

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered in the narrow neck of the hourglass. The text is centered within the hourglass.

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U.S.-EU Cooperation Against Terrorism

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Abstract. The September 11, 2001 terrorist attacks gave new momentum to European Union (EU) initiatives to improve law enforcement cooperation against terrorism both among its 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 examines the evolution of U.S.-EU counterterrorism cooperation and the ongoing challenges that may be of interest in the second session of the 110th Congress.

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CRS Report for Congress

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 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 examines the evolution of U.S.-EU counterterrorism cooperation and the ongoing challenges that may be of interest in the second session of the 110th Congress. This report will be updated as needed. Also 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

¹ The EU has since enlarged twice and now has 27 members: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

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 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. 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 member states. In November 2007, the European Commission — the EU's executive — proposed a new counterterrorism package; among other measures, it targets terrorist activities over the internet that incite violence and promote terrorist recruitment or training, calls for improving the security of explosives, and proposes an EU-wide system for the exchange of airline passenger data (see below). These proposals must now be considered and approved by the member states.²

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 many 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) and in the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) mirror these sentiments and are consistent with U.S.-EU counterterrorism efforts, especially those aimed at improving border controls and transport security.

² "Brussels Suggests New Tools To Fight Terrorism," EUObserver.com, November 11, 2007.

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 2001, and have played a crucial role in developing closer U.S.-EU ties. The U.S. Departments of State, Justice, Homeland Security, and the 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, DC and the United States has stationed an FBI liaison officer in The Hague, Netherlands to work with Europol on counterterrorism. In November 2006, a U.S. liaison position was established at Eurojust headquarters in The Hague as part of a wider U.S.-Eurojust agreement to facilitate cooperation between European and U.S. prosecutors on terrorism and other cross-border criminal cases. 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.³

New Law Enforcement and Intelligence 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. EU data protection concerns also reportedly slowed negotiations over the 2006 U.S.-Eurojust cooperation agreement noted above.

In September 2006, President Bush transmitted to the Senate for its advice and consent two new treaties signed with the EU on extradition and mutual legal assistance (MLA). These treaties, agreed in 2003, seek to 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 demands that the treaty guarantee the extradition of any EU national. They stress, however, that the extradition accord modernizes existing bilateral 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

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.

transposed into national law by EU members and the U.S. Senate must give its advice and consent to ratification before they can enter into force.⁴ In April 2007, the United States and the EU also signed an agreement that sets common standards for the security of classified information to facilitate the exchange of such information.

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 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' privacy rights. In July 2007, the United States and the EU concluded negotiations on a new, seven-year 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, will extend the length of time that the United States can store such data, and will permit the United States to access sensitive information about a passenger's race, ethnicity, religion, and health in exceptional circumstances. The new accord, beginning in January 2008, will also require airlines to send data from their reservation systems to U.S. authorities at least 72 hours before a flight departs. U.S. officials are also reportedly "open" to the new proposal from the European Commission, noted above, for a similar passenger data regime in the EU in which the personal data of U.S. citizens flying into or out of the EU would be transmitted to European border and custom authorities for counterterrorism purposes.⁵

The United States and the EU have also pledged to enhance international information exchanges on lost and stolen passports, to promote travel document security through the use of interoperable biometric identifiers, and to exchange information on aviation security technologies. In addition, the United States and the EU reportedly continue to discuss the use of armed air marshals on some transatlantic flights. Some European countries objected to U.S. requirements issued in December 2003 for armed marshals on certain flights to and from the United States, viewing guns on board planes as increasing

⁴ The White House also transmitted for Senate advice and consent 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.

⁵ "Travelers Face Greater Use of Personal Data," *Washington Post*, July 27, 2007; "EU Seeks Data on American Passengers," *Washington Post*, November 4, 2007.

the security risks. In April 2004, U.S. officials pledged to consider alternative measures for European countries opposed to armed air marshals.

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 existing bilateral relations between the FBI and CIA (among other agencies) and national police and intelligence services in 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. Others 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 Hezbollah to the EU's common terrorist list.

Data privacy also remains a sticking point. 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. Observers suggest that any U.S.-EU umbrella agreement is unlikely in the near term given ongoing European concerns to sharing personal data with U.S. authorities. European data privacy concerns have also been heightened by the controversy over a U.S. government program, as part of efforts since 2001 to track terrorist financing, to secretly obtain banking records from a Belgian-based consortium of international banks (SWIFT, or the Society for Worldwide Interbank Financial Telecommunications). In June 2007, the U.S. and EU reached a deal to allow continued U.S. access to SWIFT data for counterterrorism purposes, but it remains controversial for some European politicians and privacy groups.⁶

Another challenge confronting U.S. and EU officials is finding a balance between improving border security and facilitating legitimate transatlantic travel and commerce. The United States and the EU remain at odds over the U.S. Visa Waiver Program (VWP) and the EU's desire to have it applied equally to all EU members. The VWP allows for short-term visa-free travel to the United States from 27 countries, most of which are in Europe. New EU members are eager to join the VWP, but most are excluded due to problems meeting the program's requirements. Amid growing EU frustration, President Bush announced in November 2006 that he would ask Congress to modify the VWP to allow new EU members (and other interested states) to qualify more quickly, while also strengthening the program's security components. Although some Members of Congress have expressed skepticism about the VWP in general because of security concerns (noting

⁶ "Frattoni Claims Major Advance in Data Privacy Dispute," *European Report*, June 29, 2007; "Travelers to U.S. Face Personal Data Trawl," *The Observer*, July 22, 2007.

that terrorists with European citizenship have entered the United States on the VWP), other Members are more supportive of extending the VWP to new EU members given their roles as U.S. allies in NATO and in the fight against terrorism.

In July 2007, Congress passed the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53), which includes changes to the VWP. However, EU officials remain disappointed with the legislation, noting that some VWP requirements are still set too high to allow most new EU members to qualify in the near term. Furthermore, EU officials are concerned about the act's mandate to create a new U.S. electronic travel authorization system, which will require that visitors submit biographical information to U.S. authorities prior to traveling to the United States. They contend that this system will essentially comprise a new type of visa requirement, could be a hardship for business travelers in particular, and could infringe on EU privacy and data protection rights. In addition, EU officials are concerned with a separate provision in P.L. 110-53 that sets a five-year goal of scanning all container ships bound for the United States for nuclear devices, arguing that it could disrupt trade and would place a heavy financial burden on EU ports and businesses.⁷

Some analysts also suggest that transatlantic tensions could negatively affect future U.S.-EU cooperation against terrorism. 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. Many Europeans fear 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. Some Europeans have also expressed serious concerns about U.S. rendition policy and a CIA program to detain and question suspected terrorists outside of the United States. Despite these frictions, others assert 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 EU members, 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. Congressional decisions related to improving U.S. travel security and border controls may also affect how U.S.-EU cooperation evolves in these fields. The U.S. Visa Waiver Program, cargo security, and data privacy issues will continue to be salient issues for Congress in this respect.

⁷ "Europeans Fear New U.S. Requirements Could Hurt Travelers," *New York Times*, June 18, 2007; "EU Hits at U.S. Plan To Scan Containers," *Financial Times*, August 2, 2007.