

CRS Report for Congress

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U.S.-EU Cooperation Against Terrorism

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Summary

The September 11, 2001 terrorist attacks gave new momentum to European Union (EU) initiatives to improve law enforcement cooperation against terrorism both among its 25 member states and with the United States. Washington has largely welcomed these efforts, recognizing that they may help root out terrorist cells and prevent future attacks. However, the United States and the EU continue to face several challenges as they seek to promote closer cooperation in the police, judicial, and border control fields. This report will be updated as needed. For more information, see CRS Report RL31509, *Europe and Counterterrorism: Strengthening Police and Judicial Cooperation*.

Background on EU Efforts Against Terrorism

The September 11, 2001 terrorist attacks on the United States gave new momentum to EU initiatives to combat terrorism and other cross-border crimes such as drug trafficking, human trafficking, and financial fraud. For many years, EU efforts to address such challenges were hampered by national sovereignty concerns, insufficient resources, and a lack of trust among law enforcement agencies. However, the terrorist attacks and the subsequent revelation of Al Qaeda cells in Europe changed this status quo. Immediate European efforts following September 11 to track down terrorist suspects and freeze financial assets, often in close cooperation with U.S. authorities, produced numerous arrests, especially in Belgium, France, Germany, Italy, Spain, and the United Kingdom. Germany and Spain were identified as key logistical and planning bases for the attacks on the United States. As a result, European leaders recognized that the largely open borders within the then-15 member EU and Europe's different legal systems enabled some terrorists and other criminals to move around easily and evade arrest and prosecution.¹

Since the 2001 attacks, the EU has sought to speed up its efforts to harmonize national laws and bring down barriers among member states' law enforcement authorities

¹ The EU enlarged from 15 to 25 members on May 1, 2004. The 25 members are: Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

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so that information can be meaningfully shared and suspects apprehended expeditiously. Among other steps, the EU has established a common definition of terrorism and a list of terrorist groups, an EU arrest warrant, enhanced tools to investigate terrorist financing, and new measures to strengthen external EU border controls. The EU has been working to bolster Europol, its fledgling joint criminal intelligence body, and Eurojust, a new unit charged with improving prosecutorial coordination in cross-border crimes.

The March 2004 terrorist bombings in Madrid, Spain injected a greater sense of urgency into EU counterterrorism efforts, and gave added impetus to EU initiatives aimed at improving travel document security and impeding terrorist travel. In the wake of the Madrid attacks, the EU also created a new position of Counterterrorist Coordinator, designed in large part to tackle ongoing challenges facing the EU as it seeks to translate its raft of counterterrorism initiatives into effective law enforcement tools. Key among the Coordinator's responsibilities are enhancing intelligence-sharing among EU members, and promoting the implementation of already agreed EU anti-terrorism policies, some of which have bogged down in the legislative processes of individual member states.

U.S.-EU Counterterrorism Cooperation: Progress to Date

As part of the EU's efforts to combat terrorism since September 11, the EU has made improving law enforcement cooperation with the United States a top priority. The Bush Administration and Members of Congress have largely welcomed this EU initiative in the hopes that it will help root out terrorist cells in Europe and beyond that could be planning other attacks against the United States or its interests. This is in line with the 9/11 Commission's recommendations that the United States should develop a "comprehensive coalition strategy" against Islamist terrorism, "exchange terrorist information with trusted allies," and improve border security through better international cooperation. Some measures in the resulting Intelligence Reform and Terrorism Prevent Act of 2004 (P.L. 108-458) mirror these sentiments and are consistent with U.S.-EU counterterrorism efforts, especially those aimed at improving border controls and transport security.

U.S.-EU cooperation against terrorism has led to a new dynamic in U.S.-EU relations by fostering dialogue on law enforcement and homeland security issues previously reserved for bilateral discussions. Despite some frictions, most U.S. policymakers and analysts view the developing partnership in these areas as positive, and one of the relative bright spots in the recently much-strained transatlantic relationship. At the June 2004 U.S.-EU Summit in Ireland, the two sides issued a joint declaration on combating terrorism that reinforces their commitment to work together on this global challenge.²

Developing U.S.-EU Links. Contacts between U.S. and EU officials — from the cabinet level to the working level — on police, judicial, and border control policy matters have increased substantially since September 11, 2001 and have played a crucial role in developing closer U.S.-EU ties. The U.S. Departments of State, Justice, Homeland Security, and Treasury have been actively engaged in this process. The Secretary of State, U.S. Attorney General, and Secretary of Homeland Security meet at the ministerial level with their respective EU counterparts at least once a year, and a U.S.-EU working group

² See "U.S.-EU Declaration on Combating Terrorism," U.S.-EU Summit, June 26, 2004 [<http://www.whitehouse.gov/news/releases/2004/06/20040626-5.html>].

of senior officials meets once every six months to discuss police and judicial cooperation against terrorism. Europol has posted two liaison officers in Washington, and the FBI will station a U.S. liaison officer in The Hague to work with the EU's Counterterrorism Task Force, housed in Europol. U.S. and EU officials have also worked to bring their respective terrorist lists closer together and have developed a regular dialogue on terrorist financing. The U.S. Secret Service will appoint a liaison to Europol to work on counterfeiting issues. In addition, the United States and the EU have established a high-level policy dialogue on border and transport security to discuss issues such as passenger data-sharing, cargo security, biometrics, visa policy, and sky marshals.³

New Police and Judicial Cooperation Agreements. Beyond the increasing dialogue, U.S.-EU efforts against terrorism have produced a number of new agreements that seek to improve police and judicial cooperation. In 2001 and 2002, two U.S.-Europol information-sharing agreements were concluded; these allow U.S. law enforcement authorities and Europol to share both "strategic" information (including threat tips, crime patterns, and risk assessments) as well as "personal" information (such as names, addresses, and criminal records). U.S.-EU negotiations on the personal information accord proved especially arduous, as U.S. officials had to overcome worries that the United States did not meet EU data protection standards. The EU considers the privacy of personal data a basic right, and EU regulations are written to keep such data out of the hands of law enforcement authorities as much as possible.

In June 2003, the United States and the EU signed two treaties on extradition and mutual legal assistance (MLA) to help simplify the extradition process, and promote better prosecutorial cooperation. In negotiating these treaties, the U.S. death penalty and the extradition of EU nationals posed particular challenges. Washington effectively agreed to EU demands that suspects extradited from the EU will not face the death penalty, which EU law bans. U.S. officials also relented on their initial demands that the treaty guarantee the extradition of any EU national. They stress, however, that the extradition accord modernizes and harmonizes existing bilateral extradition agreements with individual EU member states. The MLA treaty will provide U.S. authorities access to European bank account information, speed the processing of MLA requests, and permit joint investigations. The treaties must now be transposed into national law by EU members, and ratified by the U.S. Senate before they can enter into force.⁴

Border Control and Transport Security. The United States and the EU have been placing increasing emphasis on cooperation in the areas of border control and transport security, as seen by the creation of the high-level policy dialogue on these issues. Several agreements have also been concluded. In April 2004, the United States and EU signed a customs cooperation accord; among other measures, it calls for extending the

³ On the U.S. side, the State Department has the lead in managing the interagency policymaking process toward enhancing U.S.-EU police, judicial, and border control cooperation, while the Justice and Homeland Security Departments provide the bulk of the legal and technical expertise. The Treasury Department has the lead on efforts to suppress terrorist financing.

⁴ U.S. and European officials have been working on concluding protocols to reconcile the terms of their respective bilateral treaties with the new EU-wide treaties; talks with the EU's original 15 members are expected to finish soon, and a second round of negotiations with the EU's newest 10 members will likely begin in early 2005. Interviews of U.S. and EU officials, 2003-2004.

U.S. Container Security Initiative (CSI) throughout the Union. CSI stations U.S. customs officers in foreign ports to help pre-screen U.S.-bound cargo containers to ensure that they do not contain dangerous substances such as weapons of mass destruction.

In May 2004, the United States and EU reached an agreement permitting airlines operating flights to or from the United States to provide U.S. authorities with passenger name record (PNR) data in their reservation and departure control systems within 15 minutes of a flight's departure. This accord formalizes a practice in place since March 2003, but which remains controversial because of fears that it compromises EU citizens' data privacy rights; the most contentious issues relate to the length and type of data stored. The European Parliament has lodged a case against the PNR agreement in the EU Court of Justice, which could nullify the accord if it finds that it violates EU privacy rules.

The United States and the EU have also pledged to enhance international information exchanges on lost and stolen passports and to promote travel document security through the use of interoperable biometric identifiers. Cooperation on biometric identifiers is aimed in part at helping to minimize U.S.-EU conflicts over new U.S. rules for its Visa Waiver Program (VWP) and to facilitate legitimate transatlantic travel. U.S. law had required citizens of VWP countries to have machine-readable biometric passports by October 26, 2004, but Congress extended the deadline for biometric requirements in VWP passports to October 26, 2005 to allow more time to resolve technical issues.⁵

The United States and the EU continue to discuss the use of armed air marshals on some transatlantic flights. U.S. requirements issued in December 2003 for countries to deploy armed marshals on certain flights to and from the United States were contentious in Europe. Some European countries claimed that guns on board planes would increase the security risks, while others — such as the U.K. and France — were more receptive. In April 2004, U.S. officials pledged to consider alternative measures that could be put in place for European countries opposed to armed air marshals, and U.S. and EU officials agreed that cancelling flights should be a measure of last resort.⁶ In November 2004, U.S. and EU officials agreed to exchange information about aviation security technologies, such as airline countermeasures against shoulder-fired ground-to-air missiles known as Man-Portable Air Defense Systems (MANPADs).

Ongoing Challenges

Despite U.S.-EU strides since 2001 to foster closer counterterrorism and law enforcement cooperation, and a shared commitment to do so, some challenges remain. Working out the mechanics of U.S.-EU police and judicial cooperation and U.S.-EU information-sharing is a key hurdle. Some U.S. officials doubt the utility of collaborating with EU-wide bodies given good, existing bilateral relations between U.S. law enforcement agencies — such as the FBI and CIA — and national police and intelligence

⁵ Fifteen of the EU's 25 members participate in the VWP, which allows travel to the United States without a visa. To mitigate security concerns about the extension of the biometrics deadline, VWP entrants as of September 30, 2004 are processed through the U.S. VISIT program, in which U.S. visitors are fingerprinted and photographed upon arrival. For more information, see CRS Report RL32221, *Visa Waiver Program*, by Alison Siskin.

⁶ "U.S. Conciliatory in Air Marshal Demands," Associated Press, April 26, 2004.

services in individual EU member states. Many note that Europol and Eurojust lack enforcement capabilities, and member states' national police and intelligence services are often reluctant to share information with each other, let alone with U.S. authorities. Meanwhile, European officials complain that the United States expects intelligence from others, but does not readily share its own. Some suggest that the United States and the EU also need to address security and legal impediments to using intelligence information in courts of law to prosecute suspected terrorists. Other analysts point out that European opposition to the U.S. death penalty or resistance to handing over their own nationals may still slow or prevent the extradition of terrorist suspects. And although the United States and the EU have succeeded in bridging many gaps in their respective terrorist lists, some persist. For example, EU member states have been unable to reach agreement on adding suspected Hamas-related charities to the EU's common terrorist list, and some continue to resist U.S. entreaties to add the Lebanon-based Hezbollah.

Differences in the U.S.-EU data protection regimes have also complicated closer cooperation on border controls and travel security. Washington would like to establish an umbrella agreement in which the EU would largely accept U.S. data privacy standards as adequate and permit the routine transfer of personal data between EU and U.S. law enforcement. The EU resists this idea, claiming that only tailored agreements will guarantee an "added level of protection" for EU citizens against possible U.S. infringements of their privacy rights. They point out that it would be burdensome for EU citizens to gain redress for any wrongs committed through the U.S. judicial system.

Some U.S. analysts assert that the Europol and PNR agreements establish U.S. data protection "adequacy" in practice and predict that similar U.S.-EU efforts in the future to improve information-sharing will face fewer hurdles. Others are more skeptical, noting that the PNR accord may be overturned by the European Court of Justice. At the same time, U.S. officials would like to receive PNR information before — not after — flights depart Europe. In addition, EU data protection experts remain concerned about the proposed U.S. domestic aviation passenger pre-screening system known as "Secure Flight," which is currently in the testing phase. In an attempt to assuage some European privacy worries, the United States in November 2004 announced that test data for Secure Flight would only be required from U.S. airlines, but the names of European passengers who have traveled on domestic U.S. flights likely would be among those tested. The EU will probably seek a U.S.-EU agreement on Secure Flight before it is fully implemented.⁷

Another challenge confronting U.S. and EU officials relates to finding a balance between improving border security and facilitating legitimate transatlantic travel. The EU has agreed to enhance the security of EU passports by making the inclusion of two biometric features — facial recognition data and fingerprints — mandatory, but EU officials admit that not all EU members that participate in the U.S. Visa Waiver Program will be able to meet the biometric requirements by the October 2005 deadline. EU citizens in such states will need a visa to visit the United States; some observers worry that this could seriously impede transatlantic tourism and commerce, and increase the burden on U.S. consular officers in embassies overseas. The EU is reportedly still lobbying the United States to extend the 2005 deadline. Some European officials caution in private that a failure to do so may also make it more difficult for the EU to dampen

⁷ "Passenger Screening Prompts Legal Concern," Associated Press, November 19, 2004.

potential calls from new EU members to impose retaliatory visa requirements on U.S. citizens; many are eager to join the VWP and are increasingly frustrated by U.S. rebuffs. U.S. officials claim that most of the new EU members do not yet meet the VWP requirements. Some Members of Congress have expressed skepticism about the continuation of the VWP in general because of security concerns.⁸

Some analysts also suggest that transatlantic tensions could negatively affect future U.S.-EU cooperation against terrorism. Differences in U.S. and European approaches to countering terrorism have become more evident as Washington has broadened the war against terrorism beyond Al Qaeda and Afghanistan. Most EU members continue to view terrorism primarily as an issue for law enforcement and political action rather than a problem to be solved by military means. Europeans are increasingly worried that the United States is losing the battle for Muslim “hearts and minds,” not only because of the war with Iraq, but also because of U.S. decisions that some charge violate human rights, such as detaining suspected Al Qaeda terrorists at Guantánamo Bay. Despite these frictions, others argue that Europe remains vulnerable to terrorist attacks, and law enforcement cooperation will continue because it serves both EU and U.S. interests.

U.S. Perspectives and Issues for Congress

The Bush Administration and many Members of Congress have supported efforts to enhance U.S.-EU cooperation against terrorism. Although some skeptics worry that such U.S.-EU collaboration could weaken strong bilateral law enforcement relationships with individual EU member states, the Bush Administration appears to have determined that the political benefits of engaging the EU as an entity on police and judicial matters outweigh the potential risks. U.S. officials say that the Union’s renewed initiatives in the police and judicial field may be the first steps on a long road toward a common EU judicial identity. Thus, they assert it is in U.S. interests to engage with the EU, given Europe’s role as a key U.S. law enforcement partner. They also hope that improved U.S.-EU cooperation on border controls and transport security will help authorities on both sides keep better track of suspected terrorists and prevent them from entering the United States or finding sanctuary in Europe. The new U.S.-EU high-level dialogue on border and transport security also seeks to establish a forum in which each side can provide the other with “early warning” of and input on emerging legislative proposals in these areas.

A salient issue for Congress will be whether the U.S.-EU agreements on extradition and mutual legal assistance add value to the existing bilateral accords on these issues that Washington already has with most EU member states. U.S. officials stress that the U.S.-EU-wide treaties protect all U.S. bilateral agreements and merely update or strengthen the existing accords; they do not reduce the existing accords to the level of the lowest common EU denominator. Congressional decisions related to improving U.S. travel document security and border controls may also affect how U.S.-EU cooperation in these fields evolves. The U.S. Congress-European Parliament Transatlantic Legislators Dialogue may offer a useful forum for enhancing consultations in these areas.

⁸ Raphael Minder, “Brussels Aims To Nip EU-US Visa War in Bud,” *Financial Times*, April 26, 2004; Interviews of European officials, 2004.