EU/USA agreement on the judicial cooperation in criminal matters and extradition

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The Council agreed that the presidency has conducted the negotiations efficiently, with an encouraging outcome. However, some delegations have expressed concerns on specific points. For the time being, the negotiation of the Agreement should be suspended, in order to allow time to examine all relevant aspects of the text, in order to take a final decision at the next meeting of the JHA Council. It possible, the Council could conclude the Agreement in May or June, after having involved the parliaments in the appropriate manner. This agreement will have two contracting parties : the EU and the USA. It is recalled that the EU, by virtue of articles 24 and 38 of the Treaty, can conclude agreements on extraditions and on mutual legal assistance. The agreement should supplement (not replace) bilateral agreements between the US and Member States of the European Union, and should add value to such bilateral agreements and provide for the necessary guarantees for the protection of human rights and fundamental freedoms and respect the constitutional principles of the member States. Some of the main subjects included in the draft agreement are the following : 1) Extradition : as regards the delays in handling of requests, the draft agreement alleviates legalisation and certifications requirements and simplifies documentation to be provided and improve channels of transmission, in particular in urgent cases concerning provisional arrest, and facilitates direct contacts between central authorities ; - Member States will not be able to continue to apply their grounds of refusal of their bilateral extradition treaties. Both parties respect the right to a fair trial by an impartial tribunal established pursuant to law ; - The draft agreement contains a provision that prohibits extradition if the death penalty will be imposed or executed ; - In case of sensitive information, the draft agreement allows to as for consultations to determine the extent to which information, in a request, can be protected by the requested State ; - As far as competing request, the agreement deals with the issue of a concurrence between an extradition request from the USA and one form another State, or when this other State is a Member State, a European Arrest Warrant. 2) the draft agreement improves co-operation in the area of investigations into financial elements of serious crime, including organised crime ; 3) it also contains practical cooperation by reducing delays in mutual assistance, and also allows for the creation of Joint Investigative teams and the possibilities of video-conferencing ; 4) member States will be able to continue to apply their grounds of refusal from the bilateral mutual legal assistance treaties or legal principles of domestic law ; - those Member States that at present do not have a mutual legal assistance treaty with the USA, may refer to their ordre public (security, sovereignty, or other essential interests of the requested State) in order o refuse communication information in certain cases ; - the agreement contains extensive provisions in relation the data protection and the provisions of the evidence and information. It is recalled that the need to coordinate action against the various forms of transnational crime and strengthen judicial cooperation has been raised a number of times in proceedings at the Council, particularly at the high-level meetings with the US and Canada. Furthermore, at its extraordinary meeting on 20 September 2001 immediately following the terrorist attacks in the US, the Council agreed on the necessity for the Union to speed up the process of creating an area of freedom, security and justice and to step up cooperation with its partners, especially in the US. More specifically, the Council agreed on the principle of proposing to the US that an agreement be negotiated between the EU and the US in the field of penal cooperation on terrorism.