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U.S.-EU Cooperation Against Terrorism

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Summary

The September 11, 2001, terrorist attacks on the United States and the subsequent revelation of Al Qaeda cells in Europe gave new momentum to European Union (EU) initiatives to combat terrorism and improve police, judicial, and intelligence cooperation among its member states. Other deadly incidents in Europe, such as the Madrid and London bombings in 2004 and 2005, respectively, injected further urgency into strengthening EU counterterrorism capabilities. Among other steps, the EU has established a common definition of terrorism and a common list of terrorist groups, an EU arrest warrant, enhanced tools to stem terrorist financing, and new measures to strengthen external EU border controls and improve transport security. Over the years, the EU has also encouraged member states to devote resources to countering radicalization and terrorist recruitment; such efforts have received renewed attention in light of concerns about the threats posed by European fighters returning from the conflicts in Syria and Iraq, highlighted most recently by the November 13, 2015, attacks in Paris, France.

Promoting law enforcement and intelligence cooperation with the United States has been another top EU priority since 2001. Washington has largely welcomed enhanced counterterrorism cooperation with the EU. Since 9/11, contacts between U.S. and EU officials on police, judicial, and border control policy matters have increased substantially. A number of U.S.-EU agreements have been reached; these include information-sharing arrangements between the United States and EU police and judicial bodies, U.S.-EU treaties on extradition and mutual legal assistance, and accords on container security and airline passenger data. In addition, the United States and the EU have been working together to curb terrorist financing, strengthen transport security, and address the foreign fighter phenomenon.

Nevertheless, some challenges persist in fostering closer U.S.-EU cooperation in these fields. Among the most prominent and long-standing are data privacy and data protection issues. The negotiation of several U.S.-EU information-sharing agreements, from those related to tracking terrorist financial data to sharing airline passenger information, has been complicated by EU concerns about whether the United States could guarantee a sufficient level of protection for European citizens' personal data. EU worries about U.S. data protection safeguards and practices were further heightened by the unauthorized disclosures of U.S. National Security Agency (NSA) surveillance programs in mid-2013 and subsequent allegations of U.S. collection activities in Europe. Other issues that have led to periodic tensions include detainee policies, differences in the U.S. and EU terrorist designation lists, and balancing measures to improve border controls and border security with the need to facilitate legitimate transatlantic travel and commerce.

Congressional decisions related to data privacy, intelligence-gathering, border controls, visa policy, and transport security may affect how future U.S.-EU counterterrorism cooperation evolves. EU officials have welcomed passage of the Judicial Redress Act (P.L. 114-126) to provide EU citizens with a limited right of judicial redress for privacy violations in a law enforcement context, but they have expressed unease with some provisions in the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 (passed as part of P.L. 114-113 in the wake of the Paris attacks and heightened U.S. concerns about European citizens fighting with terrorist groups abroad). Given the European Parliament's growing influence in many of these policy areas, Members of Congress may be able to help shape the Parliament's views and responses through ongoing contacts and the existing Transatlantic Legislators' Dialogue (TLD). This report examines the evolution of U.S.-EU counterterrorism cooperation, current issues, and the ongoing challenges that may be of interest in the 114th Congress. Also see CRS Report R44003, *European Fighters in Syria and Iraq: Assessments, Responses, and Issues for the United States*, coordinated by Kristin Archick.

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Evolution of EU Counterterrorism Policies

The September 11, 2001, terrorist attacks on the United States and the subsequent revelation of Al Qaeda cells in Europe gave new momentum to European Union (EU) initiatives to combat terrorism and improve police, judicial, and intelligence cooperation. The EU is a unique partnership that defines and manages economic and political cooperation among its current 28 member states.[1] The EU is the latest stage in a process of European integration begun in the 1950s to promote peace and economic prosperity throughout the European continent. As part of this drive toward further European integration, the EU has long sought to harmonize policies among its members in the area of "justice and home affairs" (or JHA).

Efforts in the JHA field are aimed at fostering common internal security measures while protecting the fundamental rights of EU citizens and promoting the free movement of persons within the EU. JHA encompasses countering terrorism and other cross-border crimes, police and judicial cooperation, and migration and asylum issues. JHA also includes border control policies and rules for the Schengen area of free movement, which allows individuals to travel without passport checks among participating countries.[2] For many years, however, EU attempts to forge common JHA policies were hampered by member state concerns that doing so could infringe on their national legal systems and national sovereignty. Insufficient resources and a lack of trust among member state law enforcement agencies also impeded progress in the JHA area.

The 2001 terrorist attacks changed this status quo and served as a wake-up call for EU leaders and member state governments. In the weeks after the attacks, European law enforcement efforts to track down terrorist suspects and freeze financial assets—often in close cooperation with U.S. authorities—produced numerous arrests, especially in Belgium, France, Germany, Italy, Spain, and the United Kingdom. Germany and Spain were identified as key logistical and planning bases for the attacks on the United States. As a result, European leaders recognized that the EU's largely open borders and different legal systems enabled some terrorists and other criminals to move around easily and evade arrest and prosecution. For example, at the time of the 2001 attacks, most EU member states lacked anti-terrorist legislation, or even a legal definition of terrorism. Without strong evidence that a suspect had committed a crime common to all countries, terrorists or their supporters 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, extradition requests often took months or years to process.

EU Efforts Since 9/11

Although the primary responsibility for countering terrorism remains with the EU's national governments, EU leaders have recognized that the EU can and should play a supportive role in responding to the cross-border nature of terrorist threats. Following the 2001 attacks, the EU sought to speed up its efforts to harmonize national laws against terrorism and bring down barriers among member states' law enforcement authorities so that information could be meaningfully shared and suspects apprehended expeditiously. Among other steps, the EU

[1] The 28 members of the EU are Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom. For more information on the EU, see CRS Report RS21372, *The European Union: Questions and Answers*, by Kristin Archick.

[2] Of the 26 countries that participate in the Schengen area of free movement, 22 are EU members: Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, and Sweden. The four non-EU members of the Schengen area are Iceland, Liechtenstein, Norway, and Switzerland.

established a common definition of terrorism and a common list of terrorist groups, an EU arrest warrant to speed the extradition process, enhanced tools to stem terrorist financing, and new measures to strengthen external border controls and improve aviation security. The EU also worked to bolster *Europol*, its joint police agency that handles criminal intelligence, and *Eurojust*, a unit charged with improving prosecutorial coordination in cross-border crimes in the EU.

Subsequent incidents in Europe injected further urgency into enhancing EU counterterrorism capabilities. The March 2004 bombings of commuter trains in Madrid, perpetrated by an Al Qaeda-inspired group of North Africans resident in Spain, gave added impetus to EU initiatives to improve travel document security and impede terrorist travel. The Madrid attacks also prompted the EU to establish a Counterterrorism Coordinator; among other responsibilities, the Counterterrorism Coordinator was charged with enhancing intelligence sharing among EU member states and encouraging the implementation of already agreed EU policies.

The July 2005 bombings of London's metro system—carried out by four young Muslims born and/or raised in the United Kingdom—brought the issue of "homegrown" Islamist extremism to the forefront of European political debate. Although the vast majority of Muslims in Europe are not involved in radical activities, the London attacks highlighted questions about whether EU governments had done enough to integrate Muslims into mainstream European society and to counter violent extremism. In December 2005, the EU adopted its first plan to combat radicalization and terrorist recruitment, with three broad goals: disrupt the activities of networks and individuals who draw people into terrorism; ensure that voices of mainstream opinion prevail over those of extremism; and promote security, justice, and opportunity for all.[3]

Since then, the EU has continued working to improve its collective ability to better combat terrorism, radicalization, and violent extremism. In 2008, the EU expanded its common definition of terrorism to include three new criminal offenses: terrorist recruitment; providing terrorist training; and public provocation to commit terrorism, including via the Internet. EU officials hoped that this decision would facilitate the prosecution of people trying to involve others in terrorist activity and counter the dissemination of terrorist propaganda and training tactics, in part by making it easier for law enforcement to demand cooperation from Internet providers. In 2011, the EU established a Radicalisation Awareness Network (RAN) to connect key groups of people involved in countering radicalization and violent extremism (including social workers, religious leaders, youth leaders, policemen, and researchers) and to serve as an EU-wide forum for exchanging ideas and best practices.

Despite the political commitment to enhancing EU-wide cooperation against terrorism and other cross-border crimes, forging common EU policies remains a work in progress. National sovereignty concerns and different views among member states and between EU institutions on sensitive issues such as data privacy and intelligence sharing often complicate harmonizing laws or concluding EU-wide policies in the JHA field. EU member states retain control over their law enforcement and judicial authorities, and some national police and intelligence services are often reluctant to share information with each other or with EU bodies such as Europol. Such challenges have been evident in recent EU efforts to address the threat posed by the Islamic State terrorist organization (also known as ISIL or ISIS) and the so-called "foreign fighter phenomenon."

[3] The EU updated its strategy for combating radicalization and terrorist recruitment in 2008 and 2014. For background, see CRS Report RL33166, *Muslims in Europe: Promoting Integration and Countering Extremism*, coordinated by Kristin Archick.

Addressing the Foreign Fighter Phenomenon[4]

EU policymakers have become increasingly alarmed by the growing number of European citizens and residents training and fighting with the Islamist State and other terrorist groups in the Middle East and North Africa. Although it is difficult to assess the precise number of Europeans who have left to fight abroad since 2011, EU authorities suggest that up to 5,000 EU citizens may have traveled to fight in Syria, Iraq, or other conflict zones. Security services are concerned about the potential danger such trained militants might pose should they eventually return to Europe; they also worry about those inspired by Islamist extremist propaganda to commit "lone wolf" attacks at home without ever traveling abroad. Such fears have been heightened by a series of recent terrorist attacks in Europe in which the perpetrators appeared to have links to, or have been influenced by, the Islamic State or other extremist groups abroad. These attacks include the following:

- The May 24, 2014, killing of four people at the Jewish Museum in Brussels, Belgium, believed to be carried out by a French Muslim who reportedly spent a year with Islamist fighters in Syria;
- The January 7-9, 2015, attacks in Paris, France, in which gunmen killed 17 people in three incidents that targeted the satirical magazine *Charlie Hebdo*, police officers, and a kosher supermarket. The perpetrators of the attacks were French-born Muslims, with possible ties to Al Qaeda in Yemen or the Islamic State;
- The February 14-15, 2015, shootings in Copenhagen, Denmark, in which a self-radicalized, Danish-born citizen of Palestinian descent murdered two people—one at a cafe that had been hosting a free speech debate, another at a synagogue—and wounded five police officers;
- The attempted August 21, 2015, attack on a train traveling from Amsterdam to Paris that was thwarted by six passengers, including three Americans; the suspect is a Moroccan man who may have traveled to Syria and has been linked to known Islamist extremists in Europe; and
- The November 13, 2015, coordinated attacks at multiple locations throughout Paris, which left 130 dead and more than 350 injured. Of the nine assailants killed during or shortly after the attacks, authorities have confirmed the identities of seven so far—all of whom were French or Belgian citizens—and at least six of them appear to have fought with the Islamic State in the Syria-Iraq region.

Although European governments have employed a range of tools to combat the foreign fighter threat, the EU has sought to play a leading role. Many of the recent attacks have exposed weaknesses in European domestic security and border controls. European authorities have encountered difficulties monitoring a growing number of potential assailants and been hampered by what many observers view as insufficient information sharing among EU countries' law enforcement and intelligence services. Some perpetrators also appear to have taken advantage of the Schengen system and the chaos generated by the unprecedented influxes of migrants and refugees seeking to enter Europe. Both the thwarted train assailant and the alleged Brussels gunman reportedly traveled between several European countries prior to the attacks, and the suspected ringleader of the November attacks in Paris may have repeatedly traveled back and forth between Europe and Syria despite being known to European security services. Two of the

[4] For additional background, see CRS Report R44003, *European Fighters in Syria and Iraq: Assessments, Responses, and Issues for the United States*, coordinated by Kristin Archick.

perpetrators who died during the November attacks apparently entered Europe through Greece in early October as part of the refugee flows (authorities believe they used fake Syrian passports, but their true identities remain unknown). Another individual suspected of direct involvement in the November attacks in Paris reportedly entered Belgium from France the morning after the attacks but remains at large.

The EU has embarked on a number of measures to tackle various aspects of the foreign fighter phenomenon. As noted previously, however, agreeing upon and implementing common EU policies to counter terrorism and the foreign fighter threat has been challenging. This is largely because such initiatives often relate to police, judicial, and intelligence prerogatives long viewed as central to a nation-state's sovereignty. The imperative to balance promoting security with protecting human rights and civil liberties has also slowed the formulation of certain EU-wide policies at times. The EU has made some progress on several EU initiatives that seek to address the evolving foreign fighter threat, although some analysts remain skeptical about the ultimate effectiveness of such efforts. Key EU steps include the following:

- **Enhancing Information Sharing.** EU officials have been encouraging national authorities to share information on suspected foreign fighters and make greater use of existing common EU databases, such as the Schengen Information System (SIS)—which contains information on suspected criminals, forged identity documents, and stolen vehicles and property—and Europol's Focal Point Travellers database, established in 2013 to collect and analyze information on European fighters. In January 2016, Europol launched a European Counter Terrorism Centre (ECTC) as a platform for information sharing and operational cooperation among member states with regard to monitoring and investigating foreign terrorist fighters, illegal firearms trafficking, and terrorist financing. Many experts caution that the success of such initiatives largely remains dependent on receiving information from national authorities. Although EU officials assert that there has been an increase in alerts entered into SIS and information contributed to Europol databases over the past year, some contend that EU-wide information sharing related to terrorism continues to fall short.[5]
- **Finalizing the EU-Wide System for the Collection of Airline Passenger Name Record (PNR) Data.[6]** Establishing an EU PNR system has been under discussion for years, but a proposal put forward in 2011 had been stalled in the European Parliament—a key EU institution—since 2013 because of data privacy and protection concerns. Political pressure to adopt an EU PNR system intensified significantly following the January 2015 attacks in Paris. EU governments asserted that an EU-wide PNR system would facilitate information sharing on foreign fighters, help to keep better track of their movements, and assist authorities in identifying previously unknown terrorist suspects. In addition, EU officials argued that some member states had already set up, or were working on, their own national PNR systems and that finalizing the EU PNR proposal was necessary to ensure harmonization across the EU on PNR collection, usage, and data-protection practices. In December 2015, the Parliament and the EU governments reached a provisional agreement, which is

[5] EU Counterterrorism Coordinator, Report to the Council of the EU, "State of Play on Implementation of the Statement of the Members of the European Council of 12 February 2015 on Counterterrorism," November 30, 2015.

[6] PNR data is information provided by airline passengers that is collected and held in air carriers' reservation and departure control systems. PNR data includes names, travel dates, itineraries, contact details, and means of payment, among other information.

expected to receive final approval in early 2016. It will oblige airlines to provide national authorities with PNR data for flights into and out of EU territory, and member states will be allowed to collect PNR data from intra-EU flights and non-carrier economic operators, such as travel agencies and tour operators (although they were not required to do so, all EU governments signed a "letter of intent" to collect PNR data from these sources as well). Nevertheless, critics contend that the envisioned PNR system will infringe too much on data privacy rights. Others argue that it does not go far enough in ensuring that PNR data is meaningfully shared; those of this view note that while the accord calls for the exchange of PNR data between EU members, it does not establish a centralized EU PNR database. Once formally adopted, EU governments will have two years to implement the agreement's provisions.[7]

- **Strengthening External EU Border Controls.** As concerns mounted in 2014 and early 2015 about the foreign fighter threat, EU officials urged national authorities to make full use of security tools (including increasing electronic checks at the EU's external borders) provided in the Schengen Borders Code, the detailed set of rules governing external and internal border controls in the Schengen area. Many EU officials and some member states, however, resisted calls to amend the code to permit more extensive checks of EU or other Schengen country nationals at the external borders, fearing that any possible revision process could lead to the reimposition of internal border controls as well. The surge of migrants and refugees into Europe in the second half of 2015 and the attacks in Paris in November have put enormous pressure on the Schengen system. As a result, in mid-December 2015, the European Commission (the EU's executive) proposed a "targeted modification" of the Schengen Borders Code to introduce mandatory checks of EU citizens against law enforcement databases (such as the SIS) at the Schengen area's external borders (such checks have always been required for non-EU citizens). The European Commission also proposed establishing a new European Border and Coast Guard to reinforce member states' capacities at the EU's external borders through joint operations and rapid border interventions. Past efforts to establish such an "EU border guard corps" have foundered on concerns about infringing on national sovereignty, and some member states reportedly remain wary.[8]
- **Preventing Radicalization.** The EU has been seeking to detect and remove Internet content that promotes terrorism or extremism and to develop communication strategies to counter terrorist ideologies, especially online. In July 2015, the EU established a new Internet Referral Unit (IRU) to monitor terrorist content on the Internet and social media platforms and to work with service providers to flag and remove such content. In December 2015, the EU launched an Internet Forum to bring together European policymakers and law enforcement authorities with technology companies to explore what more can be done to counter terrorist propaganda online. The EU has also called on member

[7] Each member state must establish a national Passenger Information Unit (PIU) to collect and process PNR data; each PIU will be responsible for sharing the results of its analysis with the competent authorities within its member state. Alerts derived from PNR data may be shared between member states and with Europol as necessary, and member states may share PNR data on a case-by-case basis in support of specific investigations.

[8] European Commission, "A European Border and Coast Guard to Protect Europe's External Borders," press release, December 15, 2015; "Migrant Crisis: EU Launches New Border Force Plan," BBC News, December 15, 2015.

states to bolster efforts to address societal factors and situations in prisons that may contribute to radicalization.

- **Ensuring an Adequate Criminal Justice Response Throughout the EU.** The EU is working on revising its Framework Decision on Combating Terrorism—which sets out the EU's common definition of terrorism and common criminal penalties—to make traveling or attempting to travel abroad for terrorist purposes and receiving terrorist training criminal offenses throughout the EU.[9] Past EU efforts to harmonize criminal laws have often encountered difficulties, however, because of varying national policies toward crime and punishment and fears that EU-wide measures could infringe on national legal systems. Some EU governments initially appeared hesitant to amend the common terrorism definition, arguing that tightening laws against foreign fighters could be done more quickly at the national level. EU officials contend that the common terrorism definition must be updated to help avoid gaps as EU member states seek to comply with U.N. Security Council Resolution 2178 of September 2014, which calls on U.N. member countries to ensure that their laws permit the prosecution of foreign fighter-related offenses. In December 2015, the European Commission submitted a proposal on revising the EU's common terrorism definition in light of the foreign fighter threat; the proposal will now be considered by the EU member states and the European Parliament.

U.S.-EU Counterterrorism Cooperation and Challenges

As part of the EU's efforts to combat terrorism since September 11, 2001, the EU made improving law enforcement and intelligence cooperation with the United States a top priority. The previous George W. Bush Administration and many Members of Congress largely welcomed this EU initiative in the hopes that it would help root out terrorist cells in Europe and beyond that could be planning other attacks against the United States or its interests. U.S.-EU cooperation against terrorism has led to a new dynamic in U.S.-EU relations by fostering dialogue on law enforcement and homeland security issues previously reserved for bilateral discussions with individual EU member states. Despite some frictions, most U.S. policymakers and analysts view the evolving partnership with the EU in these areas as positive.

Like its predecessor, the Obama Administration has supported U.S. cooperation with the EU in the fields of counterterrorism, border controls, and transport security. In 2011, President Obama's National Strategy for Counterterrorism asserted that in addition to working with European allies bilaterally, "the United States will continue to partner with the European Parliament and European Union to maintain and advance CT efforts that provide mutual security and protection to citizens of all nations while also upholding individual rights." The EU has also been a key U.S. partner in the 30-member Global Counterterrorism Forum, founded in 2011 as a multilateral body aimed at mobilizing resources and expertise to counter violent extremism, strengthen criminal justice and rule-of-law capacities, and enhance international cooperation against terrorism.[10]

[9] While the EU's current common definition of terrorism (as originally adopted in 2002 and amended in 2008) makes terrorist recruitment and providing terrorist training common offenses throughout the EU, it does not explicitly criminalize traveling for terrorist purposes, nor the receiving of terrorist training.

[10] For more information on U.S.-EU collaboration in the Global Counterterrorism Forum, see White House, "Fact Sheet: U.S.-EU Counterterrorism Cooperation," press release, March 26, 2014.

Over the past two years, U.S.-EU counterterrorism cooperation has focused heavily on ways to combat the foreign fighter phenomenon given increasing concerns that both European and American Muslims are being recruited to fight with Islamist groups in Syria and Iraq. U.S. policymakers, including some Members of Congress, have expressed worries in particular about European foreign fighters in light of short-term visa-free travel arrangements between the United States and most EU countries. In early July 2014, then-U.S. Attorney General Eric Holder asserted, "We have a mutual and compelling interest in developing shared strategies for confronting the influx of U.S. and European-born violent extremists in Syria. And because our citizens can freely travel, visa-free ... the problem of fighters in Syria returning to any of our countries is a problem for all of our countries."[11]

In September 2014, the White House noted that U.S. officials from the Department of Justice and the Department of Homeland Security were "working closely" with EU counterparts on "a wide range of measures focused on enhancing counter-radicalization, border security, aviation security, and information sharing" to address the foreign fighter threat.[12] EU countries strongly backed U.N. Security Council Resolution 2178 of September 2014, which seeks to combat the foreign fighter phenomenon worldwide, and most EU member states are providing either military or other political or humanitarian support to the U.S.-led coalition against the Islamic State. In the aftermath of the January 2015 attacks in Paris, the U.S. Attorney General attended an emergency meeting of European and North American interior ministers to discuss terrorist threats and foreign fighters. High-ranking European and EU officials were also key participants in the February 2015 conference on countering violent extremism hosted by the United States in Washington, DC.

Given the EU's largely open internal borders, U.S. officials have been encouraging European governments and the EU to bolster intra-European information exchanges and urging the EU to make greater use of existing EU-wide databases, such as the SIS and those managed by Europol. U.S. officials also have expressed support for efforts to establish an EU PNR system. Following the November 2015 attacks in Paris, President Obama called on the EU "to finally implement the agreement that's been long in the works that would require airlines to share passenger information, so we can do more to stop foreign terrorist fighters from entering our countries undetected."[13] Furthermore, U.S. officials and analysts contend that the foreign fighter phenomenon underscores the importance of close law enforcement ties with European allies and existing U.S.-EU information-sharing arrangements, including those related to tracking terrorist financing and sharing airline passenger data.

Nevertheless, some challenges remain in the evolving U.S.-EU counterterrorism relationship. Among the most prominent are long-standing data privacy and data protection concerns, which have complicated negotiations on a range of U.S.-EU information-sharing agreements over the years. These issues have received renewed attention in the wake of the unauthorized disclosures since June 2013 of U.S. National Security Agency (NSA) surveillance activities. Other issues that have led to periodic tensions include detainee policies, differences in the U.S. and EU terrorist designation lists, and balancing measures to improve border controls and border security with the need to facilitate legitimate transatlantic travel and commerce. U.S. legislation passed in December 2015 to strengthen the security of the U.S. Visa Waiver Program (VWP)—largely in

[11] U.S. Department of Justice, Remarks by Attorney General Holder Urging International Effort to Confront Threat of Syrian Foreign Fighters, July 8, 2014.

[12] White House, "Fact Sheet: Comprehensive U.S. Government Approach to Foreign Terrorist Fighters in Syria and the Broader Region," press release, September 24, 2014.

[13] Office of the Press Secretary, White House, "Remarks by President Obama and President Hollande of France in Joint Press Conference," November 24, 2015.

response to worries about Europeans fighting with or inspired by the Islamic State—has also raised some concerns in the EU.

Developing U.S.-EU Links

Contacts between U.S. and EU officials—from the cabinet level to the working level—on police, judicial, and border control policy matters have increased substantially since 2001, and have played a crucial role in developing closer U.S.-EU ties. The U.S. Departments of State, Justice, Homeland Security, and the Treasury have been actively engaged in this process.[14] The Secretary of State, U.S. Attorney General, and Secretary of Homeland Security meet at the ministerial level with their respective EU counterparts at least once a year, and a U.S.-EU working group of senior officials meets once every six months to discuss police and judicial cooperation against terrorism. In addition, the United States and the EU have developed a regular dialogue on terrorist financing and have established a high-level policy dialogue on border and transport security to discuss issues such as passenger data-sharing, cargo security, biometrics, visa policy, and sky marshals. Over the last few years, U.S. and EU officials have also engaged in expert-level dialogues on critical infrastructure protection and resilience, and preventing violent extremism.

U.S. and EU agencies have also established reciprocal liaison relationships. Europol has posted two liaison officers in Washington, DC, and the United States has stationed 14 officers at Europol headquarters in The Hague, Netherlands, to work with Europol on counterterrorism and other international crimes, such as counterfeiting and cybercrime. The 14 officers represent 11 different U.S. federal law enforcement agencies, including the Federal Bureau of Investigation (FBI) and the Secret Service. Europol supports approximately 500 cases a year involving U.S. authorities, which have led to operational successes in countering a range of transnational crimes (including the 2014 operation against online "dark net" marketplaces selling illicit products such as drugs, weapons, and stolen personal data).[15] Since 2006, a U.S. liaison has also worked at Eurojust headquarters in The Hague as part of a wider U.S.-Eurojust agreement to facilitate cooperation between European and U.S. prosecutors on terrorism and other cross-border criminal cases.

Law Enforcement and Intelligence Cooperation Agreements

U.S.-EU efforts against terrorism have produced a number of accords that seek to improve police and judicial cooperation. In 2001 and 2002, two U.S.-Europol agreements were concluded to allow U.S. law enforcement authorities and Europol to share both "strategic" information (threat tips, crime patterns, and risk assessments) as well as "personal" information (such as names, addresses, and criminal records). U.S.-EU negotiations on the personal information accord proved especially arduous, as U.S. officials had to overcome worries that the United States did not meet EU data protection standards. The EU considers the privacy of personal data a basic right, and EU regulations are written to keep such data out of the hands of law enforcement authorities as much as possible. EU data protection concerns also reportedly slowed negotiations over the 2006 U.S.-Eurojust cooperation agreement noted above. In 2007, the United States and the EU also signed

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

[15] Europol, "Increased Law Enforcement Cooperation Between the United States and Europe," press release, February 25, 2015.

an agreement that sets common standards for the security of classified information to facilitate the exchange of such information.

In 2010, two new U.S.-EU-wide treaties on extradition and mutual legal assistance (MLA) entered into force following their approval by the U.S. Senate and the completion of the ratification process in all EU member states.[16] These treaties, signed by U.S. and EU leaders in 2003, seek to harmonize the bilateral accords that already exist between the United States and individual EU members, simplify the extradition process, and promote better information-sharing and prosecutorial cooperation. Washington and Brussels hope that these two agreements will be useful tools in combating not only terrorism, but other transnational crimes such as financial fraud, organized crime, and drug and human trafficking.

In negotiating the extradition and MLA agreements, the U.S. death penalty and the extradition of EU nationals posed particular challenges. Washington effectively agreed to EU demands that suspects extradited from the EU will not face the death penalty, which EU law bans. U.S. officials also relented on initial demands that the treaty guarantee the extradition of any EU national. They stress, however, that the extradition accord modernizes existing bilateral agreements with individual EU members, streamlines the exchange of information and transmission of documents, and sets rules for determining priority in the event of competing extradition requests between the United States and EU member states. The MLA treaty will provide U.S. authorities access to European bank account and financial information in criminal investigations, speed MLA request processing, allow the acquisition of evidence (including testimony) by video conferencing, and permit the participation of U.S. authorities in joint EU investigations.[17]

Despite these growing U.S.-EU ties and agreements in the law enforcement area, some critics continue to doubt the utility of collaborating with EU-wide bodies given good existing bilateral relations between the FBI and CIA (among other agencies) and national police and intelligence services in EU member states. Many note that Europol lacks enforcement capabilities, and that its effectiveness to assess and analyze terrorist threats and other criminal activity largely depends on the willingness of national services to provide it with information. Meanwhile, European officials complain that the United States expects intelligence from others, but does not readily share its own. Others contend that European opposition to the U.S. death penalty or resistance to handing over their own nationals may still slow or prevent the timely provision of legal assistance and the extradition of terrorist suspects in some cases. Nevertheless, most U.S. and European officials appear committed to enhanced cooperation with EU law enforcement entities such as Europol. In early 2015, U.S. and Europol officials signed two new agreements aimed at improving U.S.-Europol cooperation against foreign fighters and illegal immigration, especially as exploited by organized crime groups.[18]

[16] In September 2006, former U.S. President George W. Bush transmitted the U.S.-EU treaties on extradition and MLA to the Senate for its advice and consent, along with separate bilateral instruments signed by the United States and individual EU member states that reconciled the terms of existing bilateral extradition and MLA treaties with the new EU-wide treaties. The Senate gave its advice and consent in September 2008. All EU member states also had to transpose the terms of the U.S.-EU extradition and MLA accords into their national laws. Following the completion of this process in all EU member countries, the United States and the EU exchanged the instruments of ratification for both agreements in October 2009, thus allowing them to enter into force in February 2010.

[17] U.S. Department of Justice, "U.S./EU Agreements on Mutual Legal Assistance and Extradition Enter into Force," press release, February 1, 2010.

[18] Europol, "Increased Law Enforcement Cooperation Between the United States and Europe," press release, February 25, 2015.

Tracking and Suppressing Terrorist Financing

The United States and the EU have been active partners in efforts to track and stem terrorist financing. The two sides cooperate frequently in global forums, such as the United Nations and the intergovernmental Financial Action Task Force, to suppress terrorist financing and to improve international financial investigative tools. The United States and the EU both benefit from an agreement that allows U.S. authorities access to financial data held by a Belgian-based consortium of international banks—known as SWIFT, or the Society for Worldwide Interbank Financial Telecommunications—as part of the U.S. Treasury Department's Terrorist Finance Tracking Program (TFTP). The TFTP has reportedly generated more than 7,000 investigative leads for EU governments, and U.S. and EU officials assert that many of these leads have helped in the prevention or investigation of terrorist attacks in Europe.[19] However, the TFTP and the U.S.-EU agreement permitting the sharing of SWIFT data remains controversial in Europe due to ongoing data privacy concerns. (For more information on the U.S.-EU SWIFT agreement, see "Promoting Information Sharing and Protecting Data Privacy" below.)

Designating Terrorist Individuals and Groups

U.S. and EU officials have worked together successfully since 2001 to bridge many gaps in their respective lists of individuals and groups that engage in terrorist activities, viewing such efforts as important in terms of symbolically presenting a united U.S.-EU front, and in helping to curb terrorist financing. The EU maintains two separate lists of terrorist organizations and individuals. One list focuses on persons and groups associated with Al Qaeda and the Taliban that essentially enacts into EU law the post-9/11 U.N. Security Council sanctions against those individuals and organizations; it has been frequently updated over the years and now includes Al Qaeda-affiliated groups such as Jabhat al Nusra in Syria, the Nigerian-based Boko Haram, and the Islamic State (also known as ISIL or ISIS).[20] The second EU list, which contains terrorist persons or entities not affiliated with Al Qaeda, is often referred to as the EU's "common terrorist list" or "blacklist;" the composition of this list has been controversial at times and the subject of U.S.-EU debate.

The consolidated version of the EU's "common terrorist list" or "blacklist" includes over 80 individuals or entities based both in Europe and worldwide.[21] However, the specific law enforcement measures applied to those named depends on whether an individual or organization is considered "external" to the EU (i.e., those based primarily outside of EU territory such as Hamas and Hezbollah) or "internal" (i.e., those based within EU territory such as the Basque group ETA, the Real IRA, or the Italian anarchist Red Brigade). For "external" persons and groups, all EU member states are legally obligated to freeze the assets of those named, ensure that financial resources are not made available to them (within EU jurisdiction), and provide law enforcement assistance to each other in related police investigations and legal proceedings.[22] For "internal" persons and groups, inclusion on the EU's common terrorist list formally subjects them

[19] European Commission, "European Agenda on Security – State of Play," press release, November 17, 2015; also see U.S. Department of the Treasury, "Terrorist Finance Tracking Program: Questions and Answers," available at http://www.treasury.gov.

[20] See Council Regulation (EC) No. 881/2002, originally issued in May 2002.

[21] The legal basis in EU law for the EU's common terrorist list is Council Common Position 2001/931/CFSP, adopted December 27, 2001; it sets out the criteria for designating persons or groups as "terrorist" and identifies the actions that constitute terrorist acts.

[22] For the financial asset-freezing measures and other sanctions that EU member states must apply to "external" individuals or groups designated as terrorist, see Council Regulation (EC) No. 2580/2001, adopted December 27, 2001.

only to the list's strengthened police cooperation measures, but national governments generally seek to apply their own sanctions to stem financing for such individuals and entities.[23]

In order for a person or entity to be added to (or deleted from) the EU's common terrorist list, there must be unanimous agreement among all EU member states. Over the last decade, the United States and other countries have successfully lobbied the EU to add several organizations—such as the Turkish-based Kurdistan Worker's Party (PKK), the Revolutionary Armed Forces of Colombia (FARC), some Palestinian groups (including Hamas' military and political wings in 2001 and 2003 respectively),[24] and Hezbollah's military wing (in July 2013)—to the EU's common terrorist list. The United States has also taken some cues from the EU and has included a number of members of the Basque separatist group ETA, among others, to its terrorist designation lists.[25]

Nevertheless, fully harmonizing the U.S. and EU terrorist designation lists has generated some frictions periodically. For example, the EU remains hesitant about adding some suspected Hamas-related charities to its common terrorist list because some EU members view them as separate entities engaged in political or social work.[26] Several charities that the United States has designated as fronts for Hamas, such as the UK-based Interpal, have been investigated by European national authorities but have been cleared of funding Hamas terrorist activities. Given that such charities have passed scrutiny at the national level, it is unlikely that EU governments would agree to blacklist them at the EU level.[27]

For many years, EU member states were also divided on whether the Lebanese-based Hezbollah organization should be included on the EU's common terrorist list. The United States considers Hezbollah, which is backed by Syria and Iran, to be a foreign terrorist organization and applies financial and other sanctions to the group and its members. While some EU countries, such as the United Kingdom and the Netherlands, had long supported adding either all or part of Hezbollah to the EU's common list, France and other members had opposed doing so. Traditionally, EU governments that were hesitant about putting Hezbollah on the EU's common list argued that it would be counterproductive to managing relations with Lebanon given Hezbollah's role in the Lebanese government and its representation in Lebanon's parliament. Some EU member states were also apparently reluctant to add Hezbollah to the EU's list because they viewed Hezbollah as providing needed social services in some of Lebanon's poorest communities.

In 2012-2013, several events led to a renewed debate within the EU on Hezbollah, and to repeated U.S. (and Israeli) calls for the EU to add Hezbollah to its common terrorist list. These included the July 2012 bombing at an airport in Burgas, Bulgaria (in which five Israeli tourists

[23] Paul Ames, "EU Adopts Anti-terrorist Measures," Associated Press, December 28, 2001.

[24] In 2010, Hamas challenged its inclusion on the EU's terrorist list in the General Court of the European Union (part of the Court of Justice of the European Union, which interprets EU law and the legality of acts of the EU institutions). In December 2014, the General Court ruled that Hamas should be removed from the EU's common list of designated terrorist organizations on procedural grounds related to the decisionmaking processes used in adding the group to the list more than a decade ago. EU officials pointed out that the court's ruling did not address the merits of Hamas's inclusion on the list. In January 2015, EU officials announced they would appeal the decision and that the restrictive measures against Hamas would remain in place during the appeal process.

[25] "U.S. Takes Action with EU on Expanded Terror List," *Agence France Presse*, May 3, 2002.

[26] The EU common terrorist list currently includes one charity that is believed to be related to Hamas: Al-Aqsa, e.V. (or the Al-Aqsa Foundation), located throughout Europe.

[27] Of 11 charities currently designated by the United States as front organizations for Hamas, five are based primarily in Europe (including Al-Aqsa, e.V.). For more information, see U.S. Treasury Department, http://www.treasury.gov/resource-center/terrorist-illicit-finance/Pages/protecting-fto.aspx.

and their Bulgarian bus driver were killed) that has been linked to Hezbollah, as well as the March 2013 conviction in Cyprus of a Hezbollah operative (with dual Lebanese-Swedish citizenship) involved in planning attacks on Israeli tourists there. In addition, Hezbollah's intervention in Syria's civil war and its active military and logistical support of the Syrian government of Bashar al Asad prompted further appeals—both from within and outside Europe—urging EU action against Hezbollah.

In late July 2013, the EU announced that its 28 member states had agreed to add Hezbollah's military wing to its common terrorist list, but not the entire Hezbollah organization. Many observers viewed this as a "compromise" position that was more amenable to those EU members still concerned that adding all of Hezbollah could destabilize Lebanon and reduce the EU's influence in the region. In adopting its decision to include Hezbollah's military wing on its common terrorist list, the EU also asserted that doing so "does not prevent the continuation of dialogue with all political parties in Lebanon" oor the "legitimate transfers to Lebanon and the delivery of assistance, including humanitarian assistance, from the European Union and its Member States in Lebanon."[28]

Many analysts judged that some of the most important implications of the EU's decision were largely symbolic, in terms of sending Hezbollah a message that the EU would not tolerate terrorist attacks within its borders and that the organization's terrorist activities would endanger any legitimacy it may have as a political and social actor. Some experts hoped that the EU designation would spur EU governments to initiate or enhance intelligence investigations into activities that may be tied to Hezbollah's military wing and thus make Europe a far less attractive base of operations for Hezbollah. Nevertheless, critics contended that listing only Hezbollah's military wing was insufficient because Hezbollah would still be allowed to fundraise in Europe.[29]

Successive U.S. Administrations and many Members of Congress have long urged the EU to include Hezbollah on its common terrorist list. Following Bulgaria's announcement in February 2013 implicating Hezbollah in the Burgas bombing, the Obama Administration called on Europe "to take proactive action to uncover Hezbollah's infrastructure and disrupt the group's financing schemes and operational networks in order to prevent future attacks."[30] In the wake of the Burgas bombing, individual Members and groups of Members, in both the House and Senate, sent several letters to EU officials and institutions calling upon the EU to add Hezbollah to its terrorist list. At the end of the 112th Congress, the Senate passed S.Res. 613 in December 2012, and the House passed H.Res. 834 in January 2013, both of which called on the governments of Europe and the EU to designate Hezbollah as a terrorist organization and to impose sanctions. The Obama Administration and many Members of Congress have welcomed the EU's decision to put Hezbollah's military wing on its common terrorist list as a positive step.[31]

[28] European Union, "Joint Council and Commission Declaration on the Specific Restrictive Measures to Combat Terrorism," press release, July 25, 2013.

[29] Michael Birnbaum and Ruth Eglash, "EU Designates Hezbollah's Military Wing as a Terrorist Organization," *Washington Post*, July 22, 2013; Matthew Levitt, "Europe's Moment of Decision on Hezbollah," Washington Institute for Near East Policy, July 22, 2013.

[30] Statement by (then) Assistant to the President for Homeland Security and Counterterrorism John Brennan on Bulgaria's Announcement of Hezbollah's Role in the 2012 Burgas Terrorist Attack, The White House, February 5, 2013.

[31] Joshua Chaffin and Abigail Fielding-Smith, "EU Declares Hizbollah Military Wing a Terrorist Organization," *Financial Times*, July 22, 2013; Julian Pecquent, "Lawmakers Welcome EU Adding Hezbollah to its Terror List," TheHill.com, July 22, 2013.

Promoting Information Sharing and Protecting Data Privacy

Although the United States and the EU both recognize the importance of sharing information to disrupting terrorist activity, data privacy has been and continues to be a key U.S.-EU sticking point. As noted previously, the EU considers the privacy of communications and the protection of personal data to be human rights; 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." In the negotiation of several U.S.-EU information-sharing accords, some EU officials have been concerned about whether the United States could guarantee a sufficient level of protection for European citizens' personal data. In particular, some Members of the European Parliament (MEPs) and many European civil liberty groups have long argued that elements of U.S.-EU information-sharing agreements violate the privacy rights of EU citizens.

The unauthorized disclosures since June 2013 of U.S. National Security Agency (NSA) surveillance programs and the spate of subsequent allegations of U.S. collection activities in Europe (including reports that U.S. intelligence agencies have monitored EU diplomatic offices and computer networks, as well as German Chancellor Angela Merkel's mobile phone) have strained transatlantic trust and exacerbated EU worries about U.S. data protection safeguards.[32] Consequently, many analysts are increasingly concerned about the future of U.S.-EU information-sharing arrangements, especially given the deep dismay of many MEPs. As discussed in this section, many U.S.-EU information-sharing accords require the approval of the European Parliament, which has not been shy in the past about opposing or demanding changes to accords such as SWIFT and the U.S.-EU Passenger Name Record (PNR) agreement that permits sharing airline passenger data.

In July 2013, the European Parliament passed a resolution expressing serious concerns about the reported U.S. surveillance programs and established its own special working group (within the Parliament's civil liberties committee) to investigate the alleged U.S. collection activities, as well as similar, related surveillance practices by security services in certain EU member states.[33] The Parliament's working group was chaired by Claude Moraes, a British MEP from the Socialists and Democrats (S&D) political group. In March 2014, the full Parliament adopted the so-called "Moraes report," which was deeply critical of the NSA's alleged mass surveillance programs and contained a number of recommendations pertaining to a wide range of U.S.-EU security and economic issues.[34]

With respect to U.S-EU information-sharing arrangements, the "Moraes report" noted concerns about the U.S.-EU PNR accord and reiterated previous calls from some MEPs to suspend the SWIFT agreement. The "Moraes report" urged the timely conclusion of the ongoing negotiations on the umbrella U.S.-EU Data Privacy and Protection Agreement (DPPA), and called on the United States to revise its legislation to recognize the privacy rights of EU citizens and to provide them with judicial remedies for any potential violations. Although the Parliament's resolution

[32] Michael Birnbaum, "EU Fury on Allegations of U.S. Spying," *Washington Post*, June 30, 2013; Alison Smale, "Indignation Over U.S Spying Spreads in Europe," *New York Times*, October 24, 2013. For more information on the NSA surveillance programs, see CRS Report R43134, *NSA Surveillance Leaks: Background and Issues for Congress*, by Catherine A. Theohary and Edward C. Liu; and CRS Report R43459, *Overview of Constitutional Challenges to NSA Collection Activities*, by Edward C. Liu, Andrew Nolan, and Richard M. Thompson II.

[33] See European Parliament resolution P7_TA(2013)0322, adopted July 4, 2013 (with 483 votes in favor, 98 opposed, and 65 abstentions); also see "Parliament To Launch Enquiry Into U.S. Eavesdropping," EurActiv.com, July 3, 2013.

[34] See European Parliament resolution P7_TA(2014)0230, adopted March 12, 2014 (with 544 votes in favor, 70 opposed, and 60 abstentions). The full text of the "Moraes report" is contained in this resolution.

approving the "Moraes report" is not binding on the European Commission or the EU's member states, it does express the "sense" of the Parliament (similar to House and Senate resolutions) and carries a degree of political weight.

The reported NSA programs and other alleged U.S. spying activities also spurred the European Parliament to demand that EU data protection reforms, which have been under discussion in the EU since early 2012, should include even stronger safeguards than those initially proposed by the European Commission for data transferred outside the EU, including to the United States. In December 2015, the Parliament and the EU member states reached political agreement on new data protection rules, which are expected to receive final approval in early 2016. Some U.S. officials and business leaders worry that some of the new provisions could impede U.S.-European law enforcement cooperation and be overly burdensome for U.S. companies.

U.S. officials have sought to reassure EU leaders and MEPs that U.S. surveillance activities operate within U.S. law and are subject to oversight by all three branches of the U.S. government. Some observers note that the United States has been striving to demonstrate that it takes EU concerns seriously and is open to improving transparency, in part to maintain European support for the SWIFT and the PNR accords. At the EU's request, a high-level U.S.-EU working group was established to discuss the reported NSA surveillance operations, especially the so-called PRISM program (in which the NSA allegedly collected data from leading U.S. Internet companies), and to assess the "proportionality" of such programs and their implications for the privacy rights of EU citizens.[35]

In November 2013, the European Commission (the EU's executive) issued a report on the findings of this working group, along with recommendations for addressing European concerns about U.S.-EU data flows and restoring transatlantic trust.[36] U.S. and EU policymakers have been seeking possible ways to implement some of the Commission's proposals. In June 2014, then-U.S. Attorney General Holder announced that as part of efforts to conclude the DPPA, the Obama Administration would seek to work with Congress to enact legislation to provide EU citizens with the right to pursue redress in U.S. courts for certain law enforcement data privacy violations—a key EU demand. In the 114th Congress, the Judicial Redress Act (H.R. 1428 and S. 1600), was introduced for this purpose; H.R. 1428 completed its passage through the House and Senate in mid-February 2016 and was signed into law (P.L. 114-126) on February 24, 2016, (For more information, see "U.S.-EU "Umbrella" Data Privacy and Protection Agreement" below.)

The U.S.-EU SWIFT Accord

Controversy over Europe's role in the U.S. Terrorist Finance Tracking Program surfaced originally in 2006, following press reports that U.S. authorities had been granted secret access to SWIFT financial data since 2001. In an attempt to assure Europeans that their personal data was being protected, U.S. officials asserted that SWIFT data was used only for counterterrorism purposes, was obtained by the U.S. Treasury Department by administrative subpoena, and that no data mining occurred as part of the TFTP. In June 2007, the United States and the EU reached a deal to allow continued U.S. access to SWIFT data for counterterrorism purposes, but some

[35] On the EU side, this ad hoc working group was co-chaired by the European Commission and the Presidency of the Council of the European Union (which rotates among the member states every six months), with participation from other EU foreign policy, counterterrorism, and data protection officials; U.S. participants included officials from the U.S. Department of Justice, the State Department, the Department of Homeland Security, and the Office of the Director of National Intelligence.

[36] European Commission, "European Commission Calls on the U.S. to Restore Trust in EU-U.S. Data Flows," press release, November 27, 2013.

European politicians and privacy groups remained worried about whether the program was consistent with EU rights and data protection standards.[37]

In 2009, changes to SWIFT's systems architecture—including a reduction in the amount of data stored on U.S. servers and the transfer of a large portion of data to a storage location in Europe—necessitated a new U.S.-EU agreement to permit the continued sharing of SWIFT data with the U.S. Treasury Department. In November 2009, the European Commission reached a new accord with the United States on SWIFT. However, under the EU's new Lisbon Treaty, the European Parliament gained the right to approve or reject international agreements such as the SWIFT accord by majority vote. In February 2010, the Parliament rejected this new version of the U.S.-EU SWIFT agreement by a vote of 378 to 196 (with 31 abstentions); those MEPs who opposed the accord claimed that it did not contain sufficient protections to safeguard the personal data and privacy rights of EU citizens. Given the EP's long-standing concerns about SWIFT and the TFTP, many observers were not surprised that some MEPs took the opportunity to both assert the Parliament's new powers and to halt U.S. access to much of the SWIFT data until their views regarding the protection of data privacy and civil liberties were taken onboard more fully.

In May 2010, the European Commission and U.S. authorities began negotiating a revised U.S.-EU SWIFT agreement that could garner the necessary Parliament support. Two key EP concerns related to guaranteeing judicial remedy for European citizens in the United States in the event of possible data abuse, and the use of "bulk data" transfers. Many MEPs wanted more targeted transfers and less data included in any transfer, but U.S. and EU officials contended that such "bulk" transfers were essentially how the SWIFT system worked and had to be maintained for technical reasons. Some MEPs also called for greater supervision by an "appropriate EU-appointed authority" over U.S. access to SWIFT data.[38]

In June 2010, U.S. and EU officials concluded a new draft SWIFT agreement. Among other provisions, the draft provided for the possibility of administrative and legal redress for EU citizens in the United States and gave Europol the authority to approve or reject U.S. Treasury Department requests for SWIFT data. Press reports indicated, however, that some MEPs were still unhappy with several of the draft's provisions. In order to avoid another "no" vote by the Parliament, EU and U.S. officials agreed to two additional changes to the draft. First, a new provision was included in the draft effectively guaranteeing that an independent observer appointed by the European Commission would be based in Washington, DC, to oversee (along with SWIFT personnel) the extraction of SWIFT data.[39] The second change required the European Commission to present plans for an EU equivalent to the U.S. TFTP within a year. Such a "European TFTP" would be aimed at enabling the EU to extract SWIFT data on European soil and send the targeted results onward to U.S. authorities, thereby avoiding "bulk data" transfers to the United States in the longer term.[40]

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[37] "Frattini Claims Major Advance in Data Privacy Dispute," *European Report*, June 29, 2007; David S. Cohen, U.S. Treasury Department Assistant Secretary for Terrorism and Financial Intelligence, Remarks to the Washington Institute for Near East Policy, April 7, 2010.

[38] "MEPs Hail Historic Rejection of SWIFT Deal," *Agence Europe*, February 13, 2010; "SWIFT: Commission To Negotiate Under Pressure from EP," *Europolitics*, April 23, 2010.

[39] Toby Vogel, "SWIFT Deal on Data Sharing with U.S. Reopened," *European Voice*, June 24, 2010; "SWIFT: Rapporteur Announces Last-Minute Agreement," *Europolitics*, June 25, 2010.

[40] In July 2011, the European Commission issued a preliminary study with several options for establishing what it termed a European Terrorist Finance Tracking System (TFTS). After assessing these various options, in November 2013, the Commission concluded that establishing an EU TFTS would raise serious challenges in terms of data storage and protection, pose technical difficulties, and entail significant financial costs. As such, the Commission essentially

The European Parliament approved the final iteration of the U.S.-EU SWIFT accord on July 8, 2010, by 484 votes to 109 (with 12 abstentions). The agreement entered into force on August 1, 2010, for a period of five years. It also provided that the U.S.-EU accord would be automatically extended for subsequent periods of one year unless one of the parties notified the other at least six months in advance of its intention to not extend the agreement.[41]

Despite the agreement's entrance into force, some MEPs remained concerned about the EU's role in the U.S. TFTP and whether the SWIFT accord was being properly implemented. Several MEPs criticized Europol for too readily approving vague U.S. requests for SWIFT data. As part of a review of the U.S.-EU SWIFT agreement released in March 2011, the European Commission recommended certain measures to help make the TFTP more transparent, including by providing more information to Europol in writing. In December 2012, the Commission released the results of a second review of the agreement. This second review concluded that the TFTP had provided concrete benefits in the fight against terrorism (including for EU countries), that the agreement's safeguards were being properly implemented, and that the recommendations presented in the first review report of 2011 had been followed up to a large extent.[42]

As noted previously, the unauthorized disclosures since June 2013 of alleged U.S. surveillance activities in Europe have renewed European concerns, especially in the European Parliament, about how the United States handles the personal data of EU citizens. In October 2013, following press reports that the NSA had purportedly monitored German Chancellor Merkel's mobile phone and additional allegations of NSA collection operations in France, Spain, and other EU countries, the Parliament passed by a slight majority a nonbinding resolution calling for the immediate suspension of the U.S.-EU SWIFT accord.[43] The EP's March 2014 resolution approving the "Moraes report" also asserted that the U.S.-EU SWIFT agreement should be suspended. These resolutions, however, were largely symbolic because actually suspending the SWIFT accord would require the European Commission and the member states to take action, which they are not inclined to do. Reviews of the TFTP program in late 2013 and mid-2014 indicate that SWIFT data has generated significant leads for European intelligence services and been helpful in investigating numerous terrorist threats, including during the 2012 London Olympics and those posed by EU nationals training with Islamist extremist groups in Syria and Iraq.[44]

advised against pursuing an EU TFTS, but noted that the final decision on whether to create a system rested with the EU member states and the European Parliament. Most observers expect that the EU will not move forward with creating a TFTS at this time. European Commission, "EU-US Agreements: Commission Reports on TFTP and PNR," press release, November 27, 2013.

[41] Agreement between the European Union and the United States of America on the Processing and Transfer of Financial Messaging Data from the European Union to the United States for the Purposes of the Terrorist Finance Tracking Program, *Official Journal of the European Union*, July 27, 2010.

[42] European Parliament, "Parliament Gives Green Light for SWIFT II," press release, July 8, 2010; "Europe Seeks More Openness from U.S. Anti-terror Program," *International Herald Tribune*, March 18, 2011; European Commission, "Terrorist Finance Tracking: Citizen's Safeguards Are in Place," press release, December 14, 2012.

[43] European Parliament resolution P7_TA(2013)0449, adopted October 23, 2013, with 280 votes in favor, 245 opposed, and 30 abstentions.

[44] European Commission, "EU-US Agreements: Commission Reports on TFTP and PNR," press release, November 27, 2013; Report from the European Commission to the European Parliament and the Council on the Joint Review of the Implementation of the Agreement between the European Union and the United States of America on the Processing and Transfer of Financial Messaging Data from the European Union to the United States for the Purposes of the Terrorist Finance Tracking Program, August 11, 2014.

Passenger Name Record (PNR) Data

In May 2004, the United States and EU reached an initial agreement permitting airlines operating flights to or from the United States to provide U.S. authorities with passenger name record data in their reservation and departure control systems within 15 minutes of a flight's departure (in order to comply with provisions in the U.S. Aviation and Transportation Security Act of 2001, P.L. 107-71). This PNR accord was controversial in Europe because of fears that it violated the privacy rights of EU citizens and did not contain sufficient protections to safeguard their personal data. As a result, the European Parliament lodged a case against the PNR agreement in the EU Court of Justice; in May 2006, the Court annulled the PNR accord on grounds that it had not been negotiated on the proper legal basis. EU officials stressed, however, that the Court did not rule that the agreement infringed on European privacy rights.

In July 2007, the United States and the EU concluded negotiations on a new, seven-year agreement to ensure the continued transfer of PNR data. U.S. officials appeared pleased with several provisions of this new deal, such as allowing the U.S. Department of Homeland Security to share PNR data with other U.S. agencies engaged in the fight against terrorism; extending the length of time that the United States could store such data (from 3½ to 15 years ultimately); and permitting the United States to access sensitive information about a passenger's race, ethnicity, religion, and health in exceptional circumstances. The new accord also required airlines to send data from their reservation systems to U.S. authorities at least 72 hours before a flight's departure. The United States agreed, however, to reduce the number of fields from which data would be collected, from 34 to 19.[45]

Although the 2007 U.S.-EU PNR agreement was provisionally in force since its signing, the European Parliament had to approve it in order for the accord to be formally signed and remain in force. Many MEPs, however, objected to key elements of the 2007 agreement, including the amount of PNR data transferred; the length of time such data could be kept; and what they viewed as an inadequate degree of redress available for European citizens for possible data misuse. Some MEPs also worried that U.S. authorities might use PNR data for "data mining" or "data profiling" purposes. At the same time, many MEPs recognized that rejecting the U.S.-EU PNR agreement would create legal uncertainties and practical difficulties for both travelers and air carriers. As such, in May 2010, the Parliament agreed to postpone its vote on the 2007 PNR deal, calling instead upon the European Commission to present a "global external PNR strategy" setting out general requirements for all EU PNR agreements with other countries.[46]

In September 2010, the European Commission issued its "global external PNR strategy"[47] and called for the renegotiation of the EU's PNR agreements with the United States, Australia, and Canada. Among other general principles proposed in the "external PNR strategy," the Commission asserted that PNR data should be used exclusively to combat terrorism and other serious transnational crimes, passengers should be given clear information about the exchange of their PNR data and have the right to effective administrative and judicial redress, and that a decision to deny a passenger the right to board an airplane must not be based solely on the automated processing of PNR data. The Commission also proclaimed that the categories of PNR data exchanged should be as limited as possible and that PNR data should be retained no longer than absolutely necessary. In November 2010, the European Parliament welcomed the

[45] Paul Lewis and Spencer Hsu, "Travelers Face Greater Use of Personal Data," *Washington Post*, July 27, 2007.

[46] "EP Suspends Vote on PNR," *Agence Europe*, May 6, 2010.

[47] Communication from the Commission on the Global Approach to Transfers of Passenger Name Record (PNR) Data to Third Countries, COM/2010/0492, September 21, 2010.

Commission's PNR strategy and endorsed the opening of new PNR negotiations with the United States. The Parliament emphasized, however, that the exchange of PNR data must be both "necessary" and "proportional," reiterated that PNR data must not be used for data mining or profiling, and called on the Commission to also explore less intrusive alternatives.[48]

Although many U.S. officials had been wary about reopening negotiations on the PNR accord, the Obama Administration assented to discussing at least some adjustments, largely in recognition of the fact that the EP was unlikely to approve the 2007 agreement. U.S.-EU negotiations on a revised PNR accord were launched in December 2010. U.S. officials continued to maintain that the 2007 accord sufficiently protected both the data collected and individual privacy rights; they noted that two joint reviews conducted by the U.S. Department of Homeland Security (DHS) and the European Commission since 2004 confirmed that the United States had not misused the PNR data. U.S. policymakers asserted that any revised PNR accord must not degrade the operational effectiveness of the current PNR program. U.S. officials also cautioned that any new PNR agreement with the EU must not invalidate bilateral PNR deals that the United States had concluded with various EU member states.[49] In mid-May 2011, resolutions were introduced in the House (H.Res. 255) and passed in the Senate (S.Res. 174) essentially supporting the existing 2007 U.S.-EU PNR accord and urging DHS to reject any efforts by the EU to modify the agreement in a way that would degrade its usefulness in the fight against terrorism.

In late May 2011, the United States and the European Commission concluded negotiations on a revised PNR agreement, a draft of which was leaked to the press. According to U.S. officials, the draft contained new innovations to enhance the protection of passengers' personal information.[50] For example, the May 2011 agreement introduced a new provision whereby after six months, portions of a passenger's record would be depersonalized and "masked" (or hidden); it decreased the time that PNR data would be stored in an "active" database; and it progressively restricted the number of authorized personnel with access to the data. U.S. officials contended that the draft accord provided greater legal certainty and clarity on a passenger's rights to redress, and affirmed that the United States would not make a decision to deny boarding based solely on the automated processing of PNR data. In addition, it recognized that should the EU in the future develop its own PNR system, the parties would consult to determine if it necessitated making any changes to the existing U.S.-EU accord in order to ensure full reciprocity between the two systems.[51]

Despite these revisions to the U.S.-EU PNR agreement, press reports indicated that some MEPs remained unsatisfied. They pointed out that the May 2011 version of the accord still allowed the United States to retain passenger data ultimately for up to 15 years (albeit in a "dormant" state after 5 years), did not reduce the amount of data transferred, and increased the requirement that airlines transmit the data to U.S. authorities from 72 hours before a flight departs to at least 96 hours. Furthermore, some MEPs worried that the new deal broadened the use of PNR data to more criminal offenses than contained in the 2007 iteration.[52]

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[48] EP Resolution P7_TA-PROV(2010)0397, November 11, 2010.

[49] "Will Napolitano Change 2007 PNR Accord?," *Europolitics Transport*, October 12, 2010; Edward Cody, "Armed with New Treaty, Europe Amplifies Objections to U.S. Data-sharing Demands," *Washington Post*, October 26, 2010; "MEPs Assent to Talks on Airline Passenger Information-sharing," *Agence Europe*, November 13, 2010.

[50] Statement by U.S. Ambassador to the EU, William Kennard, on the U.S.-EU PNR Agreement, May 26, 2011.

[51] As noted previously in this report, establishing an EU-wide system for the collection of PNR data has been discussed for years but delayed largely because of data privacy and protection issues. In December 2015, the Parliament and the EU member states reached a provisional agreement on an EU-wide PNR system, which is expected to receive final approval in early 2016.

[52] Alan Travis, "U.S. To Store Passenger Data for 15 Years," *The Guardian*, May 25, 2011.

In October 2011, the House Homeland Security Committee's Subcommittee on Counterterrorism and Intelligence held a hearing on intelligence-sharing and terrorist travel, at which the negotiations on the U.S.-EU PNR agreement figured prominently. U.S. officials testifying at the hearing asserted that the May 2011 draft of the PNR accord was stronger than the 2007 version, preserving and in some cases improving its operational effectiveness. At the same time, they noted, it addressed all concerns raised by the EU, including those pertaining to data security and protection, the scope of offenses covered, and the right of passengers to redress.[53]

Nevertheless, in an effort to further assuage European concerns, U.S. and EU negotiators continued to work on revising the PNR accord. In November 2011, the United States and the EU concluded a new draft PNR agreement, which the European Commission asserted contained "real improvements" over the version leaked in May. Although the November 2011 iteration was very similar to the May 2011 version, two further changes were included to meet EU demands: limiting the use of PNR data specifically to terrorist or other serious transnational crimes that could result in three years or more in prison; and varying the retention time depending on the type of crime under investigation (data would be retained up to 15 years for terrorist investigations, but only 10 years for investigations into other types of crimes).[54]

In December 2011, EU member states approved the new U.S.-EU PNR agreement, although Germany and Austria abstained because they still viewed the data retention and redress provisions in the new accord as insufficient. Some MEPs shared these concerns, maintaining that the additional changes in the November 2011 PNR accord were largely cosmetic and that it should therefore be rejected. Other MEPs backed the new agreement, noting European Commission arguments that the accord contained stronger data protection guarantees than the 2007 version. A number of MEPs asserted they would vote for the 2011 accord despite some misgivings regarding the data privacy safeguards because in their view, it was better to have an agreement providing the airlines with legal certainty than no agreement at all (the Commission contended that should the Parliament reject this latest version of the PNR agreement, the United States had made clear there would be no further negotiations).[55]

On April 19, 2012, the full Parliament approved the U.S.-EU PNR agreement by a vote of 409 to 226, with 33 abstentions. U.S. officials welcomed the Parliament's endorsement, asserting that it reaffirmed the shared commitment of the United States and the EU to countering terrorism and other transnational threats while protecting privacy and other civil rights.[56] The U.S.-EU PNR accord was officially adopted by the EU on April 26, 2012, and entered into force on August 8, 2012. It will be valid for a period of seven years and shall be renewed for a subsequent period of seven years unless one of the parties notifies the other of its intention to not extend the agreement at least 12 months in advance.[57]

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[53] House Committee on Homeland Security, Subcommittee on Counterterrorism and Intelligence, "How DHS Addresses the Mission of Providing Security, Facilitating Commerce and Protecting Privacy for Passengers Engaged in International Travel," 112th Congress, October 5, 2011.

[54] "EU-US PNR Agreement," *Agence Europe*, November 11, 2011; Valentina Pop, "Unhappy MEPs to Approve Passenger Data Deal," EUobserver.com, November 11, 2011.

[55] "PNR Agreement Will Not Be Renegotiated, Warns Malmstrom," *Europolitics Transport*, February 20, 2012; "MEPs Divided Over EU-US PNR; S&D Very Cautious," *Agence Europe*, February 29, 2012.

[56] Statement by U.S. Ambassador to the EU, William Kennard, on the European Parliament's Endorsement of the U.S.-EU PNR Agreement, April 19, 2012; "MEPs Bring an End to PNR Agreements Saga," *Agence Europe*, April 20, 2012.

[57] Agreement between the United States of America and the European Union on the Use and Transfer of Passenger Name Records to the United States Department of Homeland Security, *Official Journal of the European Union*, August 11, 2012.

In November 2013, the European Commission published the results of a U.S.-EU joint review of the PNR program. The Commission asserted that the PNR agreement provides an efficient tool to fight terrorism and other serious international crimes; it also noted that U.S. authorities respect their obligations under the accord and are implementing it correctly.[58] Nevertheless, in light of the renewed unease about U.S. data protection safeguards following the allegations of U.S. surveillance activities, some MEPs have raised questions about the PNR program. The Parliament's March 2014 resolution approving the "Moraes report" called on the European Commission to respond to concerns about whether U.S. laws provide adequate protection for PNR data saved in cloud systems operating on U.S. soil.

U.S.-EU "Umbrella" Data Privacy and Protection Agreement

Many U.S. and EU leaders believe that law enforcement information-sharing agreements such as SWIFT and PNR are vital tools in the fight against terrorism. At the same time, U.S. officials have often been frustrated by the need for painstaking and often time-consuming negotiations with the EU on every individual agreement that involves sharing personal data between the two sides. For many years, Washington has sought to establish an umbrella agreement in which the EU would largely accept U.S. data privacy standards as adequate and thus make the negotiation of future data-sharing accords easier in the law enforcement arena.

In 2009, the European Parliament called for a U.S.-EU framework agreement to help better ensure the protection of personal data exchanged between the two sides in the fight against terrorism and crime. In May 2010, the European Commission proposed a draft mandate for negotiating such an accord that could apply to all U.S.-EU data-sharing agreements in the law enforcement context. The Commission hoped that an overarching deal on data protection would help bridge what it views as U.S.-EU differences in the application of privacy rights and guarantee that all data transferred is subject to high standards of protection on both sides of the Atlantic. The Commission noted, however, that any such framework agreement would not provide the legal basis for the actual transfer of personal data between the EU and the United States, and that specific agreements on SWIFT or PNR, for example, would still be required.[59] EU member states approved the Commission's mandate in early December 2010.

In March 2011, the United States and the EU officially launched negotiations on an "umbrella" Data Privacy and Protection Agreement (DPPA) to protect personal information exchanged in a law enforcement context. U.S. officials asserted that this U.S.-EU accord should be based broadly on the principle of mutual recognition of each other's data protection systems, thus making it clear that while the U.S. and EU regimes may differ, they both protect citizens' rights to privacy and other civil liberties effectively. As such, U.S. authorities hoped that the negotiations would ultimately result in an EU finding of "adequacy" for U.S. data protection standards. Many analysts believed that the DPPA would likely build on the common personal data protection principles adopted by the United States and the EU in October 2009.[60]

In June 2012, U.S. and EU officials stated that considerable progress had been made in negotiating a DPPA, including on provisions related to data security, the transparency of data

[58] European Commission, "EU-US Agreements: Commission Reports on TFTP and PNR," press release, November 27, 2013.

[59] European Commission, "European Commission Seeks High Privacy Standards in EU-US Data Protection Agreement," press release, May 26, 2010.

[60] For more information, see U.S. Department of State, "U.S., EU Reach Agreement on Common Personal Data Protection Principles," press release, October 28, 2009.

processing, maintaining the quality and integrity of information, and oversight. However, some controversial issues remained, including purpose limitation, retention times, and redress.[61] For years, many EU officials and MEPs insisted that European citizens needed the right of judicial redress in the United States and pushed for the U.S. Privacy Act of 1974 to be amended to extend judicial redress to EU citizens (currently, the U.S. Privacy Act limits judicial redress to U.S. citizens and legal permanent residents). Successive U.S. Administrations countered that EU citizens could seek redress concerning U.S. government handling of personal information through other means, including agency administrative redress or judicial redress through other U.S. laws, such as the U.S. Freedom of Information Act. Amid the stumbling block of judicial redress, observers suggested that the DPPA negotiations were largely stalled.

The revelations and allegations since June 2013 of U.S. surveillance activities, however, injected renewed momentum into the DPPA discussions. In the European Parliament's previously noted July 2013 resolution on the NSA programs, MEPs called for the European Commission and U.S. authorities to resume the negotiations on a DPPA "without delay." The EP's "Moraes report" of March 2014 asserted that concluding the DPPA was a precondition for the restoration of transatlantic trust and urged the United States to revise its legislation to provide EU citizens with the right to judicial redress for any potential violations of their privacy rights.

In June 2014, then-U.S. Attorney General Holder announced that, "in support of our desire to bring the DPPA negotiations to conclusion, the Obama Administration is committed to seeking legislation that would ensure that, with regard to personal information transferred within the scope of our proposed DPPA ... EU citizens would have the same right to seek judicial redress for intentional or willful disclosures of protected information, and for refusal to grant access or to rectify any errors in that information, as would a U.S. citizen under the Privacy Act."[62] Observers suggested that this decision represented a concerted effort by the Obama Administration to spur final agreement on the DPPA and restore EU trust and confidence in U.S. data privacy and protection commitments. On September 8, 2015, U.S. and EU negotiators announced they had finalized and initialed the text of the DPPA.[63] The EU asserted that the DPPA would not be signed, however, until U.S. judicial redress legislation was adopted.

To help meet EU demands for U.S. judicial redress and facilitate conclusion of the DPPA, in March 2015, Representative Jim Sensenbrenner and Representative John Conyers introduced H.R. 1428, known as the Judicial Redress Act. An identical measure, S. 1600, was introduced by Senator Chris Murphy and Senator Orrin Hatch in June 2015. As introduced, both H.R. 1428 and S. 1600 would essentially extend the core of the judicial redress provisions in the U.S. Privacy Act to citizens of covered countries or regional organizations (such as the EU) with whom the United States has entered into an agreement "that provides for appropriate privacy protections for

[61] U.S. Department of Justice, "Joint Statement on the Negotiation of a EU-U.S. Data Privacy and Protection Agreement by Attorney General Eric Holder and European Commission Vice-President Viviane Reding," press release, June 21, 2012.

[62] U.S. Department of Justice, "Attorney General Holder Pledges Support for Legislation to Provide EU Citizens with Judicial Redress in Cases of Wrongful Disclosure of Their Personal Data Transferred to the U.S. for Law Enforcement Purposes," press release, June 25, 2014.

[63] Initially, neither the United States nor the European Commission officially released the text of the draft agreement because it had only been initialed and was not a final document. In late January 2016, the U.S. Department of Justice released the draft of the agreement in response to a Freedom of Information Act (FOIA) request submitted by the Electronic Privacy Information Center (EPIC), a U.S. privacy watchdog group. The draft text released by the Justice Department on the "Agreement Between the United States of America and the European Union on the Protection of Personal Information Relating to the Prevention, Investigation, Detection, and Prosecution of Criminal Offenses," is available at http://www.epic.org/foia/eu-us-data-transfer/EPIC-15-09-10-DOJ-FOIA-20160125-Final-Response.pdf.

information shared for the purpose of preventing, investigating, detecting, or prosecuting criminal offenses" (such as the DPPA).

Congressional action on the Judicial Redress Act took on added significance in the wake of the October 6, 2015, ruling by the Court of Justice of the European Union (CJEU, which is also known as the European Court of Justice, or ECJ) invalidating the U.S.-EU Safe Harbor Agreement that had permitted the transfer of personal data between European and U.S. companies since 2000. The CJEU essentially found that Safe Harbor did not provide "adequate" protection for personal data as required by EU law, in large part because of the U.S. surveillance programs disclosed in mid-2013. The CJEU decision also highlighted the lack of judicial remedies for EU citizens in the United States as a significant problem.

Many U.S. officials and industry leaders hoped that the Judicial Redress Act would ameliorate at least some European concerns about U.S.-EU data transfers in the commercial sector as well and strengthen confidence in the new "Privacy Shield," agreed in principle by U.S. and EU negotiators on February 2, 2016, to replace Safe Harbor.[64] Others note that the scope of the judicial redress in the U.S. legislation is not exactly equivalent to what U.S. persons and residents enjoy under the Privacy Act and relates specifically to information transferred in a law enforcement context. Thus, it is unclear to what extent the Judicial Redress Act might help the United States meet EU "adequacy" standards more broadly or ease concerns about U.S. government access to personal data in the commercial sector.[65]

H.R. 1428 passed the House on October 20, 2015, and was approved by the Senate Judiciary Committee on January 28, 2016, with an amendment introduced by Senator John Cornyn. The Cornyn amendment included additional provisions mandating that the Judicial Redress Act would be applicable only to citizens of countries or regional organizations that also permit the transfer of personal data for commercial purposes to the United States and whose data transfer policies "do not materially impede the national security interests of the United States." Some analysts suggest that this provision in the Judicial Redress Act may have provided further impetus for the U.S.-EU provisional agreement on Privacy Shield. H.R. 1428, as amended, passed the Senate on February 9, 2016, and the amended version was approved by the House on February 10; it was signed into law on February 24, 2016 (P.L. 114-126).

As noted above, adoption of the Judicial Redress Act is viewed as necessary for the formal signature of the U.S.-EU DPPA. The EU warmly welcomed the act's enactment. The European Commission stated, "The signature of the Judicial Redress Act by President Obama is a historic achievement in our efforts to restore trust in transatlantic data flows," and asserted that the act will pave the way for the signature of the DPPA.[66] Once signed, EU member states and the European Parliament must approve the DPPA for it to enter into force, a process that could take several months.[67]

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[64] The full text of the new U.S.-EU Privacy Shield agreement was released on February 29, 2016, at https://www.commerce.gov/privacyshield.

[65] For more information on the CJEU decision on the Safe Harbor Agreement and the subsequent development of the new U.S.-EU "Privacy Shield," see CRS Report R44257, *U.S.-EU Data Privacy: From Safe Harbor to Privacy Shield*, by Martin A. Weiss and Kristin Archick.

[66] European Commission, "Statement by Commissioner Věra Jourová on the Signature of the Judicial Redress Act by President Obama," press release, February 24, 2016.

[67] Congressional approval of the DPPA itself is not required because the United States negotiated the DPPA as an executive agreement. For more information on U.S. executive agreements, see CRS Report RL32528, *International Law and Agreements: Their Effect upon U.S. Law*, by Michael John Garcia.

Strengthening Border Controls and Transport Security

According to the U.S. Department of Homeland Security, roughly 30,000 passengers arrive daily from Europe at U.S. ports of entry, as do more than 3,000 commercial containers.[68] Over the last decade, the United States and the EU have emphasized cooperation in the areas of border control and aviation and maritime security, and have concluded several agreements on such issues. The two sides have sought to enhance international information exchanges on lost and stolen passports and to promote the use of interoperable biometric identifiers to improve travel document security. In January 2010, the United States and the EU issued a joint declaration in which they pledged to intensify U.S.-EU efforts to strengthen aviation security measures worldwide, and in October 2010, U.S.-EU collaboration played a key role in forging an International Civil Aviation Organization (ICAO) declaration on aviation security, agreed to by 190 countries. The United States and the EU have also worked together to improve cargo security and to strengthen global supply chain security. In a joint statement in June 2011, the United States and the EU reaffirmed their determination to bolster supply chain security and foster greater global cooperation on this issue. At the same time, U.S. and EU officials continue to grapple with finding the appropriate balance between improving border security and facilitating legitimate transatlantic travel and commerce.

Aviation and Air Cargo Security

Since the 2001 terrorist attacks in which airplanes were used as weapons, both the United States and the EU have implemented a range of measures aimed at improving aviation security.[69] Several incidents over the last few years have brought aviation and air cargo security to the forefront of U.S.-EU discussions again, especially the December 2009 attempt by a Nigerian passenger to blow up an airliner en route from Amsterdam to Detroit with a device concealed in his underwear; and the thwarted October 2010 "Yemen bomb plot," in which two Chicago-bound printer cartridge packages containing explosives were shipped from Yemen on various cargo and passenger flights (one package was transferred in Germany before being intercepted in the UK). The decision by U.S. authorities in early July 2014 to institute tighter rules for carrying electronic devices (such as mobile phones) onboard some international U.S.-bound flights, reportedly because of fears that Al Qaeda-linked groups could be seeking to use such devices to disguise explosives, highlights the continuing terrorist threat to aviation.

Many U.S. and EU rules and regulations implemented since 2001 have coincided closely, and the two sides have sought to work together to bridge gaps in their respective policies given the significant volume of transatlantic flights (more than 2,500 every week). For example, in 2003, some EU countries objected to new U.S. rules requiring armed air marshals on certain flights to and from the United States; U.S. officials pledged to consider alternative measures for European countries opposed to armed air marshals. Moreover, in 2008, the United States and the EU reached an agreement on coordinating air cargo security measures.[70] Among other provisions, the

[68] Testimony of Mark Koumans, Deputy Assistant Secretary for International Affairs, U.S. Department of Homeland Security, before the House Foreign Affairs Committee, Europe and Eurasia Subcommittee, "Overview of Security Issues in Europe," 112th Congress, May 5, 2011.

[69] The EU first adopted common rules on aviation security in 2002, detailing measures regarding access to sensitive airport areas, aircraft security, passenger screening and baggage handling, among others. These measures were revised and updated in 2008 and became fully applicable in April 2010.

[70] Ned Levi, "TSA To Finally Screen Air Cargo on Passenger Flights," *Consumer Traveler*, November 4, 2008. The text of the 2008 U.S.-EU agreement on air cargo security is available at http://www.tsa.gov/assets/pdf/eu_us_enhancing_air_cargo_security.pdf.

two sides pledged to institute commensurate systems to ensure the security of all cargo on passenger flights between their respective territories, in part to comply with a provision in the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) that mandates 100% screening of cargo transported on U.S. domestic and U.S.-bound international passenger flights equivalent to the level of security used for checked baggage.[71]

In June 2012, the United States and the EU announced that they had reached an agreement on an air cargo security partnership, in which each side will recognize the other's air cargo security regime, thereby eliminating duplication of security controls and the need to implement different regimes depending on the destination of air cargo. U.S. and EU officials assert that this mutual recognition of air cargo security regimes will enhance cargo security and result in huge savings for U.S. and European cargo operators in terms of both time and money, improving the speed of transatlantic shipments and reducing costs. As part of the agreement, both sides also pledged to exchange information on the evolution and the implementation of their security regimes. According to press reports, EU officials assert that this mutual recognition agreement will enable European operators to meet the U.S. requirement for 100% screening of cargo on passenger planes bound for the United States from abroad contained in the Implementing Recommendations of the 9/11 Commission Act of 2007, noted above.[72]

Despite a shared commitment to promote U.S.-EU cooperation in the areas of aviation and air cargo security, some differences in perspective remain. In the aftermath of the failed 2009 attack, the United States accelerated installation of body scanners at U.S. airports and encouraged the EU to follow suit. Although some EU countries and leaders supported installing body scanners at European airports, other EU member states were hesitant due to concerns that the scanners could compromise privacy rights and pose health dangers. Some Members of the European Parliament expressed similar worries. However, in July 2011, the European Parliament backed the use of body scanners at EU airports provided that safeguards were instituted to protect passenger privacy and ensure passenger health; the safeguards recommended by the EP included the requirement that scans only produce stick figure images and not body images, and a ban on x-ray scans (an alternative millimeter wave scan was permitted instead). The EP also asserted that the use of the scanners should be voluntary, with passengers having the right to opt for a manual search. In November 2011, the European Commission adopted the EP's conditions in setting common standards for the use of body scanners at EU airports, but member states are not required to deploy such scanners and some are unlikely to do so.[73]

Some EU officials and European Parliamentarians have also been uneasy about the use of body scanners at U.S. airports, given the large volume of European visitors to the United States. However, at least some European privacy and health worries were likely assuaged in January 2013, when the U.S. Transportation Security Administration (TSA) announced that it would

[71] In the United States, the screening of all cargo on passenger flights, as called for in P.L. 110-53, has been implemented in stages. The U.S. Transportation Security Administration (TSA) has required the screening of all cargo transported on U.S. domestic passenger flights since August 2010, and the screening of all cargo on international passenger flights inbound to the United States since December 2012. For more information, see CRS Report R41515, *Screening and Securing Air Cargo: Background and Issues for Congress*, by Bart Elias.

[72] European Commission, "EU-US Security Agreement Allows Cheaper and Faster Air Cargo Operations," press release, June 1, 2012; U.S. Transportation and Security Administration, "TSA and EU Achieve Unprecedented Air Cargo Security Through Agreement," press release, June 1, 2012; Nicola Clark, "U.S. and European Union Agree on Air Cargo Security," *New York Times*, June 1, 2012.

[73] "EU Puts Off Reply To U.S. Request for Airport Body Scanners," *Agence France Presse*, January 21, 2010; "Body Scanner Approved by EP, with Conditions," *Agence Europe*, July 7, 2011; "Europe Sets Rules for Airport Body Scanners," *Agence France Presse*, November 14, 2011.

remove all full-body scanners that produce detailed, revealing images by June 2013. Body scanners will remain at U.S. airports, but only those that produce more generic body images will be employed and most (but not all) of these scanners (either currently in use or contracted for by the TSA) use millimeter wave technology rather than low-dose x-rays. Many Members of Congress, like their counterparts in the European Parliament, had long expressed concerns that the more revealing body scanners violated passengers' privacy rights.[74]

Meanwhile, U.S. officials have been worried about planned changes to EU regulations governing liquids and gels in carry-on baggage onboard planes. Following the August 2006 disruption of a plot to use liquid explosives to blow up transatlantic flights, the United States and the EU began prohibiting passengers from carrying most liquids and gels onboard planes. The United States has worked with the EU and other countries to harmonize the small amounts of travel-sized liquids and gels that are permitted in carry-on baggage in an effort to minimize inconvenience to international travelers. In 2010, however, the EU announced plans to eliminate restrictions on liquids in cabin baggage by April 2013, following the introduction of liquid screening equipment in all EU airports. U.S. policymakers voiced concerns about the effectiveness of current liquid-screening technology and argued that it was premature to ease the liquid and gel restrictions. Some EU governments and segments of the airline industry expressed similar worries about airline security and noted that the planned changes could result in potential flight delays.

In light of these concerns, the EU postponed its original 2013 deadline for introducing liquid screening equipment and eliminating all restrictions on liquids and gels in carry-on baggage. The EU maintained that it was still committed to doing so in the longer term. In January 2014, as a first phase, the EU lifted the prohibitions on "duty-free" liquids and gels in cabin baggage, and hopes to end all restrictions on liquids and gels aboard planes by January 2016.[75]

Maritime Cargo Screening

In April 2004, the United States and the European Union signed a customs cooperation accord; among other measures, it calls for extending the U.S. Container Security Initiative (CSI) throughout the EU. CSI stations U.S. customs officers in foreign ports to help pre-screen U.S.-bound maritime cargo containers to ensure that they do not contain dangerous substances such as explosives or other weapons of mass destruction. Ten EU member states currently have ports that participate in CSI.

In May 2012, the United States and the EU agreed to recognize each other's trusted shipper programs in an effort to improve supply chain security and boost trade opportunities. This mutual recognition accord is intended to speed up customs procedures for some 15,000 U.S. and European companies designated as "trusted traders" by either the U.S. Customs-Trade Partnership Against Terrorism (C-TPAT) program or the EU's Authorized Economic Operators (AEO) regime. U.S. and EU officials hope this agreement will not only lower costs and simplify procedures for trusted traders but also allow customs authorities to concentrate limited resources on risky consignments and better facilitate legitimate transatlantic trade.

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[74] Ron Nixon, "Unpopular Full-Body Scanners to be Removed from Airports," *New York Times*, January 18, 2013; Jeff Plungis, "Naked-image Scanners to be Removed from U.S. Airports," Bloomberg.com, January 18, 2013. For more information, see CRS Report R42750, *Airport Body Scanners: The Role of Advanced Imaging Technology in Airline Passenger Screening*, by Bart Elias.

[75] Nicola Clark, "Europe Postpones Easing Rules on Carrying Liquids on Planes," *New York Times*, April 30, 2011; Jonathan Stearns, "EU Abandons Plan to End Liquids Curbs in Air Travel in 2013," Bloomberg.com, July 18, 2012; Tanya Mohn, "EU Eases Rules on Liquids on Planes," *New York Times*, November 28, 2013.

Recently, U.S.-EU tensions have receded over a provision in the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) that set a five-year goal of scanning at foreign ports of loading all containers bound for the United States for nuclear devices. EU officials viewed 100% container scanning as unrealistic, and argued that it could disrupt trade and place a heavy financial burden on EU ports and businesses. U.S. policymakers in both the Bush and Obama Administrations shared these concerns about the cost and effectiveness of 100% scanning, suggesting that it could result in lower profits and higher transportation costs for U.S. importers; they also pointed out that the United States and Europe already had programs in place to identify high risk cargo shipments and target them for further inspection. In May 2012, the U.S. Department of Homeland Security notified Congress that it was extending the July 2012 100% scanning deadline by two years; in June 2014, DHS announced an additional two-year extension. Proponents of 100% scanning continue to urge its full implementation, arguing that the manifest data currently used by U.S. and European authorities to determine which containers need closer scrutiny is not an adequate basis for determining risk.[76]

Visa Waiver Program (VWP)[77]

The U.S. Visa Waiver Program (VWP) and the EU's desire for it to be applied equally to all 28 member states have periodically generated U.S.-EU tensions. The VWP allows for short-term visa-free travel for business or pleasure to the United States for citizens of 38 countries, most of which are in Europe. Following the EU's enlargement in 2004, new EU members were eager to join the VWP, but most were excluded for years due to problems meeting the program's statutory requirements. The EU argued that U.S. citizens enjoyed short-term visa-free privileges in all its member states and that there should be full visa reciprocity between the United States and the EU. Although some Members of Congress supported extending the VWP to new EU members (especially those in central and eastern Europe) given their roles as U.S. allies in NATO and in the fight against terrorism, others were skeptical of the VWP post-9/11 because of security concerns. Many noted that terrorists with European citizenship—including French citizen Zacarias Moussaoui, the "20th" 9/11 hijacker, and British-born Richard Reid, the airplane "shoe bomber"—traveled to the United States under the VWP.

In July 2007, Congress passed the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53), which included changes to the VWP that sought to both strengthen the program's security components and allow more EU members (and other interested countries) to qualify. Among other measures, P.L. 110-53 called on VWP participant countries to meet certain security and passport standards and to sign on to a number of information-sharing agreements; it also required visitors entering the United States under the VWP to submit biographical information to U.S. authorities through the web-based Electronic System for Travel Authorization (ESTA).[78] At the same time, P.L. 110-53 allowed the U.S. Department of Homeland Security under certain circumstances to waive a specific admission requirement, which permitted several new EU member states to join the VWP. Currently, 23 of the EU's 28 member states belong to the VWP.

[76] "EU Hits at U.S. Plan To Scan Containers," *Financial Times*, August 2, 2007; "U.S. Cargo Scanning Law Unfair," Reuters, March 10, 2008; "Underwear Bomber Could Have Evaded Full Body Scanner," *Europolitics*, March 29, 2010; "New Customs Pact Spells Likely End to 100% Scanning Rule," *Europolitics*, May 7, 2012; Joel Griffin, "Maritime Cargo Scanning Mandate Extended," SecurityInfoWatch.com, June 6, 2014.

[77] For more information on the VWP, see CRS Report RL32221, *Visa Waiver Program*, by Alison Siskin.

[78] ESTA checks the biographical information submitted against relevant law enforcement databases; those individuals not approved under ESTA must obtain a U.S. visa. ESTA approval is good for two years and valid for multiple entries.

The EU continues to encourage the United States to admit the remaining five EU members (Bulgaria, Croatia, Cyprus, Poland, and Romania) to the VWP as soon as possible. In January 2014, a revised EU reciprocity mechanism entered into force, aimed at injecting greater momentum into EU efforts to achieve full visa reciprocity with the United States and other third countries (Canada, Australia, Brunei, and Japan) whose citizens are exempt from EU visa requirements. Under the new EU rules, the European Commission may suspend visa-free travel for a third country's citizens in the absence of full visa reciprocity, subject to the approval of the EU member states and the European Parliament. Thus far, the European Commission has not moved to suspend any visa-free travel under the new reciprocity mechanism, but it has been actively assessing the situation with respect to the United States and other third countries every six months; its next assessment is due in April 2016.[79]

The VWP is a key reason U.S. officials, including many Members of Congress, are increasingly alarmed by reports of Europeans fighting in Syria and Iraq. Not only can such European citizens easily return to their home countries, many can also enter the United States without first acquiring a visa. The Obama Administration continues to support the VWP as a key facilitator of transatlantic commerce and tourism. In early November 2014, however, DHS announced that VWP travelers would be required to submit additional biographic information through ESTA. In August 2015, DHS introduced new traveler screening and information-sharing requirements for VWP countries. U.S. officials contended that these enhanced security measures would enable more comprehensive screening of VWP visitors while preserving legitimate trade and travel.[80]

As noted previously, the November13, 2015, attacks in Paris and the revelation that all of the assailants identified to date were French or Belgian citizens further heightened U.S. concerns about the security of the VWP. On November 30, 2015, the Obama Administration announced several additional changes to the VWP intended to strengthen the program's security controls, including modifying ESTA to capture information regarding any past travel to countries considered terrorist safe havens. The Administration also required that within 60 days, DHS should report to the President on any VWP countries that were deficient in key areas of cooperation with the United States, and that the FBI should provide an evaluation to the President on the terrorism information sharing that occurs between the United States and VWP countries.[81]

In mid-December 2015, Congress passed legislation (the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015) as part of P.L. 114-113 (the 2016 Consolidated Appropriations Act) to further enhance the security of the VWP. With certain exceptions, the new legislation prohibits people who have traveled to Syria, Iraq, Iran, or Sudan at any time on or after March 1, 2011, from entering the United States under the VWP; such individuals, along with dual nationals of these four countries, must now obtain a visitor visa at a U.S. consulate abroad in order to travel to the United States. The legislation also mandates that all VWP participant countries must issue electronic passports, have mechanisms in place to validate machine-readable passports at all ports of entry, and implement appropriate screening protocols and information-sharing arrangements. As permitted under the legislation, in February 2016, DHS announced that it would expand the VWP travel restrictions to individuals who have also traveled to Libya,

[79] European Commission, "The European Commission Assesses the Situation of Visa Non-reciprocity with Certain Third Countries," press release, October 10, 2014.

[80] Greg Miller, "U.S. To Step Up Screening of European and Other Visitors Who Don't Need Visas," *Washington Post*, November 3, 2014; U.S. Department of Homeland Security, "Statement by Secretary Jeh C. Johnson on Intention to Implement Security Enhancements to the Visa Waiver Program," press release, August 6, 2015.

[81] Office of the Press Secretary, The White House, "Fact Sheet: Visa Waiver Program Enhancements," November 30, 2015.

Somalia, and Yemen since March 1, 2011, but "at this time, the restriction on Visa Waiver Program travel will not apply to dual nationals of these three countries."[82]

EU officials have been troubled by the new VWP requirements, arguing that they could constitute a de facto visa regime and that they discriminate against those who are dual nationals (e.g., a citizen of the UK and Iran). Many European policymakers also question the effectiveness of the new legislation, asserting that its provisions will most likely affect European citizens who have traveled to the specified countries for legitimate business or personal reasons but do little to detect those who have traveled clandestinely to join the Islamic State or other terrorist groups abroad. U.S. officials point out that the new law provides exemptions for government and military personnel and grants the Secretary of DHS authority to waive exclusion from the VWP for individuals on a case-by-case basis. DHS has provided examples of the types of persons who may be eligible for a waiver, including journalists and those working for humanitarian nongovernmental organizations, among others. EU leaders have warned about the possibility of "reciprocal measures" (i.e., restricting visa-free travel to Europe for U.S. citizens).[83]

Several Members of Congress also have expressed concerns that the provisions in the new VWP legislation related to dual nationals could discriminate against people based on their ethnicity. On January 13, 2016, Representative Justin Amash introduced H.R. 4830, the "Equal Protection in Travel Act 2016," that would eliminate the VWP restrictions on dual nationals; a companion measure, S. 2449, was introduced by Senator Jeff Flake on January 20, 2016. Some observers hope that, if passed, such further changes could also help to reduce the prospects of the EU imposing reciprocal visa requirements on U.S. citizens intending short-term travel to Europe.[84]

Detainee Issues and Civil Liberties

U.S. and European officials alike maintain that the imperative to provide freedom and security at home should not come at the cost of sacrificing core principles with respect to civil liberties and upholding common standards on human rights. Nevertheless, the status and treatment of suspected terrorist detainees has often been a key point of U.S.-European tension. Especially during the former George W. Bush Administration, a number of U.S. policies were subject to widespread criticism in Europe; these included the U.S.-run detention facility at Guantánamo Bay, Cuba; U.S. plans to try enemy combatants before military commissions; and the use of "enhanced interrogation techniques." The U.S. practice of "extraordinary rendition" (or extrajudicial transfer of individuals from one country to another, often for the purpose of interrogation) and the possible presence of CIA detention facilities in Europe also gripped European media attention and prompted numerous investigations by the European Parliament, national legislatures, and judicial bodies, among others. Some individuals held at Guantánamo and/or allegedly subject to U.S. rendition have been European citizens or residents.

Many European leaders and analysts viewed these U.S. terrorist detainee and interrogation policies as being in breach of international and European law, and as degrading shared values regarding human rights and the treatment of prisoners. Moreover, they feared that such U.S. policies weakened U.S. and European efforts to win the battle for Muslim "hearts and minds,"

[82] U.S. Department of Homeland Security, "DHS Announces Further Travel Restrictions for the Visa Waiver Program," press release, February 18, 2016. Also see, U.S. Customs and Border Protection, Visa Waiver Program Improvement and Terrorist Travel Prevention Act Frequently Asked Questions, available at http://www.cbp.gov.

[83] EU Ambassador to the United States David O'Sullivan and the Ambassadors to the U.S. of the 28 EU Member States, "What the Visa Waiver Program Means to Europe," TheHill.com, December 14, 2015.

[84] Nahal Toosi, "U.S. Lawmakers Move to Protect Iran, Arab Diaspora from New Visa Rules," *Politico Europe*, January 13, 2016.

considered by many to be a crucial element in countering terrorism. The Bush Administration, however, defended its detainee and rendition polices as important tools in the fight against terrorism, and vehemently denied allegations that such policies violated U.S. human rights commitments. Bush Administration officials acknowledged European concerns about Guantánamo and sought agreements with foreign governments to accept some Guantánamo detainees, but maintained that certain prisoners were too dangerous to be released.

U.S.-EU frictions over terrorist detainee policies have subsided to some degree since the start of the Obama Administration. EU and other European officials welcomed President Obama's announcement in January 2009 that the United States intended to close the detention facility at Guantánamo within a year. They were also pleased with President Obama's executive order banning torture and his initiative to review Bush Administration legal opinions regarding detention and interrogation methods. In March 2009, the U.S. State Department appointed a special envoy to work on closing the detention facility, tasked in particular with persuading countries in Europe and elsewhere to accept detainees cleared for release but who could not be repatriated to their country of origin for fear of torture or execution. Some EU members accepted small numbers of released detainees, but others declined.

At the same time, the Obama Administration has faced significant challenges in its efforts to close Guantánamo. Some observers contend that U.S. officials have been frustrated by the reluctance of other countries, including some in Europe, to take in more detainees. Congressional opposition to elements of the Administration's plan for closing Guantánamo, and certain restrictions imposed by Congress (including on the Administration's ability to transfer detainees to other countries amid concerns that some released detainees were engaging in terrorist activity), have also presented obstacles. Consequently, the Obama Administration has not fulfilled its promise to shut down Guantánamo. In March 2011, President Obama signed an executive order that in effect created a formal system of indefinite detention for those detainees at Guantánamo not charged or convicted but deemed too dangerous to free. The Administration also announced in March 2011 an end to its two-year freeze on new military commission trials for Guantánamo detainees.[85]

Some European policymakers continue to worry that as long as Guantánamo remains open, it serves as a recruiting tool for Al Qaeda and other Islamist terrorist groups. European officials have also voiced concern about the physical well-being of detainees at Guantánamo. In May 2013, the European Parliament adopted a resolution that expressed concern for those on hunger strike at Guantánamo and again called upon the United States to close the facility.[86]

The Obama Administration asserts that it remains committed to shuttering Guantánamo. In May 2013, President Obama renewed his pledge to work toward this goal. In December 2013, Congress passed a measure in the FY2014 defense authorization bill (P.L. 113-66) easing restrictions on the Administration's ability to transfer low-risk detainees to other countries. In signing the bill into law, President Obama asserted that it was a "welcome step" toward ultimately closing the detention facility but urged Congress to lift other restrictions that still prevented the transfer of Guantánamo detainees to prisons on U.S. soil for trial in U.S. courts.[87]

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[85] "Europeans Still Resisting Obama Over Guantanamo Inmates," *Deutsche Welle*, February 17, 2010; Peter Finn and Anne Kornblut, "Obama Creates Indefinite Detention System for Prisoners at Guantánamo," *Washington Post*, March 8, 2011.

[86] See EP Resolution P7_TA(2013)0231, adopted May 23, 2013.

[87] Peter Finn and Julie Tate, "Hurdles To Closing Guantanamo Just as High Under New Obama Plan," *Washington Post*, May 23, 2013; Philip Rucker, "Obama Signs Defense Law, Calls It a 'Welcome Step' Toward Closing Guantanamo Bay Prison," *Washington Post*, December 26, 2013.

In the FY2016 defense authorization bill approved in November 2015 (P.L. 114-92), Congress maintained the restrictions on bringing Guantánamo detainees to the United States but required the Administration to submit a plan for closing the facility. President Obama sent his proposal for closing Guantánamo to Congress on February 23, 2016, and called on Congress to help him shutter the facility before the end of his term in office in January 2017.[88] Of the almost 800 individuals detained at Guantánamo since early 2002, press reports indicate that 147 have been resettled overseas during the Obama Administration thus far; 91 detainees remain at Guantánamo as of February 2016 (35 of whom have been cleared for transfer to other countries).[89]

European concerns also linger about the past role of European governments in U.S. terrorist detainee policies and practices. The European Parliament has been particularly vocal on this issue. In 2006, the Parliament established a temporary special committee to investigate the role of EU member states in hosting alleged CIA detention facilities and aiding CIA flights related to the rendition of terrorism suspects. Over the years, the Parliament has repeatedly called upon EU member states to fully investigate whether CIA detention facilities previously existed on their territories and to disclose all relevant information related to suspected CIA rendition flights.

In February 2015, the European Parliament passed a resolution directing its civil liberties and foreign affairs committees to resume investigations into the CIA's "alleged transportation and illegal detention" of terrorist suspects in EU countries following the release of a U.S. Senate Select Committee on Intelligence report on the CIA's detention and interrogation programs. This latest resolution also called on the United States to investigate and prosecute human rights violations resulting from the purported CIA programs and to cooperate with all requests from EU countries for information, extradition, or effective remedies for victims in connection with such programs.[90] Meanwhile, some U.S. and European officials worry that allegations of U.S. wrongdoing and rendition-related criminal proceedings against CIA officers in some EU states (stemming from the Bush era) continue to cast a long shadow and could put vital U.S.-European intelligence cooperation against terrorism at risk.[91]

U.S. Perspectives and Issues for Congress

Successive U.S. Administrations and many Members of Congress have supported efforts to enhance U.S.-EU cooperation against terrorism since the 2001 attacks on the United States. Although some skeptics initially worried that such U.S.-EU collaboration could weaken strong U.S. bilateral law enforcement relationships with EU member states, the George W. Bush Administration essentially determined that the political benefits of engaging the EU as an entity on police and judicial matters outweighed the potential risks given Europe's role as a key U.S. law enforcement partner. They also hoped that improved U.S.-EU cooperation on border controls and transport security would help authorities on both sides keep better track of suspected terrorists and prevent them from entering the United States or finding sanctuary in Europe.

[88] For more information, see CRS Legal Sidebar WSLG1501, *DOD Releases Plan to Close GTMO,* by Jennifer K. Elsea.

[89] Missy Ryan and Adam Goldman, "Obama Asks Lawmakers to Lift Obstacles to Closing Prison at Guantanamo Bay," *Washington Post*, February 23, 2016. Also see, "The Guantanámo Docket," at http://projects.nytimes.com/guantanamo.

[90] See EP Resolution P8_TA(2015)0031, adopted February 11, 2015, with 363 votes in favor, 290 opposed, and 48 abstentions.

[91] "EU Investigation of CIA Flights May Threaten Intelligence Cooperation," Associated Press, February 28, 2007; "The Dark Pursuit of the Truth," *The Economist,* July 30, 2009.

At the same time, observers note that U.S.-EU counterterrorism cooperation is complicated by different EU and member state competencies, and U.S. policy preferences. An increasing number of policy areas relevant to counterterrorism—including data protection, customs, and visas—fall under the competence of the Union (i.e., EU members adopt a common policy, agree to abide by its terms, and negotiate collectively with other countries). However, at times, the United States continues to prefer to negotiate on some issues—such as the Visa Waiver Program—bilaterally, and observers assert that this disconnect can lead to frictions in the U.S.-EU relationship.

Despite periodic tensions, both the United States and the EU appear committed to fostering closer cooperation in the areas of counterterrorism, law enforcement, border controls, and transport security. As noted previously, the Obama Administration has largely continued the Bush Administration's policy of engagement with the EU in these areas. U.S.-EU cooperation against terrorism is increasingly viewed as key to combating potential threats posed by European and American citizens fighting with Islamist groups in Syria, Iraq, and elsewhere.

Aviation and cargo security, U.S border control measures, and visa policy may continue to be salient issues for Congress that could affect how future U.S.-EU cooperation evolves. In the 113th and 114th Congresses, several hearings have focused all or in part on the potential threats posed by Western foreign fighters in Syria and Iraq. As noted previously, Congress passed the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 (as part of P.L. 114-113) in an effort to strengthen the VWP's security controls in response to growing concerns about European citizens fighting with or inspired by the Islamic State and other terrorist groups.

Congressional decisions related to intelligence-gathering reforms and data privacy and protection issues may also have significant implications for U.S.-EU counterterrorism cooperation in the years ahead. Possible changes to the laws that govern U.S. surveillance activity will be closely watched in Europe. As discussed above, EU officials have welcomed passage of the U.S. Judicial Redress Act (P.L. 114-126) as a positive step toward concluding the U.S.-EU "umbrella" Data Privacy and Protection Agreement and as a goodwill gesture on the part of the United States to help reestablish trust and confidence in U.S.-EU information-sharing arrangements and transatlantic data flows.

Given the European Parliament's growing influence in many of the areas related to counterterrorism and its new role since 2009 in approving international agreements—such as the U.S.-EU SWIFT and PNR accords, and the proposed DPPA—Members of Congress may increasingly be able to help shape Parliament's views and responses. Many European Parliamentarians appeared to appreciate efforts by some Members of Congress to engage in substantive dialogue on the alleged U.S. surveillance operations and their implications for EU data privacy rights. In November 2013, for example, Representative Jim Sensenbrenner testified before the European Parliament on possible changes to U.S. legislation governing surveillance practices, and urged Parliament "to work pragmatically with the United States to continue balanced efforts to protect our nations."[92] In late 2013, Senator Chris Murphy and Representative Mike Rogers, then-chairman of the House Permanent Select Committee on Intelligence, led separate congressional delegations to Europe to discuss the alleged U.S. intelligence activities with European Parliamentarians and other European officials, and to reaffirm the importance of close U.S.-European political, security, and economic relations.

Some Members of Congress have ongoing contacts with their counterparts in the European Parliament, and the existing Transatlantic Legislators' Dialogue (TLD) brings members of the Parliament and the U.S. House of Representatives together twice a year to discuss various foreign

[92] As quoted in Dan Roberts, "Jim Sensenbrenner Takes NSA Reform Case to European Parliament," *The Guardian*, November 11, 2013.

policy and economic issues. In recent years, some Members of Congress and many European Parliamentarians have expressed interest in strengthening ties and cooperation between the two bodies further. Such exchanges could provide useful opportunities for enhancing transatlantic dialogue on the wide range of counterterrorism issues facing both the United States and the EU.[93]

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[93] For more information, see CRS Report R41552, *The U.S. Congress and the European Parliament: Evolving Transatlantic Legislative Cooperation*, by Kristin Archick and Vincent L. Morelli.