



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 4 February 2010

**5833/1/10
REV 1**

LIMITE

**COPEN 32
EJN 2
EUROJUST 16
USA 18**

NOTE

from:	Presidency
to:	delegations
Subject:	Requests under Article 4 of the Mutual Legal Assistance Agreement with the USA

Delegations will find enclosed in the Annex draft forms under Article 4 of the MLA agreement with the USA. This Agreement between the EU and the USA enters into force on 1 February 2010.

Delegations are informed that the USA intends to use the form in Annex I for requests to Member States as from 1 February. As regards the form in Annex II, the USA has expressed the wish that Delegations use the form, if possible, to facilitate the execution by FINCEN. The Presidency recommends that Member States accede to that request whenever possible.

It is the intention of the Presidency to present these forms at the US-EU seminar in Madrid on 25 - 26 March 2010.

The Presidency suggests that the forms are used on a provisional and trial basis and that an evaluation is carried out on the use of the forms by the end of 2010.

This revised version contains some minor linguistic corrections.

Law Enforcement Sensitive; For Official Use Only

U.S. request to _____ (name of EU Member State) under Article 4 of the U.S.-EU Mutual Legal Assistance Agreement and pursuant to Article ___ of the bilateral instrument between _____ (name of EU Member State) and the United States of America.

1. This request is made by the United States of America to (name of requested State) _____ pursuant to Article 4 of the Agreement on Mutual Legal Assistance between the United States of America and the European Union and pursuant to Article ___ of the bilateral instrument between (name of requested State) _____ and the United States.

2. This request seeks the following kind of information: *(check one or more of the following boxes)* identification of bank accounts; financial transactions unrelated to accounts; information in the possession of non-bank financial institutions. *(Provide further detail regarding the information sought here):*

3. This request is made with respect to a natural or legal person engaged in: (check one or more of the following boxes) terrorist activity; money laundering; other (“other” may be checked for a request to Cyprus, Denmark, Estonia, France, Hungary, Ireland, Latvia, the Netherlands, or Sweden. Describe here the non-terrorist or money laundering activity for which assistance is sought)

4. If this is not a terrorism investigation, it is significant because *(e.g., describe the seriousness and magnitude of suspected criminal conduct, including, as applicable the dollar or euro amount involved; the international scope and connection to European financial systems; whether investigation is being conducted as part of a multi-agency domestic/international task force; whether the investigation is time sensitive, importance of investigation to the priorities of the investigating agency; and any other relevant factors)*

5. With respect to this activity, the natural or legal person is *(check one or more of the following boxes)* suspected of; charged with; convicted of; was otherwise involved in, the following conduct: *(describe the criminal conduct and the basis for reasonably suspecting that the person engaged or was involved in the criminal conduct, and the relevant statutory provision(s), including citation, the conduct violates)*

6. The names and enough identifying information provided *(such as date of birth; identification number (such as Social Security Number, Cedula, etc.); address(es); alias(es); and passport number)* on the subjects of my request are sufficient to permit a financial institution to differentiate between common or similar names. This information is as follows:

7. The information requested is related to the criminal conduct suspected of or charged in that
(describe manner in which the information would be relevant to your investigation or proceeding)

It is believed to be in *(insert name of requested State)* _____ because *(insert reasons)*

8. Any further available information regarding the potential location of the information sought is as follows *(In order to reduce the breadth of the search, provide any further available information regarding the potential location of the information sought here):*
- _____
- _____

9. I understand that the treaty provision permitting this form of assistance is an extraordinary law enforcement tool that should not be used if there are adequate traditional investigative tools available. I am submitting this request because all other financial leads have been exhausted.

10. **The United States requests that this request be kept confidential, and that persons who are not responsible for the execution of the request, including the holder of the account or maker of the transaction, not be notified of the request or the measures taken to execute it.**

11. This request is approved by and is being transmitted via the appropriate official U.S. authority for this type of assistance under the above-named treaties. I and the officials described below shall be available to address any questions concerning this request:

Name and Title of Requesting Authority:

Name and Title of Designee:

Name of U.S. Government Agency:

Mailing Address:

E-Mail Address:

Telephone and Telefax Number:

Name and Title of U.S. Transmitting Authority under Treaty:

Name and Title of Designee:

Name of U.S. Transmitting Agency under Treaty:

Mailing Address:

E-Mail Address:

Telephone and Telefax Number:

Signature of U.S. Transmitting Authority

Date _____

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Request/Certification from _____ [insert name of country] pursuant to Article 4 of the U.S.-EU Mutual Legal Assistance Agreement Seeking Account or Transaction Information from U.S. Financial Institutions (U.S. Legal Authority: Section 314(a) of the USA PATRIOT Act and 31 CFR 103.100)

This request/certification is made by (name of requesting State) _____ to the United States of America pursuant to Article 4 of the Agreement on Mutual Legal Assistance between the United States of America and the European Union and pursuant to Article ____ of the bilateral instrument between the United States of America and (name of requesting State) _____.

I hereby certify, on behalf of (name of requesting foreign law enforcement authority) _____ that:

1. The individuals, entities, and organizations about which information is requested are suspected of (check one or both of the following boxes) terrorist activity; money laundering. In particular, they are believed to have (describe suspected criminal conduct and evidence forming basis for reasonable suspicion that person/entity/organization is involved) _____ in violation of _____ (cite relevant statutory provision(s) here).
2. The individuals, entities, and organizations about which information is requested are believed to have maintained a financial account or conducted a financial transaction in the United States because _____ (insert reason(s) here).
3. If this is a money laundering investigation, it is significant because (e.g., describe the seriousness and magnitude of suspected criminal conduct; dollar amount involved; the international scope and the connection to the U.S. financial system; whether investigation is being conducted as part of a multi-agency domestic/international task force; whether the investigation is time sensitive; importance of investigation to agency program goals; and any other relevant factors) _____.
4. This investigation does does not involve a public or political official. (Please identify public/political subjects and related allegations in this section.)
5. This investigation has been has not been brought to the attention of my country's financial intelligence unit (FIU). If it has not, I understand FinCEN will notify the FIU of the request prior to further processing. I also understand that it is FinCEN's policy to network (i.e., notify) different requesters that have submitted requests for information to FinCEN on the same subject. Networking gives requestors the opportunity to coordinate their efforts with U.S. Law Enforcement and other international entities on matters of mutual interest. ***If there is a reason why we should not notify your country's FIU or other requestors, please explain.***

6. I have provided the names and enough identifying information (*such as date of birth; identification number (such as Social Security Number, Cedula, etc.); address(es); alias(es); and passport number*) on the subjects of my request on the attached **Subject Information Form** to permit a financial institution to differentiate between common or similar names. I understand that requests with insufficient identifying information will not be processed.

7. I understand that Section 314(a) System by which this request will be executed is an extraordinary law enforcement tool that, in the case of a money laundering investigation, should not be used if there are adequate traditional investigative tools available. I am submitting this 314(a) request because I have been unable to locate the information sought through the following traditional methods of investigation and analysis:
 _____.

8. Unless otherwise noted, information will be collected from the following types of financial institutions: depository institutions, brokers or dealers in securities, future commissions' merchants, some insurance companies, some trust companies and some money services businesses. If you do not want the subject information of this case made available to money services businesses, please check this box .

9. The search criteria will include: 12 months for account activity and 6 months for financial transactions conducted by, or on behalf of, the subject(s) of the request; and all 50 states, Guam, U.S. Virgin Islands and Puerto Rico will be searched.

10. I understand that this request will be executed by the United States FIU, FinCEN, which will forward any positive response to the U.S. foreign law enforcement attaché specified below, for onward transmission to the requester specified below. If the queries result in positive responses from financial institutions, the foreign law enforcement agency I represent must follow the appropriate legal avenues to obtain all relevant information once it has been identified and evaluated.

11. The persons specified below shall be readily available to address any questions concerning the names of individuals, entities, or organizations attached to this request/certification:

Requester Name: _____ Title: _____
 Mailing Address: _____
 E-Mail Address: _____
 Telephone Number: _____ Facsimile Number: _____
 Agency Control Number: _____ Signature: _____

Alternate Point of Contact Name: _____ Title: _____
 Mailing Address: _____
 E-Mail Address: _____
 Telephone Number: _____ Facsimile Number: _____

Supervisory Authorization By: Name

Title

Executed on this

day of

, 2

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(below this line for U.S. Government use only)

Reviewed and approved as complying with 31 CFR 103.100 by:

(U.S. Law Enforcement Representative in *(name of requesting State)*)

Name Title

Agency

Mailing Address:

E-Mail Address:

Telephone Number:

Facsimile Number:

Executed on this day of , 2 .

ANNEX TO ANNEX II

Law Enforcement Requester: Please note that all of the financial institutions that have questions regarding possible matches will be directed to your contact phone number listed above. The FinCEN 314 Program Office will field all other questions concerning a 314(a) request. If you have any questions regarding the 314(a) process, please call the 314 Program Office at +1-703-905-3743 or email us at LE314a@fincen.gov.

All of the information that you provide below will be sent to financial institutions. Including as much identification information as possible will help increase the probability that a financial institution can distinguish if a subject is a positive match. You will be notified when FinCEN has submitted the subject information to financial institutions.

Law Enforcement Agency – Please provide the following information in this column: Subject Name and other pertinent identifying information [Alias(es); Date(s) of Birth; Identification Number(s); Address(es)] EXAMPLE(Smith, John J.; aka Smyth, Jonathan; 01/01/1950; 000-00-0000; 123 Main St, City, State)