



US-EU Joint Actions

Introduction

Since 11 September 2001 coordination efforts between the EU and the US to combat the threat of terrorism have increased significantly. The culmination of EU-US cooperation has resulted in the **EU-US Declaration on Combating Terrorism** on 26 June 2004. However, despite both sides' stated commitment to work together, the process is difficult.

The United States has criticized the European Union for not doing enough and especially for not uniformly enforcing the implementation of EU legislation. In fact, the United States has been reluctant to open all of its intelligence resources to Europol for fear that this institution is not stable or reliable enough.

At the same time, the European Union and individual Member States are unhappy - to say the least - with the foreign policy of the Bush Administration and many are unwilling to cooperate **unconditionally** on the United States' terms.

For example, and to show that problems even come down to the minutest details, the complete ban on lighters as carry-on items on aircraft (which could pose a difficult logistical problem for security at airports) was a controversial issue. Cooperation between the United States and the EU is seen as essential in the fight against terror but it is very difficult.

The following sections briefly set out the major commitments which the EU and the US have made to each other regarding their co-operation against terrorism.

Extradition and Mutual Legal Assistance (Washington, 25 June 2003)¹

- This is a product of the EU-US Summit in June 2003.
- It is the first agreement between EU the US, but builds on and works on the basis of existing bilateral agreements between EU Member States and the US.)

1) *The Extradition Agreement*

- a) Extradition procedures are simplified with fewer legalisation and certification requirements which make the procedure easier and faster.
- b) It represents an improvement in transmission channels providing for direct contact between central authorities especially in urgent cases.
- c) It broadens the range of extraditable offences including all offences which are punishable by more than one year in prison.
- d) EU Member States will still be able to refuse certain extraditions based on existing bilateral treaties with the US.

¹ Please note that all the following information either quotes or paraphrases the following: *General Secretariat of the Council of the European Union*, "Fact Sheet: Extradition and Mutual Legal Assistance." 25 June 2003. EU. 12 June 2005. <http://europa.eu.int/comm/external_relations/us/sum06_03/extra.pdf>.

- e) It gives the extradited person the right to a fair trial by an impartial tribunal that is established according to the law.
- f) *"Allows Member States to make extradition contingent upon the condition that the death penalty will not be imposed."*
- g) Allows for consultation to determine "the extent to which sensitive information contained in an extradition request, can be protected by the requested State."
- h) When a State is dealing with competing extradition requests, the agreement sets out a list of criteria that the State must take into account.

2) *The Mutual Legal Assistance Agreement*

- a) This gives mutual access to bank accounts through the proper law enforcement authorities in the context of serious investigations (including organised crime, financial crime, and terrorism).
- b) It allows for the creation of Joint Investigative Teams and speeds up the co-operation procedures between EU Member States and the US.
- c) EU Member States will continue to be able to refuse mutual legal assistance based on existing bilateral treaties with the US
- d) Those Member States that do not have an existing mutual assistance treaty with the US will be able to refuse mutual legal assistance based on "public order" or the basic essential interests of their State.
- e) It contains extensive provisions in relation to data protection and the provision of evidence and information.

Container Security Accord (22 April 2004)

This extends the US Container Security Initiative (CSI) which allows US officials to pre-screen containers in foreign ports bound for US soil "in order to rule out potential use by terrorists."²

Passenger Name Records Agreement (PNR) (28 May 2004)

- Despite strong opposition from Members of the European Parliament (MEPs), the EU Council signed the agreement which came into force immediately.
- The agreement legalises the transfer of passenger information to the US on transatlantic flights to the United States. The purpose of this agreement is to prevent and combat terrorism and has a provision which states that the

"CBP (US Bureau of Customs and Border Protection) shall process PNR data received and treat data subjects concerned by such processing in accordance with applicable US laws and constitutional requirements, without unlawful discrimination, in particular on the basis of nationality and country of residence."³

- The agreement came only two weeks after the European Commission's Data Protection Directive.

² *The United States Mission the European Union*, "US, EU Sign Container Security Accord." 22 April 2004. US 15 June 2005. <<http://www.useu.be/Terrorism/USResponse/Apr2204CSISigning.html>>.

³ *EurLex*. 20 May 2004. EU. June 15 2005. <[http://europa.eu.int/eur-lex/lex/LexUriServ/LesUriServ.do?uri=CELEX:22004A0520\(01\):EN:HTML](http://europa.eu.int/eur-lex/lex/LexUriServ/LesUriServ.do?uri=CELEX:22004A0520(01):EN:HTML)>.

- In the face of strong opposition from MEPs, the Commission adopted a formal Decision on 11 May 2004 which limits the PNR Agreement. In particular:⁴
 - a) fewer data fields will be collected (only 34 out of a possible 60 fields);
 - b) sensitive data will be selectively transferred, filtered, and subsequently deleted by the US Bureau of Customs and Border Protection (for example, data which may reveal race or religion);
 - c) the PNR will only be used for the purposes of combating and preventing terrorism;
 - d) the PNR will not be a shared system;
 - e) most PNR data will be deleted after 3 1/2 years; accessed files will be kept for eight years;
 - f) a joint review will be conducted at least once annually.
- Many Member States are still unhappy with the compromise and the implementation process is slow. The European Parliament has brought this matter before the European Court of Justice which could nullify the agreement if it were found to violate EU privacy law.

Biometric Identifiers in Passports

Please refer to Briefing Paper 5 - Justice and Home Affairs for further details on this.

High Level Policy Dialogue on Border and Transport Security

- This is a biannual meeting between high officials of the EU and the US. The first took place on 26 April 2004. The third meeting took place on 19 May 2005 in Brussels.
- Its main purpose is to serve as another coordination mechanism.
- In addition, it acts as an early warning on projected measures and for joint initiatives when necessary.

EU-US Declaration on Combating Terrorism⁵ (Dromoland Castle, June 26th 2004)

This Declaration's main purpose is to emphasize the EU and US's commitment to cooperating internationally to combat terrorism while ensuring the fundamental freedoms and human rights.

It is based on seven main objectives:

1. To work on international consensus and international efforts to combat terrorism with special emphasis on the key role of the UN and the adherence to UN Conventions on terrorism.
To prevent terrorist access to financial and economic resources.
2. To work together to "detect, investigate and prosecute terrorists and prevent terrorist attacks." In particular, to prevent attacks on information structures via the internet and to improve coordination and information exchange between the EU Member States and the United States.
3. To work to protect the "security of international transport and ensure an effective system of border control." In particular, to improve security standards without hindering

⁴ Please note that the following information has been paraphrased from: *Eurunion*, "EU, US Sign International Agreement on "PNR" Passenger Data Transfers." 28 May 2004. EU. June 15 2005.
<<http://www.eurunion.org/New/press/2004/20040088.htm>>.

⁵ Please note that all the following information and cited works has been taken from: *The Council of the European Union*, "EU-US Declaration on Combating Terrorism." Brussels 26 June 2004. EU. 15 June 2005.
<http://europa.eu.int/comm/external_relations/us/sum06_04/decl_terr.pdf>.C/04/205.

trade, to implement EU-US agreements such as the Passenger Name Records (PNR) agreement, and to continue to promote mutual cooperation.

4. To work together to "develop further our capabilities to deal with the consequences of a terrorist attack."
5. To develop coherent strategies in the event of an attack (especially a CBRN attack).
6. To work together in "diminishing the underlying conditions that terrorists can seize to recruit and exploit to their advantage." Emphasis is put on supporting good governance, rule of law, and promoting cross-cultural tolerance and understanding.
7. To improve the counter-terrorist capacities/commitment in third countries by making it an external relations priority. In particular, this should be done through external assistance programs and international "comprehensive Counter-terrorist Financing and Anti-Money Laundering regimes" which are developed with influence from other international/multinational organizations (for example, the UN Counter Terrorism Committee (CTC), Financial Action Task Force (FATF), and the G8 Counter-terrorism Action Group).

US-Europol Cooperation

- On 6 December 2001, the US and Europol signed their first agreement on strategic cooperation. It established a long-term "comprehensive working relationship and will include exchanges of strategic information on criminal trend analyses, articulation of best practices for addressing specific crime problems, sharing of training and continuing education programmes with participation of personnel in each other's programmes."⁶ (This agreement does not agree on the sharing of personal data.)
- On 20 December 2002, the US and Europol signed their second cooperation agreement. This agreement made US and Europol co-operation "fully operational" by allowing for information exchange including the sharing of personal data between the competent authorities of these two bodies.⁷
- Europol has posted two liaison officers in Washington. The FBI is to post a liaison officer with Europol's Counterterrorism Task Force in The Hague.

US - Eurojust Cooperation

Eurojust has had close contacts with the United States Justice Department. The US has appointed a liaison magistrate with Eurojust and many are pushing for a formal agreement between Eurojust and the United States Justice Department.

Conclusions

Since 11 September 2001, the US-EU relationship has been difficult. Nevertheless, a significant degree of transatlantic co-operation has developed since then. There are still difficulties in the relationship. The US's future transatlantic agenda includes pushing US requirements (December 2003) for countries to deploy armed marshals on certain flights to the US (although they have pledged in April 2004 to come up with alternative proposals for European countries that oppose it.) Yet, the EU and the US have pledged to continue to work together to enhance international information exchange particularly on lost or stolen

⁶ *The United States Mission to the European Union*, "US, Europol to Sign Cooperation Agreement." 4 December 2001. US. 15 June 2005. <<http://www.useu.be/Terrorism/EUResponse/Dec0401USEuropolAgreement.html>>.

⁷ *The United States Mission to the European Union*, "US and Europol Sign a Second Cooperation Agreement." 20 December 2002. US 15 June 2005. <<http://www.useu.be/Categories/Justice%20and%20Home%20Affairs/Dec2002USEuropolSignAgreement.html>>.

passports. In the end, both co-operation and disagreement are inevitable as the US pushes for new regulations to enhance its own security and the EU tries to preserve the varied interests of its Member States and the civil liberties of its citizens.

Results of the EU-US Summit in June 2005

The result of which were four major declarations on 20 June 2005. They include:

- Declaration on Working Together to Fight Against Global Piracy and Counterfeiting (http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/er/85381.pdf)
- Declaration on Working Together to Promote Peace, Stability, Prosperity, and Good Governance in Africa (http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/er/85382.pdf)
- Declaration on the EU and US Initiative to Enhance Transatlantic Economic Integration and Growth (http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/er/85383.pdf)
- Declaration on Enhancing Co-operation in the Field of Non-Proliferation and the Fight Against Terrorism (http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/er/85384.pdf)

Further details of these Declarations will follow.

References

- EU-US Declaration on Combating Terrorism - http://europa.eu.int/comm/external_relations/us/sum06_04/decl_terr.pdf
- The EU, the US, and the Fight Against Global Terrorism. <http://www.eurunion.org/New/EUNewsletters/EUFocus/2005/EUFocus-Terror.pdf>
- Fact Sheet: Extradition and Mutual Legal Assistance - http://europa.eu.int/comm/external_relations/us/sum06_03/extra.pdf
- US, EU Sign Container Security Accord - <http://www.useu.be/Terrorism/USResponse/Apr2204CSISigning.html>
- Passenger Name Records Agreement - [http://europa.eu.int/eur-lex/lex/LexUriServ/LesUriServ.do?uri=CELEX:22004A0520\(01\):EN:HTML](http://europa.eu.int/eur-lex/lex/LexUriServ/LesUriServ.do?uri=CELEX:22004A0520(01):EN:HTML)
- EU, US Sign International Agreement on "PNR" Passenger Data Transfers - <http://www.eurunion.org/New/press/2004/20040088.htm>
- Commission Secures Guarantees for Protecting Personal Data of Transatlantic Air Passengers - <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/650&format=HTML&aged=0&language=en&guiLanguage=en>
- US-Europol First Cooperation Agreement - <http://www.useu.be/Terrorism/EUResponse/Dec0401USEuropolAgreement.html>
- US-Europol Sign Second Cooperation Agreement - <http://www.useu.be/Categories/Justice%20and%20Home%20Affairs/Dec2002USEuropolSignAgreement.html>
- US-Europol Supplemental Agreement on the Exchange of Personal Data and Related Information - <http://www.state.gov/s/l/38629.htm>