

No. 50231

**Portugal
and
United States of America**

Agreement between the Portuguese Republic and the United States of America on enhancing cooperation in preventing and combating crime. Lisbon, 30 June 2009

Entry into force: *29 November 2011 by notification with the exception of articles 8 through 10, in accordance with article 25*

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**Portugal
et
États-Unis d'Amérique**

Accord entre la République portugaise et les États-Unis d'Amérique relatif au renforcement de la coopération en vue de prévenir et de combattre la criminalité. Lisbonne, 30 juin 2009

Entrée en vigueur : *29 novembre 2011 par notification sauf les articles 8 à 10, conformément à l'article 25*

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[ENGLISH TEXT – TEXTE ANGLAIS]

**AGREEMENT
BETWEEN
THE PORTUGUESE REPUBLIC
AND
THE UNITED STATES OF AMERICA
ON ENHANCING COOPERATION IN PREVENTING AND
COMBATING CRIME**

The Portuguese Republic and the United States of America, hereinafter referred to as “The Parties”,

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

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

Recognizing the importance of preventing and combating crime, particularly terrorism, while respecting fundamental rights and freedoms, notably privacy;

Following the example of the Treaty of Prüm on enhancing cross-border cooperation, and seeking to enhance and encourage cooperation between the Parties in the spirit of partnership;

Bearing in mind the Instrument between the Portuguese Republic and the United States of America as contemplated by Article 3 (3) of the Agreement on Mutual Legal Assistance between the European Union and the United States of America signed 25 June 2003, signed at Washington, on 14 July 2005,

Agree as follows:

Article 1

Definitions

For the purposes of this Agreement:

- 1) “DNA profiles” (DNA identification patterns) 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 fingerprinting data and the related reference (fingerprinting reference data), that cannot contain any data from which the data subject can be directly identified and must be recognizable as such when not traceable to any individual (untraceables);
- 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.

Article 2

Purpose and scope of this Agreement

1. The purpose of this Agreement is to enhance the cooperation between the Parties in preventing and combating crime.
2. The querying powers provided for under this Agreement shall be used only for the prevention, detection, repression, and investigation of crime.
3. The scope of this Agreement shall encompass crimes constituting an offence punishable under the domestic law of the Parties by a maximum deprivation of liberty of more than one year more serious penalty.

Article 3

Fingerprinting data

1. For the purpose of implementing this Agreement, the Parties shall ensure the availability of reference data from the file for the national automated fingerprint identification systems established for the prevention and investigation of criminal offenses.
2. Reference data shall only include fingerprinting data and a reference.

Article 4

Automated querying of fingerprint data

1. For the prevention and investigation of crime, each Party shall allow the other Party's national contact points, as referred to in Article 7, access to the reference data in the automated fingerprint identification system which it has established for that purpose, with the power to conduct automated queries by comparing fingerprinting data.
2. Queries may be conducted only in individual cases and in compliance with the querying Party's national law.
3. Firm matching of fingerprinting 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.

4. When needed, further analysis for the purpose of confirming a match of the fingerprinting data with reference data held by the Party in charge of the file shall be carried out by the requested national contact points.

Article 5

Alternative means to query using identifying data

1. Until the Portuguese Republic has a fully operational and automated fingerprint identification system that links to individual criminal records or is otherwise prepared to provide the United States of America with automated access to such a system, it shall provide an alternative means to conduct a query using other identifying data to determine a clear match linking the individual to additional data.
2. Query powers shall be exercised in the same manner as provided in Article 4 and a clear match will be treated the same as a firm match of fingerprinting data to allow for the supply of additional data as provided for in Article 6.
3. The querying powers provided for under this Agreement shall be used only as provided for under Article 2(2), including when applied at the border where an individual for whom the additional data is sought has been identified for further inspection.

Article 6

Supply of further personal and other data

Should the procedure referred to in Article 4 show a match between fingerprinting 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.

Article 7

National contact points and implementing documents

1. For the purpose of the supply of data as referred to in Articles 4 and 5, each Party shall designate one or more national contact points.