Fundamental Rights, as well as its competences according to the Regulation.

11. Europol and Eurojust cooperation with U.S.

Europol was pleased to announce that the entry into force of the Third Protocol (19 April 2007) will allow a much closer cooperation with the United States, in particular on access to Analytical Work Files. Cases will be handled through the different agencies (FBI, Secret Service, DEA and Post) which now have a Liaison Officer posted in the Hague. The Western Balkans are among the AWF for which the US showed interest.

Europol was however still not satisfied with the extent to which it receives classified information from the US.

The formal agreement signed between the US and Eurojust on 6 November 2006 and which entered into force on 21 December 2006 is a sign of good cooperation in concrete cases. The recent stationing of an American Liaison Officer at Eurojust will certainly ease further coordinated handling of cases.

12. Afghanistan

A lengthy discussion took place about various aspects of the situation in Afghanistan, both from the point of view of drugs production as well as with respect to the building of a solid Afghan police force, independent justice, the fight against corruption, etc. It was underlined that these objectives should apply increasingly to the regions outside Kabul.

Since the EU decided to restructure the Member States' efforts into an ESDP Police mission, there is even more need for consultation and cooperation with the other countries present in the area, and more than was the case until now, with the United States.

The plans to reinforce the Afghan State are not limited to the police and drugs, but should also concern border controls, since drug production is dependent to a large extent on importing huge amounts of acetic anhydride from neighbouring countries.

Germany is furthermore in contact with Iran on these issues, since Iran has a major role to play in the region and its population is badly affected by drug addiction.

Questions of training, border controls, precursors and targeting of criminals for investigation and prosecution will also be addressed in the G8.

13. Organised crime and corruption

- Western-Balkans / SECI

In the light of the interest of the United States in the region and the many efforts it has deployed over the years, a discussion took place over possible future prospects for SECI. It was underlined that even if SECI is to become more closely associated with Europol's activities, it will take several legal and political steps before the new legal personality will be able to exchange personal data with third country partners.

The US is however interested to continue working on concrete files in the meantime, e.g. on the smuggling of aliens.

- Update on implementation of international instruments: UNCAC, UNTOC

Note was taken of the unfortunate situation that not all EU Member States have yet ratified both Conventions (the United Nations Convention against corruption and the United Nations Convention against transnational organised crime) and that proper implementation is hindered by the fact that questionnaires are not answered quickly (or not at all) by UN member states. The need for a review mechanism should be discussed further between the EU and the US.

14. CyberCrime - Implementation of the Council of Europe Cybercrime Convention

The Cybercrime Convention, which has been ratified by the United States, is not yet in force in many EU Member States. Both parties underlined to need to work concretely on the basis of this Convention. Moreover, the US side will not welcome the initiative, suggested by Russia in the Council of Europe, to draft an additional Convention on Cyberterrorism.

15. Status update on mutual legal assistance and extradition agreements

Note was taken of the state of play with respect to the EU-US instruments themselves, the bilateral instruments and the constitutional declarations to be made in several Member States.

On US side, the agreements were transmitted to the Senate, which could start hearings fairly soon.

In the EU, the need to speed up the processes will be recalled. Also Bulgaria and Romania will be involved in these agreements.

16. Further cooperation in the field of law enforcement

- Intellectual Property Rights

The EU side informed the US on the negotiation of a draft Framework Decision on IPR. The US reiterated the importance of cooperation in this field.

- CEPOL

Both parties emphasised that there is room for more cooperation between CEPOL and the American agencies. They would welcome any initiative in this context. If a formal agreement is to be negotiated, that agreement will on the EU side ultimately have to be approved by the Council.

Session 4: Law Enforcement Information Sharing (continued 23 January)

17. Expansion of the Prüm Convention

The EU side informed the US about recent developments with respect to a possible expansion of the Prüm Convention and its integration into the EU legal framework.

18. Data protection framework decision and implementation of data retention directive

19. Passenger Name Records/ Automated Targeted System

20. Contact Group

Delegations held initial talks on the nature and the schedule of the various talks to be held in the near future, both within the context of the High Level Contact group on data protection and data sharing, as it was created at the previous Ministerial meeting, as well as on PNR, in the PDBTS and with respect to Swift.

Thoughts were exchanged as to whether one should aim at a global detailed agreement, or for a few principles, to be detailed for each of the data categories to be exchanged.

The US delegation handed over a "Proposed Outline for the High Level Contact Group", to which the EU promised to respond.

In respect to PNR, the EU recalled that a first step can only be taken after Coreper have approved guidelines for negotiation.

The US side sketched its new TRIP system (Travellers' Redress Information Programme), offering a uniform system of redress.

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There were no other business



EU-US JHA High Level Meeting

22nd January 2007, Berlin

Presidency	
Günter Krause	Abteilungsleiter Polizei und Terrorismusbekämpfung Bundesministerium des Innern
Reinhard Peters	Unterabteilungsleiter Migration Bundesministerium des Innern
Michael Grotz	Unterabteilungsleiter Strafrecht Bundesministerium der Justiz
Dr. Hans-Jürgen Förster	Unterabteilungsleiter Polizeiangelegenheiten Bundesministerium des Innern
Michael Niemeier	Referatsleiter EU-Koordinierung Bundesministerium des Innern
Andrea Schumacher	Referatsleiterin Terrorismusbekämpfung Bundesministerium des Innern
Andreas Schultz	Referatsleiter Polizeiliches Informationswesen Bundesministerium des Innern
Dr. Carsten Maas	Referent Terrorismusbekämpfung Bundesministerium des Innern
Stefan von Burstin	Referent Internat. Grenzpolizeiliche Zusammenarbeit Bundesministerium des Innern
Dr. Sena Ceylanoglu	Referentin Stab EU-Präsidentschaft Bundesministerium des Innern
Annette Dürkop	Sachbearbeiterin Stab EU-Präsidentschaft Bundesministerium des Innern
Martina Wenske	Ständige Vertretung der Bundesrepublik Deutschland bei der EU

USA Delegation	
Elizabeth Verville	Deputy Assistant Secretary for Crime US Department of State
Susan Burk	Deputy Assistant Secretary, Office of the Coordinator for Counterterrorism, US Department of State
Ken Propp	Attorney-Adviser, Office of Legal Affairs US Department of State
John Brennan	Director, Office of Field Support and Liaison US Department of State
Alessandro Nardi	Foreign Affairs Officer US Department of State
Laura McKechnie	Multilateral Affairs Officer US Department of State
Paul Rosenzweig	Acting Assistant Secretary for International Affairs US Department of Homeland Security
Mike Scardaville	Deputy Director for European and Multilateral Affairs US Department of Homeland Security
Jacquelyn Bednarz	Attaché (Designate) to the EU US Department of Homeland Security
John Kropf	Director, International Privacy Policy US Department of Homeland Security
Jane Horvath	Chief Privacy & Civil Liberties Officer, Office of the Deputy Attorney General, US Department of Justice
Bruce Swartz	Deputy Assistant Attorney General, Criminal Division US Department of Justice
Thomas Burrows	Associate Director for Multilateral Matters, Office International Affairs, US Department of Justice
James Freis	Deputy Assistant General Counsel US Department of the Treasury

James McAnulty	Counselor of Mission for International Narcotics and Law Enforcement Affairs, US Mission to the EU
Michael McKinley	Deputy Chief of Mission US Mission to the EU
Paul Fitzgerald	Counselor, Consular Affairs US Mission to the EU
Donald Shemanski	Counselor for Global Affairs US Embassy
Mark Koumans	First Secretary for Counterterrorism, Homeland Security, and Legal Affairs, US Embassy
Robert Cekuta	Minister-Counselor for Economic Affairs US Embassy
Caroline Sheldon	Legal Specialist, Office of Global Affairs US Embassy
Clyde Langley	FBI Legal Attache Brussels
EU-COMMISSION	
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Vivian Loonela	Seconded National Expert – Unit A2 - External relations and enlargement
Cecilia Verkleij	Head of Sector Access to Information
Nicholas Kaye	Administrator
Alenka Zajc Freudenstein	Principal administrator, RELEX-C1
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Portugal	
Mariana Sotto Maior	Deputy Director General of the Cabinet of European Affairs, Ministry of Interior

Europol	
Max-Peter Ratzel	Direktor
Eurojust	
Jean Francois Bohnert (nur 22.01.07)	Stellvertreter des Französischen nationalen Mitglieds von EUROJUST
Frontex	
Ilkka Laitinen	Executive Director
Rick Weijermans	External Relations Officer