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JAIEX	11
RELEX	60
ASIM	10
CATS	8
JUSTCIV	13
USA	15

OUTCOME OF PROCEEDINGS

from: General Secretariat of the Council
to: Delegations
Subject: Results of the EU-US Informal Justice and Home Affairs Senior Officials meeting, Madrid, 11-12 January 2010

Session 1: Introduction

1. Presentation of the Spanish Presidency priorities in JHA and JHA External Relations

The Spanish Presidency presented its priorities, which fitted in with the implementation of the Stockholm programme and the new format provided by the Lisbon Treaty. It highlighted priorities, which were already agreed at EU level, such as the implementation of the Pact on Immigration and Asylum. Among the new priorities and proposals, the Presidency highlighted the Internal Security Strategy; Spain envisaged several other initiatives, including a proposal to set up an "Erasmus-like" mechanism for police training, a fast-track system at the outer borders for EU citizens, a network of anti-terrorism centres, implementation of Article 17 of

the Prüm Convention and, in the external field, a more comprehensive approach towards West Africa and the Sahel. In the field of justice, on-going work will be pursued on trafficking in human beings and on child protection. A new impetus will be given to work on procedural guarantee, on victims' support and on the rights of detainees. The Presidency will also promote a European Protection Order and the EU's accession to the Council of Europe Convention on Human Rights. Finally, the efforts on e-Justice will be also pursued.

For both Ministries, as for the Commission, the strengthening of transatlantic relations is considered to be very important.

The US side focused on the importance of the effective implementation of the MLA and Extradition agreements and on the preparation of an international agreement on data protection making it possible to reinvigorate information sharing, including under the Terrorism Financial Tracking Programme (TFTP). The US looked forward to more international cooperation with the EU, both in certain regions (i.a. in Western Africa and the Sahel region) and multilaterally (UNCAC, UNTOC). Also, the topic of transport and of passenger security should be addressed, as will be during with the visit of the DHS Secretary to the JHA Informal Council in Toledo. Given the new institutional framework, the US would look closely at its relations with the European Parliament.

2. EU-US joint statement on enhancing transatlantic cooperation in the area of justice, freedom and security – the way forward

Several concrete steps are taken to implement the Washington Statement. The EU will organise with the US, or associate the US with, seminars on radicalisation and recruitment, explosives, West Africa, prison radicalisation, mutual legal assistance on fraud, corruption, money laundry and asset recovery, on cybercrime and others. The US will also invite European experts on child protection and on trafficking in human beings. Among other activities, the negotiations were mentioned on the long-term TFTP agreement, the data protection agreement, and the continued work on the extension of the Visa Waiver Programme.

Both the EU and the US priorities should lead to useful deliverables at the EU-US JHA Ministerial meeting, which is scheduled for 8-9 April 2010.

Session 2: Law enforcement and judicial cooperation in criminal matters

3. Implementation of the EU-US mutual legal assistance / extradition agreements

- Practitioners' seminar on 25-26 March in Madrid, organised by the Spanish Presidency

The seminar that will bring together EU and US practitioners will take place on 25-26 March. Focus will be put on, inter alia, the use of video in proceedings, on the exchange of banking information and on the possibility to use Eurojust as a one-stop shop.

4. Data protection/privacy

- The way forward after the HLCG has completed its work

The EU side outlined a possible schedule for the preparation of negotiations on an international agreement on data protection. The Commission believed it might take several months to come up with a proposal, once the new Commissioners had been approved by the European Parliament and after informal consultations with public and private partners. The scope of the mandate might be broader than that covered by the work of the High Level Contact Group (HLCG). The Commission would soon present a paper explaining its views on the schedule of further activities .

The US side declared that it would be disappointed if it were not possible to start negotiations soon, given the considerable efforts that had been put in the work of the HLCG. The US would be ready to start working without any delay. It needed in fact to know what the EU was aiming at in order to decide whether the agreement should be given the format of a Treaty or that of an executive agreement. The US asked the EU side to come up with a mandate before the EU-US Ministerial meeting in April.

5. Follow -up to the EU-US cyber crime seminar in November 2009

- Annual dialogue on cybercrime, cooperation on cybercrime research, public-private platform for information exchange, common voice of law enforcement re Internet governance

The EU side reported on the activities undertaken after the successful seminar held in November 2009. Work on the Trusted Secure Platform was going on, with the involvement of private and public stakeholders. Efforts were also being made to develop together a Common Research Agenda, on which the US is consulted.

The US wished to work urgently with the EU to promote the wider use of the Council of Europe Convention on cybercrime, while there is substantial pressure from different sides to draft such an instrument within the United Nations.

The Europol Cybercrime Platform was mentioned as a useful tool for bilateral cooperation, aimed at collecting Internet reports on offences. A cyber-analytical work file has been set up in which the US side had been invited to participate.

6. EU-US cooperation on child protection and human trafficking

The US delegation stated that the US child protection office would meet with interested EU experts to learn from the US practice in this field. Also, the US Ambassador-at-large against trafficking in human beings, Mr. Louis CdeBaca, would be available to meet relevant authorities in Europe in order to open an informal dialogue, *inter alia* on labour trafficking. The discussions might also extend to child pornography and child abuse linked to tourism. The progress in the EU draft framework decision on sexual exploitation of children would be discussed too, as well as the cooperation with third countries to combat trafficking in human beings.

Technical work was ongoing with the US at Eurojust, *inter alia* with telecom experts on encryption and other means of concealment of content. The THB meeting in Vienna on 27-29 January would offer another opportunity for cooperation.

7. EU – US international cooperation

- Regional cooperation in the JHA area in
 - *the Western Balkans*

The EU side handed out an overview of the technical assistance projects to the Western Balkan countries supported by the Commission, which underscored the support for the EU perspective of the countries in the region as well as for their numerous efforts to reach EU standards. The EU asked the US to submit a similar overview, which would then allow experts to discuss priorities and results. The visa liberalisation process vis-à-vis all the countries in the region was outlined , as were the developments with SECI and SELEC, the SEE-OCTA report and the ILECU project.

The US was keen to learn which safeguards the EU had obtained with respect to document security.

The EU pointed out that much attention had been given to biometric passports, the withdrawal of old passports, supporting documents , etc.

The US suggested improving cooperation with the EU at the International Law Enforcement Academy in Budapest.

- *in Western Africa and Sahel*

The EU highlighted the various efforts it was making in this area, which needed urgent attention. One of the ideas was to establish a coordinating and analytical centre in West Africa, based on the experience of the MAOC-N and CECLAD. EU Liaison officers would meet in February to enhance cooperation, a meeting to which US representatives would also be invited . An Action- Oriented Paper was under preparation on a strategy on and concerted action against drugs. Reference was also made to the sub-regional conference that would be held with several involved parties in mid-February.

The US also welcomed the results of the HDG troika held in December and which agreed to focus on Regional Training Centres and on drawing up matrices covering assistance projects for West Africa The US side was very interested in discussing with the EU Visa Denial as a tool for targeting drug traffickers and corrupt officials.

The Sahel region also deserved greater focus from the counter-terrorism point of view, owing to the number of kidnappings and the involvement of Al-Qaïda-related groups in drugs trafficking. Much was required from Mali, Mauritania and Niger as regards the capability and willingness to fight these threats.

- *UNCAC/UNTOC coordination*

Both sides were satisfied with the results of the Doha conference, which led to substantial progress towards an evaluation mechanism for the UNCAC Convention. This *acquis* might also prove useful as regards an evaluation mechanism for the UNTOC Convention, the terms of reference of which would be discussed soon. However, the structure of the Convention and its protocols made it even more difficult to define precise rules for thorough evaluations.

Session 3: Counter-terrorism and security

**8. Meeting with the Secretary of Homeland Security of the United States of America,
Mrs. Napolitano, in the framework of the Informal JHA Ministerial Meeting (21
and 22 of January, Toledo, Spain)**

The preparation of this meeting in Toledo was held in the margins of the Senior Officials meeting focusing on the content of a Joint Statement that might be adopted on the occasion of the visit of the DHS Secretary to the Informal Ministerial meeting.

9. EU – US PNR agreement

- Modalities for joint review; next steps regarding participatory rights of the European Parliament

Both sides agreed to the suggestion as formulated in a letter from the Commission to US counterparts to hold the review of the PNR review soon, possibly as early as in February 2010. US answers to questions raised before would be made available at least one week before the actual visits for the review.

10. Closing of Guantanamo

- US update

The US pointed out that so far 44 detainees had been released or transferred. That left 198 remaining detainees, of whom several would be recommended for release, with others being prosecuted by criminal or military courts. During these trials, the US might need EU support for additional evidence, for instance when the defendants were connected with the 9/11 attacks.

The EU took note of this information, stating that it would consider civil (criminal) courts to be the standard rather than military ones, unless the defendants were suspected in cases linked to military operations. It warned of the effect of seeking the death penalty, which might transform the suspects into martyrs.

There was concern about the number of former detainees returning to the battlefields.

- Joint Declaration on Counter-terrorism

The parties remain committed to implementing the June 2009 Declaration on Guantanamo and the intention to work on common principles. To that end, it was suggested that work should be carried out on defining the problems that were to be tackled and on the scope of the task. The US was proceeding with its internal consultations and would come back to the EU side with its thoughts.

11. Radicalisation and recruitment

- Seminar on 13-14 January 2010, organised by the Spanish Presidency
- possible EU-US seminar in the first half of 2010, organised by the Commission

Reference was made to a whole range of seminars, apart from the above, linked to radicalisation and recruitment held during the first half of 2010, and including one on radicalisation in prisons and a seminar on religious freedoms in democratic societies.

The US were invited to all these seminars. Another idea was to associate the US with the evaluation mechanism set up to measure the effectiveness of counter-terrorism programmes. The EU should also be invited to similar events organised in the US.

It was suggested including in the talks the possibility to set up an early-warning system, which might be useful in emergencies such as the cartoon crisis. .

An offer was made to the US to participate in two EUROPOL anti-terrorism Analytical Workfiles (Hydra, Dolphin) to which the competent agencies would be designated.

12. Cooperation on Explosives

- EU-US seminar on control of explosives on 17-18 February 2010, organised by the Commission and the Spanish Presidency

The EU and the US underscored the importance of the seminar on this issue, in light of the terrorist attempt in Detroit. The previous seminar had also been promising.. This might lead to results to be discussed at the Ministerial meeting.

13. Critical Infrastructure protection

- EU-US seminar on exchanges of best practices in CIP on 5-6 March 2010, organised by the Commission and the Spanish Presidency.

Considering the importance of critical infrastructure, delegations looked forward to the next seminar that might become a yearly event. Progress in this field might also be mentioned at the Ministerial meeting.

Session 4: Visa, border and migration issues

14. Visa issues – U.S. Visa Waiver Program

- progress towards visa-free transatlantic travel, progress on the two-track approach, ESTA, ESTA fee and travel promotion fee

The US side reported that the Travel Promotion Act, including the ESTA-fee to finance tourism promotion activities, had not yet been approved by Congress nor signed into law by the President. Also, under the existing regulation, the Homeland Secretary had the right to a cost recovery. Compliance with ESTA would be made compulsory before the middle of March 2010. In general, the US reported that the compliance rate with ESTA was now 92 %.

In reply to another EU question, no concrete date was mentioned for Greece to join the Visa Waiver Programme. The word used was, as before, "soon".

The ban on HIV carriers flying to the United States had been lifted and the ESTA screens would be adapted accordingly.

15. EU-US Dialogue on migration

The EU and the US had already discussed at the end of 2009 what the content of the migration dialogue might be as it was agreed in the Washington statement. The US suggested a rather wide definition of migration, suggesting discussion of the following topics:

- developing the migration management capacities in third countries, i.a. their protection standards,
- sharing information on the US Joint Refugee Resettlement Program,
- consultations in multilateral fora
- international adoption.

The EU was ready to consider these items as part of a dialogue, possibly with the exception of the one on adoption that might not fit in this format. The High Level Working Party on Asylum and Migration would discuss this proposal and was likely to become the counterpart of the US for this dialogue. This was seen as one of the items to report on at the Ministerial meeting.

16. Border Management

- US biometric exit system, registered travellers programmes, EU ESTA study, EU entry/exit system, automated border control systems

Both sides discussed the programmes they had launched to facilitate travel conditions for registered (trusted) travellers. Entry-exit systems were under preparation on both sides, although a systematic introduction of entry-exit systems might take longer. Also, plans for a European ESTA were still subject to preparatory work.

Two other projects were discussed, such as the US-Netherlands Premium system, which facilitates travel conditions for people who pay a fee and who have been vetted by both sides. Spain demonstrated its projects involving two airports aimed at automated checks of biometric passports and passengers; the system would also provide some intelligence.

- Update on the implementation of the Frontex-US Working Arrangement

The Frontex agreement that was signed in 2009 would soon be supplemented by a cooperation plan to identify concretely areas of common interest and prepare common measures. That plan would be valid until 2012.

Session 5: Preparation of the Ministerial meeting under Spanish Presidency

The Presidency had suggested the dates of 8 and 9 April for the EU-US JHA Ministerial meeting. Work on the agenda and organisational aspects should start soon, and delegations were invited to suggest items to discuss, including one that would be discussed more in-depth by the Ministers. Critical infrastructure was mentioned in that context, as well as organised crime and West Africa and Sahel.

Session 6: Concluding session

17. Intervention of the incoming Belgian Presidency

The incoming Presidency outlined a first set of its priorities, which should be based on the Stockholm programme and its corresponding Action Plan. Two major items were mentioned from the Home Affairs point of view: the implementation of the 2009 Terrorism Declaration with the US would serve as a guideline, with a focus on a preventive and multi-disciplinary approach. In the fight against organised crime, cybercrime was highlighted, as well as the protection of children and identity theft. Also in the justice area, ongoing files would be brought forward, with particular attention paid to data protection and for the implementation of the MLA and extradition agreements.

18. Any Other Business

There was no other business.

EU-US JHA SENIOR OFFICIALS MEETING
LIST OF PARTICIPANTS

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