

Loi du 17 mai 2017 portant approbation du « Memorandum of Understanding between the Government of the Grand-Duchy of Luxembourg and the United States of America for the exchange of terrorism screening information », signé à Luxembourg le 20 juin 2012.

Nous Henri, Grand-Duc de Luxembourg, Duc de Nassau,

Notre Conseil d'Etat entendu;

De l'assentiment de la Chambre des Députés;

Vu la décision de la Chambre des Députés du 27 avril 2017 et celle du Conseil d'Etat du 9 mai 2017 portant qu'il n'y a pas lieu à second vote;

Avons ordonné et ordonnons:

Art. 1^{er}.

Est approuvé le « Memorandum of Understanding between the Government of the Grand-Duchy of Luxembourg and the United States of America for the exchange of terrorism screening information », signé à Luxembourg le 20 juin 2012, ci-après désigné comme « l'Accord ».

Art. 2.

La désignation du point de contact national luxembourgeois visé à l'article III paragraphe 1 de l'Accord est sans préjudice des attributions dévolues par la loi au procureur général d'Etat et aux procureurs d'Etat.

Art. 3.

(1) Le point de contact désigné par le Grand-Duché de Luxembourg transmet, dans le respect des conditions prévues par l'Accord, les données y visées au point de contact désigné par les États-Unis d'Amérique.

Cette transmission est subordonnée à l'autorisation préalable du procureur général d'État, qui peut la refuser si :

- (a) elle est de nature à porter atteinte à la souveraineté, à la sécurité, à l'ordre public ou à des intérêts essentiels similaires du Grand-Duché de Luxembourg ;
- (b) elle est relative à une infraction aux lois militaires qui ne constitue pas une infraction de droit commun, ou
- (c) elle est relative à une infraction politique.

Il refuse l'autorisation si la transmission se rapporte à un fait pour lequel celle-ci n'est pas prévue par l'Accord ou si son objet dépasse le domaine d'application de l'Accord.

(2) Par dérogation au paragraphe (1), n'est pas soumise à l'autorisation y visée la transmission, complémentaire à celle qui a été autorisée, ayant pour objet des données :

- (a) tirées des traitements de données à caractère personnel visés par l'article 34-1 de la loi modifiée du 31 mai 1999 sur la Police et l'Inspection générale de la police ; ou
- (b) accessibles publiquement.

(3) La transmission est effectuée par le point de contact désigné par le Grand-Duché de Luxembourg soit en réponse à une demande du point de contact désigné par les États-Unis d'Amérique, soit, dans la mesure où l'Accord le permet, de façon spontanée sur demande faite dans le cadre de leurs compétences respectives par les officiers de police judiciaire, les procureurs d'État, les juges d'instruction ou le procureur général d'État.

(4) Les données transmises par le Grand-Duché de Luxembourg aux États-Unis d'Amérique ne peuvent être utilisées aux fins visées par l'article V, paragraphe 2, de l'Accord sans l'autorisation préalable du procureur général d'État.

Le point de contact désigné par le Luxembourg en informe celui désigné par les États-Unis d'Amérique à l'occasion de la transmission.

Art. 4.

(1) Dans le cadre de leurs compétences respectives les officiers de police judiciaire, les procureurs d'État, les juges d'instruction ou le procureur général d'État peuvent demander par l'intermédiaire du point de contact désigné par le Luxembourg au point de contact désigné par les États-Unis d'Amérique la transmission de données prévue par l'Accord.

(2) Sous réserve des dispositions pertinentes de l'Accord de coopération, les informations communiquées par le point de contact désigné par les États-Unis d'Amérique peuvent être utilisées par les autorités répressives luxembourgeoises de la même manière que celles obtenues par voie d'entraide judiciaire en matière pénale.

Mandons et ordonnons que la présente loi soit insérée au Journal officiel du Grand-Duché de Luxembourg pour être exécutée et observée par tous ceux que la chose concerne.

Le Ministre de la Justice,
Félix Braz

Palais de Luxembourg, le 17 mai 2017.
Henri

Doc. parl. 6759; sess. ord. 2014-2015, 2015-2016 et 2016-2017.

MEMORANDUM OF UNDERSTANDING
between the Government of the Grand-Duchy of Luxembourg and the United
States of America for the exchange of terrorism screening information.

Preamble

The Grand-Duchy of Luxembourg and the United States of America (hereinafter referred to collectively as „the Parties“);

Having determined that their joint efforts to prevent and address international terrorism should include cooperation in the timely identification of individuals known or suspected to be, or to have been, involved in activities constituting, in preparation for, in aid of, or related to terrorism and terrorist activities, including the sharing of terrorism screening information concerning known or suspected terrorists, and

Desiring to establish appropriate procedures for exchange of terrorism screening information in order to strengthen the ability of the Parties to protect against acts of terrorism,

Recognizing that this Memorandum of Understanding does not entail an obligation for either of the Parties to set up an automated terrorism screening system if it does not already exist,

Have reached the following agreement to guide their cooperation in the sharing and use of terrorism screening information derived from intelligence and law enforcement information:

Article I

Definitions

For purposes of this Memorandum of Understanding, the following definitions shall apply:

1. „Background information“ means additional information, beyond terrorism screening information, about known or suspected terrorists.
2. „Correcting information“ means any information that is intended to correct a misidentification of a person as a known or suspected terrorist or any other error in data provided under this Memorandum of Understanding.
3. „Need to know“ means that an authorized holder of information has concluded that a prospective recipient requires access to specific information in order to perform or assist in a lawful and authorized governmental function related to the purposes of this Memorandum of Understanding.
4. „Providing Party“ means, with regard to information provided under this Memorandum of Understanding, either the United States of America (the United States) or the Grand-Duchy of Luxembourg (Luxembourg), as the case may be.
5. „Receiving Party“ means, with regard to information received under this Memorandum of Understanding, either the United States or Luxembourg, as the case may be.
6. „Relevant Agency“ means any intelligence, law enforcement, diplomatic, immigration, military, public security or other governmental agency of the respective Parties that may have officials who have access to information provided under this Memorandum of Understanding or that may be asked, in the event of an encounter as described in Article IV, to provide additional information or take other actions to assist in accomplishing the stated purposes of this Memorandum of Understanding as set forth in the Preamble. For the United States, such „relevant agency“ may include any Federal, State, local, territorial or tribal governmental authority. For Luxembourg, such „relevant agency“ includes the State Intelligence Service of Luxembourg and the Grand-Ducal Police, as well as its different units.
7. „Terrorism screening information“ means unclassified identifying information about known or suspected terrorists.

*Article II***Scope of Information Exchange**

1. The Parties agree, subject to their respective domestic laws and regulations, to provide each other with terrorism screening information in accordance with the purposes and provisions of this Memorandum of Understanding, with implementing procedures to be agreed between the Parties.
2. Terrorism screening information provided under this Memorandum of Understanding shall, at a minimum, include the individual's full name and date(s) of birth. Passport or other identity document number(s), and current and former nationality/citizenship also shall be provided, if known. Any other available identifying information including identifying biometric information (e.g., fingerprints/photographs) may be provided as permitted by law and at the discretion of the Providing Party.
3. No classified information, as defined by each Party in accordance with its domestic law, shall be required to be exchanged under this Memorandum of Understanding. The Parties may, through their Relevant Agencies, exchange such information pursuant to existing authorities, agreements, or arrangements.
4. Nothing in this Memorandum of Understanding shall restrict either Party or its Relevant Agencies from requesting or exchanging information or data through existing agreements or arrangements.

*Article III***Information Exchange Procedures**

1. For purposes of implementing this Memorandum of Understanding, the points of contact shall be, for the United States, an official of the U.S. Terrorist Screening Center (TSC) and, for Luxembourg, an official of the Criminal Investigation Service of the Grand Ducal Police (CIS). These points of contact and the individuals responsible for handling encounter, technical, and redress matters arising under this Memorandum of Understanding shall be identified in the implementing procedures to be agreed between the Parties.
2. Each Party shall provide its terrorism screening information to the other Party in accordance with Article IX and implementing procedures to be agreed between the Parties. Each Providing Party shall update its terrorism screening information on a regular basis.
3. Each Party shall make regular updates (including corrections) to its terrorism screening information pursuant to paragraph 2 of this Article, but need not provide notice to the other Party when such updates are made. If a Party becomes aware that information it provided under this Memorandum of Understanding is inaccurate, it shall advise the other Party as soon as practicable and provide correcting information.

*Article IV***Procedures for Encounters**

The procedures to be followed, in the event that the Receiving Party or a Relevant Agency thereof encounters an individual who is a potential match to terrorism screening information from the Providing Party, are to be set forth in implementing procedures to be agreed between the Parties.

*Article V***Use and Protection of Information****Accuracy of Information**

1. The Receiving Party shall use the most current terrorism screening information it receives from the other Party under this Memorandum of Understanding to conduct terrorism-related screening. The Receiving Party shall expeditiously update its records (i.e., correct, modify or delete) once it receives correcting information

from the other Party or otherwise becomes aware that a correction, modification, or deletion is needed. The Receiving Party agrees not to use or rely upon information received under this Memorandum of Understanding when it has been superseded by new information, or if this Memorandum of Understanding is terminated, except as provided in paragraph 10 of this Article.

Protection from Disclosure

2. The Receiving Party shall limit access to information it receives from the Providing Party under this Memorandum of Understanding solely to its personnel and personnel of Relevant Agencies on a need-to-know basis. Unless the Providing Party provides written consent, any other disclosure of information received under this Memorandum of Understanding shall be prohibited, including but not limited to:

- a. use in any legal or administrative proceeding or process, any judicial or quasi-judicial process, or in any process that could result in public disclosure;
- b. disclosure to a third-party foreign government;
- c. disclosure to an international organization;
- d. disclosure to private parties, including the subject of terrorism screening information; and
- e. disclosure of any information regarding whether or not an individual is the subject of terrorism screening information provided under this Memorandum of Understanding.

3. Any reproduction, dissemination, or communication of any information provided by the United States or Luxembourg to the other Party under this Memorandum of Understanding, other than name, date of birth, passport number, passport country of origin, or current and former citizenship/nationality, must be accompanied by a statement describing the use and disclosure restrictions set forth in paragraph 2 of this Article.

4. Requests for consent to a disclosure that is otherwise prohibited under this Memorandum of Understanding shall be made under the following procedures: if the Receiving Party is interested in disclosing any terrorism screening information provided under this Memorandum of Understanding, including in the cases provided for in paragraph 2, the Receiving Party shall first contact the Providing Party through its point of contact, which will endeavor to obtain permission from the Relevant Agency that originated the information.

5. Any ambiguity or question relating to the disclosure of information exchanged under this Memorandum of Understanding shall be the subject of consultations between the Parties as described in Article VI.

Security of Information

6. Each Party shall use appropriate electronic and physical security safeguards to control access to information obtained under this Memorandum of Understanding and, at all times, shall store such information in a secure storage system in accordance with its domestic law.

Oversight and Monitoring

7. Each Party shall monitor its respective compliance with the provisions of this Memorandum of Understanding pertaining to the protection of information and shall communicate with the other Party, as appropriate, regarding protection and security issues.

8. Each Party shall use its best efforts to ensure that all personnel with access to information obtained under this Memorandum of Understanding are trained in the safeguards required to protect the information. Each Party shall keep a record of the individuals who are permitted access to the other Party's information and shall report to the other Party any attempts to gain inappropriate access to or inappropriately use or disclose information provided by the other.

9. Each Party shall keep an audit record regarding when information obtained under this Memorandum of Understanding was received, how long such information was held, and how it was used, and shall make such information available to the Providing Party, if requested.

10. In the event that either Party terminates this Memorandum of Understanding, each Party shall destroy all information obtained under this Memorandum of Understanding, to the extent practicable, unless otherwise agreed in writing or unless such destruction would be contrary to a Party's record retention requirements. Nothing in this paragraph shall prohibit the Receiving Party or Relevant Agencies thereof from retaining records of any encounters of individuals identified in terrorism screening information provided by the Providing Party. Each Party shall use the most stringent procedures that are in place for the disposal of sensitive personal and/or national security information.

Redress

11. Each Party shall have or establish procedures for individuals to register complaints related to screening to assist in resolving possible misidentification, in accordance with the implementing procedures to be agreed between the Parties.

Article VI

Consultation

1. The Parties shall consult regularly through their points of contact to promote the most effective implementation of this Memorandum of Understanding and to settle disputes, as necessary.

2. Disputes that may arise relating to the interpretation, application, or implementation of this Memorandum of Understanding that cannot be settled through consultations between the points of contact shall be settled through diplomatic channels.

Article VII

Relationship to Other Arrangements

1. The terms of this Memorandum of Understanding shall be subject to each Party's domestic laws and regulations and shall not prejudice or restrict any other agreement or arrangement between the Parties, including agreements or arrangements related to law enforcement, exchange of information, or counterterrorism efforts.

2. Nothing in this Memorandum of Understanding shall provide a private right of action.

Article VIII

Modification of the Memorandum of Understanding

This Memorandum of Understanding may be amended by written agreement of the Parties.

Article IX

Entry into Force and Termination

1. This Memorandum of Understanding shall enter into force on the date of the last written notification by the Parties that they have completed all of their internal procedures required for its entry into force.

2. Either Party may terminate this Memorandum of Understanding by giving 90 days advance written notice to the other Party. All responsibilities and understandings with respect to the use and disclosure of all information received under this Memorandum of Understanding prior to the termination of this Memorandum of Understanding shall survive such termination.

DONE, in duplicate, at Luxembourg, this 20th day of June 2012, in the English language.

For the Grand-Duchy of Luxembourg, (signature) ; For the United States of America, (signature)

