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# U.S.-EU Cooperation Against Terrorism

**Kristin Archick**

Specialist in European Affairs

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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 and reducing barriers among national law enforcement authorities so that information could be meaningfully shared and suspects apprehended expeditiously. 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, issues that have been receiving renewed attention in light of growing European concerns about the possible threats posed by European fighters returning from the conflicts in Syria and Iraq.

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, which 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. Contacts between U.S. and EU officials on police, judicial, and border control policy matters have increased substantially and a number of new U.S.-EU agreements have also been reached; these include information-sharing arrangements between the United States and EU police and judicial bodies, two 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 and to strengthen transport security.

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 have been further heightened by the unauthorized disclosures since June 2013 of U.S. National Security Agency (NSA) surveillance programs and subsequent allegations of U.S. collection activities in Europe (including reports that U.S. intelligence agencies have monitored EU diplomatic offices and German Chancellor Angela Merkel's mobile phone). 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 intelligence-gathering reforms, data privacy, border controls, and transport security may affect how future U.S.-EU counterterrorism cooperation evolves. In addition, 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 and the ongoing challenges that may be of interest in the 113<sup>th</sup> Congress.

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## Evolution of EU Counterterrorism Efforts

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.<sup>1</sup> 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.

Among other policy areas, JHA encompasses countering terrorism and cross-border crimes, police and judicial cooperation, border controls, and immigration and asylum issues. 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.

Since the 2001 attacks, the EU has sought to speed up its efforts to harmonize national laws and bring down barriers among member states’ law enforcement authorities so that information can be meaningfully shared and suspects apprehended expeditiously. Among other steps, the EU has established a common definition of terrorism and a list of terrorist groups, an EU arrest warrant, enhanced tools to stem terrorist financing, and new measures to strengthen external EU border controls and improve aviation security. The EU has been working to bolster Europol, its joint criminal intelligence agency, and Eurojust, a unit charged with improving prosecutorial coordination in cross-border crimes in the EU.

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<sup>1</sup> 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.

The March 2004 terrorist bombings of commuter trains in Madrid, perpetrated by an Al Qaeda-inspired group of North Africans resident in Spain, injected a greater sense of urgency into EU counterterrorism efforts and prompted the EU to establish a Counterterrorism Coordinator, in part to enhance intelligence-sharing among EU member states. The Madrid attacks, along with the July 2005 bombings of London's metro system that were carried out by young Muslims born and/or raised in the United Kingdom, also gave added impetus to EU initiatives aimed at improving transport security and impeding terrorist travel.

Furthermore, the terrorist incidents in Madrid and London brought the issue of "homegrown" Islamist extremism to the forefront of European political debate. Many EU countries have large and growing Muslim minorities. While the vast majority of Muslims in Europe are not involved in radical activities, the Madrid and London attacks highlighted questions about whether EU governments had done enough both to integrate Muslims into mainstream European society and to counter Islamist extremism. In December 2005, the EU adopted a new counterterrorism strategy to "prevent, protect, pursue, and respond to the international terrorist threat," as well as a plan to combat radicalization and terrorist recruitment.<sup>2</sup>

Over the last several years, the EU has continued working to strengthen its counterterrorism capabilities. In 2008, the EU expanded its common definition of terrorism to include three new offenses: terrorist recruitment, terrorist training, and public provocation to commit terrorism, including via the Internet. In 2010, the EU issued its first-ever internal security strategy, which highlights terrorism as a key threat facing the EU and aims to develop a coherent and comprehensive EU strategy to tackle terrorism as well as organized crime, cybercrime, money laundering, and natural and man-made disasters.

Despite the death of Al Qaeda leader Osama bin Laden in Pakistan in May 2011, experts expect that the "Al Qaeda narrative" and Al Qaeda-related groups will likely continue to attract followers. A young French Muslim extremist who murdered seven people in the Toulouse region of France in March 2012 reportedly spent time in Pakistan and Afghanistan; according to some media accounts, he asserted that he was acting in the name of Al Qaeda before being killed himself in a shoot-out with French police. In the United Kingdom, prosecutors contended that the two Muslim extremists convicted in the brutal slaying of a British soldier in May 2013 were inspired by Al Qaeda.<sup>3</sup> Meanwhile, the deadly July 2012 terrorist attack on Israeli tourists in Bulgaria—which has been linked to the Lebanese Shiite Hezbollah organization—and the March 2013 conviction of a Hezbollah operative in Cyprus serve as stark reminders that Europe remains vulnerable to terrorist activity perpetrated by a number of groups in addition to Al Qaeda.

EU policy makers are also increasingly worried by reports of European citizens being recruited to fight with Islamist extremist groups in conflicts in the Middle East and North Africa, especially in Syria and Iraq. European security services warn about the potential danger such trained militants might pose should they eventually return to Europe (see the text box for more information on European fighters). Such fears have been heightened by the May 2014 killing of four people at the Jewish Museum in Brussels, Belgium. European authorities believe that this attack was carried out by a French Muslim who reportedly spent the past year with Islamist fighters in Syria.

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<sup>2</sup> The EU adopted a revised and updated strategy for combating radicalization and terrorist recruitment in June 2014. For background on EU efforts to prevent radicalization and counter terrorist recruitment, see CRS Report RL33166, *Muslims in Europe: Promoting Integration and Countering Extremism*, coordinated by Kristin Archick.

<sup>3</sup> Maia de la Baume, "Radicalism Prompts Warnings in France," *New York Times*, October 8, 2012; "Woolwich Suspect Had Al Qaeda, Jihad Texts, Court Hears," Reuters, December 5, 2013.

French and Belgian officials assert that the suspect may have been associated with the terrorist group known as the Islamic State (alternatively referred to as the Islamic State of Iraq and the Levant, ISIL or ISIS). European concerns about the Islamic State, especially its apparent use of European Muslims as recruitment and propaganda tools, have been exacerbated by recently released videos featuring European fighters and by the beheadings since August 2014 of three Americans and two United Kingdom citizens—believed to have been carried out by a suspected British member of the Islamic State.

### European Fighters in Syria and Iraq

European governments and EU leaders are growing steadily more concerned about reports of European citizens or residents of Muslim background fighting with rebel groups in Syria against the Bashar al-Asad regime and in Iraq. Although it is difficult to assess the precise number of Muslims from Europe and other Western countries engaged in the conflicts in Syria and Iraq, European officials believe that their ranks have been increasing and that the scale is unprecedented, with more European Muslims fighting in Syria and Iraq than in previous conflicts in countries such as Afghanistan, Somalia, and Yemen. A December 2013 study by the London-based International Centre for the Study of Radicalisation estimates that up to 11,000 foreign fighters may be in Syria, and up to 2,000 of them may be from Western Europe (these figures represent a three-fold increase compared to the Centre's April 2013 projections). Recent estimates from Europol, the EU's joint criminal intelligence body, suggest that there were between 1,200 and 2,000 EU citizens fighting in Syria at the end of 2013. Key EU countries of origin reportedly include Belgium, France, Germany, the Netherlands, Spain, and the United Kingdom, among others. The conflict in Syria has also attracted fighters from countries with large Muslim populations in the Balkans (especially Bosnia, Kosovo, and Albania) that either border EU territory or are in close proximity to it, as well as from Russia.

Experts assert that many fighters from Europe have become associated with Islamist extremist groups opposing the Asad regime, including the Al Qaeda-affiliated Jabhat al Nusra, and the Islamic State. While European Muslims who have gone to fight in Syria and Iraq may already have been radicalized to some extent at home, authorities worry that fighters may return not only with more extremist views but also with enhanced training and weapon skills. Some analysts suggest that returned Muslim fighters are more likely to commit acts of violent extremism than Muslims in the general population, and that their attacks are more lethal than those carried out by individuals who lack fighting or training experience abroad. The deadly May 2014 shootings at the Jewish Museum in Brussels, allegedly by a French Muslim who reportedly spent the last year with Islamist fighters in Syria, has escalated fears across Europe about the potential threat. At the same time, experts question how widespread the threat is, noting that only a small proportion of foreign fighters actually commit attacks upon returning to their home countries.

European governments have begun addressing security concerns raised by European fighters in Syria and Iraq with a range of measures, including increasing surveillance, combating terrorist recruitment, and prohibiting travel. Police in some EU countries, including Belgium, France, Germany, the Netherlands, and Spain, have arrested individuals suspected of planning to travel to Syria for the purposes of engaging in terrorism or who were recruiting others to do so. Germany, the Netherlands, and the United Kingdom have sought to stop citizens or residents from travelling to the conflict zone under rules that permit the confiscation of passports or travel identification documents on security grounds. France, Germany, and the United Kingdom have attempted to detain returning fighters under laws that criminalize training in terrorist camps. In addition, France and the United Kingdom are reportedly working to diminish departures for Syria and Iraq by setting up websites and hotlines for family members concerned that a loved one may become radicalized and to alert law enforcement and border authorities of possible travel plans.

Nevertheless, observers point out that finding ways to stem the flow of European fighters to Syria and Iraq and keep track of those who go and return remains challenging. Prosecuting individuals pre-emptively is difficult in many European countries because of civil liberty concerns, and most existing laws require a high level of proof that a suspect has actually engaged in terrorism or has returned to commit a terrorist act. Certain tools for preventing travel, such as confiscating passports, can entail lengthy legal processes. Meanwhile, analysts also assert that an EU-wide approach is necessary to better combat the potential threat given the EU's largely open borders. The EU has been working to address various aspects of the foreign fighter phenomenon, but some experts contend that the implementation of certain measures has been hindered by different views and national sensitivities among EU member states and between EU institutions on intelligence-sharing and data privacy issues.

**Selected Sources:** Thomas Hegghammer, posted in Joshua Tucker's "Monkey Cage" blog, *Washington Post*, November 27, 2013; International Centre for the Study of Radicalisation, "Up To 11,000 Foreign Fighters in Syria; Steep Rise Among Western Europeans," December 17, 2013; Europol Press Release, "Returning Fighters from Syrian Conflict Cause Concern in the EU," May 29, 2014.

Amid the range of terrorist threats facing Europe, EU policy makers assert that continued vigilance and cooperation among EU member state law enforcement and intelligence services remains essential. The growing security concerns raised by European fighters in Syria and Iraq, in particular, have figured prominently in recent high-level EU ministerial discussions. In June 2013, EU officials expressed broad support for a package of 22 measures proposed by the EU's Counterterrorism Coordinator and directed work to begin on preparing implementing measures where necessary. Information released by the EU asserts that the 22 measures focus on preventing the flow of foreign fighters to Syria and Iraq, improving information exchanges and the detection of suspicious travel, providing an adequate criminal justice response, and engaging more closely with third countries.<sup>4</sup> In late August 2014, EU heads of state and government called for the "accelerated implementation" of this package.<sup>5</sup>

In October 2014, EU officials asserted that work should be revived urgently on an EU-wide system for the exchange of airline Passenger Name Record (PNR) data to help improve EU information-sharing on foreign fighters and keep better track of their movements. Although establishing an EU PNR system has been under discussion for years, the most recent legislative proposal has been stalled in the European Parliament—a key EU institution—since April 2013 because of data privacy and protection concerns. The Parliament has taken up consideration of the EU PNR system again in light of the foreign fighter phenomenon, but many European Parliamentarians remain skeptical, and some suggest that the possible threats posed by returning foreign fighters are being exaggerated in order to secure approval of the EU PNR system.<sup>6</sup>

Also in October 2014, EU officials agreed to strengthen security checks at external EU borders further in response to the possible foreign fighter threat. While no additional details were forthcoming from the EU, press reports suggested that member states have tasked the European Commission (the EU's executive) with exploring ways to implement systematic electronic checks of travel documents at EU external borders and to enable cross-referencing with national police databases and existing EU border control information systems.<sup>7</sup> In addition, EU policy makers have been holding discussions with Internet and social media companies such as Google, Twitter,

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<sup>4</sup> Council of the European Union Press Release, Justice and Home Affairs, 3244<sup>th</sup> Council Meeting, June 6-7, 2013; also see, Council of the European Union Press Release, Justice and Home Affairs Council Background Note, October 8, 2014.

<sup>5</sup> European Council Conclusions, August 30, 2014.

<sup>6</sup> Although the European Commission (the EU's executive) first floated establishing an EU PNR system in November 2007, progress has been slow because of different member state sensitivities about privacy rights and counterterrorism practices. In February 2011, the Commission presented a new proposal for an EU-wide PNR system. In April 2012, EU member states approved creating an EU PNR system that would oblige airlines to transfer the PNR data of passengers on international flights into and out of EU territory to the member state of arrival or departure; member states would be allowed to collect PNR data from intra-European flights but not required to do so (mandating the inclusion of PNR data from intra-European flights was controversial for some EU members because of data privacy concerns). The European Parliament, however, must still approve establishing this EU PNR system, but some Parliamentarians have opposed certain elements of the current proposal; it has been blocked by a key parliamentary committee since April 2013 because of worries that it does not sufficiently protect citizens' data privacy rights. European Commission Press Release, "EU Proposal for Passenger Data to Fight Serious Crime and Terrorism," February 2, 2011; "PNR-EU27 Outline European System," *Agence Europe*, April 27, 2012; "MEPs Reject EU Passenger Data Storage Scheme," EurActiv.com, April 24, 2013; Nikolaj Nielsen, "Data Retention Issue Stymies EU Air Passenger Bill," EUObserver.com, November 11, 2014.

<sup>7</sup> Council of the European Union Press Release, Justice and Home Affairs, 3336<sup>th</sup> Council Meeting, October 9-10, 2014; Nikolaj Nielsen, "Europe at Risk of Huge Number of Returning Jihadist Fighters," EUObserver.com, October 10, 2014; "JHA: Member States Agree on Strengthening External Border Controls," *Agence Europe*, October 10, 2014.

and Facebook, to explore what more can be done to tackle radicalization and counter jihadist propaganda online.<sup>8</sup>

Besides the work at the EU level, a group of EU member states most affected by the foreign fighter phenomenon have been meeting regularly since 2013 under the leadership of Belgium to share information on the nature of the threat, compare policy measures, and discuss intensified cooperation. In early July 2014, several of these EU countries agreed to an “action plan” broadly aimed at stopping Europeans from going to fight in Syria and Iraq, improving the monitoring of returning European fighters, and increasing information exchanges.<sup>9</sup> EU officials maintain that while the measures agreed in the “action plan” will be implemented by the competent national authorities, they will also be promoted at the EU level.<sup>10</sup>

Despite the political commitment of EU leaders to promote greater cooperation on Justice and Home Affairs issues and to improve the EU’s collective ability to better combat terrorism, forging common internal security policies has been challenging. Different views among member states and between EU institutions on issues such as data privacy or intelligence-sharing often complicate harmonizing national laws or establishing EU-wide policies in the JHA field. While the EU’s Lisbon Treaty, which entered into force in December 2009, allows member states to use a qualified majority voting system for most JHA decisions to speed EU decision-making, EU member states still strive for consensus as much as possible. At the same time, the Lisbon Treaty adds another actor—the European Parliament—into the JHA policy-making process by giving it the right to approve or reject most JHA-related legislation.<sup>11</sup> Some analysts suggest that like other EU counterterrorism policies over the years, progress on EU measures to address the potential foreign fighter threat—especially those related to improving information-sharing—has been slowed by national sovereignty sensitivities in some member states and European Parliament concerns that pending proposals not undermine EU data protection standards.

In addition, implementation of many EU policies in the JHA field is up to the member states, and lag times may exist between when an agreement is reached in Brussels and when it is implemented at the national level. Furthermore, EU member states retain national control over their law enforcement and judicial authorities, and some national police and intelligence services remain reluctant to share information with each other or with Europol. In short, efforts to enhance EU-wide cooperation against terrorism and other cross-border crimes remain works in progress.

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<sup>8</sup> Nikolaj Nielsen, “Internet Giants Discuss Jihad with EU Ministers,” EUObserver.com, October 9, 2014.

<sup>9</sup> According to press reports, Belgium, Denmark, France, Germany, Italy, the Netherlands, Spain, and the United Kingdom agreed to the “action plan.” Details of the “action plan” remain confidential for security reasons. Sweden reportedly declined to subscribe to the “action plan,” contending that it does not go far enough to address the foreign fighter threat. Nikolaj Nielsen, “EU States Adopt New Counter-terrorism Plan,” EUObserver.com, July 9, 2014; Nikolaj Nielsen, “Doubts Emerge on Belgium’s Counter-terror Group,” EUObserver.com, July 10, 2014.

<sup>10</sup> Council of the European Union Press Release, Justice and Home Affairs Council Background Note, October 8, 2014.

<sup>11</sup> The Lisbon Treaty also adds an “emergency brake” that allows any member state to halt certain JHA measures it views as threatening its national legal system, and ultimately, to opt out. Despite these safeguards, the UK and Ireland essentially negotiated the right to choose those JHA policies they want to take part in and to opt out of all others; Denmark extended its existing opt-out in some JHA areas to all JHA issues. The Lisbon Treaty technically renames JHA as the “Area of Freedom, Security, and Justice,” although JHA remains the more commonly-used term. For more information on the Lisbon Treaty, see CRS Report RS21618, *The European Union’s Reform Process: The Lisbon Treaty*, by Kristin Archick and Derek E. Mix.



## **U.S.-EU Counterterrorism Cooperation: Progress to Date and Ongoing 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. Such growing U.S.-EU cooperation was in line with the 9/11 Commission's recommendations that the United States should develop a "comprehensive coalition strategy" against Islamist terrorism, "exchange terrorist information with trusted allies," and improve border security through better international cooperation. Some measures in the resulting Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) and in the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) mirrored these sentiments and were consistent with U.S.-EU counterterrorism efforts, especially those aimed at improving border controls and transport security.

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. policy makers and analysts view the developing 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.

At the November 2009 U.S.-EU Summit in Washington, DC, the two sides reaffirmed their commitment to work together to combat terrorism and enhance cooperation in the broader JHA field. In June 2010, the United States and the EU adopted a "Declaration on Counterterrorism" aimed at deepening the already close U.S.-EU relationship and highlighting the commitment of both sides to combat terrorism within the rule of law. In June 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 September 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 counterterrorism cooperation.<sup>12</sup>

Recently, U.S. and EU officials have been discussing 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. policy makers, including some Members of Congress, have expressed worries in particular about such foreign fighters in light of short-term visa-free travel arrangements between the United States and most EU countries. In early July 2014, 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

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<sup>12</sup> For more information on U.S.-EU collaboration in the Global Counterterrorism Forum, see White House Press Release, "Fact Sheet: U.S.-EU Counterterrorism Cooperation," March 26, 2014.

fighters in Syria returning to any of our countries is a problem for all of our countries.”<sup>13</sup> In September 2014, the White House noted that U.S. officials from the Department of Justice and the Department of Homeland Security are “working closely” with EU counterparts to “address a wide range of measures focused on enhancing counter-radicalization, border security, aviation security, and information sharing” to address potential threats posed by foreign fighters.<sup>14</sup>

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 long complicated a range of U.S.-EU information-sharing agreements and 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.

## **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.<sup>15</sup> 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 an FBI officer in The Hague, Netherlands, to work with Europol on counterterrorism. A U.S. Secret Service liaison posted in The Hague also works with Europol on counterfeiting issues. In 2006, a U.S. liaison position was established at Eurojust headquarters in The Hague as part of a wider U.S.-Eurojust agreement to facilitate cooperation between European and U.S. prosecutors on terrorism and other cross-border criminal cases.

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<sup>13</sup> U.S. Department of Justice, Remarks by Attorney General Holder Urging International Effort to Confront Threat of Syrian Foreign Fighters, July 8, 2014.

<sup>14</sup> White House Press Release, “Fact Sheet: Comprehensive U.S. Government Approach to Foreign Terrorist Fighters in Syria and the Broader Region,” September 24, 2014.

<sup>15</sup> 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.

## New Law Enforcement and Intelligence Cooperation Agreements

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

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.<sup>16</sup> 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.<sup>17</sup>

Despite these growing U.S.-EU ties and agreements in the law enforcement area, some U.S. 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

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<sup>16</sup> 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.

<sup>17</sup> U.S. Department of Justice Press Release, “U.S./EU Agreements on Mutual Legal Assistance and Extradition Enter into Force,” February 1, 2010.

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.

## **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). U.S. authorities have shared over 2,000 leads resulting from the SWIFT data with European 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.<sup>18</sup> 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 and the Nigerian-based Boko Haram.<sup>19</sup> 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.<sup>20</sup> However, the specific law enforcement measures applied to those named depends on whether an individual or organization

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<sup>18</sup> U.S. Department of the Treasury, “Terrorist Finance Tracking Program: Questions and Answers,” available at <http://www.ustreas.gov>.

<sup>19</sup> See Council Regulation (EC) No. 881/2002, originally issued in May 2002. Since then, there have been 223 amendments; the most recent one was issued on November 28, 2014.

<sup>20</sup> 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.

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.<sup>21</sup> For “internal” persons and groups, inclusion on the EU’s common terrorist list formally subjects them 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.<sup>22</sup>

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), 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.<sup>23</sup>

Nevertheless, fully harmonizing the U.S. and EU terrorist designation lists has presented challenges, and 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.<sup>24</sup> 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.<sup>25</sup>

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 member states, 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 members 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

<sup>21</sup> 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.

<sup>22</sup> Paul Ames, “EU Adopts Anti-terrorist Measures,” Associated Press, December 28, 2001.

<sup>23</sup> “U.S. Takes Action with EU on Expanded Terror List,” *Agence France Presse*, May 3, 2002.

<sup>24</sup> The EU common terrorist list currently includes two charities that are believed to be related to Hamas: the U.S.-based Holy Land Foundation for Relief and Development; and Al-Aqsa, e.V. (or the Al-Aqsa Foundation), located throughout Europe.

<sup>25</sup> 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-fts.aspx>.

viewed Hezbollah as providing needed social services in some of Lebanon's poorest communities. On the other hand, critics of Hezbollah's absence from the EU's list contended that Hezbollah was responsible for numerous terrorist attacks in the Middle East and elsewhere, and that Hezbollah had long used Europe as a primary base for fundraising and financial services. Those in favor of including Hezbollah on the EU's list also noted that Hezbollah leaders themselves reportedly admitted that if the EU were to blacklist the group, it would have serious negative implications for Hezbollah's financial and moral support in Europe.<sup>26</sup>

Over the last two years, 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 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 increased profile in lending active military and logistical support to the Syrian government of Bashar al Assad, despite the regime's violent response to the popular uprising and civil war, heightened concerns about the group and prompted further appeals—both from within and outside Europe—urging EU action against Hezbollah.

By late spring 2013, it appeared that a consensus was forming among EU member states to put Hezbollah's military wing on the EU's terrorist list, but not the entire Hezbollah organization. Many observers viewed this as a "compromise" position that would be 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 late July 2013, the EU announced that its 28 member states had agreed to add Hezbollah's military wing to its common terrorist list. In adopting this decision, however, the EU also asserted that doing so "does not prevent the continuation of dialogue with all political parties in Lebanon," nor the "legitimate transfers to Lebanon and the delivery of assistance, including humanitarian assistance, from the European Union and its Member States in Lebanon."<sup>27</sup> With this statement, the EU sought to underline that its decision to add Hezbollah's military wing to its terrorist list would not preclude the EU from interacting with Lebanon's government, which includes ministers associated with Hezbollah.

Many analysts judge that some of the most important implications of the EU's decision may be largely symbolic, in terms of sending Hezbollah a message that the EU will not tolerate terrorist attacks within its borders and that the organization's terrorist activities will endanger any legitimacy it may have as a political and social actor. Some experts hope that the EU designation will 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. Those of this view argue that there is no meaningful distinction between Hezbollah's political and military

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<sup>26</sup> Steven Weisman, "Allies Resisting as U.S. Pushes Terror Label for Hezbollah," *New York Times*, February 17, 2005; James Phillips, "Hezbollah's Terrorist Threat to the European Union," The Heritage Foundation, August 28, 2007; Nicolas Kulich, "Despite U.S. Fear, Hezbollah Moves Openly in Europe," *New York Times*, August 16, 2012.

<sup>27</sup> European Union Press Release, "Joint Council and Commission Declaration on the Specific Restrictive Measures to Combat Terrorism," July 25, 2013.

wings, and note that the EU has not provided authoritative guidance on how to distinguish between what it views as these two wings.<sup>28</sup>

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."<sup>29</sup> 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 112<sup>th</sup> 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.<sup>30</sup>

## Promoting Information-Sharing and Protecting Data Privacy

Although the United States and the EU both recognize the importance of sharing information in an effort to track and disrupt 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 personal data a basic right; EU data privacy regulations set out common rules for public and private entities in the EU that hold or transmit personal data, and prohibit the transfer of such data to countries where legal protections are not deemed "adequate." In the negotiation of several U.S.-EU information-sharing agreements, 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.<sup>31</sup>

<sup>28</sup> Benjamin Weinthal, "In Europe, A Growing Case for Banning Hezbollah," *The Atlantic*, April 17, 2013; 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.

<sup>29</sup> 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.

<sup>30</sup> 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.

<sup>31</sup> 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* (continued...)

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. The U.S.-EU SWIFT agreement will be up for renewal in 2015, and the PNR accord in 2019.

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.<sup>32</sup> 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.<sup>33</sup>

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" also urged the swift 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 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 have 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 March 2014, the full European Parliament approved a version of EU data protection reform legislation that would require U.S.-based Internet firms, social media companies, and telecommunication providers to obtain the approval of European officials before complying with any U.S. warrants for personal data of EU citizens; significant monetary penalties would be imposed should companies fail to comply. U.S. officials and business leaders worry that such provisions could impede U.S.-European law enforcement cooperation and be overly burdensome for U.S. companies, potentially putting U.S. firms in a situation in which they are forced to choose between complying with U.S. legal demands for data and EU rules that may prohibit its transfer. The Parliament's version of the EU's data protection reform package,

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(...continued)

*Collection Activities and Recent Developments*, by Edward C. Liu, Andrew Nolan, and Richard M. Thompson II.

<sup>32</sup> 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.

<sup>33</sup> 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.



however, must still be approved by EU member states, at least some of which appear concerned about their potential negative impact on European technology firms and economic growth.<sup>34</sup>

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.<sup>35</sup>

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.<sup>36</sup> U.S. and EU policy makers have been seeking possible ways to implement some of the Commission's proposals. In June 2014, 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 data privacy violations—a key EU demand.

### **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 European politicians and privacy groups remained worried about whether the program was consistent with EU rights and data protection standards.<sup>37</sup>

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

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<sup>34</sup> European Parliament Press Release, "MEPs Tighten Up Rules To Protect Personal Data in the Digital Era," March 12, 2014.

<sup>35</sup> On the EU side, this ad hoc working group has been 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 have 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.

<sup>36</sup> European Commission Press Release, "European Commission Calls on the U.S. to Restore Trust in EU-U.S. Data Flows," November 27, 2013.

<sup>37</sup> "Frattoni 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.

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 on board 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.<sup>38</sup>

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.<sup>39</sup> 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.<sup>40</sup>

The European Parliament approved the latest 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. Some MEPs, however, were still concerned about the EU's role in the U.S. TFTP and whether the SWIFT accord was being properly implemented. Several MEPs

<sup>38</sup> "MEPs Hail Historic Rejection of SWIFT Deal," *Agence Europe*, February 13, 2010; "Countering Terrorist Threats—In the Air and on the Ground," *EU Insight*, April 2010; "SWIFT: Commission To Negotiate Under Pressure from EP," *Europolitics*, April 23, 2010.

<sup>39</sup> 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.

<sup>40</sup> 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 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 Press Release, "EU-US Agreements: Commission Reports on TFTP and PNR," November 27, 2013.

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.<sup>41</sup>

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 non-binding resolution calling for the immediate suspension of the U.S.-EU SWIFT accord.<sup>42</sup> The EP's March 2014 resolution approving the "Morales report" also asserted that the U.S.-EU SWIFT agreement should be suspended. Although these resolutions are largely symbolic (actually suspending the SWIFT accord would require the European Commission and the member states to take action and they are not inclined to do so), experts are concerned that future iterations of the SWIFT accord may not be able to secure the required Parliament approval. In November 2013, the European Commission issued another review of the TFTP, noting that the U.S.-EU agreement on the use of SWIFT data had generated significant leads for European intelligence services and had 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.<sup>43</sup>

### 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

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<sup>41</sup> European Parliament Press Release, "Parliament Gives Green Light for SWIFT II," July 8, 2010; "Europe Seeks More Openness from U.S. Anti-terror Program," *International Herald Tribune*, March 18, 2011; European Commission Press Release, "Terrorist Finance Tracking: Citizen's Safeguards Are in Place," December 14, 2012.

<sup>42</sup> European Parliament resolution P7\_TA(2013)0449, adopted October 23, 2013, with 280 votes in favor, 245 opposed, and 30 abstentions.

<sup>43</sup> European Commission Press Release, "EU-US Agreements: Commission Reports on TFTP and PNR," November 27, 2013.

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.<sup>44</sup>

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; the EP essentially expected that the EU PNR deal with the United States (as well as similar EU agreements on PNR data pending with Australia and Canada) would be renegotiated to conform to the new PNR standards put forth by the Commission.<sup>45</sup>

In September 2010, the European Commission issued its "global external PNR strategy"<sup>46</sup> 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 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.<sup>47</sup>

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

<sup>44</sup> Paul Lewis and Spencer Hsu, "Travelers Face Greater Use of Personal Data," *Washington Post*, July 27, 2007.

<sup>45</sup> James Kanter, "Europe Acts on Privacy Front," *International Herald Tribune*, April 7, 2010; "EP Suspends Vote on PNR," *Agence Europe*, May 6, 2010.

<sup>46</sup> 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.

<sup>47</sup> EP Resolution P7\_TA-PROV(2010)0397, November 11, 2010.

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. policy makers asserted that any revised PNR agreement must not degrade the operational effectiveness of the current PNR program and should permit further enhancements. 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.<sup>48</sup> 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. 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 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 accord in order to ensure full reciprocity between the two systems.<sup>49</sup>

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.<sup>50</sup>

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

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<sup>48</sup> "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.

<sup>49</sup> As noted previously in this report, establishing an EU-wide PNR system has been discussed for years. The most recent legislative proposal put forward by the European Commission has been stalled in the European Parliament since April 2013, largely because of data privacy issues.

<sup>50</sup> Alan Travis, "U.S. To Store Passenger Data for 15 Years," *The Guardian*, May 25, 2011; Statement by U.S. Ambassador to the EU, William Kennard, on the U.S.-EU PNR Agreement, May 26, 2011.

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.<sup>51</sup>

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 similar to the May 2011 version and retained many of its same provisions, two further changes were included that were aimed at meeting 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 still be retained ultimately for 15 years for terrorist investigations, but only 10 years for investigations into other types of crimes).<sup>52</sup>

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).<sup>53</sup>

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.<sup>54</sup> The new U.S.-EU PNR accord took effect on June 1, 2012, and will be valid until 2019.

In November 2013, the European Commission published the results of the most recent 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.<sup>55</sup> Nevertheless, in light of the renewed unease about U.S. data protection safeguards following the

<sup>51</sup> 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,” 112<sup>th</sup> Congress, October 5, 2011.

<sup>52</sup> “EU-US PNR Agreement,” *Agence Europe*, November 11, 2011; Valentina Pop, “Unhappy MEPs to Approve Passenger Data Deal,” *EUobserver.com*, November 11, 2011.

<sup>53</sup> “In’t Veld Says EU-US PNR Agreement Should Be Rejected,” *Agence Europe*, February 2, 2012; “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.

<sup>54</sup> 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.

<sup>55</sup> European Commission Press Release, “EU-US Agreements: Commission Reports on TFTP and PNR,” November 27, 2013.

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 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 late 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 hopes that an overarching deal on data protection will 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.<sup>56</sup> 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 a framework 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 believe that the DPPA will likely build on the common personal data protection principles adopted by the United States and the EU in October 2009.<sup>57</sup>

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 processing, maintaining the quality and integrity of information, and oversight. However, some controversial issues remained, including purpose limitation, retention times, and redress.<sup>58</sup> For

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<sup>56</sup> European Commission Press Release, "European Commission Seeks High Privacy Standards in EU-US Data Protection Agreement," May 26, 2010.

<sup>57</sup> For more information, see U.S. Department of State Press Release, "U.S., EU Reach Agreement on Common Personal Data Protection Principles," October 28, 2009.

<sup>58</sup> U.S. Department of Justice Press Release, "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," June 21, 2012.

years, many EU officials and MEPs have insisted that European citizens need the right of judicial redress in the United States, and have 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 have long countered that Congress would probably not be inclined to support amending the Privacy Act, but that EU citizens could seek redress concerning U.S. government handling of personal information through 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, appear to have 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 Parliament's aforementioned "Moraes report" in 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, 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."<sup>59</sup> Observers suggest that this decision represents an 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. Analysts point out that the Administration must now work with Congress to formulate an official legislative proposal, and that it remains unclear whether it could achieve sufficient congressional backing to become U.S. law. EU member states and the European Parliament must ultimately approve any eventual U.S.-EU DPPA for it to take effect.<sup>60</sup>

## **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.<sup>61</sup> 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

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<sup>59</sup> U.S. Department of Justice Press Release, "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," June 25, 2014.

<sup>60</sup> Nikolaj Nielsen, "U.S. to Extend Privacy Rights to EU Citizens," EUObserver.com, June 25, 2014.

<sup>61</sup> 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," 112<sup>th</sup> Congress, May 5, 2011.



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.<sup>62</sup> 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) on board 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.<sup>63</sup> Among other provisions, the 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.<sup>64</sup>

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<sup>62</sup> 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.

<sup>63</sup> 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](http://www.tsa.gov/assets/pdf/eu_us_enhancing_air_cargo_security.pdf).

<sup>64</sup> 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.

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.<sup>65</sup>

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.<sup>66</sup>

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 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.<sup>67</sup>

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<sup>65</sup> European Commission Press Release, "EU-US Security Agreement Allows Cheaper and Faster Air Cargo Operations," June 1, 2012; U.S. Transportation and Security Administration Press Release, "TSA and EU Achieve Unprecedented Air Cargo Security Through Agreement," June 1, 2012; Nicola Clark, "U.S. and European Union Agree on Air Cargo Security," *New York Times*, June 1, 2012.

<sup>66</sup> For example, the UK, the Netherlands, France, and Italy have been trying out full-body scanners at their airports, but Germany, Spain, and some Nordic countries remain more cautious about using the scanners. "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.

<sup>67</sup> Ron Nixon, "Unpopular Full-Body Scanners to be Removed from Airports," *New York Times*, January 18, 2013; Jeff (continued...)

Meanwhile, U.S. officials have been worried about planned changes to EU regulations governing liquids and gels in carry-on baggage on board 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 on board 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. policy makers 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.<sup>68</sup>

### **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.

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

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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.

<sup>68</sup> 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.

heavy financial burden on EU ports and businesses. U.S. policy makers 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.<sup>69</sup>

### Visa Waiver Program (VWP)<sup>70</sup>

For many years, the United States and the EU were at odds over the U.S. Visa Waiver Program (VWP) and the EU's desire to have it applied equally to all EU members. The VWP allows for short-term visa-free travel for business or pleasure to the United States from 38 countries, most of which are in Europe. New EU members were eager to join the VWP, but most were excluded for years due to problems meeting the program's statutory requirements. 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 “20<sup>th</sup>” September 11 hijacker, and British-born Richard Reid, the airplane “shoe bomber”—travelled 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 aimed at both strengthening the program's security components and allowing more EU members (and other interested countries) to qualify. Among other measures, P.L. 110-53 called on VWP participating 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) at least two days before traveling.<sup>71</sup> At the same time, P.L. 110-53 eased some admission requirements to make it easier for several new EU member states (and other interested countries) to join the VWP. As a result, 23 of the EU's 28 member states now belong to the VWP. The EU, however, 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.

The VWP is one reason U.S. officials are increasingly alarmed by reports of European citizens or residents fighting in Syria and Iraq. Not only can such European fighters easily return to their home countries, many European passport-holders can also enter the United States without first

<sup>69</sup> “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.

<sup>70</sup> For more information on the VWP, see CRS Report RL32221, *Visa Waiver Program*, by Alison Siskin.

<sup>71</sup> 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.

acquiring a visa. Amid such concerns, some Members of Congress have introduced new legislation on the VWP. While some measures largely aim to strengthen the VWP's security components further (see H.R. 5470, introduced September 15, 2014 by Representative Candice Miller), other proposals would temporarily suspend the VWP or the participation of certain countries (see H.R. 5434, introduced September 10, 2014 by Representative Doug Collins; and H.R. 5594, introduced September 18, 2014, by Representative Tulsi Gabbard).

The Obama Administration continues to support the VWP as a key facilitator of transatlantic commerce and tourism, and rejects calls from some critics to suspend it because of the potential foreign fighter threat. In early November 2014, however, the U.S. Department of Homeland Security announced that VWP travelers would be required to submit additional biographic information through ESTA. U.S. officials contend that the new ESTA requirements will enable more accurate and comprehensive screening of VWP visitors, while preserving legitimate trade and travel.<sup>72</sup>

## 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,” considered by many to be a crucial element in countering terrorism. The Bush Administration, however, defended its detainee and rendition policies 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

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<sup>72</sup> Greg Miller, “U.S. To Step Up Screening of European and Other Visitors Who Don't Need Visas,” *Washington Post*, November 3, 2014; Stephen Dinan, “Visa-free Visitors Must Give More Information as Terrorist Fears Grow,” *Washington Times*, November 3, 2014.

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.<sup>73</sup>

Some European policy makers continue to worry that as long as Guantánamo remains open, it helps serve as a recruiting tool for Al Qaeda, its affiliates, and other Islamist extremist groups. European officials have also voiced concern about the physical well-being of those detainees at Guantánamo who began hunger strikes in early 2013 to protest their ongoing incarceration. In May 2013, the European Parliament adopted a resolution that expressed concern for those on hunger strike, and again called upon the United States to close the detention facility.<sup>74</sup>

The Obama Administration asserts that it remains committed to closing Guantánamo. In late May 2013, President Obama renewed his pledge to work toward this goal, and announced that U.S. authorities would restart the process of sending home or resettling in third countries those detainees already cleared for transfer. In August 2013, the Administration released two Algerian detainees (the first such releases in nearly a year), after certifying to Congress that they no longer posed a threat to U.S. national security. Media sources indicate that nine additional detainees were transferred to other countries during the remainder of 2013, including three to Slovakia.

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 prevent the transfer of Guantánamo detainees to prisons on U.S. soil for trial in U.S. courts. Some commentators suggest, however, that Congress may not be inclined to take further action aimed at shuttering Guantánamo amid the controversy that erupted in late May 2014 following the Administration's transfer of five Taliban prisoners from Guantánamo to Qatar (without prior congressional notification) in exchange for the release of Sgt. Bowe Bergdahl from captivity in

<sup>73</sup> "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.

<sup>74</sup> See EP Resolution P7\_TA(2013)0231, adopted May 23, 2013.

Afghanistan. Of the almost 800 individuals detained at Guantánamo since early 2002, press reports indicate that 143 remained as of the end of November 2014.<sup>75</sup>

European concerns also linger about the past role of European governments in U.S. terrorist detainee policies and practices. In September 2012, the European Parliament passed a non-binding resolution (by 568 votes to 34, with 77 abstentions) calling upon EU member states to investigate whether CIA detention facilities had existed on their territories.<sup>76</sup> The resolution urged Lithuania, Poland, and Romania in particular to open or resume independent investigations, and called on several other member states to fully disclose all relevant information related to suspected CIA flights on their territory. 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.<sup>77</sup>

## 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.

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.

Nevertheless, 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

<sup>75</sup> Peter Finn and Julie Tate, "Hurdles To Closing Guantanamo Just as High Under New Obama Plan," *Washington Post*, May 23, 2013; Craig Whitlock, "Two Algerians Released from Guantanamo Bay," *Washington Post*, August 29, 2013; Philip Rucker, "Obama Signs Defense Law, Calls It a 'Welcome Step' Toward Closing Guantanamo Bay Prison," *Washington Post*, December 26, 2013; Charlie Savage, "5 Guantanamo Inmates Are Sent to Eastern Europe," *New York Times*, November 20, 2014. Also see, "The Guantánamo Docket," <http://projects.nytimes.com/guantanamo>.

<sup>76</sup> See EP Resolution A7-0266/2012, adopted September 11, 2012.

<sup>77</sup> "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.

citizens fighting with Islamist groups in Syria, Iraq, and elsewhere in the Middle East and North Africa. U.S. policy makers and analysts contend that the foreign fighter phenomenon also underscores the importance of existing U.S.-EU information-sharing agreements that help facilitate the sharing of traveler information and the tracking of potential terrorists. Some U.S. officials have reportedly been encouraging the EU to move forward with approving and implementing its own system for sharing airline passenger data in order to improve European capabilities to keep tabs on suspected foreign fighters.<sup>78</sup>

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 September 2014, several congressional hearings were held on countering terrorism and the potential threats posed by Western foreign fighters in Syria and Iraq.<sup>79</sup> As noted previously, various pieces of legislation have been introduced recently on the VWP; these range from measures to enhance VWP security controls to those that seek to limit or suspend the program.

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, and congressional reactions to the Obama Administration's proposal to provide EU citizens judicial redress in the context of a potential U.S.-EU Data Privacy and Protection Agreement, will be closely watched in Europe. In addition, 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—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.”<sup>80</sup> Other Members, including Senator Chris Murphy, Chair of the Senate Foreign Relations Subcommittee on European Affairs, have expressed similar sentiments acknowledging European worries about the reported U.S. intelligence collection programs, while asserting the ongoing need for close U.S.-European counterterrorism and intelligence cooperation.<sup>81</sup> At the end of 2013, both Senator Murphy and Representative Mike Rogers, Chairman of the House Permanent Select Committee on Intelligence, led congressional delegations to Europe to discuss the alleged U.S. intelligence

<sup>78</sup> Nikolaj Nielsen, “EU States Adopt New Counter-terrorism Plan,” EUObserver.com, July 9, 2014.

<sup>79</sup> See, for example: Senate Homeland Security and Government Affairs Committee, “Cybersecurity, Terrorism, and Beyond: Addressing Evolving Threats to the Homeland,” 113<sup>th</sup> Congress, September 10, 2014; House Homeland Security Committee, Subcommittee on Border and Maritime Security, “One Flight Away: An Examination of the Threat Posed by ISIS Terrorists with Western Passports,” 113<sup>th</sup> Congress, September 10, 2014; House Homeland Security Committee, “Worldwide Threats to the Homeland,” 113<sup>th</sup> Congress, September 17, 2014; and House Foreign Affairs Committee, Subcommittee on Europe, Eurasia, and Emerging Threats, “Islamist Foreign Fighters Returning Home and the Threat to Europe,” 113<sup>th</sup> Congress, September 19, 2014.

<sup>80</sup> As quoted in Dan Roberts, “Jim Sensenbrenner Takes NSA Reform Case to European Parliament,” *The Guardian*, November 11, 2013.

<sup>81</sup> U.S. Senator Chris Murphy, Press Statement on Alleged NSA Surveillance of European Allies, October 29, 2013.



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 a wide range of topical foreign policy and economic issues. In recent years, several 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.<sup>82</sup>

## **Author Contact Information**

Kristin Archick  
Specialist in European Affairs  
karchick@crs.loc.gov, 7-2668

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<sup>82</sup> 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.