



European Legal Cooperation Against Terrorism

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EUROPEAN LEGAL COOPERATION AGAINST TERRORISM
COMPARATIVE SUMMARY
IMMIGRATION AND ASYLUM

Unlike the United States, Canada, Australia, and New Zealand, European countries do not operate immigration programs through which a foreign individual can apply for the issuance of a fixed or targeted number of immigrant visas set aside for that purpose on an annual basis. For many years, most of the foreigners who have come to establish permanent residence in the countries of Europe have done so through marriage, through rights extended to persons in former colonies, or through prolonged employment. Persons in these categories either have the right to remain or extended permission to apply to stay in the country indefinitely. Whether such an application filed by a person other than a spouse of a citizen is granted is most often at the discretion of a responsible minister. Contribution to the country or a locality is often weighed heavily. European countries do not administer a points system under which the accumulation of a required number of credits ensures entry. Most European governments have granted responsible ministers the authority to eventually grant citizenship to permanent or long term residents either through the exercise of broad discretion or, increasingly, in accordance with rules that establish the requirements an applicant must meet and the types of past conduct that will render persons ineligible.

In recent years, relatively large numbers of aliens have come to live in almost all European countries through two additional methods. One is illegal immigration. Statistics in this area are mostly rough guesses, but there seems to be no doubt that illegal immigration, including illegal trafficking in persons, has become a growing problem. One area that has been particularly affected is the British Isles. In the United Kingdom and Ireland, there have been many reports of persons hiding as stowaways on boats as well as of persons clinging to trains entering the Chunnel in France. However, even some countries that are not generally considered to be highly desirable for refugee claimants have had experiences with "boat people." An example of such a country is the Mediterranean nation of Malta.

The other method that has been used to gain admission with increasing frequency in most countries is the presentation of claims to asylum. There are some exceptions; for example, legal reforms in Germany have actually led to a substantial decrease in the number of such applications filed in that country in recent years. Also, in the east, small countries such as Estonia have received very few refugee applications. However, there are many more cases of tremendous increases in refugee claims in recent years. Again, the British Isles are one notable example. France is another, with almost 80,000 applications for refugee status and territorial asylum in 2001.

All of the surveyed European countries are signatories to the United Nations Convention on Refugees that requires Member States to not return persons to their country

of origin if they have a well-founded fear that they would face persecution on account of grounds such as race, religious beliefs, nationality, social group, or political conviction except in extraordinary cases involving national security or related matters.

What constitutes a well-founded fear is an issue that has been interpreted somewhat differently by administrative officials and the courts in different countries. For example, the United Kingdom's reputation for being more receptive to claims for asylum than France is cited as a reason for why so many refugees have used the Chunnel and other means of transportation to try to enter the United Kingdom illegally. Yet despite these differences, it appears that the acceptance rates for refugee claimants is generally low. In the two country reports that cite statistics, France and Ireland, the rates are less than 20 percent.

In most of the western European countries that have seen large increases in the filing of refugee claims, backlogs have grown at a corresponding rate. In France, it now takes up to two years for an application to be processed. During this period, applicants are often able to make contacts that will enable them to continue living in the country clandestinely even if their cases are rejected. For this reason, many European countries have either recently revised their procedures or are in the process of revising their procedures for asylum cases. In France, the Government reportedly hopes to reduce the processing to one month. In the United Kingdom, it is hoped that reform will result in cases being initially heard within two months and appeals within an additional four months.

Because the backlogs have grown, the importance of having laws that dispose of frivolous cases quickly and laws that provide immediate protection to national security interests has become more important. This has led to the development of some two-tiered approaches. For example, in the United Kingdom, national security cases are referred to the Special Immigration Appeals Commission for quick consideration. Another important part of the national security provisions is the inclusion or expansion of the powers of detention. However, detention does not appear to be a very common practice in Europe. Few countries have reported significant increases in the number of persons actually detained because they were either unable to establish their identity or were considered to pose a threat to either citizens or national security.

Another area that has been widely examined in Europe is deportation. In practice, the rates appear to have generally been very low. The first reason for this is that many persons who have their claims to refugee status denied cannot easily be located. Tracking has generally been inadequate. Germany is one country that appears to have made a concerted effort in this area. In that country, an alien's central registry is maintained as well as registers of all abodes. In other countries, registration requirements are often weak or unenforced. One way of attacking this problem has been to increase the registration requirements and to issue registration cards to refugee claimants. A number of countries have started issuing machine-readable cards.

Another manner of attempting to combat the problem of refugee claimants disappearing when their claims are rejected has been to prevent them from posing as citizens in applying

for employment or services. One way governments are attempting to do this is through the issuance of identification cards. In fact, most of the surveyed countries now require their citizens to obtain national identity cards. In some cases, a passport will suffice.

Some countries, including Greece and Malta, require citizens to actually carry the cards that have been issued. Other countries, such as France, Italy, and the Netherlands, issue identity cards to persons who choose to request them. At least in France, possession of such a card is almost indispensable. The two countries that have resisted creating national identity cards are the United Kingdom and Ireland. However, the British Government is currently considering a plan that would require residents to obtain a card in order to be eligible to receive such services as medical care. Within the United Kingdom, this plan has been opposed by many civil libertarians as one that amounts to creating a national identity card. Feelings that identity cards are an invasion of civil liberties appear to run strongest in the British Isles.

While locating persons who have disappeared is one reason why deportation rates are low, it is not the only one. In many countries, decisions against deportation are often made on humanitarian grounds. It is reported that in Germany, such considerations have prevailed even in some instances when security reasons might have suggested otherwise.

This points to a much broader problem. It has been frequently pointed out that low birth rates in Europe have created the need for young, employable workers. Many refugee claimants fit into this category and their admission has not always been seen as a negative phenomenon.

Nevertheless, the countries that have experienced the greatest influx of refugee claimants have seen their presence as a drain on social services. A number of steps have been taken to discourage claims. One of these has been to restrict social services, payments, and entitlements. For example, Ireland does not grant refugee claimants the right to work. Instead, claimants are housed in complexes located around the country, rather than in Dublin. The United Kingdom has also created 13 "cluster areas" that are generally less attractive to potential claimants than the former center of London.

Significant efforts at controlling influxes of asylum seekers has also been made through European cooperation. One of the most important agreements in this connection is the Dublin Convention of 2000. An implementing regulation provides for the establishment of a computerized database called Eurodac which will contain the fingerprints of all who seek asylum in a Member State, and those aliens 14 years old or older who are apprehended while attempting to enter a Member State illegally. The fingerprints must be maintained for a period of 10 years or unless the apprehended person becomes a citizen in a Member State before that date.

The most important feature of the Dublin Convention is that it attempts to attack the problem of "asylum shopping" through European Union wide adoption of a safe third country rule. Under this rule, asylum seekers are generally required to present their claims in the first safe country they enter. The Convention also authorizes countries to provide in their asylum laws that immigration officials can return persons to a safe third country for resolution of their claims. Although there have been some obstacles

to an EU-wide adoption of this rule, many countries have already implemented the Dublin Convention. Ireland, the United Kingdom, and Germany are three countries that already have safe third country rules in place.

In the fight against terrorism, one issue that has arisen involves police powers. More specifically, questions have been raised as to whether the police are allowed to employ wiretapping and the types of physical surveillance that are often indispensable in combating crimes and conspiracies to commit crimes. The reports on all of the surveyed countries indicate that the local laws provide for both wiretapping and physical surveillance. In many countries, such as France, wiretapping must be authorized by an examining magistrate or a court. In some countries, including Ireland, wiretapping can be authorized by the Minister of Justice. Most of the laws provide that wiretapping is only allowed in the investigation of serious crimes. Terrorism is often specifically listed as such a crime. It does not appear that any countries' courts have placed severe limits on the ability of police officers to seek approval to engage in wiretapping for the purpose of combating terrorism.

Physical surveillance by police officers does not appear to be governed by legislation in many European countries. This type of physical surveillance thus appears to be sometimes treated as a normal police activity that does not have to be specifically authorized by judicial officers. However, the situation is generally different in such countries as Germany, France, and the United Kingdom.. In Germany, provision is made for the issuance of warrants to authorize visual surveillance. France also requires the police to obtain warrants except in matters concerning national defense. In the United Kingdom, warrants can be granted for directed and covert surveillance when it is considered to be necessary and proportionate or pursuant to an order issued by the Secretary of State. In the Netherlands, the police may use camera surveillance in public areas if it is necessary to maintain public order or to the investigation of crimes if other measures do not appear to be adequate. In all of these countries, failure to comply with the relevant statutes may result in the police violating the strict privacy laws that have been created.

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EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

INTERNATIONAL CONVENTIONS AND PROTOCOLS *

*Key:

_ = ratification/accession/succession/acceptance

S = signed (not yet ratified)

blank = not signed

Convention/Protocol *	1	2	3	4	5	6	7	8	9	10	11	12
Austria	_	_	_	_	_	_	_	_	_	_	_	_
Belgium	_	_	_		_	_	_			S	S	S
Bulgaria	_	_	_	_	_	_	_	_	_	_	_	_
Cyprus	_	_	_	_	_	_	_	_	_	_	_	_
Czech Republic	_	_	_	_	_	_	_			_	_	S
Estonia	_	_	_	_	_	_	_	_		_	_	_
France	_	_	_		_	_	_	_	_	_	_	_
Germany	_	_	_	_	_	_	_	_	_	_	S	S
Greece	_	_	_	_	_	_	_	_	_	_	S	S
Ireland	_	_	_			_	_				S	S
Italy	_	_	_	_	_	_	_	_	_		S	S
Latvia	_	_	_	_			_			_		S
Lithuania	_	_	_		_	_	_			_	S	
Luxembourg	_	_	_		_	_	S				S	S
Malta	_	_	_	_	_		_	_	_	_	_	_
Netherlands	_	_	_	_	_	_	_	_	_	_	_	_
Poland	_	_	_	_	_	_	S	_	_		S	S
Portugal	_	_	_	_	_	_	_	_	_		_	S
Slovakia	_	_	_	_	_	_	_	_	_	_	_	_
Spain	_	_	_	_	_	_	_	_	_	_	_	_
Switzerland	_	_	_	_	_	_	_	_	_	_		S
U.K.	_	_	_	_	_	_	_	_	_	_	_	_
U.S.	_	_	_	_	_	_	_	_	_	_	_	_
TOTAL	23	23	23	18	21	21	21	17	16	16	13	11

* The numbers correspond to the titles listed below. See pp. 2-3 for details.

1. Offences Committed on Board of Aircraft, 1969
2. Suppression of Unlawful Seizure of Aircraft, 1971
3. Suppression of Unlawful Acts Against the Safety of Civil Aviation, 1973
4. Prevention and Punishment of Crimes Against Internationally Protected Persons, 1977
5. Convention Against Taking Hostages, 1983
6. Physical Protection of Nuclear Material, 1987

7. Suppression of Unlawful Acts of Violence at Airports, 1989
8. Unlawful Acts Against the Safety of Maritime Navigation, 1992
9. Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1992
10. Marking of Plastic Explosives for the Purpose of Detection, 1998
11. Suppression of Terrorist Bombings, 2001
12. Suppression of Financing of Terrorism, 2002

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EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

INTERNATIONAL CONVENTIONS AND OTHER
INTERNATIONAL LEGAL INSTRUMENTS

There are twelve major global (generally applicable, as opposed to regional) multilateral conventions and protocols deposited with the Secretary General of the United Nations related to states' responsibilities for combating terrorism.¹ All of them were adopted before September 11, 2001. However, to this date, many states are not yet parties to them, or are not implementing them. The following is the list of these conventions and protocols in chronological order, i.e., arranged by the date of their adoption:

1. *Convention on Offences and Certain Other Acts Committed on Board of Aircraft*, signed at Tokyo on September 14, 1963, entered into force on December 4, 1969, hereinafter Tokyo Convention. The Convention has been binding (by the effect of ratification, accession, or succession) on 173 Parties, which includes all 22 Report countries and the United States;

2. *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at the Hague on December 16, 1970, entered into force on October 14, 1971, hereinafter Hague Convention. The Convention has been binding (by the effect of ratification, accession, or succession) on 175 Parties, which includes all 22 Report countries and the United States;

3. *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation*, signed at Montreal on September 23, 1971, entered into force on January 26, 1973, hereinafter Montreal Convention. The Convention has been binding (by the effect of ratification, accession, or succession) on 176 Parties, which includes all 22 Report countries and the United States;

4. *Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents*, adopted by the General Assembly of the United Nations in New York on December 14, 1973, entered into force on February 20, 1977, hereinafter Protected Convention. The Convention has been binding (by the effect of ratification, accession, or succession) on by 121 Parties, including 17 Report countries (except Belgium, France, Ireland, Lithuania, and Luxembourg) and the United States;

5. *International Convention Against Taking Hostages*, adopted by the General Assembly of the United Nations, in New York on December 17, 1979, entered into force on June 3, 1983, hereinafter Hostages Convention. The Convention has been binding (by the effect of ratification, accession, or succession) on 110 Parties, which includes 20 Report countries (except Ireland and Latvia) and the United States;

¹ See: wysiwyg://2http://www.odccp.org/odccp/terrorism_conventions.ht

See also: United Nations Treaty Collection. Conventions on Terrorism, at: <http://untreaty.un.org/English/terrorism.asp>
United Nation Organization has presently 191 Members.

6. *Convention on the Physical Protection of Nuclear Material*, signed at Vienna on March 3, 1980, entered into force on February 8, 1987, hereinafter Nuclear Material Convention. The Convention has been binding (by the effect of ratification, accession, or succession) on 78 Parties, including 20 Report countries (except Latvia and Malta) and the United States;

7. *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on September 23, 1971, signed at Montreal on February 24, 1988, entered into force on August 6, 1989, hereinafter Montreal Protocol. The Protocol has been binding (by the effect of ratification, accession, or succession) on 124 Parties, including 20 Report countries—except Luxembourg (signed in 1989) and Poland (signed in 1989, presently in ratification process)—and the United States;

8. *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*, done at Rome on March 10, 1988, entered into force on March 1, 1992, hereinafter SUA Convention. The Convention has been binding on 73 countries, including 16 Report countries (except for Belgium, Czech Republic, Ireland, Latvia, Lithuania, and Luxembourg), and the United States;

9. *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf*, done in Rome on March 10, 1988, entered into force on March 1, 1992, hereinafter SUA Protocol. The Protocol has been binding on 66 countries, including 15 Report countries (except for Belgium, Czech Republic, Estonia, Ireland, Latvia, Lithuania, and Luxembourg), and the United States;

10. *Convention on the Marking of Plastic Explosives for the Purpose of Detection*, signed at Montreal on March 1, 1991, entered into force on June 21, 1998, hereinafter Explosives Convention. The Convention has been binding (by the effect of ratification, acceptance, approval, accession, or succession) on 81 Parties, including 15 Report countries--except for Belgium (which has already signed it), Cyprus, Ireland, Italy, Luxembourg, Poland (in ratification process), and Portugal—and the United States;

11. *International Convention for the Suppression of Terrorist Bombings*, adopted by the General Assembly of the United Nations on December 15, 1997, entered into force on May 23, 2001, hereinafter Bombings Convention. The Convention has been binding (by the effect of ratification, acceptance, approval, or accession) on 70 Parties, including 12 Report countries--except for Belgium, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Poland (in ratification process), and Switzerland— and the United States. The Convention has been already signed by 8 of these countries, i.e., Belgium, Germany, Greece, Ireland, Italy, Lithuania, Luxembourg, and Poland;

12. *International Convention for the Suppression of Financing of Terrorism* adopted by the General Assembly of the United Nations on December 9, 1999, entered into

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force on April 10, 2002, hereinafter Financing Convention. The Convention has been binding on 45 Parties, including 10 Report countries—except for Belgium, Czech Republic, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Poland (pending ratification), Portugal, and Switzerland—and the United States. The Convention has been already signed by 11 of these countries: Belgium, Czech Republic, Germany, Greece, Ireland, Italy, Latvia, Luxembourg, Poland, Portugal, and Switzerland, i.e., all except Latvia.

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

The September 11 attacks on the United States prompted greater cooperation between the United States and Europe in the area of counterterrorism. Many European countries, after discussions with the U.S. government or on their own, reacted by enacting or considering legislation designed to improve law enforcement and suppression of terrorism. The following is a brief evaluation of positive legal developments as well as areas of concern.

1. Immigration, Asylum and Tracking of Aliens

Countries' laws differed substantially prior to 9/11, with some adopting very restrictive policies, tight border controls and efficient tracking of aliens, whereas others having more liberal and loose control over immigrants and asylum seekers. Post 9/11 enacted or pending legislation generally indicates toughening of regulations in most of these areas.

Border controls appear to still vary among EU countries. Some countries adopted portions of the 1990 Schengen Treaty that are designed to eliminate border checks for travel within the European Economic Area, and some, like Ireland and the United Kingdom opted out over concern that the external borders of the EU were not adequately secured. Considering the relatively strong border controls currently utilized in aspiring EU members, such as Bulgaria and the Baltic States (Estonia, Latvia and Lithuania), it is questionable if these countries will choose to apply the rule indicated above.

Whereas most countries surveyed possess restrictive immigration and asylum laws, problems remain in their implementation. In an effort to reduce the backlogs created by large increase in the filing of refugee claims, many West European countries, including France and the United Kingdom, have either recently revised or are in the process of revising their procedures in asylum cases. Enforcement of asylum law and procedure, however, is restricted by the limited use of detention and deportation originating from either an inability to track or establish the person's identity or to prove the threat (s)he poses to either citizens or national security. Deportation has also been rejected in some countries, specifically Germany, based on humanitarian grounds.

Significant efforts at controlling the influx of asylum seekers were made through European cooperation, and particularly the Dublin Convention of 2000. As a consequence, the safe third country rule was adopted and already been implemented by Ireland, the United Kingdom, and Germany. The rule requires asylum seekers to present their claims in the first safe country they enter.

Another important contribution of the Dublin Convention of 2000 is the establishment of a computerized database called Eurodac. Eurodac will contain the fingerprints of all asylum seekers fourteen years or older or those apprehended in a Member State for a period of 10 years unless the apprehended person becomes a citizen in a Member State before that date.

Although helpful, additional tracking measures need to be further improved. Germany is one country that appears to have made a concerted effort in this area. In that country, an alien's central registry is maintained as well as registration of all residences. In addition, all inhabitants over the age of 16 have to obtain a machine-readable identity card or a passport, which will include biometric information. In other countries, registration requirements are often weak or unenforced. One way of attacking this problem has been to increase the registration requirements and to issue registration cards to refugee claimants. A number of countries, including Ireland, have started issuing machine-readable cards. Another way to track aliens is by requiring all citizens to obtain national identity cards. Some countries, including Greece and Malta, require citizens to actually carry the cards that have been issued, and others, such as France, Italy, and the Netherlands, make it optional. At least in France, possession of such a card is almost indispensable. Although initially opposed to creating national identity cards, the British Government is currently considering a plan that would require residents to obtain a card in order to be eligible to receive such services as medical care. Ireland, however, appears to strongly oppose such a plan.

2. Surveillance and Intelligence Gathering

In the fight against terrorism questions have been raised as to whether police are allowed to employ wiretapping, intercept correspondence transmitted via telecommunication technology, and exercise certain types of physical surveillance. The reports on all of the surveyed countries indicate that local laws provide for both wiretapping and physical surveillance. In many countries, such as France, wiretapping must be authorized by an examining magistrate or a court. In some countries, including Ireland, wiretapping can be authorized by the Minister of Justice. Most of the laws provide that wiretapping is only allowed in the investigation of serious crimes. Terrorism is often specifically listed as such a crime. It does not appear that any countries' courts have placed severe limits on the ability of police officers to seek approve to engage in wiretapping for the purpose of combating terrorism.

The interception of correspondence transmitted via telecommunication technology for the purpose of preventing terrorism is specifically authorized in France as an exception to the general rule of secrecy of such correspondence. German statutory law has not as yet specifically addressed the permissibility of the collection of Internet data for intelligence and investigative purpose or for crime prevention. In Ireland, police investigative powers are quite broad, and authorities may obtain a warrant on reasonable grounds if they believe that evidence of an offense may be found at a particular place. Italy introduced new provisions to deal with monitoring and control of communications for the purpose of investigations for crimes of terrorism, and extended to these crimes the less stringent requirements applicable to wiretapping against organized crime.

Physical surveillance by police officers does not appear to be governed by legislation in many European countries. This type of physical surveillance thus appears to be sometimes treated as a normal police activity that does not have to be specifically authorized by judicial officers. However, the situation is generally different in such countries as Germany, France, and the United Kingdom. In Germany, provision is made for the issuance of warrants to authorize visual surveillance. France also requires the police to obtain warrants except in matters concerning

national defense. In the United Kingdom, warrants can be granted for directed and covert surveillance when it is considered to be necessary and proportionate or pursuant to an order issued by the Secretary of State. In the Netherlands, the police may use camera surveillance in public areas if it is necessary for maintaining public order or the investigation of crimes if other measures do not appear to be adequate. In all of these countries, failure to comply with the relevant statutes may result in the police violating the strict privacy laws that have been created.

3. Anti-Terrorism Legislation and Enforcement

A survey of anti-terrorism legislation in European countries indicates different treatment of terrorism offenses. This situation exists in both EU member countries as well as in non EU countries.

Two framework decisions adopted by the EU following the September 11 events, are relevant in this context. The Framework Decision on Combating Terrorism is designed to harmonize the legislation on terrorism in the Member States, by establishing a definition of terrorism and terrorist offenses, and requiring effective proportionate and dissuasive penalties, while affirming their commitment to human rights. The decision further deals with jurisdictional issues as well as protection and assistance to victims of terrorism. The second framework decision adopted by the EU after 9/11 is the European Arrest Warrant (EAW) that when it enters into force in 2004, will require the extradition of suspects sought for terrorism in all Member State. So far, six member states, Belgium, France, Luxembourg, Portugal, Spain, and the United Kingdom have made a commitment to adopt the EAW.

Currently, though, terrorism legislation varies among the countries surveyed. Countries that had experienced terrorism, like France and the United Kingdom, already had special anti-terrorism legislation which was further strengthened by post 9/11 temporary emergency measures. Some countries that had not shared such experience, either amended or are in the process of amending their laws by enacting special provisions and imposing stiffer sentences on such offenses. Others still apply regular criminal law to terrorism offenses. Designation of special offenses that carry increased penalties may signal recognition of the special impact terrorism has on the welfare of society.

Generally, what distinguishes regular offenses from terrorist ones is the special intent. Thus, to qualify as terrorist offenses, French Code requires the offenses to be intentionally connected to an individual or collective enterprise having the purpose of seriously disturbing public order by intimidation or terror. The 2000 U.K. Terrorism Act definition adds the intent to influence the government and the advance of a political, religious, or ideological cause, as other qualifying criteria. The recognition of a religious or ideological motivation as one of the elements of terrorist intent seems to expand its application to domestic terrorism as well as to international acts. An interesting feature of the British Act is the introduction of the crime of inciting terrorism overseas and of conspiracy to commit a terrorism offense.

Similarly to French and U.K. law, Portuguese terrorism law predates the 9/11 events. It specifically defines the offences of terrorism, association with terrorist organizations, and incitement to commit terrorism. Interestingly, though, the law provides for a reduced or annulled penalty for voluntarily abandoning terrorist activities and lessening or preventing their risk.

Review of the laws of other European Countries indicates several that have or are currently in the process of amending their laws to establish special terrorism offenses. In October 2001 Italy approved emergency legislation which amended the pertinent article of the Penal Code and made international terrorism a crime. The new law also created a new crime of assisting members of terrorist organizations which carries a stiff penalty. In the Netherlands, recent bill purports to exert increased penalties on violent offenses committed with “terrorist intent”, and in Switzerland, a bill was introduced to propose the enactment of two criminal terrorism provisions, including foreign terrorism and financing of terrorism.

In addition to the above, Greece appears to be considering the adoption of a special law on terrorism implementing the EU Framework Decision on Combating Terrorism. In the absence of any specific anti-terrorist statutes, prosecutions of suspected terrorists have been based on Greek Criminal Code which does not explicitly contain the word “terrorism” or the necessary elements. It punishes anyone who founds or joins a group that endangers or continues an uninterrupted criminal activity. Single acts of terrorism, therefore, appear not to come within the scope of the law. As stated, a special committee was appointed to study and draft new legislative measures on this subject.

A somewhat problematic situation seems to connect to the application of German law to international terrorism. German pre 9/11 law contained only one substantive provision specifically relating to terrorism, prohibiting various conduct with regard to a terrorist organization. The events of 9/11 have shown a major flaw in this provision in that it applied only to terrorist groups that commit or plan activities in Germany. Although the German Anti-Terrorist Act of 2002 aimed at preventing international terrorism, the enactment of a criminal provision for international terrorist organization seems since to have been modified or delayed.

Unlike the above mentioned countries, the survey indicates lack of interest on the part of other European countries in amending their legislation. Some, like Malta, claim that provisions within their criminal codes are sufficient to cover terrorist activities.

4. Terrorist Financing and Measures

A survey of the reports of European countries and European transnational organizations shows that financing of terrorists in most countries is not a separate offence as such, especially before September 11. Terrorist financing has been dealt with in various ways, such as by punishing participation in a criminal or terrorist organization. In most of the countries surveyed, however, the financing of terrorism, under certain circumstances, amounts to money laundering. Therefore, money laundering laws are considered major instruments to prevent the financing of terrorism.

In compliance with the 1991 Directive on the Prevention of the Use of the Financial System for the Purpose of Money Laundering, EC member countries enacted various money laundering acts that apply to all financial and credit institutions, including insurance companies, pension funds, credit card companies, currency exchanges, casinos, etc. Such institutions are required to request identification when a currency movement exceeds certain amounts and report all unusual and suspicious transactions to a central reporting authority.

To control large amounts of cash, an additional European Union Regulation has been proposed. It establishes an obligatory declaration of amounts exceeding 15,000 Euro on anybody who enters or leaves the Community customs territory. Custom officials will have the duty to inform the custom officials of the Member State where the person making the declaration resides and the authorities of the Member State through which the person entered or left the customs territory. The same reporting obligation will also apply to cases of repeated entry and exit.

At the international level, the European Commission and the 15 Member States participate in the efforts of the Financial Task Force on Money Laundering. It appears that most have also signed the International Convention for the Suppression of the Financing of terrorism adopted by the General Assembly of the United Nations on December 9, 1999. None of the Member States is on the list of those countries that lack adequate protection against money laundering.

After September 11, terrorist funding was made a crime under the criminal code in some of the countries surveyed, such as Austria, and also the scope for the seizure of terrorist funds was increased. In France, Parliament introduced the new offense of the financing of terrorist activities. The Parliament has also expanded the definition of acts of terrorism to include money laundering and/or insider trading when they are intentionally connected to an individual or collective enterprise having the purpose of seriously disturbing public order by intimidation or terror. In Germany major changes in the monitoring of bank accounts were enacted, including authorization for collection of information from financial institutions on banking records or accounts, and the surveillance of international terrorist funds by the Federal Office for the Protection of the Constitution and the Federal Intelligence Service.

Like Germany, Ireland and Italy approved bills addressing the financing of Terrorism. In Italy

a special committee for financial security was created, and the confiscation of assets used in committing acts of terrorism was made mandatory. Portugal's law on money laundering includes terrorism as one of the criminal activities used for money laundering. In Spain, a draft law would grant a special commission the authority, as a precautionary measure, to freeze funds of individuals suspected of being involved in terrorism. In the Netherlands, the Dutch Central Bank and the Pension and Insurance Chamber will be given more authority in order to take action against institutions they supervise such that funds may be frozen on a short term notice if there are indicators they may be used to finance terrorism. In the United Kingdom the power to forfeit terrorists' cash has been extended and may be taken whether or not proceedings have been undertaken regarding offenses related to the cash. To reduce the risk of terrorist property being sent overseas, freezing orders can be made at the start of an investigation. The power to freeze

assets also has been extended to cases where there is a reasonable belief that overseas governments or residents are conducting actions that threaten the UK's economy or the lives or property of UK nationals or residents.

Estonia, a candidate for membership in the European Union, joined the EU Declaration on Fight Against Terrorism together with the EU Council statements on measures against terrorism. Estonia, with other EU aspiring members Bulgaria, Latvia, Lithuania, the Slovak Republic, Cyprus and Malta all adopted or are in the process of adopting legislation that complies with EU legislation in this area. Along with the above countries, the Channel Islands and the Isle of Man, providers of a range of financial services, have enacted or are strengthening laws aimed at combating terrorism, including reforms to prevent money laundering and the funding of terrorism. In Switzerland, where bank secrecy has always been respected, a bill was introduced to subject suspects of terrorist funding to trial before the Swiss Federal Court, to facilitate the seizure of terrorist funds, and to make easier the receipt of information on implicated bank accounts by foreign governments.

5. Cooperation and Enforcement of Counter-Terrorism Law

Unlike the European Convention on the Suppression of Terrorism, which is binding in all countries surveyed, most of the twelve major multilateral global conventions have not been signed or implemented by these countries.

Several European countries are signatories to bilateral or multilateral treaties relevant to cooperation in the fight against terrorism. These include cooperation in the area of legal assistance, extradition, technological cooperation, etc. Implementation of treaties in most countries, though, depends on constitutional principles in the country, as well as sometimes, domestic policies. Thus, European countries will generally be prevented from compliance with extradition or information requests by the U.S. in cases where the requested person may be subjected to death penalty.

Spain is an example of a major ally of the United States, cooperation of which has been restrained by its domestic law. As a consequence, eight men the extradition of whom was requested by the U.S., will not be extradited unless the United States agrees that they would be tried by a civilian court and not by military tribunals. Although willing to share information about the arrests, Spain will exclude its police report from the United States case against the so-called 20th hijacker, Zacarias Moussaoui, based on a legal prohibition on sharing information to be used in a death penalty case.

Like in other European countries, enforcement in the U.K. is subject to legal restraints such as compliance with the European Convention on Human Rights, incorporated into domestic legislation. An adverse decision has already been made by the Special Immigration Appeals Commission regarding the case of nine suspected international terrorists detained under the new terrorism statute. Similarly, an Algerian pilot arrested per the U.S. FBI request, for suspicion of training the hijackers of the 9/11 attacks, was released after five month of incarcerations after charges against him were dropped due to insufficient evidence. In Ireland, a signatory of a bilateral

extradition agreement with the United States, doubts have been expressed as to whether the government had the ability to extradite persons to other countries under the 2001 Extradition Act. This inability is based on several interpretations of the Constitution that have favored persons seeking refuge in Ireland.

Another example of a European country which despite its swift and massive anti-terrorism measures taken after 9/11 encountered some difficulties in implementation is Germany. Some of the difficulties may stem from the division of powers between the German federation and the German States, and the stringent requirements for the detention of suspects. A court order in the State of Hesse ordering a stop to a nationwide computerized search for traces of the perpetrators of the September 11 events, resulted in the abandonment of already started efforts and data pertaining to some 1,830 individuals relevant for an investigation, and in jeopardizing the effectiveness of the computerized search in all the other states. The court of Hesse stopped the effort on the grounds that the September 11 events did not constitute a national emergency in Germany as to justify the far-reaching invasion of the privacy of the individuals involved.

Concerns have been also raised regarding Luxembourg, a signatory to a bilateral agreement with the United States on Mutual Legal Assistance in Criminal Matters. Despite its adoption of extensive anti laundering legislation, Luxembourg's implementation of these laws was severely criticized by a French parliamentary commission which had investigated Luxembourg banking practices. Of interest to the United States is the April 2002 decision of a court in Luxembourg to unfreeze \$200 million in assets of six Luxembourg companies and investment banks linked to Al Baraka Exchange in Dubai, a company suspected of financing the al-Qaeda network and on the U.S. Treasury Department list. The court ordered the funds to be unblocked after lawyers for the Al Baraka Exchange succeeded in casting reasonable doubt on the validity of the U.S. Treasury list.

Finally, Malta, a country located only 250 miles away from Moslem Africa, deserves some attention. The suitcase containing the bomb that exploded on Pan Am flight 103 over Lockerbie, Scotland, was reportedly loaded in Malta. Although Malta cooperated in the investigation and provided witnesses during the trial, Malta released the surviving hijacker, Ali Rezak, from prison in 1993, despite assurances to the U.S. State Department that he would be kept in prison until 1996. His release prompted a House Resolution, H. Res. 118, March 29, 1993, condemning the release. Malta's actions following the 9/11 attacks, however, and specifically the distribution of the names of organizations and individuals suspected in the 9/11 attacks to its financial institutions, indicate a stronger commitment to fighting terrorism. A cause for concern, though, is the resistance by the government strong opposition to legislative actions regarding terrorism and membership to the EU.

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EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

MUTUAL LEGAL ASSISTANCE TREATIES (MLATs) with U.S.

Country	MLAT with U.S.	
Austria	—	
Belgium	—	
Bulgaria	no	
Cyprus	—	
Czech Repub.	—	
Estonia	—	
France	—	went into force December 1, 2001
Germany	no	
Greece	—	went into force December 12, 2001
Ireland		negotiated, not yet ratified
Italy	—	
Latvia	—	
Lithuania	—	
Luxembourg	—	
Malta	no	
Netherlands	—	
Poland	—	
Portugal	no	
Slovakia	no	
Spain	—	
Switzerland	—	
U.K.	—	
Total	16	

Sources: 1. <http://travel.state.gov/mlat.htm>

2. State Department oral info - Treaty Analyst D. Cook (202) 647-2044

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EUROPEAN LEGAL COOPERATION AGAINST TERRORISM
COMPARATIVE SUMMARY
TERRORIST FINANCING AND MEASURES

A survey of the reports of European countries and European transnational organizations with respect to terrorist financing and legislative measures shows that the financing of terrorists in most countries is not a separate offense as such, especially before September 11. Terrorist financing has been dealt with in various ways, such as an act that is punishable as participation in a criminal organization or as participation in the kind of a crime that would be committed as a terrorist act. However, in most of the countries surveyed, the financing of terrorism under certain circumstances amounts to money laundering; therefore, money laundering laws are considered major instruments to prevent the financing of terrorism.

Member countries of the European Union (EU) enacted, as a result of the European Community Council Directive on the Prevention of the Use of the Financial System for the Purpose of Money Laundering of 1991, legislation on money laundering in the 1990s that may be instrumental in the fight against terrorism. Financial institutions and credit institutions (this definition is extended in most countries to include insurance companies, pension funds, credit card companies, currency exchanges, casinos, etc.) are required to request identification when a currency movement takes place in amounts of over _15,000. Unusual transactions over this amount are closely examined, and there is a duty to report all other suspicious transactions to a central reporting authority. Under the EU anti-laundering provisions, when there is suspicion of money laundering activities, banking and other credit institutions have the dual obligation to lift their banking confidentiality and to report the suspicious activity to the proper authorities.

Since some Member countries lack statutory controls on large amounts of cash movements through customs and since terrorists may use cash to avoid bank transactions because financial institutions have increased their security controls on money movements since September 11, an EU Regulation has been proposed to compliment the Directive on Money Laundering. The proposal establishes an obligatory declaration on entering or leaving the Community customs territory by any natural person carrying _15,000 or more. Custom officials have the duty to inform the custom officials of the Member States where the person making the declaration resides and the authorities of the Member State through which the person entered or left the customs territory. The same reporting obligation will exist in the case of a natural person who repeatedly enters or leaves the Community customs territory even if the amount of cash declared is below the fixed threshold.

At the international level, the European Commission and the 15 Member States

participate in the efforts of the Financial Task Force on Money Laundering. None of the Member States is on the list of those countries which lack adequate protection against money laundering

In most of the countries, terrorist funding was not a separate offense, however, terrorist conduct such as the funding of a terrorist organization could also be construed as a crime under the general provisions of the criminal code, such as, e.g., the participation in a criminal organization. After September 11, terrorist funding was made a crime under the criminal code in some of the countries surveyed such as Austria, and also the scope for the seizure of terrorist funds was increased. In France, Parliament introduced a new offense, the financing of terrorist activities, and the expanded definition of acts of terrorism to include money laundering and/or insider trading when they are intentionally connected to an individual or collective enterprise having the purpose of seriously disturbing public order by intimidation or terror. In Germany, major changes in the monitoring of bank accounts were enacted, the Federal Office for the Protection of the Constitution and the Federal Intelligence Service were authorized to obtain information from financial institutions on any banking records or accounts, within the scope of their missions, this includes the surveillance of international terrorist funds.

Ireland's government has approved a proposal on a Criminal Justice (Financing of Terrorism) Bill.

Italy approved new urgent provisions to confront international terrorism previously not addressed. A special committee for financial security was created, and the confiscation of assets used in committing acts of terrorism was made mandatory. Portugal's law on money laundering includes terrorism as one of the criminal activities used for money laundering. In Spain, a special commission, in a draft law would be granted the authority, as a precautionary measure, to freeze funds of individuals suspected of being involved in terrorism. However, the constitutionality of this Bill has been debated.

In the Netherlands, the Dutch Central Bank and the Pension and Insurance Chamber will be given more authority in order to take action against institutions they supervise; funds may be frozen on a short term notice if there is an indication they may be used to finance terrorism. In the United Kingdom, the power to forfeit terrorists' cash has been extended and can be taken whether or not proceedings have been undertaken in respect to an offense related to the cash. To reduce the risk of terrorist property being sent overseas, freezing orders can be made at the start of an investigation. The power to freeze assets has also been extended to cases where there is a reasonable belief that overseas governments or residents are conducting action that threatens the UK's economy or the lives or property of UK nationals or residents.

One of the countries surveyed that is a candidate for membership in the European Union, Estonia, joined the EU Declaration on Fight Against Terrorism together with the EU Council statements on measures against terrorism, which means that they will enforce international sanctions, together with other EU countries, including freezing accounts and blocking access of terrorism-related units to financial means. Restrictive financial legislation was elaborated and implemented under the control of EU experts and is in accordance with the EU standards. Latvia has elaborate legislation in the area of

preventing money laundering, and the law on money laundering in Lithuania is considered a major legal act aimed at the prevention of money laundering. In the Slovak Republic, the law on money laundering was also amended after September 11, and, even though the Euro is not official tender in that country, it introduced for the first time the Euro in its legislation. It appears that their legislation on money laundering is also done in accordance with EU legislation in this field. As another candidate country to the EU, Cyprus' harmonization of laws dealing with terrorism issues is moving forward, and the Attorney General was authorized to take action to freeze the assets of terrorists and terrorist organizations listed in the UN Security Council resolution and those listed in the European Union legal instruments. Malta, which has applied to join the EU, has recently updated much of its legislation to incorporate its potential EU obligations.

Domestic legislation dealing with money laundering was expanded considerably since September 11, and a special intelligence unit was created to investigate potential money laundering incidents. Bulgaria, which also expects to be admitted into the EU, has a proposed law against the funding of terrorism which grants wide-ranging powers to the Interior Minister and the possibility of freezing funds and assets belonging to individuals and corporate entities.

The Channel Islands and Isle of Man, providers of a range of financial services, have been responsive to concerns that their financial institutions may provide a cover for the transfer and holding of terrorist finances. Not only have they enacted, or are strengthening, laws aimed at combating terrorism, they have introduced legislative reforms for the prevention of money laundering and the funding of terrorism. These jurisdictions are also slated to reflect "a change in legislation across the globe" to close the loophole through which terrorist organizations obtain funding through "clean" sources, such as a wealthy benefactor. Switzerland, another important financial center where bank secrecy is an important legal principle, proposed a Bill that Swiss criminal provisions on terrorist funding would be tried before the Swiss Federal Court, which would make it easier for terrorist funds to be seized and for foreign governments to obtain information on implicated bank accounts.

It appears that most of the countries surveyed have signed the International Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly of the United Nations on December 9, 1999. In countries that had not ratified this Convention by September 11, 2001, it appears from the reports that the events on this date seemed to have accelerated the national ratification process.

All of the countries surveyed mention a number of amendments to their respective money laundering laws and criminal laws since September 11. In most countries the definition of money laundering was extended; the definition of financial and credit institutions was, or will be, broadened; and non-financial institutions such as insurance companies, exchange offices, casinos, real estate agents, and credit card companies have been included in the duty to identify and report to the competent authorities suspicious or unusual transactions based on the amount involved or the frequency of the transactions.

New procedural provisions have been enacted, and disclosure of customer information was extended and most reports indicated an increased interagency reporting and cooperation.

Overall legislation aimed at combating and preventing money laundering has been strengthened and more efficient and new provisions in the financial field to confront international terrorism have been approved in most cases through amending existing legislation.

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EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

Mr. Chairman, Members of the Subcommittee on Intelligence Policy and national Security; my presentation centers on the legal aspects of Europe's cooperation in the fight against terrorism. Following the September 11 attacks on the United States, greater cooperation has been reached between the United States and Europe in the area of counterterrorism. Many European countries, after discussions with the U.S. government or on their own, reacted by ratifying anti terrorism related agreements and by enacting or considering legislation designed to improve law enforcement and suppression of terrorism. The adoption of international or domestic law, however, cannot be complete in the absence of efficient implementation. The following is a brief evaluation of positive legal developments as well as areas of concern among twenty three European countries surveyed. A list of these countries, along with a comparative analysis and country reports are available for your use.

1. Immigration, Asylum and Tracking of Aliens

Countries' laws differed substantially prior to 9/11, with some adopting very restrictive policies, tight border controls and efficient tracking of aliens, whereas others having more liberal and loose control over immigrants and asylum seekers. Post 9/11 enacted or pending legislation generally indicates toughening of regulations in most of these areas.

Border controls appear to still vary among EU countries, with some complying with the 1990 Schengen Treaty provisions for the elimination of border checks for travel within the European Economic Area, and some, like Ireland and the United Kingdom who do not.

Review of immigration and asylum laws in most countries reflects shortcomings not in substance but with implementation. Problems stem from the limited use of detention and deportation of asylum seekers sometimes based on humanitarian grounds. The backlogs created by large increase in the filing of refugee claims is an additional problem which many West European countries, including France and the United Kingdom have either recently addressed or in the process of doing so. Significant efforts at controlling the influx of asylum seekers were made through European cooperation, and particularly the Dublin Convention of 2000 instituting the safe third country rule requiring asylum seekers to present their claims in the first safe country they enter. The Dublin Convention also established a computerized database called Eurodac to record the fingerprints of all asylum seekers fourteen years or older or those apprehended in a Member State for a period of 10 years unless the apprehended person becomes a citizen in a Member State before that date.

Additional tracking measures used by the countries surveyed include a German's alien's central registry and a requirement for all inhabitants over the age of 16 to obtain a machine-readable identity card or a passport, with biometric information. An increasing number of countries have started issuing machine-readable cards and require all citizens to obtain national identity cards. Although initially opposed to creating national identity cards, the British Government is currently considering a plan that would require residents to obtain a

card in order to be eligible to receive such services as medical care. Ireland, however, appears to strongly oppose such a plan.

2. Surveillance and Intelligence Gathering

The reports on all of the surveyed countries indicate that local laws provide for both wiretapping and physical surveillance. In many countries, such as France, wiretapping must be authorized by an examining magistrate or a court. In some countries, including Ireland, wiretapping can be authorized by the Minister of Justice. Most of the laws provide that wiretapping is only allowed in the investigation of serious crimes, therefore including terrorism.

The interception of correspondence transmitted via telecommunication technology for the purpose of preventing terrorism is specifically authorized in France as an exception to the general rule of secrecy of such correspondence. In Ireland, however, police investigative powers are quite broad, and authorities may obtain a warrant on reasonable grounds if they believe that evidence of an offense may be found at a particular place. Italy introduced new provisions to deal with monitoring and control of communications for the purpose of investigations for crimes of terrorism, and extended to these crimes the less stringent requirements applicable to wiretapping against organized crime.

In many European countries physical surveillance by police officers appears to be treated as a normal police activity that does not have to be specifically authorized by judicial officers. In the Netherlands, the police may use camera surveillance in public areas if it is necessary for maintaining public order or the investigation of crimes if other measures do not appear to be adequate. A different rule applies to Germany, France, and the United Kingdom where judicial warrants are precondition for visual surveillance.

3. Anti-Terrorism Legislation and Enforcement

A survey of anti-terrorism legislation in European countries indicates different treatment of terrorism offenses. Countries that had experienced terrorism, like France and the United Kingdom, already had special anti-terrorism legislation which was further strengthened by post 9/11 temporary emergency measures. Some countries that had not shared such experience, either amended or are in the process of amending their laws by enacting special provisions and imposing stiffer sentences on such offenses. Others still apply regular criminal law to terrorism offenses. Designation of special offenses that carry increased penalties may signal recognition of the special impact terrorism has on the welfare of society.

Generally, what distinguishes regular offenses from terrorist ones is the special intent. Thus, to qualify as terrorist offenses, French Code requires the offenses to be intentionally connected to an individual or collective enterprise having the purpose of seriously disturbing public order by intimidation or terror. The 2000 U.K. Terrorism Act definition adds the

intent to influence the government and the advance of a political, religious, or ideological cause, as other qualifying criteria. The recognition of a religious or ideological motivation as one of the elements of terrorist intent seems to expand its application to domestic terrorism as well as to international acts. An interesting feature of the British Act is the introduction of the crime of inciting terrorism overseas and of conspiracy to commit a terrorism offense.

In October 2001 Italy approved emergency legislation which amended the pertinent article of the Penal Code and made international terrorism a crime. The new law also created a new crime of assisting members of terrorist organizations which carries a stiff penalty. The Netherlands and Switzerland are in the process of enacting special terrorism legislation which will impose increased penalties on violators.

Interestingly, some countries, including Malta, still claim that provisions within their criminal codes are sufficient to cover terrorist activities.

4. Terrorist Financing and Measures

Money laundering laws are considered major instruments in preventing the financing of terrorism. In compliance with the 1991 Directive on the Prevention of the Use of the Financial System for the Purpose of Money Laundering, EC member countries enacted various money laundering acts that apply to all financial and credit institutions, including insurance companies, pension funds, credit card companies, currency exchanges, casinos, etc. Such institutions are required to request identification when a currency movement exceeds certain amounts and report all unusual and suspicious transactions to a central reporting authority. Following 9/11, an additional European Union directive has been proposed to require a declaration and reporting of persons frequently entering and exiting or of cash amounts exceeding 15,000 Euro on anybody who enters or leaves the Community customs territory.

In addition, terrorist funding was made a criminal offense in some countries, including Austria and France. Greater investigative and enforcement powers were given to supervising institutions, including an authorizing for collection of financial information and surveillance of international terrorist funds by the German Federal government, as well as of confiscation or freezing of assets used in committing acts of terrorism in the Netherlands and the U.K.

It is important to note that non, but some aspiring, EU member states like, Estonia, Bulgaria, Latvia, Lithuania, the Slovak Republic, Cyprus and Malta, as well as the Channel Islands and the Isle of Man all adopted or are in the process of adopting legislation that complies with EU legislation on money laundering.

5. Cooperation and Enforcement of Counter-Terrorism Law

Several European countries are signatories to bilateral or multilateral treaties relevant to cooperation in the fight against terrorism. These include cooperation in the area of legal assistance, extradition, technological cooperation, etc. Implementation of treaties in most countries, though, depends on their adherence to constitutional principles and domestic policies and laws incorporating, among others, the European Convention on Human Rights.

European countries will generally be prevented from compliance with extradition or information requests by the U.S. in cases where the requested person may be subjected to death penalty or tried by military tribunals. Examples include an adverse decision by the Special Immigration Appeals Commission in the U.K. regarding the case of nine suspected international terrorists detained under the new U.K. terrorism statute. Similarly, the release of an Algerian pilot arrested per the U.S. FBI request, for suspicion of training the hijackers of the 9/11 attacks, for insufficient evidence. In Ireland, a signatory of a bilateral extradition agreement with the United States, doubts have been expressed as to whether the government had the ability to extradite persons to other countries under the 2001 Extradition Act based on several interpretations of the Constitution that have favored persons seeking refuge in Ireland.

The survey shows that Germany encountered some difficulties implementing its anti-terrorism measures taken after 9/11. Some of the difficulties may stem from stringent requirements for the detention of suspects, and from the division of powers between the German federation and the German States, resulting in one state stopping a state wide computer search for the perpetrators of the September 11 events.

Concerns have been raised regarding Luxembourg, which despite its adoption of extensive anti laundering legislation, was severely criticized by a French parliamentary commission which had investigated Luxembourg banking practices. Also, in April 2002 a court in Luxembourg unfroze \$200 million in assets of six companies and investment banks linked to Al Baraka Exchange in Dubai, a company suspected of financing the al-Qaeda network, based on finding reasonable doubt on the validity of the U.S. Treasury list

Finally, Malta, a country located only 250 miles away from Moslem Africa, deserves some attention. House Resolution, H. Res. 118, March 29, 1993, condemned the release of the surviving hijacker of Pan Am flight 103 over Lockerbie, Scotland, from prison. Malta's actions following the 9/11 attacks, however, and specifically the distribution of the names of organizations and individuals suspected in the 9/11 attacks to its financial institutions, indicate a stronger commitment to fighting terrorism. A cause for concern, though, is the resistance by the government strong opposition to legislative actions regarding terrorism and membership to the EU.

I hope this short brief is helpful.

COMPARATIVE SUMMARY

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

ANTI-TERRORISM LEGISLATION AND ENFORCEMENT

The attacks on September 11, 2001 on the United States have shown that no country is immune to terrorism, and that though not a new phenomenon, it has reached a level of sophistication and destructive potential that can defy even the wildest imagination.

In spite of the long history of terrorist-type activities around the world there is still no clear and commonly agreed upon definition of the term, and even countries that have extensive anti-terrorism legislation avoid defining it in their laws which deal instead with acts of terrorism or other specific felonies committed however for the purpose of national or international terrorism.

This comparative summary is concerned with legislation to combat terrorism in effect before September 11, 2001 in Austria, Belgium, Bulgaria, Czech Republic, Channel Islands and Isle of Man, Cyprus, Estonia, France, Germany, Greece, Italy, Ireland, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Spain, Slovak Republic, Switzerland, and United Kingdom. It also outlines legislative developments after that date.

Some of the countries surveyed have experienced some level of national or international terrorist activities on their own territory as is the case for France, Germany, Ireland, Italy, Spain, and the U.K. Some of these countries have resorted to the enactment of emergency legislation approved under the pressure of terrorist activities (Italy, UK, Ireland) that supposedly temporary, essentially became permanent through constant renewal (UK). Other countries instead (Germany) felt that the specific provisions of their Penal Codes, perhaps with some amendments, would suffice to confront the threat of terrorism. This is also the case for Bulgaria, Estonia, Greece, Latvia, Spain, Portugal, Lithuania,.....

There are countries, however, that had no special provisions in their laws specifically addressing terrorism, so that acts of terrorism are dealt with under the penal provisions for offenses actually committed.(Austria, Belgium, Czech. Republic, Luxembourg, The Netherlands, Poland, Slovak Republic, Switzerland).

In all cases severe penalties are imposed on aggravated terrorist acts. Though no country among those surveyed resorts to the death penalty, in countries such as France, Germany, Italy, penalties up to life imprisonment may be imposed.

A wide variety of other measures are found in the legislative approach of the counties surveyed which include granting greater powers to the police in telephone surveillance operations and in apprehending and interrogating suspects, searches of suspects and of premises in buildings or block of buildings, undercover police operations for organized crime and terrorism prevention or for

related investigations, and infiltration operations. More stringent provisions regarding the control of arms, explosives and ammunition, as well as the reorganization of the police forces, the development of centers for the computerized collection of information, and construction of new high security prisons are also found.

Many of the reports analyzed point to the existence of specific provisions concerning prohibited organizations. Such provisions are generally found in Penal Codes. However, some countries (France, Germany, Italy, Ireland, UK) have additional special legislation dealing with a variety of illegal or secret organization, and provide for them to be proscribed or dissolved.

It has been observed that the Internet, due to its global nature, cannot be effectively regulated by any one country.. It appears that countries have chosen not to put specific legislative restrictions on Internet content. However, the presence on the Internet of illegal and harmful content has raised serious concerns in the European Union in several areas such as national, economic, and information security; and protection of human dignity, of minors, of privacy, and of reputation as well as intellectual property.

Generally, countries have taken measures to ensure the security of computerized systems and information, and rely on their existing legislation for the prosecution and punishment of violations committed through the use of Internet. Until recently cyber crime was not a concern for Estonia, and this area was excluded from the traditional field of police activities. In 2001 Estonian Parliament passed the resolution on the creation of a separate police structure that will fight cyber crime. This agency will deal with hacking, database leaks, and the entire sphere of Internet activities, acting as a division of the national Data Protection Inspectorate. In France the law concerning the secrecy of correspondence transmitted via telecommunication technology authorizes interception for the purpose of preventing terrorism. German statutory law has not as yet specifically addressed the permissibility of the collection of Internet data for intelligence and investigative purpose or for crime prevention. In Ireland, under the Electronic commerce act, the investigative powers are quite broad, and authorities may obtain a warrant on reasonable grounds if they believe that evidence of an offense may be found at a particular place. In the UK the Terrorism Act makes it an offense to make information about weapons training readily available such as on the Internet.

France, a victim of international terrorism for decades, has in place a comprehensive body of law dealing specifically with acts of terrorism and the operational mechanisms needed to allow for a strong response. Prosecution, investigation, and judgment of terrorist acts are combined under the sole jurisdiction of Paris criminal courts presided over by specialized judges whose jurisdiction extends to the entire country, and the rules of procedure are less stringent

Germany has experienced a considerable amount of terrorism during the 1970s and 1980s, however German law enforcement efforts were able to overcome the terrorist threat. During the 1990s the focus of German law enforcement and criminal law reform shifted to organized crime, perceived then as a larger threat than terrorism. Before the September 11, 2001 German authorities

were not aware that Germany harbored several of the perpetrators, though German domestic intelligence agencies knew of the existence of Islamic radical groups. The perpetrators of the attack are being tried in Germany

In Greece the broadening of investigative powers in regard to investigative infiltrations, surveillance of suspects, lifting of confidentiality of communications, the recording by audio-visual means or other special technical means of activities or other events outside the home, according to amending legislation of June 2001, were widely criticized as infringing upon civil liberties. In addition, this country's legislation prescribes that all criminal activities covered under article 187 of the Penal Code, on the basis of which terrorists are prosecuted, must be tried by the Court of Appeals rather than before juries, in order to lessen the potential for the intimidation of jurors.

Terrorism in the form of attacks on the Republicans advocating the unification of Ireland or Loyalists supporting Northern Ireland remaining part of the United Kingdom, has long been a major concern of the Government of the Republic of Ireland. The major applicable statute, the Offense Against the State Act, was created in 1939. This statute, which is best known for outlawing membership in such organizations as the Irish Republican Army and creating Special Criminal Courts for trials without juries, but made up for years exclusively of military officers, has been tightened on a number of occasions, most recently following the 1998 bombing at Omagh.

Between 1969 and 1982 Italy went through a serious experience of both right wing and left wing terrorist violence. The year 1975 marked the turning point in the enactment in a piecemeal fashion of the so-called emergency legislation approved under the pressure of terrorist activities, changing the approach of reformist governments in defense of individual rights. Legislation regulating the collaboration of members of terrorist groups with investigative authorities was developed in Italy in early 80s, encouraging their *disassociation* from those organizations by means of reduced sentences and in some cases early parole. This type of legislation may be credited for most of the successes in defeating terrorism in that country.

The Republic of Malta does not have any terrorist-specific legislation, and claims that provisions in its Penal Code are sufficient to cover terrorist activities. The Republic is proceeding with EU application measures, consequently it has to amend its legislation and implement new laws in order to meet with the *acquis communautaire*. Malta has currently transposed 23 out of 29 Chapters of EU law into its domestic legislation. Malta's past role in terrorism has been attributable to a lack of control and its formerly close relations with Libya. Since the end of 1989, however, seeking to improve its relation with the West and enter the EU, Malta formally ended its military ties with Libya.

British anti-terrorism laws have their genesis in the troubled relationship between Great Britain and Ireland over the partition of Northern Ireland in May 1921, followed by the enactment of special powers legislation conferring wide powers of arrest, questioning, detention, and internment of persons involved in Northern Ireland in what the British viewed as acts of terrorism. The

Northern Ireland(Emergency Provisions)Act 1973 and the Prevention of Terrorism (Emergency Provisions)Act 1974,which introduced for the first time increased powers to deal with terrorist attacks on the mainland, were enacted in reaction to IRA attacks. The Terrorism Act 2000 was enacted on the Government view that it was needed to modernize the legislation to apply to England, Scotland, and Wales as well as Northern Ireland and address all forms of terrorism with an appropriate and effective range of measures proportionate to the reality of the threats, and enabling the UK to cooperate more fully in the international fight against terrorism.

Legislative Developments after September 11, 2001

In addition to the general expression of sympathy and support for the U.S. the attacks on September 11 have elicited a wide spread response in new legislative measures to confront the escalating level of terrorism, and the establishment of counter- terrorism crisis management units in some cases as in Italy, and the Slovak Republic. This country created a new article against terrorism in the Penal Code. The same measure was taken by Austria,Cyprus,Latvia

The UK despite the enactment in 2000 of a new law against terrorism, immediately passed further emergency legislation to enable it to respond effectively to the heightened threats and has actively implemented it. This legislation however, has been subject to intense criticism in the UK due to its breadth and fear over the abuse of power that it might bring.

The German response to the September attacks included two major legislative security packages that proposed reform legislation pertaining to national security. On the whole it would seem that the new measures should make it easier for police and intelligence agencies to prevent and investigate terrorist threats. The new legislation granted statutory authorization for the inclusion of biometric data in personal identification documents, though implenting regulations are still under consideration.regulations. Wiretapping provisions and measures concerning physical surveillance were also expanded. Amendments to the Act on Associations makes it possible for the German authorities to ban religious organizations that pursue unlawful or subversive activities or purposes.

In October 2001 Italy approved emergency legislation which amended the pertinent article of the Penal Code and made international terrorism a crime. The new law also created a new crime of assisting members of terroristic organizations which carries a stiff penalty. New provisions deal with monitoring and control of communications for the purpose of investigations for crimes of terrorism, and extend to these crimes the less stringent parameters adopted for wiretapping against organized crime. Undercover police operations carried out by judicial police are specifically authorized in investigations of crimes of terrorism. A law approved in 2002 provides that foreigners who apply for a residence permit or for its renewal, and those whose identity is not certain, will be subject to fingerprinting.

In the Netherlands an Action Plan on the fight against terrorism and security was developed which contains a considerable number of measures for the government to step up the fight against

terrorism. Among them are extensive investments in prevention and repression of terrorist acts. The penalty for crimes of terrorism will also be increased and for the first time a crime of terrorism and terrorist intent will be defined in the Penal Code. The issue on whether the carrying of an identity card should become compulsory has not been settled yet.

In Spain, after September 11 the focus shifted from illegal immigration (blamed for an increase in crime) to terrorism, but it appears that the fight against terrorism is in some way providing additional reasons for restricting immigration even more. Bills are pending on the prevention and freezing of financing of terrorism, and on the regulation of joint teams for criminal investigations within the European Union.

In Switzerland the only pertinent federal legislation that was enacted since September 2001 was the Act on the Surveillance of the Mail and of Telecommunications. There is however legislation pending that responds to the events of September 11.

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September 2002

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EUROPEAN LEGAL COOPERATION AGAINST TERRORISM
INTERNATIONAL CONVENTIONS AND OTHER
INTERNATIONAL LEGAL INSTRUMENTS

Presently, the legal regimes dealing with terrorism vary from state to state. Some states have specific laws on terrorism, some have specific provisions on terrorist crimes in criminal codes, still others deal with terrorism using general criminal law provisions.

Similarly, there is no generally accepted definition of terrorism although there are many attempts at national and international level to create one. Some legal scholars cite as many as 200 definitions of terrorism.¹ The lack of generally accepted definition is one of major difficulties in fighting terrorism. That lack of agreement on generally accepted definition of terrorism is particularly important at international level where it hampers cooperation between sovereign states and international organizations. Therefore, the international conventions and other international legal instruments are particularly important for the success of fight against terrorism.

This summary will deal with most important global and regional conventions, protocols, bilateral agreements, and other international legal instruments. It will cover all 22 countries included in the Report,² hereinafter the Report countries, as well as the European Union and the Council of Europe.

Conventions and Protocols Done Before September 11, 2001

Global Multilateral Conventions and Protocols

There are twelve major global (generally applicable, as opposed to regional) multilateral conventions and protocols deposited with the Secretary General of the United Nations related to states' responsibilities for combating terrorism.³ All of them were adopted before September 11, 2001. However, to this date, many states are not yet parties to them, or are not implementing them.

¹Jaloszynski, K.: "Terroryzm czy terror kryminalny w Polsce" ["Terrorism or Criminal Terror in Poland"], Akademia Obrony Narodowej [National defense Academy], Warsaw 2001.

²As mentioned in the Report, the Channel Islands and the Isle of Man are not part of the United Kingdom, although the government in London is responsible for their defense and international relations.

³See: http://www.odccp.org/odccp/terrorism_conventions.ht
See also: United Nations Treaty Collection. Conventions on Terrorism, at:
<http://untreaty.un.org/English/terrorism.asp>
United Nation Organization has presently 191 Members.

The following is the list of these conventions and protocols in chronological order, i.e., arranged by the date of their adoption:

1. Convention on Offences and Certain Other Acts Committed on Board of Aircraft, signed at Tokyo on September 14, 1963, entered into force on December 4, 1969, hereinafter Tokyo Convention. The Convention has been binding (by the effect of ratification, accession, or succession) on 173 Parties, which includes all 22 Report countries and the United States;

2. Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on December 16, 1970, entered into force on October 14, 1971, hereinafter Hague Convention. The Convention has been binding (by the effect of ratification, accession, or succession) on 175 Parties, which includes all 22 Report countries and the United States;

3. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971, entered into force on January 26, 1973, hereinafter Montreal Convention. The Convention has been binding (by the effect of ratification, accession, or succession) on 176 Parties, which includes all 22 Report countries and the United States;

4. Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations in New York on December 14, 1973, entered into force on February 20, 1977, hereinafter Protected Convention. The Convention has been binding (by the effect of ratification, accession, or succession) on 121 Parties, including 17 Report countries (except Belgium, France, Ireland, Lithuania, and Luxembourg) and the United States;

5. International Convention Against Taking Hostages, adopted by the General Assembly of the United Nations, in New York on December 17, 1979, entered into force on June 3, 1983, hereinafter Hostages Convention. The Convention has been binding (by the effect of ratification, accession, or succession) on 110 Parties, which includes 20 Report countries (except Ireland and Latvia) and the United States;

6. Convention on the Physical Protection of Nuclear Material, signed at Vienna on March 3, 1980, entered into force on February 8, 1987, hereinafter Nuclear Material Convention. The Convention has been binding (by the effect of ratification, accession, or succession) on 78 Parties, including 20 Report countries (except Latvia and Malta) and the United States;

7. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on September 23, 1971, signed at Montreal on February 24, 1988, entered into force on August 6, 1989, hereinafter Montreal Protocol. The Protocol has been binding (by the effect of ratification,

accession, or succession) on 124 Parties, including 20 Report countries—except Luxembourg (signed in 1989) and Poland (signed in 1989, presently in ratification process)—and the United States;

8. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on March 10, 1988, entered into force on March 1, 1992, hereinafter SUA Convention. The Convention has been binding on 73 countries, including 16 Report countries (except for Belgium, Czech Republic, Ireland, Latvia, Lithuania, and Luxembourg), and the United States;

9. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done in Rome on March 10, 1988, entered into force on March 1, 1992, hereinafter SUA Protocol. The Protocol has been binding on 66 countries, including 15 Report countries (except for Belgium, Czech Republic, Estonia, Ireland, Latvia, Lithuania, and Luxembourg), and the United States;

10. Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on March 1, 1991, entered into force on June 21, 1998, hereinafter Explosives Convention. The Convention has been binding (by the effect of ratification, acceptance, approval, accession, or succession) on 81 Parties, including 15 Report countries—except for Belgium (which has already signed it), Cyprus, Ireland, Italy, Luxembourg, Poland (in ratification process), and Portugal—and the United States;

11. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997, entered into force on May 23, 2001, hereinafter Bombings Convention. The Convention has been binding (by the effect of ratification, acceptance, approval, or accession) on 70 Parties, including 12 Report countries—except for Belgium, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Poland (in ratification process), and Switzerland—and the United States. The Convention has been already signed by 8 of these countries, i.e., Belgium, Germany, Greece, Ireland, Italy, Lithuania, Luxembourg, and Poland;

12. International Convention for the Suppression of Financing of Terrorism adopted by the General Assembly of the United Nations on December 9, 1999, entered into force on April 10, 2002, hereinafter Financing Convention. The Convention has been binding on 45 Parties, including 10 Report countries—except for Belgium, Czech Republic, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Poland (pending ratification), Portugal, and Switzerland—and the United States. The Convention has been already signed by 11 of these countries: Belgium, Czech Republic, Germany, Greece, Ireland, Italy, Latvia, Luxembourg, Poland, Portugal, and Switzerland, i.e., all except Latvia.

Regional Legal Instruments

There are also international regional conventions, most important of which for

the European countries in the European Convention on the Suppression of Terrorism, concluded at Strasbourg on January 27, 1977, entered into force on April 8, 1978, hereinafter the European Convention. The Convention has been binding on 38 countries, including all 22 Report countries.

European Union legislation, including various directives and other legal instruments intended to combat terrorism, binding on all 15 Union's Member States, which includes 12 Report countries, has been described and analyzed by T. Papademetriou in the separate Chapter: European Union and Council of Europe. The European Union Members covered by this Report are: Austria, Belgium, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, and the United Kingdom.⁴

Finally, there is a Treaty on Cooperation among States Members of the Commonwealth of Independent States in Combating Terrorism, done at Minsk on June 4, 1999, deposited with the Secretariat of the Commonwealth of Independent States.

International Legal Instruments Done After September 11, 2001

Global Legal Instruments

On September 28, 2001, the Security Council of the United Nations unanimously adopted Resolution 1373 (2001) condemning terrorism, hereinafter 1373 Resolution. The Resolution unequivocally condemned the terrorist attacks which took place in New York, Washington, D.C. and Pennsylvania on September 11, 2001, expressed its determination to prevent all such attacks and obliged all Member States to undertake steps necessary to achieve this goal and to cooperate in this matter. "In its unanimous adoption of resolution 1373 (2001) on September 28, 2001, the Security Council for the first time imposed measures not against a State, its leaders, nationals or commodities, but against acts of terrorism throughout the world and the terrorists themselves."⁵

To this goal, the 1373 Resolution created the Counter-Terrorism Committee, consisting of all the members of the Security Council, to monitor implementation of

⁴For current list of EU Members see: <http://www.eurunion.org/states/home.htm>. In addition, two Report countries, i.e., Poland and Czech Republic are associate members of Western European Union (WEU) and five Report countries, i.e., Bulgaria, Estonia, Latvia, Lithuania, and Slovakia, are WEU associate partners. WEU is an organization which was set up for the purpose of cooperation on defense and security. The Treaty on European Union raised WEU to the rank of "integral part of the development of the Union" while preserving its institutional autonomy.
See: [wysiwyg://13/http://europa.eu.int/scadplus/leg/en/cig/g4000w.htm](http://13/http://europa.eu.int/scadplus/leg/en/cig/g4000w.htm)

⁵"Report of the Policy Working Group on the United Nations and Terrorism." Annex to A/57/273 S/2002/875. See: <http://www.un.org/terrorism/a57273.htm> at 9.

the Resolution and called upon all States to report to the Committee on the steps they have taken to implement the Resolution.⁶ All Report countries and the United States comply with this requirement.⁷

G8 Summit Members⁸ also condemned the September 11th attacks and agreed on global implementation of 1373 Resolution. To this goal, G8 members have amended domestic legislation where necessary to ensure compliance. All G8 members have reported on their implementation status to the UN Security Council Counter-Terrorism Committee, as required under Resolution 1373.⁹

Regional Legal Instruments

One of the most important instruments in European legal cooperation against terrorism are those adopted by the European Union since they, in turn, result in major change in law of Member States.

Among legal instruments adopted in this area by the European Union, two framework decisions are most important: the Decision on Combating Terrorism (hereinafter Terrorist Decision) and on the European Arrest Warrant (EAW). Although both decisions were initiated prior to September 11, 2001, terrorist attack on the United States, the attack sped up their adoption. The main goal of the Terrorist Decision is to harmonize the legislation on terrorism in the Member States. The Decision on EAW will replace all legal instruments on extradition as well as the provisions implementing the Schengen Agreement concerning extradition. As a result of its implementation, suspects sought for terrorism in a Member State that issues the arrest warrant must be surrendered by the executing state.¹⁰

Additionally, there are various multilateral and bilateral agreement relating to issue of terrorism, like bilateral agreements with the United States on various matters

⁶1373 Resolution, paragraph 6.

⁷Reports From Member States Pursuant to Paragraph 6 of Resolution 1373 (2001). See: <http://www.un.org/Docs/sc/committees/1373/1373reportsEng.htm>

⁸Consisting of Canada, France, Germany, Italy, Japan, Russian Federation, United Kingdom, United States and European Union.

⁹"G8 Counter-Terrorism Cooperation since September 11". See: http://www.g8.gc.ca/kan_docs/counterterrorism-e.a

¹⁰Both decisions are analyzed in detail in the European Union and Council of Europe chapter of this Report.

including border control, airport security, and other matters.

Limitations on Legislation Against Terrorism

The anti-terrorist national laws and international conventions and other legal instruments have to comply with fundamental rights of people as guaranteed by various international treaties, such as European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, the International Convention on Civil and Political Rights, and the International Convention on Economic, Social, and Cultural Rights, and as safeguarded by rulings of the European Court of Justice, and other supra national and national organizations and courts.

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EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

Since the September 11 attacks on the United States, greater cooperation has occurred between the United States and Europe in the area of counter-terrorism. In the aftermath of September 11, all the European countries covered in the Law Library's study have taken steps in compliance with the requirements of UN Resolution 1373, condemning terrorism. The European Union has also taken a leading roles in anti-terrorism legal initiatives. In addition, many individual European countries enacted or are considering legislation designed to improve law enforcement and suppression of terrorism. This overview summarizes the EU's major initiatives and describes activities by individual European countries, both EU Member States and others, in the following areas: immigration and asylum; surveillance and intelligence gathering; anti-terrorism legislation; measures against terrorist financing; and enforcement of counter-terrorism laws.

I. European Union and recent UN Anti-Terrorism Initiatives

In response to September 11, the EU rapidly developed an *Action Plan* that complements the measures taken by individual Member States but also goes further toward the goal of achieving greater harmonization of the current diverse legal regimes on terrorism.

Two EU framework decisions recently adopted best exemplify the EU's contribution to the war on terrorism: one on Combating Terrorism and the other on the European Arrest Warrant.

The Framework Decision on Combating Terrorism requires that the 15 Member States and candidate countries incorporate in their legal systems a common definition of terrorism as the intentional committing of offenses by an individual or group against one or more countries, their institutions, or people with the aim of intimidation and seriously altering or destroying the political, economic, or social structures of a country. The Framework Decision also requires Member States to punish terrorism offenses by "effective, proportionate and dissuasive penalties." In addition, Member States are also required to assist each other in proceedings related to terrorist offenses by establishing contact points in their territory.

The European Arrest Warrant (EAW), once implemented in 2003, will replace cumbersome extradition procedures and provide an additional tool for Members to deal with terrorism.

The EAW will function both as an arrest warrant dealing with search, arrest, and detention and as a request for surrender to the authorities of the issuing Member State. A fundamental principle of the EAW is mutual recognition of court orders among Members. Thus, the EAW will void current prohibitions on extraditing one's national, the rule on dual criminality which requires that the conduct must be criminal in both Member States,

and the rule on speciality which restricts prosecution to the offense for which the person was extradited. So far six Members (Belgium, France, Luxembourg, Portugal, Spain, and the UK) have expressed their commitment to adopt the EAW, even prior to the deadline.

Other Members, however, may have difficulties in meeting the implementation deadline of the EAW, due to the need to modify their constitutions.

The EU *Action Plan* also has international dimensions, linking the issue of terrorism in the EU's relations with third countries. The EU has included anti-terrorist clauses in association agreements concluded recently with Lebanon and Algeria, and has stepped up anti-terrorism efforts with other states, including the United States, Russia, Canada, and India.

On September 28, 2001, the Security Council of the United Nations unanimously adopted Resolution 1373 (2002) condemning terrorism. The Resolution unequivocally condemned the September 11 terrorist attacks expressed its determination to prevent all such attacks and obliged all Member States to undertake steps necessary to achieve this goal and to cooperate in this matter. To this goal, Resolution 1373 created the Counter-Terrorism Committee, consisting of all the members of the Security Council, to monitor implementation of the Resolution and called upon all States to report to the Committee on the steps they have taken to implement the Resolution. All the countries covered by this Law Library reports, the European Union and the United States are complying with this requirement.

II. Immigration, Asylum, and Tracking of Aliens

Immigration and asylum laws and practices play a significant role in ensuring the effectiveness of counter-terrorism measures. Prior to September 11, European countries' laws differed substantially on immigration, asylum and tracking of aliens, with some having adopted very restrictive policies and tight border controls, while others having more liberal, looser control over immigrants and asylum seekers. Post September 11 enacted or pending legislation generally indicates a toughening of regulations in most of these jurisdictions.

Border controls still appear to vary among EU countries, with all but two (UK and Ireland) of the EU Members as well as Norway, Iceland, and Liechtenstein, complying with the 1995 Schengen Agreement provisions for the elimination of border checks for travel within the EU while other non-EU countries, such as Bulgaria and the Baltic States, have relatively strong border controls.

The Schengen Agreement requires close cooperation among Member States in controlling external borders. Based on this requirement, Member States entered into an agreement for the exchange of liaison officers and bilateral police cooperation agreements with the objective to fight illegal immigration and organized crime. To implement the agreement, the Schengen Information System (SIS), a computerized database containing information on persons and objects, was established, as a joint information system designed to improve police and judicial cooperation in criminal activities, and matters relating to issuance

of visas, immigration, and the free movement of persons. The SIS is accessible to national and consular authorities. A Second Generation Schengen Information System (SIS II) is intended to handle additional Member States after enlargement, using more advanced technology as well.

Significant efforts at controlling the influx of asylum seekers were made, even prior to 9/11, through European cooperation, in particular, the Dublin Convention of 1997. As a consequence, the safe third country rule was adopted and has already been implemented by Ireland, the United Kingdom, and Germany. The rule requires asylum seekers to present their claims in the first safe country they enter.

Another important contribution of the Dublin Convention of 1997 is the establishment of a computerized database called Eurodac. Eurodac will contain the fingerprints of all asylum seekers 14 years or older or those apprehended in a Member State for a period of 10 years unless the apprehended person becomes a citizen in a Member State before that date.

A review of the immigration and asylum laws in many European countries reflects shortcomings, not so much in the substance of the law but more with implementation.

In an effort to reduce the backlogs created by the large increase in the filing of refugee claims, many West European countries, including France and the United Kingdom, have either recently revised or are in the process of revising their procedures for asylum cases. Some countries adopted legislative measures to limit immigration (Estonia, Latvia and Lithuania). Enforcement of asylum law and procedure, however, is restricted by the limited use of detention and deportation originating from either an inability to track or establish the person's identity or to prove the threat he/she poses either to citizens or national security. Deportation has also been rejected in some countries, specifically Germany, based on humanitarian grounds.

Although these steps are helpful, additional improvements in tracking measures are needed. Germany is one country that appears to have made a concerted effort in this area. In that country, a central registry of aliens is maintained, as well as registration of all residences. In addition, all inhabitants over the age of 16 must obtain a machine-readable identity card or a passport, which will include biometric information. Similar requirements exist in the three Baltic States and Bulgaria. In other countries, however, registration requirements are often weak or unenforced. One way some countries attacked this problem has been to increase the registration requirements and to issue registration cards to refugee claimants. A number of countries, including Ireland, have started issuing machine-readable cards. Another way to track aliens is by requiring all citizens to obtain national identity cards. Some countries, including Greece, Malta, and Spain, require citizens to actually carry the cards that have been issued, and others, such as France, Italy, and the Netherlands, make it optional. At least in France, possession of such a card is almost indispensable. Although initially opposed to creating national identity cards, the British Government is currently considering a plan that would require residents to obtain a card in order to be eligible to receive services such as medical care. Ireland, however, appears to strongly oppose

such a plan.

III. Surveillance and Intelligence Gathering

In the fight against terrorism, a variety of questions have been raised as to whether, and to what extent, police are allowed to employ wiretapping, intercept correspondence transmitted via telecommunication technology, and exercise certain types of physical surveillance. A 2002 EU directive on privacy and electronic communications gave law enforcement authorities in Europe additional powers to monitor telephone and Internet users, since EU directives are mandated for implementation by the Member States.

While recognizing the principle of confidentiality of communications and traffic data, the directive allows Member States to adopt legislation to restrict the scope of rights and obligations as long as such legislation is appropriate, proportionate, and necessary in a democratic society. Similarly, an EU directive designed to protect personal data and the right to privacy by requiring Member States to ensure that personal data are processed fairly and lawfully and collected for a specific, explicit, and legitimate purpose, authorizes circumvention of these rules for the purpose of national security, defense, and public security.

Local laws in all countries surveyed provide for both wiretapping and physical surveillance. In many jurisdictions, such as France and Spain, wiretapping must be authorized by an examining magistrate or court. In some countries, including Ireland, wiretapping can be authorized by the Minister of Justice. Most of the laws allow wiretapping only in the investigation of serious crimes which include terrorism. It does not appear that any countries' courts have placed severe limits on the ability of police officers to seek approval to engage in wiretapping for the purpose of combating terrorism.

The interception of correspondence transmitted via telecommunications technology such as the Internet for the purpose of preventing terrorism is dealt with in different ways by European countries. It is specifically authorized in France and Spain as an exception to the general rule of secrecy of such correspondence. German statutory law has not yet specifically addressed the permissibility of the collection of Internet data for intelligence and investigative purpose or for crime prevention. In Ireland, police investigative powers are quite broad, and authorities may obtain a warrant on reasonable grounds if they believe that the evidence of an offense may be found at a particular place. Italy introduced new provisions to deal with monitoring and controlling communications for the purpose of investigations for terrorism crimes, and extended to these crimes the less stringent requirements applicable to wiretapping against organized crime.

Physical surveillance by police officers does not appear to be governed by legislation in many European countries. This type of physical surveillance thus appears to be treated sometimes as normal police activity that does not need to be specifically authorized by judicial officers. However, the situation is generally different in countries such as Germany, France, and the United Kingdom. In Germany, provision is made for the issuance of warrants to authorize visual surveillance. France also requires

the police to obtain warrants except in matters concerning national defense. In the United Kingdom, warrants may be granted for directed and covert surveillance when it is considered to be necessary and proportionate or pursuant to an order issued by the Secretary of State. In the Netherlands, the police may use camera surveillance in public areas if it is necessary for maintaining public order or for investigating crimes if other measures do not appear to be adequate. In all of these countries, failure to comply with the relevant statutes may result in the police violating the strict privacy laws that have been created.

IV. Anti-Terrorism Legislation

Throughout Europe there is different treatment of terrorism offenses. Although the EU framework decision on combating terrorism requires all Members and candidate countries to incorporate into their laws a common definition of terrorism and impose effective penalties, not all have yet complied.

Several countries that had experienced domestic terrorism over the past few decades, including France, Ireland, the UK, Spain, Italy, and Germany, already had in place special anti-terrorism legislation prior to September 11 which was further strengthened after September 11 by temporary emergency measures. Other countries either amended or are in the process of amending their laws to enact special provisions and impose stiffer sentences on such offenses. Still others apply their regular criminal law to terrorism offenses, but have designated special terrorism-related offenses that carry increased penalties.

Generally, what distinguishes terrorist offenses from regular offenses is the intent. Thus, for example, to qualify as terrorist offenses, the French Code requires the offenses to be intentionally connected to an individual or collective enterprise having the purpose of seriously disturbing public order by intimidation or terror. The UK Terrorism Act 2000 definition of terrorist offenses added to other qualifying criteria the intent to influence the government and to advance a political, religious, or ideological cause. The recognition of a religious or ideological motivation as one of the elements of terrorism is intended to expand its application to domestic terrorism as well as to international acts. The Act also introduces the crime of inciting terrorism overseas and of conspiracy to commit a terrorism offense.

Similarly to French and UK law, Portuguese terrorism law predates the September 11 events. It specifically defines the offenses of terrorism, association with terrorist organizations, and incitement to commit terrorism. The law also provides for a reduced or annulled penalty for voluntarily abandoning terrorist activities and lessening or preventing their risk. After September 11 Italy approved emergency legislation, amending its Penal Code and making international terrorism a crime. The legislation further created a new crime of assisting members of terrorist organizations which carries a stiff penalty. The Netherlands and Switzerland are in the process of enacting special terrorism legislation which will impose increased penalties on violators.

In addition, Greece appears to be considering the adoption of a special law on terrorism. In the absence of any specific anti-terrorist statutes, prosecutions of suspected terrorists have been based on Greek Criminal Code which does not explicitly contain the word "terrorism" or the necessary elements, and punishes anyone who founds or joins a group of "continuous" or uninterrupted criminal activity. Single acts of terrorism, therefore, appear not to come within the scope of Greek criminal law. A special committee was appointed in Greece to study and draft new legislative measures on this subject.

Pre-September 11 German law contained only one substantive provision specifically relating to terrorism, prohibiting various conduct with regard to a terrorist organization. The events of September 11 showed a flaw in this provision in that it applied only to terrorist groups that commit or plan activities in Germany. Very recently Germany augmented its criminal provisions against terrorist conspiracies by rendering them applicable to foreign terrorist groups.

Some countries, including Belgium, the Czech Republic, Luxembourg, and Malta, do not have specific legislation on terrorism, apparently considering that current provisions within their criminal codes are sufficient to cover terrorist-related criminal activities.

V. Terrorist Financing and Measures

Before September 11 the financing of terrorists in most European countries was not considered a separate offense. Terrorist financing has been dealt with in various ways, such as by punishing participation in a criminal or terrorist organization. The financing of terrorism, however, under certain circumstances amounted to money laundering. Therefore, money laundering laws are considered major instruments in preventing the financing of terrorism.

In compliance with the 1991 Directive on the Prevention of the Use of the Financial System for the Purpose of Money Laundering, EC Member States enacted various money laundering acts that apply to all financial and credit institutions, including insurance companies, pension funds, credit card companies, currency exchanges, casinos, etc. Such institutions are required to request identification when a currency movement exceeds a certain amount and report all unusual and suspicious transactions to a central reporting authority. Following September 11, the EU adopted legislation requiring Member States to directly enforce orders issued in a Member State pertaining to freezing property or funds, evidence relating to money laundering activities, and prohibiting provision of funds, assets, and financial services to terrorists with proven connections to terrorist organizations. The EU has proposed a regulation regarding declaring and reporting persons frequently entering and exiting the Community customs territory as well as those entering and leaving with large cash amounts.

In addition to EU efforts, terrorist financing was made a crime under the criminal code in some Member States, (including Austria and France), and the scope for the seizure

of terrorist funds was increased. In France, Parliament introduced the new offense of the financing of terrorist activities. The Parliament also expanded the definition of acts of terrorism to include money laundering and/or insider trading when they are intentionally connected to an individual or collective enterprise having the purpose of seriously disturbing public order by intimidation or terror. In Germany major changes in the monitoring of bank accounts were enacted, including the authorization to collect information from financial institutions on banking records or accounts, and the surveillance of international terrorist funds by the Federal Office for the Protection of the Constitution and the Federal Intelligence Service.

Like Germany, Ireland and Italy approved bills addressing the financing of terrorism. In Italy a special committee for financial security was created, and the confiscation of assets used in committing acts of terrorism was made mandatory. Portugal's law on money laundering includes terrorism as one of the criminal activities used for money laundering. In Spain, a draft law would grant a special commission the authority, as a precautionary measure, to freeze funds of individuals suspected of being involved in terrorism. In the Netherlands, the Dutch Central Bank and the Pension and Insurance Chamber will be given more authority to take action against institutions they supervise so that funds may be frozen on a short term notice if there are indicators they may be used to finance terrorism. In the United Kingdom the power to forfeit terrorists' cash has been extended and may be taken whether or not proceedings have been undertaken regarding offenses related to the cash. To reduce the risk of terrorist property being sent overseas, freezing orders can be made at the start of an investigation. The power to freeze assets also has been extended to cases where there is a reasonable belief that overseas governments or residents are conducting actions that threaten the UK's economy or the lives or property of UK nationals or residents.

Estonia, in which EU membership has been recommended for 2004, joined the EU Declaration on Fight Against Terrorism together with the EU Council statements on measures against terrorism. Estonia, with other states aspiring to EU membership in 2004, Latvia, Lithuania, the Slovak Republic, Cyprus, Malta, and Bulgaria, all adopted or are in the process of adopting legislation that complies with EU legislation in this area. Along with the above countries, the Channel Islands and the Isle of Man, providers of a range of financial services, have enacted or are strengthening laws aimed at combating terrorism, including reforms to prevent money laundering and the funding of terrorism. In Switzerland, where bank secrecy has always been respected, a bill was introduced to subject suspects of terrorist funding to trial before the Swiss Federal Court, to facilitate the seizure of terrorist funds, and to make easier the receipt of information on implicated bank accounts by foreign governments.

VI. Legal Cooperation and Enforcement of Counter-Terrorism Laws

The adoption of international or domestic law is insufficient without effective implementation of the laws. Several European countries are signatories to bilateral or multilateral treaties relevant to cooperation in the fight against terrorism, including cooperation in the areas of legal assistance, extradition, technological cooperation,

and other areas. Unlike the European Convention on the Suppression of Terrorism, which is binding in all countries surveyed, many countries have not yet signed or implemented one or more of the 12 major multilateral global conventions related to terrorism (*See attached charts.*)

Implementation of laws, however, depends on countries' adherence to constitutional principles and domestic policies and laws incorporating, among others, the European Convention on Human Rights. European countries are presently prevented from compliance with extradition or information requests by the United States in cases where the requested person is a national, the offense is subject to the death penalty or the person is to be tried by military tribunals.

In addition, European countries' strong privacy laws, further strengthened by EU directives, have had an impact on cooperation with the United States in the area of intelligence gathering and sharing. Thus, an EU directive authorizes the collecting, processing, and limited time preservation of personal data only for specific, explicit, and legitimate purposes. The strict rules on the protection of personal data, however, may be circumvented in cases involving defense and national and public security; cases involving the prevention, investigation, detection, and prosecution of criminal offenses; and monetary, budgetary, and taxation matters. A recently adopted directive on privacy and electronic communications further requires Member States to adopt enabling legislation to implement the principle of confidentiality of communications and traffic data by means of a public communications network and prohibit listening, wiretapping, and other kinds of interceptions and surveillance of communications without the consent of the users. The general directive, however, authorizes restrictions on the confidentiality rule if they are appropriate, proportionate, and necessary in a democratic society.

A review of European legal cooperation with the United States in the fight against terrorism indicated some areas where domestic law had an impact on the level of such cooperation. In Spain, a major ally of the United States, eight men the extradition of whom was requested by the United States, will not be extradited unless the United States agrees that they would be tried by a civilian court and not by military tribunals.

Although willing to share information about the arrests, Spain will exclude its police report from the United States case against the so-called 20th hijacker, Zacarias Moussaoui, based on a legal prohibition on sharing information to be used in a death penalty case.

Similarly, France, Moussaoui's country of citizenship, may not provide all the evidence gathered to support the United States' prosecution in which the death penalty is requested.

In the UK, an adverse decision has already been made by the Special Immigration Appeals Commission regarding the case of nine suspected international terrorists detained under the 2000 terrorism statute. Similarly, an Algerian pilot arrested per FBI request, for suspicion of training the hijackers of the September 11 attacks, was released after five months of incarceration when charges against him were dropped due to insufficient evidence. In Ireland, a signatory of a bilateral extradition agreement with the United States, doubts have been expressed as to whether the government had the ability to extradite persons to other countries under the Extradition Act 2001. This inability is based

on several interpretations of the Constitution that have favored persons seeking refuge in Ireland.

In Germany, despite swift and massive anti-terrorism measures taken after September 11, difficulties still remain in implementation. Some of the difficulties may stem from the stringent requirements for the detention of suspects, and others from the division of powers between the German federation and the German States. A court order in the State of Hesse, ordering a stop to a nationwide computerized search for traces of the perpetrators of the September 11 events, resulted in the abandonment of already started efforts and data pertaining to some 1,830 individuals relevant for an investigation, and in jeopardizing the effectiveness of the computerized search in all the other states.

A court in state of Hesse stopped the effort on the grounds that the September 11 events did not constitute a national emergency in Germany as to justify the far-reaching invasion of the privacy of the individuals involved.

Concerns have also been raised regarding Luxembourg, a signatory to a bilateral agreement with the United States on Mutual Legal Assistance in Criminal Matters. Despite its adoption of extensive anti-laundering legislation, Luxembourg's implementation of these laws was severely criticized by a French parliamentary commission which had investigated Luxembourg banking practices. Additionally, in April 2002, a court in Luxembourg ordered the unfreezing of \$200 million in assets of six Luxembourg companies and investment banks linked to Al Baraka Exchange in Dubai, a company suspected of financing the al-Qaeda network and on the U.S. Treasury Department list. The court ordered the funds to be unblocked after lawyers for the Al Baraka Exchange succeeded in casting reasonable doubt on the validity of the U.S. Treasury list.

The cooperation of Malta, a country located only 250 miles away from North Africa and an expected EU Member State of 2004, has also been a concern for the United States.

The suitcase containing the bomb that exploded on Pan Am flight 103 over Lockerbie, Scotland, was reportedly loaded in Malta. Although Malta cooperated in the investigation and provided witnesses during the trial, it released the surviving hijacker, Ali Rezak, from prison in 1993, despite assurances to the U.S. State Department that he would be kept in prison until 1996. His release prompted a House Resolution (H.R. 118, 103rd Cong. 1993) condemning the release. However, Malta's actions following the September 11 attacks, specifically the distribution of the names of organizations and individuals suspected in the September 11 attacks to its financial institutions, indicate a stronger commitment to fighting terrorism. A cause for concern, though, is the government's strong opposition to resist legislative actions regarding terrorism and membership to the EU.

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