

No. 35007. Austria and United States of America

TREATY BETWEEN THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS. VIENNA, 23 FEBRUARY 1995 [*United Nations, Treaty Series, vol. 2029, I-35007.*]

PROTOCOL TO THE TREATY BETWEEN THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS, SIGNED 23 FEBRUARY 1995, AS CONTEMPLATED BY ARTICLE 3 (2) OF THE AGREEMENT ON MUTUAL LEGAL ASSISTANCE BETWEEN THE EUROPEAN UNION AND THE UNITED STATES OF AMERICA SIGNED 25 JUNE 2003. VIENNA, 20 JULY 2005

Entry into force: 1 February 2010, in accordance with article 9

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N° 35007. Autriche et États-Unis d'Amérique

TRAITÉ D'ENTRAIDE JUDICIAIRE EN MATIÈRE PÉNALE ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE D'AUTRICHE ET LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE. VIENNE, 23 FÉVRIER 1995 [*Nations Unies, Recueil des Traités, vol. 2029, I-35007.*]

PROTOCOLE AU TRAITÉ D'ENTRAIDE JUDICIAIRE EN MATIÈRE PÉNALE ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE D'AUTRICHE ET LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE, SIGNÉ LE 23 FÉVRIER 1995, TEL QUE PRÉVU AU PARAGRAPHE 2 DE L'ARTICLE 3 DE L'ACCORD EN MATIÈRE D'ENTRAIDE JUDICIAIRE ENTRE L'UNION EUROPÉENNE ET LES ÉTATS-UNIS D'AMÉRIQUE, SIGNÉ LE 25 JUIN 2003. VIENNE, 20 JUILLET 2005

Entrée en vigueur : 1^{er} février 2010, conformément à l'article 9

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[ENGLISH TEXT – TEXTE ANGLAIS]

Protocol to the Treaty between the Government of the Republic of Austria and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters signed 23 February 1995, as contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the European Union and the United States of America signed 25 June 2003

As contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the European Union and the United States of America signed 25 June 2003 (hereafter “the EU-U.S. Mutual Legal Assistance Agreement”), the Governments of the Republic of Austria and the United States of America acknowledge that, in accordance with the provisions of this Protocol, the EU-U.S. Mutual Legal Assistance Agreement is applied in relation to the bilateral Treaty between the Government of the Republic of Austria and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters signed on 23 February 1995 (hereafter “the 1995 Mutual Legal Assistance Treaty”) under the following terms:

**Article 1: Channel for assistance to agencies
with jurisdiction to refer matters for criminal prosecution**

Pursuant to Article 8(2) of the EU-U.S. Mutual Legal Assistance Agreement, the following shall be applied as the final sentence of Article 2(2) of the 1995 Mutual Legal Assistance Treaty:

“Requests for assistance made on behalf of such agencies shall be transmitted between the Central Authorities, or between such other authorities as may be agreed by the Central Authorities.”

Article 2: Expedited transmission of requests

Pursuant to Article 7 of the EU-U.S. Mutual Legal Assistance Agreement, the following shall be applied in place of Article 4(1) of the 1995 Mutual Legal Assistance Treaty:

“1(a). A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another form in urgent situations. In any such situation, the request shall be confirmed in writing within ten days unless the Central Authority of the Requested State agrees otherwise. For purposes of this paragraph, requests transmitted by fax or e-mail shall be considered to be in writing.

(b) Communications related to requests for assistance may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the Requested State. The Requested State may respond by any such expedited means of communication.

(c) The Requesting State shall translate the request and any supporting documents into the language of the Requested State. However, the Central

Authorities may make arrangements for the Requested State to translate the request and any supporting documents at the expense of the Requesting State.”

Article 3:

Limitations on use to protect personal and other data

A. Article 7(2) of the 1995 Mutual Legal Assistance Treaty shall be renumbered to be Article 7(4).

B. Pursuant to Article 9 of the EU-U.S. Mutual Legal Assistance Agreement, the following shall be applied in place of Article 7(1) and (3) of the 1995 Mutual Legal Assistance Treaty:

“1. The Requested State may require that the Requesting State use any evidence or information obtained from the Requested State for the following purposes:

- (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:
 - (i) set forth in subparagraph (a); or
 - (ii) for which mutual legal assistance was rendered to agencies with jurisdiction to refer matters for criminal prosecution in accordance with Article 2(2);
- (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 Requested State.

2.

(a) This Article shall not prejudice the ability of the Requested State 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 Requested State may require the Requesting State to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the Requesting State for processing personal data may not be imposed by the Requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the Requesting State, the Requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested State may consult with the Requesting State to determine the extent to which the evidence or information can be protected. ”

Article 4: Identification of bank information

Existing Article 18 of the 1995 Mutual Legal Assistance Treaty is renumbered as Article 21 and pursuant to Article 4(1) through (5) of the EU-U.S. Mutual Legal Assistance Agreement, the following shall be applied as Article 18 of the 1995 Mutual Legal Assistance Treaty:

**“Article 18:
IDENTIFICATION OF BANK INFORMATION**

1.

(a) Upon request of the Requesting State, the Requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The Requested State shall promptly communicate the results of its enquiries to the Requesting State.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

- (i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;
- (ii) information in the possession of non-bank financial institutions; or
- (iii) financial transactions unrelated to accounts.

2. In addition to the requirements of Article 4(2) of this Treaty, a request for information described in paragraph 1 of this Article shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions;

(b) sufficient information to enable the competent authority of the Requested State to:

- (i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the Requested State may have the information requested; and
- (ii) conclude that the information sought relates to the criminal investigation or proceeding; and

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic notes between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

- (a) for the Republic of Austria, the Ministry of Justice, and
- (b) for the United States of America, the attaché responsible for Austria of the:
 - (i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;
 - (ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;
 - (iii) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. The Republic of Austria and the United States of America shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both States, and with respect to such other criminal activity as they may notify each other.

5. The Requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the other provisions of this Treaty.”

Article 5: Joint investigative teams

Existing Article 19 of the 1995 Mutual Legal Assistance Treaty is renumbered as Article 22, and pursuant to Article 5 of the EU-U.S. Mutual Legal Assistance Agreement, the following shall be applied as Article 19 of the 1995 Mutual Legal Assistance Treaty:

“Article 19:

JOINT INVESTIGATIVE TEAMS

1. Joint investigative teams may be established and operated in the respective territories of the Republic of Austria and the United States of America for the purpose of facilitating criminal investigations or prosecutions involving one or more Member States of the European Union and the United States of America where deemed appropriate by the Republic of Austria and the United States of America.