

**No. 49990**

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**Austria  
and  
United States of America**

**Agreement between the Government of the Republic of Austria and the Government of the United States of America on enhancing cooperation in preventing and combating serious crime (with annex). Vienna, 15 November 2010**

**Entry into force:** *4 May 2012 with the exception of articles 7 through 9, in accordance with article 27*

**Authentic texts:** *English and German*

**Registration with the Secretariat of the United Nations:** *Austria, 22 August 2012*

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**Autriche  
et  
États-Unis d'Amérique**

**Accord entre le Gouvernement de la République d'Autriche et le Gouvernement des États-Unis d'Amérique relatif au renforcement de la coopération en vue de prévenir et de combattre les crimes graves (avec annexe). Vienne, 15 novembre 2010**

**Entrée en vigueur :** *4 mai 2012 sauf les articles 7 à 9, conformément à l'article 27*

**Textes authentiques :** *anglais et allemand*

**Enregistrement auprès du Secrétariat des Nations Unies :** *Autriche, 22 août 2012*

[ ENGLISH TEXT – TEXTE ANGLAIS ]

**Agreement between  
the Government of the Republic of Austria  
and  
the Government of the United States of America  
On Enhancing Cooperation in  
Preventing and Combating Serious Crime**

The Government of the Republic of Austria and the Government of the United States of America (hereinafter “Parties”),

Prompted by the desire to cooperate as partners to prevent and combat serious crime, particularly terrorism, more effectively,

Recognizing that information sharing is an essential component in the fight against serious crime, particularly terrorism,

Recognizing the importance of preventing and combating serious crime, particularly terrorism, while respecting fundamental rights and freedoms, notably privacy and the protection of personal data,

Recognizing the interest of the European Union and the United States of America in negotiating an agreement on data protection in the law enforcement context which might give rise to consultations regarding the potential impact of such an agreement on the provisions set forth below,

Inspired by the Convention on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration, done at Prüm on May 27, 2005, as well as the related decision of the Council of the European Union of June 23, 2008,

Taking into account the Principles on Privacy and Personal Data Protection for Law Enforcement Purposes elaborated by the EU-U.S. High Level Contact Group,

Recognizing the importance of establishing procedures between the Parties for correcting, blocking and deleting inaccurate personal data, and taking into account that such procedures should involve the competent authorities of the supplying Party, and

Seeking to enhance and encourage cooperation between the Parties in the spirit of partnership,

Have agreed as follows:

Article 1  
Definitions

For the purposes of this Agreement,

1. DNA profiles shall mean a letter or numerical code representing a number of identifying features of the non-coding part of an analyzed human DNA sample, i.e. of the specific chemical form at the various DNA loci.
2. Reference data shall mean a DNA profile and the related reference (DNA reference data) or dactyloscopic data and the related reference (dactyloscopic reference data). Reference data must not contain any data from which the data subject can be directly identified. Reference data not traceable to any individual (untraceables) must be recognizable as such.
3. Personal data shall mean any information relating to an identified or identifiable natural person (the “data subject”).
4. Processing of personal data shall mean any operation or set of operations which is performed upon personal data, whether or not by automated means, such as collection, recording, organization, storage, adaptation or alteration, sorting, retrieval, consultation, use, disclosure by supply, dissemination or otherwise making available, combination or alignment, blocking, or deletion through erasure or destruction of personal data.
5. Blocking shall mean the marking of stored personal data with the aim of limiting their processing in future.
6. Terrorist Offense shall mean conduct punishable in accordance with an international instrument relating to the fight against terrorism which is in force for both Parties.
7. Serious crimes shall mean conduct constituting an offense punishable by a maximum deprivation of liberty of more than one year or a more serious penalty. To ensure compliance with their national laws, the Parties may agree to specify particular serious crimes for which a Party shall not be obligated to supply personal data as described in Articles 6 and 9 of the Agreement.

Article 2  
Purpose and Scope of this Agreement

1. The purpose of this Agreement is to enhance the cooperation between the Republic of Austria and the United States of America in preventing and combating serious crime.
2. The querying powers provided for under this Agreement (Articles 4 and 7) shall be used only for the prevention, detection and investigation of a serious crime as defined in Article 1 paragraph 7 and only if particular and legally valid circumstances relating to a specific individual give a reason to inquire whether that individual will commit or has committed such a serious crime.

### Article 3

#### Dactyloscopic data

For the purpose of implementing this Agreement, the Parties shall ensure the availability of reference data from those national automated dactyloscopic identification systems which were established for the prevention and investigation of criminal offenses. These systems and the extent of their application to this Agreement are listed in the Annex, which forms an integral part of this Agreement. Reference data shall only include dactyloscopic data and a reference.

### Article 4

#### Automated querying of dactyloscopic data

1. For the prevention and investigation of serious crime, each Party shall allow the other Party's national contact points, as referred to in Article 6, access to the reference data in the national automated dactyloscopic identification systems, which it has established for that purpose, with the power to conduct automated queries by comparing dactyloscopic data. Queries may be conducted only in individual cases and in compliance with the querying Party's national law.
2. The confirmation of a match of dactyloscopic data with reference data held by the Party in charge of the file shall be carried out by the querying national contact points by means of the automated supply of the reference data required for a clear match.

### Article 5

#### Supply of further personal and other data

Should the procedure referred to in Article 4 show a match between dactyloscopic data, the supply of any available further personal data and other data relating to the reference data shall be governed by the national law, including the legal assistance rules, of the requested Party and shall be supplied in accordance with Article 6.

### Article 6

#### National contact points and implementing agreements

1. For the purpose of the supply of data as referred to in Article 4, and the subsequent supply of further personal data as referred to in Article 5, each Party shall designate one or more national contact points. The contact point shall supply such data in accordance with the national law of the Party designating the contact point. Other available legal assistance channels need not be used unless necessary, for instance to authenticate such data for purposes of its admissibility in judicial proceedings of the requesting Party.
2. The technical and procedural details for the queries conducted pursuant to Article 4 shall be set forth in one or more implementing agreements.

### Article 7

#### Automated querying of DNA profiles

1. If permissible under the national law of both Parties and on the basis of reciprocity, the Parties may allow each other's national contact point, as referred to in Article 9, access to the reference data in their DNA analysis files, with the power to conduct automated queries by comparing DNA profiles for the investigation of serious crime. Queries may be conducted only in individual cases and in compliance with the querying Party's national law.
2. Should an automated query show that a DNA profile supplied matches a DNA profile entered in the other Party's file, the querying national contact point shall receive by automated notification the reference data for which a match has been found. If no match can be found, automated notification of this shall be given.

### Article 8

#### Supply of further personal and other data

Should the procedure referred to in Article 7 show a match between DNA profiles, the supply of any available further personal data and other data relating to the reference data shall be governed by the national law, including the legal assistance rules, of the requested Party and shall be supplied in accordance with Article 9.

### Article 9

#### National contact point and implementing agreements

1. For the purposes of the supply of data as set forth in Article 7, and the subsequent supply of further personal data as referred to in Article 8, each Party shall designate a national contact point. The contact point shall supply such data in accordance with the national law of the Party designating the contact point. Other available legal assistance channels need not be used unless necessary, for instance to authenticate such data for purposes of its admissibility in judicial proceedings of the requesting Party.
2. The technical and procedural details for the queries conducted pursuant to Article 7 shall be set forth in one or more implementing agreements.

### Article 10

#### Supply of personal and other data in order to prevent serious criminal offenses of a transnational dimension and terrorist offenses

1. For the prevention of serious criminal offenses of a transnational dimension and terrorist offenses, the Parties may, in compliance with their respective national law, in individual cases concerning the interests of either Party, even without being requested to do so, supply the other Party's relevant national contact point, as referred to in paragraph 6, with the personal data specified in paragraph 2, in so far as is necessary because particular circumstances give reason to believe that the data subject(s):