

AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE UNITED STATES OF AMERICA FOR THE EXCHANGE OF TERRORISM SCREENING INFORMATION

Preamble

The Portuguese Republic and the United States of America,

hereinafter referred to 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 screening information concerning known or suspected terrorists;

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

Have reached the following agreement:

CHAPTER I

General Provisions

Article I

Object and Purpose

1. The present Agreement establishes the cooperation between the Parties in the sharing and use of terrorism screening information derived from intelligence and law enforcement information, for the sole purposes of preventing and combating terrorism and terrorism-related offences as defined in the Parties' domestic laws and the international law applicable to both Parties.
2. This cooperation shall be implemented in accordance with the Parties' domestic laws and applicable international law, including international humanitarian and human rights law.

Article II

Definitions

For purposes of this Agreement, the following definitions shall apply:

- a) "Classified information" means:
- i. For the Portuguese Republic (Portugal), information, regardless of its form, nature, and means of transmission, determined, in accordance with the respective Law in force, to require protection against unauthorised disclosure and which has been marked with the appropriate security classification level;
 - ii. For the United States of America (the United States), classified national security information determined pursuant to Executive Order 13526, as amended, or any predecessor or successor order to require protection against unauthorized disclosure and marked to indicate its classified status when in documentary form.
- b) "Correcting information" means any information that is intended to correct a misidentification of a person's terrorism screening information or any other error in data provided under this Agreement;
- c) "Need to know" means that an authorized holder of information within a relevant Authority 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 Agreement;
- d) "Providing Party" means, with regard to information provided under this Agreement, Portugal or the United States, as the case may be;
- e) "Receiving Party" means, with regard to information received under this Agreement, Portugal or the United States , as the case may be;
- f) "Relevant Authority" means any intelligence, law enforcement, immigration and public security authorities of the respective Parties including, for the United States, any Federal, State, local, territorial or tribal governmental authority, that may have officials who have access to information provided under this Agreement or that may be asked, in the event of an encounter as described in Article VIII, to provide additional information or take other actions to assist in accomplishing the stated purposes of this Agreement;
- g) "Known terrorist"
- (i) for the United States: An individual who:
 1. has been convicted of a crime of terrorism in a U.S. or foreign court of competent jurisdiction; or
 2. has been charged with or indicted for a crime of terrorism in a U.S. or foreign court of competent jurisdiction.
 - (ii) for Portugal: An individual who has been convicted of a crime of terrorism in a Portuguese court.
- h) "Suspected terrorist"

- (i) for the United States: An individual who is reasonably suspected to be or to have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism and terrorist activities based on an articulable and reasonable suspicion.
- (ii) for Portugal: An individual who has been charged with a crime of terrorism in a Portuguese court.

i) "Terrorism Screening Information" means unclassified identifying information about known or suspected terrorists in accordance with the above definitions for each Party.

CHAPTER II Information Exchange

Article III Exchange of Terrorism Screening Information

Each Party shall, in accordance with its laws and regulations and for the purposes of this Agreement, provide to the other Party access to terrorism screening information relating to:

- a) known terrorists as defined in Article II (g) for the Providing Party, or
- b) suspected terrorists, as defined in Article II (h) for the Providing Party.

Article IV Principles Applicable for the Information Exchange

The information exchange within the framework of this Agreement shall be:

- a) Obtained for the purposes specified in this Agreement and shall not be further processed for other purposes;
- b) Adequate, necessary, relevant and not excessive in relation to the purposes for which they are collected, transferred and then processed;
- c) Accurate and, where necessary, kept up to date in accordance with each Party's domestic law;
- d) Kept in a form that permits identification of the data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed.

Article V Information Retention Period

1. Each Providing Party shall inform the Receiving Party of the data retention time limits under its respective domestic laws for information exchanged pursuant to this Agreement. Upon the expiration of such time limits, the Providing Party shall request the Receiving Party to erase or block the data or to review whether or not they are still needed. This obligation shall not apply if, at the time of the expiration of these time limits, the data are required for ongoing investigative, prosecutorial, or a law enforcement purpose which may be subject to judicial review.
2. Where the Providing Party has not indicated a specific time limit for the retention of information in accordance with paragraph 1, the time limits for the retention of information exchanged pursuant to this Agreement provided for under the domestic law of the Receiving Party shall apply.

Article VI Scope of Information Exchange

1. The Parties agree to provide each other access to terrorism screening information in accordance with the purposes and provisions of this Agreement.
2. The information shall be provided except to the extent the Providing Party determines that provision of such information would be contrary to its national interest, and subject to each Party's domestic laws and international obligations.
3. Terrorism screening information provided under this Agreement shall include the individual's full name, and date of birth. Passport or other identity document number(s) and current and former nationality/citizenship also should be provided, if known.
4. Additional unclassified information about known or suspected terrorists, beyond the information covered in paragraph 3 of this Article, including fingerprints and photographs, may be provided as permitted by law and at the discretion of the Providing Party.
5. No classified information shall be required to be exchanged under this Agreement, although the Parties may, through their Relevant Authority, exchange such information pursuant to a security agreement between the Parties about mutual protection of classified information.
6. Nothing in this Agreement is intended to restrict either Party or its Relevant Authorities from requesting or exchanging information or data through existing instruments.

Article VII Information Exchange Procedures

1. For purposes of implementing this Agreement each Party shall designate one or more points of contact. Within 30 days following the date the Agreement enters into force, the points of contact shall confer regarding steps to take to provide access to its terrorism

screening information to the other.

2. The Parties shall implement this Agreement and exchange terrorism screening information not later than 120 days after this Agreement enters into force.

3. Each Providing Party shall update information provided under this Agreement on a regular basis.

4. If a Party becomes aware that information it received or provided under this Agreement may be materially inaccurate, such Party, subject to its domestic laws and regulations, shall advise the other Party as soon as practicable and provide correcting information.

5. Each Party shall make regular electronic updates (including corrections and eliminations) to its terrorism screening information pursuant to paragraph 4 of this Article, and shall subsequently inform the other Party. For the United States, the regular electronic updating of the information shall fulfill the obligation of the United States to inform Portugal of the updates.

Article VIII Procedures for Encounters

1. A Party that encounters a potential match shall notify the other Party through the designated contacts for encounters within 24 hours. The Parties agree, however, that such notice may not be feasible in some limited cases.

2. Upon notification of a potential match, the Providing Party, through its point of contact for encounters, within the limits set forth in article X and as permitted by its internal law, shall endeavor to:

- assist in confirming whether the individual is a match;
- provide immediately releasable additional unclassified information to the Receiving Party;
- request that Relevant Authorities of its government provide additional unclassified information to the Receiving Party.
- coordinate operational responses between the Participants and/or Relevant Authorities of the two governments.

3. The Providing Party may request that the Receiving Party takes or refrains from taking action with respect to the encountered individual. The Receiving Party shall consider, as permitted by its internal law, such requests as well as any additional unclassified information provided by the Providing Party.

CHAPTER III Use and Protection of Information

Article IX Accuracy of Information

1. The Receiving Party shall use the most current terrorism screening information it receives from the Providing Party under this Agreement to conduct terrorism-related screening.
2. The Receiving Party shall expeditiously update its records (i.e., correct, modify or delete) once notified of a change to an individual's watchlist status.
3. The Receiving Party agrees not to use or rely upon information received under this Agreement, or derivatively-created information, when it has been superseded by new information or if this Agreement is terminated, except as provided in the 3rd sentence of paragraph 1 of article V.

Article X Protection from Disclosure

1. The Receiving Party shall limit access to information it receives from the Providing Party under this Agreement solely to its authorized personnel within the Relevant Authorities on a need-to-know basis.
2. Unless the Providing Party provides written consent, any other disclosure of information received under this Agreement shall be strictly 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 or/and an international organization;
 - c) Disclosure to private parties, including the subject of terrorism screening information; and
 - d) Disclosure of any information, including to the subject of terrorism screening information, regarding whether or not an individual is the subject of terrorism screening information provided under this Agreement.
3. Any reproduction, dissemination, or communication of any information provided by the Parties under this Agreement, other than name, date of birth, passport number, passport country of origin, or citizenship, 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 shall be made under the following procedures: if the Receiving Party is interested in obtaining authorization to use any terrorism

screening information provided under this Agreement in any legal or administrative proceeding or process, any judicial or quasi-judicial process, or in any process that could result in public disclosure, the Receiving Party shall first contact the Providing Party through its point of contact, which will endeavor to obtain permission from the Relevant Authority that originated the information.

5. Any ambiguity or question relating to the disclosure of information exchanged under this Agreement shall be the subject of consultations between the Parties.

Article XI Security of Information

1. Each Party shall use appropriate electronic security safeguards to control access, data support, insertion, handling, transmission and transportation of the information obtained under this Agreement.
2. Each Party shall use the appropriate technical and organizational measures to protect against unauthorized access and input of data, loss, corruption, misuse, accidental or unauthorized destruction, modification or disclosure and any other form of illicit processing of information obtained under this Agreement; these measures shall ensure a level of security adequate to the nature of the data and the risks presented by its processing.
3. Each Party shall use appropriate electronic and physical security safeguards to control access to information obtained under this Agreement and, at all times, shall store such information in a secure storage system in accordance with its domestic law.

Article XII Oversight and Monitoring

1. Each Party shall monitor its respective compliance with the provisions of this Agreement pertaining to the protection of information and shall communicate with the other Party, as appropriate, regarding protection and security issues.
2. Each Party shall use its best efforts to ensure that all personnel with access to information obtained under this Agreement are trained in the safeguards required to protect the information.
3. Each Party shall keep a record of the entities and individuals 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.

4. Each Party shall keep an audit record regarding when information obtained under this Agreement was received, how long such information was held and how it was used consistent with the provisions of this Agreement and shall make such information available to the Providing Party, if requested. Each Party shall ensure that the audit record tracks which entities have had access to the information shared by the Providing Party.
5. Each Party shall use the most stringent procedures that are in place for the disposal of sensitive personal and/or national security information.

Article XIII Access to information

To the extent provided in their respective domestic laws and respecting the disclosure restrictions set forth in art. X, each Party shall ensure that the data subject has the right to request to the competent authority if the possible processing of his or her personal data has been done in accordance with the law and in compliance with the conditions and limits set forth in this agreement, and to receive an appropriate response.

Article XIV Complaints / Redress

1. To the extent provided in their respective domestic laws, each Party shall ensure that the data subject has the right to an effective complaint, including access to judicial remedies and the possibility to seek legal compensation, in the event of violation of his/her data protection rights in relation to screening.
2. Each Party shall have or establish procedures for individuals to register complaints related to screening.
3. If a Party receives a complaint related to information provided by the other Party, the Party receiving the complaint shall provide a copy of the complaint to the other Party and consult, as appropriate, with respect to any actions to be taken.
4. Where appropriate, corrections shall be made to information provided under this Agreement by the Party that provided the information.
5. In no event shall a Party disclose to the individual registering the complaint or to any other private party the fact that a copy of the complaint was sent to the other Party or that it pertains to information provided by the other Party under this Agreement.
6. Complaints should be accompanied by a copy of an identity document such as a passport or other government-issued photo identification that contains the individual's full name, date of birth and country of citizenship.

7. Complaints presented to Portugal should be translated into English before transmission and shall be transmitted to the redress point of contact for the United States.
8. Complaints presented to the United States should be translated into Portuguese before transmission and shall be transmitted to the redress point of contact for Portugal.

CHAPTER IV Final Provisions

Article XV Relationship to Other Instruments

1. The provisions of this Agreement are not intended to prejudice or restrict any other instrument between the Parties, including those related to law enforcement, exchange of information or counterterrorism efforts.
2. This Agreement shall neither give rise to rights on the part of any private persons, nor expand or limit rights otherwise available to each Party's nationals under its respective domestic laws.

Article XVI Consultation

The Parties shall consult regularly through their points of contact to promote the most effective implementation of this Agreement.

Article XVII Settlement of Disputes

Any dispute concerning the interpretation or application of the present Agreement shall be settled through negotiation via diplomatic channels.

Article XVIII Amendments

1. The present Agreement may be amended by written request of one of the Parties and upon written consent by the other Party.
2. The amendments shall enter into force in accordance with the terms specified in Article XX of the present Agreement.

Article XIX Duration and Termination

1. The present Agreement shall remain in force for an unlimited period of time.

2. Either Party may, at any time, terminate the present Agreement upon a prior notification in writing and through the diplomatic channels. The present Agreement shall terminate fourteen days after the receipt of such notification.
3. All understandings under art. X with respect to the use and disclosure of all information received under this Agreement shall survive the Parties' termination of this Agreement.

Article XX Entry into Force

The present Agreement shall enter into force thirty days after the date of receipt of the later of the notifications, in writing through diplomatic channels, conveying the completion of the internal procedures of each Party required for that purpose.

Article XXI Registration

Upon the entry into force of the present Agreement, Portugal shall transmit it to the Secretariat of the United Nations for registration, in accordance with Article 102 of the Charter of the United Nations, and shall notify the United States of the completion of this procedure as well as of its registration number.

Done, at Washington, this day 24th of July 2012, in two originals, in the Portuguese and English languages, both texts being equally authentic.

FOR THE UNITED STATES OF
AMERICA:

Daniel Benjamin
Ambassador

FOR THE PORTUGUESE REPUBLIC:

Nuno Filipe Alves Salvador e Brito
Ambassador of Portugal in Washington