

Report for Congress

Received through the CRS Web

Europe and Counterterrorism: Strengthening Police and Judicial Cooperation

July 23, 2002

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Summary

The September 11 terrorist attacks 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 has changed this status quo as it becomes 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 active 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 since last September 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 some countries must first 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 could also slow progress on 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 perhaps enhancing ongoing cooperation between U.S. and EU member states' intelligence and law enforcement agencies. The United States hopes to conclude an agreement with Europol on personal data sharing as soon as possible, viewing it as essential to a closer working relationship in criminal investigations. U.S. policymakers are also willing to discuss with the EU a judicial cooperation agreement, which they hope will permit the extradition of EU nationals to the United States. Nevertheless, whether U.S. judicial authorities or Members of Congress would be willing to forgo the possibility of the death penalty for suspected terrorists in order to achieve an extradition accord with the EU is an open question. Working-level U.S. police and judicial officials caution that an eventual U.S.-EU judicial accord must not reduce existing 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. Nevertheless, U.S. officials are 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. They assert that any eventual U.S.-EU-wide judicial cooperation agreements must add value, and not detract from existing U.S. relationships with law enforcement authorities in individual member states.

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.

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.

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 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 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 recent 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 focuses on establishing greater cross-border compatibility among EU member states'

³ Prior to September 11, 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's current list contains 93 persons and entities. These include Osama bin Laden, Al Qaeda, European-based organizations, and others such as the Turkish-based Kurdistan Worker's Party (PKK), the Revolutionary Armed Forces of Colombia (FARC), and the military wing of Hamas. All EU members must freeze the assets of those named, and provide assistance to each other in related police investigations and legal proceedings. The list is reviewed at least every six months.
- ***Creating an EU-wide arrest warrant.*** In December 2001, EU governments reached a political agreement to implement an EU-wide arrest warrant by 2004 that would eliminate the need for extradition proceedings among EU member states for a diverse set of 32 offenses, which include 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 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 about 350, including 50 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 would still be prohibited from detaining or arresting suspects, and could only participate in joint investigations into crimes that fall within their mandate. The EU has also increased Europol's budget by 46 percent to roughly \$45 million to pay for more staff and growing counter-terrorist responsibilities.⁵ Eurojust, the EU's nascent unit of prosecutors and magistrates, became fully operational in February 2002. It is charged with helping to coordinate the investigation and prosecution of serious cross-border crimes in EU member states. Some members are also seeking 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

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," AP, February 28, 2002.

exchange of information among member states' police services and with Europol.

- ***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 Proposals to widen the mandate of the European Police College also seek to improve cooperation among member states' services.

Suppressing Terrorist Funding

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

- ***Expanding the EU's money-laundering directive.*** In November 2001, the EU agreed to broaden the scope of its directive on 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. EU members have 18 months to transpose the directive's provisions into national law.
- ***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 hopes to adopt this initiative formally as soon as the European Parliament consents and six countries clear the measure with their respective legislatures.

Strengthening External EU Border Controls

EU progress on its police and judicial agenda 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

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.

because many are linked to EU efforts to decrease illegal immigration, which are foundering upon different national policy preferences and domestic political considerations. In the last several months, however, EU leaders have 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 justice and interior ministers endorsed 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 heads of government subsequently approved the bulk of this plan at the Seville Summit and directed that joint law enforcement operations at external borders begin by the end of 2002 at the latest.
- ***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 April 2002, EU justice and interior ministers approved creating a common EU visa format—with digital photos to prevent fraud—and 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 June 2002, EU leaders agreed politically to establish an EU visa database that would list all visas issued and turned down by member states.
- ***Implementing Eurodac.*** In February 2002, EU officials endorsed implementing Eurodac—an EU-wide fingerprint database of asylum seekers—by the end of the year. This database 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.

Enhancing U.S.-EU Cooperation

In addition to boosting cooperation among member states' law enforcement bodies, a key goal of the European Union since September 11 has been to bolster coordination with U.S. police and judicial authorities in order to better combat the terrorist threat and prevent future attacks. 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.⁷ Efforts to date have revolved around:

- ***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 early 2002, an FBI liaison was dispatched to work with the task force in The Hague, and Europol recently stationed two liaison officers in Washington.⁸ In addition, EU and U.S. judicial officials are collaborating in Eurojust on investigations and pending prosecutions related to the September 11 attacks, 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. Negotiations have begun on a second Europol agreement to permit U.S. and European investigators to share “personal” data—such as names, addresses, phone numbers, and criminal records—about suspects in all crimes covered by Europol’s mandate. Currently, EU privacy rules and data protection requirements prohibit sharing such information without a legal agreement, but the EU’s counterterrorist task force and the FBI have been able to exchange personal data on suspects related to September 11 investigations because of a special exemption that allows the EU to treat the attacks as a “life-threatening” situation.⁹
- ***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. The EU’s main objective in these talks will be to obtain a guarantee that the death penalty will not be imposed or carried out on any individual extradited from a member state to the United States. EU officials believe, however, that such agreements will help expedite the extradition process between the two sides of the Atlantic and could be useful tools in combating financial crimes and organized criminal syndicates as well as terrorists. For its part, Washington will seek an arrangement permitting the extradition to the United States of all EU nationals.

⁷ 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.

⁸ Interviews of EU and U.S. officials, March-June 2002.

⁹ Donald McNeil, “Europe agrees to share data on terrorism with the U.S.,” *NYT*, December 6, 2002. Interviews of EU and U.S. officials, March-April 2002.

Challenges Ahead

Despite the EU's strides since September 11 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 also 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 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. Some officials in Rome, for example, question whether they will be able to bring Italy's laws into line by the 2004 deadline. 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. Rome finally acquiesced, but has remained vague on whether the Italian parliament will be able to ratify what it describes as "major" constitutional changes by 2004.¹⁰ Some observers 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

¹⁰ 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," *FT*, December 12, 2001.

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.¹¹

These skeptics also point out that even the six countries—Belgium, France, Luxembourg, Portugal, Spain, and the UK—which agreed to implement the arrest warrant among themselves by early 2003, have not yet introduced the necessary domestic legislation. The British government published a draft extradition bill including provisions for the EU arrest warrant in late June, and will introduce it in Parliament in the fall. Press reports suggest that it was not submitted for consideration during the spring 2002 parliamentary session because of other legislative priorities.¹²

The EU-wide asset-freezing order may also take many years to come into effect throughout the Union. As noted previously, it must still be formally adopted by the EU, and of the six countries that need parliamentary approval first, Italy will likely pose the most significant challenge. Like the arrest warrant, enacting the asset-freezing measure will require judicial reforms and additional modifications of the Italian constitution. As for freezing the assets of terrorists on the EU's blacklist, the Spanish EU Presidency proposed an initiative to allow the EU to act collectively against European persons or groups based on its soil—such as the Basque separatist group ETA—but no such EU law currently exists. Member states, however, are supposed to act bilaterally to freeze the assets of these individuals and groups.

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 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.

¹¹ Interview of U.S. official, May 2002.

¹² Rosemary Bennett and Cathy Newman, "Government drops plan to speed up extradition," *FT*, March 1, 2002; Philip Johnston, "Parliament given no say as Blunkett adopts arrest warrant," *The Daily Telegraph* (London), June 24, 2002.

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."¹³ According to EU watchers, national police and intelligence services harbor a deep mistrust of Europol. Those wary of greater information-sharing point to a 1997 incident in which a Belgian intelligence official allegedly sold information to organized crime groups that he retrieved from the Schengen Information System (SIS)—an EU database, used primarily by customs and immigration officials, of information on convicted or suspected criminals, forged passports, and stolen vehicles. They cite this as proof that national police services are right to closely guard their intelligence information.¹⁴

The lack of a common language 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 restrict information-sharing between police and intelligence services.

Nevertheless, 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 up 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 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

¹³ Quoted in Judy Dempsey, "Europol's bid for success," *FT*, February 27, 2002.

¹⁴ Ambrose Evans-Pritchard, "EU police investigated for money laundering," *The Daily Telegraph* (London), June 2, 2001; "Computer data on Schengen accord stolen in Belgium," *AFP*, December 16, 1997.

¹⁵ Judy Dempsey, "Europol's bid for success," *FT*, 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. Member states are reportedly divided on a Belgian-Spanish initiative to allow changes to the Europol Convention to be made more efficiently by a simple Council decision. Eurojust can recommend that national authorities initiate an investigation, but cannot launch or carry one out itself.

Data protection concerns are also impeding some efforts to enhance Europol and Eurojust’s capabilities. Belgium objects, for example, to a proposal to give Europol access to the Schengen Information System; it claims that the SIS is the sole property of the members, and Europol should not be allowed to update it by deleting or modifying information. Although an initiative recently approved by EU leaders to establish police and judicial contact points for exchanging information on terrorist investigations includes Eurojust, the text limits the type of data that may be shared because member states were reluctant to permit Eurojust more open-ended access.¹⁶

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 recent successes coordinating several drug busts and anti-illegal immigration operations in which law enforcement authorities of both EU member states and aspirant countries participated.¹⁷

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 over the last several months 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

¹⁶ “Justice and Home Affairs: Belgian concerns about Europol access to Schengen database,” *European Report*, No. 2672, March 29, 2002; “EU/JHA Council: Formal approval of framework decision on European arrest warrant,” Agence Europe, 14 June 2002; “Justice and Home Affairs: Commission slams Spanish anti-terrorism initiative,” *European Report*, No. 2680, May 1, 2002.

¹⁷ For example, in late May, Europol headquarters coordinated a three-day operation against people smuggling networks; 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,” AFP, May 29, 2002.

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 Germany that are making 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 a European Commission proposal to develop a public prosecutors office limited to handling crimes against EU financial interests has received a lukewarm reception from member states.

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 because some members, such as 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 within the next year and a half, 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.¹⁸ 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—was also fearful that sanctions would upset its bilateral relations with those countries and produce domestic unrest at home.

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.¹⁹ Although far from finalized, some view these agreements as potentially paving the way for a similar EU-wide accord in the future.

¹⁸ 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.

¹⁹ "French, German deal on police arrests," AFP, May 27, 2002.

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 arrest warrant on grounds that it compromises domestic legal protections, and could delay its approval. 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 recent 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.²⁰

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. The U.S. liaison officer in The Hague currently works only with the Europol-based counterterrorism task force because a broader mandate to share investigative information with the EU has not yet been worked out. Some observers suggest that EU task force officers have been less than welcoming to the U.S. representative, but given the information-sharing problems among EU police and intelligence services, this is not surprising. Others argue that a U.S. presence at Europol is unnecessary in light of the good, close bilateral relationships between U.S. law enforcement agencies and counterparts in EU member states. Some U.S. officials are also skeptical of the benefits of having Europol officers in Washington, noting that it is unclear what their mission will be or with whom among the more than 30 federal law enforcement agencies they will interact.²¹ At present, it is likely that they will engage mostly in analytical work and concentrate liaison efforts on the FBI. The scope of their activities will be limited by the continued absence of a U.S.-Europol accord on sharing personal data.

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 have been hesitant to name groups to the list that are based in nations with dubious human rights records. In the last two months, however, the EU has included entities such as the Turkish-based Kurdistan Worker's party (PKK), the Revolutionary Armed Forces of Colombia (FARC), and two militant Palestinian groups with ties to Palestinian Authority president Yasser Arafat in response to pressure from the United States as well as the

²⁰ "Justice and Home Affairs: Member states design new data base of visas," *European Report*, No. 2670, March 23, 2002.

²¹ The arrival of Europol's liaison officers in Washington was delayed for several months because of internal EU wrangling over where they should be posted. For now, they will be attached diplomatically to the European Commission's Washington delegation office.

countries directly affected by these groups, such as Israel.²² The United States has also taken some cues from the EU; since last December, the United States has added to its list and frozen the assets of 27 persons and 9 organizations based in Europe.²³

Nevertheless, differences persist. While Washington has labeled as “terrorist” a total of 210 individuals and organizations, the corresponding EU number is 93 at present. The EU draws a distinction between the political and terrorist wings of the same organization, such as Hamas, and continues to resist including other groups like the Lebanon-based Hezbollah. A number of commentators suggest that the EU has been slower to name many groups such as the FARC or the PKK to its list because some member states view them as more revolutionary than terrorist in nature.²⁴

Data Protection Worries. In order to forge closer U.S.-EU police and judicial cooperation in the fight against terrorism, the United States must grapple with concerns that it does 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.²⁵ 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 continues to prove difficult. Nowhere is this more evident than in the ongoing negotiations to allow U.S. law enforcement officers and Europol representatives to share personal information on suspected terrorists and other criminals. 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

²² The two entities linked to Arafat are: the Al Aqsa Martyrs Brigade, an armed offshoot of Arafat’s Fatah faction; and the left-wing Popular Front for the Liberation of Palestine (PFLP), which opposes the 1993 peace accords. Fatah and the PFLP are two of the three main components of the Palestine Liberation Organization (PLO), headed by Arafat.

²³ All 27 individuals added to the U.S. list are suspected Basque separatists. Of the 9 groups: 5 are Northern Irish paramilitary organizations, 2 are based in Spain, and the remaining 2 in Greece.

²⁴ David E. Kalish, “European slow to block terror assets,” AP, March 8, 2002.

²⁵ Interview of EU official, March 2002.

investigations involving the use of computer systems to facilitate terrorist acts. Thus, Washington has sought 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 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.

Crime, Punishment, and Diverging Views. The EU is 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. Although initial exploratory talks began at the end of June 2002, progress could be slowed by a number of contentious issues that have their roots in different U.S. and European societal attitudes toward crime and punishment. 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. Some claim that these issues may erode trust in U.S. judicial processes and affect the EU’s negotiating stance on judicial cooperation issues.

Topping the list of EU concerns is 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. Thus, the EU has laid down a clear redline that it will not conclude an accord in which a suspect extradited from an EU member state could be subject to capital punishment. Most observers believe the only room for compromise will be on the U.S. side. EU officials have suggested that the key to resolving this issue may be a guarantee from Washington that prosecutors would not seek the death penalty for extradited suspects wanted for capital crimes. They point out that many EU member states have worked out such arrangements with the United States in the past to permit extradition to go forward on a case-by-case basis. Washington, however, appears hesitant to acquiesce to a blanket guarantee.

The EU will also seek a U.S. commitment that persons extradited under an eventual cooperation accord would not face life imprisonment or trial by military tribunal. Several EU member states do not impose life-without-parole sentences, and Portugal’s criminal code does not allow for prison terms longer than 20 years.²⁶ EU officials oppose the proposed use of military tribunals in the United States on grounds that they lack transparency and curtail civil rights protections. Germany also wants defined guidelines on how personal data or investigative information related to extradition cases would be used by the United States. EU officials

²⁶ Michael Mann, “EU sets tough terms for judicial treaty,” *FT*, April 27, 2002.

recognize that these challenges will take work to resolve, but claim they are not insurmountable.

Impact on Bilateral Cooperation. As evident by the U.S. decision to open negotiations on extradition and judicial assistance accords, Washington is willing to explore with the EU the parameters of what may be possible, but will be looking for some “value added.” The Bush Administration’s main objective for an eventual extradition accord would be 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 allow their own nationals to be extradited to the United States. At a minimum, U.S. officials insist that the EU must agree to temporary surrender—in which all member states would extradite their nationals to stand trial in the United States, but the U.S. would return them to the sender for sentencing and incarceration (as currently occurs with Dutch nationals). EU officials remain largely circumspect on whether they would be prepared to meet these requirements given the national sensitivities involved and the likely objections of some member states. Instead, they stress that an EU-wide extradition agreement would provide value-added for the United States because it would speed up an often onerous process and update existing extradition arrangements with some member states that date back to the early 1900s.

The EU also argues that a Union-wide accord on mutual legal assistance would give the United States agreements with all 15 member states. They note that Washington has bilateral mutual legal assistance treaties (MLATs) covering exchange of information and prosecutorial cooperation in effect with only 9 current EU members.²⁷ A U.S.-EU agreement would also provide the United States an MLAT with all the EU aspirant countries following their accession to the Union.²⁸

Many working-level U.S. police and judicial officials, however, are skeptical that such an accord would be beneficial. They assert that those MLATs with individual member states that do exist are strong and effective, and an EU-wide accord could weaken them. They point 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. In the case of a U.S.-EU-wide legal assistance accord, they believe that German views on data protection—which have precluded a bilateral MLAT for the past ten years—would hold the negotiations hostage. Unlike other EU states, Berlin insists that even basic legal assistance provided by German authorities to the United States not lead to the pursuit of a capital case or contribute to the application of the death penalty.²⁹ The United States is not interested in signing on to an agreement

²⁷ The United States has signed similar mutual legal assistance treaties with EU members Sweden and Ireland, but these have not yet been ratified. No U.S. agreements exist with Germany, Denmark, Finland, or Portugal.

²⁸ The EU will likely take in 10 new members by 2004—the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.

²⁹ Most recently, German judicial officials have failed to respond to U.S. requests for evidence in the case against Zacarias Moussaoui, who faces a possible death sentence in the
(continued...)

with the EU that would likely have to subscribe to this position, and which could call into question U.S. MLATs with individual member states.

European Perspectives

According to the recently-completed Spanish EU Presidency, “creating a single area of freedom, security and justice is now one of Europe’s key priorities.”³⁰ Some observers worry, however, that as memories of September 11 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. Others fear that the EU will not 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 the new 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

²⁹(...continued)

United States for his alleged involvement in planning the September 11 attacks. U.S. prosecutors believe that Moussaoui received two money transfers from Germany to pay for flight lessons from a close associate of lead hijacker Mohammed Atta. Hugh Williamson, “Schroeder sees way out of evidence dispute,” *FT*, June 12, 2002.

³⁰ Website of the Spanish EU Presidency [www.ue2002.es].

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 rapid progress since the attacks was only possible because work on many of the initiatives proposed at the September emergency meetings of EU leaders 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 EU’s desire to build an eventual judicial identity—complete with common EU institutions such as a public prosecutors office—is also driving its 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, but EU officials claim they are committed for the long haul.

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 State Department’s Coordinator for Counter-terrorism, Francis Taylor, has called EU assistance since September 11 “superb” and noted that Washington hopes to expand cooperation to increase the effectiveness of law enforcement and judicial efforts on both sides of the Atlantic.³¹

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. The United States hopes to conclude the second agreement with Europol on personal data sharing as soon as possible, viewing it as essential to enabling a closer working relationship in criminal investigations. As noted previously, U.S. policymakers are also open to discussing a judicial cooperation

³¹Transcript of Press Roundtable at the U.S. Mission to the European Union with Ambassador Francis X. Taylor, January 29, 2002.

agreement with the EU, which they hope will permit the extradition of EU nationals to the United States. However, some U.S. judicial authorities bristle at the thought of an accord with the EU coming at the expense of the death penalty, while working-level investigators are concerned that an EU-wide agreement not detract from good, existing bilateral law enforcement relationships or impede ongoing cross-border investigations. They caution that any eventual EU-wide agreement must add value, and not reduce currently strong bilateral extradition and mutual legal assistance treaties to the level of the lowest common EU denominator.

Although the Administration is listening to the concerns of those at the working level and proceeding cautiously in negotiations with the EU, Washington wants to keep the dialogue with the EU open. Given the Union's renewed political commitment to bolstering cooperation in the police and judicial fields and Europe's role as a key U.S. partner in international law enforcement efforts, Administration officials believe it is in U.S. interests to weigh in early and often in the EU process. They point out 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 give priority to the country in which the suspect faces the most serious charge. For example, if an alleged criminal is wanted in Germany for car theft, but in the United States for a terrorist act, police in the EU member state executing the warrant would hold the suspect for extradition to the United States. 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 will seek 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.³²

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 United States should forgo the possibility of the death penalty for suspected terrorists in order to achieve an eventual U.S.-EU accord on extradition. The conclusion of any eventual agreement, however, is likely at least a year away given the complexities facing negotiators. U.S. officials note that the Europol agreement signed in December 2001 that provides for the sharing of strategic information with the United States took over two years to finalize, and negotiations on the second accord to permit the exchange of personal data on suspects are now in their seventh month. Congress may also want to weigh the merits of any eventual EU-wide mutual legal assistance treaty against current bilateral arrangements to ensure it does not negatively affect ongoing cross-border investigations and useful informal working relationships between U.S. and European law enforcement services.

³² Interviews of U.S. officials, March-May 2002.

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

This Appendix provides additional information and background on the EU's main initiatives to enhance cooperation in the police and judicial fields and combat terrorism. This should be read in conjunction with the information provided 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 maximum sentences of at least 15 years incarceration for being the leader of a terrorist group and at least 8 years for participating in or financing the activities of a terrorist organization. All EU members must bring their national laws into line with the common definition and sanctions by December 2002.³³

Common EU list of terrorist organizations. The EU issued its first list of persons, groups, and entities involved in terrorist acts in October 2001. It included Osama bin Laden and 26 other individuals or groups linked to him and Al Qaeda. In December 2001, EU leaders expanded this list to include 8 other persons associated with Islamic groups, 21 Basques wanted for terrorist crimes in Spain and 13—mostly European-based—terrorist organizations. In May 2002, the EU added 7 other individuals associated with the Basque group ETA and 10 additional entities, such as the Turkish-based Kurdistan Worker's Party (PKK), Peru's Shining Path, and the Egyptian-based radical Islamic group Al Gama al-Islamiyya. Most recently, on June 17, 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). The United States and other countries such as Turkey, Colombia, and Israel had strongly advocated for the inclusion of many of these organizations since last December. EU police authorities also maintain a separate, classified list of suspected terrorists and entities that are the subjects of ongoing investigations.³⁴

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

³³ 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].

³⁴ Text of the relevant Council Common Position (2002/462/CFSP) and Council Decision (2002/460/EC) of June 17, 2002 may be found in the *Official Journal of the European Communities* [http://europa.eu.int/eur-lex/en/search/search_oj.html]. Also see, Paul Ames, "EU adopts anti-terrorist measures," AP, December 28, 2001.

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 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.

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 also 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, Iceland, Norway, Hungary, Poland, Slovenia, the Czech Republic, and Estonia.

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 still-unratified EU Convention on Mutual Assistance in Criminal Matters of May 2000. 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, and gives priority in the creation of such teams to tackling terrorist offenses. This decision will cease to have effect once the May 2000 Convention enters into force in all member states.³⁵

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, hearing 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, and no later than the end of 2002.

³⁵ 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).

Eurojust. Provisionally-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. Representatives are seconded from every EU member state and reportedly have extensive knowledge of the legal systems of their own countries, and access to national authorities. EU officials hope these officials will be able to give immediate 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 will work 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. The Spanish EU Presidency called for setting up a Supervisory Unit for the Task Force—which would bring together representatives from the outgoing, incoming, and current EU presidency countries, as well as the Director of Europol every two months—to enhance cooperation with Europol and ensure greater continuity in the Task Force's efforts. Other member states appear resistant to this proposal, however, preferring a more independent status for the body.³⁶

Cooperation among EU police and intelligence services. EU leaders recently approved two 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. 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 its activities have been impeded by a lack of a permanent seat, budget, and administrative director. This past February, EU officials

³⁶ "Justice and Home Affairs: List of terrorist groups already exists, says police chief," *European Report*, No. 2632, November 3, 2001.

decided Denmark would temporarily host the College, thereby allowing a director to be appointed and its proposed budget of about \$2 million to be released. College courses will focus on anti-terrorism, border controls, community policing, and riot control in light of the violent demonstrations at recent EU summits.³⁷ Spain has also proposed extending the College's mandate to allow it to function as a monitoring center for police cooperation in Europe.

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 this past November, 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 expanded directive's 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. Thus, EU leaders claim it goes well beyond U.S. anti-money laundering legislation.

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 both the asset-freezing requirement that accompanies the EU's common list of terrorist organizations, as well as a Spanish effort to enable the EU to act collectively against the assets of EU citizens or groups that appear on its terrorist blacklist.

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 only seven EU member states have ratified it (Austria, Finland, France, the Netherlands, Spain, Sweden, and the UK).

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, EU justice and finance ministers—meeting in a special joint session—approved a ban on EU-based banks opening branches in states blacklisted by the FATF as non-

³⁷ "Justice and Home Affairs: European Police College work programme for 2001," *European Report*, No. 2629, October 24, 2001; "Justice and Home Affairs Council: Italy drags its heels on asset-freezing move," *European Report*, No. 2664, March 2, 2002.

cooperative and called for those with already existing branches to disclose any large financial transactions.³⁸

External borders management plan. The terms of this plan were largely based on recommendations put forward by the European Commission in early May 2002. EU leaders at the Seville Summit in late June 2002 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 the year, and by June 2003, they called for: undertaking a common risk assessment, establishing a common core curriculum for border guard training, and a Commission study on sharing the costs of managing the EU's external borders. To coordinate the plan's numerous initiatives, EU leaders established a common unit of external border practitioners, composed of member states' heads of border control.

Reinforcing sea border controls. This past April, EU justice and interior ministers also directed the European Commission to conduct a viability study by December 2002 on measures to improve controls at maritime borders, identify risk zones, and enhance existing information and early warning systems. In addition, EU officials are reportedly considering reinforcing coastal patrols in southern Europe by sending border guards from other EU member states, but have backed away from a proposal to use naval ships and planes to track and intercept boats carrying illegal aliens.³⁹

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. The EU intends to set up a common consular office in Pristina, Kosovo soon as a pilot project, but no timetable has yet been set for implementing the common EU visa format. Although it has been agreed that the EU visa database will include visa applicants' names, type of visa issued, and an explanation of rejected applications, the legal instruments, data protection rules, and funding mechanism still need to be fleshed out. EU ministers have directed the European Commission to carry out a feasibility study on these issues by March 2003.

Eurodac. This system will allow 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

³⁸ 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 15 countries and territories—including Russia—as non-cooperative. In late June 2002, EU aspirant Hungary was removed from this list. The Organization for Economic Cooperation and Development (OECD) in Paris provides a base and secretariat for the Task Force. Allen Nacheman, "EU finance ministers back tough new money laundering measures," AFP, October 16, 2001.

³⁹ Keith Richburg, "EU leaders back tighter controls on immigration," *Washington Post*, June 22, 2002; "EU leaders tighten border controls," AP, June 22, 2002.

in different member states under a pseudonym. Eurodac was originally approved in principle in December 2000.

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.⁴⁰ Last September, EU leaders called for participating states to ensure that data is fed more systematically into the SIS. Presently, each Schengen member decides for itself the amount and type of information to enter into the system. In June 2002, EU officials gave provisional approval to new SIS requirements, which reportedly include adding the names of demonstrators with a history of violent protest at EU summits. The EU is also considering incorporating its future visa database into the SIS. Finally, the EU has been working—for some time—on upgrading the technical capabilities of the SIS (SIS II) to enable it to accommodate by 2005 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. In addition to working as liaisons with U.S. counterparts, the task force collects and analyzes all relevant information and intelligence about the September 11 attacks and has been drafting a joint terrorist threat assessment. The task force was set up on a temporary basis for a period of six months, but with a renewable mandate. This mandate was extended this past March, and will be revisited again in September 2002.

⁴⁰ 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.

