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LIMITE

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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 Senior Officials
Meeting, Bratislava, 8-9 September 2016

1. Welcome by the EU Presidency

After welcoming the delegations to Bratislava, the Presidency referred briefly to the importance of EU-US cooperation, sharing of best practices and joint action with regard to the agenda items of the meeting.

The US side concurred with this view mentioning counter-terrorism, migration and transnational crime as essential areas of cooperation if the EU and US are to succeed individually and collectively.

2. Counter-terrorism

The US delegation highlighted the excellent operational cooperation at EU level especially with Europol, a critical partner. The number of US agents had increased and the areas of cooperation expanded with US authorities joining the Focal Point Travellers team in Europol. For the US it was fundamental to ensure intelligence sharing and coordination, both on foreign fighters travelling to and from Syria and Iraq to Europe and the US, and on self-radicalisation.

In connection to CT work at EU Member States' level, the US delegation recalled the huge importance for EU Member States to support CT work being done in Interpol. While protecting personal information, it was essential to ensure that personnel in the frontline were able to check against all relevant databases, including Interpol's Stolen and Lost Travel Documents database and for red notices. Although straight forward, this was not happening.

On CT operational matters, the US delegation informed that they were willing to share information with Member States and hoped for the same in return. A first step could be to create joint investigation teams (JIT). As the threat was viewed by the US side as sufficiently grave, the US believed it was possible to move forward establishing JITs despite procedural concerns being voiced. The introduction of US liaison officers in Europol had been successful and the US side hoped for Member States also to allow such investigative activity. In this context, the US delegation inquired about the opinion of the Advocate General of the ECJ concerning the EU-CAN PNR agreement published on the day of the meeting.

On countering violent extremism issues, the US delegation was interested to learn from experiences of EU Member States, in particular how to empower credible voices in local communities. It was perhaps useful to view the CT work not solely from a law enforcement perspective, but more from a social perspective, working with local authorities and using social media. Other lines of CT work included developing efficient counter narratives and continuing research and cooperation with academia to find causes for violent extremism.

The EU delegation pointed to the increasing terrorism threat in both the EU and US for which the response should be even more cooperation on border security, with internet service providers and on prevention of radicalisation. Security was high on the agenda of the upcoming meeting of Heads of States and Governments in Bratislava. The EU side recalled several actions and initiatives to enhance cooperation and coordination, information exchange and interoperability, and efforts concerning prevention. Practical examples were given on sharing of information via the SIENA infrastructure for CT investigation purposes and the utility of the Foreign Fighters travel database, the key challenge being to process the huge amount of collected data. Having just received the opinion of the Advocate General of the ECJ, recalling its non-binding nature, the EU would nevertheless assess it in detail, awaiting the opinion of the Court.

On chemical, biological, radiological and nuclear issues, it was agreed to do more in terms of cooperation, e.g. training programmes to detect smuggling, sharing of experiences and best practices.

Concerning the TFTP, both delegations expressed satisfaction with the tool for which the 4th joint review would be issued later this year. The US delegation offered to assist EU Member States with PNR and PNR capabilities, and 'off the shelf technology', the Automated Targeting System.

3. Migration and mobility

The EU delegation underlined the stabilised migration situation, the EU internal two-track approach as well as the external aspects; the cooperation with Turkey and the Partnership Frameworks, and referred briefly to the recent legislative proposals on asylum and border management, including on the upcoming proposal for an European Travel Information and Authorisation System (ETIAS). It was suggested to use the EU-US Migration and Refugee Platform to discuss further these issues. The EU delegation also suggested to the US side that they cooperate to move forward the global burden sharing on migration, to enhance the impact on the 'Compact countries' and to deliver joint messages to these countries during the upcoming summit in New York. US processing of the resettlement of 10.000 Syrian refugees being recently finalised for 2016, the EU delegation welcomed these efforts and inquired if this number would increase for 2017.

The US delegation applauded the efforts of EU Member States to cope with the difficult situation. The US side acknowledged their concern from a security perspective, in particular in terms of the 'special interest aliens', irregularly migrating foreigners born in countries close to the crime-terrorism nexus. The EMSC was lauded as a very important partner for the US and much information on foreign fighters had been given to other EU institutions and agencies. The US had also offered access to the 'Security Real Time Platform' against which asylum seekers and migrants could be screened. A part of US efforts concerned Turkey with whom it had signed a 'border work plan'. The US expressed interest in discussing EU-US cooperation in terms of capacity building and joint messaging in such countries, possibly before the ministerial meeting in December. On the 'Obama Summit', the US delegation informed that the US would make broad commitments, financial and with regard to cooperation, leadership and education. The resettlement quota for 2017 was 100.000 persons but that could change after the presidential elections. The commitment for a Syrian contingent within that number was unknown.

On visa issues, the EU delegation emphasised the common goal to have visa-free travel for the remaining five Member States and expressed confidence that there were no security risks attached as ESTA screening would apply. The delegation noted the crucial turning point that the position of the European Parliament represented concerning the obligation for the Commission to adopt a delegated act to impose temporary visa requirement for US nationals. It inquired if any facilitation measures for the five Member States could be considered.

The US delegation shared the goal expressed by the EU side, but to achieve this required the continued existence of the Visa Waiver Programme which was viewed upon with strong scepticism at political level in the US. Even the 23 visa free Member States were now required to fulfil more obligations in terms of *i.a.* expanding information sharing and improving screening of travellers. A partial visa lift was politically and legally not possible. The US delegation underlined that a visa suspension for US citizens would not facilitate progress, rather the opposite.

4. Transnational crime

Concerning drugs, the EU delegation made a positive assessment of the UNGASS outcome document, despite the lack of a reference to the abolition of death penalty. The next step was to implement the recommendations, in cooperation with the Global Commission on Drug Policy. The EU side referred briefly to the current review of the EU legal framework.

The US side concurred with this assessment and the importance of implementation, looking also forward to increased coordination by UN agencies, with the UNODC in lead. Concerning the 2019 review process of the 2009 Political Declaration, the US delegation questioned if another UNGASS session would be the most useful way forward. The US raised concerns with the use of Fentanyl in combination with heroine, an increasing and extremely dangerous trend on the US market, and asked to include this topic in the ministerial meeting in Washington.

On the preparations for the 8th Conference of the Parties to the UN Convention against Transnational Organised Crime, the US had three goals concerning the review process; to ensure that the review process would not be a burden for the users and that civil society was involved, and to avoid funding from the regular UN budget. Moreover, they encouraged the idea of national experts participating in the Conference and wanted to diversify the agenda to encompass more than the review process. The US side suggested to use the opportunity of the Conference to highlight the relevance of the Convention with regard to migrant smuggling and organised crime and suggested to organise a seminar with the EU on this topic.

The EU delegation echoed the importance of involving civil society in the review. It would revert to the seminar suggestion after consultation with Member States.

EU-US cooperation on the issue of Travelling Child Sex Offenders was briefly discussed, including US programme Angel Watch and the provision of US leads to EU Member States through Europol which in their view were not fully used. Similar information to the US was also asked for. The EU delegation expressed commitment to continue cooperation with the US on this sensitive issue.

On the issue of wild life trafficking, the US delegation noted no substantive differences between the EU and US priorities. It was seen as a huge threat in the sense that successful wild life smuggling equalled a capability to smuggle anything.

The EU delegation referred to the European Agenda for Security, the Commission Action Plan against wild life trafficking and Council Conclusions adopted in June this year.

5. Data Protection

The EU delegation recalled the positive developments in transatlantic data flows in the past year, highlighting the adoption of the Privacy Shield and the signature of the 'Umbrella Agreement'. Still, European Parliament consent was needed and efforts to achieve this required more work on both EU and US sides.

Data protection being a topical issue for the US, it was grateful for the progress achieved. The US delegation underlined however, that the Judicial Redress Act would not come into play and be effective for any EU citizen until the European Parliament approved the 'Umbrella Agreement'. The US side did not find useful to provide more than the two explanatory memoranda already given but was open to work on other strands vis-à-vis the Parliament.

6. Anti-money laundering and terrorism financing

The US side welcomed the EU efforts on anti-money laundering, transparency of beneficial ownership information as well as other amendments to the 4th Anti-money laundering directive. It was a very positive step the EU had taken in proposing to eliminate references to national laws of secrecy. The US inquired about the interpretation of the new provision on the cooperation between competent authorities (art. 50a) and the challenge of virtual currencies exchange platforms being obliged to implement preventive measures and report suspicious transactions. The US side was offering to share their experiences. Concerning the Cultural Property Act to protect Syrian antiquities, there had been no cases linking import of antiquities to terrorist activities yet.

The EU delegation stated the amendments to the 4th Anti-money laundering directive were to enter into force in 2017 if the adoption procedure proceeded smoothly, and made remarks concerning the list of high-risk third countries and the proposal for setting minimum rules on the definition and criminal sanctions for money laundering.

7. Cooperation in the area of criminal law

The EU delegation highlighted recently adopted Council conclusions aiming at improving criminal justice in cyberspace for which further EU-US cooperation was necessary, including in the EU-US working group on cybersecurity and cybercrime. Initial discussions on encrypted e-evidence would continue as would the screening exercise on which the US would be informed at a future occasion. The EU side referred to the legal and practical aspects in identifying solutions to streamline MLA proceedings and direct contacts with internet service providers, and its interest in cooperating with the US in these matters. The establishment of a European Judicial Cybercrime Network was forthcoming, bringing together representatives of Member States and experts and acting also as a possible interlocutor and liaison for the US.

The US delegation concurred that this critical and difficult issue should be faced collectively. The US competent authority had increased by 100% its size which had reduced the number of outstanding cases with 33%. The network was welcomed as a forum to discuss with counterparts. Remarks were made concerning the Microsoft decision rejecting a request for data stored overseas. It was viewed as very dangerous that evidence could be stored in different locations abroad or that it would remain unclear whether evidence existed at all, or just not in the US. The US expected Eurojust and Europol to continue working with them on this issue.

8. Cooperation with third countries

The EU side informed of the ministerial meeting with EaP countries on 7 July in Bratislava addressing issues such as the fight against corruption, money laundering and terrorist financing as well as the independence of the judiciary. Three of the six countries were associated countries providing a strong hook for encouraging reform programs.

The cooperation with these countries was of particular interest to the US having several projects in the mentioned areas to build capacity. EU-US collaboration on investigations and prosecution of corruption cases was suggested.

9. Preparation of the EU – US Ministerial meeting in Washington

A possible date for the ministerial meeting was proposed: 5-6 December.

10. Priorities of the incoming Maltese Presidency

The incoming Maltese Presidency made a presentation of priorities in the Justice and Home Affairs areas and proposed dates for the meetings with the US: the Senior Officials Meeting on 1-2 March and the Ministerial Meeting on 14-15 June 2017 (tbc).
