

JUDICIAL ASSISTANCE

Cooperation

**Agreement Between the
UNITED STATES OF AMERICA and
EUROJUST**

Signed at Washington November 6, 2006



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

EUROJUST

Judicial Assistance: Cooperation

*Agreement signed at Washington November 6, 2006;
Entered into force December 19, 2006.*

**Agreement
between
the United States of America and Eurojust**

The United States of America and Eurojust (hereinafter referred to as 'the Parties'),

Having regard to the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, and in particular Article 27(1)(c) and (3) thereof;

Having regard to the opinion of the Joint Supervisory Body of 15 August 2006;

Considering the interests of both the United States of America and Eurojust in developing close and dynamic co-operation to meet the present and future challenges posed by serious transnational crime including terrorism;

Considering the wish of the Parties to improve co-operation between the competent authorities of the United States of America and Eurojust to facilitate the co-ordination of investigations and prosecutions involving the United States and one or more Member States, and to facilitate development of relevant best practices, and assessment of crime trends;

HAVE AGREED AS FOLLOWS:

**Article 1
Definitions**

For the purposes of this Agreement:

- a) 'Eurojust Decision' means the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime;
- b) 'Member States' means the Member States of the European Union;
- c) 'College' means the College of Eurojust, as referred to in Article 10 of the Eurojust Decision;
- d) 'National member' means the national member seconded to Eurojust by each Member State of the European Union, as referred to in Article 2(1) of the Eurojust Decision;
- e) 'Assistant' means a person who may assist each national member, as referred to in Article 2(2) of the Eurojust Decision, unless defined otherwise in this Agreement;

- f) 'Administrative Director' means the Administrative Director as referred to in Article 29 of the Eurojust Decision;
- g) 'Eurojust staff' means the staff referred to in Article 30 of the Eurojust Decision;
- h) 'Personal data' means any information relating to an identified or identifiable natural person ('data subject'). An identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity;
- i) 'Processing of personal data' means any operation or set of operations which are performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;
- j) 'United States' means the United States of America.

Article 2 Purpose of this Agreement

The purpose of this Agreement ('this Agreement') is to enhance the co-operation between the United States and Eurojust in combating serious forms of transnational crime including terrorism.

Article 3 Scope of co-operation

1. The United States and Eurojust co-operate in the fields of activity set forth in Articles 6 and 7 of the Eurojust Decision within the competences of Eurojust as set forth in Article 4 of the Eurojust Decision.
2. Where Eurojust's mandate is changed to cover fields of activities and/or competences in addition to those set forth in paragraph 1, Eurojust may, from the date when the change to Eurojust's mandate enters into force, submit to the United States in writing a proposal to extend the scope of application of this Agreement in relation to the new mandate. This Agreement shall apply in relation to the new mandate as of the date on which Eurojust receives the written acceptance by the United States in accordance with its internal procedures.
3. 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 expand or limit rights otherwise available under the respective laws of the Parties.

Article 4
Competency for the execution of this Agreement

1. The competent authority of the United States for the execution of this Agreement is the Department of Justice of the United States. The Department of Justice may invite competent state or local prosecutorial authorities from the United States to participate in the activities authorized by this Agreement provided that the Department of Justice secures from those authorities a commitment that they will observe the provisions of this Agreement.
2. Within Eurojust and in accordance with Articles 6 and 7 of the Eurojust Decision, the national members concerned and the College are competent for the execution of this Agreement.

Article 5
Liaison Prosecutor to Eurojust

1. To facilitate co-operation as laid down in this Agreement, and in accordance with the provisions of Article 27(3) of the Eurojust Decision, a liaison prosecutor from the United States may be seconded to Eurojust.
2. The liaison prosecutor shall be a public prosecutor as established by the law of the United States. The mandate and the duration of secondment shall be determined by the United States.
3. The liaison prosecutor may be assisted by one person. When necessary, the assistant may replace him or her.
4. The United States shall inform Eurojust of the nature and extent of the prosecutorial powers of the liaison prosecutor in order to accomplish his or her tasks in accordance with the purpose of this Agreement. The liaison prosecutor will have authority to share information pursuant to this Agreement and to contact relevant officials in the United States to advance the purpose of this Agreement.
5. The liaison prosecutor shall have access to the information contained in the national criminal records or in any other register of the United States in the same way as stipulated by the law of the United States in the case of a prosecutor or person of equivalent competence.
6. Eurojust shall endeavour to provide sufficient liaison facilities, which shall include the use of office space and telecommunications services, to the extent possible within the constraints of the Eurojust infrastructure and budget. Eurojust may request reimbursement of any or all expenses incurred by Eurojust in providing these facilities.
7. The working documents of the liaison prosecutor shall be held inviolable by Eurojust.

Article 6
Contact point to Eurojust

The United States shall put in place or appoint at least one contact point to Eurojust within the office of the competent authority of the United States.

Article 7
Operational and strategic meetings

1. Prosecutorial authorities of the United States, and, as appropriate, their investigative agents, including the liaison prosecutor, his or her assistant and the contact point to Eurojust, may participate in operational and strategic meetings, at the invitation of the President of the College and with the approval of the national members concerned. The United States competent authority may ask Eurojust either to participate in or convene a meeting.
2. National members and their assistants, the Administrative Director and Eurojust staff may also attend meetings organized by the competent authority, the liaison prosecutor or other prosecutorial authorities of the United States, including the contact point to Eurojust, at the invitation of the competent authority, the liaison prosecutor or the contact point to Eurojust.

Article 8
Authorization to Exchange information

1. The Parties may exchange information in accordance with this Agreement in order to achieve its purpose as set forth in Article 2.
2. The requesting Party shall notify the other Party of the purpose for which the information is requested. In the case of spontaneous transfer of information, the Party providing information shall notify the other Party of the purpose for which the information is supplied.
3. The information shall be exchanged
 - a) either between the liaison prosecutor or, if no liaison prosecutor is appointed or otherwise available, the contact point to Eurojust and the national members concerned or the College; or
 - b) directly between the prosecutorial authority in charge of investigating and/or prosecuting the case and the national members concerned or the College. In this event, the liaison prosecutor shall be informed about any such information exchanges.
4. The Parties are not precluded from agreeing to use other channels for the exchange of information in particular cases.
5. Both Parties shall ensure that its respective representatives are authorised to exchange information at appropriate levels and are adequately screened.

Article 9
Privacy and Data Protection

1. The Parties recognize that the handling and processing of personal data they acquire from each other is of critical importance to preserving confidence in the implementation of this Agreement.
2. The Parties shall act in full accord with their respective laws concerning the processing of personal data exchanged pursuant to this Agreement and are committed to:
 - a) processing personal data fairly;
 - b) ensuring that the personal data provided is adequate and relevant in relation to the specific purpose of the request or transfer as defined in Article 8(2);
 - c) retaining data only so long as necessary for the purpose for which the data were provided or further processed in accordance with this Agreement; and
 - d) ensuring that possibly inaccurate data is timely brought to the attention of the receiving Party in order that appropriate corrective action is taken.

Article 10
Limitation on use to protect personal and other data

1. The Parties may use any evidence or information obtained under this Agreement:
 - a) for the purpose of its criminal investigations and proceedings;
 - b) for preventing an immediate and serious threat to its public security;
 - c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings set forth in subparagraph (a);
 - d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b), and (c); and
 - e) for any other purpose, only with the prior consent of the Party which has transmitted the information.
2.
 - a) This Article shall not prejudice the ability of the Party transmitting the information to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the transmitting Party may require the receiving Party to give information on the use made of the transferred evidence or information.
 - b) Generic restrictions with respect to the legal standards of the receiving Party for processing personal data may not be imposed by the transmitting Party as a condition under subparagraph (a) to providing evidence or information.
3. Where, following disclosure to the receiving Party, the transmitting Party becomes aware of circumstances that may cause it to seek an additional

condition in a particular case, the Parties may consult to determine the extent to which the evidence or information can be protected.

4. The Parties shall not communicate any evidence or information provided under this Agreement to any third State or body without the consent of the Party which provided the information and without the appropriate safeguards.

Article 11 Transmission of Special Categories of Personal Data

1. Personal data revealing racial or ethnic origin, political opinions or religious or other beliefs, trade union membership or concerning health and sexual life may only be provided if they are particularly relevant to a purpose set forth in Articles 2 and 10(1)(b) of this Agreement.
2. The Parties shall take suitable safeguards, in particular appropriate security measures, in order to comply with the special sensitivity of the categories of personal data mentioned in paragraph 1.

Article 12 Documentation

Each Party shall maintain a record of the transmission and receipt of data communicated to the other Party under this Agreement.

Article 13 Data Security

The Parties ensure the necessary technical measures and organisational arrangements are utilized to protect personal data against accidental or unlawful destruction, accidental loss or unauthorised disclosure, alteration, access or any unauthorised form of processing. The Parties in particular ensure that only those authorised to access personal data can have access to such data.

Article 14 Transparency--Providing information to the data subjects

1. Nothing in this Agreement shall be interpreted to interfere with the Parties' legal obligations, as set forth by their respective laws, to provide data subjects with information as to the purposes of the processing and the identity of the data controller, the recipients or categories of recipients, the existence of the right of access to and the right to rectify the data concerning him or her and any further information such as the legal basis of the processing operation for which the data are intended, the time limits for storing the data and the right of recourse, in so far as such further information is necessary, having regard for the purposes and the specific circumstances in which the data are processed, to guarantee fair processing with respect to data subjects.

2. Such information may be denied in accordance with the respective laws of the Parties, including if providing this information may jeopardize
 - a) the purposes of the processing;
 - b) investigations or prosecutions conducted by the competent authorities in the United States or by the competent authorities in the Member States which Eurojust is assisting;
 - c) the rights and freedoms of third parties.

Article 15

Access to personal data

1. The data subject is entitled to request from a Party access to information received by that Party under this Agreement. The access is determined in accordance with the law applicable to the Party to which the request is submitted. That Party shall ensure that its decision is communicated to the data subject in a timely manner. Access to personal data shall be denied if providing such access may jeopardize
 - a) the purposes of the processing;
 - b) investigations or prosecution conducted by the competent authorities in the United States or by the competent authorities in the Member States which Eurojust is assisting;
 - c) the rights and freedoms of third parties.
2. The Party to which the request is submitted shall give the other Party the opportunity to express its opinion as to the possible existence of one of the grounds to deny access as set forth in paragraph 1.
3. This Article is without prejudice to any rights an individual may have under the law applicable to the transmitting Party to seek release of information from that Party, or other appropriate relief.

Article 16

Correction, blockage and deletion of personal data

1. The data subject shall be entitled to ask the Party which has processed data relating to him/her under this Agreement to correct, block or delete those data if they are incorrect or incomplete or if their collection, further processing or storage contravenes this Agreement or the respective rules applicable to the Parties.
2. Where a Party becomes aware either via the request of the data subject, via notification from the transmitting Party or via some other way that 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, which may include supplementation, deletion or correction of such information.
3. 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 17
Time limits for the storage of personal data

Personal data shall be stored in accord with the respective laws applicable to the Parties and only for so long as necessary for the achievements of the purpose of this Agreement or for the purposes for which the data were collected or further processed according to Articles 2 and 10(1)(a)-(e) of this Agreement.

Article 18
Consultations

1. The Parties shall consult each other regularly, and at least once a year, on the implementation of the provisions of this Agreement. In particular, regular exchanges of views shall take place with regard to the implementation of provisions relating to, and further developments in the field of, data protection and data security.
2. In the event of any dispute regarding the interpretation or application of this Agreement, the Parties shall consult each other in order to facilitate its resolution.

Article 19
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 20
Expenses

Without prejudice to Article 5(6), 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 21
Termination of the Agreement

1. This Agreement may be terminated by each Party with three months' notice.
2. In case of termination, the Parties shall endeavour to reach agreement under the conditions set out in this Agreement on the continued use and storage of the information that has already been communicated between them. If no agreement is reached, either Party may request deletion of the information that had been previously communicated.

Article 22
Amendments

1. The Parties shall enter into consultations with respect to the amendment of this Agreement at the request of either Party.
2. This Agreement may be amended by agreement of the Parties at any time. Such amendment will enter into force after the Parties have notified each other of the completion of their respective internal requirements.

Article 23
Entry into force

This Agreement shall enter into force on the date on which the Parties have notified each other in writing that their legal requirements have been completed.

Done at Washington this ^{6th} day of November two thousand and six in duplicate in the English language.

For the United States of America



For Eurojust

