

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*, by Kristin Archick.

Background on EU Efforts Against Terrorism

The September 11, 2001, terrorist attacks on the United States and the subsequent revelation of Al Qaeda cells in Europe gave new momentum to EU initiatives to combat terrorism and other cross-border crimes. 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. 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.

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 unit charged with improving prosecutorial coordination in cross-border crimes.

The March 2004 terrorist bombings in Madrid 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. 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 members.

The July 2005 terrorist attacks on London's mass transport system prompted additional EU efforts to improve police, judicial, and intelligence cooperation. In December 2005, the EU adopted a new EU counterterrorism strategy outlining EU goals to prevent, protect, pursue, and respond to the international terrorist threat. The EU also set out a plan to combat radicalization and terrorist recruitment. And following the plot, foiled in August 2006, to bomb airliners flying from the UK to the United States, the EU reached political agreement on a package of new measures to improve and harmonize air security among its 25 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 Prevention 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.

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 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 United States has stationed an FBI liaison officer in The Hague, Netherlands to work with Europol on counterterrorism. U.S. and EU officials have also bridged many gaps in their respective terrorist lists and have developed a regular dialogue on terrorist financing. A

U.S. Secret Service liaison posted in The Hague works with Europol 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.²

New Police and Judicial Cooperation Agreements. U.S.-EU efforts against terrorism have produced a number of new accords that seek to improve police and judicial cooperation. In 2001 and 2002, two U.S.-Europol agreements were concluded to allow U.S. law enforcement authorities and Europol to share both “strategic” information (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. The U.S. death penalty and the extradition of EU nationals posed particular challenges in these negotiations. 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 members. The MLA treaty will provide U.S. authorities access to European bank account information, speed MLA request processing, and permit joint investigations. The treaties must now be transposed into national law by EU members and be ratified by the U.S. Senate before they can enter into force. In September 2006, President Bush transmitted the EU-wide extradition and MLA treaties to the Senate for its advice and consent.³

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 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

² 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.

³ The White House also transmitted for Senate ratification separate bilateral instruments signed by the United States and individual EU member states that reconcile the terms of existing bilateral extradition and MLA treaties with the new EU-wide treaties.

name record (PNR) data in their reservation and departure control systems within 15 minutes of a flight's departure. This accord was controversial because of fears that it compromised EU citizens' data privacy rights. As a result, the European Parliament lodged a case against the PNR agreement in the EU Court of Justice; in May 2006, the Court annulled the PNR accord on grounds that it had not been negotiated on the proper legal basis. EU officials stressed, however, that the Court did not rule that the agreement infringed on EU citizens' fundamental rights with regard to data protection. In October 2006, the United States and the EU concluded negotiations on a new, interim agreement to ensure the continued transfer of PNR data. U.S. officials appear pleased with this new deal, which will allow U.S. Customs and Border Protection to share PNR data with other U.S. agencies engaged in the fight against terrorism, such as the FBI. This latest agreement will expire in July 2007; U.S. and EU negotiators are expected to continue working on a more comprehensive and permanent PNR deal.⁴

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 minimizing U.S.-EU conflicts over new U.S. rules for its Visa Waiver Program (VWP). U.S. law had initially set October 2004 as the deadline for VWP countries to begin issuing machine-readable passports with biometric identifiers, but Congress twice extended the deadline for biometric requirements in VWP passports to give VWP countries more time to resolve technical issues. VWP passports issued after October 2005 must contain a digital photograph, and those issued after October 2006 must include microchips capable of storing biographic information.⁵

The United States and the EU reportedly 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. Some U.S. officials doubt the utility of collaborating with EU-wide bodies given good

⁴ "EU, U.S. Clinch Air Passenger Data Deal," *Agence France Presse*, Oct. 6, 2006.

⁵ Fifteen of the EU's 25 members participate in the VWP, which allows short-term travel to the United States without a visa. For more information, see CRS Report RL32221, *Visa Waiver Program*, by Alison Siskin.

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

existing bilateral relations between the FBI and CIA (among other agencies) and national police and intelligence services in individual EU member states. Many note that Europol and Eurojust lack enforcement capabilities, and that national 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. 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 some differences persist in the U.S. and EU terrorist lists. For example, some EU members continue to resist U.S. entreaties to add suspected Hamas-related charities or the Lebanon-based Hizballah to the EU's common terrorist list.

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 continues to face opposition from some European Parliamentarians and European civil liberty and privacy groups. At the same time, U.S. officials would like to receive more PNR information before — not after — flights depart Europe; the new PNR agreement reportedly will allow the United States time to access PNR data earlier when there is an indication of a specific threat to flights bound for the United States.⁷

Another challenge confronting U.S. and EU officials is finding a balance between improving border security and facilitating legitimate transatlantic travel. European leaders worry that visa-free travel could become a larger sticking point. New EU members are eager to join the VWP, and the EU would like to see all 25 members treated equally. U.S. officials claim that most new members do not yet meet the VWP's requirements but have pledged to continue discussions on extending the program. Observers caution that some EU members may ultimately press for retaliatory EU visa requirements on U.S. citizens if they continue to be rebuffed by Washington. In October 2006, the European Commission, as the EU's executive, recommended that the EU impose visa requirements on U.S. diplomats because of Washington's failure to extend the VWP. EU members have not backed this call, fearing that a visa war would result in a serious deterioration of transatlantic ties. While some Members of Congress have expressed skepticism about the continuation of the VWP in general because of security concerns, other Members are

⁷ "Homeland Security Secretary Chertoff Issues Statement on Passenger Name Record Agreement with European Union," *U.S. Fed News*, Oct. 6, 2006.

more supportive of extending the VWP to new EU members in Central and Eastern Europe, given their roles as U.S. allies in NATO and in the fight against terrorism.⁸

Some analysts 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” because of the war in Iraq, past prisoner abuse at Abu Ghraib, and the detentions of terrorist suspects at Guantánamo Bay. The EU has also expressed concerns about a November 2005 *Washington Post* report of alleged “secret” CIA prisons for terrorist suspects in some eastern European member states and the U.S. practice of rendition; the European Parliament has established a special committee to investigate these allegations. 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 evolves in these fields. The U.S. Congress-European Parliament Transatlantic Legislators Dialogue may offer a useful forum for enhancing consultations in these areas.

⁸ “EU Says New Members Will Have Visa-free Travel by June ‘08,” Associated Press, Oct. 5, 2006.