

**SUPPLEMENTAL AGREEMENT BETWEEN
THE EUROPOL POLICE OFFICE AND
THE UNITED STATES OF AMERICA
ON THE EXCHANGE OF PERSONAL DATA
AND RELATED INFORMATION**

The European Police Office (Europol) and the United States of America ("the Parties");

Considering that the Agreement of 6 December 2001 between the United States of America and Europol ("2001 Agreement") contemplates subsequent supplementation in order to address the exchange of personal data;

Considering that it is in their common interest to extend their cooperation to, inter alia, the exchange of personal data, with due regard to the rule of law and protection of individual rights and liberties;

Considering that the Council of the European Union has given Europol the authorization to enter into negotiations on a cooperation agreement including the exchange of personal data and to agree to the following provisions with the United States of America;

Considering the letters exchanged between the Parties, and the letter attached thereto, which amplify the meaning of this Agreement;

Have agreed as follows:

**Article 1
Purpose**

The purpose of this agreement is to enhance the cooperation of the Member States of the European Union, acting through Europol, and the United States of America, in preventing, detecting, suppressing, and investigating criminal offenses within the respective jurisdiction of the Parties, in particular by facilitating the reciprocal exchange of information, including personal data.

**Article 2
Definitions**

For purposes of this Agreement:

- (a) "personal data" means any information relating to an identified or identifiable natural person;
- (b) "identifiable natural person" means a natural person who can be identified, directly or indirectly, by reference to, in particular, an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;
- (c) "processing of personal data" means any operation or set of operations which is performed upon such data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, combination, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

Article 3
Scope of assistance

1. The Parties may exchange information, including personal data, between themselves, in accordance with the provisions of this Agreement.
2. The exchange of strategic and technical information shall continue to be governed by the 2001 Agreement. Articles 4, 6 and 8 of the 2001 Agreement shall apply to this Agreement, *mutatis mutandis*.
3. This Agreement is intended solely for the purpose of cooperation between the Parties. The provisions of this Agreement shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request, nor shall it derogate from any pre-existing right of a private party to do so.
4. Nothing in this Agreement may be interpreted in a manner that would prejudice or restrict the provisions of any Mutual Legal Assistance Treaty, working law enforcement relationship, or any other agreement or arrangement for the exchange of information between the United States of America and any Member States or institution of the European Union.
5. The Parties may carry out forms of cooperation other than the exchange of information to the extent and under the terms and conditions mutually agreed upon by them.

Article 4
Communications between the Parties

1. Requests and responses to requests under this Agreement may be made in writing, by any other means capable of producing a written record, or orally with written confirmation to follow if required by the requested Party. Where feasible, a written request may be transmitted through fax, e-mail, or other means for expediting communications, providing, where necessary in a particular matter, appropriate security measures.
2. Requests and responses to requests shall be transmitted either directly between the points of contact designated pursuant to Article 4 of the 2001 Agreement, or, if the points of contact agree in writing, directly between Europol and designated U.S. federal, state or local authorities.
3. A request shall provide a concise statement identifying the authority making the request, the matter under consideration, the reason for the request, and the nature of the assistance sought.
4. A Party may, without prior request, forward to the other Party information when it considers that disclosure of such information might assist the receiving Party. A brief statement of the reasons for forwarding the information shall be provided to the extent feasible and necessary, or to the extent required by the applicable legal framework of the forwarding Party.

Article 5
General terms and conditions

1. (a) Transmission of information under this agreement to, and its further processing by, the receiving Party shall be for the purposes set forth in the request, which shall be deemed to include the prevention, detection, suppression, investigation and

prosecution of any specific criminal offenses, and any specific analytical purposes, to which such information relates. Where the receiving Party seeks the use of such information for other purposes, it shall ask for the prior consent of the Party that furnished the information.

(b) Notwithstanding subparagraph (a), nothing in this Agreement shall prevent the receiving Party from:

- (i) disclosing in its proceedings, information or evidence that tends to exculpate an accused person. In this situation, the receiving Party shall notify the transmitting Party in advance of disclosure, or, in an exceptional case in which advance notice is not possible, without delay thereafter.
 - (ii) using without restriction information or evidence that has been made public as a normal result of having been provided.
2. The transmitting Party shall indicate the agency from which the information concerned originated.
 3. Unless already in the public domain, information exchanged under this Agreement will be treated as law enforcement information and afforded protections, including all appropriate security measures, in accordance with domestic law and applicable regulations. In particular, information marked as "Europol 1" to "Europol 3" shall be protected as "law enforcement sensitive material" and handled in the same manner as information of a similar sensitivity held by the United States of America. Europol shall treat "law enforcement sensitive material" transmitted by the United States of America as equivalent to "Europol 1" for purposes of security, unless otherwise requested pursuant to paragraph 5 of this Article. It is the responsibility of the transmitting Party to ensure all appropriate marks are fixed to the materials so transmitted.
 4. The Party to which a request for assistance under this Agreement has been made shall endeavor to limit the circumstances in which it refuses or postpones assistance to the greatest extent possible. Before refusing or postponing assistance, that Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially, or subject to conditions. If the receiving Party cannot comply with such conditions, it shall notify the providing Party, which shall then determine whether the information shall nevertheless be provided. If the receiving Party accepts the information subject to the conditions, it shall be bound by them. Where the need for such conditions becomes apparent following transmission due to changed circumstances, the Parties shall promptly discuss available remedies.
 5. A request for assistance pursuant to this Agreement shall be executed in accordance with and subject to the limitations of the applicable laws and regulations of the Party receiving the request, and within the limits of its available resources.

Article 6

Transmission of special categories of personal data

Personal data revealing race, political opinions, or religious or other beliefs, or concerning health and sexual life, may be provided only upon the transmitting Party's determination that such data is particularly relevant to a purpose set forth in Article 5, paragraph 1.

Article 7
Authorities competent to receive information

1. (a) Information supplied by Europol under this Agreement shall be available to competent U.S. federal authorities for use in accordance with this Agreement.

(b) Such information shall also be available for use by competent U.S. state or local authorities provided that they agree to observe the provisions of this Agreement, in particular Article 5, paragraph 1.
2. Europol shall ensure that information supplied by the United States under this Agreement will only be made available to the competent law enforcement authorities of the Member States of the European Union or for use within Europol.
3. Onward transmission of information to international institutions, or to third States, will only take place with the prior written consent of the Party that supplied the information, unless already in the public domain.

Article 8
Requests for supplemental information

A Party may seek information to supplement that previously received pursuant to this Agreement, including, where not ascertainable from the information previously provided, the transmitting Party's assessment of the accuracy of such information, and of the reliability of the source of such information.

Article 9
Maintaining the accuracy of information

1. Each Party shall maintain information provided pursuant to this Agreement under a system of record keeping that facilitates the ability of its law enforcement authorities to carry out their activities on the basis of accurate information.
2. Each Party shall maintain a system of database and document control that provides for the orderly disposal, at intervals to be provided for by domestic law or administrative regulation, of information that has been received.
3. Where a Party becomes aware that non-public information it has received from the other Party is not accurate, it shall take all appropriate measures to safeguard against erroneous reliance on such information by its law enforcement authorities, which may include supplementation, deletion or correction of such information.
4. Where a Party becomes aware that information it possesses causes significant doubt as to the accuracy of information received pursuant to this Agreement, or an assessment made by the other Party of the accuracy of information or the reliability of a source, it shall, where feasible, advise the other Party thereof.

Article 10
Access by private persons or entities

1. Where a private person or entity requests from a Party access to information received by that Party under this Agreement that is not already in the public domain, the transmitting Party shall be consulted.
2. Where the transmitting Party does not consent to the release of the information, the receiving Party shall not release it. Should a decision not to release information be challenged, whether administratively or through judicial proceedings, the receiving Party shall, by all legal means within its power, advise, assist, appear and represent the transmitting Party's interests in connection therewith. Should the receiving Party become subject to a final order requiring it to release information to which the transmitting party had not consented, the receiving Party shall notify the transmitting Party in advance of disclosure, or, in an exceptional case in which advance notice is not possible, without delay thereafter.
3. This Article is without prejudice to any rights an individual may have under the law of the transmitting Party to seek release of information from that Party, or other appropriate relief.

Article 11
Expenses

Neither Party shall make any pecuniary claim against the other Party for expenses arising out of the execution of this Agreement. Should expenses of an extraordinary nature arise out of the execution of this Agreement, the Parties may consult with a view to determining the manner in which they shall be addressed.

Article 12
Oversight of implementation

The execution and implementation of this Agreement by the Parties shall be subject to oversight in accordance with their applicable law and procedures. The Parties shall utilize their respective administrative, judicial or supervisory bodies that will ensure an appropriate level of independence of the oversight process.

Article 13
Consultation

The Parties may consult, as appropriate, to promote the most effective use of this Agreement.

Article 14
Evaluation, amendment, and termination of the Agreement

1. Within two years after the entry into force of this Agreement, its implementation will be jointly evaluated by the Parties.
2. This Agreement may be amended by mutual consent between Europol and the United States of America at any time, in accordance with their respective applicable internal procedures.
3. This Agreement may be terminated by either Party upon three months' written notice.