



**‘The Importance of International Legal Cooperation
for the US and the EU’**

On this topic, we are honoured to hear the comments of:

Mark Richard,

U.S. Counselor for Criminal Justice Matters assigned to the US Mission to
the European Union

And

Luigi Soreca,

Head of Strategic Policy Unit, DG Justice, Freedom and Security,
European Commission

Mr. Richard puts forward that he wants to discuss the obstacles and challenges in the months ahead. The US is extremely dependent on international cooperation and ‘we cannot address international crime realistically without working together. There is a need for reliable, predictable useful information that is usable in court. Therefore information sharing with regard to intelligence, judicial information and police information (border security) is indispensable.’

The American focus concerns working on a bilateral basis, this is called the ‘first line’. Crime problems, level of integrity and working systems can be comprehended best in a bilateral way. On a bilateral basis the US creates tailor-made agreements to counter crime, and this is not possible when working multi-lateral. On a multi-lateral basis consensus can only be achieved by ambiguity and vagueness. An example hereof is the UN Convention on Drugs that has many signatories but much less implementations.

The JHA field is a success story for cooperation between the US and EU according to Mark Richard, this is however not to suggest that all problems are surmounted. Data protection is the most difficult area in cooperation. The US has based its opinion on past lessons. The US wants to eliminate gaps in information sharing, Mr. Richard: ‘to connect the dots and see the big picture’. The utilisation of information beyond the use it was originally collected for is difficult for the EU. Currently the biggest problem is the Personal Name Records (PNR) ruling by the ECJ (May 30th). Another obstacle is the prosecution of suspects of terrorism

because of a lack of (classified) information sharing (consistent with the rights of the defendant).

Mark Richard: 'Let's find a process in which prosecutors and judges can make inquiries to (classified) information'. At the moment prosecutors prefer to dismiss a case rather than sharing information. In this way one ends up with public reproaches and finger pointing. 'We have yet to find a regularised predictable way to consult each other' according to Mr. Richard. 'We do not have much choice, we have a new reality at hand and we have to develop new methods of consulting and cooperation'.

According to **Luigi Soreca** the EU and the US have a high level of mutual understanding of each others legal systems, open borders, new technologies etc... Mr. Soreca wants to discuss new challenges and threats to European security and the external dimension of the area of freedom, security and justice.

After 9/11 mutual arrangements between the EU and US were established. They concern arrangements with regard to border control, information sharing and security and immigration policy. Also, a high level EU-US working group on border control was created. It is very important, according to Luigi Soreca, to find common ground and to keep discussing obstacles, priorities and cooperation together. The EU has to ensure that the current framework, Europol and Eurojust, will dedicate itself to counter-terrorism. This would truly add value. Secondly, as Mr. Soreca emphasises, consultation and cooperation are very important to eliminate terrorist attacks. A network of security has to be built up. Furthermore it is of the utmost concern to drive a wedge between terrorists and the public they claim to defend, this takes away the terrorist's legitimacy and power base. Terrorism can be defeated.

Question: All cooperation looks fine, and one is inclined to be positive about EU-US cooperation after the overview given by Mr. Richard and Mr. Soreca. However, what about the deep rupture between the EU and US with regard to Guantanamo, CIA camps, Abu Graib and the ICC, doesn't this render all other cooperation meaningless? Mark Richard: 'I do acknowledge the existence of such a difference of opinion but I do not think that it makes it impossible to cooperate all together. Luigi Soreca: 'Differences in the institutional framework do exist but in the field of Justice and Home Affairs it is important to agree or find a compromise approach, especially on data protection between the EU and US.'