

# Background

No. 2528  
March 8, 2011



Published by The Heritage Foundation

## The EU–U.S. Counterterrorism Relationship: An Agenda for Cooperation

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**Abstract:** *After 9/11, the nations of Europe displayed extraordinary solidarity with the United States, and a decade later both sides of the Atlantic still know they need each other to fight the global threat of Islamist terror. But the EU–U.S. counterterrorism relationship has been marked as much by confrontation as it has by cooperation. As a result of the Lisbon Treaty, the powers of the European Parliament have grown immensely, and the parliament opposes several key—and successful—U.S. data-sharing programs. Instead, the parliament supports a greater counterterrorism role from untested EU institutions, such as Europol and Eurojust. The EU also looks the other way while Hezbollah continues raising political and financial support in Europe. The EU’s supranational approach often comes at the expense of more effective relations between the U.S. and individual EU states. Heritage Foundation EU and transatlantic security expert Sally McNamara lays out an agenda for fruitful cooperation between Europe and the United States.*

The Islamist terrorist threat is a global one. It has threatened every corner of the transatlantic alliance, and the risks to Europe and America remain substantial.<sup>1</sup> Since the 9/11 terrorist attacks, the EU has become a major actor in counterterrorism policymaking, significantly increasing its competency for integrating members’ judicial and security policies. But even though America and Europe need each other to defeat this threat, the U.S.-led war on terrorism has exposed deep divisions between them.<sup>2</sup>

### Talking Points

- The EU has become a major actor in counterterrorism policymaking. While some policies have aided the fight against global terrorism, many have advanced unnecessary EU programs and created ineffective institutions.
- Although the Islamist terrorist threat requires strong transatlantic cooperation, the EU–U.S. counterterrorism relationship has been marked as much by confrontation as it has by cooperation.
- The European Parliament has challenged two vital data-transfer deals between the EU and the U.S. and will continue to oppose U.S. counterterrorism policies in the future on the basis of enhanced powers granted by the Lisbon Treaty.
- Europe is one of Hezbollah’s primary fundraising bases, yet there is little prospect of the EU adding the terror group to its list of foreign terrorist organizations.
- The U.S. must continue to invest in its bilateral relationships with individual EU states, especially for intelligence-sharing and counterterrorist operations.

This paper, in its entirety, can be found at:  
<http://report.heritage.org/bg2528>

Produced by The Margaret Thatcher Center for Freedom

Published by The Heritage Foundation  
214 Massachusetts Avenue, NE  
Washington, DC 20002–4999  
(202) 546-4400 • [heritage.org](http://heritage.org)

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The EU–U.S. counterterrorism relationship has been marked as much by confrontation as it has by cooperation. Brussels has long opposed key U.S. counter-terror programs such as renditions, and under new powers granted by the Lisbon Treaty, the European Parliament has challenged two vital data-transfer deals—the SWIFT data-sharing agreement and the EU–U.S. Passenger Name Records (PNR) Agreement. The European Commission has also objected to member states negotiating directly with Washington to secure entry into the U.S. visa waiver program, favoring instead a supranational approach to visa policy.

Successfully countering Islamist terrorism will require both bilateral and multilateral cooperation. Although the EU has increased its competency for counterterrorism policymaking over the past decade, the U.S. should continue to invest time and energy in maintaining its bilateral relationships with EU member states, too—especially for intelligence-sharing purposes and in conducting counterterrorist operations. Opposition to the multilateralization of intelligence-sharing and preference for bilateral operations should not be seen as undercutting the global war against Islamist terrorism, but rather as complementing the international work being carried out to fight transnational terrorists.

## EU Competency for Counterterrorism: A Rapidly Growing Agenda

EU competency for counterterrorism policy grew rapidly after 9/11. Although it was at the Tampere Summit in 1999 that the EU first agreed to establish a European “area of freedom, security and justice,” progress in harmonizing policy at the EU level before 9/11 was sluggish.<sup>3</sup> Terrorism was seen, like the drug trade and human trafficking, as a law-and-order challenge to be confronted by the EU through administrative institutions, such as the judicial cooperation body, Eurojust.<sup>4</sup> After 9/11—and again in the wake of the Madrid Bombings (3/11) and the London attacks (7/7)—the EU prioritized counterterrorism as an agenda item and availed itself of significant competencies for counterterror policymaking.<sup>5</sup>

**EU Counterterrorism Policies Post-9/11.** The sense of urgency created by 9/11 led the EU to take what then-Justice Commissioner Antonio Vitorino described as “a giant leap forward” in Justice and Home Affairs (JHA) cooperation.<sup>6</sup> Member states began coordinating their national counterterrorism laws with one another and criminalized large numbers of offenses related to terrorism.<sup>7</sup> Before 9/11, just six of the EU’s then-15 member states recognized terrorism as a special offense.<sup>8</sup> By agreeing to a common definition of terrorism, the EU sought

1. The Global Terrorism Database catalogues terrorist events around the world from 1970 through 2008, and reveals an increasing Islamist terrorist threat to Europe and the United States. See GTD: Global Terrorism Database, at <http://www.start.umd.edu/gtd> (March 3, 2011).
2. The Obama Administration has formally stopped using the term “Global War on Terror” and replaced it with “overseas contingency operations.” See Oliver Burkeman, “Obama Administration Says Goodbye to ‘War on Terror,’” *The Guardian*, March 25, 2009, at <http://www.guardian.co.uk/world/2009/mar/25/obama-war-terror-overseas-contingency-operations> (March 3, 2011).
3. Under the Lisbon Treaty (2009), the formal name given to this policy area is “Area of Freedom, Security, and Justice.” The term “Justice and Home Affairs” (JHA) is far more commonly used, however, and hereinafter used in this paper.
4. European Parliament, “Presidency Conclusions,” Tampere European Council, October 15–16, 1999, at [http://www.europarl.europa.eu/summits/tam\\_en.htm](http://www.europarl.europa.eu/summits/tam_en.htm) (March 3, 2011).
5. Javier Argomaniz, “Post-9/11 Institutionalisation of European Union Counter-terrorism: Emergence, Acceleration and Inertia,” *European Security*, Vol. 18, No. 2 (2009), pp. 151–172.
6. “Antonio Vitorino,” *The Economist* (U.S. Edition), September 29, 2001.
7. Two pieces of legislation were especially significant in coordinating national counterterrorism laws—(1) the 2001 “Common Position on the Application of Specific Measures to Combat Terrorism” and (2) the 2002 “Council Framework Decision on Combating Terrorism.”
8. Elspeth Guild, “The Uses and Abuses of Counter-Terrorism Policies in Europe: The Case of the ‘Terrorist Lists.’” *The Journal of Common Market Studies*, Vol. 46, No. 1 (2008), pp. 173–193.

to deny terrorists the sanctuary of border-hopping to another member state where terrorism was not previously regarded as a specific offense.<sup>9</sup> Crucially, in 2001, the European Council produced a list of persons, groups, and entities whose financial assets would be frozen and to whom financial services would henceforth be denied. This has proved to be one of Brussels's most valuable contributions to countering Islamist terrorism to date. By agreeing to minimum standards under a clear definition of terrorism, the EU has denied terrorists the freedom to operate and raise funds in Europe.

However, Brussels also advanced several unnecessary programs under the guise of countering terrorism at this time. The EU gave greater authority to, and has gradually expanded the mandates of, ineffective institutions, such as the European Police Office (Europol) and Eurojust—even though counterterrorism requires greater flexibility than static institutions allow. The EU's flagship European Arrest Warrant (EAW) program—which was justified as a key counterterror measure—has been used to extradite people for overwhelmingly far less serious offenses than transnational terrorism.<sup>10</sup> Between April 2009 and April 2010, for instance, 1,032 Britons were extradited to other EU member states—without any *prima facie* evidence—on charges such as leaving a gas station without paying.<sup>11</sup> The Home Office also expects to see a further 70 percent increase in EAW extradition cases in 2011, which will divert key anti-terrorism resources as the British authorities struggle to fulfill these requests. Former Home Secretary David Blunkett,

who oversaw the introduction of the system has stated: “I was right, as Home Secretary in the post-9/11 era, to agree to the European Arrest Warrant, but I was insufficiently sensitive to how it might be used.”<sup>12</sup>

**EU Counterterrorism Policies Post-3/11.** On March 11, 2004, 10 bombs were remotely detonated on four Madrid commuter trains at the height of rush hour, killing 191 people and injuring more than 1,800. An al-Qaeda-affiliated group, the Moroccan Islamic Combat Group, claimed responsibility for the attack. Although 9/11 had shaken Europe profoundly, the 2004 train bombings in Madrid drastically heightened its sense of vulnerability.

In the immediate aftermath of the train bombings, the European Council agreed to a Declaration on Combating Terrorism and EU leaders appointed a counterterrorism coordinator to audit members' implementation of EU counterterrorism policies and to encourage greater harmonization of their judicial systems.<sup>13</sup> An EU-wide Solidarity Clause was agreed to, specifically pledging that members would “act jointly in a spirit of solidarity if one of them is the victim of a terrorist attack.” Similar to NATO's Article 5 mutual-defense clause, the members promised that in the event of an attack, “they shall mobilise all the instruments at their disposal, including military resources.”<sup>14</sup> Summit leaders also outlined seven strategic objectives to combat terrorism—from its root causes to its prosecution.<sup>15</sup> The “seven objectives strategy” emphasized the central role of the U.N., the importance of adher-

9. Council Framework Decision 2002/475/JHA, Article 1, agreed to a common definition of terrorism. It defined terrorism as specified acts, which “given their nature or context, may seriously damage a country or an international organisation where committed with the aim of seriously intimidating a population, or unduly compelling a Government or international organisation to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.”
10. Press release, “Europe Must Have Common Instruments to Tackle Terrorism,” European Commission, September 19, 2001.
11. Andrew Gilligan, “Surge in Britons Exported for Trial,” *The Telegraph*, August 21, 2010, at <http://www.telegraph.co.uk/news/newstoppers/politics/7958202/Surge-in-Britons-exported-for-trial.html> (March 3, 2011).
12. *Ibid.*
13. “Declaration on Combating Terrorism,” March 25, 2004, at <http://www.consilium.europa.eu/uedocs/cmsUpload/DECL-25.3.pdf> (March 3, 2011).
14. *Ibid.*, “Declaration on Solidarity Against Terrorism,” p. 18. The Solidarity Clause became a mandatory mechanism in the Lisbon Treaty.
15. *Ibid.*, pp. 14–17.

ing to U.N. legal conventions, and combating the perceived causes of terrorism, including “the links between extreme religious or political beliefs, as well as socio-economic and other factors, and support for terrorism.”<sup>16</sup> As in 2001, the EU simultaneously pursued a mix of simple coordinating policies and policies that advanced its supranational agenda.

**EU Counterterrorism Policies Post-7/7.** In the midst of developing a more comprehensive counterterrorism agenda, the EU was confronted with another large-scale al-Qaeda-sponsored terrorist attack. The London public transportation bombings of July 7, 2005, killed 52 people (as well as the four suicide bombers) and stands as Britain’s deadliest terror attack on its homeland. It also confronted Europe with the reality of “homegrown” terrorists, which reinforced the EU’s strategy of focusing greater attention on the perceived root causes of terrorism.

In November 2005, the EU agreed on a new Counter-Terrorism Strategy which outlined four strategic “strands of work” that would make up the EU’s counterterrorism agenda: prevent, protect, pursue, and respond.<sup>17</sup> A slate of highly specific policy recommendations were made on the key issues that emerged after 7/7, including the de-radicalization of homegrown terrorists and the incitement and recruitment of terrorists.

The 7/7 bombings had revealed the extent to which Europeans were being recruited for terrorism and sent abroad for training. Research conducted by The Heritage Foundation in June 2008 catalogued every al-Qaeda-sponsored, al-Qaeda-inspired, and al-Qaeda-directed plot against Europe since 9/11, and identified two clear patterns.<sup>18</sup> First, foreign-born hate preachers and extremist

clerics, such as Abu Hamza, Tolga Duerbin, and Omar Bakri Mohammed, were revealed as primary recruiters of homegrown terrorists and inciters to terrorist acts. Second, terrorist training camps—particularly in Afghanistan and Pakistan—were crucial to the radicalization and training of European Muslims. Camps, such as Malakand and Khalden, had nurtured homegrown terrorists and provided them with the training to carry out large-scale terrorist attacks on their homelands. In 2008, the EU formally expanded its common definition of terrorism to criminalize three specific new offenses: (1) public provocation to commit a terrorist offense; (2) recruitment for terrorism; and (3) training for terrorism.<sup>19</sup>

**A Strategic Approach to Counterterrorism.** After 7/7, the EU also pledged to increase its focus on combating the beliefs, ideologies, and narratives that underpin violent radicalization. In February 2008, the European Commission commissioned a major study by the U.K.-based Change Institute to identify the causes of radicalization in Europe. The study bore out the results of The Heritage Foundation’s research, namely that extremist preachers and ideologues—Abu Hamza in particular—have advanced the cause of violent jihad in Europe.<sup>20</sup> The study also came to a number of other conclusions including:

- Islamist terrorists promote a sense of grievance and victimhood among young Muslims to justify terrorism and violence;
- Young Muslims in Europe feel that there are few prospects for upward social mobility; and
- Radical ideologues call for violent responses, including suicide terrorism, to Western foreign policies.<sup>21</sup>

16. *Ibid.*, p. 17.

17. Council of the European Union, “The European Union Counter-Terrorism Strategy,” November 30, 2005, at <http://register.consilium.eu.int/pdf/en/05/st14/st14469-re04.en05.pdf> (March 3, 2011).

18. The catalogue was constructed only from publicly available information. Sally McNamara, “Why NATO Must Win in Afghanistan: A Central Front in the War on Terrorism,” Heritage Foundation *Backgrounder* No. 2148, June 23, 2008, at <http://www.heritage.org/Research/Reports/2008/06/Why-NATO-Must-Win-in-Afghanistan-A-Central-Front-in-the-War-on-Terrorism>.

19. Official Journal of the European Communities, “Council Framework Decision Amending Framework Decision 2002/475/JHA on Combating Terrorism,” December 9, 2008, Article 9, p. 2.

20. “Studies into Violent Radicalisation; Lot 2: The Beliefs Ideologies and Narratives,” The Change Institute, February 2008, pp. 62–67, at [http://ec.europa.eu/home-affairs/doc\\_centre/terrorism/docs/ec\\_radicalisation\\_study\\_on\\_ideology\\_and\\_narrative\\_en.pdf](http://ec.europa.eu/home-affairs/doc_centre/terrorism/docs/ec_radicalisation_study_on_ideology_and_narrative_en.pdf) (March 4, 2011).



The Change Institute's recommendations for countering Islamist terrorism, however, reflected a one-size-fits-all approach, as well as the EU's radical supranational approach to legislating human rights. Many of the institute's recommendations were picked up by the European Commission in November 2008 when it updated the EU's Strat-

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egy for Combating Radicalization and Recruitment for Terrorism.<sup>22</sup> For example, the Change Institute recommended identifying and encouraging moderate foreign imams to present the counter-radical case. In its updated strategy, the European Commission pledged to "to empower mainstream voices by stepping up the dialogue with political, religious and separatist groups which favour moderation and exclude recourse to violence."<sup>23</sup> But European governments have not proved effective at picking winners and losers in this regard. The previous U.K. Labour government courted foreign imams such as Sheikh Yusuf al-Qaradawi on the basis that al-Qaradawi is "a highly respected Islamic scholar."<sup>24</sup> The former government has since had cause to regret that decision, after discovering that al-Qaradawi has defended suicide bombings, called for the execution of homosexuals, and advised European Muslims to create "Muslim ghettos where they can avoid cultural assimilation and introduce Shari'a law."<sup>25</sup>

tos where they can avoid cultural assimilation and introduce Shari'a law."<sup>25</sup>

The Change Institute also recommended implementing strong anti-discrimination legislation across the EU to specifically combat "Islamophobia"—which not only assumes that this phenomenon exists, but that it is best tackled through the legislative process. The EU has behind it a catalogue of failed public policies, such as multiculturalism and crippling human rights legislation. In pursuit of "tolerance," EU policies, including the Charter of Fundamental Rights, and the Council of Europe's European Convention on Human Rights (ECHR) have weakened, not strengthened, members' counterterrorism efforts. British judges, for instance, refused to make full use of control orders mandated under the 2000 Terrorism Act—on the grounds that 18-hour curfews may breach the convention's Article V clause on the right to liberty.<sup>26</sup> Prime Minister David Cameron is currently under pressure from the Strasbourg-based European Court of Human Rights to grant U.K. prisoners the right to vote—contrary to a long-standing British tradition. In order to protect British sovereignty and its heritage, the Prime Minister should simply withdraw from the Convention and recognize that British law must supersede European law on human rights. Crucially, he must also veto the EU's accession to the ECHR. Under the Treaty of Lisbon, the EU is seeking to accede to the convention in its own right, which would simply rejoin Britain by the back door. This decision is one on which Britain has maintained a veto and which it must use.<sup>27</sup>

21. *Ibid.*

22. Council of the European Union, "Updated version of the European Union strategy for combating radicalisation and recruitment to terrorism," November 14, 2008. The EU Counter-Terrorism Coordinator prepared a Strategy and Action Plan to implement this updated strategy.

23. *Ibid.*, p. 5.

24. Sean O'Neill, "Taxpayers Fund Five-Star Trip for Extremist Cleric," *The Times (London)*, July 13, 2006, at <http://www.timesonline.co.uk/tol/news/uk/article686879.ece> (March 3, 2011).

25. Zeyno Baran, "Countering Ideological Support for Terrorism in Europe: Muslim Brotherhood and Hizb ut-Tahrir—Allies or Enemies?" The Partnership for Peace Consortium's *The Quarterly Journal*, Vol. 5, No. 3 (Winter 2006), pp. 19–34.

26. Richard Ford, Philip Webster, and Stewart Tendler, "We May Declare an Emergency to Quit Rights Act, Says Reid," *The Times (London)*, May 25, 2007, at <http://www.timesonline.co.uk/tol/news/politics/article1837662.ece> (March 3, 2011).

27. "Consolidated version of the Treaty on the Functioning of the European Union," *Official Journal of the European Union*, March 30, 2010, p. 146. Article 218(8) states that "The Council shall also act unanimously for the agreement on accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms."

## The EU–U.S. Counterterrorism Relationship

America needs allies to win the war on terrorism. The EU equally accepts that third-party cooperation is necessary to successfully counter Islamist terrorism. A number of EU–U.S. counterterrorism agreements have been reached since 9/11, especially in the areas of information-sharing and terrorist-financing.<sup>28</sup> Two EU–U.S. Declarations on Combating Terrorism have been concluded,<sup>29</sup> and in February 2010, two new treaties entered into force on the central issues of extradition and mutual legal assistance.<sup>30</sup>

But despite an unprecedented display of transatlantic solidarity following the 9/11 terrorist attacks, the EU–U.S. counterterrorism relationship has been marked as much by confrontation as cooperation. The Lisbon Treaty, introduced on December 1, 2009, formally abolished the EU’s pillar structure, which had previously reserved “justice and home affairs” as a purely intergovernmental competence. Post Lisbon, the EU now formally enjoys shared competency with the member states in JHA, and the EU’s role in counterterror policymaking has become truly supra-nationalized. In particular, the European Parliament has enjoyed a huge boost in powers—and it has not been afraid to flex its legislative muscle.

**Passenger Name Records (PNR) Agreement.**  
The U.S. Air Transportation Safety Act of 2002

requires that the PNR data of travelers to the U.S. be provided to American authorities before arrival of planes in the U.S. In May 2004, the EU and the U.S. agreed to allow airlines operating U.S.-bound flights to provide the U.S. authorities with travelers’ data contained in their reservation systems before the flight’s departure. Being able to analyze the personal and financial data of passengers prior to departure, in conjunction with U.S. and international intelligence databases, allows analysts a further opportunity to spot any red flags and ultimately screen out potential terrorists. However, the European Parliament argued that this agreement violated EU citizens’ privacy rights, and in July 2005 it formally lodged a case with the European Court of Justice. Parliament’s objections revolved around the amount of PNR data transferred to U.S. authorities, the length of time such data could be kept, the degree of redress available to European citizens in cases of data misuse, and the potential for profiling by U.S. authorities.

The 2004 agreement was annulled in May 2006—albeit on a technicality—and an interim agreement was provisionally agreed to. In July 2007, the EU and the U.S. agreed to a third iteration of the PNR agreement,<sup>31</sup> and a seven-year deal was signed which reduced the pieces of shareable information from 34 to 19.<sup>32</sup> Although this new agreement has provisionally been in force since 2007, the European Parliament is required to give its approval for the

28. In December 2001, two U.S.–Europol agreements were concluded to facilitate the exchange of information related to global financial movements. See “Agreement Between the United States of America and the European Police Office,” Europa, December 6, 2001, at <http://www.europol.europa.eu/legal/agreements/Agreements/16268-2.pdf> (March 3, 2011), and “Supplemental Agreement Between the Europol Police Office and the United States of America on the Exchange of Personal Data and Related Information,” December 20, 2002 at <http://www.europol.europa.eu/legal/agreements/Agreements/16268-1.pdf> (March 3, 2011).

29. Council of the European Union, “EU–U.S. Declaration on Combating Terrorism,” June 26, 2004, at [http://www.consilium.europa.eu/uedocs/cmsUpload/10760EU\\_US26.06.04.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/10760EU_US26.06.04.pdf) (March 3, 2011), and Council of the European Union, “EU–U.S. and Member States 2010 Declaration on Counterterrorism,” June 3, 2010, at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/114874.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/114874.pdf) (March 3, 2011).

30. *Official Journal of the European Union*, “Council Decision on the conclusion on behalf of the European Union of the Agreement on extradition between the European Union and the United States of America and the Agreement on mutual legal assistance between the European Union and the United States of America,” November 7, 2009, at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:291:0040:0041:EN:PDF> (March 4, 2011).

31. *Official Journal of the European Union*, “Agreement between the European Union and the United States of America on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the United States Department of Homeland Security (DHS) (2007 PNR Agreement),” August 4, 2007.

32. At the outset of negotiations, the U.S. had asked for 38 data elements to be shared.

accord to be formally enforced. However, in May 2010, the parliament postponed its approval vote on the deal and asked the European Commission to instead present a comprehensive PNR plan for both internal PNR exchanges and EU–third-party PNR agreements. In January 2011, the EU and U.S. formally entered into renewed negotiations on a *fourth* iteration of the PNR agreement. Parliament’s withholding of its consent also potentially threatens bilateral PNR deals that the U.S. has concluded with individual EU member states that have recently acceded to the U.S. visa waiver program.

In testimony to the U.S. Senate’s Subcommittee on Aviation Operations, Safety and Security in December 2010, Assistant Secretary for the Department of Homeland Security’s Office of Policy David Heyman stated:

Among our remaining challenges is the false notion that privacy and data protection standards in the United States and the European Union (EU) are irreconcilable...some EU officials are now looking to restrict one of the most powerful tools we have for identifying risks to our aviation system, the review of data from passenger name records (PNR)—information that passengers give to travel agencies and airlines to book flights and that is provided to CBP [Customs and Border Protection] in advance of a flight to prescreen passengers who may pose a risk to our nation’s security. This data is invaluable as evidenced by the fact that the United States has successfully used PNR more than 3,000 times in 2008 and 2009, including in the investigation of many of the most notable terrorist plots in the United States over the last year.<sup>33</sup>

Although not perfect, the PNR agreement has a number of demonstrable successes to its credit, as Heyman and a number of other U.S. officials have testified, including former U.S. Secretary of Homeland Security Michael Chertoff.<sup>34</sup> Baroness Ashton of Upholland, the former Parliamentary Under-Secretary of State at the Department for Constitutional Affairs and now EU foreign minister, also proclaimed the benefits of PNR-profiling in disrupting human-trafficking rings when testifying before the House of Lords European Committee in March 2007.<sup>35</sup> Furthermore, providing PNR data pre-travel is mandated under U.S. law, and to restrict this transfer contravenes what Congress has stated is necessary to protect American security.

**SWIFT.** The Society for Worldwide Interbank Financial Telecommunication (SWIFT) is a Belgium-based syndicate of international banks, which started sharing large amounts of its processed data with the U.S. after 9/11. When media reports revealed the existence of this program in 2006, the European Data Protection Supervisor ruled that the transfers breached EU data protection laws.<sup>36</sup> In February 2007, the European Parliament resolved that proposed U.S. improvements to the program were insufficient to adequately protect the personal data of EU citizens and U.S. negotiators were once again sent back to the drawing board.<sup>37</sup> In July 2009, SWIFT announced that its intra-European data would henceforth only be stored in Europe, and therefore a new EU–U.S. agreement was required. A new interim agreement was formally concluded in November 2009 and ratified by the European Council.<sup>38</sup> Nevertheless, in February 2010, the European Parliament’s Civil Liberties, Justice and Home Affairs Committee voted

33. Testimony of David Heyman and Vicki Reeder, “International Aviation Screening Standards,” Subcommittee on Aviation Operations, Safety and Security, Committee on Commerce, Science, and Transportation, U.S. Senate, December 2, 2010, p. 12, at [http://commerce.senate.gov/public/?a=Files.Serve&File\\_id=5cbe4680-f1f2-41a8-a4a5-03023232c5f6](http://commerce.senate.gov/public/?a=Files.Serve&File_id=5cbe4680-f1f2-41a8-a4a5-03023232c5f6) (March 3, 2011).

34. House of Lords European Union Committee, “The EU/US Passenger Name Record (PNR) Agreement,” 21st Report of Session 2006–2007, May 22, 2007, p.11.

35. *Ibid.*

36. Press release, “Agreement Achieved on the Use of SWIFT Data,” Germany 2007–Presidency of the European Union, June 29, 2007, at [http://www.eu2007.de/en/News/Press\\_Releases/June/0629BMFswift.html](http://www.eu2007.de/en/News/Press_Releases/June/0629BMFswift.html) (March 3, 2011).

37. European Parliament, “PNR–SWIFT,” 2007, at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P6-TA-2007-0039+0+DOC+PDF+V0//EN> (March 3, 2011).

down the SWIFT data-sharing agreement, and the parliament as a whole refused to give its consent on the basis of privacy concerns, proportionality, and reciprocity.<sup>39</sup> Acting under powers granted by the Lisbon Treaty, this vote rendered the agreement legally void.

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***Washington remains frustrated by Europe's willingness to turn a blind eye to Hezbollah's activities in Europe, especially its extensive fundraising efforts.***

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The U.S. Mission in Brussels issued a statement declaring, "This decision disrupts an important counter-terrorism program, which has resulted in more than 1,500 reports and numerous leads to European governmental authorities and has contributed significantly to collaborative counter-terrorism efforts between the United States and Europe."<sup>40</sup> The U.S. Secretaries of State and the Treasury, Hillary Clinton and Timothy Geithner, wrote to the president of the European Parliament stating, "Withholding consent... could jeopardize a valuable and carefully constructed counter-terrorism program of importance to countries affected by terrorism around the world."<sup>41</sup>

It was not until June 2010 that the European Commission was able to conclude a new draft agreement with Washington, and only with the inclusion of a number of new restrictions, including oversight roles for both the European Commis-

sion and Europol.<sup>42</sup> EU officials are now posted to the U.S. Treasury to scrutinize the transfer of European banking data to investigators and information requests are to be tailored as narrowly as possible.

**Foreign Terrorist Organizations (FTO).** The EU's common definition of terrorism and designation of terrorist individuals and groups has acted as a powerful sanction against the free flow of terrorist finances. Maintaining and regularly updating a comprehensive list designating terrorist organizations is a critical counterterror tool, and several EU member states maintain additional lists of their own, including the U.K. and the Netherlands. These nations cooperate closely with the U.S. to update their lists and ensure that terrorist organizations are denied access to the world's biggest financial markets.

The EU's refusal to proscribe Hezbollah as an FTO is especially difficult for the United States to understand. The Lebanon-based group is a radical transnational terrorist entity responsible for several acts of mass murder against the U.S., including the April 1983 bombing of the U.S. embassy in Beirut which killed 63 people, including 17 Americans; the October 1983 suicide truck bombing of a U.S. Marine barracks at Beirut Airport, which killed 241; and the 1996 Khobar Towers bombing in Saudi Arabia, which killed 19 U.S. servicemen. Hezbollah also serves as a terrorist proxy for the Iranian government, which has ramped up its attacks on Israel in recent years.

Washington remains frustrated by Europe's willingness to turn a blind eye to Hezbollah's activities in

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38. Council of the European Union, "Council Decision on the signing, on behalf of the European Union, of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Program," November 27, 2009, at <http://register.consilium.europa.eu/pdf/en/09/st16/st16110.en09.pdf> (March 3, 2011).
39. European Parliament, "SWIFT: MEPs to Vote on Backing or Sacking EU/US Data Sharing Deal," February 5, 2010, at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+IM-PRESS+20100205STO68536+0+DOC+XML+V0//EN> (March 3, 2011).
40. "European Parliament Rejects SWIFT Deal for Sharing Bank Data with U.S.," Deutsche Welle, February 11, 2010, at <http://www.dw-world.de/dw/article/0,,5239595,00.html> (March 3, 2011).
41. *Ibid.*
42. Council of the European Union, "Council Decision on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program," June 24, 2010, at <http://register.consilium.europa.eu/pdf/en/10/st11/st11222-re01.en10.pdf> (March 3, 2011).



Europe, especially its extensive fundraising efforts. Hezbollah's "secretary general" Hassan Nasrallah recently stated that without European support "our funding (and) moral, political, and material support will...dry up."<sup>43</sup> Washington even took the unusual step of rebuking its closest European ally in March 2009, when it was revealed that Britain (at that time under a Labour government) would hold talks with the political wing of Hezbollah.<sup>44</sup> The United States considers Hezbollah "a direct and growing threat to the United States and Latin America," and continues to press Brussels to designate it as an FTO—albeit without success thus far.<sup>45</sup>

## Bilateral Cooperation

How to disseminate intelligence with key allies has long been a major issue for nation-states. The exchange of sensitive information can reveal a nation's assets, its methods of collection, and its third-party sources. Trust is therefore critical in these transactions. As international security expert Professor Richard Aldrich states:

Often characterized as sinister, the realm of intelligence is instead perhaps the most human of all aspects of government and consists to a large degree of personal relationships. The universal currency is trust. Achieving congruence on a grand counter-terrorism strategy may require common ideals, but joint intelligence operations are driven by a more basic sense of mutual reliance and a track record of competence in the field.<sup>46</sup>

Despite Brussels's increased role in counterterror policymaking, the EU has not replaced the bilateral relationships that have been formed between lawmakers, intelligence officers, and the security services over many decades. Equally, the U.S. is unlikely to share its highest-level intelligence in multilateral forums such as Europol and will continue to rely on its bilateral relationships, especially when conducting large-scale counterterrorism operations. And U.S.–European bilateral counterterror operations have enjoyed a number of extraordinary successes. The Anglo–American relationship stands out in particular for the remarkable ease with which intelligence officers operate together.

In August 2004, senior al-Qaeda leader Dhiren Barot led a terrorist cell in planning multiple attacks on key financial institutions in the U.S. and the U.K. The joint U.S.–U.K. investigation, known as Operation Rhyme, was cited in congressional testimony by FBI director Robert Mueller as one of a number of "unclassified examples of successes in the war against terrorism that would not have been possible without extensive cooperation and coordination with our partners."<sup>47</sup> Mueller and President Bush also cited Operation Crevice as a major success of British–American intelligence-sharing.<sup>48</sup> Crevice thwarted an al-Qaeda plot to detonate fertilizer bombs in a British shopping center and a London nightclub. The ensuing convictions of cell leader Omar Khyam and his four associates was viewed as a major victory in the war on terrorism and a vindication of the close cooperation between the U.S.,

43. Steven J. Rosen, "The Arab Lobby: The European Component," *The Middle East Quarterly*, Vol. 17, No. 4 (Fall 2010), p. 25, at <http://www.meforum.org/meq/pdfs/2774.pdf> (March 3, 2011).

44. Alex Spillius, "'Special Relationship' Strained: U.S. Criticises UK's Vow to Talk to Hezbollah," *The Telegraph*, March 12, 2009, at <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/barackobama/4982046/Special-relationship-strained-US-criticises-UKs-vow-to-talk-to-Hezbollah.html> (March 3, 2011).

45. Douglas Farah, "Iran in the Western Hemisphere," testimony before the Committee on Foreign Affairs, U.S. House of Representatives, October 27, 2009, at [http://www.strategycenter.net/research/pubID.217/pub\\_detail.asp](http://www.strategycenter.net/research/pubID.217/pub_detail.asp) (March 3, 2011).

46. Richard Aldrich, "US–European Intelligence Co-operation on Counter-Terrorism: Low Politics and Compulsion," *The British Journal of Politics and International Relations*, Vol. 11, No. 1 (2009), p. 124.

47. Robert Mueller, "Transforming the Federal Bureau of Investigation," statement before the Subcommittee on Science, State, Justice, and Commerce, and Related Agencies, Committee on Appropriations, U.S. House of Representatives, September 14, 2005, at <http://www2.fbi.gov/congress/congress05/mueller091405.htm> (March 3, 2011).

48. Press release, "Fact Sheet: Plots, Casings, and Infiltrations Referenced in President Bush's Remarks on the War on Terror," The White House, October 6, 2005, at <http://georgewbush-whitehouse.archives.gov/news/releases/2005/10/20051006-7.html> (March 3, 2011).

the U.K., and Pakistani and Canadian intelligence services.<sup>49</sup> British and American intelligence officers were in close contact for months, tracking, and subsequently preventing, the transatlantic airline bomb plot in summer 2006, which would have resulted in a projected death toll of at least 1,500.<sup>50</sup> After the arrest of 21 men, then-Prime Minister Tony Blair stated: “There has been an enormous amount of cooperation with the U.S. authorities which has been of great value and underlines the threat we face and our determination to counter it.”<sup>51</sup>

### The EU–U.S. Relationship: Achieving Cooperation

To increase transatlantic cooperation on fighting terrorism:

- **The European Parliament should approve the 2007 EU–U.S. PNR Agreement without modification.** The EU should also consider extending the agreement for an additional seven years in light of the substantial evidence supporting its critical role in countering terrorism.
- **EU leaders should consent to an umbrella agreement accepting U.S. data privacy standards as adequate.** An umbrella agreement will pave a quicker and more efficient path for future information-sharing programs.
- **The Obama Administration should push the EU to add Hezbollah to its list of foreign terrorist organizations.** The Obama Administration should demand that Europe end its role as Hezbollah’s primary political and funding support base.
- **Washington should add further European members to the Visa Waiver Program, such as Poland and Romania, through bilateral agreements that include mutually satisfactory security protocols.** Accessions to the Visa Waiver program should not modify or materially affect the EU–U.S. PNR agreement in any way.

- **The U.S., the EU, and its member states should agree to share data relating to asylum and immigration.** Combating asylum fraud and illegal migration is critical to ensuring international security.
- **Britain should withdraw from the European Convention of Human Rights.** Prime Minister Cameron should also veto the EU’s accession to the convention so that Britain is not rejoined by the backdoor.

### Conclusion

Rather than creating a single criminal justice system across Europe, the EU should focus on providing added value to the fight against Islamist terrorism. The EU’s common definition of terrorism and designation of terrorist entities has greatly restricted terrorists’ fundraising activities in Europe. Stopping the free movement of terrorists and their finances severely limits their capacity to carry out attacks, which is why the EU should immediately add Hezbollah to its list of foreign terrorist organizations.

As a matter of principle, EU counterterror policies should only be introduced if they complement, not *supplant*, the existing bilateral relationships that individual European allies have carefully built with the United States. State-to-state relations encourage the greatest intelligence-gathering and intelligence-sharing since trust is fundamental to the transaction.

The EU should continue to work closely with the U.S. on exchanging financial and travel data. It is the height of contradiction that the EU has prioritized intra-European information-sharing through untested and peripheral institutions, such as Eurojust and Europol, only for the European Parliament to place tighter restrictions on EU–U.S. agreements that have thousands of proven successes to their credit.

The Obama Administration must also recognize that tensions in the EU–U.S. relationship are likely to increase. The new powers granted to the

49. Mueller, “Transforming the Federal Bureau of Investigation.”

50. James Auger, “Eight Britons on Trial over ‘Unprecedented’ 2006 Terrorist Plot Against Multiple Airlines,” *Global Insight*, April 4, 2008.

51. BBC News, “‘Airlines Terror Plot’ Disrupted,” August 10, 2006, at [http://news.bbc.co.uk/2/hi/uk\\_news/4778575.stm](http://news.bbc.co.uk/2/hi/uk_news/4778575.stm) (March 3, 2011).

European Parliament under the Lisbon Treaty have already frustrated key U.S. policies. It is critical that Washington does not neglect its bilateral relationships and over-invest in the EU–U.S. counterterrorism relationship. Although there is clearly a role for multilateral institutions, bilateral contacts and state-to-state relations remain critical components in winning the war on terrorism.

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