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Europe and Counterterrorism: Strengthening Police and Judicial Cooperation

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Kristin Archick
Analyst in European Affairs
Foreign Affairs, Defense, and Trade Division

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Summary

The September 11, 2001 terrorist attacks on the United States have given new momentum to European Union (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 as it became increasingly evident that the EU's open borders and different legal systems allow terrorists and other criminals to move around easily and evade arrest and prosecution. Thus, EU officials have renewed their efforts to harmonize national laws and bring down traditional barriers among member states' police, intelligence, and judicial authorities. As part of this initiative, the EU is also seeking to enhance ongoing cooperation with U.S. law enforcement and judicial authorities so that information can be meaningfully shared and suspects apprehended expeditiously.

Although the EU has made progress on measures aimed at boosting police and judicial cooperation within the EU and improving coordination with appropriate U.S. counterparts, the Union faces significant political, legal, and cultural hurdles as it seeks to implement more effective law enforcement tools. For example, although the EU has agreed to establish an EU-wide arrest warrant to eliminate extradition proceedings among the member states for 32 offenses — including terrorism — it will not take effect in all 15 member states until 2004 because countries must update their national criminal codes or in some cases, change their constitutions. National police and intelligence services remain reluctant to share information with each other and with Europol — the EU's fledgling joint police body. Contentious issues such as the use of the death penalty in the United States and different data protection regimes have also posed challenges to more robust U.S.-EU cooperation.

The Bush Administration, backed by Members of Congress, supports EU efforts to strengthen its counter-terrorism capabilities, and welcomes initiatives aimed at complementing and improving existing bilateral cooperation between U.S. and EU member states' intelligence and law enforcement agencies. The United States and Europol have concluded two information-sharing agreements; in June 2003, the United States and the EU also signed two treaties on extradition and mutual legal assistance to help harmonize the bilateral accords that already exist between Washington and EU member states. Although some critics question whether these U.S.-EU-wide cooperation agreements will add much value to existing bilateral arrangements, the Bush Administration appears to have made the determination that the political benefits of engaging the EU as an entity on police and judicial matters outweigh potential negatives. Working-level U.S. police and judicial officials continue to caution that such U.S.-EU accords must not reduce currently strong bilateral relations to the level of the lowest EU common denominator.

This report will be updated as events warrant.

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Europe and Counterterrorism: Strengthening Police and Judicial Cooperation

Introduction

The Bush Administration supports the European Union (EU) initiative to improve cooperation in the police and judicial fields among its 15 member states and with the United States.¹ The Administration hopes that EU efforts will augment European counter-terrorist capabilities, promote better information-sharing among member states, and ultimately lead to rooting out terrorist cells in Europe that could be planning other attacks against U.S. interests. Washington is keen to keep the dialogue with the Union on such issues open, viewing it as serving U.S. interests to weigh in early and often given Europe's role as a key U.S. partner in international law enforcement efforts and the presence of terrorist cells in some EU countries. At the same time, U.S. officials claim they have been proceeding cautiously in pursuing more robust cooperation with the EU in order to avoid actions that could damage currently good bilateral relations or impede ongoing criminal investigations.

The 15 members of the EU have long sought to improve police and judicial cooperation among themselves as part of the Union's drive toward further political integration and its desire to create a European area of "freedom, security, and justice." European interior and justice ministries, law enforcement agencies, and security services began cooperating informally in the mid-1970s to combat terrorism and other crimes amid a significant increase in cross-border travel by European citizens and other nationals. The 1992 Maastricht Treaty on European Union formalized this intergovernmental cooperation into a "third pillar" of justice and home affairs (JHA) aimed at fostering common internal security measures and the free movement of people within EU borders.² Despite this institutionalization, progress in the police and judicial fields was hampered for years by member states' concerns about maintaining sovereignty over national law enforcement authorities, insufficient resources, and a lack of trust among police and intelligence agencies.

The September 11 terrorist attacks and the subsequent revelation of Al Qaeda cells in Europe, however, served as a wake-up call for EU governments. In the

¹ The 15 EU members are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom.

² The first "pillar" of the European Union is the European Community, which encompasses economic, trade, and social policies; the second "pillar" aims to develop an EU common foreign and security policy.

weeks after the attacks, police in many EU member states arrested dozens of suspected terrorists linked to Osama bin Laden; some of those detained in France were suspected of plotting attacks against U.S. facilities such as the American Embassy in Paris. European leaders quickly recognized that the EU's open borders and different legal systems allowed terrorists and other criminals to move around easily and evade arrest and prosecution. Most member states, for example, lacked anti-terrorist legislation, or even a legal definition of terrorism.³ Without strong evidence that a suspect had committed a crime common to all countries, such as murder, those engaged in terrorist activities were often able to avoid apprehension in one EU country by fleeing to another with different laws and criminal codes. Moreover, although suspects could travel among EU countries quickly and freely, extradition requests often took months or years to process.

Since the attacks on the United States, EU leaders have demonstrated a renewed political commitment to boosting police and judicial cooperation both among member states and with U.S. law enforcement counterparts. Although many EU initiatives approved since September 11 are directed primarily against the terrorist threat, observers note that several of them — such as the EU-wide arrest warrant — will also improve EU abilities to investigate and prosecute other transnational crimes, and could be the first building blocks of an eventual EU judicial identity. Nevertheless, translating these EU political agreements into effective law enforcement tools will not be easy. A multitude of political, legal, and cultural challenges lie ahead.

Progress to Date

EU leaders — meeting in a special emergency session — made key decisions on September 21, 2001 to boost police and judicial cooperation within the EU, close off sources of terrorist financing, and enhance U.S.-EU law enforcement coordination as part of a comprehensive plan to counter terrorism.⁴ They also endorsed a detailed work program — reached by EU justice and interior ministers the day before — of over 30 initiatives for closer police and judicial cooperation and stronger external border controls. The EU views all of these measures as essential to building a common internal security area. Work on many of these proposals has been underway for much of the past decade. (See Appendix A for additional background on the initiatives below and information on others.)

Boosting EU Police and Judicial Cooperation

The bulk of EU initiatives set forth in September in the police and judicial fields focus on establishing greater cross-border compatibility among EU member states'

³ Prior to the September 11 terrorist attacks, only six EU members had specific anti-terrorism legislation: France, Germany, Italy, Portugal, Spain, and the United Kingdom.

⁴ The EU's plan of action against terrorism also includes diplomatic, humanitarian, and economic assistance measures not addressed in this report.

national criminal laws and improving cooperation and information-sharing among national police, intelligence, and judicial authorities. Key measures include:

- ***Establishing a common EU definition of terrorism and common penalties.*** In December 2001, EU member states reached a political agreement that defines as terrorist offenses various types of crimes committed with the intent to intimidate a population or destabilize a country's political or economic system. It also standardizes penalties for participating in a terrorist group.
- ***Defining a common EU list of terrorist organizations.*** The EU maintains two lists of persons and entities with terrorist links. One list is directed against persons and entities associated with Osama bin Laden, Al Qaeda, and the Taliban; it essentially enacts into EU law U.N. Security Council sanctions against these individuals and groups. The other EU list currently names 86 additional terrorist individuals and organizations based both in Europe and worldwide. Examples include the Basque group ETA, the Turkish-based Kurdistan Worker's Party (PKK), the Revolutionary Armed Forces of Colombia (FARC), and Hamas. All EU members must freeze the assets of those named on both lists, and provide assistance to each other in related police investigations and legal proceedings.
- ***Creating an EU-wide arrest warrant.*** In December 2001, EU governments reached a political agreement to implement an EU-wide arrest warrant by January 2004 to eliminate the need for extradition proceedings among EU member states for a diverse set of 32 offenses, including terrorism as well as organized crime, trafficking in persons, corruption, murder, and rape. EU officials claim the arrest warrant will expedite the apprehension of criminals given that the entire process — from arrest to surrender to the issuing authority — must be completed within a maximum of 90 days. The warrant is based on the principle of mutual recognition of other EU member states' judicial systems.
- ***Strengthening EU police and judicial institutions.*** The EU has been working to give Europol, its fledgling joint police body, a more assertive law enforcement role. Since 1999, Europol has functioned as an information clearinghouse for cross-border crimes such as terrorism and drug trafficking for member states' law enforcement agencies. Europol currently has a staff of 386, including 59 liaison officers from national police, customs, immigration, and intelligence agencies. In April 2002, EU leaders agreed to allow the organization to ask national police authorities to launch specific criminal investigations and to participate in eventual EU joint investigation teams. Europol agents will still be prohibited from detaining or arresting suspects, and can only participate in joint investigations into crimes that fall within their mandate. Since September 11, the EU has also increased Europol's budget by almost 50 percent to pay for more staff and growing counter-terrorist responsibilities; for 2003, Europol's budget is roughly \$64 million.⁵ Eurojust, the EU's nascent unit of prosecutors and magistrates, was

⁵ In comparison to the FBI's almost 30,000 employees and \$3 billion annual budget, Europol remains small and minimally funded. "EU boosts spending on Europol to fight terrorism," Associated Press, February 28, 2002. Also see "Fact Sheet on Europol," January (continued...)

officially established in February 2002. It is charged with helping to coordinate the investigation and prosecution of serious cross-border crimes in EU member states. Some EU officials would also like to further define an institutional role for the EU Chiefs of Police Task Force — which currently meets once every six months — to foster a more systematic exchange of information.

- ***Increasing cooperation among police and intelligence services.*** EU leaders continue to call for member states' police, security, and intelligence services to intensify information-sharing both among themselves and with Europol. Following September 11, EU leaders directed the heads of EU police counter-terrorist units to begin meeting, and called on member states' security and intelligence services to consult on a regular basis. These meetings are held largely out of public view given the nature of the discussions. EU officials say a key goal is to build trust among national police and intelligence authorities as a first step toward closer ties between intelligence and law enforcement services throughout the EU.⁶ The European Police College also seeks to improve cooperation among member states' police services.

Suppressing Terrorist Funding

The EU has made progress on initiatives set out in September 2001 to close off sources of terrorist financing and improve financial investigative tools. Major efforts in this area have focused on:

- ***Expanding the EU's money-laundering directive.*** In November 2001, EU finance ministers agreed to broaden the scope of its directive on preventing the use of the financial system for the purpose of money laundering — previously applicable only to drug-trafficking proceeds — to all serious crimes, including terrorism. The directive also expands the types of professionals who must notify law enforcement of suspicious transactions and provide client identification and records if necessary. Whereas initially only those in the banking industry had such obligations, now lawyers, accountants, and others deemed vulnerable to misuse by money launderers, do as well.
- ***Establishing an EU-wide asset-freezing order.*** In February 2002, EU justice and interior ministers reached political consensus on an agreement that will require national courts to enforce orders issued by other member states to freeze the assets of suspected terrorists and other criminals. Such orders could apply to investigations into any of the 32 offenses subject to the EU arrest warrant. The EU formally adopted this initiative in July 2003 after six countries cleared the measure with their respective legislatures.
- ***Facilitating asset confiscation.*** In August 2002, Denmark proposed two measures to ease the confiscation of criminal assets throughout the EU. In

⁵ (...continued)

2003 on the Europol website [www.europol.eu.int].

⁶ Ian Black, "On the brink of war: EU to pool security intelligence," *The Guardian* (London), September 29, 2001; Interview of EU official, March 2002.

December 2002, member states approved one of these proposals, but the other — which relates to the mutual enforcement of confiscation orders — remains controversial and has not yet been agreed. Although these measures will apply to a wide range of crimes, it is hoped they will prove useful tools in the fight against terrorism also.

Strengthening External EU Border Controls

EU progress on new proposals to counter terrorism and other cross-border crimes has been slowest in the border control area. Border control was the least well-defined category of initiatives to emerge from the EU's emergency sessions in September 2001. Developments in this area have also been hampered because many are linked to EU efforts to decrease illegal immigration, which continue to founder upon different national policy preferences and domestic political considerations. In the spring of 2002, however, EU leaders endorsed the broad outlines of several measures aimed at preventing terrorists and common criminals from gaining footholds in the EU's territory. These center on improving cooperation and information-sharing among national customs and immigration officials, and combating visa and asylum fraud. They include:

- ***Establishing an external borders management plan.*** In June 2002, EU leaders approved a multi-faceted proposal to help curb illegal immigration, especially at European air and sea ports. Key provisions seek to create networks of member states' border control officials, establish common training programs and equipment standards, and centralize EU funding to share the financial burden of these measures. EU officials also called for joint law enforcement operations at external borders to begin by the end of 2002; fifteen ad hoc joint border control projects have been executed so far.⁷
- ***Reinforcing sea border controls.*** In April 2002, EU officials agreed that strengthening maritime border controls was a priority given the growing number of immigrants that attempt to enter the EU illegally by boat along its coastlines. Proposals under consideration include establishing joint patrols in especially problematic areas, such as off the coasts of Spain, Italy, and Greece.
- ***Increasing visa coordination.*** EU officials view establishing a common visa policy among EU member states as crucial to stemming illegal immigration and keeping terrorists and other criminals out. In February 2002, EU justice and interior ministers approved establishing common consular offices in non-EU countries to end the practice of "visa shopping" in which non-EU nationals try their luck at different EU embassies. In April 2002, they approved creating a common EU visa format with digital photos to prevent fraud. In June 2002, EU leaders gave a green light to establishing an EU visa database that would list all visas issued and turned down by member states. EU officials are also considering adding biometric data to visas.

⁷ "Justice and Home Affairs: Internal report says border control projects have mixed results," *European Report*, No. 2787, June 25, 2003.

- ***Implementing Eurodac.*** In February 2002, EU officials endorsed implementing Eurodac, an EU-wide fingerprint database of asylum seekers. Eurodac is intended to counter “asylum shopping,” in which applicants lodge asylum requests in several member states, see where they are accepted, and which countries offer the most favorable reception conditions. The system was officially launched in January 2003.

Enhancing U.S.-EU Cooperation

In addition to boosting cooperation among member states’ law enforcement bodies, a key EU goal since September 11 has been to bolster coordination with U.S. police and judicial authorities to better combat terrorism. In particular, EU officials in Brussels have stepped up their diplomatic engagement on police and judicial policy matters with U.S. counterparts in the Departments of State and Justice, and are seeking closer working relationships — primarily for Europol and Eurojust — with the FBI, CIA, and U.S. Justice Department.⁸ Major efforts include:

- ***Increasing cooperation between U.S. and EU police and judicial counterparts.*** In the immediate aftermath of the September attacks, the EU established a task force of counterterrorism specialists — housed in Europol and composed of police and intelligence representatives from each member state — both to increase communication among these services and to work on liaison with U.S. counterparts. In June 2002, two Europol liaison officers arrived in Washington. In addition, EU and U.S. judicial officials are collaborating in Eurojust, and U.S. representatives have reportedly been invited to attend meetings of EU heads of counterterrorist units.
- ***Establishing U.S.-Europol information exchanges.*** In December 2001, the United States and the EU agreed to allow U.S. law enforcement authorities and Europol to share “strategic” or “technical” information, including threat tips, crime patterns, risk assessments, and investigative procedures. In December 2002, negotiations were completed on a second Europol agreement to permit U.S. and European investigators to share “personal” information, such as names, addresses, phone numbers, and criminal records, about suspects in all crimes covered by Europol’s mandate.
- ***Establishing U.S.-EU cooperation agreements on extradition and judicial assistance.*** In April 2002, EU leaders approved opening negotiations with the United States on agreements aimed especially at promoting cooperation in extraditing terrorist suspects and providing legal assistance in such cases. At the May 2002 U.S.-EU summit in Washington, the Bush Administration agreed to explore developing such instruments with the Union. Two draft treaties — one on extradition and the other on mutual legal assistance — were concluded in February 2003, and signed in June 2003. Washington and Brussels hopes that these two treaties will help harmonize the bilateral accords that already exist between the United States and individual EU members, simplify the extradition

⁸ On the U.S. side, the State Department has the lead in managing the interagency policymaking process toward enhancing U.S.-EU police and judicial cooperation, while the Justice Department provides the bulk of the technical legal expertise.

process, promote better information-sharing, and be useful tools in combating fraud and organized crime as well as terrorism. The provisions of the treaties must now be transposed into national law by EU member states, and ratified by the U.S. Senate. Officials hope the treaties will be able to take effect by 2005.⁹

Challenges Ahead

Despite the EU's strides since September 11, 2001 to foster closer police and judicial cooperation, the Union still faces significant political, legal, and cultural hurdles as it seeks to translate its initiatives into effective EU-wide law enforcement tools. Although the political commitment of EU leaders is strong at present, most observers acknowledge that the "devil is in the details." Implementing many of the agreed measures will take time and some could bog down in the legislative processes of individual member states. Different interpretations of agreed measures, long-standing reluctance of police and intelligence services to share information, weak EU enforcement capabilities, ongoing national sovereignty concerns, domestic preoccupations, and civil liberty considerations of various member states may also hinder EU progress. In addition to sorting out these issues among 15 member states, the EU is confronting challenges in improving coordination with U.S. law enforcement authorities and putting judicial relations with the United States on an EU-wide footing. While some U.S.-EU problems are similar to obstacles facing the EU internally — such as law enforcement communication issues or differences in terrorist definitions — others have their origins in different legal traditions and societal attitudes toward crime and punishment.

Internal EU Obstacles

Implementation Delays. Most observers view the EU as having made rapid progress since September 11, 2001 on forging political agreements on many initiatives in the police and judicial fields that had been languishing for years. Indeed, for the EU — a traditionally slow-moving body because of its intergovernmental nature and largely consensus-based decision-making processes — the pace has been speedy. Nevertheless, it is an inescapable fact of EU life that considerable lag times often exist between when an agreement is reached by EU leaders in Brussels and when it is implemented or enforced at the national level. Often, member states must alter their laws to bring them into line with EU decisions or directives, as is the case with the EU arrest warrant. In laying out the plans for the warrant, EU leaders set January 2004 as the date for it to take effect in all member states to allow time for them to enact the necessary constitutional amendments or updated criminal codes.

Although EU officials express confidence that the warrant will come into force as planned, critics are doubtful. To date, only three EU member states — Spain,

⁹ Interviews of EU and U.S. officials, 2002 and 2003. For the texts of the U.S.-EU extradition and mutual legal assistance agreements, see the Council Decision of June 6, 2003 (2003/516/EC) in the *Official Journal of the European Communities* [http://europa.eu.int/eur-lex/en/search/search_oj.html].

Portugal, and Denmark — have passed the necessary domestic legislation.¹⁰ Skeptics also point out that although six countries — Belgium, France, Luxembourg, Portugal, Spain, and the UK — pledged to implement the arrest warrant among themselves by early 2003, this goal was clearly not met. Civil liberty concerns have slowed the passage of legislation in some countries, such as the UK. Italian officials have publicly questioned from the start whether the 2004 implementation date was feasible, and Rome has remained vague on whether the Italian parliament will be able to ratify what it describes as “major” constitutional changes by 2004.¹¹

Some observers suggest that not all EU member states will be ready to implement all parts of the EU arrest warrant on time. They note that it may take Germany, Austria, Denmark, and Greece five years or more to enact new constitutional provisions permitting their nationals to stand trial in other EU member states. Despite possible delays in the ability of such countries to extradite their own nationals, they will likely claim they are in compliance by 2004 because they will be able to execute the warrant against citizens of other states within their territory. For example, Danish judicial officials could still execute the arrest warrant on a French national wanted in Germany.¹² Beyond implementing the necessary legislation for the arrest warrant to take effect, some critics also assert that technical problems with issuing the EU arrest warrant via the Schengen Information System (SIS) could impede law enforcement authorities from acting quickly on such arrest warrants. The SIS is an EU database, used primarily by customs and immigration officials, containing information on convicted or suspected criminals, forged passports, and stolen vehicles.¹³

Differing Interpretations. Despite EU efforts to harmonize national laws and criminal codes related to terrorism, EU definitions and common penalties will still be open to interpretation by individual member states and could leave some wiggle room for those suspected of terrorist activities. The European Commission originally recommended specific standardized sanctions for terrorist activities ranging from maximum penalties in each member state of at least two to twenty years depending on the offense. Member states, however, could not agree on such exact penalties and found the proposed system too complicated. As a result, specific penalties were spelled out for only two offenses — leading a terrorist group and participating in or financing the activities of a terrorist organization. Sanctions for other offenses — such as murder, kidnapping, or hijacking — are largely left to the discretion of each

¹⁰ “Justice and Home Affairs: Member states struggle to implement EU arrest warrant,” *European Report*, No. 2801, September 10, 2003.

¹¹ Italy was the most reluctant of all EU member states to give its assent to the arrest warrant last year — claiming that the 32 offenses were too many and varied. Italy initially wanted the warrant’s 32 offenses reduced to six, including terrorism but excluding financial crimes. Press reports speculated that this position was due to allegations of corruption and tax evasion pending against Prime Minister Berlusconi in Italy and elsewhere in Europe. James Blitz, “Italy falls into line on arrest warrants,” *Financial Times*, December 12, 2001.

¹² Interview of U.S. official, May 2002.

¹³ Simon Coss, “EU-wide arrest warrant delay until 2006 upgrade of police database,” *European Voice*, July 10, 2003.

member state, although the EU decision allows for the imposition of a heavier sentence if the acts were committed with a terrorist intent. Observers note that even for those sentences specified in the decision, the maximum/minimum construction leaves states free to set penalties as high as they want, but also allows lesser sentences to be imposed.

Cultural Barriers. The EU views increasing communication and information-sharing among member states' national police, judicial, and intelligence services as crucial to improving its ability to counter and apprehend terrorists and other cross-border criminals. As in the United States, however, long-standing law enforcement traditions against such practices as well as rivalries between and among the various local, regional, and national services must be overcome in order to improve cooperation and close security loopholes. Such cooperation is therefore a tall order because it will require changing well-entrenched police cultures and mentalities.

Perhaps nowhere are such tensions more evident than in Europol, which is dependent on receiving information from member states' law enforcement services. Jürgen Storbeck, Europol's director and a former German police official, summed the problem up this way: "For a policeman, information about his own case is like property. He is even reluctant to give it to his chief or to another department, let alone giving it to the regional or national services. For an international body like Europol, it is very difficult."¹⁴ According to EU watchers, national police and intelligence services harbor a deep mistrust of Europol.

The lack of a common language in the EU also poses problems for closer cooperation among member states' police services, especially at local or regional levels. Along the French-Belgian border, for example, Belgian police officers are not required to speak French, and most French police officers do not speak Flemish. And in some states such as Germany — where the history of its Nazi past still weighs heavily — legal prohibitions restricted information-sharing between police and intelligence services.

Despite these difficulties, EU officials counter that the changing nature of crime and the growth in cross-border terrorist and criminal organizations will increasingly force police agencies to cooperate at the national and international level. They recognize that building trust and fostering greater communication among these law enforcement authorities will take time, but note that this is a key reason for the EU's backing of the European Police College and other common training programs. They also point out that the problems facing the EU in this regard are not that different from those currently confronting the United States as it seeks to improve the flow of information among the FBI, state and local police forces, and customs officials to prevent suspected terrorists and other criminals from falling through the cracks.¹⁵

¹⁴ Quoted in Judy Dempsey, "Europol's bid for success," *Financial Times*, February 27, 2002.

¹⁵ Judy Dempsey, "Europol's bid for success," *Financial Times*, February 27, 2002; Interview of EU official, March 2002.

Lack of Enforcement Capabilities. Strengthening EU police and judicial institutions — especially Europol — has emerged as a central piece of EU efforts to bolster cooperation. Nevertheless, critics point out that Europol and Eurojust are still largely talk shops, remain minimally funded, and have few enforcement capabilities. Even though EU leaders have agreed that Europol should have a more operational role in cross-border investigations and the right to ask national authorities to initiate criminal investigations, these new powers will not take effect until all national parliaments ratify the required changes to Europol's 1995 Convention. Eurojust can recommend that national authorities initiate an investigation, but cannot launch or carry one out itself. Data protection concerns have also slowed some efforts to enhance Europol and Eurojust's capabilities.

EU officials, however, believe these criticisms that Europol and Eurojust lack sufficient authority — and the underlying assumption that these bodies provide little value — are unfair. They note that Europol and Eurojust are still in early stages of development. A key current objective of these bodies is to foster closer coordination, routine communication, and greater trust among police, intelligence, and judicial officials from the 15 member states. Other proponents point out that Europol has had some analytical successes, helping identify narcotics and human trafficking networks that have led to coordinated law enforcement operations in both EU member states and aspirant countries.¹⁶ In December 2002, EU leaders also agreed to grant Europol and Eurojust partial access to the Schengen Information System to help improve information-sharing.

National Sovereignty and Domestic Considerations. Traditionally, law enforcement and criminal justice have been jealously guarded national prerogatives. Progress in building an EU police and judicial sphere has thus been brought about through mutual recognition of member states' legal systems rather than wholesale harmonization. Despite the EU's achievements since September 2001 in pushing forward its common judicial agenda, some EU-watchers maintain that member states' will proceed cautiously. Leaders will resist measures that smack of EU judicial federalism, thereby exposing themselves politically to domestic opposition and public outcries that they are ceding national sovereignty to Brussels. Many European politicians note with alarm the recent rise of extreme right parties like those in France and the Netherlands that have made electoral gains partly on anti-EU platforms. Skeptics suggest these concerns will inhibit Europol's development into the equivalent of the FBI or Eurojust's maturation into a European public prosecutors office — able to initiate and direct criminal investigations as well as prosecute cases in national courts — for the foreseeable future. They note that recent proposals to develop a public prosecutors office limited to handling crimes against EU financial interests has provoked fierce opposition from some members, such as the UK.

Furthermore, skeptics point out that EU heads of state and government meeting in Seville in June 2002 stopped short of calling for a common EU border guard corps

¹⁶ For example, in May 2002, with help from Europol, police in a dozen EU countries searched 30,000 containers at ports and railways, found 200 illegal immigrants, and arrested ten suspected traffickers. "European police forces target illegal immigration networks," Agence France Presse, May 29, 2002.

because some members, including the UK, were reluctant to relinquish any control of national borders or police activity within them to Brussels. Also, they note that the effectiveness of EU efforts to strengthen external border controls will partly depend on the EU's success in combating illegal immigration and standardizing immigration and asylum rules throughout the EU. But EU attempts to do so have been impeded for years by vastly different national preferences and sensitivities toward immigrants and asylum seekers. Although EU leaders at Seville managed to set deadlines for harmonizing key aspects of asylum policy by December 2003, they backed away from a British-Spanish proposal to suspend EU financial assistance to developing countries that fail to crack down on illegal immigration or refuse to readmit their nationals.¹⁷ France and Sweden led the charge against this initiative, considering it both too draconian and counterproductive. They argued that imposing sanctions on development aid would only add to the poverty that forces people to emigrate. Commentators note that France — whose bulk of both legal and illegal immigrants come from Africa — also feared that sanctions would upset its bilateral relations with those countries and produce domestic unrest at home. Similarly, in June 2003, a UK proposal to establish asylum centers outside the EU to process refugee claims was rejected by other member states, such as Germany and Sweden, on human rights grounds.

Other analysts argue that national sovereignty issues are becoming less important to many EU member states. They claim that the EU continues to knit itself closer together on a number of fronts, and less integrationist-minded states such as the UK, Ireland, and Denmark are in the minority. Many members — including France, Germany, and Italy — back the formation of an EU border police force, for example. These optimists also point out that some member states' attitudes toward cross-border policing and arrest capabilities may be changing. While it remains true for the most part that police officers in one member state can pursue but not arrest suspects that cross a border into another member's territory, France recently concluded two separate bilateral agreements in principle with Germany and Belgium to give their police forces the right of arrest on each other's soil.¹⁸ Although far from finalized, some view these agreements as potentially paving the way for a similar EU-wide accord in the future.

Civil Liberty Concerns. Distrust among some members of other countries' legal regimes and wariness about the degree of protection they offer for individual civil rights may also pose obstacles to closer police and judicial cooperation. For example, conservative opposition parties in Sweden and the UK object to the EU

¹⁷ The EU views establishing common asylum definitions, standards, and timetables for processing requests as crucial to ending "asylum shopping," and preventing criminals that may attempt to claim refugee status from using loopholes and differences in members' asylum procedures to their advantage. Although EU member states were able to reach agreement on a regulation updating rules determining which member state should process asylum requests — which had been languishing for years — they missed the June 2003 deadline set by the Seville Summit for concluding a directive setting out a common definition of a refugee. Many observers doubt that member states will meet the December 2003 deadline for agreeing on common asylum procedures.

¹⁸ "French, German deal on police arrests," Agence France Presse, May 27, 2002.

arrest warrant on grounds that it compromises domestic legal protections. They fear that their fellow citizens will be exposed to the whims of other judicial systems that they consider less than trustworthy. British commentators point to the 2002 conviction of 12 British tourists in Greece on allegedly trumped-up charges of spying on Greek military aircraft. Supporters counter that the warrant contains an appeals process that will allow for redress at the national level. Sweden also worries that EU plans to establish databases of visa and asylum-seekers with pictures and biometric data could infringe on privacy rights. Other EU members differ on how long data in these systems should be stored.¹⁹

Obstacles to Closer U.S.-EU Cooperation

Liaison Difficulties. Although U.S. officials praise the help provided by European law enforcement officials after September 11, some doubt the utility of liaison exchanges with EU-wide bodies. In early 2002, a U.S. liaison officer was stationed in The Hague to work with the Europol-based counterterrorism task force, but was withdrawn in August 2002. Some observers suggest that EU task force officers were less than welcoming to the U.S. representative and not cooperative; at the same time, they point out that given the information-sharing problems among EU police and intelligence services, this should not have been a surprise. Other analysts question how effective Europol officers in Washington can be given that they are housed in the European Commission's Washington delegation office, and not with U.S. law enforcement agencies. Critics also argue that direct liaison with Europol is unnecessary given the good bilateral relationships between U.S. law enforcement agencies and counterparts in EU member states, and in light of Europol's capability deficiencies. Supporters counter that Europol may still evolve into a more capable and coherent EU law enforcement agency, and therefore, it behooves U.S. interests to establish close ties now.

Definitional Differences. The United States and the EU have been working to bring their respective lists of individuals and groups that engage in terrorist activities closer together. The United States views this as important not only for its symbolic value, but also because of the asset-freezing requirements that the EU attaches to those on its list. Some EU member states were hesitant initially to name certain groups to the list — such as the Turkish-based Kurdistan Worker's party (PKK), the Revolutionary Armed Forces of Colombia (FARC), and Palestinian-related organizations — that are based in nations with dubious human rights records. A number of commentators also suggest that the EU has been slower to add such groups on its list because some member states view them as more revolutionary than terrorist in nature. In other cases, the EU drew distinctions between the political and military branches of the same organization, such as Hamas. Although the EU terrorist list included Hamas' military wing since its first iteration in December 2001, the EU did not agree to add the political wing until early September 2003. Some member states argued that Hamas' political wing provided crucial social services in the West Bank and Gaza, and worried that listing it would only further inflame the Israeli-Palestinian conflict. The EU's decision to include Hamas' political wing

¹⁹ "Justice and Home Affairs: Member states design new data base of visas," *European Report*, No. 2670, March 23, 2002.

comes amid an escalation in suicide bombings in August 2003 and a growing sense that Hamas is a single organization.

The United States and other countries such as Turkey, Colombia, and Israel have successfully lobbied the EU to include the PKK, FARC, Hamas, and other organizations on its terrorist blacklist. The United States has also taken some cues from the EU, adding to its terrorist asset-freezing list a number of Basque separatists, several Northern Ireland paramilitary organizations, and two Sikh separatist groups, among others. The United States and Israel continue to press the EU to add the Lebanon-based Hezbollah to its terrorist list. As with Hamas previously, however, some member states remain concerned that including Hezbollah — which also provides needed social services — would be counterproductive.²⁰

Data Protection Worries. In order to forge closer police and judicial cooperation with the EU, the United States had to overcome worries that it did not meet EU data protection standards. The EU considers the privacy of personal data a basic right; EU data privacy regulations set out common rules for public and private entities in the EU that hold or transmit personal data, and prohibit the transfer of such data to countries where legal protections are not deemed “adequate.” According to the EU, the United States falls short. European officials insist, however, that this view stems more from fundamentally different data privacy regimes than from EU beliefs of nefarious U.S. practices. They note that the European approach has been structured to keep personal data out of the hands of authorities as much as possible; in the United States, this is not as much of a concern because there is greater confidence that the judicial system will correct law enforcement mistakes. U.S. officials believe the underlying problem is different perceptions of law enforcement. While Americans see the police as providing a societal benefit, Europeans regard law enforcement as a necessary evil that must be constrained lest it run amok. Europe’s past experience with totalitarian regimes clearly informs this view, and contributes to the demand of European politicians and publics for strict data privacy rules.

Bridging the gap between U.S. and EU data protection regimes has been and will likely remain a challenge. Negotiations to allow U.S. law enforcement officers and Europol representatives to share “personal” information on suspected terrorists and other criminals were arduous and took over a year to complete. The same problems, however, extend to other areas of potential cooperation. U.S. officials worry that Eurojust’s evolving data control rules may exceed those that exist in U.S. bilateral judicial relationships. They also caution that recent EU proposals to limit the retention of computer records could impede efforts to combat cybercrime and hinder investigations involving the use of computer systems to facilitate terrorist acts. The EU has also contested new U.S. regulations that require airlines operating flights to or from the United States to provide U.S. Customs with passenger name record (PNR) information from their reservation and departure control systems. Washington would like to establish an umbrella agreement in which the EU would largely accept

²⁰ David E. Kalish, “European slow to block terror assets,” Associated Press, March 8, 2002; Paul Geitner, “EU says won’t step in to help Palestinians replace any frozen Hamas funds,” Associated Press, September 8, 2003; Interviews of EU officials, Spring-Summer 2003.

U.S. data privacy standards as adequate and permit the routine transfer of personal data between EU bodies and U.S. law enforcement agencies. The EU resists this idea, however, 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.²¹

Crime, Punishment, and Diverging Views. The EU was keen to establish cooperation agreements with the United States on extradition and mutual legal assistance to aid the fight against terrorism and other transnational crimes, help harmonize member states’ policies vis-à-vis the United States, and expedite the judicial process. Concluding these U.S.-EU-wide accords proved challenging, however, because U.S. and EU negotiators had to grapple with a number of contentious issues rooted in different U.S. and European societal attitudes toward crime and punishment. Many Europeans are increasingly wary of what they view as a widening divide between the two sides of the Atlantic over concepts of justice and U.S. tendencies toward retribution rather than rehabilitation. They struggle to understand how a country with which they share such fundamental values regarding the protection of individual human rights can take such a different perspective on capital punishment. For many in the EU, the U.S. handling of Al Qaeda prisoners at Guantánamo Bay and the Bush Administration’s decision to “unsign” the U.N. treaty creating the International Criminal Court are further proof of underlying philosophical differences.

Topping the list of EU concerns in the extradition treaty negotiations was the use of the death penalty in the United States. EU law bans capital punishment among member states and prohibits the extradition of suspects to countries where they could face the death penalty. The EU laid down a clear redline that it would not conclude an accord in which a suspect extradited from an EU member state could be subject to capital punishment. With little room for compromise by the EU side, Washington effectively agreed to EU demands that suspects extradited from the EU to the United States would not face the death penalty. EU officials say this merely formalizes past ad hoc practices in which EU member states have extradited suspects wanted for capital crimes on a case-by-case basis on the condition that the death penalty would not be imposed or carried out. EU member states may refuse extradition to the United States if these conditions are not guaranteed.

Some EU leaders and European human rights activists oppose the U.S.-EU extradition treaty and could slow its transposition into national law in certain member states. These critics contend that the guarantees against the imposition of the death penalty in the current text are not strong enough. Moreover, they point out that the guarantee to a fair trial is ambiguous, and worry that the treaty does not explicitly prohibit trial by military tribunal. Many Europeans oppose the proposed use of military tribunals for suspected terrorists in the United States on grounds that they lack transparency and curtail civil rights protections.²²

²¹ Interviews of U.S. and EU officials, 2002 and 2003.

²² “EU agrees to extradition deal with United States,” Reuters, June 6, 2003; Interviews of (continued...)

Impact on Bilateral Cooperation. Many working-level U.S. police and judicial officials were initially hesitant to pursue U.S.-EU-wide cooperation on extradition and mutual legal assistance (MLA) because they were doubtful it would add much value to existing bilateral arrangements. In particular, they worried that an EU-wide accord on mutual legal assistance could weaken currently strong and effective MLA treaties with individual member states. They pointed out that the difficulty of reaching consensus among the 15 EU member states often results in common positions that are founded upon the lowest common denominator — i.e., conditions acceptable to all but which may not be optimal. U.S. officials feared that certain issues — such as German views on data protection — could hold U.S.-EU negotiations hostage. They noted that Berlin’s redline that even basic legal assistance provided by German authorities must not lead to the pursuit of a capital case in the United States had precluded the conclusion of a U.S.-German bilateral MLA treaty for over ten years. U.S. officials asserted that they were not interested in signing onto an EU-wide accord that might have to subscribe to this principle in order to get German agreement, and which could call into question U.S. bilateral MLA treaties with other individual EU members that were less restrictive. U.S. officials were somewhat more enthusiastic about the potential benefits of a U.S.-EU-wide extradition accord. They had hoped to secure a provision permitting any EU national to be handed over to U.S. judicial authorities. Under current bilateral arrangements, only some EU countries permit the extradition of their nationals to the United States.

Ultimately, the resulting U.S.-EU agreements on extradition and mutual legal assistance reflect several compromises. U.S. concerns that these Union-wide accords not weaken existing bilateral arrangements were eased by a provision calling for each EU member state to conclude a protocol with the United States reconciling the terms of its bilateral treaties with the new EU-wide agreements. These protocols will spell out which parts of the bilateral treaties will be retained, and which parts will be added to or replaced by provisions in the wider U.S.-EU treaties. Both U.S. and EU officials claim that this procedure should protect those parts of the bilateral treaties that are stronger or more effective than those in the U.S.-EU accords. Although Washington failed to obtain the extradition of all EU nationals to the United States, U.S. policymakers point out that the EU-wide extradition treaty will update and modernize existing bilateral accords. In the end, U.S. negotiators were pleased with the MLA treaty, which will provide U.S. authorities access to European bank account information on potential terrorists and other criminal suspects, establishes expedited procedures for processing MLA requests, and permits setting up joint investigative teams. They note that accepting the banking information provision was difficult for many EU member states because of their concerns about protecting privacy rights. EU and U.S. officials also point out that the MLA agreement captures all current and future EU member states in one agreement; Washington has active bilateral MLA treaties with only 10 of the EU’s current member states.²³

²² (...continued)

U.S. and EU officials, 2002 and 2003.

²³ The United States has signed mutual legal assistance treaties with EU members Sweden and Germany, but these have not yet been ratified. No U.S. agreements exist with Denmark, Finland, or Portugal. Ten new members — the Czech Republic, Cyprus, Estonia, Hungary, (continued...)

European Perspectives

In 2002, the Spanish EU Presidency asserted that “creating a single area of freedom, security and justice is now one of Europe’s key priorities.”²⁴ Some observers worry, however, that as memories of the September 11 terrorist attacks fade, so will the EU’s renewed political will. These skeptics believe the EU’s commitment to pushing its common police and judicial agenda forward will wane as competing agenda priorities emerge, as the hard work of implementing many of the already agreed measures begins, and as further progress in this area starts to encroach even more on national sovereignty. Some suggest that the new EU arrest warrant may represent the current outer limits of EU judicial cooperation. Critics also doubt that the EU will devote the resources necessary to build more effective EU-wide police and judicial institutions.

Other European commentators stress that sufficient momentum exists to sustain the EU’s effort to boost police and judicial cooperation. They argue that European publics feel a heightened sense of vulnerability since September 11 and EU leaders know that the costs of failure would be high. Although the EU as an entity and many individual member states are struggling with establishing a proper balance between law enforcement, individual privacy, and civil rights in the post-September 11 world, the changes in some domestic laws demonstrate that European governments recognize that their law enforcement authorities need new tools to tackle emerging challenges. Observers note that even in Germany, which has among the strictest data protection laws of any EU country, legislators passed a series of measures designed to improve the ability of law enforcement authorities to track terrorist suspects and enable police and judicial officials to better communicate with each other. As for EU willingness to pay for new common internal security measures as well as initiatives to strengthen the EU’s external borders, EU-watchers point out that the sums involved are relatively small — unlike the anticipated large defense equipment expenditures necessary to make the EU’s rapid reaction force effective. Moreover, they claim that EU publics are more amenable to spending scarce budgetary resources on measures aimed at enhancing “homeland security” than on new peacekeeping capabilities for use outside of Europe.

Supporters also assert that the EU’s upcoming enlargement to the east — as early as 2004 — will give further impetus to EU initiatives aimed at clamping down on cross-border criminals and closing security loopholes. Enlargement will push the EU’s borders east to Russia and further into the Balkans — areas that are havens and conduits for organized crime, terrorists, and other criminals. By joining the EU, new members will have to beef up their own border controls, introduce tough visa requirements, and subscribe to the provisions of new EU law enforcement tools, such as the arrest warrant. Furthermore, EU officials also point out that while September 11 provided the spark to accelerate cooperation in the police and judicial field, the

²³ (...continued)

Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia — will join the EU in May 2004.

²⁴ Website of the Spanish EU Presidency [www.ue2002.es].

rapid progress since the attacks was only possible because work on many of the initiatives had been underway for several years. EU leaders have always viewed greater cooperation in the law enforcement and judicial fields as a crucial step on the road to further European integration.

The EU recognizes that increased cooperation with U.S. law enforcement and intelligence authorities — particularly with the FBI and CIA — is essential to improving its internal security, preventing future terrorist attacks in Europe, and ensuring the safety of EU citizens. In addition, observers point out that the desire of many EU leaders to build an eventual judicial identity — complete with common EU institutions such as a public prosecutors office — is also driving EU efforts to increase cooperation with the United States both at the investigative level and with policy counterparts at the U.S. State and Justice Departments. The EU views establishing external relationships with the United States and other countries in the police and judicial field as an essential part of developing a common judicial identity. EU officials recognize this will take many years to accomplish, especially as EU efforts to formulate common policies, definitions, and sanctions for crimes beyond terrorism — such as drug-trafficking or child exploitation — lag behind. Analysts estimate that a common EU judicial identity is at least a decade away given the ongoing national sovereignty concerns of some members.

Some analysts suggest that transatlantic tensions could negatively affect future U.S.-EU cooperation against terrorism. Differences in U.S. and European approaches to counterterrorism have become more evident as Washington has broadened the war against terrorism beyond Al Qaeda and Afghanistan. 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 and Washington’s traditional support for Israel, but also because of U.S. decisions that some charge violate human rights, such as keeping suspected Al Qaeda terrorists at Guantánamo Bay. Others dismiss these concerns, arguing that Europe remains vulnerable to terrorist attacks, and law enforcement cooperation serves both EU and U.S. interests.²⁵

U.S. Policy and Perspectives

The Bush Administration, backed by many Members of Congress, supports EU efforts to enhance its counter-terrorism capabilities, and hopes they will ultimately lead to rooting out terrorist cells in Europe that could be planning other attacks against U.S. interests. The Administration also welcomes EU initiatives designed to increase cooperation with the United States and enhance ongoing bilateral law enforcement relationships. The U.S. Departments of State, Justice, the FBI, and CIA, are actively engaged in efforts to step up coordination with EU police, judicial, and intelligence counterparts. Some working-level police and judicial officials continue to caution that U.S.-EU-wide cooperation must add value and not detract from good, existing bilateral law enforcement relationships or impede ongoing cross-border investigations. Although mindful of these concerns, the Bush Administration appears to have determined that the political benefits of engaging the EU as an entity on

²⁵ Interviews of European officials, 2002 and 2003.

police and judicial matters outweigh potential negatives. U.S. officials stress they are proceeding cautiously in engaging the EU to avoid damaging good bilateral relations, but they also believe that the Union's renewed efforts on the police and judicial front may be the first steps on a long road toward a common EU judicial identity. Thus, they claim it is in U.S. interests to weigh in early and often in this EU process given Europe's role as a key U.S. partner in international law enforcement efforts and the fight against terrorism.

Administration officials assert that this strategy has already garnered some successes. For example, U.S.-EU coordination in naming terrorist suspects and freezing their assets is improving, and the EU has taken U.S. concerns into account in formulating its common arrest warrant. Original language in the EU arrest warrant agreement gave priority to member states in the event that multiple extradition requests for a particular suspect existed from countries both within and outside the EU. The United States successfully lobbied the EU to change this provision to permit consideration of the seriousness of the offense and the place where the offense was committed. For example, if an alleged criminal located in Italy is wanted in Germany for car theft, but in the United States for a terrorist act, Italian judicial authorities could decide to extradite the suspect to the United States rather than to its EU partner. The Administration also believes that considerable room exists for more robust cooperation between the United States and the EU in the area of border control and has been seeking more systematic exchanges of customs and immigration information. U.S. officials hope this will help both American and EU authorities keep better track of suspected terrorists.

Congress is keenly interested in the measures being developed by the EU to improve the ability of its member states to combat global terrorism. A salient issue for Congress in relation to EU efforts to strengthen police and judicial cooperation will be whether the U.S.-EU agreements on extradition and mutual legal assistance add value to existing, strong bilateral arrangements or threaten to reduce them to the level of the lowest EU common denominator. U.S. negotiators stress that the U.S.-EU treaties on extradition and mutual legal assistance protect all U.S. bilateral agreements with member states and merely add to, update, or strengthen the existing accords.²⁶

²⁶ Interviews of U.S. officials, 2002 and 2003.

Appendix A: Key EU Initiatives to Improve Police and Judicial Cooperation and Combat Terrorism

This Appendix provides additional information on the EU's main initiatives to enhance cooperation in the police and judicial fields and combat terrorism. It should be read in conjunction with the information on pages 2-6 of this Report.

Common EU definition of terrorism and common penalties. The common definition applies to groups or individuals committing or threatening certain acts, including murder, kidnapping and hijacking, with the intent to intimidate a population or destabilize a country's political system or economic structures. Each member state must set a maximum sentence of at least 15 years incarceration for leading a terrorist group and at least 8 years for participating in or financing the activities of a terrorist organization. EU members were required to bring their national laws into line with these common provisions by December 31, 2002.²⁷

Common EU lists of terrorist organizations. In October 2001, the EU expanded its previously existing sanctions against the Taliban, Osama bin Laden, and Al Qaeda to include a total of 27 individuals or groups. Following subsequent U.N. Security Council decisions, this list has grown to include over 300 persons and entities with links to Al Qaeda, including Abu Sayyaf, Algeria's GIA, Harakat al-Mujahideen, and Jemaah Islamiyah.²⁸ The EU issued the first iteration of its own common list of 42 additional terrorist individuals and organizations in December 2001; most of the groups on this initial list were European-based — such as the Basque group ETA — but Hamas' military wing was also included. In May 2002, the EU added 7 other individuals associated with ETA and 10 additional entities, such as the Turkish-based Kurdistan Worker's Party (PKK) and Peru's Shining Path. In June 2002, EU leaders added 4 more Basques (but removed 5 others) and 8 other groups — including the Revolutionary Armed Forces of Colombia (FARC) and two Palestinian entities with ties to Palestinian Authority president Yasser Arafat (the Al Aqsa Martyr's Brigade and the Popular Front for the Liberation of Palestine). In September 2003, EU member states agreed to include the political wing of Hamas on this list, but continues to resist adding the Lebanese-based Hezbollah. As of September 2003, this EU list had grown to contain 52 individuals and 34 groups; it is updated at least every six months. EU police authorities also maintain a separate, classified list of suspected terrorists that are the subjects of ongoing investigations.²⁹

²⁷ See the Council Framework Decision on Combating Terrorism (2002/475/JHA), June 13, 2002. Text may be found in the *Official Journal of the European Communities* [http://europa.eu.int/eur-lex/en/search/search_oj.html].

²⁸ Text of the relevant Council Regulation (EC) No. 881/2002 of May 27, 2002 and accompanying amendments may be found in the *Official Journal of the European Communities* [http://europa.eu.int/eur-lex/en/lif/reg/en_register_18.html].

²⁹ Text of the most recent relevant Council Common Position (2003/651/CFSP) and Council Decision (2003/646/EC) of September 12, 2003 may be found in the *Official Journal of the European Communities* [http://europa.eu.int/eur-lex/en/search/search_oj.html].

EU-wide arrest warrant. The EU arrest warrant will effectively end the practice of non-extradition of EU nationals within the Union and abolish dual criminality — the principle that a crime must be defined and verified as a crime in both the issuing and enforcing state — for the 32 agreed upon offenses. Hence, it will transform the formal diplomatic process of extradition into an administrative procedure and permit suspects to be handed directly from one judicial authority to another. For example, an Italian judge could issue an arrest warrant for a French citizen who committed a crime in Rome and give it to the Dutch police to enforce if the suspect had fled to Amsterdam; Dutch police would then arrest the suspect and transfer the individual back to Rome to face trial. The maximum 90-day timeframe for this process includes an appeals procedure. The 32 offenses must be punishable by at least three years incarceration in the requesting state for the warrant to apply.³⁰

Europol (European Police Office). Europol was established by the 1992 Maastricht Treaty. Agreement and ratification of the Europol Convention — which set out the agency's mandate, responsibilities, and competencies — was delayed for many years because of a dispute between member states over the role of the EU Court of Justice. Based in The Hague, Europol began limited operations in 1994 in the form of the Europol Drugs Unit. The Europol Convention was finally signed in 1995 and ratified in 1998, thereby allowing Europol to become fully operational in 1999. Europol's original mandate covered terrorism, money-laundering, Euro counterfeiting, drug trafficking, human trafficking, and child pornography. In December 2001, EU leaders extended this mandate to include extortion, corruption, kidnapping, and racist, cyber, and environmental crimes. Europol is also seeking to boost cooperation with other transnational police organizations such as Interpol, and with other countries to enable Europol and those states' police services to share information. To date, Europol has signed cooperation agreements with the United States, as well as with Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Norway, Poland, Slovakia, and Slovenia.

Joint investigation teams. In October 1999, EU leaders gave the green light to establish joint investigation teams — composed of law enforcement representatives of two or more member states to conduct a specific cross-border investigation of limited duration. Their creation was codified in Article 13 of the EU Convention on Mutual Assistance in Criminal Matters of May 2000, which has not yet entered into force. In October 2001, Belgium, France, Spain, and the United Kingdom submitted a proposal to allow Article 13 to take effect immediately to help in the fight against terrorism. This proposal was formally adopted by the EU in June 2002. This decision will cease to have effect once the May 2000 Convention has been ratified and enters into force in all member states.³¹

³⁰ See the Council Framework Decision on the European arrest warrant (2002/584/JHA), June 13, 2002. Text may be found in the *Official Journal of the European Communities* [http://europa.eu.int/eur-lex/en/search/search_oj.html].

³¹ See the Council Framework Decision on Joint Investigation Teams (2002/465/JHA), June 13, 2002. Text may be found in the *Official Journal of the European Communities* [http://europa.eu.int/eur-lex/en/search/search_oj.html].

EU Convention on Mutual Assistance in Criminal Matters of May 2000. This Convention seeks to update previous mutual legal assistance agreements among EU members; it does not require dual criminality as a condition for assistance and outlines provisions for rendering assistance on restitution, temporary transfer of persons, hearings by video or telephone conference, and cross-border investigation methods. Following the terrorist attacks, the EU called upon all members to ratify the Convention as soon as possible. The Convention has not yet entered into force.

Eurojust. Based in The Hague, Eurojust is a centralized unit of senior lawyers, prosecutors, judges, and other legal experts charged with helping to coordinate the investigation and prosecution of serious cross-border crimes involving at least two member states or one member and the European Commission. It is composed of 15 representatives — one from each EU member state — who reportedly have extensive knowledge of the legal systems of their own countries, and access to national authorities. These representatives are charged with providing legal advice and assistance in cross-border cases to investigators, prosecutors, and judges in the member states, thereby improving cooperation and communication between the national courts and making the prosecution of cross-border cases better and more efficient. Eurojust can recommend that national authorities initiate an investigation, but cannot launch or carry out one itself. In March 2001, a provisional judicial cooperation unit (Pro-Eurojust) began work and dealt with 180 cases during its eleven months of operation. Eurojust has since handled over 500 cases. Eurojust works alongside the EU's decentralized European Judicial Network, which began operations in 1998 and is composed of contact points in all member states who provide advice and assistance to lawyers and judges working on cross-border cases.

EU Chiefs of Police Task Force. EU leaders called for the establishment of this Task Force in 1997; it came into being in 2000 as a forum for EU police chiefs to engage in dialogue with each other and with Europol on best practices and trends in cross-border crime. It is also charged with providing strategic guidance for Europol operations and for preventing and combating crime throughout the EU. In April 2002, the Task Force established a supervisory committee — composed of representatives from the outgoing, incoming, and current EU presidency countries, Europol, and the Commission — to ensure greater continuity in the Task Force's efforts and enhance cooperation with Europol.

Cooperation among EU police and intelligence services. In 2002, EU leaders approved three additional measures in this area. One calls for establishing multinational, ad hoc teams of counter-terrorist experts from agencies under the control of member states' Interior Ministries to investigate the working methods of terrorist groups such as the use of joint training camps and sources of financing. Europol will provide analytical and logistical support, but the member states in which the operations are carried out will have authority over the teams. The second initiative requires each member state to designate a police and judicial contact point for collecting and exchanging information on terrorist investigations. The third measure allows for the common use of member states' police liaison officers posted to non-EU countries; such liaison officers are now able to share information with any member state and with Europol. Critics charge that these proposals duplicate existing instruments and could compromise EU data protection rules.

European Police College (CEPOL). EU leaders set up the European Police College in December 2000 as a network of training institutes for senior police officers. It seeks to boost knowledge of national police systems and foster a European police culture, but it has been slow to get off the ground. In February 2002, EU officials decided Denmark would temporarily host the College, thereby allowing a director to be appointed and its roughly \$2 million budget to be released. Courses organized by the College address anti-terrorism, border controls, community policing, and riot control, among other subjects.

Expanded EU money-laundering directive. The terms of this directive were initially proposed in 1999, but final approval was delayed because of the European Parliament's concern that it would seriously damage lawyer-client confidentiality rules. In a compromise reached in November 2001, lawyers will be exempt from reporting information received from clients during the course of criminal proceedings and are permitted to warn clients before tipping off law enforcement agencies. In addition to lawyers and accountants, the new requirement to report suspicious transactions also applies to auditors, real estate agents, notaries, casino owners, dealers in high value goods such as precious gems or works of art, and fund transporting companies. All EU member states were required to bring their national laws into line with the expanded directive by June 15, 2003.³²

EU-wide asset freezing order. This initiative was originally proposed by France, Sweden, and Belgium in February 2001. Following September 11, its scope was extended to terrorist-related crimes and linked to the EU-wide arrest warrant. It will be applicable to specific cross-border investigations, and is distinct from the asset-freezing requirement that accompanies the EU's common terrorist list.³³

Confiscating assets in the EU. In August 2002, Denmark proposed two measures to facilitate the confiscation of criminal assets in the EU. One measure — approved in December 2002 — relaxes the burden of proof necessary for confiscation of crime-related proceeds. The other measure calls for swift mutual recognition and enforcement of orders to confiscate criminal assets wherever they may be located in the EU. This second measure is proving more controversial, however. Member states continue to disagree on the scope of the proposal; some want to broaden it to allow for the confiscation of assets of both the criminal and “close relations.” Italy, the current holder of the EU presidency, hopes to secure agreement on this provision by December 2003.³⁴

³² See Directive 2001/97/EC of the European Parliament and of the Council amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering, December 4, 2001. Text may be found in the *Official Journal of the European Communities* [http://europa.eu.int/eur-lex/en/search/search_oj.html].

³³ See the Council Framework Decision on the execution in the European Union of orders freezing property or evidence (2003/577/JHA), July 22, 2003. Text may be found in the *Official Journal of the European Communities* [http://europa.eu.int/eur-lex/en/search/search_oj.html].

³⁴ For more information, see “Justice and Home Affairs: Council Split on Mutual Enforcement of Confiscation Orders,” *European Report*, No. 2780, May 29, 2003.

Ratifying EU and U.N. mechanisms against financing terrorism. In October 2001, EU leaders signed the Protocol to the EU Convention on Mutual Assistance in Criminal Matters. The Protocol seeks to facilitate the exchange of information among member states on banking records, accounts, and transactions of criminal suspects under investigation. This Protocol, however, like the Convention itself, has not yet been ratified. In addition, the EU has called upon member countries to ratify the 1999 U.N. Convention for the Suppression of the Financing of Terrorism; all have signed it, but five EU members have not yet ratified it (Belgium, Germany, Greece, Ireland, and Luxembourg).

Increasing cooperation among national financial intelligence units and the international Financial Action Task Force on Money Laundering (FATF). In September 2001, EU leaders directed member states to improve data exchange among their national financial intelligence units concerning all sources of terrorist funding and to take action against countries and territories identified by the FATF as non-cooperative in the fight against money laundering. In October 2001, EU justice and finance ministers — meeting in a special joint session — reportedly approved a ban on EU-based banks opening branches in states blacklisted by the FATF as non-cooperative and called for those with already existing branches to disclose any large financial transactions.³⁵

External borders management plan. The terms of this plan were largely based on recommendations put forward by the European Commission in early May 2002. In June 2002, EU leaders at the Seville Summit subsequently approved the bulk of this plan and called for establishing a Common Unit of External Border Practitioners — composed of member states' heads of border control — to coordinate the plan's numerous initiatives. EU leaders at Seville also set near-term deadlines for several of the plan's provisions. They directed a network of immigration liaison officers to be set up by the end of 2002, and by June 2003, they called for: undertaking a common risk analysis, establishing a common core curriculum for border guard training, and a Commission burden-sharing study on the costs of managing the EU's external borders. Although progress has been made on these various strands, additional work is necessary. In June 2003, EU officials at the Thessaloniki Summit sought to strengthen the role and responsibilities of the External Borders Practitioners unit, and directed the Commission to build on its burden-sharing study by examining the possibility of appropriating common EU funds between 2004-2006.

Reinforcing sea border controls. In April 2002, EU justice and interior ministers directed the European Commission to conduct a viability study on measures to improve controls at maritime borders, identify risk zones, and enhance existing information and early warning systems. This study is scheduled to be presented in September 2003. Several of the ad hoc joint border control projects that have been

³⁵ The intergovernmental FATF was founded in 1989 by the Group of Seven (G7) most industrialized countries; it is composed of 29 member states, plus the European Commission and the Gulf Cooperation Council. It currently lists 9 countries and territories as non-cooperative. Allen Nacheman, "EU finance ministers back tough new money laundering measures," Agence France Presse, October 16, 2001.

undertaken as part of the external borders management plan have focused on improving sea border controls.

Increasing visa coordination. All measures under consideration are designed to enable member states to share information on visa seekers and end the ability of some visa applicants to exploit differences in national policies and requirements. EU officials have agreed that the EU visa database — or Visa Information System (VIS) will include applicants' names, type of visa issued, and an explanation of rejected applications, but the legal basis, data protection rules, and funding mechanism still need to be fleshed out. At the June 2003 Thessaloniki summit, EU leaders called for these decisions on the VIS as soon as possible, and called for a coherent EU approach on the inclusion of biometric identifies on visas, as well as residence permits and passports.

Eurodac. This system allows immigration officials to check the fingerprints of asylum seekers against records held by other EU countries. If an applicant has already claimed asylum in another EU member state, he or she would be returned to that country where the original application was made for processing. The use of fingerprints is also intended to prevent asylum seekers from making asylum claims in different member states under a pseudonym. Eurodac was originally approved in principle in December 2000. It became operational in January 2003. Its effectiveness will depend on member states collecting the necessary fingerprints and sending them for storage to the central unit in Brussels, as they are legally required.

Schengen Information System (SIS). The SIS is an EU database, used primarily by customs and immigration officials, of information on convicted or suspected criminals, lost or forged passports, missing persons, and stolen vehicles and firearms. It was established to facilitate implementation of the Schengen Convention, which allows for freedom of movement among 13 EU member states plus Iceland and Norway.³⁶ Each Schengen member decides the amount and type of information to enter into the system. Following the September 2001 terrorist attacks, EU leaders called for participating states to ensure that data is fed more systematically into the SIS. The EU is also considering incorporating its future visa database into the SIS. Finally, the EU has been working on upgrading the technical capabilities of the SIS (SIS II) to enable it to accommodate by 2006 information from up to 10 additional EU members.

EU Counterterrorism Task Force. The task force is composed of one police and one intelligence representative from each EU member state, as well as about ten officials from Europol. Europol headquarters provides the administrative and operational support for the task force. Task force representatives work as liaisons with U.S. counterparts and collect and analyze all relevant information and intelligence about the September 11 attacks. The task force was set up on a temporary basis for a period of six months, but with a renewable mandate.

³⁶ Although the UK and Ireland do not subscribe to the Schengen Convention's free movement provisions, they do participate in police and judicial aspects of the Convention, thus allowing them access to the SIS.

