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OUTCOME OF PROCEEDINGS

from: General Secretariat of the Council

to: Delegations

Subject: Summary of conclusions of the EU-US JHA Informal Senior Officials Meeting,
Cracow, 25-26 July 2011

Session 1: Introduction

1. Recent developments and prospects for justice and home affairs

In their overview of recent developments and prospects, the EU side (Presidency and Commission) highlighted several priorities in the areas of justice and home affairs, including migration issues (following the June JHA Council and the European Council), international aspects such as the Eastern Partnership and the Southern Neighbourhood, Schengen matters, judicial cooperation (inter alia Brussels I, European contract law, succession and confiscation of assets) and priorities in the field of drugs, in particular synthetic drugs.

They underlined that the current challenging time required an integrated approach to internal and external security problems, seeking the right balance between freedom and security. Several examples of these issues would be dealt at the current meeting, such as the PNR negotiations, the TFTS proposal, issues of mobility and security related to North Africa, cyber security and cyber crime, as well as criminal justice.

The US side highlighted both the Transatlantic Agenda, as reflected in the agenda for this SOM meeting, and cooperation between the EU and the US in international fora to combat terrorism, 10 years after 9/11, as well as the fight against cyber crime.

The recent events in Norway showed that societies had to remain vigilant against all forms of threat. The participants decided to send a message of condolences and solidarity to Norway on behalf of the EU-US Senior Officials Forum.

Session 2: CyberSecurity/CyberCrime

1. EU-US CyberSecurity/CyberCrime Working Group: state of play, preparation of report to the Summit

2. Update on ratification of the Council of Europe Cybercrime Convention

The EU referred to the partial successes so far achieved in fighting cyber crime. Good results had been achieved in combating child exploitation, but progress was still needed on Internet governance. The EU reiterated its call to the ICANN Board to implement the law enforcement recommendations of the independent review.

In 2012, the Commission would issue a communication on cyber security, and an EU Cyber Centre would be part of that scheme. The EU might also conduct mutual evaluations on the resilience of Member States. Several fora were already involved, such as the Cybercrime Task Force at Europol and ENISA, which were collaborating with US agencies to a certain extent.

The US referred to the International Strategy for Cyberspace recently issued by the Administration, which focused on three domains: security, economic growth and human rights. It was also mentioned that the EU and the US had agreed to hold the first-ever common cyber exercise in the autumn.

The activities of the EU-US Working Group would be pursued by several expert groups. The US had proposed a terms of reference document on awareness raising, calling for " good cyber hygiene ".

Both sides urged the importance of public-private partnerships, since private partners had more knowledge in certain areas, such as cyber attacks. The US called again for full ratification by the remaining 9 EU Member States of the 2001 Council of Europe Convention on Cybercrime. It was noted that no EU Member States had problems with the content of the Convention, but that the ratification procedure could be particularly lengthy. The EU and the US should work together in the UN to avoid dilution of this acquis.

Session 3: Counter-terrorism and security

1. Recent developments on air cargo security and securing the supply chain

The EU set out the results it had achieved so far on cargo security, which were based on the results of the High Level Working Group put in place in October 2010 and the progress report presented in June 2011. New rules for air cargo and for screening had been in place since early July. Risk assessments on countries of origin allowed vulnerabilities to be analysed, both in terms of infrastructure and human risks. It was important to include the private sector in this work, as well as the customs sector. The EU made a plea for a certification system with the US to enhance the efficiency of each other's tools. The EU also called for ICAO to agree on higher global cargo security standards.

The US referred to the international counter-terrorism strategy it had recently adopted, which focused on Al-Qaida groups in peripheral battlegrounds. The US remained worried by the large flows of recruits, which called for even closer cooperation with communities in the US.

The US recognised that air cargo continued to represent an important risk, which required law enforcement, maritime and customs agencies to work together as closely as possible. Questions of (international) mutual recognition in respect of WTO rules and recommendations needed to be solved.

2. Recent developments and next steps on Countering Violent Extremism (Radicalisation)

Both sides welcomed the work done by the US-EU steering committee (linking the US-EU Mission, EEAS, the Commission and the EU CTC's office) that had, among other things, prepared the two CVE seminars in June 2010 and the follow-up seminar on Somalia in January 2011. The intention was to organise another seminar on countering violent extremism, focusing on Pakistan, before the end of 2011. The seminar would be modelled on the previous one, inviting leaders of the Pakistani diaspora to join in parts of the seminar.

The US mentioned the setting up of a new Community Office at the Office of the Coordinator for Counterterrorism at the Department of State in order to build relationships with the different communities, focusing on training and on awareness of violent extremism.

The EU referred in this context to the development of an EU radicalisation awareness network to pool experience, knowledge and good practice. The awareness network would closely involve civil society organisations, such as associations representing victims of terrorism.

The EU also announced that it would organise a ministerial conference on radicalisation in 2012.

3. Recent developments and next steps on countering terrorist uses of explosives

Cooperation on explosives was a continuing success for EU-US cooperation, as demonstrated at the recent third seminar attended by 300 experts. A real network of experts was emerging. The recent incident in Norway showed the importance of regulating explosives precursors, such as fertilisers. The US referred also to an initiative on explosives it had launched in cooperation with the World Customs Organisation, in which more than 70 countries had participated. It called for more EU Member States, in particular major shipping nations, to join the initiative.

Furthermore, the US called on the EU to cooperate on the issue of liquids in commercial aviation. The deadline for the current system was 2013 and the US underlined that the necessary technology had to be in place before giving in to pressure to lift restrictions.

4. Report on recent seminars on Critical Infrastructure Protection and on countering terrorist financing and future work

Cooperation between the EU and the US on Critical Infrastructure Protection was the subject of a second conference held in June 2010. Both parties considered, however, that they could do more. The US mentioned, for instance, the idea of building a tool-kit to assist national governments in examining their existing national policies, procedures, norms, institutions and relationships in the light of national needs, to enhance cyber security and address critical information infrastructure protection. The definition of "critical infrastructures" is a key issue.

It was suggested that these questions could be addressed as one of the most interesting deliverables for the next EU-US Ministerial meeting in November 2011.

The meeting also discussed cooperation on terrorist financing, in light of the recent workshop in Budapest, which focused inter alia on the challenges financial institutions faced when they implemented different rules and on the impact of new payment methods.

The US was generally worried by the issue of the ability to implement FATF recommendations and in particular by a suggestion from an EU Member State that the FATF recommendations could be renegotiated so as to include data protection criteria.

The EU mentioned the policy paper including options for a TFTS (*Terrorist Finance Tracking System*), which was an initial response to the request for a legal and technical framework for establishment of such a system within the European Union. After debate on the issue in the Council and the Parliament, the Commission would prepare a legislative proposal in 2012.

Session 4: PNR issues

1. PNR – update (including update on the EU PNR proposal)

Regarding the EU-US PNR agreement **DELETED**.

Moreover, a proposal had been tabled for an EU PNR system, which was being discussed by Member States and which would probably include the collection of PNR data on intra-EU flights. The period of retention for EU PNR would anyway have to be in accordance with the Charter of Fundamental Rights.

Session 5: Mobility, borders and migration issues

1. EU-US Platform on Migration: report on recent and planned activities

The EU expressed satisfaction at cooperation so far under the EU-US Migration Platform, in particular on biometrics, on unaccompanied minors and on resettlement. For the period ahead, the EU would envisage adding to the agenda issues of capacity building in migration management, integration and labour migration.

The US also saw the Migration Platform as a success. They welcomed the cooperation that had been established with both the Commission and the Member States, such as the seminar organised by Spain on unaccompanied minors, which should lead to access to more data, cooperation in third countries, effective means of age determination, etc. The US looked forward to EU proposals to enhance cooperation on labour migration and on the consequences of the situation in North Africa.

2. Visa Waiver Program - state of play on proposed U.S. legislation; ESTA

The US delegation outlined the status of the Bill that had been introduced in March 2011 to modify the requirements of the Visa Waiver Program. Since President Obama endorsed the objectives of the Bill, the Department of Homeland Security had been looking at its technical and operational applicability. The Bill would give overstay rates a more important role in determining a country's ability to join the VWP. The EU asked how the overstay rates were calculated.

The EU was following this issue with great interest, not only in light of the four EU MS that were currently excluded from the VWP. **DELETED**

The EP had also suggested that certain visa issues be covered by an EU-US visa agreement. The US stated, however, that their VWP legislation provided only for bilateral agreements with individual states, despite the fact that other issues could be addressed with the EU as such, as had been done in the past under the so-called "twin-track approach".

The EP had also reiterated its dissatisfaction with the US ESTA system.

The US referred to the Privacy Impact Assessment Update that had been published recently on the ESTA fee and which showed that no financial information was being used for screening purposes.

3. Border issues; Frontex update

The EU side underlined recent discussions in the Council on the European Border Surveillance System (EUROSUR) and on the Smart-Borders package.

Under the new Regulation, Frontex would be able to acquire or lease its own technical equipment and to deploy detached national experts from Member States for operational activities. The proposal also provided for a co-leading role for the Agency in joint operations and pilot projects. Frontex would be able to deploy liaison officers in third countries and the new Regulation created new possibilities for the processing of personal data for operational purposes.

Pressure in the Central Mediterranean area was still very high, as it was in the Eastern Mediterranean area, calling for enhanced cooperation with Turkey.

The cooperation between Frontex and the DHS had become more efficient with the appointment of contact points. Cooperation was now focusing on risk assessment, research and development, training and joint operations. The US were also including other departments in the cooperation, such as the Consular Department, while using information provided by Frontex to inform relevant US agencies.

Session 6: Data protection

1. Data protection agreement - state of play

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The EU side reaffirmed the objective of a credible, legally binding agreement in the interests of EU citizens as well as guarantees for US citizens. This also required, for instance, a satisfactory solution to the question of judicial redress.

2. Data protection and privacy in the commercial sector - information point by the EU

The EU delegation highlighted the efforts made in the EU to reinforce the framework for data protection, in order to increase legal certainty and strengthen individual rights. The latter were considered particularly important in light of the growing role of social networks, geo-positioning, etc. The EU was therefore interested to learn from similar efforts made in the US by the Department of Trade to protect the interests of consumers without harming the Internet economy.

The US was ready to provide the EU with information on this kind of initiative but wanted to keep these discussions separate from those linking data protection and law enforcement.

3. Update on the Polish Presidency Conference on Data Protection (21 September 2011)

The EU side explained that there were many issues worth addressing at the conference on 21 September, such as the privacy-related consequences of cloud computing, IT security and practitioners' experience. US experts would be invited to the conference, the agenda for which had not yet been finalised.

Session 7: Judicial cooperation in criminal matters

1. Implementation of the MLA/Extradition Agreements - next steps

The EU and the US noted that after the progress made in the spring, all parties were now ready to use the article 4 forms. The EU informed the US on the discussions among MS to draft an EU Handbook and the lack of interest of the majority of MS due to the preferential use they were giving to their bilateral agreements with the US.

Instead, the parties saw added-value in organising a seminar, possibly with the guidance of Eurojust, in order to bring together practitioners to discuss all kinds of issues relating to the agreements. Asset recovery might be one of the topics, as well as electronic evidence. The EU side noted moreover that if the European Investigation Order was adopted, it might have a positive impact on transatlantic investigations since it would include the principle of proportionality and a 4-months maximum period for complying with a request.

On central banking registers, the US regretted that only 5 EU MS had set up such systems, although it was also possible to respond quickly to requests by other means such as legislative measures imposing deadlines to reply to requests.

Session 8: International cooperation

1. Follow-up to ministerial discussion on North Africa

The EU side recapitulated on the action it had taken since the developments in North Africa, focusing initially on humanitarian action, and currently addressing migration in all its dimensions. The ultimate objective was the conclusion of "mobility partnerships" between the EU and the countries concerned. These partnerships would also allow for mobility for researchers, students and businessmen and include talks on visa facilitation and readmission agreements. The dialogues were not limited to migration issues but also included assessments of judicial systems and of prisons, court management, training etc.

The current dialogues with three Northern African countries might be extended to other interested parties. The US would be invited to attend a conference planned for November 2011 in Dakar, in the framework of the Rabat process.

2. Follow-up to the "EU-US Transatlantic Symposium on Dismantling Transnational Illicit Networks" (Lisbon, 17-19 May 2011) and to the Paris G8+ Conference on Drugs

The experience gained at the two conferences referred to in the heading encouraged the EU and the US to enhance their efforts to combat narcotics trafficking, inter alia in Latin America and in West Africa. Intelligence sharing was mentioned as one of the key tools, together with practical cooperation between maritime units. Cooperation could also easily be enhanced by using web-based networks. These policies might be accompanied by closer cooperation with the countries of origin, so as to avoid impunity for the perpetrators. Mention was also made of the EU-Mexico security dialogue which had recently got under way.

The US emphasised its efforts on capacity building and on border security with certain countries in West Africa.

The EU also reported on its synthetic drugs priority, since the JHA Informal Ministerial Meeting had paved the way for a European Pact on Synthetic Drugs.

3. Cooperation on Forfeiture of Criminal Assets

At previous meetings, the US had already suggested enhancing cooperation with the EU on the possibilities for non-conviction based asset forfeiture when suspects were beyond the jurisdiction of the courts. The US had presented some legal avenues of cooperation during a meeting at Eurojust. After the recent experience in relation to North African countries, it was evident that more should be done in relation to third countries. The US preferred to channel these efforts bilaterally, rather than in a general fund.

The EU announced that it would start discussing a new legal framework for confiscation before the end of 2011. 24 Member States already had asset recovery offices, which were important tools in protecting the licit economy. In October 2011, a conference on confiscation would be organised, to which the US side would be invited.

Session 9: Concluding session

1. Preparation for the next ministerial meeting (November date tbc., Washington)

The date for the next ministerial meeting had now been agreed between all parties for 21 November 2011. Delegations wished to present concrete deliverables to the Ministers, as well as to prepare for an in-depth discussion on a subject still to be agreed.

2. Presentation on the incoming Danish Presidency's priorities in the JHA area

The Danish side confirmed that its priorities would be consistent with the three-Presidency work programme to which it had agreed. Among the priorities listed, there was in general the implementation of the Stockholm programme and in particular PNR, Brussels I, countering violent extremism, TFTS, data retention and individual rights. The Danish Presidency planned to organise a transatlantic conference on cyber crime the following spring.

3. Any Other Business

The EU referred to talks with the US on physical accessibility, allowing it to learn more with a view to establishing criteria which might be relevant for public procurement. An expert meeting was envisaged for the autumn of 2011.
