



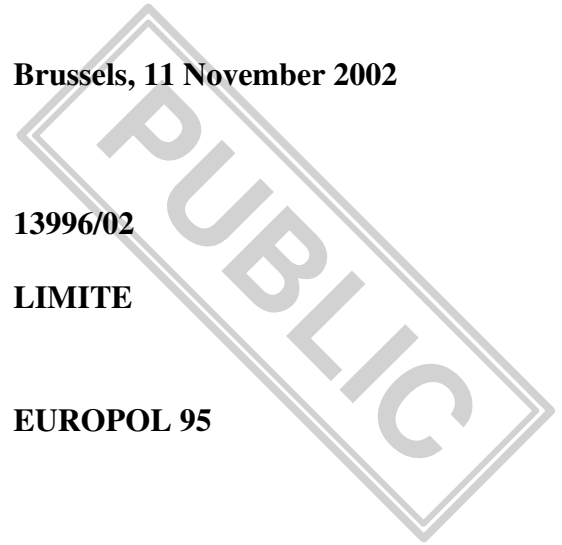
**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 11 November 2002

13996/02

LIMITE

EUROPOL 95



NOTE

from : Europol
to : COREPER / Council

No. prev. doc. : 13689/02 EUROPOL 82 + ADD 1

Subject : Exchange of letters related to the Supplemental Agreement between the United States of America and Europol on the exchange of personal data and related information

Delegations please find enclosed the aforementioned exchange of letters.

With respect to the Supplemental Agreement between the United States of America and Europol on the exchange of personal data and related information, the Parties would like to amplify the following points.

1. Liaison Officers and Privileges and Immunities

Europol is committed to support the position that any United States officials posted as Liaison Officers to Europol will receive reciprocal treatment to Europol officials posted as Liaison Officers in the United States. The United States regards such reciprocity as a necessary basis for maintaining privileges and immunities for Europol Liaison Officers in the US at their current level.

2. Article 1

The Parties note that for Europol the term “jurisdiction” in Article 1 refers to its mandate as laid down in the Europol Convention.

3. Article 3

The Parties note that information which is not strategic or technical information, as defined under the Agreement of 6 December 2001, will be covered by the Supplemental Agreement, in accordance with Article 3 (2) of the Supplemental Agreement.

The United States takes that the other forms of co-operation foreseen under Article 3 (5) can only be contemplated by Europol as far as such co-operation is compatible with Europol’s legal framework and any other applicable legal instrument which applies to such forms of co-operation.

4. Article 4

With respect to paragraph 4 the United States take note that under Europol's legal framework, it may only forward without prior request personal data under the Supplemental Agreement where this is necessary in individual cases for the prevention or combating of criminal offences for which Europol is competent. In the event that Europol shall find itself unable to directly forward such information to the United States it shall endeavour to obtain the consent of a Member State to transmit the information to US authorities itself.

5. Article 5

The Parties agree that the phrase "prevention, detection, suppression, investigation and prosecution of any specific criminal offences and for any analytical purposes to which such information relates" as used in Article 5, paragraph 1 *sub* (a), includes, *inter alia*, exchange of information pertaining to immigration investigations and proceedings, and to those relating to *in rem* or *in personam* seizure or restraint and confiscation of assets that finance terrorism or form the instrumentalities or proceeds of crime, even where such seizure, restraint or confiscation is not based on a criminal conviction.

The United States takes note of the fact that under its legal framework, Europol may not presently authorise usage for other purposes than those included in paragraph 1.

The United States also takes note of the fact that under its legal framework, Europol may not presently transmit to the United States data that were transmitted to it by a Member State under this agreement without that Member State's prior consent.

Article 5, paragraph 4, of the Supplemental Agreement is to be understood not to permit the imposition of generic restrictions with respect to the sharing of personal data, additional to the express requirements of the Agreement as a precondition to be imposed by either Europol or one of its Member States.

6. Article 6

Parties agree that for Europol the term “particularly relevant” as used in this Article shall be understood in the same sense as the term “absolutely necessary” under Europol’s regulations connoting information with a significant degree of usefulness. The term “race” is interpreted by Europol to include racial origin, whereas for the US it shall reflect the concept of ethnicity.

7. Article 7

With respect to paragraph 1, Parties note that “competent authorities” shall mean those authorities who are responsible for functions relating to the prevention, detection, suppression, investigation and prosecution of criminal offences.

With respect to paragraph 3, the United States takes note of the fact that under its legal framework Europol is not allowed to provide authorisation for onward transmission beyond that reflected in this Agreement; conversely this Agreement shall not be relied upon as authority for Europol or its Member States to cause the onward transmission of data supplied by the US except as authorised by this Agreement.

8. Article 12

The United States notes that under its laws and procedures, as well as those of Law Enforcement authorities at state and local levels, there are objective bodies and authorities authorised to oversee as appropriate the implementation of the Supplemental Agreement. For example, various departments and agencies at the federal, state and local levels have established by specific statutory provisions, regulations or administrative actions, offices of Inspectors-General, Internal Affairs divisions or designated senior officials or other components to oversee the general application of laws and procedures within the departments or agencies mandate or specific aspects thereof.