109TH CONGRESS
2d Session

SENATE

TREATY DOC.
109–13

MUTUAL LEGAL ASSISTANCE AGREEMENT WITH THE EUROPEAN UNION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

AGREEMENT ON MUTUAL LEGAL ASSISTANCE BETWEEN THE UNITED STATES OF AMERICA AND THE EUROPEAN UNION (EU), SIGNED ON JUNE 25, 2003 AT WASHINGTON, TOGETHER WITH TWENTY-FIVE BILATERAL INSTRUMENTS WHICH SUBSEQUENTLY WERE SIGNED BETWEEN THE UNITED STATES AND EACH EUROPEAN UNION MEMBER STATE IN ORDER TO IMPLEMENT THE AGREEMENT WITH THE EU, WITH EXPLANATORY NOTE

SEPTEMBER 28, 2006.—Agreement was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 28, 2006.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Agreement on Mutual Legal Assistance between the United States of America and the European Union (EU), signed on June 25, 2003, at Washington, together with 25 bilateral instruments that subsequently were signed between the United States and each European Union Member State in order to implement the Agreement with the EU, and an explanatory note that is an integral part of the Agreement. I also transmit, for the information of the Senate, the report of the Department of State with respect to the Agreement and bilateral instruments.

A parallel agreement with the European Union on extradition, together with bilateral instruments, will be transmitted to the Senate separately. These two agreements are the first law enforcement agreements concluded between the United States and the European Union. Together they serve to modernize and expand in important respects the law enforcement relationships between the United States and the 25 EU Member States, as well as formalize and strengthen the institutional framework for law enforcement relations between the United States and the European Union itself.

The U.S.-EU Mutual Legal Assistance Agreement contains several innovations that should prove of value to U.S. prosecutors and investigators, including in counterterrorism cases. The Agreement creates an improved mechanism for obtaining bank information from an EU Member State, elaborates legal frameworks for the use of new techniques such as joint investigative teams, and establishes a comprehensive and uniform framework for limitations on the use of personal and other data. The Agreement includes a nonderogation provision making clear that it is without prejudice to the ability of the United States or an EU Member State to refuse assistance where doing so would prejudice its sovereignty, security, public, or other essential interests.

I recommend that the Senate give early and favorable consideration to the Agreement and bilateral instruments.

GEORGE W. BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, August 3, 2006.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmittal to the Senate for advice and consent to ratification, the Agreement on Mutual Legal Assistance between the United States and the European Union (EU), ("U.S.-EU MLAT"), signed on June 25, 2003. Also being submitted together with the U.S.-EU MLAT are twenty-five bilateral instruments that were signed by the United States and all EU Member States during 2004–2006, which implement the provisions of the U.S.-EU MLAT. A detailed, article-by-article analysis of the U.S.-EU MLAT is enclosed with this report. I am recommending that the U.S.-EU MLAT, including an explanatory note, which is an integral part of the Agreement, and the related bilateral instruments be transmitted to the Senate for its advice and consent to ratification. The Department joins me in this recommendation.

Respectfully submitted.

CONDOLEEZZA RICE.

Enclosures: As stated.

EXECUTIVE SUMMARY

MUTUAL LEGAL ASSISTANCE AGREEMENT BETWEEN THE UNITED STATES AND THE EUROPEAN UNION

On June 25, 2003, the United States signed with the European Union a Mutual Legal Assistance Agreement ("U.S.-EU Mutual Legal Assistance Agreement"). Also being transmitted together with this Agreement are bilateral implementing instruments with all 25 EU member states. A parallel agreement with the EU on extradition, together with implementing instruments, is being transmitted separately. These are the first law enforcement agreements ever concluded by the United States with the European Union. The principal effect of the Mutual Legal Assistance Agreement would be to modernize bilateral relationships with EU member states with which the United States already has mutual legal assistance treaties (MLATs), and to create such relationships with the remainder of member states with which bilateral MLATs had not been concluded previously. This is particularly important in light of the counter-terrorism challenges we have faced since September 11, 2001. A second benefit would be formalizing and strengthening the

institutional framework for law enforcement relations with the European Union.

The U.S.-EU Mutual Legal Assistance Agreement incorporates several innovations which should prove of value to U.S. prosecutors and investigators. The Agreement creates an improved mechanism for obtaining bank information from an EU member state, elaborates legal frameworks for the use of new techniques such as joint investigative teams, and establishes a comprehensive and uniform framework for limitations on the use of personal and other data. The Agreement includes a non-derogation provision making clear that it is without prejudice to the ability of the U.S. or an EU member state to refuse assistance where doing so would prejudice its sovereignty, security, other public or other essential interests.

U.S.-EU MUTUAL LEGAL ASSISTANCE AGREEMENT

OVERVIEW

The U.S.-EU Mutual Legal Assistance Agreement selectively amends and supplements existing United States bilateral mutual legal assistance treaties with seventeen Member States of the EU. In the case of the other eight EU Member States, the U.S.-EU Mutual Legal Assistance Agreement creates for the first time a treaty-based, albeit partial, mutual legal assistance relationship with the United States. A counterpart Agreement on Extradition between the United States and the European Union is being submitted separately, together with implementing instruments with EU Member States.

Both U.S.-EU Agreements have their origin in a period of intensive consultation between the United States and officials of the European Union, and its then-Belgian and Spanish Presidencies, in the aftermath of the September 11, 2001, terrorist attacks on ways of improving trans-Atlantic cooperation against terrorism. These discussions led to the conclusion that modernization of existing bilateral mutual legal assistance treaties ("MLATs") between the United States and EU Member States would be a valuable step, as would creation of new bilateral mutual legal assistance agreements with Member States that did not already have such agreements with the United States. By concluding agreements with the European Union, the United States could achieve uniform improvements and expansions in coverage across much of Europe. In addition, the U.S.-EU Agreements will enable the strengthening of an emerging institutional relationship on law enforcement matters between the United States and the European Union, during a period when the EU is actively harmonizing national criminal law procedures and methods of international cooperation.

Negotiation of the U.S.-EU Agreements was conducted during 2002 and 2003. The European Union's delegation was led by officials from Denmark and Greece, which held the EU's rotating Presidency at that time, and also included officials from the Council and Commission. After the U.S.-EU Agreements were signed on June 25, 2003, the United States pursued negotiation with each Member State of implementing bilateral mutual legal assistance instruments. Initial efforts focused on the fifteen states that were members of the European Union at the time the U.S.-EU Agree-

ments were signed, and then expanded to the additional ten states, which joined the EU in 2004. The last of the bilateral instruments was signed on June 9, 2006.

The U.S.-EU Mutual Legal Assistance Agreement and bilateral instruments are regarded as self-executing treaties under U.S. law, and thus will not require implementing legislation for the United States. With respect to implementation within the European Union, there is greater complexity. The EU, as a Contracting Party, is responsible for implementation of the obligations contained in the U.S.-EU Mutual Legal Assistance Agreement, even though practical application of those obligations would occur at the Member State level. The EU Council would monitor implementation and empower the Presidency as necessary to ensure that Member States comply in all respects. EU Member States, while formally not Contracting Parties to the U.S.-EU Mutual Legal Assistance Agreement are bound to its provisions under internal EU law. The Member States also would have international obligations to the United States under the bilateral instruments. Most Member States, in order to comply with the requirements of their domestic constitutional order, are like the United States, pursuing domestic processes in order to ratify both the U.S.-EU Mutual Legal Assistance Agreement and the bilateral instrument. A number of Member States also secured domestic parliamentary endorsement of the U.S.-EU Mutual Legal Assistance Agreement prior to its signature.

The following is an article-by-article description of the provisions of the U.S.-EU Mutual Legal Assistance Agreement.

The Preamble underscores that cooperation between the United States and European Union Member States serves to protect democratic society and our common values, including the rights of individuals and the rule of law.

Article 1 ("Object and Purpose") states that the United States and the EU undertake to provide enhancements to cooperation and mutual legal assistance, in the manner specified in the U.S.-EU Mutual Legal Assistance Agreement. To the extent that mutual legal assistance between the United States and EU Member States is carried out pursuant to bilateral treaties, this phrasing underscores the obligation to supplement, and, where necessary, modify these existing bilateral treaties to effectuate the terms of the U.S.-EU Mutual Legal Assistance Agreement.

Article 2 ("Definitions") defines three terms used frequently in the U.S.-EU Mutual Legal Assistance Agreement: "Contracting Parties," "Member States," and "Ministry of Justice."

Article 2(1) provides that the Contracting Parties to each U.S.-EU Agreement are the United States and the European Union. Under Articles 24 and 38 of the Treaty of European Union, the European Union may enter into international agreements in the area of criminal judicial cooperation. The Member State then holding the rotating Presidency (Denmark, followed by Greece) leg negotiations for the European Union. At the conclusion of negotiations, Greece was authorized unanimously by the European Council to sign the U.S.-EU Mutual Legal Assistance Agreement on behalf of the European Union.

Article 3(1) ("Scope of application") provides that the Contracting Parties shall ensure that the provisions of the U.S.-EU Mutual

Legal Assistance Agreement are applied in relation to existing bilateral mutual legal assistance treaties between the United States and EU Member States. Thus the EU is responsible, as the Party to the Agreement, for ensuring that Member States make the necessary changes in their bilateral mutual legal assistance relationships with the United States.

The remainder of Article 3(1) specifies the manner in which existing mutual legal assistance treaties between the United States and EU Member States are affected by the U.S.-EU Mutual Legal Assistance Agreement, or, alternatively, the manner in which the U.S.-EU Mutual Legal Assistance Agreement is to apply where there is no mutual legal assistance treaty in force between a Member State and the United States. Generally, Article 4 (creating a mechanism for identifying bank accounts and transactions), 5 (providing a mechanism for forming joint investigative teams), 6 (establishing a mechanism for using video conferencing technology in criminal investigations and proceedings), 7 (providing for the use of expedited means of communications) and 8 (authorizing the providing of mutual legal assistance to certain administrative authorities), which either create new cooperation mechanisms or deal with them in great detail than in existing treaties, supplement the terms of existing bilateral mutual legal assistance treaties, and also apply in the absence of a treaty. Article 9 (facilitating broad law enforcement use of information and evidence received pursuant to mutual legal assistance requests), replaces use limitation provisions in existing bilateral mutual legal assistance treaties, and is applicable where the bilateral mutual legal assistance treaty either contains no use limitation provisions (*i.e.* the U.S.-Belgium MLAT) or where there is no mutual legal assistance treaty in force. Article 10 (providing a procedure for the requesting State to seek the confidentiality of its request) is applied bilaterally except if the applicable bilateral mutual legal assistance treaty already has such a provision.

The extent to which current mutual legal assistance treaties with EU Member States are modified or supplemented by application of these substantive provisions is described later in this analysis, on a country-by-country basis.

Article 3(2) elaborates on the EU's obligation to ensure the application of the provisions of the U.S.-EU Mutual Legal Assistance Agreement by its Member States having existing bilateral MLATs with the United States. Specifically, the EU shall ensure that each Member State acknowledges the consequential changes to its existing bilateral mutual legal assistance treaty by entering into a written "instrument" with the United States, that is, a free-standing international agreement binding under international law. The EU also must ensure that countries acceding to the European Union after the entry into force of the U.S.-EU Mutual Legal Assistance Agreement and having mutual legal assistance treaties with the United States conclude bilateral instruments with the United States after accession or preferably prior thereto.

Article 3(3) provides that both the United States and the European Union are obliged to ensure the application of the U.S.-EU Mutual Legal Assistance Agreement by Member States lacking an existing bilateral MLAT with the United States. Such a Member

State also must enter into a written "instrument" with the United States. Countries acceding to the European Union after the entry into force of the U.S.-EU Mutual Legal Assistance Agreement and not having mutual legal assistance treaties with the United States likewise are obliged to conclude bilateral instruments with the United States after accession, and are encouraged to do so prior to their accession.

Article 3(4) states that the U.S.-EU Mutual Legal Assistance Agreement shall apply in mutual legal assistance relations between the United States and a new Member State from the date of notification that internal procedures for the bilateral instrument have been completed.

There are both legal and practical reasons for the requirement of a bilateral instrument between the United States and each EU Member State. As a matter of international law, the conclusion of a bilateral instrument conveys to the United States the sovereign consent of the Member State to the changes required in treaties concluded and applied at the bilateral level, rather than relying entirely on the effect of EU internal law to ensure application of changes in bilateral treaties to which the European Union itself is not party.

In addition, as a practical matter, since mutual legal assistance treaties are litigated and interpreted extensively in national courts, it was seen as important to delineate in instruments concluded at the bilateral level the changes made by the U.S.-EU Mutual Legal Assistance Agreement in these bilateral treaties. The consequential changes are set out either in a revised integrated text of the particular treaty (included as an Annex to the instrument) or in provisions placed in the instrument itself specifically delineating the new operative language. Conclusion of bilateral instruments thus serves to ease application of the revised treaties for practitioners and the judiciary.

Finally, Article 3(5), like other U.S. mutual legal assistance treaties, states that the provisions of the U.S.-EU Mutual Legal Assistance Agreement are intended solely for mutual legal assistance between the United States and EU Member States and shall not give rise to a right on the part of any private person to obtain, suppress, or exclude evidence, impede the execution of a request, or expand or limit rights otherwise available under domestic law.

Article 4 ("Identification of bank information") is one of the provisions included in order to provide a form of assistance not specifically set forth in existing mutual legal assistance treaties. Its terms supplement the provisions of all existing treaties with EU Member States, and apply in the absence of a treaty.

Mutual legal assistance treaties generally address the production of records located in the requested State. For such provisions to function properly with respect to bank and other business records, a requesting State must provide sufficient information regarding the bank branch or account involved to enable the records to be located and produced. In the Protocol to the European Union Mutual Legal Assistance Treaty, which applies among EU Member States, Article 1 went a step further by establishing a procedure by which a requested State is obligated to search on a centralized basis for bank accounts located within its territory that may be important

to a criminal investigation in the requesting State. Section 314(a) of the USA Patriot Act established a comparable centralized mechanism by which the Treasury Department's Financial Crime Information Center ("FinCen") can query domestic banking institutions in order to locate transactions or accounts that may be involved in money laundering or terrorism violations. The availability of these existing comparable mechanisms provided a basis for Article 4 of the U.S.-EU Mutual Legal Assistance Agreement.

Article 4(1)(a) requires the requested State, upon receiving a request in accordance with the terms of the article, to promptly ascertain if banks located in its territory possess information on whether a natural or legal person suspected of or charged with a criminal offense as designated pursuant to paragraph 4, holds a bank account or accounts. Paragraph 1(b) permits, but does not obligate, the requested State to ascertain whether bank information exists pertaining to convicted persons, or whether there is information in the possession of non-bank financial institutions, or financial transactions other than those related to accounts.

Article 4(2) requires a request for this form of cooperation to include, first, the identity of the natural or legal person relevant to locating such accounts or transactions; second, sufficient information to enable the competent authority of the requested State to reasonably suspect that such person engaged in a criminal offense and that banks or non-bank financial institutions in the requested State may have the information requested and to conclude that the information sought relates to the criminal investigation or proceeding for which assistance is sought; and, third, as much information as possible concerning which banks or other institutions may have the information, in order to reduce the breadth of the inquiry.

Article 4(3) provides that request and information may be transmitted through, for the United States, designated law enforcement components and, for the European Union, designated law enforcement authorities of the Member States, or their Central Authorities under bilateral mutual legal assistance treaties. In each of the bilateral instruments with the 25 EU Member States implementing the U.S.-EU Mutual Legal Assistance Agreement, the United States designated its legal attaché to the Member State concerned representing the Federal Bureau of Investigation, Drug Enforcement Administration or Immigration and Customs Enforcement (depending on the nature of the investigation or proceeding giving rise to the request), as the channel of communication under this article, since this was viewed as the most rapid channel for the exchange of information which may be time-sensitive. Paragraph 3 also allows the United States and the EU to modify these designations by exchange of diplomatic notes after the entry into force of this agreement.

Under Article 4 paragraph 4(a), a State may limit its obligation to provide assistance under this Article to certain forms of criminality, specifically: (i) offenses punishable under the laws of the requesting and requested States (i.e., conduct as to which there is dual criminality standard); (ii) offenses punishable by a maximum penalty of at least two years in the requested State and four years in the requesting State (i.e., a modified application of the dual

criminality standard); or (iii) designated offenses punishable under the laws of the requesting and requested States. A State may also make application of Article 4 unlimited in scope (i.e., no dual criminality requirement).

Under paragraph 4(b), should a State choose to limit the scope of its obligation to provide assistance under the options set forth in paragraphs 4(a)(ii) or (iii), it must at a minimum provide assistance with respect to terrorist activity and laundering of proceeds generated from a comprehensive range of serious criminal activities punishable under the laws of both the requesting and requested States. In the bilateral instruments between the United States and EU Member States implementing the U.S.-EU Mutual Legal Assistance Agreement, the United States, consistent with the scope of Section 314(a) of the USA Patriot Act, chose to limit application of this measure to terrorist and money laundering activity punishable in both the requesting and requested States, and to such criminal activity as may subsequently be agreed between the Parties (so that the scope of assistance could be expanded in the future in a manner corresponding to any future expansion of U.S. domestic legislation). Most EU Member States, in turn, chose also to provide assistance to the same extent, but, as will be described in the country-by-country analysis of bilateral instruments that follows, a number agreed to provide assistance under this Article more broadly. Those EU Member States that chose to provide assistance to the same extent as the United States assured the United States that assistance would be available with respect to a wide range of conduct associated with terrorism (which includes the conduct criminalized in international counter-terrorism conventions to which they are party), and money laundering with respect to an extremely broad range of predicate offenses. The U.S. negotiators in turn provided the same assurance.

Article 4(5) prohibits the invocation of bank secrecy in order to refuse assistance under this Article. Strictly speaking, this specification does not alter the applicable standard where there is a mutual legal assistance treaty in force between an EU Member State and the United States, since no U.S. MLAT permits the assertion of bank secrecy as a ground for refusal of assistance. However, with respect to EU Member States with which the United States does not have a mutual legal assistance treaty, this paragraph prohibits the EU Member State from seeking to deny assistance on this basis.

Article 4(6) provides that once information has been provided under this Article identifying accounts or transactions, the actual production of records pertaining to such accounts or transactions is governed by the already existing MLAT provision governing the production of records, or, in the absence of an MLAT, by the applicable domestic law of the requested State. The same would of course be true with respect to the freezing or forfeiture of funds identified through application of this Article.

Under Article 4(7), the United States and EU are under an obligation to ensure that application of this Article does not impose extraordinary burdens on requested States. In the event that the volume of requests became overly burdensome to banks or the points of contact designated under paragraph 3, a consultation mechanism

has been established for purposes of facilitating a more effective application of the Article, including such measures as may be required to reduce pending and future burdens.

Article 5 ("Joint investigative teams") also provides a form of cooperation not explicitly provided for in existing United States bilateral mutual legal assistance treaties, and its terms supplement the provisions of existing treaties and apply in the absence of a treaty. Paragraph 1 requires the Parties to provide for the necessary legal authority to establish and operate joint investigative teams in the respective territories of the United States and the EU Member States, where the States concerned agree to do so. For the United States, the legal authority to engage in such cooperation with foreign authorities already exists under the statutory and regulatory frameworks for U.S. law enforcement agencies. For some EU Member States, however, an obligation to assist set forth in a binding legal instrument was deemed necessary to permit operation of joint teams in a broad variety of circumstances, such as a joint team similar in complexity to a U.S. domestic law enforcement task force, in which both police and prosecutorial components (or the investigative magistrate that in some EU countries performs this function) participate simultaneously.

Under Article 5(2), the manner of the team's operation shall be agreed between the competent authorities determined by the respective States concerned.

Article 5(3) describes channels of communication. The competent authorities determined by the respective States concerned shall communicate directly for purposes of establishment and operation of such team, except where the complexity, scope, or other circumstances involved are deemed to require more central coordination, in which case the States concerned may agree upon other channels of communication. This approach facilitates speed, efficiency, and clarity by providing for direct communications in most cases among the affected law enforcement components, rather than through a mutual legal assistance request transmitted through the Central Authority, as would otherwise take place pursuant to a bilateral MLAT.

Article 5(4) states that where the joint investigative team needs investigative measures to be taken in one of the States involved in the team, a member of the team of that State may request its own competent authorities to take those measures without the other State having to submit a mutual legal assistance request. The legal standard for obtaining the measure is the applicable domestic standard. In other words, where an investigative measure is to be carried out in the United States, for example, a U.S. team member would do so by invoking existing domestic investigative authority, and would share resulting information or evidence seized pursuant to existing authority to share with foreign authorities. An MLAT request would not be required. Of course, in a case in which there is no domestic U.S. jurisdiction and consequently a compulsory measure cannot be carried out based on domestic authority, the other provisions of the bilateral MLAT in force (or, absent an MLAT, the provisions of 28 U.S.C. Section 1782 or other provisions) may furnish a separate legal basis for carrying out such measure.

Article 6 ("Video-conferencing") also supplements the terms of existing bilateral mutual legal assistance treaties and applies in the absence of a treaty. Paragraph 1 requires the Parties to provide for the necessary legal authority to use video transmission technology between the United States and the EU Member States for the purpose of taking witness testimony sought by the requesting State. The procedures to be applied in taking such testimony are as otherwise set forth in the applicable mutual legal assistance treaty in force (e.g., provisions governing execution of requests, or procedures for taking of testimony in the requested State), or—either in the absence of a treaty or where the terms of the treaty so provide—under the law of the requested State. Here too, general provisions of bilateral MLATs already in force and 28 U.S.C. Section 1782 already enable the United States to provide this form of cooperation on behalf of a foreign State, but a separate provision was deemed useful to enable a number of EU Member States to provide the same cooperation to the United States.

Article 6(2) deals with costs. Unless otherwise agreed, the requesting State shall bear the cost associated with establishing and servicing the transmission. Other costs are treated in accordance with the costs provision of the applicable MLAT in force, or, absent an MLAT, as agreed between the requesting and requested States.

Article 6(3) provides for a consultation mechanism in order to facilitate legal, technical or logistical issues that may arise in a particular State.

Article 6(4) provides that the making of intentionally false statements or other witness or expert misconduct shall be punishable in the same manner as if such conduct had been committed in the course of a domestic proceeding. This is already the case where the United States has been requested to facilitate the taking of video testimony from a witness or expert located in the United States on behalf of a foreign State, since the proceeding to execute the request is a U.S. proceeding and therefore penalties under U.S. law for perjury, obstruction of justice or contempt of court are applicable.

Article 6(5) specifies that the availability of video transmission technology for purposes of facilitating the taking of testimony does not mean that other means of obtaining testimony are no longer applicable.

Article 6(6) makes clear that the requested State may also permit the use of video conferencing technology for purposes other than providing testimony, including for purposes of identification of persons or objects, and taking of investigative statements (to the extent these are not considered to be testimony under the law of the requesting State).

Article 7 ("Expedited transmission of requests") supplements the terms of existing mutual legal assistance treaties in force and applies in the absence of a treaty. It provides that requests for mutual legal assistance, and communications related thereto, may be made by expedited means of communications, including fax or email, with formal confirmation to follow where required by the requested State. The requested State may respond to the request by any such expedited means of communication. Use of these means of transmitting or responding to requests is at the option of the

State concerned, and generally will facilitate the rapid execution of requests.

Article 8 ("Mutual legal assistance to administrative authorities") also supplements the terms of existing treaties, and applies in the absence thereof. Paragraph 1 provides an express legal basis for providing assistance to an administrative authority investigating conduct with a view to criminal prosecution of the conduct or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. If the administrative authority anticipates that no prosecution or referral will take place, assistance is not available under this agreement.

This provision benefits U.S. regulatory authorities including, but not limited to, the Securities and Exchange Commission, the Commodities Futures Trading Commission, and the Federal Trade Commission, which have statutory authority to conduct investigations with a view to subsequent referral to the Department of Justice for criminal prosecution. By the terms of Article 8(1), there is an obligation to afford assistance to these "national" (i.e., federal) authorities. With respect to assistance to "other" administrative authorities (i.e., at the state or local level), the requested State may provide assistance at its discretion. These obligations are described in more detail in the explanatory note to the U.S.-EU Mutual Legal Assistance Agreement, which also clarifies that there is an obligation to assist irrespective of the fact that the administrative or regulatory authority is also pursuing sanctions other than possible referral for criminal prosecution, and irrespective of whether or not the authority ultimately decides to pursue criminal prosecution referral.

Pursuant to Article 8(2)(a), requests are to be transmitted between the Central Authorities pursuant to the applicable mutual legal assistance treaty in force, or between such other authorities as may be agreed among the Central Authorities. In the absence of a mutual legal assistance treaty, paragraph 2(b) specifies that such requests are to be transmitted between the U.S. Department of Justice and the Ministry of Justice of the EU Member State (or its comparable ministry where designated pursuant to Article 15(1)), or between such other authorities as may be agreed between the Department of Justice and such Ministry. Pursuant to paragraph 3, the United States and EU are under an obligation to ensure that application of this Article does not impose extraordinary burdens on requested States. Should this occur, a consultation mechanism has been established for purposes of facilitating more effective application of the Article, including such measures as may be required to reduce pending and future burdens.

Article 9 ("Limitations on use to protect personal and other date") replaces the use limitation provision of existing bilateral mutual legal assistance treaties (subject to paragraphs 4 and 5, described further below). It also applies where the existing treaty has no use limitation article (i.e. the U.S.-Belgium treaty), as well as where there is no treaty in force.

Article 9(1) permits the requesting State to use evidence or information it has obtained from the requested State for its criminal investigations and proceedings, for preventing an immediate and se-

rious threat to its public security, for non-criminal judicial or administrative proceedings directly related to its criminal investigations, for non-criminal judicial or administrative proceedings for which assistance was provided under Article 8, and for any other purpose if the information or evidence was made public within the framework of the proceedings for which it was transmitted or pursuant to the above permissible uses. Other uses of the evidence or information require the prior consent of the requested State. This paragraph represents a broader formulation than in pre-existing MLATs that require the consent from the requested State if the evidence or information is to be used for an investigation or proceeding different from that set forth in the request. The new formulation authorizes the use of the evidence and information received for a particular case in other criminal cases and for preventive purposes.

Article 9(2)(a) specifies that the article does not preclude the requested State from imposing additional conditions where the particular request for assistance could not be granted in the absence of such conditions. Where such additional conditions are imposed, the requested State may require the requesting State to give information on the use made of the evidence or information.

Article 9(2)(b) provides that generic restrictions with respect to the legal standards in the requesting State for processing personal data may not be imposed by the requested State as a condition under paragraph 2(a) to providing evidence or information. This is further elaborated upon in the explanatory note to the U.S.-EU Mutual Legal Assistance Agreement, which specifies that the fact that the requesting and requested States have different systems of protecting the privacy of data does not give rise to a ground for refusal of assistance, and may not as such give rise to additional conditions under paragraph 2(a). Such refusal of assistance could only arise in exceptional cases in which, upon balancing the important interests involved in the particular case, furnishing the specific data sought by the requesting State would raise difficulties so fundamental as to be considered by the requested State to fall within the essential interests grounds for refusal.

Article 9(3) provides that where, following disclosure to the requesting State, the requested State becomes aware of circumstances that may cause it to seek additional conditions in a particular case, it may consult with the requesting State to determine the extent to which the evidence or information can be protected.

Article 9(4) provides that the requested State instead may apply the use limitation provision of the existing mutual legal assistance treaty where to do so will result in less restriction on the use of evidence of information than provided for in this Article. This paragraph applies to those mutual legal assistance treaties between the United States and EU Member States in which there is no use limitation unless specifically invoked by the requested State. In such cases, the requested State remains free to impose no limitation, and the use limitation article in the relevant bilateral instruments between the United States and such EU Member States has been drafted accordingly.

Article 9(5) provides that, where the bilateral mutual legal assistance treaty in force between the United States and an EU Member State on the date of signature of the U.S.-EU Mutual Legal Assistance Agreement limits the obligation to provide assistance with respect to certain tax offenses, the Member State concerned may indicate in its written instrument with the United States that, with respect to such offenses, it will continue to apply the pre-existing bilateral provision. Only Luxembourg has made use of this provision, so that with respect to tax offenses as to which the obligation to provide assistance is limited by the U.S.-Luxembourg MLAT, the prior use limitation provision applies.

Article 10 ("Requesting State's request for confidentiality"), like similar provisions in many modern U.S. MLATs, requires the requested State, if asked, to use its best efforts to keep confidential a request and its contents, and to inform the requesting State if the request cannot be executed without breaching confidentiality. The article applies where the existing mutual legal assistance treaty does not already contain such a provision, or in the absence of a treaty.

Under Article 11 ("Consultations"), the United States and European Union shall consult for purposes of enabling the most effective use of the U.S.-EU Mutual Legal Assistance Agreement.

Article 12 ("Temporal application") provides that the U.S.-EU Mutual Legal Assistance Agreement applies to offenses committed before as well as after it enters into force. Articles 6 ("Video-conferencing") and 7 ("Expedited transmission of requests") apply to requests pending in a requested State at the time of the U.S.-EU Mutual Legal Assistance Agreement's entry into force; otherwise the Agreement applies to requests for mutual legal assistance made after its entry into force.

Article 13 ("Non-derogation") makes clear that the U.S.-EU Mutual Legal Assistance Agreement's provisions do not preclude the assertion of a ground for refusal set forth in the applicable mutual legal assistance treaty, or, in the absence of a treaty, applicable legal principles (sovereignty, security, ordre public or other essential interests) except where such ground for refusal is precluded by Articles 4(5) (bank secrecy) and 9(2)(b) (generic restrictions relating to personal data) of the U.S.-EU Mutual Legal Assistance Agreement.

Article 14 ("Future bilateral mutual legal assistance treaties with Member States") provides that the United States and EU Member States may conclude future mutual legal assistance agreements consistent with the U.S.-EU Mutual legal Assistance Agreement. In the Explanatory Note, it is clarified that should measures set forth in the U.S.-EU Mutual Legal Assistance Agreement create operational difficulties for the United States or a Member State, and consultations alone cannot remedy the difficulty, a future bilateral agreement with the Member State could contain an operationally feasible alternative mechanism that satisfies the objectives of the provision in question.

Article 15 ("Designation and notification") provides that the EU shall notify the United States of designations pursuant to Articles 4(3) (points of contact for identification of bank information), 4(4) (designation of scope of bank information article) and 8(2) (com-

petent authority other than Ministry of Justice designated as point of contact for cooperation with administrative authorities), prior to the completion of bilateral written instruments between the U.S. and Member States under Articles 3(2) or 3(3). This notification requirement was intended to ensure that the identity of these authorities would be set forth in the bilateral instruments.

Under Article 16(1) ("Territorial application"), the U.S.-EU Mutual Legal Assistance Agreement applies to the United States of America, to EU Member States, to territories for whose external relations a Member State is is responsible, and to countries for whom the member has other duties pertaining to their external relations, where agreed upon by exchange of diplomatic note between the EU and United States, duly confirmed by the relevant Member State. Several EU Member States have such responsibilities; hence, this enables the United States and EU to agree to include such territories or countries within the ambit of the U.S.-EU Mutual Legal Assistance Agreement. Under paragraph 2, application of the U.S.-EU Mutual Legal Assistance Agreement to such territories or countries may be terminated upon six month's written notice through the diplomatic channel, again where confirmed between the United States and the Member State concerned.

Article 17 ("Review") provides that the United States and the EU will carry out a common review of the U.S.-EU Mutual Legal Assistance Agreement no later than five years after its entry into force, in particular for purposes of addressing its practical implementation and the consequences of the further development of the European Union in relation to the subject matter of the U.S.-EU Mutual Legal Assistance Agreement.

Article 18(1) ("Entry into force and termination"), provides that the U.S.-EU Mutual Legal Assistance Agreement shall enter into force on the first day following the third month after the date on which the United States and the EU have indicated that they have completed their internal procedures for this purpose. The exchange of instruments of ratification between the United States and the European Union shall also indicate that the bilateral instruments between the United States and all EU Member States have been completed. Article 18(2) provides that either the United States or EU may terminate the U.S.-EU Mutual Legal Assistance Agreement by giving written notice to the other, with such termination effective six months after the date of such notice.

Bilateral Instruments between the United States and the EU Member States implementing the U.S.-EU Mutual Legal Assistance Agreement

As noted above, Article 3(2) of the U.S.-EU Mutual Legal Assistance Agreement requires the conclusion of a written instrument between the United States and each Member State, indicating the application of Agreement's provisions in the bilateral mutual legal assistance relationship. The following discussion delineates the content and character of each of these instruments, and any particular understandings reached between the United States and individual Member States during the course of negotiations.

The title chosen for the "written instrument" required by Article 3(2) of the U.S.-EU Mutual Legal Assistance Agreement varies

among the Member States. Most Member States preferred to retain the term "Instrument" as used in the U.S.-EU Agreement, but others preferred more specific descriptions utilized under their national law that also are consistent with the binding character of the instrument under international law. Thus, instruments with several Member States (e.g. Germany and the Czech Republic) are termed supplementary treaties, to indicate their precise function and legal character in relation to existing treaties, while other Member States (e.g. Austria and Greece) preferred the similar term "protocol." Still others chose the more general "Agreement;" (e.g. Netherlands and Poland).

Each instrument first expresses the agreement of the Parties to apply the provisions of the U.S.-EU Mutual Legal Assistance Agreement under the terms laid out in Article 3. The new textual provisions to be applied are either specified verbatim in the instrument, or set out in an annex containing a revised consolidated text. The United States regarded the annex form as preferable from the perspective of U.S. courts and practitioners called upon to interpret a particular mutual assistance treaty with a Member State. A majority of Member States agreed.

Other Member States, however, opted for non-integrated texts, in which only the newly-operative supplemental or replacement language is set forth, and in the instrument itself rather than in a separate annex. These Member States regarded inclusion of a consolidated text as not permitted by their domestic law. The consequence of the non-integrated approach is only that reference to both the instrument and the pre-existing treaty is necessary in order to apply the entire set of obligations between the United States and the Member State.

Each instrument, for reasons of clarity, also recites the provision on temporal application from the U.S.-EU Mutual Legal Assistance Agreement, stating that the instrument applies to offenses committed before as well as after it enters into force, but, in general, does not apply to requests made prior to its entry into force.

Instruments with several Member States required specification as to their geographic scope. These states—Denmark, the Netherlands, and the United Kingdom—exercise foreign relations responsibilities for territories or independent countries, including applying the European state's law enforcement treaties on their behalf. However, since the geographic scope of the European Union for purposes of criminal justice cooperation does not necessarily extend to all these territories and countries, the provisions of the U.S.-EU Mutual Legal Assistance Agreement would not apply to them unless specifically stipulated. Consequently, the relevant bilateral instruments spell out whether mutual legal assistance relations with the United States in respect of these territories and countries would continue to be governed by the pre-existing treaties in unmodified form.

Each bilateral instrument also contains a provision on entry into force and termination. Entry into force of each instrument occurs on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement, after exchange of notifications. Eighteen Member States will ratify both the U.S.-EU Mutual Legal Assistance Agreement and the bilateral instrument, since they serve to amend bilat-

eral treaties which previously also were ratified. Four Member States regard formal ratification of the U.S.-EU Mutual Legal Assistance Agreement as unnecessary under their domestic constitutional order, however, as authority in this respect has been deemed to have been granted to the EU, but will ratify the implementing bilateral instruments. Three Member States viewed it as unnecessary to ratify even the bilateral instrument.

Finally, in the event of termination of the U.S.-EU Mutual Legal Assistance Agreement—a step that would take place between the Parties to this Agreement—the bilateral instruments also shall terminate. Thereupon application of the pre-existing bilateral treaties, which are regarded as suspended while the bilateral instruments are in force, would resume. The United States and the Member States could, however, agree bilaterally to continue to apply some or all of the provisions in the bilateral instrument derived from the U.S.-EU Mutual Legal Assistance Agreement.

Austria

The bilateral mutual legal assistance instrument with Austria was signed on July 20, 2005, and is entitled a protocol to the 1995 U.S.-Austria Mutual Legal Assistance Treaty. Articles 1–7 of the bilateral protocol incorporate the U.S.-EU Mutual Legal Assistance Agreement provisions into the 1995 MLAT as follows: Articles 4(1)–(5) (identification of bank information), 5 (joint investigative teams), and 6(1), (3)–(6) (video) conferencing) of the U.S.-EU Mutual Legal Assistance Agreement are added as Articles 18–20, with the existing Articles 18–20 being renumbered accordingly; Article 6(2) of the U.S.-EU Mutual Legal Assistance Agreement (cost of video-conference) is added as the final sentence of Article 6 of the bilateral treaty (costs); Article 7 of the U.S.-EU Mutual Legal Assistance Agreement (expedited transmission of requests) is incorporated through a new formulation that replaces Article 4(1); Article 8(2) of the U.S.-EU Mutual Legal Assistance Agreement (channel for transmission of requests by administrative or regulatory authorities) is added as the final sentence of Article 2(2), which already provided for the power to make such requests required by U.S.-EU Mutual Legal Assistance Agreement in Article 8(1); and Article 9(1)–(3) of the U.S.-EU Mutual Legal Assistance Agreement (use limitations) replaces the majority of Article 7. The final two articles of the bilateral protocol reflect the provisions of Articles 12 (temporal application) and 18 (entry into force and termination) of the U.S.-EU Mutual Legal Assistance Agreement.

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article 4 of the bilateral protocol (identification of bank information) specifies that Austria's point of contact for the exchange of bank information under this Article is the Ministry of Justice, and that, like the United States, Austria will provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as Austria may notify the United States.

Belgium

The bilateral mutual legal assistance instrument with Belgium was signed on December 16, 2004. Paragraph 1 of the bilateral instrument specifies the articles of the U.S.-EU Mutual Legal Assistance Agreement applicable between the United States and Belgium as well as certain clarifications and designations concerning the Annex to the instrument. Paragraph 2 provides that the Annex reflects the integrated text that shall apply between the United States and Belgium. Paragraphs 3–5 contain rules on temporal application, entry into force and termination, based on those set forth in Articles 12 and 18 of the U.S.-EU Mutual Legal Assistance Agreement.

The Annex integrates the U.S.-EU Mutual Legal Assistance Agreement into the 1988 U.S.-Belgium Mutual Legal Assistance Treaty as follows: Article 4 of the U.S.-EU Mutual Legal Assistance Agreement (identification of bank information) is added as Article 12 bis; Article 5 of the U.S.-EU Mutual Legal Assistance Agreement (joint investigative teams) is added as Article 12 ter; Article 6 of the U.S.–EU Mutual Legal Assistance Agreement (video-conferencing) is added as Articles 18(2 bis) and 12 quarter; Article 7 of the U.S.-EU Mutual Legal Assistance Agreement (expedited transmission of requests) is set forth in Article 17(3); Article 8 of the U.S.-EU Mutual Legal Assistance Agreement (assistance to administrative or regulatory authorities) is added as Article 1(1 bis); and Article 9 of the U.S.-EU Mutual Legal Assistance Agreement (use limitations) is added as Article 13 bis.

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, paragraph 1(a)(ii) of the bilateral instrument and Article 12 bis of the Annex (identification of bank information) specify that Belgium's point of contact for the exchange of bank information under this Article is the Minister of Justice, and that, like the United States, Belgium will provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as the States may notify each other.

Cyprus

The bilateral mutual legal assistance instrument with Cyprus was signed on January 20, 2006. Paragraph 1 of the bilateral instrument specifies the articles of the U.S.-EU Mutual Legal Assistance Agreement applicable between the United States and Cyprus. Paragraph 2 provides that the Annex to the instrument reflects the integrated text that shall apply between the United States and Cyprus. Paragraphs 3–5 contain rules on territorial application, entry into force and termination, based on those set forth in Articles 12 and 18 of the U.S.-EU Mutual Legal Assistance Agreement.

The Annex integrates the U.S.-EU Mutual Legal Assistance Agreement into the 1999 U.S.-Cyprus Mutual Legal Assistance Treaty as follows: Article 4 of the U.S.-EU Mutual Legal Assistance Agreement (identification of bank information) is added as Article 17 bis; Article 5 of the U.S.-EU Mutual Legal Assistance Agreement (joint investigative teams) is added as Article 17 ter; Article 6 of the U.S.-EU Mutual Legal Assistance Agreement (video-confer-

encing) is added to Article 6 and as Article 17 quater; Article 7 of the U.S.-EU Mutual Legal Assistance Agreement (expedited transmission of requests) is set forth in a new formulation that replaces Article 4(1); Article 8 of the U.S.-EU Mutual Legal Assistance Agreement (assistance to administrative or regulatory authorities) is added as Article 1 (1 bis); and Article 9 of the U.S.-EU Mutual Legal Assistance Agreement (use limitations) replaces Article 7(1)–(3).

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article 17 bis of the Annex (identification of bank information) specifies that Cyprus' point of contact for the exchange of bank information under this Article is its central authority under Article 2 of the 1999 Treaty (i.e., the Minister of Justice and Public Order or his designee), and that it will provide assistance under this Article with respect to offenses punishable by a penalty involving deprivation of liberty or a detention order of a maximum period of at least four years in the requesting State and at least two years in the requested State.

Czech Republic

The bilateral mutual legal assistance instrument with the Czech Republic was signed on May 16, 2006, and is entitled a supplementary treaty to the 1998 U.S.-Czech Mutual Legal Assistance Treaty. Articles 1 through 6 of the supplementary treaty incorporate the U.S.-EU Mutual Legal Assistance Agreement provisions into the 1998 MLAT, as follows: Articles 4 (identification of bank information), 5 (joint investigative teams), and 6 (video-conferencing) of the U.S.-EU Mutual Legal Assistance Agreement, reflected in Articles 3, 6–8 of the supplementary treaty, are added as new Articles 6(1)(d), 20a, 20b and 20c of the 1998 MLAT. Article 7 of the U.S.-EU Mutual Legal Assistance Agreement (expedited transmission of requests), reflected in Article 2 of the supplementary treaty, replaces Article 4(1) of the 1998 MLAT. Article 8 of the U.S.-EU Mutual Legal Assistance Agreement (assistance to administrative or regulatory authorities), reflected in Article 1 of the supplementary treaty, replaces Article 2(1) and (2) of the 1998 MLAT. Article 9 of the U.S.-EU Mutual Legal Assistance Agreement (use limitations), reflected in Article 4 of the supplementary treaty, replaces Article 7 of the 1998 MLAT. Article 10 of the U.S.-EU Mutual Legal Assistance Agreement (requesting State's request for confidentiality), reflected in Article 5 of the supplementary treaty, replaces Article 8 of the 1998 MLAT.

Articles 9 and 11 of the supplementary treaty reflect the provisions of Articles 12 (temporal application) and 18 (entry into force and termination) of the U.S.-EU Mutual Legal Assistance Agreement. Article 10 confirms that the supplementary treaty shall be interpreted consistent with the U.S.-EU Mutual Legal Assistance Agreement.

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article 6 of the supplementary treaty (identification of bank information) specifies that the Czech Republic's point of contact for the exchange of bank information under this Article is its central authority (i.e., the Office of the Prosecutor General and the Ministry of Justice); and that,

like the United States, the Czech Republic will provide assistance under this Article with respect to money laundering and terrorist activities punishable under the laws of both States, and other criminal activity as the States may notify each other.

Denmark

The bilateral mutual legal assistance instrument with Denmark was signed on June 23, 2005, and is entitled an agreement. The bilateral agreement, in paragraph 1, specifies the articles of the U.S.-EU Mutual Legal Assistance Agreement applicable between the United States and Denmark. Paragraph 2 provides that the Annex to the agreement reflects the provisions that shall apply between the United States and Denmark. Paragraph 3, in accordance with Article 16 of the U.S.-EU Mutual Legal Assistance Agreement, provides that the instrument shall not apply to Greenland or the Faroe Islands unless the United States and the EU, by exchange of diplomatic notes duly confirmed by Denmark, subsequently agree otherwise. Paragraphs 4 and 5 contain rules of temporal application, based on those set forth in Article 12 of the U.S.-EU Mutual Legal Assistance Agreement. Paragraph 6 contains the provisions on entry into force and termination, based on those set forth in Article 18 of the U.S.-EU Mutual Legal Assistance Agreement.

Since the United States and Denmark do not have a bilateral mutual legal assistance treaty in force between them, the bilateral agreement is a partial one governing only those issues regulated by the U.S.-EU Mutual Legal Assistance Agreement, specifically: Article 4 (identification of bank information), 5 (joint investigative teams), 6 (video conferencing), 7 (expedited transmission of requests), 8 (assistance to administrative or regulatory authorities), 9 (use limitations), 10 (requesting State's request for confidentiality), and 13 (grounds for refusal).

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article 1 of the Annex (identification of bank information) specifies that Denmark's point of contact for the exchange of bank information under this Article is the Ministry of Justice, and that Denmark will provide assistance under this Article with respect to offenses punishable under the laws of the requesting State by a penalty of four years and under the laws of the requested State by a penalty of two years. Article 5 of the Annex provides that requests for assistance to administrative or regulatory authorities shall be transmitted between the U.S. Department of Justice and the Danish Ministry of Justice.

Estonia

The bilateral mutual legal assistance instrument with Estonia was signed on February 8, 2006. The bilateral instrument, in paragraph 1, specifies the articles of the U.S.-EU Mutual Legal Assistance Agreement applicable between the United States and Estonia. Paragraph 2 provides that the Annex to the instrument reflects the integrated text that shall apply between the United States and Estonia. Paragraphs 3–5 contains rules of temporal application, entry into force and termination, based on those set forth in Articles 12 and 18 of the U.S.-EU Mutual Legal Assistance Agreement.

The Annex integrates the U.S.-EU Mutual Legal Assistance Agreement into the 1998 U.S.-Estonia Mutual Legal Assistance Treaty, as follows: Article 4 of the U.S.-EU Mutual Legal Assistance Agreement (identification of bank information) is added as Article 17 bis; Article 5 of the U.S.-EU Mutual Legal Assistance Agreement (joint investigative teams) is added as Article 17 ter; Article 6 of the U.S.-EU Mutual Legal Assistance Agreement (video conferencing) is added in Articles 6 and 17 quater; Article 7 of the U.S.-EU Mutual Legal Assistance Agreement (expedited transmission of requests) is incorporated through a new formulation that replaces Article 4(1); Article 8 of the U.S.-EU Mutual Legal Assistance Agreement (assistance to administrative or regulatory authorities) is added as Article 1 (1 bis); and Article 9 of the U.S.-EU Mutual Legal Assistance Agreement (use limitations) replaces the majority of Article 7.

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article 17 bis of the Annex (identification of bank information) specifies that Estonia's point of contact for the exchange of bank information under this Article is the Ministry of Justice, and that Estonia will provide assistance under this Article with respect to offenses punishable under the laws of the requesting and requested States.

Finland

The bilateral mutual legal assistance instrument with Finland was signed on December 16, 2004, and is entitled a treaty. Paragraph 1 of the bilateral treaty specifies the articles of the U.S.-EU Mutual Legal Assistance Agreement that are to be applied. Paragraph 2 provides that the Annex to the treaty reflects the provisions that shall apply between the United States and Finland. Paragraphs 3–5 contain rules on temporal application, entry into force and termination, based on those set forth in Articles 12 and 18 of the U.S.-EU Mutual Legal Assistance Agreement.

Since the United States and Finland do not have a bilateral mutual legal assistance treaty in force between them, the bilateral treaty is a partial one governing only those issues regulated by the U.S.-EU Mutual Legal Assistance Agreement, specifically: Articles 4 (identification of bank information), 5 (joint investigative teams), 6 (video-conferencing), 7 (expedited transmission of requests), 8 (assistance to administrative or regulatory authorities), 9 (use limitations), 10 (requesting State's request for confidentiality); and 13 (grounds for refusal).

With respect to the designations required by Articles 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article 1 of the Annex (identification of bank information) specifies that Finland's point of contact of the exchange of bank information under this Article is its Military of Justice, and that, like the United States, Finland will provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as the States may notify each other. Article 5 of the Annex provides that requests for assistance to administrative or regulatory authorities shall be transmitted between the U.S. Department of Justice and the Finnish Ministry of Justice.

France

The bilateral mutual legal assistance instrument with France was signed on September 30, 2004. Paragraph A of Articles I–VI sets forth the text of the articles of the U.S.-EU Mutual Legal Assistance Agreement applicable between the United States and France. Paragraph B of Articles I–VI specifies the extent to which these provisions supplement or replace provisions of the 1998 U.S.-France Mutual Legal Assistance Treaty, and provides other necessary explanations regarding the manner in which the U.S.-EU Mutual Legal Assistance Agreement text is to operate in a bilateral setting. Articles VII–VIII contain rules of temporal application, entry into force and termination based on those set forth in Articles 12 and 18 of the U.S.-EU Mutual Legal Assistance Agreement.

Six provisions of the U.S.-EU Mutual Legal Assistance Agreement are incorporated into the 1998 MLAT, as follows: Articles 4 (identification of bank information), 5 (joint investigative teams), 6 (video conferencing), 7 (expedited transmission of requests), and 8 (requests by administrative or regulatory authorities) of the U.S.-EU Mutual Legal Assistance Agreement supplement the provisions of the 1998 MLAT. Article 9(1)–(4) of the U.S.-EU Mutual Legal Assistance Agreement (use limitations) applies in place of Article 14(3)–(5) of the 1998 MLAT; although, pursuant to U.S.-EU Article 9(4), Article 14 of the 1998 Treaty may be applied if to do so would result in less limitation on use.

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article I (identification of bank information) specifies that France's point of contact for the exchange of bank information under this Article is its central authority under Article 2(1) of the 1998 Treaty (i.e., the Ministry of Justice), and that France will provide assistance under this Article even in the absence of dual criminality.

Germany

The bilateral mutual legal assistance instrument with Germany was signed on April 18, 2006, and is entitled a supplementary treaty to the 2003 U.S.-Germany Mutual Legal Assistance Treaty. The instrument foresees the entry into force of the 2003 bilateral treaty prior to, or contemporaneous with, the entry into force of this bilateral supplementary treaty.

Articles 1–7 of the bilateral supplementary treaty incorporates the U.S.-EU Mutual Legal Assistance Agreement provisions into the 2003 MLAT as follow: Article 4 of the U.S.-EU Mutual Legal Assistance Agreement (identification of bank information) is added as Article 9 bis: Article 5 of the U.S.-EU Mutual Legal Assistance Agreement (joint investigative teams) is added as Article 12 bis; Article 6 of the U.S.-EU Mutual Legal Assistance Agreement (video conferencing) is added as Article 10 bis, and the costs provision thereof is incorporated in Article 21(1); Article 7 of the U.S.-EU Mutual Legal Assistance Agreement (expedited transmission of requests) is incorporated through a new formulation that replaces Article 17(3); Article 8 of the U.S.-EU Mutual Legal Assistance Agreement (requests by administrative or regulatory authorities) is set forth in a new formulation replacing Article 1(1) of, and adding a new Article 2(5) to, the 2003 MLAT; and Article 9 of the U.S.-EU

Mutual Legal Assistance Agreement (use limitations) is incorporated through new formulations that replace Articles 15 and 16. The final two articles of the supplementary treaty reflect the provisions of Articles 12 (temporal application) and 18 (entry into force and termination) of the U.S.-EU Mutual Legal Assistance Agreement.

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article 3 of the supplementary treaty (identification of bank information) specifies that Germany's point of contact for the exchange of bank information under this Article is the Federal Ministry of Justice, and that, like the United States, Germany will provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as the States may notify each other.

The United States and Germany agreed that the penultimate sentence of the new text of Article 16 of the supplementary treaty entitles U.S. authorities competent in treating antitrust offenses (including the U.S. Central Authority for mutual legal assistance) to disclose to other authorities evidence or information received from Germany that may aid in the investigation or prosecution of other offenses.

Greece

The bilateral mutual legal assistance instrument with Greece was signed on January 18, 2006, and is entitled a protocol to the 1999 U.S.-Greece Mutual Legal Assistance Treaty. Articles 1 through 6 of the bilateral protocol incorporate the U.S.-EU Mutual Legal Assistance Agreement provisions into the 1999 MLAT, as follow: Article 4 (identification of bank information), 5 (joint investigative teams), 6 (video-conferencing), and 8 (assistance to administrative or regulatory authorities), of the U.S.-EU Mutual Legal Assistance Agreement, set forth in Articles 1, 2, 3 and 5 of the bilateral protocol, generally supplement the provisions of the 1999 MLAT. Article 7 of the U.S.-EU Mutual Legal Assistance Agreement (expedited transmission of requests), set forth in Article 4 of the bilateral protocol, supplements Article 4(1). Article 9 of the U.S.-EU Mutual Legal Assistance Agreement (use limitations), set forth in Article 6 of the bilateral protocol, replaces Article 7, paragraphs 1, 3, and 4.

The final provisions of the bilateral protocol are as follows: Article 7 thereof confirms that other provisions of the 1999 MLAT remain in force, and that the protocol shall be interpreted consistent with the U.S.-EU Mutual Legal Assistance Agreement. Article 8 and 9 reflect the provisions of Article 12 (temporal application) and 18 (entry into force and termination) of the U.S.-EU Mutual Legal Assistance Agreement.

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article 1 of the protocol (identification of bank information) specifies that Greece's point of contact for the exchange of bank information under this Article is the Ministry of Justice; and that, like the United States, Greece will provide assistance under this Article with respect to money laundering and terrorist activities punishable under the

laws of both States and with respect to such other criminal activity as the States may notify each other.

Hungary

The bilateral mutual legal assistance instrument with Hungary was signed on November 15, 2005, and is entitled a protocol to the 1994 U.S.-Hungary Mutual Legal Assistance Treaty. Articles 1 through 8 of the bilateral protocol incorporate the U.S.-EU Mutual Legal Assistance Agreement provisions into the 1994 MILAT, as follow: Article 4 of the U.S.-EU Mutual Legal Assistance Agreement (identification of bank information) is added as Article 17A; Article 5 of the U.S.-EU Mutual Legal Assistance Agreement (joint investigation teams) is added as Article 17B; Article 6 of the U.S.-EU Mutual Legal Assistance Agreement (video-conferencing) is added as Article 6(2) and 17C; Article 7 of the U.S.-EU Mutual Legal Assistance Agreement (expedited transmission of requests) is incorporated through a new formulation that replaces Article 4(1); Article 8 of the U.S.-EU Mutual Legal Assistance Agreement (assistance to administrative or regulatory authorities) is added as Article 1 (1A); Article 9 of the U.S.-EU Mutual Legal Assistance Agreement (use limitations) is incorporated through a new formulation that replaces Article 7; and Article 10 of the U.S.-EU Mutual Legal Assistance Agreement (requesting State's request for confidentiality) is added as Article 7A.

The final provisions of the bilateral protocol are as follows: Articles 9 and 10 of the bilateral protocol reflect the provisions of Article 12 (temporal application) and 18 (entry into force and termination) of the U.S-EU Mutual Legal Assistance Agreement.

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article 6 of the protocol (identification of bank information) specifies that Hungary's point of contact for the exchange of bank information under this Article is the Prosecutor General, provided however that a request from Hungary concerning a matter in which trial has commenced shall be transmitted by the Ministry of Justice. With respect to the scope of Article 4, Hungary will provide assistance under this Article with respect to criminal activity punishable under the laws of both States.

Ireland

The bilateral mutual legal assistance instrument with Ireland was signed on July 14, 2005. The 2001 U.S.-Ireland Mutual Legal Assistance Treaty is not yet in force, having been ratified by the United States but not by Ireland. Ireland intends to ratify the 2001 Treaty and this instrument contemporaneously.

Article 1 of the bilateral instrument specifies the articles of the U.S.-EU Mutual Legal Assistance Agreement applicable between the United States and Ireland. Article 2 provides that the Annex to the instrument reflects the integrated text that shall apply between the United States and Ireland. Articles 3–5 contain rules on temporal application, entry into force and termination, based on those set forth in Articles 12 and 18 of the U.S.-EU Mutual Legal Assistance Agreement.

The Annex integrates the U.S.-EU Mutual Legal Assistance Agreement into the 2001 MLAT as follows: Article 4 of the U.S.-EU Mutual Legal Assistance Agreement (identification of bank information) is added as Article 16 bis; Article 5 of the U.S.-EU Mutual Legal Assistance Agreement (joint investigative teams) is added as Article 16 ter; Article 6 of the U.S.-EU Mutual Legal Assistance Agreement (video-conferencing) amends Article 6 and is added as Article 16 quater; Article 7 of the U.S.-EU Mutual Legal Assistance Agreement (expedited transmission of requests) is set forth in a new formulation and replaces Article 4(1); Article 8 of the U.S.-EU Mutual Legal Assistance Agreement (assistance to administrative or regulatory authorities) is added as Article 1 (1 bis); and Article 9 of the U.S.-EU Mutual Legal Assistance Agreement (use limitations) replaces Article 7.

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article 16 bis of the Annex (identification of bank information) specifies that Ireland's point of contact for the exchange of bank information under this Article is its central authority under Article 2 of the 2001 MLAT (i.e., the Minister of Justice, Equality and Law Reform, or designee), and that it will provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both States, and with respect to other criminal activity punishable by a maximum sentence of at least five years' imprisonment or more serious penalty under Irish law and also punishable under United States law.

Finally, although not required by the U.S.-EU Agreement, the United States and Ireland revised the forms to be used in conjunction with application of the bilateral instrument. The result is that Forms A, B, C, D, and E of the 2001 MLAT have been renumbered as Forms A1, B1, C1, D1, and E1 are to be used when Ireland is the requesting Party. When the United States is the requesting Party, new forms A2, B2, C2, D2, and E2 have been provided, which are identical in many respects but which contain minor modifications sought by Ireland in order to better conform to its law and practice.

Italy

The bilateral mutual legal assistance instrument with Italy was signed on May 3, 2006. The instrument, in paragraph 1, specifies the articles of the U.S.-EU Mutual Legal Assistance Agreement applicable between the United States and Italy. Paragraph 2 provides that the Annex to the instrument reflects the integrated text that shall apply between the United States and Italy. Paragraphs 3 and 4 contain rules of temporal application, based on those set forth in Article 12 of the U.S.-EU Mutual Legal Assistance Agreement. Paragraph 5 provides for a change to Article 18 (seizure, immobilization, and forfeiture of assets) of the 1982 U.S.-Italy Mutual Legal Assistance Treaty. Paragraph 6 contains the provisions on entry into force and termination, based on those set forth in Article 18 of the U.S.-EU Mutual Legal Assistance Agreement.

The Annex integrates Articles 4–11 of the U.S.-EU Mutual Legal Assistance Agreement into the 1982 MLAT, as follows: Article 4 of the U.S.-EU Mutual Legal Assistance Agreement (identification of

bank information) is added as Article 18 bis; Article 5 of the U.S.-EU Mutual Legal Assistance Agreement (joint investigative teams) is added as Article 18 ter; Article 6 of the U.S.-EU Mutual Legal Assistance Agreement (video conferencing) is added as Article 18 quater and through a change to Article 7 (costs); Article 7 of the U.S.-EU Mutual Legal Assistance Agreement (expedited transmission of requests) is incorporated through a new formulation that replaces Article 2(3); Article 8 of the U.S.-EU Mutual Legal Assistance Agreement (assistance to administrative or regulatory authorities) is added as Article 1(1 bis); and Article 9 of the U.S.-EU Mutual Legal Assistance Agreement (use limitations) replaces the majority of Article 8.

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article 18 bis of the Annex (identification of bank information) specifies that Italy's point of contact for the exchange of bank information under this Article is the Minister of Justice. Article 18 bis also specifies that Italy will provide assistance under this Article with respect to terrorist and money laundering activity punishable under the law of both States. Since Italian law does not punish the person committing the predicate offense for the separate offense of money laundering, it further states that Italy shall provide cooperation with respect to activities punishable as the offense of money laundering in the United States but as a predicate offense to money laundering under Italian law. Finally, Italy also will provide assistance with respect to such other criminal activity as it may subsequently designate.

In addition, as mentioned above, although not required by the U.S.-EU Mutual Legal Assistance Agreement, the United States and Italy modified Article 18 of the 1982 MLAT (seizure, immobilization, and forfeiture of assets), in order to replace the original formulation, which had not been implemented in accordance with an exchange of diplomatic notes between the United States and Italy dated November 13, 1985. The Parties also agreed that the formulation in Article 2(3) does not change the current, non-treaty-based practice, whereby requests are made by the Central Authorities, although in executing requests the relevant executing authorities may communicate with authorities of the other country.

Latvia

The bilateral mutual legal assistance instrument with Latvia was signed on December 7, 2005, and is entitled a protocol to the 1997 U.S.-EU Mutual Legal Assistance Treaty. Articles 1–7 of the bilateral protocol incorporate the U.S.-EU Mutual Legal Assistance Agreement provisions into the 1997 MLAT as follows: Articles 4(1)–(5) (identification of bank information), 5 (joint investigative teams), and 6(1), (3)–(6) (video conferencing) of the U.S.-EU Mutual Legal Assistance Agreement are added as Articles 17a–17c; Article 6(2) of the U.S.-EU Mutual Legal Assistance Agreement (cost of video conference) is added as Article 6(d)(costs); Article 7 of the U.S.-EU Mutual Legal Assistance Agreement (expedited transmission of requests) is incorporated through a new formulation that replaces Article 4(1); Article 8 of the U.S.-EU Mutual Legal Assistance Agreement (request by administrative or regulatory authori-

ties) is added as Article 1(1)(b) and (c); and Article 9(1)–(3) of the U.S.-EU Mutual Legal Assistance Agreement (use limitations) replaces the majority of Article 7. The final two articles of the bilateral protocol reflect the provisions of Articles 12 (temporal application) and 18 (entry into force and termination) of the U.S.-EU Mutual Legal Assistance Agreement.

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article 5 of the bilateral protocol (identification of bank information) specifies that Latvia's point of contact for the exchange of bank information under this Article is the Office of the Prosecutor General during the pretrial investigation, and the Ministry of Justice during trial. Latvia will provide assistance under this Article with respect to any criminal activity.

Lithuania

The bilateral mutual legal assistance instrument with Lithuania was signed on June 15, 2005, and is entitled a protocol to the 1998 U.S.-Lithuania Mutual Legal Assistance Treaty. The bilateral protocol, in paragraph 1, specifies the articles of the U.S.-EU Mutual Legal Assistance Agreement applicable between the United States and Lithuania. Paragraph 2 provides that the Annex to the protocol reflects the integrated text that shall apply between the United States and Lithuania. Paragraphs 3–5 contains rules of temporal application, entry into force and termination, based on those set forth in Articles 12 and 18 of the U.S.-EU Mutual Legal Assistance Agreement.

The Annex integrates the U.S.-EU Mutual Legal Assistance Agreement into, the 1998 MLAT as follows: Article 4 of the U.S.-EU Mutual Legal Assistance Agreement (identification of bank information) is added as Article 16 bis; Article 5 of the U.S.-EU Mutual Legal Assistance Agreement (joint investigative teams) is added as Article 16 ter; Article 6 of the U.S.-EU Mutual Legal Assistance Agreement (video conferencing) is added in Articles 6 and 16 quater; Article 7 of the U.S.-Mutual Legal Assistance Agreement (expedited transmission of requests) is incorporated through a new formulation that replaces Article 4(1); Article 8(2) of the U.S.-EU Mutual Legal Assistance Agreement (channel for transmission of requests by administrative or regulatory authorities) is added as Article 2(2)(b) (subparagraph (a) of which had already provided for the authority required by the U.S.-EU Mutual Legal Assistance Agreement in Article 8(1) to make such requests); and Article 9 of the U.S.-EU Mutual Legal Assistance Agreement (use limitations) replaces the majority of Article 7.

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article 16 bis of the Annex (identification of bank information) specifies that Lithuania's point of contact for the exchange of bank information under this Article is the Office of the Prosecutor General, and that, like the United States, Lithuania will provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as the States may notify each other.

Luxembourg

The bilateral mutual legal assistance instrument with luxembourg was signed on February 1, 2005. Paragraph A of Articles I–VI sets forth the text of the articles of the U.S.-EU Mutual Legal Assistance Agreement applicable between the United States and Luxembourg. Paragraph B of Articles I–VI specifies the extent to which these provisions supplement or replace provisions of the 1997 U.S.-Luxembourg Mutual Legal Assistance Treaty, and provides other necessary explanations regarding the manner in which the U.S.-EU Mutual Legal Assistance Agreement text is to operate in a bilateral setting. Articles VII–VIII contain rules of temporal application, entry into force and termination based on those set forth in Articles 12 and 18 of the U.S.-EU Mutual Legal Assistance Agreement.

Six provisions of the U.S.-EU Mutual Legal Assistance Agreement are incorporated into the 1997 MLAT provisions as follows: Articles 4 (identification of bank information), 5 (joint investigative teams), 6 (video conferencing), 7 (expedited transmission of requests), and 8(2) (channel for transmission of requests by administrative or regulatory authorities) of the U.S.-EU Mutual Legal Assistance Agreement supplement the provisions of the 1997 MLAT. Article 9 of the U.S.-EU Mutual Legal Assistance Agreement (use limitations) applies in place of Article 7 of the 1997 MLAT; although, pursuant to U.S.-EU Mutual Legal Assistance Agreement Article 9(4), Article 7 may be applied if to do so would result in less limitation on use; and, pursuant to U.S.-EU Mutual Legal Assistance Agreement Article 9(5), Luxembourg shall continue to apply Article 7 of the 1997 MLAT with respect to the tax offenses described in that treaty.

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article I (identification of bank information) specifies that Luxembourg's point of contact for the exchange of bank information under this Article is its Central Authority under Article 2 of the 1997 MLAT (the Parquet Général), and that, like the United States, Luxembourg will provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as the States may notify each other.

Malta

The bilateral mutual legal assistance instrument with Malta was signed on May 18, 2006. Paragraph 1 specifies the articles of the U.S.-EU Mutual Legal Assistance Agreement that are to be applied. Paragraph 2 provides that the Annex to the instrument reflects the provisions that shall apply between the United States and Malta. Paragraphs 3–5 contain rules on temporal application, entry into force and termination, based on those set forth in Articles 12 and 18 of the U.S.-EU Mutual Legal Assistance Agreement.

Since the United States and Malta do not have a bilateral mutual legal assistance treaty in force between them, the instrument is a partial treaty governing only those issues regulated by the U.S.-EU Mutual Legal Assistance Agreement, specifically: Articles 4 (identification of bank information), 5 (joint investigative teams),

6 (video-conferencing), 7 (expedited transmission of requests), 8 (assistance to administrative or regulatory authorities), 9 (use limitations), 10 (requesting State's request for confidentiality); and 13 (grounds for refusal).

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article 1 of the Annex (identification of bank information) specifies that Malta's point of contact for the exchange of bank information under this Article is the Office of the Attorney General, and that, like the United States, Malta will provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as the States may notify each other. Article 5 of the Annex provides that requests for assistance to administrative or regulatory authorities shall be transmitted between the U.S. Department of Justice and the Office of the Attorney General of Malta.

The Netherlands

The bilateral mutual legal assistance instrument with the Netherlands was signed on September 29, 2004, and is entitled an agreement. Article 1 of the bilateral agreement specifies the articles of the U.S.-EU Mutual Legal Assistance Agreement applicable between the United States and the Netherlands. Article 2 provides that the Annex to the agreement reflects the integrated text that shall apply between the United States and the Netherlands. Article 3 provides that the bilateral agreement shall not apply to the Netherlands Antilles or Aruba unless the United States and the EU, by exchange of diplomatic notes, subsequently agree to extend its application to them. Articles 4–6 contain rules on temporal application, entry into force and termination, based on those set forth in Articles 12 and 18 of the U.S.-EU Mutual Legal Assistance Agreement.

The Annex integrates the U.S.-EU Mutual Legal Assistance Agreement into the 1981 U.S.-Netherlands Mutual Legal Assistance Treaty as follows: Article 4 of the U.S.-EU Mutual Legal Assistance Agreement (identification of bank information) is added as Article 9 bis of the 1981 MLAT; Article 5 of the U.S.-EU Mutual Legal Assistance Agreement (joint investigative teams) is added as Article 9 ter; Article 6 of the U.S.-EU Mutual Legal Assistance Agreement (video-conferencing) is added as Article 17(1) and Article 9 quater; Article 7 of the U.S.-EU Mutual Legal Assistance Agreement (expedited transmission of requests) is added as Article 14(2); Article 8 of the U.S.-EU Mutual Legal Assistance Agreement (assistance to administrative or regulatory authorities) is added as Article 1 (1 bis); Article 9 of the U.S.-EU Mutual Legal Assistance Agreement (use limitations) is incorporated through a new Article 11 bis which replaces Article 11(2); and Article 10 of the U.S.-EU Mutual Legal Assistance Agreement (requesting State's request for confidentiality) is added as Article 11(2).

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article 9 bis of the Annex (identification of bank information) specifies that the Netherlands' point of contact for the exchange of bank information

under this Article is its competent authority under Article 14 of the 1981 MLAT (i.e., the Minister of Justice), and that the Netherlands will provide assistance under this Article with respect to activity punishable under the laws of both States and which is a "misdrijf" (crime) under Dutch law, a term which includes but is not limited to money laundering and terrorist activity.

In addition, the Schedule to the Annex (availability of search and seizure for certain offenses) has been modified to provide the texts of Dutch legislation currently in force, and to enable an exchange of notes to set forth the applicable provisions of law should the agreement be applied in future to the Netherlands Antilles and Aruba. Finally, by exchange of diplomatic notes contemporaneous with signature of the bilateral agreement, the United States and the Netherlands agreed that prior diplomatic notes exchanged on June 12, 1981, with respect to the application of the 1981 MLAT shall continue to apply to the corresponding provisions of the Annex, except for the second paragraph pertaining to Article 11 of the 1981 MLAT, which was deemed incompatible with Article 9 of the U.S.-EU Mutual Legal Assistance Agreement. The exchange of diplomatic notes in conjunction with signing the bilateral agreement also confirms that the prior exchange of notes of December 31, 1985, applying the 1981 MLAT to the Netherlands Antilles and Aruba, remains unaffected by the U.S.-EU Mutual Legal Assistance Agreement, and that the explanatory note to the U.S.-EU Mutual Legal Assistance Agreement applies to the corresponding provisions of the Annex.

Poland

The bilateral mutual legal assistance instrument with Poland was signed on June 9, 2006, and is entitled an agreement. The bilateral agreement, in Article 1, specifies the articles of the U.S.-EU Mutual Legal Assistance Agreement applicable between the United States and Poland. Article 2 provides that the Annex to the agreement reflects the integrated text that shall apply between the United States and Poland. Articles 3 and 4 contain rules of temporal application, based on those set forth in Article 12 of the U.S.-EU Mutual Legal Assistance Agreement. Article 5 contains the provisions on entry into force and termination, based on those set forth in Article 18 of the U.S.-EU Mutual Legal Assistance Agreement.

The Annex integrates the U.S.-EU Mutual Legal Assistance Agreement into the 1996 Mutual Legal Assistance Treaty, as follows: Article 4 of the U.S.-EU Mutual Legal Assistance Agreement (identification of bank information) is added as Article 3 bis; Article 5 of the U.S.-EU Mutual Legal Assistance Agreement (joint investigative teams) is added as Article 9 bis; Article 6 of the U.S.-EU Mutual Assistance Agreement (video conferencing) is added as Articles 8 bis and through a change to Article 6 (costs); Article 7 of the U.S.-EU Mutual Legal Assistance Agreement (expedited transmission of requests) is incorporated through a new formulation that replaces Article 4(a); Article 8 of the U.S.-EU Mutual Legal Assistance Agreement (assistance to administrative or regulatory authorities) is added as Article 1 bis; and Article 9 of the U.S.-EU

Mutual Legal Assistance Agreement (use limitations) replaces the majority of Article 7.

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article 3 bis of the Annex (identification of bank information) specifies that Poland's point of contact for the exchange of bank information under this Article is its central authority under Article 2 of the 1996 MLAT (i.e., the Minister of Justice-Attorney General, or designee), and that Poland will provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both States, and with respect to such other criminal acclivity as the States may notify each other.

Portugal

The bilateral mutual legal assistance instrument with Portugal was signed on July 14, 2005. Paragraph 1 specifies of the U.S.-EU Mutual Legal Assistance Agreement that are to be applied and the designations and notifications required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement. Paragraph 2 provides that the Annex to the instrument reflects the provisions that shall apply between the United States and Portugal. Paragraphs 3–5 contain rules on temporal application, entry into force and termination, based on those set forth in Articles 12 and 18 of the U.S.-EU Mutual Legal Assistance Agreement.

Since the United States and Portugal do not have a bilateral mutual legal assistance treaty in force between them, the bilateral instrument is a partial treaty governing only those issues regulated by the U.S.-Mutual Legal Assistance Agreement, specifically: Articles 4 (identification of bank information), 5 (joint investigative teams), 6 (video-conferencing), 7 (expedited transmission of request), 8 (assistance to administrative or regulatory authorities), 9 (use limitations), 10 (requesting State's request for confidentiality); and 13 (grounds for refusal).

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, paragraph 1(a) of the bilateral instrument and Article 1 of the Annex (identification of bank information) specify that Portugal's point of contact for the exchange of bank information under this Article is the Prosecutor General's Office (Procuradoria Geral da Republica), and that Portugal will provide assistance under this Article with respect to organized crime, money laundering, drug trafficking, and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as Portugal may notify the United States. Paragraph 1(e) of the bilateral instrument and Article 5 of the Annex provide that requests for assistance to administrative or regulatory authorities shall be transmitted between the U.S. Department of Justice and the Portuguese Prosecutor General's Office (Procuradoria Geral da Republica).

Slovak Republic

The bilateral mutual legal assistance instrument with the Slovak Republic was signed on February 6, 2006. Paragraph 1 provides that the U.S.-EU Mutual Legal Assistance Agreement shall be applied between them in the manner set forth in the instrument and

its Annex. Paragraph 2 provides that the Annex reflects the provisions that shall apply between the United States and the Slovak Republic. Paragraphs 3–5 contain rules on temporal application, entry into force and termination, based on those set forth in Articles 12 and 18 of the U.S.-EU Mutual Legal Assistance Agreement.

Since the United States and the Slovak Republic do not have a bilateral mutual legal assistance treaty in force between them, the bilateral instrument is a partial treaty governing only those issues regulated by the U.S.-EU Mutual Legal Assistance Agreement, specifically: Articles 4 (identification of bank information), 5 (joint investigative teams), 6 (video-conferencing), 7 (expedited transmission of requests), 8 (assistance to administrative or regulatory authorities), 9 (use limitations), 10 (requesting State's request for confidentiality); and 13 (grounds for refusal).

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article 1 of the Annex (identification of bank information) specifies that the Slovak Republic's point of contact for the exchange of bank information under this Article is the Ministry of Justice, and that, like the United States, the Slovak Republic will provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as the States may notify each other. Article 5 of the Annex provides that requests for assistance to administrative or regulatory authorities shall be transmitted between the U.S. Department of Justice and the Ministry of Justice of the Slovak Republic.

Slovenia

The bilateral mutual legal assistance instrument with Slovenia was signed on October 17, 2005, and is entitled an agreement. The bilateral agreement, in paragraph 1, specifies the articles of the U.S.-EU Mutual Legal Assistance Agreement applicable between the United States and Slovenia. Paragraph 2 provides that the Annex to the agreement reflects the provisions that shall apply between the United States and Slovenia. Paragraphs 3–5 contain rules of temporal application, entry into force and termination, based on those set forth in Articles 12 and 18 of the U.S.-EU Mutual Legal Assistance Agreement.

Because the United States and Slovenia do not have a bilateral mutual legal assistance treaty in force between them, the bilateral agreement is a partial treaty governing only those issues regulated by the U.S.-EU Mutual Legal Assistance Agreement, specifically: Article 4 (identification of bank information), 5 (joint investigative teams), 6 (video conferencing), 7 (expedited transmission of requests), 8 (assistance to administrative or regulatory authorities), 9 (use limitations), 10 (requesting State's request for confidentiality), and 13 (grounds for refusal).

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article 1 of the Annex (identification of bank information) specifies that Slovenia point of contact for the exchange of bank information under this Article is its Ministry of Justice, and that, like the United States, Slovenia will provide assistance under this Article with respect to

money laundering and terrorist activity punishable under the laws of both the requesting and requested States, and with respect to such other criminal activity as the States may notify each other. Article 5 of the Annex provides that requests for assistance to administrative or regulatory authorities shall be transmitted between the U.S. Department of Justice and the Ministry of Justice of the Republic of Slovenia.

Spain

The bilateral mutual legal assistance instrument with Spain was signed on December 17, 2004. The bilateral instrument, in paragraph 1, specifies the articles of the U.S.-EU Mutual Legal Assistance Agreement applicable between the United States and Spain. Paragraph 2 provides that the Annex to the instrument reflects the provisions that shall apply between the United States and Spain. Paragraphs 3–5 contain rules of temporal application, entry into force and termination, based on those set forth in Articles 12 and 18 of the U.S.-EU Mutual Legal Assistance Agreement.

The Annex integrates the U.S.-EU Extradition Agreement into the 1990 U.S.-Spain Mutual Legal Assistance Treaty, as follow: Article 4 of the U.S.-EU Mutual Legal Assistance Agreement (identification of bank information) is added as Article 16 bis; Article 5 of the U.S.-EU Mutual Legal Assistance Agreement (joint investigative teams) is added as Article 16 ter; Article 6 of the U.S.-EU Mutual Assistance Agreement (video conferencing) is added in Articles 6 and 16 quater; Article 7 of the U.S.-EU Mutual Legal Assistance Agreement (expedited transmission of requests) is incorporated through a new formulation that replaces Article 4(1); Article 8 of the U.S.-EU Mutual Legal Assistance Agreement (assistance to administrative or regulatory authorities) is added as Article 1(1 bis); and Article 9 of the U.S.-EU Mutual Legal Assistance Agreement (use limitations) replaces the majority of Article 7.

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article 16 bis of the Annex (identification of bank information) specifies that Spain's point of contact for the exchange of bank information under this Article is the Ministry of Justice, and that, like the United States, Spain will provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as the States may notify each other.

Sweden

The bilateral mutual legal assistance instrument with Sweden was signed on December 16, 2004. The instrument foresees the entry into force of the 2001 U.S.-Sweden Mutual Legal Assistance Treaty prior to, or contemporaneous with, the entry into force of this bilateral instrument.

Paragraph 1 of the bilateral instrument specifies the articles of the U.S.-EU Mutual Legal Assistance Agreement applicable between the United States and Sweden. Paragraph 2 provides that the Annex to the instrument reflects the provisions that shall apply between the United States and Sweden. Paragraphs 3 and 4 contain rules temporal application based on those set forth in Article

12 of the U.S.-EU Mutual Legal Assistance Agreement. Paragraph 5 governs entry into force termination, based on Article 18 of the U.S.-EU Mutual Legal Assistance Agreement.

The Annex integrates the U.S.-EU Mutual Legal Assistance Agreement into the 2001 MLAT as follows: Article 4 of the U.S.-EU Mutual Legal Assistance Agreement (identification of bank information) is added as Article 18 bis; Article 5 of the U.S.-EU Mutual Legal Assistance Agreement (joint investigative teams) is added as Article 18 ter; Article 6 of the U.S.-EU Mutual Legal Assistance Agreement (video-conferencing) is added as Articles 6(d) and 18 quater; Article 7 of the U.S.-EU Mutual Legal Assistance Agreement (expedited transmission of requests) is integrated as a new formulation of Article 4(a); Article 8(2) of the U.S.-EU Mutual Legal Assistance Agreement (transmission of requests for assistance to administrative or regulatory authorities) is added as Article 2(3)(b); and Article 9 of the U.S.-EU Mutual Legal Assistance Agreement (use limitations) replaces Article 7.

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article 18 bis of the Annex (identification of bank information) specifies that Sweden's point of contact for the exchange of bank information under this Article is the Ministry of Justice, and that Sweden will provide assistance under this Article with respect to offenses punishable under the laws of both States.

United Kingdom

The bilateral mutual legal assistance instrument with the United Kingdom was signed on December 16, 2004. The bilateral instrument, in paragraph 1, specifies the articles of the U.S.-EU Mutual Legal Assistance Agreement applicable between the United States and the UK Paragraph 2 provides that the Annex to the instrument reflects the integrated text that shall apply between the United States and UK Paragraph 3, in accordance with Article 16 of the U.S.-EU Mutual Legal Assistance Agreement, provides that the instrument applies to Great Britain and Northern Ireland, but not to the Channel Islands, the Isle of Man or other territories to which the 1994 U.S.-UK Mutual Legal Assistance Treaty applies. Paragraphs 4–5 contain rules of temporal application, based on those set forth in Article 12 of the U.S.-EU Mutual Legal Assistance Agreement. Paragraph 6 contains the provisions on entry into force and termination, based on those set forth in Article 18 of the U.S.-EU Mutual Legal Assistance Agreement.

The Annex integrates the U.S.-EU Mutual Legal Assistance Agreement into the 1994 MLAT, as follows: Article 4 of the U.S.-EU Mutual Legal Assistance Agreement (identification of bank information) is added as Article 16 bis; Article 5 of the U.S.-EU Mutual Legal Assistance Agreement (joint investigative teams) is added as Article 16 ter; Article 6 of the U.S.-EU Mutual Legal Assistance Agreement (video conferencing) is added as Article 16 quater and through a change to Article 6 (costs); Article 7 of the U.S.-EU Mutual Legal Assistance Agreement (expedited Transmission of requests) is incorporated through a new formulation that replaces Article 4(1); Article 8 of the U.S.-EU Mutual Legal Assistance Agreement (assistance to administrative or regulatory au-

thorities) is added as Article 1 (1 bis); and Article 9 of the U.S.-EU Mutual Legal Assistance Agreement (use limitations) replaces the majority of Article 7.

With respect to the designations required by Article 15 of the U.S.-EU Mutual Legal Assistance Agreement, Article 16 bis of the Annex (identification of bank information) specifies that the United Kingdom's point of contact for the exchange of bank information under this Article is the Lord Advocate, where the request relates only to Scotland, the Secretary of State for Northern Ireland, where the request relates only to Northern Ireland, and the Secretary of State for the Home Department in all other cases, and that the UK will provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as the States may notify each other.

In addition, upon signature, the United States and UK exchanged diplomatic notes stating that previous notes with respect to the 1994 MLAT, exchanged on January 6, 1994, (providing clarifications with respect to Articles 3(1)(a), 3(1)(b), 7(2) and 18 of the Treaty), and on April 30 and May 1, 2001, (revoking paragraph (d) of the 1994 exchange), shall remain applicable.

AGREEMENT
ON MUTUAL LEGAL ASSISTANCE
BETWEEN THE UNITED STATES OF AMERICA
AND THE EUROPEAN UNION

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Explanatory Note

THE UNITED STATES OF AMERICA AND THE EUROPEAN UNION,

DESIRING further to facilitate cooperation between the United States of America and the European Union Member States,

DESIRING to combat crime in a more effective way as a means of protecting their respective democratic societies and common values,

HAVING DUE REGARD for rights of individuals and the rule of law,

MINDFUL of the guarantees under their respective legal systems which provide an accused person with the right to a fair trial, including the right to adjudication by an impartial tribunal established pursuant to law,

DESIRING to conclude an Agreement relating to mutual legal assistance in criminal matters,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Object and Purpose

The Contracting Parties undertake, in accordance with the provisions of this Agreement, to provide for enhancements to cooperation and mutual legal assistance.

ARTICLE 2

Definitions

1. "Contracting Parties" shall mean the European Union and the United States of America.

2. "Member State" shall mean a Member State of the European Union.

ARTICLE 3

Scope of application of this Agreement in relation to bilateral mutual legal assistance treaties with Member States and in the absence thereof

1. The European Union, pursuant to the Treaty on European Union, and the United States of America shall ensure that the provisions of this Agreement are applied in relation to bilateral mutual legal assistance treaties between the Member States and the United States of America, in force at the time of the entry into force of this Agreement, under the following terms:

(a) Article 4 shall be applied to provide for identification of financial accounts and transactions in addition to any authority already provided under bilateral treaty provisions;

(b) Article 5 shall be applied to authorize the formation and activities of joint investigative teams in addition to any authority already provided under bilateral treaty provisions;

(c) Article 6 shall be applied to authorize the taking of testimony of a person located in the requested State by use of video transmission technology between the requesting and requested States in addition to any authority already provided under bilateral treaty provisions;

(d) Article 7 shall be applied to provide for the use of expedited means of communication in addition to any authority already provided under bilateral treaty provisions;

(e) Article 8 shall be applied to authorize the providing of mutual legal assistance to the administrative authorities concerned, in addition to any authority already provided under bilateral treaty provisions;

(f) Subject to Article 9(4) and (5), Article 9 shall be applied in place of, or in the absence of bilateral treaty provisions governing limitations on use of information or evidence provided to the requesting State, and governing the conditioning or refusal of assistance on data protection grounds;

(g) Article 10 shall be applied in the absence of bilateral treaty provisions pertaining to the circumstances under which a requesting State may seek the confidentiality of its request.

2. (a) The European Union, pursuant to the Treaty on European Union, shall ensure that each Member State acknowledges, in a written instrument between such Member State and the United States of America, the application, in the manner set forth in this Article, of its bilateral mutual legal assistance treaty in force with the United States of America;

(b) The European Union, pursuant to the Treaty on European Union, shall ensure that new Member States acceding to the European Union after the entry into force of this Agreement, and having bilateral mutual legal assistance treaties with the United States of America, take the measures referred to in subparagraph (a);

(c) The Contracting Parties shall endeavour to complete the process described in subparagraph (b) prior to the scheduled accession of a new Member State, or as soon as possible thereafter. The European Union shall notify the United States of America of the date of accession of new Member States.

3. (a) The United States of America and the European Union, pursuant to the Treaty on European Union, and shall also ensure that the provisions of this Agreement are applied in the absence of a bilateral mutual legal assistance treaty in force between the United States of America and a Member State;

(b) The European Union, pursuant to the Treaty on European Union, shall ensure that such Member State acknowledges, in a written instrument between such Member State and the United States of America, the application of the provisions of this Agreement;

(c) The European Union, pursuant to the Treaty on European Union, shall ensure that new Member States acceding to the European Union after the entry into force of this Agreement, which do not have bilateral mutual legal assistance treaties with the United States of America, take the measures referred to in subparagraph (b).

4. If the process described in paragraph 2(b) and 3(c) is not completed by the date of accession, the provisions of this Agreement shall apply in the relations between the United States of America and that new Member State as from the date on which they have notified each other and the European Union of the completion of their internal procedures for that purpose.

5. The Contracting Parties agree that this Agreement is intended solely for mutual legal assistance between the States concerned. The provisions of this Agreement shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request, nor expand or limit rights otherwise available under domestic law.

ARTICLE 4

Identification of bank information

1. (a) Upon request of the requesting State, the requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offence is the holder of a bank account or accounts. The requested State shall promptly communicate the results of its enquiries to the requesting State;

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offence;

(ii) information in the possession of non-bank financial institutions; or

(iii) financial transactions unrelated to accounts.

2. A request for information described in paragraph 1 shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions; and

(b) sufficient information to enable the competent authority of the requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offence and that banks or non-bank financial institutions in the territory of the requested State may have the information requested; and

(ii) conclude that the information sought relates to the criminal investigation or proceeding.

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Requests for assistance under this Article shall be transmitted between:

(a) central authorities responsible for mutual legal assistance in Member States, or national authorities of Member States responsible for investigation or prosecution of criminal offences as designated pursuant to Article 15(2), and

(b) national authorities of the United States responsible for investigation or prosecution of criminal offences, as designated pursuant to Article 15(2).

The Contracting Parties may, following the entry into force of this Agreement, agree by exchange of diplomatic note to modify the channels through which requests under this Article are made.

4. (a) Subject to subparagraph (b), a State may, pursuant to Article 15, limit its obligation to provide assistance under this Article to:

(i) offences punishable under the laws of both the requested and requesting States;

(ii) offences punishable by a penalty involving deprivation of liberty or a detention order of a maximum period of at least four years in the requesting State and at least two years in the requested State; or

(iii) designated serious offences punishable under the laws of both the requested and requesting States;

(b) A State which limits its obligation pursuant to subparagraph (a)(ii) or (iii) shall, at a minimum, enable identification of accounts associated with terrorist activity and the laundering of proceeds generated from a comprehensive range of serious criminal activities, punishable under the laws of both the requesting and requested States.

5. Assistance may not be refused under this Article on grounds of bank secrecy.

6. The requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article, in accordance with the provisions of the applicable mutual legal assistance treaty in force between the States concerned, or in the absence thereof, in accordance with the requirements of its domestic law.

7. The Contracting Parties shall take measures to avoid the imposition of extraordinary burdens on requested States through application of this Article. Where extraordinary burdens on a requested State nonetheless result, including on banks or by operation of the channels of communications foreseen in this Article, the Contracting Parties shall immediately consult with a view to facilitating the application of this Article, including the taking of such measures as may be required to reduce pending and future burdens.

ARTICLE 5

Joint investigative teams

1. The Contracting Parties shall, to the extent they have not already done so, take such measures as may be necessary to enable joint investigative teams to be established and operated in the respective territories of the United States of America and each Member State for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States where deemed appropriate by the United States of America and the Member State concerned.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offences, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other States having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

ARTICLE 6

Video conferencing

1. The Contracting Parties shall take such measures as may be necessary to enable the use of video transmission technology between the United States of America and each Member State for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in a requested State, to the extent such assistance is not currently available. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as provided under the applicable mutual legal assistance treaty in force between the States concerned, or the law of the requested State, as applicable.

2. Unless otherwise agreed by the requesting and requested States, the requesting State shall bear the costs associated with establishing and servicing the video transmission. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the requested State) shall be borne in accordance with the applicable provisions of the mutual legal assistance treaty in force between the States concerned, or where there is no such treaty, as agreed upon by the requesting and requested States.

3. The requesting and requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

4. Without prejudice to any jurisdiction under the law of the requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the requested State in the same manner as if it had been committed in the course of its domestic proceedings.

5. This Article is without prejudice to the use of other means for obtaining of testimony in the requested State available under applicable treaty or law.

6. This Article is without prejudice to application of provisions of bilateral mutual legal assistance agreements between the United States of America and Member States that require or permit the use of video conferencing technology for purposes other than those described in paragraph 1, including for purposes of identification of persons or objects, or taking of investigative statements. Where not already provided for under applicable treaty or law, a State may permit the use of video conferencing technology in such instances.

ARTICLE 7

Expedited transmission of requests

Requests for mutual legal assistance, and communications related thereto, may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the requested State. The requested State may respond to the request by any such expedited means of communication.

ARTICLE 8

Mutual legal assistance to
administrative authorities

1. Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

2. (a) Requests for assistance under this Article shall be transmitted between the central authorities designated pursuant to the bilateral mutual legal assistance treaty in force between the States concerned, or between such other authorities as may be agreed by the central authorities;

(b) In the absence of a treaty, requests shall be transmitted between the United States Department of Justice and the Ministry of Justice or, pursuant to Article 15(1), comparable Ministry of the Member State concerned responsible for transmission of mutual legal assistance requests, or between such other authorities as may be agreed by the Department of Justice and such Ministry.

3. The Contracting Parties shall take measures to avoid the imposition of extraordinary burdens on requested States through application of this Article. Where extraordinary burdens on a requested State nonetheless result, the Contracting Parties shall immediately consult with a view to facilitating the application of this Article, including the taking of such measures as may be required to reduce pending and future burdens.

ARTICLE 9

Limitations on use to protect personal and other data

1. The requesting State may use any evidence or information obtained from the requested State:

(a) for the purpose of its criminal investigations and proceedings;

(b) for preventing an immediate and serious threat to its public security;

(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

(i) set forth in subparagraph (a); or

(ii) for which mutual legal assistance was rendered under Article 8;

(d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

(e) for any other purpose, only with the prior consent of the requested State.

2. (a) This Article shall not prejudice the ability of the requested State to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the requested State may require the requesting State to give information on the use made of the evidence or information;

(b) Generic restrictions with respect to the legal standards of the requesting State for processing personal data may not be imposed by the requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the requesting State, the requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the requested State may consult with the requesting State to determine the extent to which the evidence and information can be protected.

4. A requested State may apply the use limitation provision of the applicable bilateral mutual legal assistance treaty in lieu of this Article, where doing so will result in less restriction on the use of information and evidence than provided for in this Article.

5. Where a bilateral mutual legal assistance treaty in force between the United States of America and a Member State on the date of signature of this Agreement, permits limitation of the obligation to provide assistance with respect to certain tax offences, the Member State concerned may indicate, in its exchange of written instruments with the United States of America described in Article 3(2), that, with respect to such offences, it will continue to apply the use limitation provision of that treaty.

ARTICLE 10

Requesting State's request for confidentiality

The requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the requesting State. If the request cannot be executed without breaching the requested confidentiality, the central authority of the requested State shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed.

ARTICLE 11

Consultations

The Contracting Parties shall, as appropriate, consult to enable the most effective use to be made of this Agreement, including to facilitate the resolution of any dispute regarding the interpretation or application of this Agreement.

ARTICLE 12

Temporal Application

1. This Agreement shall apply to offences committed before as well as after it enters into force.

2. This Agreement shall apply to requests for mutual legal assistance made after its entry into force. Nevertheless, Articles 6 and 7 shall apply to requests pending in a requested State at the time this Agreement enters into force.

ARTICLE 13

Non-derogation

Subject to Article 4(5) and Article 9(2)(b), this Agreement is without prejudice to the invocation by the requested State of grounds for refusal of assistance available pursuant to a bilateral mutual legal assistance treaty, or, in the absence of a treaty, its applicable legal principles, including where execution of the request would prejudice its sovereignty, security, ordre public or other essential interests.

ARTICLE 14

Future bilateral mutual legal assistance treaties with Member States

This Agreement shall not preclude the conclusion, after its entry into force, of bilateral Agreements between the United States of America and a Member State consistent with this Agreement.

ARTICLE 15

Designations and notifications

1. Where a Ministry other than the Ministry of Justice has been designated under Article 8(2)(b), the European Union shall notify the United States of America of such designation prior to the exchange of written instruments described in Article 3(3) between the United States of America and the Member States.

2. The Contracting Parties, on the basis of consultations between them on which national authorities responsible for the investigation and prosecution of offences to designate pursuant to Article 4(3), shall notify each other of the national authorities so designated prior to the exchange of written instruments described in Article 3(2) and (3) between the United States of America and the Member States. The European Union shall, for Member States having no mutual legal assistance treaty with the United States of America, notify the United States of America prior to such exchange of the identity of the central authorities under Article 4(3).

3. The Contracting Parties shall notify each other of any limitations invoked under Article 4(4) prior to the exchange of written instruments described in Article 3(2) and (3).between the United States of America and the Member States.

ARTICLE 16

Territorial application

1. This Agreement shall apply:

(a) to the United States of America;

(b) in relation to the European Union, to:

- Member States;

- territories for whose external relations a Member State has responsibility, or countries that are not Member States for whom a Member State has other duties with respect to external relations, where agreed upon by exchange of diplomatic note between the Contracting Parties duly confirmed by the relevant Member State.

2. The application of this Agreement to any territory or country in respect of which extension has been made in accordance with subparagraph (b) of paragraph 1 may be terminated by either Contracting Party giving six months' written notice to the other Contracting Party through the diplomatic channel, where duly confirmed between the United States of America and the relevant Member State.

ARTICLE 17

Review

The Contracting Parties agree to carry out a common review of this Agreement no later than five years after its entry into force. The review shall address in particular the practical implementation of the Agreement and may also include issues such as the consequences of further development of the European Union relating to the subject matter of this Agreement.

ARTICLE 18

Entry into force and termination

1. This Agreement shall enter into force on the first day following the third month after the date on which the Contracting Parties have exchanged instruments indicating that they have completed their internal procedures for this purpose. These instruments shall also indicate that the steps specified in Article 3(2) and (3) have been completed.

2. Either Contracting Party may terminate this Agreement at any time by giving written notice to the other Party, and such termination shall be effective six months after the date of such notice.

In witness whereof the undersigned Plenipotentiaries have signed this Agreement

Done at Washington D.C. on the twenty-fifth day of June in the year two thousand and three, in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic.

For the United States of America
Por los Estados Unidos de América
For Amerikas Forenede Stater
Für die Vereinigten Staaten von Amerika
Για τις Ηνωμένες Πολιτείες της Αμερικής
Pour les Etats-Unis d'Amérique
Per gli Stati Uniti d'America
Voor de Verenigde Staten van Amerika
Pelos Estados Unidos da América
Amerikan yhdysvaltojen puolesta
På Amerikas förenta staters vägnar

For the European Union
Por la Unión Europea
For Den Europæiske Union
Für die Europäische Union
Για την Ευρωπαϊκή Ένωση
Pour l'Union européenne
Per l'Unione europea
Voor de Europese Unie
Pela União Europeia
Euroopan unionin puolesta
På Europeiska unionens vägnar

Explanatory Note on the Agreement on Mutual Legal Assistance between
the United States of America and the European Union

This note reflects understandings regarding the application of certain provisions of the Agreement on Mutual Legal Assistance between the United States of America and the European Union (hereinafter "the Agreement") agreed between the Contracting Parties.

On ARTICLE 8

With respect to the mutual legal assistance to administrative authorities under Article 8(1), the first sentence of Article 8(1) imposes an obligation to afford mutual legal assistance to requesting United States of America federal administrative authorities and to requesting national administrative authorities of Member States. Under the second sentence of that paragraph mutual legal assistance may also be made available to other – that is non-federal or local – administrative authorities. This provision however, is available at the discretion of the requested State.

The Contracting Parties agree that under the first sentence of Article 8(1) mutual legal assistance will be made available to a requesting administrative authority that is, at the time of making the request, conducting investigations or proceedings in contemplation of criminal prosecution or referral of the investigated conduct to the competent prosecuting authorities, within the terms of its statutory mandate, as further described immediately below. The fact that, at the time of making the request referral for criminal prosecution is being contemplated does not exclude that, other sanctions than criminal ones may be pursued by that authority. Thus, mutual legal assistance obtained under Article 8(1) may lead the requesting administrative authority to the conclusion that pursuance of criminal proceedings or criminal referral would not be appropriate. These possible consequences do not affect the obligation upon the Contracting Parties to provide assistance under this Article.

However, the requesting administrative authority may not use Article 8(1) to request assistance where criminal prosecution or referral is not being contemplated, or for matters in which the conduct under investigation is not subject to criminal sanction or referral under the laws of the requesting State.

The European Union recalls that the subject matter of the Agreement for its part falls under the provisions on police and judicial cooperation in criminal matters set out in Title VI of the Treaty on European Union and that the Agreement has been concluded within the scope of these provisions.

On ARTICLE 9

Article 9(2)(b) is meant to ensure that refusal of assistance on data protection grounds may be invoked only in exceptional cases. Such a situation could arise if, upon balancing the important interests involved in the particular case (on the one hand, public interests, including the sound administration of justice and, on the other hand, privacy interests), furnishing the specific data sought by the requesting State would raise difficulties so fundamental as to be considered by the requested State to fall within the essential interests grounds for refusal. A broad, categorical, or systematic application of data protection principles by the requested State to refuse cooperation is therefore precluded. Thus, the fact the requesting and requested States have different systems of protecting the privacy of data (such as that the requesting State does not have the equivalent of a specialised data protection authority) or have different means of protecting personal data (such as that the requesting State uses means other than the process of deletion to protect the privacy or the accuracy of the personal data received by law enforcement authorities), may as such not be imposed as additional conditions under Article 9(2a).

On ARTICLE 14

Article 14 provides that the Agreement shall not preclude the conclusion, after its entry into force, of bilateral agreements on mutual legal assistance between the United States of America and a Member State consistent with the Agreement.

Should any measures set forth in the Agreement create an operational difficulty for the United States of America and one or more Member States, such difficulty should in the first place be resolved, if possible, through consultations between the United States of America and the Member State or Member States concerned, or, if appropriate, through the consultation procedures set out in the Agreement. Where it is not possible to address such operational difficulty through consultations alone, it would be consistent with the Agreement for future bilateral agreements between the United States of America and a Member State to provide an operationally feasible alternative mechanism that would satisfy the objectives of the specific provision with respect to which the difficulty has arisen.

Protocol to the Treaty between the Government of the United States of America and the Government of the Republic of Austria on Mutual Legal Assistance in Criminal Matters signed 23 February 1995, as contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003

As contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the Governments of the United States of America and the Republic of Austria acknowledge that, in accordance with the provisions of this Protocol, the U.S.-EU Mutual Legal Assistance Agreement is applied in relation to the bilateral Treaty between the Government of the United States of America and the Government of the Republic of Austria on Mutual Legal Assistance in Criminal Matters signed on 23 February 1995 (hereafter "the 1995 Mutual Legal Assistance Treaty") under the following terms:

Article 1: Channel for assistance to agencies with jurisdiction to refer matters for criminal prosecution

Pursuant to Article 8(2) of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied as the final sentence of Article 2(2) of the 1995 Mutual Legal Assistance Treaty:

"Requests for assistance made on behalf of such agencies shall be transmitted between the Central Authorities, or between such other authorities as may be agreed by the Central Authorities."

Article 2: Expedited transmission of requests

Pursuant to Article 7 of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied in place of Article 4(1) of the 1995 Mutual Legal Assistance Treaty:

"1(a). A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another form in urgent situations. In any such situation, the request shall be confirmed in writing within ten days unless the Central Authority of the Requested State agrees otherwise. For purposes of this paragraph, requests transmitted by fax or e-mail shall be considered to be in writing.

(b) Communications related to requests for assistance may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the Requested State. The Requested State may respond by any such expedited means of communication.

(c) The Requesting State shall translate the request and any supporting documents into the language of the Requested State. However, the Central Authorities may make arrangements for the Requested State to translate the

request and any supporting documents at the expense of the Requesting State."

Article 3:
Limitations on use to protect personal and other data

A. Article 7(2) of the 1995 Mutual Legal Assistance Treaty shall be renumbered to be Article 7(4).

B. Pursuant to Article 9 of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied in place of Article 7(1) and (3) of the 1995 Mutual Legal Assistance Treaty:

"1. The Requested State may require that the Requesting State use any evidence or information obtained from the Requested State for the following purposes:

(a) for the purpose of its criminal investigations and proceedings;

(b) for preventing an immediate and serious threat to its public security;

(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

(i) set forth in subparagraph (a); or

(ii) for which mutual legal assistance was rendered to agencies with jurisdiction to refer matters for criminal prosecution in accordance with Article 2(2);

(d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

(e) for any other purpose, only with the prior consent of the Requested State.

2.
(a) This Article shall not prejudice the ability of the Requested State to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the Requested State may require the Requesting State to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the Requesting State for processing personal data may not be imposed by the Requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the Requesting State, the Requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested State may consult with the Requesting State to determine the extent to which the evidence or information can be protected. "

Article 4: Identification of bank information

Existing Article 18 of the 1995 Mutual Legal Assistance Treaty is renumbered as Article 21 and pursuant to Article 4(1) through (5) of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied as Article 18 of the 1995 Mutual Legal Assistance Treaty:

"Article 18:
IDENTIFICATION OF BANK INFORMATION

1.

(a) Upon request of the Requesting State, the Requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The Requested State shall promptly communicate the results of its enquiries to the Requesting State.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;
(ii) information in the possession of non-bank financial institutions; or
(iii) financial transactions unrelated to accounts.

2. In addition to the requirements of Article 4(2) of this Treaty, a request for information described in paragraph 1 of this Article shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions;

(b) sufficient information to enable the competent authority of the Requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the Requested State may have the information requested; and

(ii) conclude that the information sought relates to the criminal investigation or proceeding; and

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic notes between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

(a) for the Republic of Austria, the Ministry of Justice, and
(b) for the United States of America, the attaché responsible for Austria of the:
  (i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;
  (ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;
  (iii) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. The Republic of Austria and the United States of America shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both States, and with respect to such other criminal activity as they may notify each other.

5. The Requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the other provisions of this Treaty."

Article 5: Joint investigative teams

Existing Article 19 of the 1995 Mutual Legal Assistance Treaty is renumbered as Article 22, and pursuant to Article 5 of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied as Article 19 of the 1995 Mutual Legal Assistance Treaty:

"Article 19:
JOINT INVESTIGATIVE TEAMS

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and the Republic of Austria for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union where deemed appropriate by the United States of America and the Republic of Austria.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offenses, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other State(s) having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities."

Article 6: Video conferencing

Existing Article 20 of the 1995 Mutual Legal Assistance Treaty is renumbered as Article 23 and pursuant to Article 6(1), 6(3) through (6) of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied as Article 20 of the 1995 Mutual Legal Assistance Treaty:

"Article 20
VIDEO CONFERENCING

1. The use of video transmission technology shall be available between the United States of America and the Republic of Austria for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the Requested State. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under this Treaty.

2. The Requesting and Requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

3. Without prejudice to any jurisdiction under the law of the Requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the Requested State in the same manner as if it had been committed in the course of its domestic proceedings.

4. This Article is without prejudice to the use of other means for obtaining of testimony in the Requested State available under applicable treaty or law.

5. The Requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements."

Article 7: Cost of Video-Conference

Pursuant to Article 6(2) of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied as final sentences of Article 6 of the 1995 Mutual Legal Assistance Treaty:

"Unless otherwise agreed by the Requesting and Requested States, the Requesting State shall bear the costs associated with establishing and servicing a video transmission pursuant to Article 20. Other costs arising in the course of providing such assistance (including costs associated with travel of participants in the Requested State) shall be borne in accordance with the other provisions of this Article."

Article 8: Temporal application

This Protocol shall apply to offenses committed before as well as after it enters into force.

This Protocol shall not apply to requests made prior to its entry into force; except that Articles 2, 6 and 7 of this Protocol shall be applicable to requests made prior to such entry into force.

Article 9: Entry into force and termination

1. This Protocol shall be subject to completion by the Parties of their respective applicable internal procedures for entry into force. The Parties shall thereupon exchange instruments indicating that such measures have been completed. This Protocol shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement.

2. In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Protocol shall be terminated and the 1995 Mutual Legal Assistance Treaty shall be applied. The Parties nevertheless may agree to continue to apply some or all of the provisions of this Protocol.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Instrument.

DONE at Vienna, in duplicate, this 20 day of July 2005, in the English and German languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA:

Karin Miklautsch
ad referendum

Instrument as contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003, as to the application of the Treaty between the United States of America and the Kingdom of Belgium on Mutual Legal Assistance in Criminal Matters signed 28 January 1988

1. As contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the Governments of the United States of America and the Kingdom of Belgium acknowledge that, in accordance with the provisions of this Instrument, the U.S.-EU Mutual Legal Assistance Agreement is applied in relation to the bilateral Treaty between the United States of America and the Kingdom of Belgium on Mutual Legal Assistance in Criminal Matters signed 28 January 1988 (hereafter "the 1988 U.S.-Belgium Mutual Legal Assistance Treaty") under the following terms:

(a) (i) Article 4 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 12 bis of the Annex to this Instrument shall govern the identification of financial accounts and transactions, in addition to any authority already provided under the 1988 U.S.-Belgium Mutual Legal Assistance Treaty;

(ii) Pursuant to Article 4(3) of the U.S.-EU Mutual Legal Assistance Agreement, requests for assistance shall be transmitted between, for the Kingdom of Belgium, its Minister of Justice; and, for the United States of America, the attaché responsible for Belgium of the:

- U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;
- U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;
- U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters;

(iii) Pursuant to Article 4(4) of the U.S.-EU Mutual Legal Assistance Agreement, the United States of America and the Kingdom of Belgium shall provide assistance with respect to money laundering and terrorist activity punishable under the laws of both States, and with respect to such other criminal activity as they may notify each other;

(iv) Pursuant to Article 4(5) of the U.S.-EU Mutual Legal Assistance Agreement, assistance may not be refused on grounds of bank secrecy. This prohibition is provided for by Article 13 of the Annex, which does not permit assistance to be refused under this Instrument on grounds of bank secrecy;

(b) Article 5 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 12 ter of the Annex to this Instrument shall govern the formation and

activities of joint investigative teams, in addition to any authority already provided under the 1988 U.S.-Belgium Mutual Legal Assistance Treaty;

(c) Article 6 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Articles 18(2 bis) and 12 quater of the Annex to this Instrument shall govern the taking of testimony of a person located in the Requested State by use of video transmission technology between the Requesting and Requested States, in addition to any authority already provided under the 1988 U.S.-Belgium Mutual Legal Assistance Treaty;

(d) Article 7 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 17(3) of the Annex to this Instrument shall govern the use of expedited means of communication, in addition to any authority already provided under the 1988 U.S.-Belgium Mutual Legal Assistance Treaty;

(e) Article 8 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 1(1 bis) of the Annex to this Instrument shall govern the providing of mutual legal assistance to the administrative authorities concerned, in addition to any authority already provided under the 1988 U.S.-Belgium Mutual Legal Assistance Treaty;

(f) Article 9(1-3) of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 13 bis of the Annex to this Instrument shall govern the limitation on use of information or evidence provided to the Requesting State, and the conditioning or refusal of assistance on data protection grounds.

2. The Annex reflects the integrated text of the provisions of the 1988 U.S.-Belgium Mutual Legal Assistance Treaty and the U.S.-EU Mutual Legal Assistance Agreement that shall apply upon entry into force of this Instrument.

3. In accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall apply to offenses committed before as well as after it enters into force.

4. This Instrument shall not apply to requests made prior to its entry into force; except that, in accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, Articles 12 quater,17(3), and 18(2 bis) of the Annex shall be applicable to requests made prior to such entry into force.

5. (a) This Instrument shall be subject to the completion by the United States of America and the Kingdom of Belgium of their respective applicable internal procedures for entry into force. The Governments of the United States of America and the Kingdom of Belgium shall thereupon exchange instruments indicating that such measures have been completed. This Instrument shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement.

(b) In the event of the termination of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall be terminated and the 1988 U.S.-Belgium Mutual Legal Assistance Treaty shall be applied. The Governments of the

United States of America and the Kingdom of Belgium nevertheless may agree to continue to apply some or all of the provisions of this Instrument.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Instrument.

DONE at Brussels, in triplicate, this 16th day of December 2004, in the English, French and Dutch languages, all three texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF KINGDOM OF BELGIUM:

ANNEX

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF BELGIUM ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

ARTICLE 1

Scope of Application

1. The Contracting States shall provide, in accordance with the provisions of this Treaty, mutual legal assistance in all matters relating to the investigation, prosecution and suppression of offenses.

1. bis a. Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

b. Requests for assistance under this paragraph shall be transmitted between the Central Authorities designated pursuant to Article 17 of this Treaty, or between such other authorities as may be agreed by the Central Authorities.

2. Assistance shall include, but not be limited to:

(a) locating or identifying persons;

(b) serving documents;

(c) providing information and items, including documents, records and articles of evidence;

(d) taking testimony and producing documents;

(e) executing requests for search and seizure;

(f) transferring persons in custody for testimonial or other purposes;

(g) locating, tracing, immobilizing, seizing and forfeiting proceeds of crime; and

(h) assuring restitution to victims of crime.

3. Unless otherwise provided by this Treaty, assistance shall be provided for any offense under the laws of the Requesting State.

4. This Treaty is intended solely for mutual legal assistance between the Contracting States. The provisions of this Treaty shall not give rise to a right on the part of any

private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

ARTICLE 2

Locating or Identifying Persons

The Requested State shall make thorough efforts to ascertain the location or identity of persons specified in the request.

ARTICLE 3

Serving Documents

1. The Requested State shall cause service of any legal document transmitted for this purpose by the Requesting State.

2. Any request for the service of a document requiring the appearance of a person before an authority in the Requesting State shall be transmitted a reasonable time before the scheduled appearance.

3. The Requested State shall return as proof of service a dated receipt signed by the person served or a declaration signed by the officer making service, specifying the form and date of service.

ARTICLE 4

Appearance of Witnesses and Experts in the Requesting State

1. If the Requesting State considers that the personal appearance of a witness or expert before its judicial authorities is particularly necessary, it may so state in its request, and the Requested State shall invite the witness or expert to appear. The Requested State shall promptly inform the Requesting State of the reply of the witness or expert.

2. The witness or expert shall be appropriately reimbursed by the Requesting State for travel expenses and subsistence incurred in complying with the request. If the witness or expert so requests, the Requesting State may provide an advance with respect to those travel expenses and subsistence; this advance may be provided through its embassy in the Requested State.

3. The witness or expert who has failed to answer a summons to appear, service of which has been requested, shall not be subjected to any punishment or measure of restraint in the Requested State, even if the summons contains a notice of penalty.

ARTICLE 5

Providing Information and Items in the Possession of Government Offices or Agencies

Upon request and for the purposes of this Treaty:

(a) the Requested State shall provide publicly available information and items, including documents or records, in the possession of a government office or agency;

(b) the Requested State may provide information and items, including documents or records, in the possession of a government office or agency, but not publicly available, to the same extent and under the same conditions as it would be available to its own law enforcement or judicial authorities. The Requested State in its discretion may deny the request entirely or in part.

ARTICLE 6

Taking Testimony and Producing Documents in the Requested State

1. A person from whom evidence is sought shall, if necessary, be compelled by subpoena to appear and to testify or to produce items, including documents, records and articles of evidence, to the same extent as in investigations or proceedings in the Requested State. Testimonial privileges under the laws of the Requesting State shall not be taken into consideration in the execution of requests under this Article, but any such claim shall be noted in the record.

2. On request, the Requested State shall state the date and place of the taking of testimony.

3. At the execution of a request, the Requested State shall permit the presence of the accused, counsel for the accused, and any other interested person specified in the request.

4. The executing authority shall provide any person permitted to be present the opportunity to pose questions for the person whose testimony is sought. The questions shall be posed in accordance with applicable procedures in the Requested State.

ARTICLE 7

Executing Requests for Search and Seizure

1. To the extent permitted under its laws, the Requested State shall execute a request for the search, seizure, and delivery of all items, including documents, records and articles of evidence, to the Requesting State if the request includes the information justifying such action under the laws of the Requested State. The search and seizure shall be carried out in accordance with the laws of that State.

2. The Requested State may condition the surrender of the items upon satisfactory assurances from the Requesting State that the items will be returned to the Requested

State as soon as practicable. Without such a condition, no obligation shall exist to return the items to the Requested State. The Requested State may also defer the surrender of items needed as evidence in that State.

3. The rights of third parties in such items shall be duly respected.

ARTICLE 8

Procedures Concerning Admissibility of Evidence

1. The Requesting State may ask the Requested State to follow particular procedures in executing a request under Article 5, 6, or 7 to ensure admissibility of the items produced or seized, and the Requested State shall follow these procedures, provided they are not prohibited by its laws.

2. The items seized in Belgium shall be held in custody by the office of the court clerk after being inventoried. Those items will be kept by that office at the disposal of the authorities of the United States of America. Upon request, that office shall provide, with the items delivered, attestations in compliance with the form appended to this Treaty and executed by each person having had possession of the items from the time of seizure. These attestations shall be admissible in evidence in the United States of America as proof of the truth of the matters set forth therein; no other attestation shall be required.

3. In the event of special circumstances, the Central Authorities shall consult concerning practical arrangements relating to the particular procedures to be followed.

ARTICLE 9

Transferring Persons in Custody in the Requested State to the Requesting State

1. A person in custody in the Requested State who is needed for purposes of assistance under this Treaty in the Requesting State shall be transported to the Requesting State if the person in custody consents and the Requested State has no reason to deny the transfer.

2. The Requested State may postpone execution of the request for as long as the presence of the person is necessary for an investigation or proceeding in the Requested State.

3. The Requesting State shall have the authority and obligation to keep the person in custody unless the Requested State has ordered release.

4. The Requesting State shall return a person not released under paragraph 3 to the custody of the Requested State as soon as circumstances permit unless otherwise agreed. The Requesting State shall not decline to return a person transferred because such person is a national of that State.

ARTICLE 10

Transferring Persons in Custody in the Requesting State to the Requested State

1. For purposes of assistance under this Treaty, the Requesting State may request the transfer to the Requested State of a person in its custody if the person in custody consents and the Requested State has no reason to deny the transfer.

2. The Requested State shall have the authority and obligation to keep that person in custody unless the Requesting State has ordered release.

3. The Requested State shall return a person not released under paragraph 2 to the custody of the Requesting State as soon as circumstances permit unless otherwise agreed. The Requested State shall not decline to return the person transferred because such person is a national of that State.

ARTICLE 11

Application of Articles 9 and 10

1. For purposes of Articles 9 and 10:

(a) The time spent in custody in the State to which a person has been transferred will be deducted from the time remaining to be served in the other State.

(b) The person transferred may not be prosecuted, detained or subjected to any other restriction of personal liberty in the State to which he has been transferred for acts or convictions prior to his transfer.

(c) The immunity provided in sub-paragraph b shall cease if the person transferred:

(i) having had for a period of 15 consecutive days an opportunity to leave the State to which he has been transferred, has remained; or

(ii) having left, has returned.

2. If the transferred person escapes, the State to which he has been transferred shall make every effort to arrest him.

3. Extradition proceedings shall not be required in order to effect the return of persons transferred under Article 9 or 10.

ARTICLE 12

Proceeds of Crime and Restitution to Victims

1. To the extent permitted by its domestic laws applicable at the time that the request is made, each Contracting State commits itself to grant assistance to:

(a) locate, trace, immobilize, seize and forfeit proceeds of crime; and

(b) assure restitution to victims.

2. The Central Authority of a Contracting State which has reason to believe that proceeds of crime may be discovered in the other State shall notify the Central Authority of that State which shall determine whether any action is appropriate and report as soon as possible on the action taken.

ARTICLE 12 bis

Identification of Bank Information

1 (a) Upon request of the Requesting State, the Requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts The Requested State shall promptly communicate the results of its enquiries to the Requesting State.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;

(ii) information in the possession of non-bank financial institutions, or

(iii) financial transactions unrelated to accounts

2. In addition to the requirements of Article 15(1) of this Treaty, a request for information described in paragraph 1 of this Article shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions;

(b) sufficient information to enable the competent authority of the Requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the Requested State may have the information requested; and

(ii) conclude that the information sought relates to the criminal investigation or proceeding; and

c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic notes between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

(a) the Minister of Justice of Belgium, and

(b) for the United States of America, the attaché responsible for Belgium of the:

- U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;
- U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;
- U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. The Kingdom of Belgium and the United States of America shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both States, and with respect to such other criminal activity as they may notify each other.

5. The Requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article, in accordance with the other provisions of this Treaty.

Article 12 ter

Joint Investigative Teams

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and the Kingdom of Belgium for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union where deemed appropriate by the United States of America and the Kingdom of Belgium.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offenses, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other States having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

Article 12 quater

Video Conferencing

1. The use of video transmission technology shall be available between the United States of America and the Kingdom of Belgium for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the Requested State. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under this Treaty.

2. The Requesting and Requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

3. Without prejudice to any jurisdiction under the law of the Requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the Requested State in the same manner as if it had been committed in the course of its domestic proceedings.

4. This Article is without prejudice to the use of other means for obtaining of testimony in the Requested State available under applicable treaty or law.

5. The Requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements.

ARTICLE 13

Limitations on Assistance

1. The Central Authority of the Requested State may deny a request to the extent that:

(a) execution of the request would prejudice the sovereignty, security or other essential public interests of the Requested State;

(b) the request relates to an offense under military law which would not be an offense under ordinary criminal law; or

(c) the request does not comply with the provisions of this Treaty.

2. The Central Authority of the Requested State may also deny a request if it involves a political offense. This paragraph shall not apply to any offense which the Contracting States may consider not be to a political offense under any other international agreement to which they are parties.

3. Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

4. The Central Authority of the Requested State may postpone execution of a request or grant it subject to conditions if execution would interfere with an ongoing investigation or legal proceeding in the Requested State.

5. The Central Authority of the Requested State shall inform the Central Authority of the Requesting State as soon as possible of the reason for denying or postponing the execution of a request.

ARTICLE 13 bis

Limitations on Use to Protect Personal and Other Data

1. The Requesting State may use any evidence or information obtained from the Requested State:

(a) for the purpose of its criminal investigations and proceedings;

(b) for preventing an immediate and serious threat to its public security;

(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

(i) set forth in subparagraph (a); or
(ii) for which mutual legal assistance was rendered under Article 1 (1 bis) of this Treaty;

(d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

(e) for any other purpose, only with the prior consent of the Requested State.

2. (a) This Article shall not prejudice the ability of the Requested State in accordance with this Treaty to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the Requested State may require the Requesting State to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the Requesting State for processing personal data may not be imposed by the Requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the Requesting State, the Requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested State may consult with the Requesting State to determine the extent to which the evidence and information can be protected.

ARTICLE 14

Protecting Confidentiality

Upon the request of the Requesting State, the Requested State shall use its best efforts to keep confidential a request and its contents. If the request cannot be executed without breaching the required confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of the Requesting State, which shall then decide whether the request should nevertheless be executed.

ARTICLE 15

Contents of Requests

1. A request for assistance shall indicate:

(a) the name of the authority conducting the investigation or proceeding to which the request relates;

(b) the subject matter and nature of the investigation or proceeding;

(c) a description of the information or item sought or the action to be performed; and

(d) the purpose for which the information, item or action is sought.

2. To the extent necessary and possible, a request shall include:

(a) available information on the identity and whereabouts of a person to be located;

(b) the identity and location of a person to be served, that person's relationship to the proceeding and the manner in which service is to be made;

(c) the identity and location of persons from whom evidence is sought;

(d) a description of the manner in which any testimony is to be taken and recorded;

(e) a list of questions to be answered;

(f) a precise description of the place to be searched and the items to be seized;

(g) a description of any particular procedure to be followed in executing the request; and

(h) information relating to the allowance to which the witness or expert appearing in the Requesting State may be entitled.

ARTICLE 16

Executing Requests and Return of Items

1. The Central Authority of the Requested State shall promptly comply with the request or, when appropriate, transmit it for execution to the authority having jurisdiction, which shall make best efforts to execute the request. The judicial authorities of the Requested State shall have jurisdiction to issue subpoenas, search warrants or other orders necessary to execute the request.

2. Requests shall be executed according to the domestic laws and procedures of the Requested State except to the extent that this Treaty provides otherwise. Procedures specified in the request, even if unfamiliar to the Requested State, shall be followed except to the extent specifically prohibited by the laws of the Requested State.

3. The Requested State may furnish copies of items, including documents, records, and articles of evidence, obtained in executing a request. Upon application of the Requesting State, the Requested State shall make every effort to furnish original items.

4. Except as provided in Article 7, the Requesting State shall return any items furnished in execution of requests for assistance as soon as possible unless the Requested State waives their return.

ARTICLE 17

Central Authorities

1. Except as otherwise provided, all requests for assistance shall be made and executed through a Central Authority for each Contracting State. The Central Authorities of the two States shall communicate directly with each other for the purpose of carrying out the provisions of this Treaty.

2. For the purposes of this Treaty, the term "Central Authority" means:

(a) for the Kingdom of Belgium, the Minister of Justice or his representative or delegate;

(b) for the United States of America, the Attorney General or officials designated by him.

3. Requests for mutual legal assistance, and communications related thereto, may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the Requested State. The Requested State may respond to the request by any such expedited means of communication.

ARTICLE 18

Costs and Translations

1. The Requested State shall render assistance without cost to the Requesting State except for fees of private experts authorized by the request.

2. The Requesting State shall bear all expenses related to the transfer under Articles 9 and 10 of a person in custody.

2 bis. Unless otherwise agreed by the Requesting and Requested States, the Requesting State shall bear the costs associated with establishing and servicing a video transmission pursuant to Article 12 quater. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the Requested State) shall be borne in accordance with the other provisions of this Article.

3. If during the execution of the request it becomes apparent that expenses of an extraordinary nature are required to fulfill the request, the Central Authorities shall consult to determine the terms and conditions under which the execution of the request may continue.

4. Requests under this Treaty shall be provided in English and either French or Dutch; however, letters of transmission from the Central Authority need not be translated. Attachments to such requests shall be translated as necessary by the Requesting State. Translation of documents provided pursuant to requests is incumbent on the Requesting State.

ARTICLE 19

Other Treaties and Domestic Laws

Assistance and procedures provided by this Treaty shall not impede any assistance or procedure available under other international conventions or arrangements or under the domestic laws and practices of the Contracting States.

ARTICLE 20

Termination

Either Contracting State may terminate this Treaty at any time by giving written notice to the other Contracting State. The termination shall be effective six months after the date of such notice.

FORM

I, the undersigned, __(Family Name), (Forenames)_____,

__(Address)_____,

__(Title or Function)_____,

attest on penalty of criminal punishment for false statements or attestation that I:

-- seized the articles listed below from __(person)_____on

_____(date)___ at ____(place)_____(*)

-- received custody of the articles listed below from _____(person)_____ on

_____(date)___ at ____(place)_____(*)

Description of articles:

I declare that I relinquished custody of those articles on _____(date)___ at ____(place)_____ to: __(Name(s)), (Forenames)_____

__(Address)_____

__(Title or Function)_____.

I declare that, while they were in my custody, these articles were:

-- in no way altered. (*)

-- altered in the following manner: (*)

DONE this _____ day of _____, _____, at _(place)_____ .

_____(signature)_____

(*) cross out the inapplicable statements

Instrument as contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003, as to the application of the Treaty between the Government of the United States of America and the Government of the Republic of Cyprus on Mutual Legal Assistance in Criminal Matters signed 20 December 1999

1. As contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the Governments of the United States of America and the Republic of Cyprus acknowledge that, in accordance with the provisions of this Instrument, the U.S.-EU Mutual Legal Assistance Agreement is applied in relation to the bilateral Treaty between the Government of the United States of America and the Government of the Republic of Cyprus on Mutual Legal Assistance in Criminal Matters, signed 20 December 1999 (hereafter "the 1999 Mutual Legal Assistance Treaty") under the following terms:

(a) Article 4 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 17 bis of the Annex to this Instrument shall govern the identification of financial accounts and transactions, in addition to any authority already provided under the 1999 Mutual Legal Assistance Treaty;

(b) Article 5 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 17 ter of the Annex to this Instrument shall govern the formation and activities of joint investigative teams, in addition to any authority already provided under the 1999 Mutual Legal Assistance Treaty;

(c) Article 6 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Articles 6 and 17 quater of the Annex to this Instrument shall govern the taking of testimony of a person located in the Requested State by use of video transmission technology between the Requesting and Requested States, in addition to any authority already provided under the 1999 Mutual Legal Assistance Treaty;

(d) Article 7 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 4(1) of the Annex to this Instrument shall govern the use of expedited means of communication, in addition to any authority already provided under the 1999 Mutual Legal Assistance Treaty;

(e) Article 8 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 1(1 bis) of the Annex to this Instrument shall govern the providing of mutual legal assistance to the administrative authorities concerned, in addition to any authority already provided under the 1999 Mutual Legal Assistance Treaty; and

(f) Article 9 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 7 of the Annex to this Instrument shall govern the limitation on use of information or evidence provided to the Requesting State, and the conditioning or refusal of assistance on data protection grounds.

2. The Annex reflects the integrated text of the provisions of the 1999 Mutual Legal Assistance Treaty and the U.S.-EU Mutual Legal Assistance Agreement that shall apply upon entry into force of this Instrument.

3. In accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall apply to offenses committed before as well as after it enters into force.

4. This Instrument shall not apply to requests made prior to its entry into force; except that, in accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, Articles 4(1), 6, and 17 quarter of the Annex shall be applicable to requests made prior to such entry into force.

5. (a) This Instrument shall be subject to the completion by the United States of America and the Republic of Cyprus of their respective applicable internal procedures for entry into force. The Governments of the United States of America and the Republic of Cyprus shall thereupon exchange instruments indicating that such measures have been completed. This Instrument shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement.

(b) In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall be terminated and the 1999 Mutual Legal Assistance Treaty shall be applied. The Governments of the United States of America and the Republic of Cyprus nevertheless may agree to continue to apply some or all of the provisions of this Instrument.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Instrument.

DONE at Nicosia, in duplicate, this 20th day of January 2006, in the English and Greek languages, both texts being equally authentic. In case of divergence the English text shall prevail.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF CYPRUS:

TREATY BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND
THE GOVERNMENT OF THE REPUBLIC OF CYPRUS
ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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Article 1
Scope of Assistance

1. The Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution, and prevention of offenses, and in proceedings related to criminal matters.

1. bis (a) Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

(b) Requests for assistance under this paragraph shall be transmitted between the Central Authorities designated pursuant to Article 2 of this Treaty, or between such other authorities as may be agreed by the Central Authorities.

2. Assistance shall include:
   (a) taking the testimony or statements of persons;
   (b) providing documents, records, and other items;
   (c) locating or identifying persons or items;
   (d) serving documents;
   (e) transferring persons in custody for testimony or other purposes;
   (f) executing searches and seizures;
   (g) assisting in proceedings related to immobilization and forfeiture of assets; restitution; collection of fines; and
   (h) any other form of assistance not prohibited by the laws of the Requested State.

3. Except as otherwise provided in this Treaty, assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution, or proceeding in the Requesting State would constitute an offense under the laws of the Requested State.

4. This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

Article 2
Central Authorities

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.

2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General. For the Republic of Cyprus, the Central Authority shall be the Minister of Justice and Public Order or a person designated by the Minister.

3. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

4. In cases of urgency the Central Authorities may transmit requests through the International Criminal Police Organization (INTERPOL).

Article 3
Limitations on Assistance

1. The Central Authority of the Requested State may deny assistance if:

(a) the request relates to a political offense or an offense under military law that would not be an offense under ordinary criminal law;

(b) the execution of the request would prejudice the security or similar essential interests of the Requested State;

(c) the execution of the request would violate the Constitution of the Requested State or the obligations of the Requested State under any international multilateral treaty relating to human rights; or

(d) the request is not made in conformity with the Treaty.

2. Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting State to

consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

3. If the Central Authority of the Requested State denies assistance pursuant to this Article, it shall inform the Central Authority of the Requesting State of the reasons for the denial.

Article 4
Form and Contents of Requests

1. (a) A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another form in urgent situations. If the request is not in writing, it shall be confirmed in writing within ten days unless the Central Authority of the Requested State agrees otherwise. For purposes of this paragraph, requests transmitted by fax or e-mail shall be considered to be in writing.

(b) Communications related to requests for assistance may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the Requested State. The Requested State may respond by any such expedited means of communication.

(c) The request shall be in the language of the Requesting State accompanied by a translation in the language of the Requested State unless otherwise agreed.

2. The request shall include the following.

(a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;

(b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offenses that relate to the matter;

(c) a description of the evidence, information, or other assistance sought; and

(d) a statement of the purpose for which the evidence, information, or other assistance is sought.

3. To the extent necessary and possible, a request shall also include:

(a) information on the identity and location of any person from whom evidence is sought;

(b) information on the identity and location of a person to be served, that person's relationship to the proceeding, and the manner in which service is to be made;

(c) information on the identity and suspected location of a person or item to be located;

(d) a precise description of the place or person to be searched and of the item to be seized;

(e) a description of the manner in which any testimony or statement is to be taken and recorded;

(f) a description of the testimony or statement sought, which may include a list of questions to be asked of a person;

(g) a description of any particular procedure to be followed in executing the request;

(h) information as to the allowances and expenses to which a person asked to appear outside of the Requested State will be entitled; and

(i) any other information that may be brought to the attention of the Requested State to facilitate the execution of the request.

Article 5
Execution of Requests

1. The Central Authority of the Requested State shall promptly execute the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request. The competent judicial or other authorities of the Requested State shall have power to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. The Central Authority of the Requested State shall make all necessary arrangements for representation of the Requesting State in the execution of a request for assistance in the Requested State.

3. Requests shall be executed according to the internal laws and procedures of the Requested State except to the extent that this Treaty provides otherwise. Procedures specified in the request shall be followed except to the extent that those procedures cannot lawfully be followed in the Requested State. Where neither the Treaty nor the request specifies a particular procedure, the request shall be executed in accordance with the appropriate procedure under the laws applicable for criminal investigations or proceedings in the Requested State.

4. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that State, it may postpone execution, or make execution subject to conditions determined to be necessary after consultations with the Central Authority of the Requesting State. If the Requesting State accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Central Authority of the Requesting State. If the request cannot be executed without breaching such confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of the Requesting State, which shall then determine whether the request should nevertheless be executed.

6. The Central Authority of the Requested State shall respond to reasonable inquiries by the Central Authority of the Requesting State concerning progress toward execution of the request.

7. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of a request. If execution of the request is denied, delayed, or postponed, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the reasons for the denial, delay, or postponement.

Article 6
Costs

1. The Requested State shall pay all costs relating to the execution of a request, including the costs of representation, except for the following, which shall be paid by the Requesting State:

(a) the fees of experts;

(b) the costs of translation, interpretation, and transcription;

(c) the allowances and expenses related to travel of persons pursuant to Articles 10 and 11; and

(d) the costs associated with establishing and servicing a video transmission pursuant to Article 17 quater, unless otherwise agreed by the Requesting and Requested States; other costs arising in the course of providing such assistance (including costs associated with travel of participants in the Requested State) shall be borne in accordance with the other provisions of this Article.

2. If during the execution of a request it becomes apparent that complete execution will entail expenses of an extraordinary nature, the Central Authorities shall consult to determine the terms and conditions under which execution may continue.

Article 7
Limitations on Use

1. The Requested State may require that the Requesting State limit the use of any evidence or information obtained from the Requested State to the following purposes:

(a) for the purpose of its criminal investigations and proceedings;

(b) for preventing an immediate and serious threat to its public security;

(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

(i) set forth in subparagraph (a); or
(ii) for which mutual legal assistance was rendered under Article 1 (1 bis) of this Treaty;

(d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

(e) for any other purpose, only with the prior consent of the Requested State.

2. (a) This Article shall not prejudice the ability of the Requested State in accordance with this Treaty to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the Requested State may require the Requesting State to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the Requesting State for processing personal data may not be imposed by the Requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the Requesting State, the Requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested State may consult with the Requesting State to determine the extent to which the evidence and information can be protected.

4. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential or be used only subject to terms and conditions it may specify. If the Requesting State accepts the information or evidence subject to such conditions, the Requesting State shall use its best efforts to comply with the conditions.

Article 8
Testimony or Evidence in the Requested State

1. A person in the Requested State from whom testimony or evidence is requested shall be compelled, if necessary, to appear and testify or give statements or produce items, including documents and records and articles of evidence.

2. Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.

3. The Requested State shall permit the presence of such persons as specified in the request during the execution of the request and shall allow such persons to question the person giving the testimony or evidence.

4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requested State, the claim shall be resolved in accordance with the laws of the Requested State. If, however, the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by the authorities of that State.

5. Evidence that has been produced in the Requested State pursuant to this Article or that has been the subject of testimony taken under this Article shall, upon request, be authenticated by an attestation, including, in the case of business records, authentication in the manner indicated in Form A appended to this Treaty. The absence or nonexistence of such records shall, upon request, be certified through the use of Form B appended to this Treaty. Records authenticated by Form A, or Form B certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting State.

Article 9
Records of Government Agencies

1. The Requested State shall provide the Requesting State with copies of publicly available records, including documents or information in any form, in the possession of government departments and agencies in the Requested State.

2. The Requested State may provide copies of any records, including documents or information in any form, that are in the possession of a government department or agency in that State but that are not publicly available, to the same extent and under the same conditions as such copies would be available to the Requested State's own law enforcement or judicial authorities. The Requested State may in its discretion deny a request for records that are not publicly available entirely or in part.

3. Records produced pursuant to this Article shall, upon request, be authenticated by an official responsible for maintaining them through the use of Form C appended to this Treaty. The absence or nonexistence of such records shall, upon request, be certified by an official responsible for maintaining similar records through the use of Form D appended to this Treaty. No further authentication shall be necessary. Records authenticated by Form C, or Form D certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting State.

Article 10
Appearance Outside of the Requested State

1. When the Requesting State requests that a person in the Requested State appear outside the Requested State, the Requested State shall invite the person to do so. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the person's response.

2. The Requesting State shall indicate the extent to which the person's expenses will be paid. A person who agrees to appear may ask that the Requesting State advance money to cover these expenses. This advance may be provided through the Embassy or a consulate of the Requesting State.

3. The Central Authority of the Requesting State may, in its discretion, determine that a person appearing in the Requesting State pursuant to this Article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions that preceded the person's departure from the Requested State.

4. The safe conduct provided for by this Article shall cease seven days after the Central Authority of the Requesting State has notified the Central Authority of the Requested State that the person's presence is no longer required, or when the person, having left the Requesting State, voluntarily returns. The Central Authority of the Requesting State may, in its discretion, extend this period for up to fifteen days if it determines that there is good cause.

Article 11
Transfer of Persons in Custody

1. A person in the custody of the Requested State whose presence outside of the Requested State is sought for purposes of assistance under this Treaty shall be

transferred from the Requested State for that purpose if the person consents and if the Central Authorities of both States agree.

2. A person in the custody of the Requesting State whose presence in the Requested State is sought for purposes of assistance under this Treaty may be transferred from the Requesting State to the Requested State for that purpose if the person consents and if the Central Authorities of both States agree.

3. For purposes of this Article:

(a) the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the sending State;

(b) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities;

(c) the receiving State shall not require the sending State to initiate extradition or any other proceedings for the return of the person transferred; and

(d) the person transferred shall receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State.

(e) where the receiving State is a third State, the Requesting State shall make all arrangements necessary to meet the requirements of this paragraph.

Article 12
Transit of Persons in Custody

1. The Requested State may, subject to any constitutional limitations, authorize the transit through its territory of a person held in custody, by the Requesting State or a third State, whose personal appearance has been requested by the Requesting State in an investigation, prosecution, or proceeding.

2. The Requested State shall have the authority and the obligation to keep the person in custody during transit.

Article 13
Location or Identification of Persons or Items

The Requested State shall use its best efforts to ascertain the location or identity in the Requested State of persons or items specified in a request.

Article 14
Service of Documents

1. The Requested State shall use its best efforts to effect service of any document relating, in whole or in part, to any request for assistance made by the Requesting State under the provisions of this Treaty.

2. The Requesting State shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting State a reasonable time before the scheduled appearance.

3. The Requested State shall return a proof of service in the manner specified in the request.

Article 15
Search and Seizure

1. The Requested State shall, to the extent permitted by its law, execute a request that it search for, seize, and transfer any item to the Requesting State if the request includes the information justifying such action under the laws of the Requested State.

2. Upon request, every official who has custody of a seized item shall certify, through the use of Form E appended to this Treaty, the identity of the item, the continuity of its custody, and any changes in condition. No further certification shall be required. The Forms shall be admissible in evidence in the Requesting State.

3. The Central Authority of the Requested State may require that the Requesting State agree to terms and conditions deemed to be necessary to protect third party interests in the item to be transferred.

Article 16
Return of Items

The Central Authority of the Requested State may require that the Central Authority of the Requesting State return, as soon as possible, any items, including documents, records, and articles of evidence furnished to it in execution of a request under this Treaty.

Article 17
Proceeds and Instrumentalities of Offenses

1. If the Central Authority of one Party becomes aware that proceeds or instrumentalities of offenses that may be forfeitable or otherwise subject to seizure are located in the other Party, it may so inform the Central Authority of the other Party. If

the Party receiving such information has jurisdiction in this regard, it may present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country. The Central Authority of the Party that received the information shall inform the Central Authority of the Party that provided the information of the action taken.

2. The Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions. This may include action to temporarily immobilize the proceeds or instrumentalities pending further proceedings.

3. The Party that has custody over proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws. Either Party may transfer to the other Party all or part of such assets, or the proceeds of their sale, to the extent not prohibited by the transferring Party's laws and upon such terms as it deems appropriate.

Article 17 bis
Identification of Bank Information

1. (a) Upon request of the Requesting State, the Requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The Requested State shall promptly communicate the results of its enquiries to the Requesting State.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;

(ii) information in the possession of non-bank financial institutions; or

(iii)financial transactions unrelated to accounts.

2. In addition to the requirements of Article 4(2) of this Treaty, a request for information described in paragraph 1 shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions; and

(b) sufficient information to enable the competent authority of the Requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the Requested State may have the information requested; and
(ii) conclude that the information sought relates to the criminal investigation or proceeding; and

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic notes between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

(a) for the Republic of Cyprus, its Central Authority identified under Article 2 of this Treaty, and

(b) for the United States of America, the attaché responsible for the Republic of Cyprus of the:

(i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;
(ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;
(iii)U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. The Republic of Cyprus shall provide assistance under this Article with respect to offenses punishable by a penalty involving deprivation of liberty or a detention order of a maximum period of at least four years in the Requesting State and at least two years in the Requested State. The United States of America shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both the Requesting and Requested States, and with respect to such other criminal activity as the United States of America may notify the Republic of Cyprus.

5. The Requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the provisions of this Treaty.

Article 17 ter
Joint Investigative Teams

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and the Republic of Cyprus for the purpose

of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union where deemed appropriate by the United States of America and the Republic of Cyprus.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offenses, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other States having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

Article 17 quater
Video Conferencing

1. The use of video transmission technology shall be available between the United States of America and the Republic of Cyprus for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the Requested State. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under this Treaty.

2. The Requesting and Requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

3. Without prejudice to any jurisdiction under the law of the Requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the Requested State in the same manner as if it had been committed in the course of its domestic proceedings.

4. This Article is without prejudice to the use of other means for obtaining of testimony in the Requested State available under applicable treaty or law.

5. The Requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements.

Article 18
Compatibility with Other Arrangements

Assistance and procedures set forth in this Treaty shall not prevent either Party from granting assistance to the other Party through the provisions of other applicable international agreements, or through the provisions of its national laws. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement, or practice that may be applicable.

Article 19
Consultation and Resolution of Disputes

1. The Central Authorities of the Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

2. Any dispute arising out of the interpretation, application, or implementation of this Treaty shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach an agreement.

Article 20
Termination

Either Party may terminate this Treaty by means of written notice to the other Party. Termination shall take effect six months following the date of receipt of the notification.

Form A
CERTIFICATION OF BUSINESS RECORDS

I, _____(name), attest on penalty of criminal punishment for false statement or attestation that I am employed by/associated with _____(name of business from which documents are sought) in the position of _____(business position or title) and by reason of my position am authorized and qualified to make this attestation. Each of the records attached hereto is the original or a duplicate of the original record in the custody of the above-named business that:

(A) was made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

(B) was kept in the course of a regularly conducted business activity;

(C) was made by the business as a regular practice; and

(D) if not an original record, is a duplicate of the original.

_____
date of execution

_____
place of execution

_____
signature

Sworn to or affirmed before me, _____(name), a judicial officer, this _____ day of _____, 20__.

Form B

CERTIFICATION OF ABSENCE OR NONEXISTENCE OF BUSINESS RECORDS

I, _____(name), attest on penalty of criminal punishment for false statement or attestation that I am employed by/associated with _____(name of business from which documents are sought) in the position of _____(business position or title) and by reason of my position am authorized and qualified to make this attestation.

As a result of my employment/association with the above-named business, I am familiar with the business records it maintains. The business maintains records that are:

(A) made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

(B) kept in the course of a regularly conducted business activity; and

(C) made by the business as a regular practice.

Among the records so maintained are records of individuals and entities that have accounts or otherwise transact business with the above-named business. I have made or caused to be made a diligent search of those records. No records have been found reflecting any business activity between the business and the following individuals and entities:

_____
_____
_____
_____.

_____
date of execution

_____
place of execution

_____
signature

Sworn to or affirmed before me, _____(name), a judicial officer, this _____day of _____, 20__.

Form C
CERTIFICATION OF OFFICIAL RECORDS

I, _____ (name), attest on penalty of criminal punishment for false statement or attestation that:

1. _____(name of office or agency) is a government office or agency of _____(country) and is authorized by law to maintain official records setting forth matters authorized by law to be reported and recorded or filed;

2. my position with the above-named public authority is _____(official title);

3. in my official capacity I have caused the production of true and accurate copies of records maintained by that public authority; and

4. those copies are described below and attached.

Description of Documents:

_____
signature

_____
date

Official Seal

Form D

CERTIFICATION OF ABSENCE OR NONEXISTENCE OF OFFICIAL RECORDS

I, _____ (name), attest on penalty of criminal punishment for false statement or attestation that:

1. _____(name of office or agency) is a government office or agency of _____(country) and is authorized by law to maintain official records setting forth matters authorized by law to be reported and recorded or filed;

2. records of the type described below set forth matters that are authorized by law to be reported and recorded or filed, and such matters regularly are recorded or filed by the above-named public authority;

3. my position with the above-named public authority is _____(official title);

4. in my official capacity I have caused the production of true and accurate copies of records maintained by that public authority; and

5. no such records have been found to exist therein.

Description of Documents:

_____
signature

_____
date

Official Seal

Form E
CERTIFICATION WITH RESPECT TO SEIZED ITEMS

I, _____ (name), attest on penalty of criminal punishment for false statement or attestation that:

1. My position with the Government of _____(country) is _____(official title).

2. I received custody of the items listed below from _____(name of person) on _____(date), at _____(place); and

3. I relinquished custody of the items listed below to _____(name of person) on _____(date), at _____(place) in the same condition as when I received them (or, if different, as noted below).

Description of Articles:

Changes in condition while in my custody:

_____
date of execution

_____
place of execution

_____
signature

Official Seal

Supplementary Treaty on Mutual Legal Assistance in Criminal Matters between the United States of America and the Czech Republic

As contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed in Washington on 25 June 2003 (hereafter "the Agreement between the United States of America and the European Union"), the United States of America and the Czech Republic have agreed to amend the Treaty between the United States of America and the Czech Republic on Mutual Legal Assistance in Criminal Matters of 4 February 1998 (hereafter "the Mutual Legal Assistance Treaty") under the following terms:

Article 1

Article 2, paragraphs 1 and 2, of the Mutual Legal Assistance Treaty shall be replaced by the following:

"1. Except as otherwise provided in this Treaty, the Contracting States shall seek and obtain assistance through their Central Authorities. The Central Authority for the Czech Republic shall be the Office of the Prosecutor General and the Ministry of Justice. The Central Authority for the United States shall be the Attorney General or such persons in the Department of Justice as the Attorney General designates.

2. The Central Authority for the Czech Republic will make requests on behalf of prosecutors and courts. The Central Authority for the United States will make requests on behalf of prosecutors, investigators with criminal law enforcement jurisdiction, and agencies and entities with specific statutory or regulatory authority to refer matters for criminal prosecution. Requests under this paragraph from agencies or entities with specific statutory or regulatory authority to refer matters for criminal prosecution shall be transmitted between the Central Authorities, or between such other authorities as may be agreed by the Central Authorities."

Article 2

Article 4, paragraph 1, of the Mutual Legal Assistance Treaty shall be replaced by the following:

"1. A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another form in urgent situations. In any such situation, the request shall be confirmed in writing within ten days unless the Central Authority of the Requested State agrees otherwise. Requests transmitted by fax or e-mail shall be considered to be in writing. Communications related to requests for assistance may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the Requested State. The Requested State may respond by any such expedited means of communication. The request, including any attachments, shall be in the language of the Requested State unless agreed otherwise. The Requested State shall have no obligation to translate the response, including any attachments."

Article 3

A new sub-paragraph shall be introduced after sub-paragraph (c) of Article 6, paragraph 1, of the Mutual Legal Assistance Treaty. It shall read as follows:

"(d) the costs associated with establishing and servicing a video transmission pursuant to Article 20c, unless otherwise agreed by the Requesting and Requested States; other costs arising in the course of providing such assistance (including costs associated with travel of participants in the Requested State) shall be borne in accordance with the other provisions of this Article."

Article 4

Article 7 of the Mutual Legal Assistance Treaty shall be replaced by the following:

"Article 7

Limitations on Use to Protect Personal and Other Data

1. The Requested State may require that the Requesting State limit its use of any evidence or information obtained from the Requested State to the following purposes:

(a) for the purpose of its criminal investigations and proceedings;

(b) for preventing an immediate and serious threat to its public security;

(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

(i) set forth in subparagraph (a); or

(ii) for which mutual legal assistance was rendered to agencies and entities with specific statutory or regulatory authority to refer matters for criminal prosecution under Article 2, paragraph 2;

(d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

(e) for any other purpose, only with the prior consent of the Requested State.

2. This Article shall not prejudice the ability of the Requested State in accordance with this Treaty to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this paragraph, the Requested State may require the Requesting State to give information on the use made of the evidence or information.

3. Generic restrictions with respect to the legal standards of the Requesting State for processing personal data may not be imposed by the Requested State as a condition under paragraph 2, to providing evidence or information."

Article 5

Article 8 of the Mutual Legal Assistance Treaty shall be replaced by the following:

"Article 8
Alteration of Conditions

Where, following disclosure to the Requesting State, the Requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested State may consult with the Requesting State to determine the extent to which the evidence or information can be protected."

Article 6

A new article shall be introduced after Article 20 of the Mutual Legal Assistance Treaty. It shall read as follows:

"Article 20a
Identification of Bank Information

1. Upon request of the Requesting State, the Requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The Requested State shall promptly communicate the results of its enquiries to the Requesting State.

2. The actions described in paragraph 1 may also be taken for the purpose of identifying:

(a) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;

(b) information in the possession of non-bank financial institutions; or

(c) financial transactions unrelated to accounts.

3. In addition to the requirements of Article 4, paragraph 2, of this Treaty, requests for information described in paragraphs 1 and 2 of this Article shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions;

(b) sufficient information to enable the competent authority of the Requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the Requested State may have the information requested; and

(ii) conclude that the information sought relates to the criminal investigation or proceeding; and

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

4. Requests for assistance under this Article shall be transmitted between:

(a) for the Czech Republic, the Central Authority mentioned in Article 2, and

(b) for the United States of America, the attaché responsible for the Czech Republic of the:

(i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;

(ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;

(iii) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

The United States of America or the Czech Republic may modify their respective designations made under this paragraph by exchange of diplomatic notes between the European Union and the United States of America.

5. The United States of America and the Czech Republic shall provide assistance under this Article with respect to money laundering and terrorist activities punishable under the laws of both the Requesting and Requested States, and with respect to other criminal activity for which such assistance is available under their domestic laws upon notification by exchange of diplomatic notes between them indicating that assistance for such activity will be provided on a reciprocal basis.

6. The Requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the other provisions of this Treaty."

Article 7

A new article shall be introduced after new Article 20a of the Mutual Legal Assistance Treaty. It shall read as follows:

"Article 20b
Joint Investigative Teams

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and the Czech Republic, for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union where deemed appropriate by the United States of America and the Czech Republic.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in the other State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offenses, as determined by the respective States concerned in accordance with domestic law.

3. The authorities determined by the respective States concerned pursuant to paragraph 2 shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other State(s) having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities."

Article 8

A new article shall be introduced after new Article 20b of the Mutual Legal Assistance Treaty. It shall read as follows:

"Article 20c
Video Conferencing

1. The use of video transmission technology shall be available between the United States of America and the Czech Republic for taking testimony in a proceeding for which mutual legal assistance is available of a witness, including an accused person, or expert, located in the Requested State. The Requested State shall permit the persons specified in the request to ask questions directly of such witness or expert. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under this Treaty, including Article 5.

2. The Requesting and Requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

3. Without prejudice to any jurisdiction under the law of the Requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the Requested State in the same manner as if it had been committed in the course of its domestic proceedings.

4. This Article is without prejudice to the use of other means for obtaining of testimony in the Requested State available under applicable treaty or law.

5. The Requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements."

Article 9

1. This Supplementary Treaty shall apply to offenses committed before as well as after it enters into force.

2. This Supplementary Treaty shall not apply to requests made prior to its entry into force; except that Articles 2, 3 and 8 of this Supplementary Treaty shall be applicable to requests made prior to such entry into force.

Article 10

This Supplementary Treaty shall be interpreted consistent with the Agreement between the United States of America and the European Union.

Article 11

1. This Supplementary Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged as soon as possible. This Supplementary Treaty shall enter into force on the date the Agreement between the United States of America and the European Union enters into force.

2. This Supplementary Treaty shall terminate on the date of termination of the Agreement between the United States of America and the European Union and the Mutual Legal Assistance Treaty shall be applied, unless the United States of America and the Czech Republic agree by exchange of diplomatic notes to continue to apply some or all of the provisions of this Supplementary Treaty.

3. When giving or receiving notice terminating the Agreement between the United States of America and the European Union, the United States of America shall at the same time inform the Czech Republic of such notice.

IN WITNESS WHEREOF, the undersigned, being duly authorized for this purpose, have signed this Supplementary Treaty.

DONE at Prague, this sixteenth day of May, 2006 in duplicate, in the English and Czech languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:

FOR THE CZECH REPUBLIC:

Instrument between the Kingdom of Denmark and the United States of America, as contemplated by Article 3(3) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003

1. As contemplated by Article 3(3) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the Governments of the Kingdom of Denmark and the United States of America acknowledge that, in accordance with the provisions of this Instrument, the U.S.-EU Mutual Legal Assistance Agreement is applied between them under the following terms:

(a) Article 4 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 1 of the Annex to this Instrument shall govern the identification of financial accounts and transactions;

(b) Article 5 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 2 of the Annex to this Instrument shall govern the formation and activities of joint investigative teams;

(c) Article 6 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 3 of the Annex to this Instrument shall govern the taking of testimony of a person located in the requested State by use of video transmission technology between the requesting and requested States;

(d) Article 7 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 4 of the Annex to this Instrument shall govern the use of expedited means of communication;

(e) Article 8 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 5 of the Annex to this Instrument shall govern the providing of mutual legal assistance to the administrative authorities concerned;

(f) Article 9 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 6 of the Annex to this Instrument shall govern the limitation on use of information or evidence provided to the requesting State, and the conditioning or refusal of assistance on data protection grounds;

(g) Article 10 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 7 of the Annex to this Instrument shall govern the circumstances under which a requesting State may seek the confidentiality of its request;

(h) Article 13 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 8 of the Annex to this Instrument shall govern the invocation by the requested State of grounds for refusal.

2. The Annex reflects the provisions of the U.S.-EU Mutual Legal Assistance Agreement that shall apply between the United States of America and the Kingdom of Denmark upon entry into force of this Instrument.

3. This Instrument and its Annex shall not apply to Greenland and the Faroe Islands unless the United States of America and the European Union, by exchange of diplomatic notes, duly confirmed by the Kingdom of Denmark in accordance with Article 16(1)(b) of the U.S.-EU Mutual Legal Assistance Agreement, agree otherwise.

4. In accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall apply to offenses committed before as well as after it enters into force.

5. This Instrument shall apply to requests made after its entry into force; nevertheless, Articles 3 and 4 of the Annex shall in accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, be applicable to requests pending in the requested State at the time this Instrument enters into force.

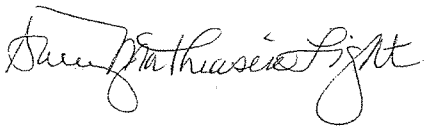
6. (a) This Instrument shall be subject to completion by the United States of America and the Kingdom of Denmark of their respective applicable internal procedures for entry into force. The Governments of the United States of America and the Kingdom of Denmark shall thereupon exchange instruments indicating that such measures have been completed. This Instrument shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement.

(b) In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall be terminated. The Governments of the United States of America and the Kingdom of Denmark nevertheless may agree to continue to apply some or all of the provisions of this Instrument.

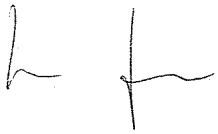
IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Instrument.

DONE at Copenhagen, in duplicate, this Thursday of 23 June 2005, in the English and Danish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF THE KINGDOM OF DENMARK:



ANNEX

Article 1
Identification of bank information

1 (a) Upon request of the requesting State, the requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The requested State shall promptly communicate the results of its enquiries to the requesting State.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;
(ii) information in the possession of non-bank financial institutions; or
(iii) financial transactions unrelated to accounts.

2. A request for information described in paragraph 1 of this Article shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions;

(b) sufficient information to enable the competent authority of the requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the requested State may have the information requested; and
(ii) conclude that the information sought relates to the criminal investigation or proceeding; and

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic notes between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

(a) The Danish Ministry of Justice, and

(b) for the United States of America, the attaché responsible for Denmark of the:

(i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;

(ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;

(iii)U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. The Kingdom of Denmark shall provide assistance under this Article with respect to offenses punishable by a penalty involving deprivation of liberty or a detention order of a maximum period of at least four years in the requesting State and at least two years in the requested State. The United States of America shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both the requesting and requested States, and such other criminal activity as to which the United States of America may notify the Kingdom of Denmark.

5. Assistance may not be refused under this Article on grounds of bank secrecy.

6. The requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the requirements of its domestic law.

Article 2
Joint investigative teams

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and the Kingdom of Denmark for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union where deemed appropriate by the United States of America and the Kingdom of Denmark.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offenses, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other States having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

Article 3
Video conferencing

1. The use of video transmission technology shall be available between the United States of America and the Kingdom of Denmark for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the requested State. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under the law of the requested State.

2. Unless otherwise agreed by the requesting and requested States, the requesting State shall bear the costs associated with establishing and servicing the video transmission. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the requested State) shall be borne as agreed upon by the requesting and requested States.

3. The requesting and requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

4. Without prejudice to any jurisdiction under the law of the requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the requested State in the same manner as if it had been committed in the course of its domestic proceedings.

5. This Article is without prejudice to the use of other means for obtaining of testimony in the requested State available under applicable treaty or law.

6. The requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements.

Article 4
Expedited transmission of requests

Requests for mutual legal assistance, and communications related thereto, may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the requested State. The requested State may respond to the request by any such expedited means of communication.

Article 5
Mutual legal assistance to administrative authorities

1. Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal

assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

2. Requests for assistance under this article shall be transmitted between the United States Department of Justice and the Danish Ministry of Justice, or between such other authorities as may be agreed by the Department of Justice and Ministry of Justice.

Article 6

Limitations on use to protect personal and other data

1. The requesting State may use any evidence or information obtained from the requested State:

(a) for the purpose of its criminal investigations and proceedings;
(b) for preventing an immediate and serious threat to its public security;
(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:
  (i) set forth in subparagraph (a); or
  (ii) for which mutual legal assistance was rendered under Article 5 of this Annex;
(d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and
(e) for any other purpose, only with the prior consent of the requested State.

2 (a) This Article shall not prejudice the ability of the requested State to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the requested State may require the requesting State to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the requesting State for processing personal data may not be imposed by the requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the requesting State, the requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the requested State may consult with the requesting State to determine the extent to which the evidence and information can be protected.

Article 7
Requesting State's request for confidentiality

The requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the requesting State. If the request cannot be executed without breaching the requested confidentiality, the Department or Ministry of Justice of the requested

State shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed.

Article 8
Refusal of assistance

Subject to Article 1(5) and 6(2)(b) of this Annex, the provisions of this Annex are without prejudice to the invocation by the requested State of grounds for refusal of assistance available pursuant to its applicable legal principles, including where execution of the request would prejudice its sovereignty, security, ordre public or other essential interests.

Instrument as contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003, as to the Application of the Treaty between the Government of the United States of America and the Government of the Republic of Estonia on Mutual Legal Assistance in Criminal Matters signed 2 April 1998

1. As contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the Governments of the United States of America and the Republic of Estonia acknowledge that, in accordance with the provisions of this Instrument, the U.S.-EU Mutual Legal Assistance Agreement is applied in relation to the bilateral Treaty between the Government of the United States of America and the Government of the Republic of Estonia on Mutual Legal Assistance in Criminal Matters, signed 2 April 1998 (hereafter "the 1998 Mutual Legal Assistance Treaty") under the following terms:

(a) Article 4 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 17 bis of the Annex to this Instrument shall govern the identification of financial accounts and transactions, in addition to any authority already provided under the 1998 Mutual Legal Assistance Treaty;

(b) Article 5 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 17 ter of the Annex to this Instrument shall govern the formation and activities of joint investigative teams, in addition to any authority already provided under the 1998 Mutual Legal Assistance Treaty;

(c) Article 6 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Articles 6 and 17 quater of the Annex to this Instrument shall govern the taking of testimony of a person located in the Requested State by use of video transmission technology between the Requesting and Requested States, in addition to any authority already provided under the 1998 Mutual Legal Assistance Treaty;

(d) Article 7 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 4(1) of the Annex to this Instrument shall govern the use of expedited means of communication, in addition to any authority already provided under the 1998 Mutual Legal Assistance Treaty;

(e) Article 8 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 1 (1 bis) of the Annex to this Instrument shall govern the providing of mutual legal assistance to the administrative authorities concerned, in addition to any authority already provided under the 1998 Mutual Legal Assistance Treaty; and

(f) Article 9 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 7 of the Annex to this Instrument shall govern the limitation on use of information or evidence provided to the Requesting State, and the conditioning or refusal of assistance on data protection grounds.

2. The Annex reflects the integrated text of the provisions of the 1998 Mutual Legal Assistance Treaty and the U.S.-EU Mutual Legal Assistance Agreement that shall apply upon entry into force of this Instrument.

3. In accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall apply to offenses committed before as well as after it enters into force.

4. This Instrument shall not apply to requests made prior to its entry into force; except that, in accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, Articles 4(1), 6 and 17 quater of the Annex shall be applicable to requests made prior to such entry into force.

5. (a) This Instrument shall be subject to the completion by the United States of America and the Republic of Estonia of their respective applicable internal procedures for entry into force. The Governments of the United States of America and the Republic of Estonia shall thereupon exchange instruments indicating that such measures have been completed. This Instrument shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement.

(b) In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall be terminated and the 1998 Mutual Legal Assistance Treaty shall be applied. The Governments of the United States of America and the Republic of Estonia nevertheless may agree to continue to apply some or all of the provisions of this Instrument.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Instrument.

DONE at Tallinn, in duplicate, this 8th day of February, 2006, in the English and Estonian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF ESTONIA:

TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF ESTONIA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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Article 1

Scope of Assistance

1. The Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution, and prevention of offenses, and in proceedings related to criminal matters.

1. bis (a) Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

(b) Requests for assistance under this paragraph shall be transmitted between the Central Authorities designated pursuant to Article 2 of this Treaty, or between such other authorities as may be agreed by the Central Authorities.

2. Assistance shall include:

(a) taking the testimony or statements of persons;
(b) providing documents, records, and other items;
(c) locating or identifying persons or items;
(d) serving documents;
(e) transferring persons in custody for testimony or other purposes;
(f) executing searches and seizures;
(g) assisting in proceedings related to immobilization and forfeiture of assets; restitution; collection of fines; and
(h) any other form of assistance not prohibited by the laws of the Requested State.

3. Assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution, or proceeding in the Requesting State would constitute an offense under the laws of the Requested State.

4. This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

Article 2

Central Authorities

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.

2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General. For the Republic of Estonia, the Central Authority shall be the Ministry of Justice or a person designated by the Minister of Justice.

3. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

Article 3

Limitations on Assistance

1. The Central Authority of the Requested State may deny assistance if:

(a) the request relates to an offense under military law that would not be an offense under ordinary criminal law;
(b) the request relates to a political offense;
(c) the execution of the request would prejudice the security or similar essential interests of the Requested State; or
(d) the request does not conform to the requirements of the Treaty.

2. Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

3. If the Central Authority of the Requested State denies assistance, it shall inform the Central Authority of the Requesting State of the reasons for the denial.

Article 4

Form and Contents of Requests

1. (a) Requests for mutual legal assistance and communications related thereto may be made and responded to by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the Requested State.

(b) In urgent situations, requests for mutual legal assistance may be made orally but shall be confirmed in writing within ten days unless the Central Authority of the Requested State agrees otherwise.

(c) The request shall be in the language of the Requested State unless otherwise agreed.

2. The request shall include the following:

(a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;
(b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offenses that relate to the matter;
(c) a description of the evidence, information, or other assistance sought; and
(d) a statement of the purpose for which the evidence, information, or other assistance is sought.

3. To the extent necessary and possible, a request shall also include:

(a) information on the identity and location of any person from whom evidence is sought;
(b) information on the identity and location of a person to be served, that person's relationship to the proceeding, and the manner in which service is to be made;
(c) information on the identity and suspected location of a person or item to be located;
(d) a precise description of the place or person to be searched and of the item to be seized;
(e) a description of the manner in which any testimony or statement is to be taken and recorded;
(f) a description of the testimony or statement sought, which may include a list of questions to be asked of a person;
(g) a description of any particular procedure to be followed in executing the request;
(h) information as to the allowances and expenses to which a person asked to appear in the Requesting State will be entitled; and
(i) any other information that may be brought to the attention of the Requested State to facilitate its execution of the request.

Article 5

Execution of Requests

1. The Central Authority of the Requested State shall promptly execute the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request. The Courts or other competent authorities of the Requested State shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. The Central Authority of the Requested State shall make all necessary arrangements for representation of the Requesting State in the execution of a request for assistance in the Requested State.

3. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. Procedures specified in the request shall be followed except to the extent that those procedures cannot lawfully be followed in the Requested State. Where neither the Treaty nor the request specifies a particular procedure, the request shall be executed in accordance with the appropriate procedure under the laws applicable for criminal investigations or proceedings in the Requested State.

4. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that State, it may postpone execution, or make execution subject to conditions determined to be necessary after consultations with the Central Authority of the Requesting State. If the Requesting State accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Central Authority of the Requesting State. If the request cannot be executed without breaching such confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of the Requesting State, which shall then determine whether the request should nevertheless be executed.

6. The Central Authority of the Requested State shall respond to reasonable requests by the Central Authority of the Requesting State concerning progress toward execution of the request.

7. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of a request. If execution of the request is denied, delayed, or postponed, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the reasons for the denial, delay, or postponement.

Article 6

Costs

1. The Requested State shall pay all costs relating to the execution of a request, including the costs of representation, except for the following:

(a) the fees of experts;
(b) the costs of translation, interpretation, and transcription;
(c) the allowances and expenses related to travel of persons traveling either in the

Requested State for the convenience of the Requesting State or pursuant to Articles 10 and 11; and

d) the costs associated with establishing and servicing a video transmission pursuant to Article 17 quater, unless otherwise agreed by the Requesting and Requested States; other costs arising in the course of providing such assistance (including costs associated with travel of participants in the Requested State) shall be borne in accordance with the other provisions of this Article.

2. If during the execution of a request it becomes apparent that complete execution will entail expenses of an extraordinary nature, the Central Authorities shall consult to determine the terms and conditions under which execution may continue.

Article 7

Limitations on Use

1. The Requested State may require that the Requesting State limit the use of any evidence or information obtained from the Requested State to the following purposes:

(a) for the purpose of its criminal investigations and proceedings;
(b) for preventing an immediate and serious threat to its public security;
(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:
    (i) set forth in subparagraph (a); or
    (ii) for which mutual legal assistance was rendered under Article 1 (1 *bis*) of this Treaty;
(d) for any other purpose, if the evidence or information has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and
(e) for any other purpose, only with the prior consent of the Requested State.

2.
(a) This Article shall not prejudice the ability of the Requested State in accordance with this Treaty to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the Requested State may require the Requesting State to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the Requesting State for processing personal data may not be imposed by the Requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the Requesting State, the Requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested State may consult with the Requesting State to determine the extent to which the evidence or information can be protected.

4. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential or be used only subject to terms and conditions that it may specify. If the Requesting State accepts the information or evidence subject to such conditions, the Requesting State shall use its best efforts to comply with the conditions.

Article 8

Testimony or Evidence in the Requested State

1. A person in the Requested State from whom evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and testify or produce items, including documents and records. A person who gives false testimony, either orally or in writing, in execution of a request shall be subject to prosecution in the Requested State in accordance with the criminal laws of that State.

2. Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.

3. The Requested State shall permit the presence of such persons as specified in the request during the execution of the request and shall allow such persons to question the person giving the testimony or evidence.

4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by the authorities of that State.

5. Evidence produced in the Requested State pursuant to this Article or that is the subject of testimony taken under this Article shall, upon request, be authenticated, by an attestation, including, with respect to business records, authentication in the manner indicated in Form A appended to this Treaty. The absence or nonexistence of such records shall, upon request, be certified through the use of Form B appended to this Treaty. Records authenticated by Form A, or Form B certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

Article 9

Records of Government Agencies

1. The Requested State shall provide the Requesting State with copies of publicly available records, including documents or information in any form, in the possession of an executive, legislative, or judicial authority in the Requested State.

2. The Requested State may provide copies of any records, including documents or information in any form, that are in the possession of an executive, legislative, or judicial authority in that State, but that are not publicly available, to the same extent and under the same conditions as such copies would be available to its own law enforcement or judicial authorities. The Requested State may in its discretion deny a request for records that are not publicly available entirely or in part.

3. Records produced pursuant to this Article shall, upon request, be authenticated by an official responsible for maintaining them through the use of Form C appended to this Treaty. The absence or nonexistence of such records shall, upon request, be certified by an official responsible for maintaining similar records through the use of Form D appended to this Treaty. No further authentication shall be necessary. Records authenticated by Form C, or Form D certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

Article 10

Testimony in the Requesting State

1. When the Requesting State requests the appearance of a person in that State, the Requested State shall invite the person to appear before the appropriate authority in the Requesting State. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the person's response.

2. The Requesting State shall indicate the extent to which the person's expenses will be paid. A person who agrees to appear may ask that the Requesting State advance money to cover these expenses. This advance may be provided through the Embassy or a consulate of the Requesting State.

3. The Central Authority of the Requesting State may, in its discretion, determine that a person appearing in the Requesting State pursuant to this Article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions that preceded the person's departure from the Requested State.

4. The safe conduct provided for by this Article shall cease seven days after the Central Authority of the Requesting State has notified the Central Authority of the Requested

State that the person's presence is no longer required, or when the person, having left the Requesting State, voluntarily returns. The Central Authority of the Requested State may, in its discretion, extend this period for up to fifteen days if it determines that there is good cause to do so.

Article 11

Transfer of Persons in Custody

1. A person in the custody of the Requested State whose presence outside the Requested State is sought for purposes of assistance under this Treaty shall be transferred from the Requested State for that purpose if the person consents and if the Central Authorities of the Requesting and the Requested States agree.

2. A person in the custody of the Requesting State whose presence in the Requested State is sought for purposes of assistance under this Treaty may be transferred from the Requesting State to the Requested State if the person consents and if the Central Authorities of both States agree.

3. For purposes of this Article:

(a) the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the sending State;
(b) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities;
(c) the receiving State shall not require the sending State to initiate extradition or any other proceedings for the return of the person transferred;
(d) the person transferred shall receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State; and
(e) where the receiving State is a third State, the Requesting State shall make all arrangements necessary to meet the requirements of this paragraph.

4. Safe conduct shall be provided in accordance with Article 10, paragraphs 3 and 4, except that the person shall be kept in custody for the offense for which the person is incarcerated in the sending State.

Article 12

Transit of Persons in Custody

1. The Requested State may authorize the transit through its territory of a person held in custody by the Requesting State or a third State, whose personal appearance has been requested by the Requesting State in an investigation, prosecution, or proceeding.

2. The Requested State shall have the authority and the obligation to keep the person in custody during transit.

Article 13

Location or Identification of Persons or Items

If the Requesting State seeks the location or identity of persons or items in the Requested State, the Requested State shall use its best efforts to ascertain the location or identity.

Article 14

Service of Documents

1. The Requested State shall use its best efforts to effect service of any document relating, in whole or in part, to any request for assistance made by the Requesting State under the provisions of this Treaty.

2. The Requesting State shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting State a reasonable time before the scheduled appearance.

3. The Requested State shall return a proof of service to the Requesting State in the manner specified in the request.

Article 15

Search and Seizure

1. The Requested State shall execute a request for the search, seizure, and transfer of any item to the Requesting State if the request includes the information justifying such action under the laws of the Requested State.

2. Upon request, every official who has had custody of a seized item shall certify, through the use of Form E appended to this Treaty, the identity of the item, the continuity of custody, and any changes in condition. No further certification shall be required. The certificates shall be admissible in evidence in the Requesting State.

3. The Central Authority of the Requested State may require that the Requesting State agree to the terms and conditions deemed to be necessary to protect third party interests in the item to be transferred.

Article 16

Return of Items

The Central Authority of the Requested State may require that the Central Authority of the Requesting State return, as soon as possible, any items, including documents, records, or articles of evidence, furnished to it in execution of a request under this Treaty.

Article 17

Assistance in Forfeiture Proceedings

1. The Central Authority of either Party may notify the Central Authority of the other Party when it becomes aware of proceeds or instrumentalities of offenses that are located in the other Party and may be forfeitable or otherwise subject to seizure under the laws of that Party. If the Party receiving such information has jurisdiction in this regard, it may present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country. The Central Authority of the Party that received the information shall inform the Central Authority of the Party that provided the information of the action taken.

2. The Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions. This may include action to temporarily immobilize the proceeds or instrumentalities pending further proceedings.

3. The Party that has custody over proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws. Either Party may transfer all or part of such assets, or the proceeds of their sale, to the other Party, to the extent permitted by the transferring Party's laws and upon such terms as it deems appropriate.

Article 17 bis

Identification of Bank Information

1.
(a) Upon request of the Requesting State, the Requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The Requested State shall promptly communicate the results of its enquiries to the Requesting State.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;
(ii) information in the possession of non-bank financial institutions; or
(iii) financial transactions unrelated to accounts.

2. In addition to the requirements of Article 4(2) of this Treaty, a request for information described in paragraph 1 shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions;

(b) sufficient information to enable the competent authority of the Requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the Requested State may have the information requested; and

(ii) conclude that the information sought relates to the criminal investigation or proceeding; and

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic notes between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

(a) for the Republic of Estonia, its Ministry of Justice, and

(b) for the United States of America, the attaché responsible for the Republic of Estonia of the:

(i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;

(ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;

(iii) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. The Republic of Estonia shall provide assistance under this Article with respect to offenses punishable under the laws of both the Requesting and Requested States. The United States of America shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both the Requesting and Requested States, and with respect to such other criminal activity as the United States of America may notify the Republic of Estonia.

5. The Requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the provisions of this Treaty.

Article 17 ter

Joint Investigative Teams

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and the Republic of Estonia for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union where deemed appropriate by the United States of America and the Republic of Estonia.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offenses, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other States having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

Article 17 quater

Video Conferencing

1. The use of video transmission technology shall be available between the United States of America and the Republic of Estonia for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the Requested State. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under this Treaty.

2. The Requesting and Requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

3. Without prejudice to any jurisdiction under the law of the Requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the Requested State in the same manner as if it had been committed in the course of its domestic proceedings.

4. This Article is without prejudice to the use of other means for obtaining of testimony in the Requested State available under applicable treaty or law.

5. The Requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements.

Article 18

Compatibility with Other Treaties

Assistance and procedures set forth in this Treaty shall not prevent either of the Parties from granting assistance to the other Party through the provisions of other applicable international agreements, or through the provisions of its national laws. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement, or practice that may be applicable.

Article 19

Consultation

The Central Authorities of the Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

Article 20

Termination

Either Party may terminate this Treaty by means of written notice to the other Party. Termination shall take effect six months following the date of notification.

Form A

CERTIFICATION OF BUSINESS RECORDS

I, ___ [name], attest on penalty of criminal punishment for false statement or attestation that I am employed by/associated with ___ [name of business from which documents are sought] in the position of ___ [business position or title] and by reason of my position am authorized and qualified to make this attestation. Each of the records attached hereto is a record in the custody of the above-named business that:

(A) was made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;
(B) was kept in the course of a regularly conducted business activity;
(C) was made by the business as a regular practice; and
(D) if not an original record, is a duplicate of the original.

___ [date of execution]

___ [place of execution]

___ [signature]

Form B

CERTIFICATION OF ABSENCE OR NONEXISTENCE OF BUSINESS RECORDS

I, ___ [name], attest on penalty of criminal punishment for false statement or attestation that I am employed by/associated with ___ [name of business from which documents are sought] in the position of ___ [business position or title] and by reason of my position am authorized and qualified to make this attestation. As a result of my employment/association with the above-named business, I am familiar with the business records it maintains. The business maintains records that are:

(A) made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;
(B) kept in the course of a regularly conducted business activity; and
(C) made by the business as a regular practice.

Among the records so maintained are records of individuals and entities that have accounts or otherwise transact business with the above-named business. I have made or caused to be made a diligent search of those records. No records have been found reflecting any business activity between the business and the following individuals and entities: ___.

___ [date of execution]

___ [place of execution]

___ [signature]

Form C

CERTIFICATION OF OFFICIAL RECORDS

I, ___ [name], attest on penalty of criminal punishment for false statement or attestation that:

1. ___ [name of office or agency] is a government office or agency of ___ [country] and is authorized by law to maintain official records setting forth matters authorized by law to be reported and recorded or filed;
2. my position with the above-named public authority is ___ [official title];
3. in my official capacity I have caused the production of true and accurate copies of records maintained by that public authority; and
4. those copies are described below and attached.

Description of Documents:

___ [signature]

___ [date]

Official Seal

Form D

CERTIFICATION OF ABSENCE OR NONEXISTENCE OF OFFICIAL RECORDS

I, ___ [name], attest on penalty of criminal punishment for false statement or attestation that:

1. ___ [name of office or agency] is a government office or agency of ___ [country] and is authorized by law to maintain official records setting forth matters authorized by law to be reported and recorded or filed;
2. records of the type described below set forth matters that are authorized by law to be reported and recorded or filed, and such matters regularly are recorded or filed by the above-named public authority;
3. my position with the above-named public authority is ___ [official title];
4. in my official capacity I have caused the production of true and accurate copies of records maintained by that public authority; and
5. no such records have been found to exist therein.

Description of Documents:

___ [signature]

___ [date]

Official Seal

Form E

CERTIFICATION WITH RESPECT TO SEIZED ITEMS

I, ___ [name], attest on penalty of criminal punishment for false statement or attestation that:

1. My position with the Government of ___ [country] is ___ [official title];
2. I received custody of the items listed below from ___ [name of person] on ___ [date], at ___ [place]; and
3. I relinquished custody of the items listed below to ___ [name of person] on ___ [date], at ___ [place] in the same condition as when I received them (or, if different, as noted below).

Description of Articles:

Changes in condition while in my custody:

___ [date of execution]

___ [place of execution]

___ [signature]

Official Seal

Treaty on Certain Aspects of Mutual Legal Assistance in Criminal Matters between the United States of America and the Republic of Finland

1. As contemplated by Article 3(3) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the Governments of the United States of America and the Republic of Finland acknowledge that, in accordance with the provisions of this Treaty, the U.S.-EU Mutual Legal Assistance Agreement is applied between them under the following terms:

(a) The aim of this Treaty is to facilitate mutual legal assistance between the United States of America and the Republic of Finland in accordance with the terms of the U.S.-EU Mutual Legal Assistance Agreement;

(b) Article 4 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 1 of the Annex to this Treaty shall govern the identification of financial accounts and transactions;

(c) Article 5 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 2 of the Annex to this Treaty shall govern the formation and activities of joint investigative teams;

(d) Article 6 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 3 of the Annex to this Treaty shall govern the taking of testimony of a person located in the requested State by use of video transmission technology between the requesting and requested States;

(e) Article 7 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 4 of the Annex to this Treaty shall govern the use of expedited means of communication;

(f) Article 8 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 5 of the Annex to this Treaty shall govern the providing of mutual legal assistance to the administrative authorities concerned;

(g) Article 9 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 6 of the Annex to this Treaty shall govern the limitation on use of information or evidence provided to the requesting State, and governing the conditioning or refusal of assistance on data protection grounds;

(h) Article 10 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 7 of the Annex to this Treaty shall govern the circumstances under which a requesting State may seek the confidentiality of its request;

(i) Article 13 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 8 of the Annex to this Treaty shall govern the invocation by the requested State of grounds for refusal.

2. The Annex reflects the provisions on mutual legal assistance applicable between the United States of America and the Republic of Finland upon entry into force of this Treaty.

3. In accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, this Treaty shall apply to offenses committed before as well as after it enters into force.

4. This Treaty shall not apply to requests made prior to its entry into force; except that, in accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, Articles 3 and 4 of the Annex shall be applicable to requests made prior to such entry into force.

5. (a) This Treaty shall be subject to the completion by the United States of America and the Republic of Finland of their respective applicable internal procedures for entry into force. The Governments of the United States of America and the Republic of Finland shall thereupon exchange notifications indicating that such measures have been completed. This Treaty shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement.

(b) In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Treaty shall be terminated. The Governments of the United States of America and the Republic of Finland nevertheless may agree to continue to apply some or all of the provisions of this Treaty.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

DONE at Brussels, in duplicate, this 16th day of December 2004, in the English and Finnish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC FINLAND:

ANNEX

Article 1:
Identification of bank information

1 (a) Upon request of the requesting State, the requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The requested State shall promptly communicate the results of its enquiries to the requesting State.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;
(ii) information in the possession of non-bank financial institutions; or
(iii) financial transactions unrelated to accounts.

2. A request for information described in paragraph 1 of this Article shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions;

(b) sufficient information to enable the competent authority of the requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the requested State may have the information requested; and
(ii) conclude that the information sought relates to the criminal investigation or proceeding; and

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic notes between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

(a) the Ministry of Justice of Finland; and

(b) for the United States of America, the attaché responsible for Finland of the:

(i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;

(ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;

(iii) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. Assistance shall be provided under this Article with respect to money laundering and terrorist activity punishable under the laws of both the requested and requesting States. Assistance also shall be provided with respect to such other criminal activity as the Government of the Republic of Finland and the Government of the United States of America may notify each other.

5. Assistance may not be refused under this Article on grounds of bank secrecy.

6. The requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the requirements of its domestic law.

Article 2:
Joint investigative teams

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and the Republic of Finland for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union where deemed appropriate by the United States of America and the Republic of Finland.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offenses, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other State(s) having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

Article 3:
Video conferencing

1. The use of video transmission technology shall be available between the United States of America and the Republic of Finland for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the requested State. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under the law of the requested State.

2. Unless otherwise agreed by the requesting and requested States, the requesting State shall bear the costs associated with establishing and servicing the video transmission. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the requested State) shall be borne as agreed upon by the requesting and requested States.

3. The requesting and requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

4. Without prejudice to any jurisdiction under the law of the requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the requested State in the same manner as if it had been committed in the course of its domestic proceedings.

5. This Article is without prejudice to the use of other means for obtaining of testimony in the requested State available under applicable treaty or law.

6. The requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements.

Article 4:
Expedited transmission of requests

Requests for mutual legal assistance, and communications related thereto, may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the requested State. The requested State may respond to the request by any such expedited means of communication.

Article 5:
Mutual legal assistance to administrative authorities

1. Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to

undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

2. Requests for assistance under this article shall be transmitted between the United States Department of Justice and the Finnish Ministry of Justice, or between such other authorities as may be agreed by the Department of Justice and Ministry of Justice.

Article 6:
Limitations on use to protect personal and other data

1. The requesting State may use any evidence or information obtained from the requested State:

(a) for the purpose of its criminal investigations and proceedings;
(b) for preventing an immediate and serious threat to its public security;
(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:
    (i) set forth in subparagraph (a); or
    (ii) for which mutual legal assistance was rendered under Article 5 of this Annex;
(d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and
(e) for any other purpose, only with the prior consent of the requested State.

2 (a) This Article shall not prejudice the ability of the requested State to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the requested State may require the requesting State to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the requesting State for processing personal data may not be imposed by the requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the requesting State, the requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the requested State may consult with the requesting State to determine the extent to which the evidence and information can be protected.

ARTICLE 7:
Requesting State's request for confidentiality

The requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the requesting State. If the request

cannot be executed without breaching the requested confidentiality, the Department or Ministry of Justice of the requested State shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed.

ARTICLE 8:
Refusal of assistance

Subject to Article 1(5) and 6(2)(b) of this Annex, the provisions of this Annex are without prejudice to the invocation by the requested State of grounds for refusal of assistance available pursuant to its applicable legal principles, including where execution of the request would prejudice its sovereignty, security, ordre public or other essential interests.

Instrument as contemplated by Article 3, paragraph 2, of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003, as to the application of the Treaty on Mutual Legal Assistance in Criminal Matters Between United States of America and France signed 10 December 1998

As contemplated by Article 3, paragraph 2, of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the Governments of the United States of America and the French Republic acknowledge that, in accordance with the provisions of this Instrument, the U.S.-EU Mutual Legal Assistance Agreement is applied in relation to the bilateral Treaty on Mutual Legal Assistance in Criminal Matters Between the United States of America and France signed 10 December 1998 (hereafter "the 1998 Mutual Legal Assistance Treaty") under the following terms:

I

A. Article 4, paragraphs 1 through 6, of the U.S.-EU Mutual Legal Assistance Agreement provides:

"Identification of Bank Information

1. (a) Upon request of the requesting State, the requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offence is the holder of a bank account or accounts. The requested State shall promptly communicate the results of its enquiries to the requesting State;

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offence;

(ii) information in the possession of non-bank financial institutions; or

(iii) financial transactions unrelated to accounts.

2. A request for information described in paragraph 1 shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions; and

(b) sufficient information to enable the competent authority of the requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offence and that banks or non-bank financial institutions in the territory of the requested State may have the information requested; and

(ii) conclude that the information sought relates to the criminal investigation or proceeding;

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Requests for assistance under this Article shall be transmitted between:

a) central authorities responsible for mutual legal assistance in Member States, or national authorities of Member States responsible for investigation or prosecution of criminal offences as designated pursuant to Article 15(2), and

b) national authorities of the United States responsible for investigation or prosecution of criminal offences, as designated pursuant to Article 15(2).

The Contracting Parties may, following the entry into force of this Agreement, agree by exchange of diplomatic note to modify the channels through which requests under this Article are made.

4. (a) Subject to subparagraph (b), a State may, pursuant to Article 15, limit its obligation to provide assistance under this Article to:

(i) offences punishable under the laws of both the requested and requesting States;

(ii) offences punishable by a penalty involving deprivation of liberty or a detention order of a maximum period of at least four years in the requesting State and at least two years in the requested State; or

(iii) designated serious offences punishable under the laws of both the requested and requesting States;

(b) A State which limits its obligation pursuant to subparagraph (a)(ii) or (iii) shall, at a minimum, enable identification of accounts associated with terrorist activity and the laundering of proceeds generated from a comprehensive range of serious criminal activities, punishable under the laws of both the requesting and requested States.

5. Assistance may not be refused under this Article on grounds of bank secrecy.

6. The requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article, in accordance with the provisions of the applicable mutual legal assistance treaty in force between the States concerned, or in the absence thereof, in accordance with the requirements of its domestic law."

B. Article 4, paragraphs 1 through 6, of the U.S.-EU Mutual Legal Assistance Agreement shall govern the identification of financial accounts and transactions, in addition to any authority already provided for under the 1998 Mutual Legal Assistance Treaty, and shall supplement the terms of that Treaty. For purposes of applying its terms, and for the purposes of Article 15, paragraphs 2 and 3, of the U.S.-EU Mutual Legal Assistance Agreement:

1. Requests for assistance shall contain the information required by Article 4, paragraph 1 (a) - (d), of the 1998 Mutual Legal Assistance Treaty, in addition to the information set forth in Article 4, paragraph 2, of the U.S.-EU Mutual Legal Assistance Agreement.

2. Notwithstanding Article 5 of the 1998 Mutual Legal Assistance Treaty, the designated authorities between whom requests for assistance shall be transmitted pursuant to Article 4, paragraph 3, of the U.S.-EU Mutual Legal Assistance Agreement unless subsequently modified, are:

- for France, the Ministry of Justice of France, as the Central Authority responsible for mutual legal assistance designated pursuant to Article 2, paragraph 1, of the 1998 Mutual Legal Assistance Treaty.

- for the United States of America, the attaché responsible for France of the

(a) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;

(b) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;

(c) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

3. a) Pursuant to Article 4, paragraph 4, of the U.S.-EU Mutual Legal Assistance Agreement, the United States of America shall limit assistance to money laundering and terrorist activity punishable under the laws of both the Requesting and Requested States, and with respect to such other criminal activity as the United States of America may notify France.

b) France shall not invoke Article 4, paragraph 4, of the U.S.-EU Mutual Legal Assistance Agreement to limit the extent of its obligation to provide assistance.

4. Article 4, paragraph 5, has the same effect as the more general provisions of Article 6 of the 1998 Mutual Legal Assistance Treaty, under which bank secrecy is not a permissible ground for refusal.

II

A. Article 5 of the U.S.-EU Mutual Legal Assistance Agreement provides:

"Joint Investigative Teams

1. The Contracting Parties shall, to the extent they have not already done so, take such measures as may be necessary to enable joint investigative teams to be established and operated in the respective territories of the United States of America and each Member State for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States where deemed appropriate by the United States of America and the Member State concerned.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offences, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other States having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities."

B. Article 5 of the U.S.-EU Mutual Legal Assistance Agreement shall govern the formation and activities of joint investigative teams in addition to any authority already

provided for under the 1998 Mutual Legal Assistance Treaty, and shall supplement the terms of that Treaty. For purposes of applying its terms:

1. Requests relating to the establishment of, operation of, and taking of investigative measures by, joint investigative teams shall be carried out as specified in Article 5 of the U.S.-EU Mutual Legal Assistance Agreement, rather than under Article 5 of the 1998 Mutual Legal Assistance Treaty.

2. The "competent authorities" referred to in this Article are those determined in accordance with its terms, and may include authorities not within the meaning of Article 3 of the 1998 Mutual Legal Assistance Treaty.

III

A. Article 6 of the U.S.-EU Mutual Legal Assistance Agreement provides:

"Video Conferencing

1. The Contracting Parties shall take such measures as may be necessary to enable the use of video transmission technology between the United States of America and each Member State for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in a requested State, to the extent such assistance is not currently available. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as provided under the applicable mutual legal assistance treaty in force between the States concerned, or the law of the requested State, as applicable.

2. Unless otherwise agreed by the requesting and requested States, the requesting State shall bear the costs associated with establishing and servicing the video transmission. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the requested State) shall be borne in accordance with the applicable provisions of the mutual legal assistance treaty in force between the States concerned, or where there is no such treaty, as agreed upon by the requesting and requested States.

3. The requesting and requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

4. Without prejudice to any jurisdiction under the law of the requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the requested State in the same manner as if it had been committed in the course of its domestic proceedings.

5. This Article is without prejudice to the use of other means for obtaining of testimony in the requested State available under applicable treaty or law.

6. This Article is without prejudice to application of provisions of bilateral mutual legal assistance agreements between the United States of America and Member States that require or permit the use of video conferencing technology for purposes other than those described in paragraph 1, including for purposes of identification of persons or objects, or taking of investigative statements. Where not already provided for under applicable treaty or law, a State may permit the use of video conferencing technology in such instances."

B. Article 6 of the U.S.-EU Mutual Legal Assistance Agreement shall govern the taking of testimony of a person located in the Requested State by use of video transmission technology between the Requesting and Requested States, in addition to any authority already provided for under the 1998 Mutual Legal Assistance Treaty, and shall supplement the terms of that Treaty. For purposes of applying its terms, costs other than those associated with establishing and servicing the video transmission shall be borne in accordance with Article 23 of the 1998 Mutual Legal Assistance Treaty.

IV

A. Article 7 of the U.S.-EU Mutual Legal Assistance Agreement provides:

"Expedited Transmission of Requests

Requests for mutual legal assistance, and communications related thereto, may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the requested State. The requested State may respond to the request by any such expedited means of communication."

B. Article 7 of the U.S.-EU Mutual Legal Assistance Agreement shall govern the use of expedited means of communication, in addition to any authority already provided for under the 1998 Mutual Legal Assistance Treaty, and shall supplement the terms of that Treaty. For purposes of applying its terms:

1. With respect to Article 4 of the 1998 Mutual Legal Assistance Treaty, requests and communications related thereto transmitted by fax, or attached to an e-mail, shall be accepted by the Requested State. Formal confirmation shall follow where required by the Requested State.

2. The use of expedited means of communications shall not be limited to urgent circumstances.

V

A. Article 8, paragraphs 1 and 2(a), of the U.S.-EU Mutual Legal Assistance Agreement provides:

"Mutual Legal Assistance to Administrative Authorities

1. Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

2. (a) Requests for assistance under this Article shall be transmitted between the central authorities designated pursuant to the bilateral mutual legal assistance treaty in force between the States concerned, or between such other authorities as may be agreed by the central authorities;"

B. Article 8, paragraphs 1 and 2(a), of the U.S.-EU Mutual Legal Assistance Agreement shall govern the providing of mutual assistance to the administrative authorities concerned, in addition to the authority provided under Article 3 of the 1998 Mutual Legal Assistance Treaty, and shall supplement the terms of that Treaty. For purposes of Article 8, paragraph 2(a), of the U.S.-EU Mutual Legal Assistance Agreement, requests for mutual legal assistance shall be transmitted between the Central Authorities referred to in Article 2(1) of the 1998 Mutual Legal Assistance Treaty, unless the Governments of the United States of America and the French Republic agree to designate an alternate channel of transmission.

VI

A. Article 9, paragraphs 1 through 4, of the U.S.-EU Mutual Legal Assistance

Agreement provides:

"Limitations on Use to Protect Personal and Other Data

1. The requesting State may use any evidence or information obtained from the requested State:

(a) for the purpose of its criminal investigations and proceedings;

(b) for preventing an immediate and serious threat to its public security;

(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

(i) set forth in subparagraph (a); or

(ii) for which mutual legal assistance was rendered under Article 8;

(d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

(e) for any other purpose, only with the prior consent of the requested State.

2. (a) This Article shall not prejudice the ability of the requested State to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the requested State may require the requesting State to give information on the use made of the evidence or information;

(b) Generic restrictions with respect to the legal standards of the requesting State for processing personal data may not be imposed by the requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the requesting State, the requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the requested State may consult with the requesting State to determine the extent to which the evidence and information can be protected.

4. A requested State may apply the use limitation provision of the applicable bilateral mutual legal assistance treaty in lieu of this Article, where doing so will result in less restriction on the use of information and evidence than provided for in this Article."

B. Article 9, paragraphs 1 through 4, of the U.S.-EU Mutual Legal Assistance Agreement shall govern the limitation on use of information or evidence provided to the Requesting State, and the conditioning or refusal of assistance on data protection grounds and shall be applied in place of Article 14, paragraphs 3, 4 and 5, of the 1998 Mutual Legal Assistance Treaty. For purposes of applying the terms of Article 9, paragraphs 1 through 4:

1. The reference to "Article 8" in Article 9, paragraph 1(c) (ii), of the U.S.-EU Mutual Legal Assistance Agreement relates to Part V of this Instrument.

2. The "additional conditions" referred to in Article 9, paragraph 2(a), of the U.S.-EU Mutual Legal Assistance Agreement are other conditions that may be imposed in accordance with the 1998 Mutual Legal Assistance Treaty.

3. Pursuant to Article 9, paragraph 4, of the U.S.-EU Mutual Legal Assistance Agreement, the requested State may apply Article 14, paragraphs 3, 4 and 5,

of the 1998 Mutual Legal Assistance Treaty where doing so would result in less restriction on use.

VII

Pursuant to Article 12, paragraph 1, of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall apply to offenses committed before as well as after it enters into force.

Pursuant to Article 12, paragraph 2, of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall apply to requests for mutual legal assistance made after its entry into force, except that Parts III and IV shall apply to requests pending in the requested State at the time this Instrument enters into force.

VIII

This instrument shall be subject to the completion by the United States of America and France of any necessary applicable internal procedures for entry into force. The Governments of the United States of America and the French Republic shall thereupon exchange instruments indicating that any such measures have been completed. This instrument shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement.

In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall be terminated and the 1998 Mutual Legal Assistance Treaty shall be applied.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Instrument.

DONE at The Hague, in duplicate, this 30 day of September, 2004, in the English and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE FRENCH REPUBLIC:

Supplementary Treaty

to

the Treaty between the United States of America

and

the Federal Republic of Germany

on Mutual Legal Assistance in Criminal Matters

The Government of the United States of America
and
the Government of the Federal Republic of Germany,

As contemplated by Article 3, paragraph (2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.- EU Mutual Legal Assistance Agreement"),

Acknowledging that in accordance with the provisions of this Supplementary Treaty, the bilateral Treaty between the United States of America and the Federal Republic of Germany on Mutual Legal Assistance in Criminal Matters signed 14 October 2003 (hereafter "the bilateral Mutual Legal Assistance Treaty"), is applied in the manner set forth in Article 3 of the U.S.-EU Mutual Legal Assistance Agreement,

Have agreed as follows:

Article 1

Pursuant to Article 8 of the U.S.-EU Mutual Legal Assistance Agreement, Article 1, paragraph (1) of the bilateral Mutual Legal Assistance Treaty is amended to read as follows:

"(1) The Parties undertake to afford each other, through their competent authorities, the widest measure of mutual assistance in criminal investigations and proceedings, including those relating to customs, duties and taxes, in accordance with the provisions of this Treaty. Criminal investigations and proceedings for purposes of this Treaty also include:

1. investigations and proceedings relating to regulatory offenses (Ordnungswidrigkeiten) under German antitrust law;

2. investigations and proceedings relating to regulatory offenses to the extent that they may lead to court proceedings or be referred for criminal prosecution in the Requesting State and would constitute criminal offenses in the Requested State;

3. investigations and proceedings of a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance under this subparagraph shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place."

Article 2

Pursuant to Article 8 of the U.S.-EU Mutual Legal Assistance Agreement, the following new paragraph (5) is added to Article 2 of the bilateral Mutual Legal Assistance Treaty:

"(5) Requests for assistance under Article 1, paragraph (1), subparagraph 3, shall be transmitted between the authorities designated pursuant to the present Article, or between such other authorities as may be agreed by the Central Authorities."

Article 3

Pursuant to Article 4 of the U.S.- EU Mutual Legal Assistance Agreement, the following text is inserted into the bilateral Mutual Legal Assistance Treaty as Article 9 bis:

"Article 9 bis:
Identification of bank information

(1) 1. Upon request of the Requesting State, the Requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The Requested State shall promptly communicate the results of its enquiries to the Requesting State.

2. The actions described in subparagraph 1 may also be taken for the purpose of identifying:

a) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;
b) information in the possession of non-bank financial institutions, or
c) financial transactions unrelated to accounts.

(2) In addition to the requirements of Article 17, paragraph (1), a request for information described in paragraph (1) above shall include:

1. the identity of the natural or legal person relevant to locating such accounts or transactions;

2. sufficient information to enable the competent authority of the Requested State to:

a) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the Requested State may have the information requested; and

b) conclude that the information sought relates to the criminal investigation or proceeding; and

3. to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

(3) Unless subsequently modified by exchange of diplomatic notes between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

1. For the Federal Republic of Germany, the Federal Ministry of Justice; and

2. For the United States of America, the attaché responsible for the Federal Republic of Germany of the:

a) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;

b) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;

c) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

(4) The United States of America and the Federal Republic of Germany shall provide assistance under this Article with respect to money laundering and terrorist activity

punishable under the laws of both the Requesting and Requested States, and with respect to such other criminal activity as they may notify each other.

(5) The Requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with
the other provisions of this Treaty."

Article 4

Pursuant to Article 6 of the U.S.- EU Mutual Legal Assistance Agreement, the following text is inserted into the bilateral Mutual Legal Assistance Treaty as Article 10 bis:

"Article 10 bis :
Video conferencing

(1) The United States of America and the Federal Republic of Germany shall take such measures as may be necessary to enable the use of video transmission technology for taking testimony of a witness or expert located in the Requested State. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under this Treaty. Article 10, paragraph (4) shall apply to the use of video transmission technology in taking of testimony irrespective of whether or not the testimony taken is recorded.

(2) The Requesting and Requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

(3) Without prejudice to any jurisdiction under the laws of the Requesting State, making an intentionally false statement or other misconduct of the witness or expert

during the course of the video conference shall be punishable in the Requested State in the same manner as if it had been committed in the course of its domestic proceedings.

(4) This Article is without prejudice to the use of other means for obtaining of testimony in the Requested State available under applicable international treaty or under internal law.

(5) The Requested State may permit the use of video conferencing technology for purposes other than those described in paragraph (1) of this Article, including for purposes of identification of persons or objects, or taking of investigative statements."

Article 5

Pursuant to Article 5 of the U.S.- EU Mutual Legal Assistance Agreement, the following text is inserted into the bilateral Mutual Legal Assistance Treaty as Article 12 bis:

"Article 12 bis:
Joint investigative teams

(1) The United States of America and the Federal Republic of Germany shall take such measures as may be necessary to enable joint investigative teams to be established and operated in the respective territories of the United States of America and the Federal Republic of Germany, for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union, where deemed appropriate by the United States of America and the Federal Republic of Germany.

(2) The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team

members of a State in investigative activities taking place in another State's territory shall be as agreed between the authorities responsible for the investigation or prosecution of criminal offenses, as determined by the respective States concerned.

(3) The authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team. A request by a United States police authority for the establishment of a joint investigative team shall be addressed to the Federal Criminal Police Office of the Federal Republic of Germany. Where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States nonethless may agree upon other appropriate channels of communications to that end.

(4) Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own authorities to take those measures without the other State having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities."

Article 6

Pursuant to Article 9 of the U.S.-EU Mutual Legal Assistance Agreement, Article 15 of the bilateral Mutual Legal Assistance Treaty is amended to read as follows:

"Article 15

Conditions and limitations on use to protect personal and other data

(1) Where assistance could be refused under Article 3, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions. Generic restrictions with respect to the legal standards of

the Requesting State for processing personal data may not be imposed by the Requested State as a condition under this paragraph to providing evidence or information.

(2) The Requesting State shall not use any evidence or information obtained under this Treaty for any other purpose than that described in the request without the prior consent of the Central Authority of the Requested State, except as specified in paragraph (3).

(3) The Requesting State may use any evidence or information obtained under this Treaty without prior consent of the Central Authority of the Requested State:

1. for the purpose of its criminal investigations and proceedings;

2. for preventing an immediate and serious threat to its public security, which, for the purposes of this Treaty, includes preventing the commission of serious criminal offenses;

3. in its non-criminal judicial or administrative proceedings directly related to a purpose set forth in subparagraph 1;

4. for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs 1, 2 and 3 of this paragraph.

(4) Where, following disclosure to the Requesting State, the Requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested State may consult with the Requesting State to determine the extent to which the evidence and information can be protected.

(5) A State that furnishes evidence or information subject to a condition referred to in this Article may require the other State to explain, in relation to that condition, the use made of such evidence or information."

Article 7

Pursuant to Article 9 of the U.S.-EU Mutual Legal Assistance Agreement, Article 16 of the bilateral Mutual Legal Assistance Treaty is amended to read as follows:

"Article 16
Evidence and Information in Antitrust
Proceedings and Investigations

Information or evidence received by the Requesting State in connection with an investigation or proceeding under antitrust laws, assistance as to which may be provided under this Treaty, shall be treated as confidential in the same way as information or evidence obtained under its domestic law and only may be disclosed to persons or authorities, including courts or administrative authorities, competent for the prosecution of antitrust offenses. Such persons or authorities shall use the information or evidence only for these purposes. They may disclose the information or evidence in public court proceedings or in judicial decisions, unless the competent authority of the Requested State supplying the information or evidence raises an objection. Such objections shall be raised only in exceptional cases. They may also disclose the information or evidence for the purposes set forth in Article 15, paragraph (3), subparagraphs 1 and 2. Information or evidence disclosed pursuant to the present Article shall not be used for other purposes without prior consent of the Requested State."

Article 8

Pursuant to Article 7 of the U.S.-EU Mutual Legal Assistance Agreement, Article 17, paragraph (3) of the bilateral Mutual Legal Assistance Treaty is amended to read as follows:

"(3) Requests for mutual legal assistance, and communications related thereto, may be

made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the Requested State. The Requested State may respond by any such expedited means of communication. In urgent cases, requests may be made orally but shall be confirmed in writing within ten days unless the Central Authority of the Requested State agrees otherwise."

Article 9

Pursuant to Article 6, paragraph (2), of the U.S.- EU Mutual Legal Assistance Agreement, Article 21, paragraph (1) of the bilateral Mutual Legal Assistance Treaty is amended to read as follows:

"(1) The Requested State shall pay all expenses, fees and disbursements arising from the execution of a request in that State except for those related to:

1. the services of an expert;

2. translation, interpretation, and transcription;

3. the travel and appearance of a witness or expert outside the Requested State pursuant to Article 5 or inside the Requested State for the convenience of the Requesting State pursuant to Article 10;

4. the transfer of a person in custody outside the Requested State pursuant to Article 7; and

5. the costs associated with establishing and servicing the video transmission in case of requests under Article 10 bis, unless otherwise agreed by the Requesting and Requested States; other costs arising in the course of providing such assistance (including costs associated with travel of participants in the

Requested State) shall be borne in accordance with the other provisions of this Article."

Article 10

(1) This Supplementary Treaty shall apply to offenses committed before as well as after it enters into force.

(2) This Supplementary Treaty shall not apply to requests made prior to its entry into force; except that, in accordance with Article 12, paragraph (2), of the U.S.-EU Mutual Legal Assistance Agreement, Articles 4, 8 and 9 of this Supplementary Treaty shall be applicable to requests made prior to such entry into force.

Article 11

(1) This Supplementary Treaty shall form an integral part of the bilateral Mutual Legal Assistance Treaty.

(2) This Supplementary Treaty shall be subject to the completion by the United States of America and the Federal Republic of Germany of their respective applicable internal procedures for entry into force. The Parties shall thereupon notify each other that such internal procedures have been completed.

(3) This Supplementary Treaty shall enter into force on the date of entry into force of the bilateral Mutual Legal Assistance Treaty.

(4) In the event of termination of the bilateral Mutual Legal Assistance Treaty, the United States of America and the Federal Republic of Germany, in view of the responsibilities under Article 3, paragraph (3) of the U.S.-EU Mutual Legal Assistance

Agreement, shall consult for the purpose of determining the manner in which the provisions of this Supplementary Treaty shall continue to apply.

(5) In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Supplementary Treaty shall be terminated.

DONE at Washington, this 18th day of April 2006, in duplicate, in the English and German languages, both texts being equally authentic.

For the Government of
the United States of America:

For the Government of
the Federal Republic of Germany:

Protocol to the Treaty between the Government of the United States of America and the Government of the Hellenic Republic on Mutual Legal Assistance in Criminal Matters, signed 26 May 1999, as contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union, signed 25 June 2003

As contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the Governments of the United States of America and the Hellenic Republic acknowledge that, in accordance with the provisions of this Instrument, the U.S.-EU Mutual Legal Assistance Agreement is applied in relation to the bilateral Treaty between the Government of the United States of America and the Government of the Hellenic Republic on Mutual Legal Assistance in Criminal Matters, signed 26 May 1999 (hereafter "the Mutual Legal Assistance Treaty") under the following terms:

Article 1

Pursuant to Article 4 of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied to supplement the terms of the Mutual Legal Assistance Treaty:

"Identification of bank information

1. (a) Upon request of the Requesting State, the Requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The Requested State shall promptly communicate the results of its enquiries to the Requesting State.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;

(ii) information in the possession of non-bank financial institutions; or

(iii) financial transactions unrelated to accounts.

2. In addition to the requirements of Article 4(2) of the Mutual Legal Assistance Treaty, a request for information described in paragraph 1 shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions; and

(b) sufficient information to enable the competent authority of the Requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the Requested State may have the information requested; and

(ii) conclude that the information sought relates to the criminal investigation or proceeding;

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Requests for assistance under this Article shall be transmitted between:

(a) for the Hellenic Republic, the Ministry of Justice, and
(b) for the United States of America, the attaché responsible for the Hellenic Republic of the:
    (i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;
    (ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;
    (iii) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

The United States of America and the European Union may, following the entry into force of this Protocol, agree by exchange of diplomatic notes to modify the channels through which requests under this Article are made.

4. The United States of America and the Hellenic Republic shall provide assistance under this Article with respect to money laundering and terrorist activities punishable under the laws of both the Requesting and the Requested States, and with respect to such other criminal activity as they may notify each other.

5. The Requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article, in accordance with the other provisions of the Mutual Legal Assistance Treaty."

Article 2

Pursuant to Article 5 of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied to supplement the terms of the Mutual Legal Assistance Treaty:

"Joint investigative teams

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and the Hellenic Republic for the purpose of facilitating criminal investigations or prosecutions involving one or more Member States of the European Union and the United States of America where deemed appropriate by the United States of America and the Hellenic Republic.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offenses, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other States having to submit a request for mutual legal assistance. The required legal standard for obtaining

the measure in that State shall be the standard applicable to its domestic investigative activities."

Article 3

Pursuant to Article 6 of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied to supplement the terms of the Mutual Legal Assistance Treaty:

"Video conferencing

1. The use of video transmission technology shall be available between the United States of America and the Hellenic Republic for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the Requested State. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided in the Mutual Legal Assistance Treaty.

2. Unless otherwise agreed by the Requesting and Requested States, the Requesting State shall bear the costs associated with establishing and servicing the video transmission. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the Requested State) shall be borne in accordance with the applicable provisions of Article 6 of the Mutual Legal Assistance Treaty.

3. The Requesting and Requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

4. Without prejudice to any jurisdiction under the law of the Requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the Requested State in the same manner as if it had been committed in the course of its domestic proceedings.

5. This Article is without prejudice to the use of other means for obtaining of testimony in the Requested State available under applicable treaty or law.

6. The Requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1, including for purposes of identification of persons or objects, or taking of investigative statements."

Article 4

Pursuant to Article 7 of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied to supplement Article 4, paragraph 1 of the Mutual Legal Assistance Treaty:

"For purposes of Article 4(1) of the Mutual Legal Assistance Treaty, requests transmitted by fax or e-mail shall be considered to be in writing.
Communications related to requests for assistance may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the Requested State.
The Requested State may respond by any such expedited means of communication."

Article 5

Pursuant to Article 8 of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied to supplement the terms of the Mutual Legal Assistance Treaty:

"Mutual legal assistance to administrative authorities

1. Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

2. Requests for assistance under this Article shall be transmitted between the Central Authorities designated pursuant to Article 2 of the Mutual Legal Assistance Treaty or between such other authorities as may be agreed by the Central Authorities."

Article 6

Pursuant to Article 9 of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied in place of Article 7, paragraphs 1, 3, and 4, of the Mutual Legal Assistance Treaty:

"Limitations on use to protect personal and other data

1. The Requested State may require that the Requesting State use any evidence or information obtained from the Requested State for the following purposes:

(a) for the purpose of its criminal investigations and proceedings;

(b) for preventing an immediate and serious threat to its public security;

(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

(i) set forth in subparagraph (a); or

(ii) for which mutual legal assistance was rendered under Article 5 of this Protocol;

(d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

(e) for any other purpose, only with the prior consent of the Requested State.

3. (a) This Article shall not prejudice the ability of the Requested State in accordance with the Mutual Legal Assistance Treaty to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the Requested State may require the Requesting State to give information on the use made of the evidence or information;

(b) Generic restrictions with respect to the legal standards of the Requesting State for processing personal data may not be imposed by the Requested State as a condition under subparagraph (a) to providing evidence or information.

4. Where, following disclosure to the Requesting State, the Requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested State may consult with the Requesting State to determine the extent to which the evidence and information can be protected."

Article 7

1. The provisions of the Mutual Legal Assistance Treaty not addressed in this Protocol, including the grounds for refusal of assistance, are unaffected by this Protocol and shall remain in force.

2. This Protocol shall be interpreted consistent with the U.S.-EU Mutual Legal Assistance Agreement.

Article 8

This Protocol shall be subject to the completion by the Parties of their respective applicable internal procedures for entry into force. The Governments of the United States of America and the Hellenic Republic shall thereupon exchange instruments indicating that such procedures have been completed.

Article 9

1. This Protocol shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement. Article 12 of the U.S.-EU Mutual Legal Assistance Agreement concerning temporal application shall apply.

2. In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Protocol shall be terminated and the Mutual Legal Assistance Treaty shall be applied. The Governments of the United States of America and the Hellenic Republic nevertheless may agree to continue to apply some or all of the provisions of this Protocol.

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective Governments, have signed this Protocol.

Done at Washington, in duplicate, this 18th day of January 2006 in the English and Greek languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE HELLENIC REPUBLIC:

Protocol to the Treaty between the Government of the United States of America and the Government of the Republic of Hungary on Mutual Legal Assistance in Criminal Matters signed 1 December 1994, as contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003

As contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the Governments of the United States of America and the Republic of Hungary acknowledge that, in accordance with the provisions of this Protocol, the provisions of the U.S.-EU Mutual Legal Assistance Agreement are applied in relation to the bilateral Treaty between the Government of the Republic of Hungary and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters signed 1 December 1994 (hereafter "the 1994 Mutual Legal Assistance Treaty") under the following terms:

Article 1: Assistance to administrative authorities

Pursuant to Article 8 of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied as Article 1(1A) of the 1994 Mutual Legal Assistance Treaty:

"1A (a) Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

(b) Requests for assistance under this paragraph shall be transmitted between the Central Authorities, or between such other authorities as may be agreed by the Central Authorities."

Article 2: Expedited transmission of requests

Pursuant to Article 7 of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied in place of Article 4(1) of the 1994 Mutual Legal Assistance Treaty:

"1(a).Requests for assistance and communications related thereto may be made and responded to by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the Requested State.

(b) In urgent situations, requests for mutual legal assistance may be made orally but shall be confirmed in writing within ten days unless the Central Authority of the Requested State agrees otherwise.

(c) The request shall be in the language of the Requested State unless agreed otherwise."

Article 3: Cost of Video-Conference

Pursuant to Article 6(2) of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied as Article 6 of the 1994 Mutual Legal Assistance Treaty:

"Article 6
Costs

1. The Requested State shall pay all costs relating to the execution of the request except for the fees of expert witnesses, the costs of translation, interpretation, and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 10 and 11, which fees, costs, allowances, and expenses shall be paid by the Requesting State.

2. In addition, unless otherwise agreed by the Requesting and Requested States, the Requesting State shall bear the costs associated with establishing and servicing a video transmission pursuant to Article 17C. Other costs arising in the course of providing such assistance (including costs associated with travel of participants in the Requested State) shall be borne in accordance with paragraph 1."

Article 4: Limitations on use to protect personal and other data

Pursuant to Article 9 of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied in place of Article 7 of the 1994 Mutual Legal Assistance Treaty:

"Article 7:
Limitations On Use To Protect Personal And Other Data

1. The Requested State may require that the Requesting State limit its use of any evidence or information obtained from the Requested State to the following purposes:

a) for the purpose of its criminal investigations and proceedings;

b) for preventing an immediate and serious threat to its public security;

c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

(i) set forth in subparagraph (a); or

(ii) for which mutual legal assistance was rendered under Article 1 (1A);

d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

e) for any other purpose, only with the prior consent of the Requested State.

2.
a) This Article shall not prejudice the ability of the Requested State in accordance with this Treaty to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the Requested State may require the Requesting State to give information on the use made of the evidence or information.

b) Generic restrictions with respect to the legal standards of the Requesting State for processing personal data may not be imposed by the Requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the Requesting State, the Requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested State may consult with the Requesting State to determine the extent to which the evidence or information can be protected.

4. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential or be used in accordance with conditions which its Central Authority shall specify. In that case, the Requesting State shall use its best efforts to comply with the conditions specified."

Article 5: Requesting State's request for confidentiality

Pursuant to Article 10 of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied as Article 7A of the 1994 Mutual Legal Assistance Treaty:

"Article 7A:
Requesting State's Request For Confidentiality

The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Requesting State. If the request cannot be executed without breaching the requested confidentiality, the Central Authority of the Requested State shall so inform the Requesting State, which shall then determine whether the request should nevertheless be executed."

Article 6: Identification of bank information

Pursuant to Article 4 of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied as Article 17A of the 1994 Mutual Legal Assistance Treaty:

"Article 17A:
Identification Of Bank Information

1.
a) Upon request of the Requesting State, the Requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The Requested State shall

promptly communicate the results of its enquiries to the Requesting State.

b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;
(ii) information in the possession of non-bank financial institutions; or
(iii)financial transactions unrelated to accounts.

2. In addition to the requirements of Article 4(2) of this Treaty, a request for information described in paragraph 1 of this Article shall include:

a) the identity of the natural or legal person relevant to locating such accounts or transactions;

b) sufficient information to enable the competent authority of the Requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the Requested State may have the information requested; and

(ii) conclude that the information sought relates to the criminal investigation or proceeding; and

c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Requests for assistance under this Article shall be transmitted between:

a) for the Republic of Hungary, the Prosecutor General, provided however that a request from Hungary concerning a matter in which trial has commenced shall be transmitted by the Ministry of Justice; and

b) for the United States of America, the attaché responsible for the Republic of Hungary of the:
(i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;
(ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;
(iii) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

The United States of America or the Republic of Hungary may modify their respective designations made under this paragraph by exchange of diplomatic notes between the European Union and the United States of America.

4. The Republic of Hungary shall provide assistance under this Article with respect to criminal activity punishable under the laws of both the Requested and Requesting States. The United States of America shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both States, and with respect to such other criminal activity as it may notify the Republic of Hungary.

5. The Requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the other provisions of this Treaty."

Article 7: Joint investigative teams

Pursuant to Article 5 of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied as Article 17B of the 1994 Mutual Legal Assistance Treaty:

"Article 17B:
Joint Investigative Teams

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and the Republic of Hungary for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union where deemed appropriate by the United States of America and the Republic of Hungary.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offenses, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other State(s) having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities."

Article 8: Video conferencing

Pursuant to Article 6(1), 6(3) through (6) of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied as Article 17C of the 1994 Mutual Legal Assistance Treaty:

"Article 17C:
Video Conferencing

1. The use of video transmission technology shall be available between the United States of America and the Republic of Hungary for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the Requested State. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under this Treaty.

2. The Requesting and Requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

3. Without prejudice to any jurisdiction under the law of the Requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the Requested State in the same manner as if it had been committed in the course of its domestic proceedings.

4. This Article is without prejudice to the use of other means for obtaining of testimony in the Requested State available under other articles of this Treaty.

5. The Requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements."

Article 9: Temporal application

This Protocol shall apply to offenses committed before as well as after it enters into force.

This Protocol shall not apply to requests made prior to its entry into force; except that Articles 2, 3 and 8 of this Protocol shall be applicable to requests made prior to such entry into force.

Article 10: Entry into force and termination

1. This Protocol shall be subject to the completion by the United States of America and the Republic of Hungary of their respective applicable internal procedures for entry into force and instruments indicating that such measures have been completed shall be exchanged as soon as possible. This Protocol shall enter into force on the date of entry into force of the U.S.-EU Extradition Agreement, as provided for in Article 18 thereof.

2. In the event of termination of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003, this Protocol shall be terminated and the bilateral Treaty between the Government of the United States of America and the Government of the Republic of Hungary on Mutual Legal Assistance in Criminal Matters signed 1 December 1994 shall be applied. The Governments of the United States of America and the Republic of Hungary nevertheless may agree to continue to apply some or all of the provisions of this Protocol.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

DONE at Budapest, in duplicate, this fifteenth day of November, 2005, in the English and Hungarian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF HUNGARY:

Instrument as contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003, as to the application of the Treaty between the Government of the United States of America and the Government of Ireland on Mutual Legal Assistance in Criminal Matters signed 18 January 2001

1. As contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the Governments of the United States of America and Ireland acknowledge that, in accordance with the provisions of this Instrument, the U.S.-EU Mutual Legal Assistance Agreement is applied in relation to the bilateral Treaty between the Government of the United States of America and the Government of Ireland on Mutual Legal Assistance in Criminal Matters signed 18 January 2001 (hereafter "the 2001 Mutual Legal Assistance Treaty") under the following terms:

(a) Article 4 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 16 *bis* of the Annex to this Instrument shall govern the identification of financial accounts and transactions, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty;

(b) Article 5 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 16 *ter* of the Annex to this Instrument shall govern the formation and activities of joint investigative teams, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty;

(c) Article 6 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Articles 6 and 16 *quater* of the Annex to this Instrument shall govern the taking of testimony of a person located in the requested Party by use of video transmission technology between the Requesting and Requested Parties, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty;

(d) Article 7 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 4 (1) of the Annex to this Instrument shall govern the use of expedited means of communication, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty;

(e) Article 8 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 1 (1 *bis*) of the Annex to this Instrument shall govern the providing of mutual legal assistance to the administrative authorities concerned, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty;

(f) Article 9 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 7 of the Annex to this Instrument shall govern the limitation on use of information or evidence provided to the Requesting Party, and the conditioning or refusal of assistance on data protection grounds.

2. The Annex reflects the integrated text of the provisions of the 2001 Mutual Legal Assistance Treaty and the U.S.-EU Mutual Legal Assistance Agreement that shall apply upon entry into force of this Instrument.

3. In accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall apply to offences committed before as well as after it enters into force.

4. This Instrument shall not apply to requests made prior to its entry into force; except that, in accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, Articles 4(1), 6 and 16 *quater* of the Annex shall be applicable to requests made prior to such entry into force.

5 (a) This Instrument shall be subject to the completion by the United States of America and Ireland of their respective applicable internal procedures for entry into force. The Governments of the United States of America and Ireland shall thereupon exchange instruments indicating that such measures have been completed. This Instrument shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement.

(b) In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall be terminated and the 2001 Mutual Legal Assistance Treaty shall be applied. The Governments of the United States of America and Ireland nevertheless may agree to continue to apply some or all of the provisions of this Instrument.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Instrument.

DONE at Dublin, in duplicate, this 14 day of July, 2005.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF IRELAND:

ANNEX

TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF IRELAND ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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Article 1
Scope of Assistance

1. The Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution, and prevention of offences, and in proceedings related to criminal matters.

1bis. (a) Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

(b) Requests for assistance under this paragraph shall be transmitted between the Central Authorities designated pursuant to Article 2 of this Treaty, or between such other authorities as may be agreed by the Central Authorities.

2. Assistance shall include:

(a) taking the testimony or statements of persons;

(b) providing documents, records, and articles of evidence;

(c) locating or identifying persons;

(d) serving documents;

(e) transferring persons in custody for testimony or other purposes;

(f) executing requests for searches and seizures;

(g) identifying, tracing, freezing, seizing, and forfeiting the proceeds and instrumentalities of crime and assistance in related proceedings;

(h) such other assistance as may be agreed between Central Authorities.

3. Except when required by the laws of the Requested Party, assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution, or proceeding in the territory of the Requesting Party would constitute an offence under the laws of the Requested Party.

4. This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

Article 2
Central Authorities

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.

2. For the Government of the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General. For the Government of Ireland, the Central Authority shall be the Minister for Justice, Equality and Law Reform or a person designated by the Minister.

3. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

Article 3
Limitations on Assistance

1. The Central Authority of the Requested Party may deny assistance if:

(a) the Requested Party is of the opinion that the request, if granted, would impair its sovereignty, security, or other essential interests, or would be contrary to important public policy;

(b) the request relates to an offender who, if proceeded against under the law of the Requested Party for the offence for which assistance is requested, would be entitled to be discharged on the grounds of a previous acquittal or conviction;

(c) the request relates to an offence that is regarded by the Central Authority of the Requested Party as:

(i) an offence of a political character; or

(ii) an offence under military law of the Requested Party which is not also an offence under the ordinary criminal law of the Requested Party; or

(d) the request is not made in conformity with the Treaty.

2. Before denying assistance pursuant to this Article, the Central Authority of the Requested Party shall consult with the Central Authority of the Requesting Party to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with the conditions.

Article 4
Form and Contents of Requests

1. (a) Requests for mutual legal assistance and communications related thereto may be made and responded to by expedited means of communications, including fax

or e-mail, with formal confirmation of requests to follow where required by the Requested Party.

(b) In urgent cases, requests for mutual legal assistance may be made orally but shall be confirmed in writing within ten days.

(c) The Requested Party may respond by any such expedited means of communication.

(d)The request shall be in an official language of the Requested Party unless otherwise agreed.

2. The request shall include the following:

(a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;
(b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offences which relate to the matter;
(c) a description of the evidence, information, or other assistance sought; and
(d) a statement of the purpose for which the evidence, information, or other assistance is sought.

3. To the extent necessary and possible, a request shall also include:

(a) information on the identity and location of any person from whom evidence is sought;

(b) information on the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;

(c) information on the identity and whereabouts of a person to be located;

(d) a precise description of the place or person to be searched and of the articles to be seized;

(e) a description of the manner in which any testimony or statement is to be taken and recorded;

(f) a list of questions to be asked of a witness;

(g) a description of any particular procedure to be followed in executing the request;

(h) information as to the allowances and expenses to which a person asked to appear in the territory of the Requesting Party will be entitled; and

(i) any other information which may be brought to the attention of the Requested Party to facilitate its execution of the request.

4. The Requested Party may ask the Requesting Party to provide any further information which appears to the Requested Party to be necessary for the purpose of executing the request.

Article 5
Execution of Requests

1. As empowered by this Treaty or by national law, or in accordance with its national practice, the Central Authority of the Requested Party shall take whatever steps it deems necessary to execute promptly requests received from the Requesting Party. The Courts of the Requested Party shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. The Central Authority of the Requested Party shall make all necessary arrangements for representation in the territory of the Requested Party of the Requesting Party in any proceedings arising out of a request for assistance.

3. The method of execution specified in the request shall be followed except to the extent that it is incompatible with the laws and practices of the Requested Party.

4. If the Central Authority of the Requested Party determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding under the laws of that Party, or prejudice the safety of any person, it may postpone execution, or make execution subject to conditions determined to be necessary after consultations with the Central Authority of the Requesting Party. If the Requesting Party accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Central Authority of the Requested Party shall, in accordance with its national law and practice, facilitate the presence in the execution of the request of such persons as are specified in the request.

6. The Requested Party shall, upon request, keep confidential any information which might indicate that a request has been made or responded to. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine the extent to which it wishes the request to be executed.

7. The Central Authority of the Requested Party shall respond to reasonable inquiries by the Central Authority of the Requesting Party concerning progress toward execution of the request.

8. The Central Authority of the Requested Party may ask the Central Authority of the Requesting Party to provide information in such form as may be necessary to enable

it to execute the request or to undertake any steps which may be necessary under the laws and practices of the Requested Party in order to give effect to the request received from the Requesting Party.

9. The Central Authority of the Requesting Party shall promptly inform the Central Authority of the Requested Party of any circumstances which make it inappropriate to proceed with the execution of the request or which require modification of the action requested.

10. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.

11. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the outcome of the execution of the request. If the request is denied, the Central Authority of the Requested Party shall inform the Central Authority of the Requesting Party of the reasons for the denial.

Article 6
Costs

1. The Requested Party shall pay all costs relating to the execution of the request, including the costs of representation, except for:

(a) the fees of expert witnesses, the costs of translation, interpretation, and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 10 and 11, which costs, fees, allowances, and expenses shall be paid by the Requesting Party;

(b) the costs associated with establishing and servicing a video transmission, to the extent set forth in Article 16 *quater*.

2. If, during the execution of a request, it becomes apparent that complete execution will entail expenses of an extraordinary nature, the Central Authorities shall consult to determine the terms and conditions under which execution may continue.

Article 7
Limitations on Use

1. The Requesting Party may use any evidence or information obtained from the Requested Party:

(a) for the purpose of its criminal investigations and proceedings;

(b) for preventing an immediate and serious threat to its public security;

(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

(i) set forth in subparagraph (a); or

(ii) for which mutual legal assistance was rendered under Article 1 (1 *bis*)(a) of this Treaty;

(d) for any other purpose, if the evidence or information has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

(e) for any other purpose only with the prior consent of the Requested Party.

2 (a) This Article shall not prejudice the ability of the Requested Party in accordance with this Treaty to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the Requested Party may require the Requesting Party to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the Requesting Party for processing personal data may not be imposed by the Requested Party as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the Requesting Party, the Requested Party becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested Party may consult with the Requesting Party to determine the extent to which the evidence and information can be protected.

Article 8

Testimony or Evidence in the Territory of the Requested Party

1. A person in the territory of the Requested Party from whom testimony or evidence is requested pursuant to this Treaty may be compelled, if necessary, to appear and testify or produce items, including documents, records, and articles of evidence.

2. Upon request, the Central Authority of the Requested Party shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.

3. In accordance with its laws and practice, the Requested Party shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to ask questions directly of the person whose testimony or evidence is being taken or indirectly through a legal representative qualified to appear before the courts of the Requested Party.

4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting Party, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting Party for resolution by the authorities of that Party.

5. Evidence produced in the territory of the Requested Party pursuant to this Article or which is the subject of testimony taken under this Article may be authenticated by an attestation, including, in the case of business records, authentication

in the manner indicated in Forms A1 or A2, as applicable, appended to this Treaty. The absence or nonexistence of such records may, upon request, be certified through the use of Forms B1 or B2, as applicable, appended to this Treaty. Records authenticated by Forms A1 or A2, or Forms B1 or B2 certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting Party. Documentary information produced pursuant to this Article may also be authenticated pursuant to such other form or manner as may be prescribed from time to time by either Central Authority.

Article 9
Records of Government Agencies

1. The Requested Party shall provide the Requesting Party with copies of publicly available records, including documents or information in any form, in the possession of government departments and agencies in the Requested Party.

2. The Requested Party may provide copies of any documents, records, or information which are in the possession of a government department or agency of that Party, but which are not publicly available, to the same extent and under the same conditions as such copies would be available to its own law enforcement or judicial authorities. The Requested Party may in its discretion deny a request pursuant to this paragraph entirely or in part.

3. Records produced pursuant to this Article shall, upon request, be authenticated under the provisions of the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, dated October 5, 1961, or by an official competent to do so through the use of Forms C1 or C2, as applicable, appended to this Treaty. The absence or nonexistence of such records may, upon request, be certified through the use of Forms D1 or D2, as applicable, appended to this Treaty. No further authentication shall be necessary. Records authenticated by Forms C1 or C2, or Forms D1 or D2 certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting Party. Documentary information produced pursuant to this Article may also be authenticated pursuant to such other form or manner as may be prescribed from time to time by either Central Authority.

Article 10
Testimony in the Territory of the Requesting Party

1. When the Requesting Party requests the appearance of a person in the territory of that Party, the Requested Party shall invite the person to appear voluntarily before the appropriate authority in the territory of the Requesting Party. The Requesting Party shall indicate the extent to which the expenses will be paid. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the response of the person.

2. The Central Authority of the Requesting Party may, in its discretion, determine that a person appearing in the territory of the Requesting Party pursuant to this article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions which preceded that person's departure from the territory of the Requested Party.

3. The safe conduct provided for by this Article shall cease seven days after the Central Authority of the Requesting Party has notified the Central Authority of the Requested Party that the person's presence is no longer required, or when the person, having left the territory of the Requesting Party, voluntarily returns. The Central Authority of the Requesting Party may, in its discretion, extend this period for up to fifteen days if it determines that there is good cause to do so.

Article 11
Transfer of Persons In Custody

1. A person in the custody of one Party whose presence in the territory of the other Party is sought for purposes of assistance under this Treaty shall be transferred for those purposes if the person and the Central Authorities of both Parties consent.

2. For purposes of this Article:

(a) the receiving Party shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorised by the sending Party;

(b) the receiving Party shall return the person transferred to the custody of the sending Party as soon as circumstances permit and in any event no later than the date upon which the person would have been released from custody in the territory of the sending Party, unless otherwise agreed by both Central Authorities and the person transferred;

(c) the receiving Party shall not require the sending Party to initiate extradition proceedings for the return of the person transferred; and

(d) the person transferred shall receive credit for service of the sentence imposed in the sending Party for time served in the custody of the receiving Party.

Article 12
Location or Identification of Persons or Items

The Requested Party shall use its best efforts to ascertain the location or identity of persons or items specified in the request.

Article 13
Service of Documents

1. The Requested Party shall use its best efforts to effect service of any document relating, in whole or in part, to any request for assistance made by the Requesting Party under the provisions of this Treaty.

2. Service of any document by virtue of paragraph (1) of this Article shall not impose any obligation under the law of the Requested Party to comply with it.

3. The Requesting Party shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting Party a reasonable time before the scheduled appearance.

4. The Requested Party shall return a proof of service in the manner specified in the Request.

Article 14
Search and Seizure

1. The Requested Party shall execute a request for the search, seizure, and delivery of any item to the Requesting Party if the request includes the information justifying such action under the laws of the Requested Party and it is carried out in accordance with the laws of that Party.

2. The Requested Party may refuse a request if it relates to conduct in respect of which powers of search and seizure would not be exercisable in the territory of the Requested Party in similar circumstances.

3. Upon request, every official who has custody of a seized item shall certify, through the use of Forms E1 or E2, as applicable, appended to this Treaty, the continuity of custody, the identity of the item, and the integrity of its condition. No further certification shall be required. The certificates shall be admissible in evidence in the Requesting Party. Certification under this Article may also be provided in any other form or manner as may be prescribed from time to time by either Central Authority.

4. The Central Authority of the Requested Party may require that the Requesting Party agree to the terms and conditions deemed to be necessary to protect third party interests in the item to be transferred.

Article 15
Return of Items

The Central Authority of the Requesting Party shall return any items, including documents, records, or articles of evidence furnished to it in execution of a request under this Treaty as soon as possible unless the Central Authority of the Requested Party waives their return.

Article 16
Assistance in Forfeiture Proceedings

1. If the Central Authority of one Party becomes aware of proceeds or instrumentalities of offences which are located in the territory of the other Party and may be forfeitable or otherwise subject to seizure under the laws of that Party, it may so inform the Central Authority of the other Party. If that other Party has jurisdiction in this regard, it may present this information to its authorities for a determination whether

any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country, and the Central Authority shall report to the Central Authority of the other Party on the action taken.

2. The Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offences. This may include action to temporarily freeze the proceeds or instrumentalities pending further proceedings.

3. The Party that has custody over proceeds or instrumentalities of offences shall dispose of them in accordance with its laws. Either Party may transfer all or part of such assets, or the proceeds of their sale, to the other Party, to the extent permitted by the transferring Party's laws and upon such terms as it deems appropriate.

Article 16 *bis*:
Identification of bank information

1 (a) Upon request of the Requesting Party, the Requested Party shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offence is the holder of a bank account or accounts. The Requested Party shall promptly communicate the results of its enquiries to the Requesting Party.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offence;
(ii) information in the possession of non-bank financial institutions, or
(iii) financial transactions unrelated to accounts.

2. In addition to the requirements of Article 4(2) of this Treaty, a request for information described in paragraph 1 shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions;

(b) sufficient information to enable the competent authority of the Requested Party to:

i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offence and that banks or non-bank financial institutions in the territory of the Requested Party may have the information requested; and
ii) conclude that the information sought relates to the criminal investigation or proceeding; and

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic note between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

(a) for Ireland, its Central Authority set forth in Article 2(2) of this Treaty, and
(b) for the United States of America, the attaché responsible for Ireland of the:
  (i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;
  (ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;
  (iii) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. Ireland shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both the Requesting and Requested Parties, and with respect to other criminal activity punishable under the law of Ireland by a maximum sentence of at least five years imprisonment or more serious penalty and which are punishable under applicable United States laws. The United States of America shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both the Requesting and Requested Parties.

5. The Requested Party shall respond to a request for production of records concerning the accounts or transactions identified pursuant to this Article in accordance with the other provisions of this Treaty.

Article 16 *ter*:
Joint investigative teams

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and Ireland for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union including Ireland, where deemed appropriate by the United States of America and Ireland.

2. The procedures under which the team is to operate, such as its composition, duration, location, organisation, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offences, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may

request its own competent authorities to take those measures without the other States having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

Article 16 *quater*:
Video conferencing

1. The use of video transmission technology shall be available between the United States of America and Ireland for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the Requested Party. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under this Treaty.

2. Unless otherwise agreed by the Requesting and Requested Parties, the Requesting Party shall bear the costs associated with establishing and servicing the video transmission. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the Requested Party) shall be borne in accordance with Article 6 of this Treaty.

3. The Requesting and Requested Parties may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

4. Without prejudice to any jurisdiction under the law of the Requesting Party, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the Requested Party in the same manner as if it had been committed in the course of its domestic proceedings.

5. This Article is without prejudice to the use of other means for obtaining of testimony in the Requested Party available under applicable treaty or law.

6. The Requested Party may permit the use of video transmission technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements.

Article 17
Compatibility with Other Arrangements

Assistance and procedures set forth in this Treaty shall not prevent either Party from granting assistance to the other Party through the provisions of other applicable international agreements, or through the provisions of its national laws. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement, or practice which may be applicable.

Article 18
Consultation

The Central Authorities of the Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

Article 19
Termination

Either Party may terminate this Treaty by means of written notice to the other Party. Termination shall take effect six months following the date of notification. Ongoing proceedings at the time of termination shall nonetheless be completed in accordance with the provisions of this Treaty.

FORM A1
(for use when Ireland is the Requesting Party, pursuant to Article 8)

CERTIFICATE OF AUTHENTICITY OF
BUSINESS RECORDS

I, _____, attest on penalty of criminal punishment
(Name)

for false statement or false attestation that I am employed by

_____
(Name of Business from which documents are sought)

and that my official title is _____
(Official Title)

I further state that each of the records attached hereto is the original or a duplicate of the original records in the custody of

_____.
(Name of Business from which documents are sought). I further state that:

(A) such records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

(B) such records were kept in the course of a regularly conducted business activity;

(C) the business activity made such records as a regular practice;

(D) if such record is not the original, such record is a duplicate of the original.

_____ _____
Signature Date

Sworn to or affirmed before me, _____, a
_____this___ day of _____, 20__.
(notary public, judicial officer, etc.)

FORM A2
(for use when the United States is the Requesting Party, pursuant to Article 8)

CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS

I, _____, the undersigned, aged 18 years and older, with the
(Name)
understanding that I am subject to criminal penalty under the laws of Ireland for an intentionally false declaration, make this solemn declaration conscientiously believing the statements set forth in this declaration to be true.

I declare that I am employed by/associated with the
_____ in the position of _____
(Name of Business from which documents are sought) (Official Title)
and by reason of my position am authorised and qualified to make this declaration.

I further declare that the documents attached hereto are originals or true copies of records in the custody of _____
(Name of Business from which documents are sought)
which:

1. were made at or near the time of the occurrence of the matters set forth therein, by (or from information transmitted by) a person with knowledge of those matters;

2. were kept in the course of regularly conducted business activity;

3. were made by the said business activity as a regular practice; and

4. if not the original records, are duplicates of original records.

All by virtue of the Statutory Declarations Act, 1938.

The originals or duplicates of these records are maintained in the country of _____.

Date of execution: _____
Place of execution: _____
Signature: _____
Declared before me at _____, this _____ day of _____.
Signed _____
Judge of the _____

FORM B1 (for use when Ireland is the Requesting Party, pursuant to Article 8)

CERTIFICATE OF ABSENCE OR NON-EXISTENCE OF BUSINESS RECORDS

I, _____ attest on penalty of criminal punishment for
(Name)

false statement or false attestation that I am employed by
_____ and that my official title
(Name of Business from which documents are sought)

is _____.
(Official Title)

As a result of my employment with the above-named business, I am familiar with the business records it maintains. The business maintains business records that:

(A) are made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

(B) are kept in the course of a regularly-conducted business activity;

(C) are made by the business as a regular practice.

Among the records so maintained are records of individuals and entities that have accounts or otherwise transact business with the above-named business. I have made or caused to be made a diligent search of those records. No records have been found reflecting any business activity between the business and the following individuals and entities: _____.

If the business had maintained an account on behalf of or had participated in a transaction with any of the foregoing individuals or entities, its business records would reflect that fact.

_____ _____
Signature Date

Sworn to or affirmed before me, _____, a
(Name)

_____ this _____ day of _____, 20___.
(Notary public, judicial officer, etc.)

FORM B2
(for use when the United States is the Requesting Party, pursuant to Article 8)

CERTIFICATE OF ABSENCE OR NON-EXISTENCE OF BUSINESS RECORDS

I, _____, the undersigned, aged 18 years and older, with the
(Name)

understanding that I am subject to criminal penalty under the laws of Ireland for an intentionally false declaration, make this solemn declaration conscientiously believing the statements set forth in this declaration to be true.

I declare that I am employed by/associated with the

_____ in the position of

_____

(Name of Business from which documents are sought) (Official Title)

and by reason of my position am authorised and qualified to make this declaration.

I further declare that as a result of my employment with the above-named business, I am familiar with the business records it maintains. The business maintains business records that:

1. are made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

2. are kept in the course of a regularly-conducted business activity;

3. are made by the business as a regular practice.

Among the records so maintained are records of individuals and entities that have accounts or\otherwise transact business with the above-named business. I have made or caused to be made a diligent search of those records. No records have been found reflecting any business activity between the business and the following individuals and entities:_____.
If the business had maintained an account on behalf of or had participated in a transaction with any of the foregoing individuals or entities, its business records would reflect that fact.

All by virtue of the Statutory Declarations Act, 1938.

Date of execution: _____
Place of execution: _____
Signature: _____
Declared before me at _____, this _____ day of _____.
Signed _____
Judge of the _____

FORM C1 (for use when Ireland is the Requesting Party, pursuant to Article 9)

ATTESTATION OF AUTHENTICITY OF FOREIGN PUBLIC RECORDS

I, _____, attest on penalty of criminal
(Name)

punishment for false statement or attestation that my position with the Government of _____ is _____ and that in that
(Country) (Official Title)

position I am duly authorised to attest that the documents attached and described below are true and accurate copies of original official records which are recorded or filed in _____, which is a government office or agency of _____.
(Name of Office or Agency) (Country)

Description of Documents:

_____
(Signature)

_____
(Title)

_____
(Date)

FORM C2
(for use when the United States is the Requesting Party, pursuant to Article 9)

ATTESTATION OF AUTHENTICITY OF FOREIGN PUBLIC RECORDS

I, _____,the undersigned, aged 18 years and older, with the
(Name)
understanding that I am subject to criminal penalty under the laws of Ireland for an intentionally false declaration, make this solemn declaration conscientiously believing the statements set forth in this declaration to be true.

I declare that my position with the Government of
_____ is _____
(Country) (Official Title)
and that by reason of my position I am authorised and qualified to make this declaration.

I further declare that the documents attached and described below are true and accurate copies of original official records which are recorded or filed in_____,
(Name of Office or Agency)
which is a government office or agency of _____.
(Country)

Description of Documents:

All by virtue of the Statutory Declarations Act, 1938.

Date of execution: _____
Place of execution: _____
Signature: _____

Declared before me at _____, this _____ day of _____.
Signed _____
Judge of the _____

FORM D1 (for use when Ireland is the Requesting Party, pursuant to Article 9)

ATTESTATION REGARDING ABSENCE
OR NON-EXISTENCE OF FOREIGN PUBLIC RECORDS

I, _____, attest on penalty of criminal punishment
(Name)

for false statement or attestation that my position with the Government of _____
(Country)

is _____, and that in that position I am duly authorised to make
(Official Title)

this attestation.

I do hereby certify that I am the custodian of records of
_____, and that I have made a diligent
(Name of Public Office or Agency)

search of the said records for the
_____, and that
(Description of Records for Which a Search was Done)

no such records are found to exist therein. I further certify that the records for which a search was conducted set forth matters which are required by the laws of the Government of _____ to be recorded or filed and reported, and
(Country)

such matters regularly are recorded or filed and reported by
_____.
(Name of Public Agency or Office)

_____
Signature

_____
Date

FORM D2 (for use when the United States is the Requesting Party, pursuant to Article 9)

ATTESTATION REGARDING ABSENCE
OR NON-EXISTENCE OF FOREIGN PUBLIC RECORDS

I, _____, the undersigned, aged 18 years and older, with the
(Name)
understanding that I am subject to criminal penalty under the laws of Ireland for an intentionally false declaration, make this solemn declaration conscientiously believing the statements set forth in this declaration to be true.

I declare that my position with the Government of _____ is _____
(Country) (Official Title)
and that by reason of my position I am authorised and qualified to make this declaration.

I further declare that I am the custodian of records of _____, and that I have made a diligent
(Name of Public Office or Agency)
search of the said records for the

_____, and that
(Description of Records for Which a Search was Done)

no such records are found to exist therein. I further declare that the records for which a search was conducted set forth matters which are required by the laws of the Government of _____ to be recorded or filed and reported, and
(Country)
such matters regularly are recorded or filed and reported by _____.
(Name of Public Agency or Office)

All by virtue of the Statutory Declarations Act, 1938.

Date of execution: _____
Place of execution: _____
Signature: _____

Declared before me at _____, this _____ day of _____.
Signed _____
Judge of the _____

FORM E1 (for use when Ireland is the Requesting Party, pursuant to Article 14)

ATTESTATION WITH RESPECT TO SEIZED ARTICLES

I, _____ (Name), attest on penalty of criminal punishment for false statements or attestation that my position with the Government of _____ (Country) is _____ (Official Title). I received the articles listed below from _____ (Name of Person) on _____ (Date), at _____ (Place) in the following condition:

Description of Article:

Changes in Condition while in my custody:

Official Seal or Stamp

_____
(Signature)

_____
(Title)

_____
(Date)

FORM E2 (for use when the United States is the Requesting Party, pursuant to Article 14)

ATTESTATION WITH RESPECT TO SEIZED ARTICLES

I, _____, the undersigned, aged 18 years and older, with the
(Name)
understanding that I am subject to criminal penalty under the laws of Ireland for an intentionally false declaration, make this solemn declaration conscientiously believing the statements set forth in this declaration to be true.

I declare that that my position with the Government of
_____ (Country) is _____ (Official title)
and that by reason of my position am authorised and qualified to make this declaration.

I further declare that I received the articles listed below from

_____ (Name of Person) on _____ (Date),

at _____ (Place) in the following condition:

Description of Article:

Changes in Condition while in my custody:

All by virtue of the Statutory Declarations Act, 1938.

Date of execution: _____
Place of execution: _____
Signature: _____ Official Seal or stamp_____

Declared before me at _____, this _____ day of _____.
Signed _____
Judge of the _____

Instrument as contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003, as to the application of the Treaty between the United States of America and the Italian Republic on Mutual Assistance in Criminal Matters signed 9 November 1982

1. As contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the Governments of the United States of America and the Italian Republic acknowledge that, in accordance with the provisions of this Instrument, the U.S.-EU Mutual Legal Assistance Agreement is applied in relation to the bilateral Treaty between the United States of America and the Italian Republic on Mutual Assistance in Criminal Matters signed 9 November 1982 (hereafter "the 1982 Mutual Assistance Treaty") under the following terms:

a) Article 4 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 18 bis of the Annex to this Instrument shall govern the identification of financial accounts and transactions, in addition to any authority already provided under the 1982 Mutual Assistance Treaty;

b) Article 5 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 18 ter of the Annex to this Instrument shall govern the formation and activities of joint investigative teams, in addition to any authority already provided under the 1982 Mutual Assistance Treaty;

c) Article 6 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Articles 7 and 18 quater of the Annex to this Instrument shall govern the taking of testimony of a person located in the Requested State by use of video transmission technology between the Requesting and Requested States, in addition to any authority already provided under the 1982 Mutual Assistance Treaty;

d) Article 7 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 2(3) of the Annex to this Instrument shall govern the use of expedited means of communication, in addition to any authority already provided under the 1982 Mutual Assistance Treaty;

e) Article 8 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 1 (1 bis) of the Annex to this Instrument shall govern the providing of mutual assistance to the administrative authorities concerned, in addition to any authority already provided under the 1982 Mutual Assistance Treaty;

f) Article 9 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 8(3)-(5) of the Annex to this Instrument shall govern the limitation on use of information or evidence provided to the Requesting State, and the conditioning or refusal of assistance on data protection grounds.

2. The Annex reflects the integrated text of the provisions of the 1982 Mutual Assistance Treaty and the U.S.-EU Mutual Legal Assistance Agreement that shall apply upon entry into force of this Instrument.

3. In accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall apply to offenses committed before as well as after it enters into force.

4. This Instrument shall not apply to requests made prior to its entry into force; except that, in accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, Articles 2(3), 7(e) and 18 quater of the Annex shall be applicable to requests made prior to such entry into force.

5. Article 18 of the Annex shall be applied in lieu of Article 18 of the 1982 Mutual Assistance Treaty, and the related exchange of diplomatic notes between the United States and Italy of 13 November 1985.

6. a) This Instrument shall be subject to the completion by the United States of America and the Italian Republic of their respective applicable internal procedures for entry into force. The Governments of the United States of America and the Italian Republic shall thereupon exchange instruments indicating that such measures have been completed. This Instrument shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement.

b) In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall be terminated and the 1982 Mutual Assistance Treaty shall be applied. The Governments of the United States of America and the Italian Republic nevertheless may agree to continue to apply some or all of the provisions of this Instrument.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Instrument.

DONE at Rome, in duplicate, this third day of May 2006, in the English and Italian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC:

ANNEX

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE ITALIAN REPUBLIC ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

ARTICLE 1
Obligation to Render Assistance

1. The Contracting Parties undertake to afford each other, upon request and in accordance with the provisions of this Treaty, mutual assistance in criminal investigations and proceedings.

1 bis. a. Mutual assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

b. Requests for assistance under this paragraph shall be transmitted between the Central Authorities designated pursuant to Article 2 of this Treaty, or between such other authorities as the Central Authorities agree instead to designate as an alternate channel for transmission.

2. Such assistance shall include:

a. locating persons;

b. serving documents;

c. producing documents and records;

d. executing requests for search and seizure;

e. taking testimony;

f. transferring persons for testimonial purposes; and

g. immobilizing and forfeiting assets.

Other types of assistance shall also be granted to the extent such assistance is not inconsistent with the laws of the Requested State.

3. Assistance shall be rendered even when the acts under investigation are not offenses in the Requested State and without regard to whether the Requested State would have jurisdiction in similar circumstances.

4. This Treaty is intended solely for mutual assistance in criminal matters between authorities of the Contracting Parties.

ARTICLE 2
Central Authority

1. A request under this Treaty shall be made by a Central Authority for each Contracting Party. The Central Authorities shall communicate directly with each other to implement the provisions of this Treaty.

2. For the United States the Central Authority shall be the Attorney General. For the Italian Republic the Central Authority shall be the Minister of Justice.

3. Requests for mutual assistance made by authorities under this Treaty, and communications related thereto, may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the Requested State. The Requested State may respond to the request by any such expedited means of communication.

ARTICLE 3
Contents of a Request

1. A request for assistance shall indicate:

a. the name of the authority conducting the investigation or proceeding to which the request relates;

b. the subject matter and nature of the investigation or proceeding;

c. a description of the evidence or information sought or the acts to be performed; and

d. the purpose for which the evidence, information or action is sought.

2. To the extent necessary and possible, a request shall include:

a. available information on the identity and whereabouts of a person to be located;

b. the identity and location of a person to be served, that person's relationship to the proceeding, and the manner in which service is to be made;

c. the identity and location of a person from whom evidence is sought;

d. a precise description of the place to be searched and the objects to be seized;

e. a description of the manner in which any testimony is to be taken and recorded;

f. a list of questions to be answered; and

g. a description of any particular procedure to be followed in executing the request.

3. A request shall indicate the allowances and expenses to which a person appearing in the Requesting State will be entitled.

4. A request and accompanying documents shall be in both English and Italian.

ARTICLE 4
Execution of a Request

1. The Central Authority of the Requested State shall promptly comply with a request or, when appropriate, transmit it to the authority having jurisdiction to do so. The competent officials of the Requested State shall do everything in their power to execute a request. The courts of the Requested State shall issue subpoenas, search warrants, or any other process necessary in the execution of a request.

2. A request shall be executed in conformity with the provisions of this Treaty and according to the laws of the Requested State. Procedures specified in the request shall be followed unless prohibited by the laws of the Requested State.

ARTICLE 5
Limitations on Compliance

1. The Requested State may deny assistance to the extent that:

a. execution of a request would prejudice the security or other essential public interests of the Requested State;

b. a request relates to a purely military offense or a matter considered a political offense by the Requested State; or

c. a request does not comply with the provisions of this Treaty.

2. Before refusing to execute a request, the Requested State shall determine whether assistance can be given subject to such conditions as it deems necessary.

3. The Requested State may postpone execution of a request or grant it subject to conditions if execution would interfere with an ongoing investigation or proceeding in the Requested State.

4. The Requested State shall immediately inform the Requesting State of the reason for partial or total denial or postponement of assistance.

ARTICLE 6
Return of a Completed Request

1. Upon completion of a request the Requested State shall, unless otherwise agreed, return to the Requesting State the original request together with all information and evidence obtained, indicating place and time of execution.

2. To the extent possible, all documents and records to be furnished pursuant to a request shall be complete and in unedited form. Upon application of the Requesting State, the Requested State shall make every effort to furnish original documents and records.

ARTICLE 7
Costs and Translations

The Requested State shall render assistance without cost to the Requesting State except for:

a. expenses incurred in the translation of documents accompanying a request or which result from a request;

b. fees of private experts specified in a request;

c. all expenses related to travel of witnesses pursuant to Article 15;

d. all expenses related to the transfer of witnesses in custody pursuant to Article 16; and

e. the costs associated with establishing and servicing a video transmission pursuant to Article 18 quater, unless otherwise agreed by the Requesting and Requested States; other costs arising in the course of providing assistance (including costs associated with travel of participants in the Requested State) shall be borne in accordance with the other provisions of this Article.

ARTICLE 8
Protecting Confidentiality and Restricting Use of Evidence and Information

1. When necessary, the Requested State may require that evidence and information provided, and information derived therefrom, be kept confidential in accordance with stated conditions. Nevertheless, disclosure may be made where necessary as evidence in a public proceeding.

2. If deemed necessary, the Requesting State may request that the application for assistance, the contents of the request and its supporting documents, and the granting of such assistance be kept confidential.

3. The Requesting State may use any evidence or information obtained from the Requested State:

a. for the purpose of its criminal investigations and proceedings;

b. for preventing an immediate and serious threat to its public security;

c. in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

i. set forth in subparagraph (a); or

ii. for which mutual assistance was rendered under Article 1(1 bis) of this Treaty;

d. for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

e. for any other purpose, only with the prior consent of the Requested State.

4. a. This Article shall not prejudice the ability of the Requested State in accordance with this Treaty to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the Requested State may require the Requesting State to give information on the use made of the evidence or information.

b. Generic restrictions with respect to the legal standards of the Requesting State for processing personal data may not be imposed by the Requested State as a condition under subparagraph (a) to providing evidence or information.

5. Where, following disclosure to the Requesting State, the Requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested State may consult with the Requesting State to determine the extent to which the evidence and information can be protected.

ARTICLE 9
Return of Documents, Records, and Articles of Evidence

The Requesting State shall return upon request any documents, records, or articles of evidence furnished in execution of a request as soon as possible.

ARTICLE 10
Locating Persons

The Requested State, consistent with the provisions of this Treaty, shall make thorough efforts to ascertain the location of persons specified in the request and believed to be in the Requested State.

ARTICLE 11
Serving Documents

1. The Requested State shall cause service of any document transmitted for that purpose by the Requesting State.

2. A request for service of a document requiring the appearance of a person before an authority in the Requesting State shall be transmitted a reasonable time before the scheduled appearance.

3. A document requiring such an appearance shall be served thirty days prior to the scheduled appearance or as otherwise agreed.

4. The Requested State shall return a proof of service executed according to its laws.

ARTICLE 12
Providing Documents and Records of Government Offices or Agencies

1. The Requested State shall provide a copy of a publicly available document or record of a government office or agency.

2. The Requested State may provide any document or record in the possession of a government office or agency, but not publicly available, to the same extent and under the same conditions as it would be available to its own law enforcement or judicial authorities. The Requested State in its discretion may deny the request entirely or in part.

3. Any document or record provided pursuant to this Article in accordance with procedures specified in the request and certified authentic by the Central Authority of the Requested State shall require no further certification or authentication to be admissible into evidence in the Requesting State.

ARTICLE 13
Producing Other Documents and Records

1. The Requested State, if necessary, shall compel a person to produce a document, record or article to the same extent as would be required for criminal investigations or proceedings in that State. When search and seizure is required, the request shall contain such information as would justify such action in criminal investigations or proceedings under the laws of the Requested State.

2. With respect to paragraph 1 of this Article, every official of the Requested State who has custody of a seized document, record or article shall certify to the Central Authority of that State the identity of the thing seized, the continuity of the custody thereof, and the integrity of its condition. The Central Authority of the Requested State shall certify that the procedures specified in the request have been followed to the extent possible pursuant to the laws and practices of that State. A document, record or article so certified shall require no further foundation to be admissible into evidence in the Requesting State.

ARTICLE 14
Taking Testimony in the Requested State

1. A person from whom evidence is sought shall, if necessary, be compelled to appear and testify to the same extent as would be required in criminal investigations or proceedings in the Requested State.

2. Upon request, the Requested State shall specify the date and place of the taking of testimony.

3. The Requested State shall permit the presence of an accused, counsel for the accused, and persons charged with the enforcement of the criminal laws to which the request relates.

4. The executing authority shall provide persons permitted to be present the opportunity to question the person whose testimony is sought in accordance with the laws of the Requested State.

5. The executing authority shall provide persons permitted to be present the opportunity to propose additional questions and other investigative measures.

6. Testimonial privileges under the laws of the Requesting State shall not apply in the execution of a request, but such questions of privilege shall be preserved for the Requesting State.

ARTICLE 15
Taking Testimony in the Requesting State

1. The Requested State, upon request that a person in that State appear and testify in connection with a criminal investigation or proceeding in the Requesting State, shall compel that person to appear and testify in the Requesting State by means of the procedures for compelling the appearance and testimony of witnesses in the Requested State if:

a. the Requested State has no reasonable basis to deny the request;

b. the person could be compelled to appear and testify in similar circumstances in the Requested State; and

c. the Central Authority of the Requesting State certifies that the person's testimony is relevant and material.

2. A person who fails to appear as directed shall be subject to sanctions under the laws of the Requested State as if that person had failed to appear in similar circumstances in that State. Such sanctions shall not include removal of the person to the Requesting State.

ARTICLE 16
Transferring Persons in Custody for Testimonial Purposes

1. A person in custody needed as a witness in the Requesting State for criminal investigations or proceedings shall be transported to that State pursuant to conditions proposed by Article 15(1).

2. A defendant in custody in one State who seeks for purposes of confrontation to be present at a judicial proceeding in the other State shall be transported to that State unless the State in which the defendant is in custody has a reasonable basis to deny the request.

3. For purposes of this Article:

a. the receiving State shall have the authority and obligation to keep in custody a person transferred unless otherwise authorized by the sending State;

b. the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed;

c. the receiving State shall not decline to return a person transferred on the basis of nationality nor require the sending State to initiate extradition proceedings; and

d. the person transferred shall receive credit for service of the sentence imposed in the sending State while in the custody of the receiving State.

ARTICLE 17
Safe Conduct

1. A person appearing before an authority in the Requesting State pursuant to a request:

a. shall not be subject to suit, or be detained or subjected to any other restriction of personal liberty, with respect to any act or conviction which preceded departure; and

b. shall not be subject to prosecution based on testimony provided pursuant to the request to the extent that such testimony is required to honor the request and is true.

2. Safe conduct provided in this Article shall cease if, ten days after the person appearing has been notified that his or her presence is no longer required, that person, being free to leave, has not left the Requesting State or, having left, has returned.

ARTICLE 18
Seizure, Immobilization and Forfeiture of Assets

1. The Contracting Parties shall assist each other to the extent permitted by their respective laws in the seizure, immobilization and forfeiture of the fruits and instrumentalities of offenses.

2. Proceeds or property forfeited to a Contracting Party pursuant to this Article shall be disposed of by that Party according to its domestic law and administrative procedures. Either State may transfer all or part of such proceeds or property, or the proceeds of its sale, to the other State, to the extent permitted by their respective laws, upon such terms as they may agree.

ARTICLE 18 bis
Identification of bank information

1. a. Upon request of the Requesting State, the Requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The Requested State shall promptly communicate the results of its enquiries to the Requesting State.

b. The actions described in subparagraph (a) may also be taken for the purpose of identifying:

i. information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;

ii. information in the possession of non-bank financial institutions; or

iii. financial transactions unrelated to accounts.

2. In addition to the requirements of Article 3(1) of this Treaty, a request for information described in paragraph 1 shall include:

a. the identity of the natural or legal person relevant to locating such accounts or transactions;

b. sufficient information to enable the competent authority of the Requested State to:

i. reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the Requested State may have the information requested; and

ii. conclude that the information sought relates to the criminal investigation or proceeding; and

c. to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic notes between the European Union and the United States, requests for assistance under this Article shall be transmitted between:

a. the Minister of Justice of Italy, and

b. for the United States, in lieu of the channel described in Article 2(1) of this Treaty, the attaché responsible for Italy of the:

i. U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;

ii. U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;

iii. U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. The Contracting Parties shall provide assistance under this Article with respect to terrorist activity punishable under the laws of both the Requesting and Requested States. The Contracting Parties also shall provide assistance under this Article with respect to money laundering activity punishable under the laws of both the Requesting and Requested States, including where the activity is punishable as money laundering under United States law while punishable as a predicate offense to the money laundering under Italian law. The Contracting Parties also shall provide assistance with respect to such other criminal activity as they may notify each other.

5. The Requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the other provisions of this Treaty.

ARTICLE 18 ter
Joint investigative teams

1. Joint investigative teams may be established and operated in the respective territories of the United States and the Italian Republic for the purpose of facilitating criminal investigations or prosecutions involving the United States and one or more Member States of the European Union where deemed appropriate by the United States and the Italian Republic.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offenses, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other States having to submit a request for mutual assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

ARTICLE 18 quater
Video conferencing

1. The use of video transmission technology shall be available between the United States and the Italian Republic for taking testimony in a proceeding for which mutual assistance is available of a witness or expert located in the Requested State. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under this Treaty.

2. The Requesting and Requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

3. Without prejudice to any jurisdiction under the law of the Requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the Requested State in the same manner as if it had been committed in the course of its domestic proceedings.

4. This Article is without prejudice to the use of other means for obtaining of testimony in the Requested State available under applicable treaty or law.

5. The Requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements.

ARTICLE 19
Other Treaties and Domestic Laws

1. Assistance and procedures provided by this Treaty shall not prevent or restrict any assistance or procedure available under other international conventions or arrangements or under the laws of the Contracting Parties.

2. The activities of the International Criminal Police Organization (INTERPOL) are not affected by this Treaty.

ARTICLE 20
Denunciation

Either Contracting Party may terminate this Treaty at any time by giving notice to the other Party and the termination shall be effective six months after the date of receipt of such notice.

Protocol to the Treaty between the Government of the United States of America and the Government of the Republic of Latvia on Mutual Legal Assistance in Criminal Matters

As contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the Governments of the United States of America and the Republic of Latvia acknowledge that, in accordance with the provisions of this Protocol, the U.S.-EU Mutual Legal Assistance Agreement is applied in relation to the bilateral Treaty between the Government of the United States of America and the Government of the Republic of Latvia signed 13 June 1997 (hereafter "the 1997 Mutual Legal Assistance Treaty") under the following terms:

Article 1: Assistance to administrative authorities

Pursuant to Article 8 of the U.S.-EU Mutual Legal Assistance Agreement, Article 1(1) shall be renumbered as Article 1(1)(a), and the following shall be applied as Article 1 (1)(b) and (1)(c) of the 1997 Mutual Legal Assistance Treaty:

"(b) Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

(c) Requests for assistance under paragraph (1)(b) shall be transmitted between the Central Authorities designated pursuant to Article 2 of this Treaty, or between such other authorities as may be agreed by the Central Authorities."

Article 2: Expedited transmission of requests

Pursuant to Article 7 of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied in place of Article 4(1) of the 1997 Mutual Legal Assistance Treaty:

"1.(a) Requests for assistance and communications related thereto may be made and responded to by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the Requested State.

(b) In urgent situations, requests for mutual legal assistance may be made orally but shall be confirmed in writing within ten days unless the Central Authority of the Requested State agrees otherwise.

(c) The request shall be in the language of the Requested State unless agreed otherwise."

Article 3: Cost of Video-Conference

Pursuant to Article 6(2) of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied as Article 6(d) of the 1997 Mutual Legal Assistance Treaty:

"(d) the costs associated with establishing and servicing a video transmission pursuant to Article 17c, unless otherwise agreed by the Requesting and Requested States; other costs arising in the course of providing such assistance shall be borne in accordance with the other provisions of this Article."

Article 4: Limitations on use to protect personal and other data

Pursuant to Article 9 of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied in place of Article 7 of the 1997 Mutual Legal Assistance Treaty:

"Article 7
Limitations On Use To Protect Personal And Other Data

1. The Requested State may require that the Requesting State limit its use of any evidence or information obtained from the Requested State to the following purposes:

(a) for the purpose of its criminal investigations and proceedings;

(b) for preventing an immediate and serious threat to its public security;

(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

(i) set forth in subparagraph (a); or

(ii) for which mutual legal assistance was rendered under Article 1(1)(b);

(d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

(e) for any other purpose, only with the prior consent of the Requested State.

2. (a) This Article shall not prejudice the ability of the Requested State in accordance with this Treaty to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the Requested State may require the Requesting State to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the Requesting State for processing personal data may not be imposed by the Requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the Requesting State, the Requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested State may consult with the Requesting State to determine the extent to which the evidence or information can be protected.

4. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential or be used subject to terms and conditions that it may specify. If the Requesting State accepts the evidence or information subject to such conditions, the Requesting State shall use its best efforts to comply with the conditions."

Article 5: Identification of bank information

Pursuant to Article 4 of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied as Article 17a of the 1997 Mutual Legal Assistance Treaty:

"Article 17a
Identification of Bank Information

1. (a) Upon request of the Requesting State, the Requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The Requested State shall promptly communicate the results of its enquiries to the Requesting State.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;
(ii) information in the possession of non-bank financial institutions; or
(iii)financial transactions unrelated to accounts.

2. In addition to the requirements of Article 4(2) of this Treaty, a request for information described in paragraph 1 of this Article shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions;

(b) sufficient information to enable the competent authority of the Requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the Requested State may have the information requested; and

(ii) conclude that the information sought relates to the criminal investigation or proceeding; and

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by the United States of America and the Republic of Latvia through an exchange of diplomatic notes between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

(a) for the Republic of Latvia:

(i) the Office of the Prosecutor General, during pre-trial investigation until the case is submitted to court; and
(ii) the Ministry of Justice, during trial.

(b) for the United States of America, the attaché responsible for the Republic of Latvia of the:

(i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;
(ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;
(iii) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. The Republic of Latvia shall provide assistance under this Article with respect to any criminal activity. The United States of America shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the

laws of both States, and with respect to such other criminal activity as it may notify the Republic of Latvia.

5. The Requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the other provisions of this Treaty."

Article 6: Joint investigative teams

Pursuant to Article 5 of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied as Article 17b of the 1997 Mutual Legal Assistance Treaty:

"Article 17b
Joint Investigative Teams

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and the Republic of Latvia for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union where deemed appropriate by the United States of America and the Republic of Latvia.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offenses, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other State(s) having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities."

Article 7: Video conferencing

Pursuant to Article 6(1), 6(3) through (6) of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied as Article 17c of the 1997 Mutual Legal Assistance Treaty:

"Article 17c
Video Conferencing

1. The use of video transmission technology shall be available between the United States of America and the Republic of Latvia for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the Requested State. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under this Treaty.

2. The Requesting and Requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

3. Without prejudice to any jurisdiction under the law of the Requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the Requested State in the same manner as if it had been committed in the course of its domestic proceedings.

4. This Article is without prejudice to the use of other means for obtaining of testimony in the Requested State available under applicable treaty or law.

5. The Requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements."

Article 8: Temporal application

This Protocol shall apply to offenses committed before as well as after it enters into force.

This Protocol shall not apply to requests made prior to its entry into force; except that Articles 2, 3 and 7 of this Protocol shall be applicable to requests made prior to such entry into force.

Article 9: Entry into force and termination

1. This Protocol shall be subject to the completion by the United States of America and the Republic of Latvia of their respective applicable internal procedures for entry into force. The Governments of the United States of America and the Republic of Latvia

shall thereupon notify each other through an exchange of diplomatic notes indicating that such measures have been completed. This Protocol shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement.

2. In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Protocol shall be terminated and the 1997 Mutual Legal Assistance Treaty shall be applied. The Governments of the United States of America and the Republic of Latvia nevertheless may agree to continue to apply some or all of the provisions of this Protocol.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

DONE at Riga, in duplicate, this ____ day of December 2005, in the English and Latvian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA :

FOR THE GOVERNMENT OF THE REPBULIC OF LATVIA:

Protocol on the application of the Agreement on Mutual Legal Assistance between the United States of America and the European Union to the Treaty between the Government of the United States of America and the Government of the Republic of Lithuania on Mutual Legal Assistance in Criminal Matters

1. As contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the Governments of the United States of America and the Republic of Lithuania acknowledge that, in accordance with the provisions of this Protocol, the U.S.- EU Mutual Legal Assistance Agreement is applied in relation to the bilateral Treaty between the Government of the United States of America and the Government of the Republic of Lithuania on Mutual Legal Assistance in Criminal Matters, signed 16 January 1998 (hereafter "the 1998 Mutual Legal Assistance Treaty") under the following terms:

(a) Article 4 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 16 *bis* of the Annex to this Protocol shall govern the identification of financial accounts and transactions, in addition to any authority already provided under the 1998 Mutual Legal Assistance Treaty;

(b) Article 5 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 16 *ter* of the Annex to this Protocol shall govern the formation and activities of joint investigative teams, in addition to any authority already provided under the 1998 Mutual Legal Assistance Treaty;

(c) Article 6 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Articles 6 and 16 *quater* of the Annex to this Protocol shall govern the taking of testimony of a person located in the Requested State by use of video transmission technology between the Requesting and Requested States, in addition to any authority already provided under the 1998 Mutual Legal Assistance Treaty;

(d) Article 7 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 4(1) of the Annex to this Protocol shall govern the use of expedited means of communication, in addition to any authority already provided under the 1998 Mutual Legal Assistance Treaty;

(e) Article 8(2) of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 2(2) of the Annex to this Protocol shall govern the transmission of requests for mutual legal assistance to administrative authorities, in addition to any authority already provided under the 1998 Mutual Legal Assistance Treaty; and

(f) Article 9 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 7 of the Annex to this Protocol shall govern the limitation on use of information or evidence provided to the Requesting State, and the conditioning or refusal of assistance on data protection grounds.

2. The Annex reflects the integrated text of the provisions of the 1998 Mutual Legal Assistance Treaty and the U.S.-EU Mutual Legal Assistance Agreement that shall apply upon entry into force of this Protocol.

3. In accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, this Protocol shall apply to offenses committed before as well as after it enters into force.

4. This Protocol shall not apply to requests made prior to its entry into force; except that, in accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, Articles 4(1), 6 and 16 *quater* of the Annex shall be applicable to requests made prior to such entry into force.

5. (a) This Protocol shall be subject to the completion by the United States of America and the Republic of Lithuania of their respective applicable internal procedures for entry into force. The Governments of the United States of America and the Republic of Lithuania shall thereupon exchange instruments indicating that such measures have been completed. This Protocol shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement.

(b) In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Protocol shall be terminated and the 1998 Mutual Legal Assistance Treaty shall be applied. The Governments of the United States of America and the Republic of Lithuania nevertheless may agree to continue to apply some or all of the provisions of this Protocol.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

DONE at Brussels, in duplicate, this 15th day of June, 2005, in the English and Lithuanian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA:

ANNEX

TREATY BETWEEN THE GOVERNMENT OF THE UNTED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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Article 1
Scope of Assistance

1. The Contracting Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution, and prevention of offenses, and in proceedings related to criminal matters.

2. Assistance shall include:

(a) taking the testimony or statements of persons;

(b) providing documents, records, and other articles of evidence;

(c) locating or identifying persons or items;

(d) serving documents;

(e) transferring persons in custody for testimony or other purposes;

(f) executing requests for searches and seizures;

(g) assisting in proceedings related to immobilization and forfeiture of assets; restitution; collection of fines; and

(h) any other form of assistance not prohibited by the laws of the Requested State.

3. Assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution, or proceeding in the Requesting State would constitute an offense under the laws of the Requested State.

4. This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

Article 2
Central Authorities

1. Except as otherwise provided in this Treaty, the authorities of the Contracting Parties shall seek and obtain assistance through their respective Central Authorities. The Central Authority for the United States shall be the Attorney General or such persons in the Department of Justice as the Attorney General designates. The Central Authority for the Republic of Lithuania shall be the Office of the Prosecutor General and the Ministry of Justice.

2. (a) The Central Authority for the United States will make requests on behalf of prosecutors, investigators with criminal law enforcement jurisdiction, and agencies and entities with specific statutory or regulatory authority to refer matters for criminal prosecution. The Central Authority for the Republic of Lithuania will make requests on behalf of prosecutors and courts.

(b) Requests under subparagraph (a) from agencies and entities with specific statutory or regulatory authority to refer matters for criminal prosecution shall be transmitted between the Central Authorities or between such other authorities as may be agreed by the Central Authorities.

3. The Central Authority for the Requesting State shall use its best efforts to ensure that a request is not made where, in its view:

(a) the offense on which the request is based does not have serious consequences; or

(b) the extent of the assistance to be requested is unreasonable in view of the sentence expected upon conviction.

4. The Central Authorities shall communicate with one another directly for the purposes of this Treaty.

Article 3
Limitations on Assistance

1. The Central Authority of the Requested State may deny assistance if:

(a) the request relates to an offense under military criminal law that would not be an offense under ordinary criminal law;

(b) the request relates to a political offense;

(c) the execution of the request would prejudice the sovereignty, security, or similar essential interests of the Requested State; or

(d) the request is not made in substantial compliance with the requirements set forth in Article 4.

2. Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

3. If the Central Authority of the Requested State denies assistance, it shall inform the Central Authority of the Requesting State of the grounds for the denial.

Article 4
Form and Contents of Requests

1. (a) A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another form in urgent situations. If the request is not in writing, it shall be confirmed in writing within ten days unless the

Central Authority of the Requested State agrees otherwise. For purposes of this paragraph, requests transmitted by fax or e-mail shall be considered to be in writing.

(b) Communications related to requests for assistance may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the Requested State. The Requested State may respond by expedited means of communications.

(c) The request shall be in the language or translated into the language of the Requested State unless otherwise agreed.

2. The request shall include the following:

(a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;

(b) information describing the facts of the offenses and the procedural history of the case;

(c) the text of the laws describing the offenses for which assistance is requested;

(d) a description of the evidence, information, or other assistance sought; and

(e) a statement of the purpose for which the evidence, information, or other assistance is sought.

3. To the extent necessary and possible, a request shall also include:

(a) information on the identity, citizenship, and location of any person from whom evidence is sought;

(b) information on the identity and location of a person to be served, that person's relationship to the investigation, prosecution, or proceeding, and the manner in which service is to be made;

(c) information on the identity and suspected location of the person or item to be located;

(d) a precise description of the place or person to be searched and of the item to be seized;

(e) a description of the manner in which any testimony or statement is to be taken and recorded;

(f) a description of the testimony or statement sought, which may include a list of questions to be asked;

(g) a description of any particular procedure to be followed in executing the request;

(h) information as to the allowances and expenses to which a person asked to appear in the Requesting State will be entitled; and

(i) any other information that may be brought to the attention of the Requested State to facilitate its execution of the request.

Article 5
Execution of Requests

1. The Central Authority of the Requested State shall promptly execute the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request. The Courts of the Requested State shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. The Central Authority of the Requested State shall represent or make arrangements for representation of the Requesting State in the execution in the Requested State of a request for assistance.

3. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. However, the method of execution specified in the request shall be followed except insofar as it contradicts or is prohibited by the laws of the Requested State.

4. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that State, it may postpone execution, or make execution subject to conditions determined to be necessary after consultations with the Central Authority of the Requesting State. If the Requesting State accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Central Authority of the Requesting State. If the request cannot be executed without breaching such confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of the Requesting State, which shall then determine whether the request should nevertheless be executed.

6. The Central Authority of the Requested State shall respond to reasonable inquiries by the Central Authority of the Requesting State concerning progress toward execution of the request.

7. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request. If the execution of the request is delayed or postponed, the Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the reasons for the delay or postponement.

Article 6
Costs

1. The Requested State shall pay all costs relating to the execution of a request except for the following:

(a) the fees of experts;

(b) the costs of interpretation, translation and transcription;

(c) the allowances and expenses related to travel of persons traveling either in the Requested State for the convenience of the Requesting State or pursuant to Articles 10 and 11; and

(d) the costs associated with establishing and servicing a video transmission, to the extent set forth in Article 16 *quater*, unless otherwise agreed by the Requesting and Requested States; other costs arising in the course of providing such assistance (including costs associated with travel of participants in the Requested State) shall be borne in accordance with the other provisions of this Article.

2. If during the execution of a request it becomes apparent that complete execution will entail expenses of an extraordinary nature, the Central Authorities shall consult to determine the terms and conditions under which execution may continue.

Article 7
Limitations on Use

1. The Requested State may require that the Requesting State limit the use of any information or evidence obtained from the Requested State to the following purposes:

(a) for the purpose of its criminal investigations and proceedings;

(b) for preventing an immediate and serious threat to its public security;

(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

(i) set forth in subparagraph (a); or
(ii) for which mutual legal assistance was rendered to agencies or entities with specific statutory or regulatory authority to refer matters for criminal prosecution under Article 2(2) of this Treaty;

(d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

(e) for any other purpose, only with the prior consent of the Requested State.

2. (a) This Article shall not prejudice the ability of the Requested State in accordance with this Treaty to impose additional conditions in a particular

case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the Requested State may require the Requesting State to give information on the use made of the information or evidence.

(b) Generic restrictions with respect to the legal standards of the Requesting State for processing personal data may not be imposed by the Requested State as a condition under subparagraph (a) to providing information or evidence.

3. Where, following disclosure to the Requesting State, the Requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested State may consult with the Requesting State to determine the extent to which the evidence and information can be protected.

4. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential or be used only subject to terms and conditions that it may specify. If the Requesting State accepts the information or evidence subject to such conditions, the Requesting State shall use its best efforts to comply with the conditions.

Article 8
Testimony or Evidence in the Requested State

1. A person in the Requested State from whom testimony or evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and testify or produce items, including documents, records, and other articles of evidence. A person who gives false testimony, either orally or in writing, in execution of a request shall be subject to prosecution in the Requested State in accordance with the criminal laws of that State.

2. Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.

3. The Requested State shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to question, directly or indirectly, the person giving the testimony or evidence.

4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the Central Authorities shall consult. If the Central Authority of the Requesting State so requests, the testimony or evidence shall nonetheless be taken and the claim shall be referred to the competent authorities of the Requesting State for resolution.

5. Evidence produced in the Requested State pursuant to this Article or that is the subject of testimony taken under this Article shall, upon request, be authenticated by an attestation, including, in the case of business records, authentication in the manner indicated in Form A appended to this Treaty. The absence or nonexistence of such records shall, upon request, be certified through the use of Form B appended to this

Treaty. Records authenticated by Form A, or Form B certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

Article 9
Official Records

1. The Requested State shall provide the Requesting State with copies of publicly available records, including documents or information in any form, in the possession of an executive, legislative, or judicial authority in the Requested State.

2. The Requested State may provide copies of any records, including documents or information in any form, that are in the possession of an executive, legislative, or judicial authority in that State, but that are not publicly available, to the same extent and under the same conditions as such copies would be available to its own law enforcement or judicial authorities. The Requested State may in its discretion deny a request pursuant to this paragraph entirely or in part.

3. Records produced pursuant to this Article shall, upon request, be authenticated by an official responsible for maintaining them through the use of Form C appended to this Treaty. The absence or nonexistence of such records shall, upon request, be certified through the use of Form D appended to this Treaty. Records authenticated by Form C, or Form D certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

Article 10
Appearance Outside the Requested State

1. When the Requesting State requests the appearance of a person in that State or in a third State, the Requested State shall invite the person to appear before the appropriate authority in the Requesting State or in the third State. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the person's response.

2. The Requesting State shall indicate the extent to which the person's expenses will be paid. A person who agrees to appear may ask that the Requesting State advance money to cover these expenses. This advance may be provided through the Embassy or a consulate of the Requesting State.

3. The Central Authority of the Requesting State may, in its discretion, determine that a person appearing in the Requesting State pursuant to this Article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions that preceded the person's departure from the Requested State.

4. The safe conduct provided for by this Article shall cease seven days after a competent authority of the Requesting State has notified a person appearing pursuant to this Treaty that the person's presence is no longer required, and that person, being free to leave, has not left or, having left, has voluntarily returned.

Article 11
Transfer of Persons in Custody

1. A person in the custody of the Requested State whose presence in the Requesting State or in a third State is sought for purposes of assistance under this Treaty shall be transferred from the Requested State to the Requesting State or to the third State for that purpose if the person consents and if the Central Authorities of both States agree.

2. A person in the custody of the Requesting State whose presence in the Requested State is sought for purposes of assistance under this Treaty may be transferred from the Requesting State to the Requested State if the person consents and if the Central Authorities of both States agree.

3. For purposes of this Article:

(a) the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise agreed by both Central Authorities;

(b) the person transferred shall not be required, without his consent, to testify in proceedings not specified in the request;

(c) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities;

(d) the receiving State shall not require the sending State to initiate extradition or any other proceedings for the return of the person transferred;

(e) the person transferred shall receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State; and

(f) where the receiving State is a third state, the Requesting State shall make all arrangements necessary to meet the requirements of this paragraph.

4. The Central Authority of the receiving State may provide safe conduct for the person transferred under the same terms set forth in Article 10, subject to the conditions set forth in paragraph 3 of this Article.

Article 12
Location or Identification of Persons or Items

If the Requesting State seeks the location or identity of persons or items in the Requested State, the Requested State shall use its best efforts to ascertain the location or identity.

Article 13
Service of Documents

1. The Requested State shall use its best efforts to effect service of any document relating, in whole or in part, to any request for assistance made by the Requesting State under the provisions of this Treaty.

2. The Requesting State shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting State a reasonable time before the scheduled appearance.

3. The Requested State shall return a proof of service to the Requesting State in the manner specified in the request.

Article 14
Search and Seizure

1. The Requested State shall execute a request for the search, seizure, and transfer of any item to the Requesting State if the request includes the information justifying such action under the laws of the Requested State.

2. Upon request by the Central Authority of the Requesting State, every official in the Requested State who has had custody of a seized item shall certify, through the use of Form E appended to this Treaty, the identity of the item, the continuity of its custody, and any changes in its condition. The certificates shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

3. The Central Authority of the Requested State may require that the Requesting State agree to the terms and conditions deemed necessary to protect third party interests in the item to be transferred.

4. The Central Authority of the Requested State shall use its best efforts to obtain any necessary approval for the transfer of items where such approval is required under the laws of that State concerning import, export, or other transfer of items.

Article 15
Return of items

The Central Authority of the Requested State may require that the Central Authority of the Requesting State return as soon as possible any items, including documents, records, or other articles of evidence, furnished to it in execution of a request under this Treaty.

Article 16
Assistance in Forfeiture Proceedings

1. The Central Authority of either Contracting Party may notify the Central Authority of the other Contracting Party when it becomes aware of proceeds or instrumentalities of offenses that are located in the other Party and may be forfeitable or

otherwise subject to seizure under the laws of that Party. If the Party receiving such information has jurisdiction in this regard, it may present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country. The Central Authority of the Party that received the information shall inform the Central Authority of the Party that provided the information of the action taken.

2. The Contracting Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions. This may include action to temporarily immobilize the proceeds or instrumentalities pending further proceedings.

3. The Party that has custody over proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws. Either Contracting Party may transfer all or part of such assets, or the proceeds of their sale, to the other Party, to the extent permitted by the transferring Party's laws and upon such terms as it deems appropriate.

Article 16 *bis*
Identification of Bank Information

1. (a) Upon request of the Requesting State, the Requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The Requested State shall promptly communicate the results of its enquiries to the Requesting State.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;

(ii) information in the possession of non-bank financial institutions; or

(iii)financial transactions unrelated to accounts.

2. In addition to the requirements of Article 4(2) of this Treaty, a request for information described in paragraph 1 shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions;

(b) sufficient information to enable the competent authority of the Requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the Requested State may have the information requested; and

(ii) conclude that the information sought relates to the criminal investigation or proceeding; and

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic notes between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

(a) for the Republic of Lithuania, the Office of the Prosecutor General, and

(b) for the United States of America, the attaché responsible for the Republic of Lithuania of the:

i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;

ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;

iii) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. The Republic of Lithuania and the United States of America shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both the Requesting and Requested States, and with respect to such other criminal activity as they may notify each other.

5. The Requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the provisions of this Treaty.

Article 16 *ter*
Joint Investigative Teams

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and the Republic of Lithuania, for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union where deemed appropriate by the United States of America and the Republic of Lithuania.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offenses, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances

involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other State(s) having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

Article 16 *quater*
Video Conferencing

1. The use of video transmission technology shall be available between the United States of America and the Republic of Lithuania for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the Requested State. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under this Treaty.

2. The Requesting and Requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

3. Without prejudice to any jurisdiction under the law of the Requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the Requested State in the same manner as if it had been committed in the course of its domestic proceedings.

4. This Article is without prejudice to the use of other means for obtaining of testimony in the Requested State available under applicable treaty or law.

5. The Requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements.

Article 17
Compatibility with Other Treaties

Assistance and procedures set forth in this Treaty shall not prevent either of the Contracting Parties from granting assistance to the other Contracting Party through the provisions of other applicable international agreements, or through the provisions of its national laws. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement, or practice that may be applicable.

Article 18
Consultation

The Central Authorities of the Contracting Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

Article 19
Termination

Either Party may terminate this Treaty by means of written notice to the other Party. Termination shall take effect six months following the date of notification.

Form A
CERTIFICATION OF BUSINESS RECORDS

I, (name), having been advised as a witness that a false attestation subjects me to a penalty of criminal punishment, attest as follows:

I am employed by/associated with (name of business from which documents are sought), in the position of (business position or title) and by reason of my position am authorized and qualified to make this attestation.

Each of the records attached hereto is a record in the custody of the above-named business that:

(A) was made, at or near the time of the occurrence of the matters set forth therein, by, or from information transmitted by, a person with knowledge of those matters;

(B) was kept in the course of a regularly conducted business activity;

(C) was made by the business as a regular practice; and,

(D) if not an original record, is a duplicate of the original.

_____
date of execution

_____
place of execution

_____
signature

Form B
CERTIFICATION OF ABSENCE OR NONEXISTENCE OF BUSINESS RECORDS

I, (name), having been advised as a witness that a false attestation subjects me to a penalty of criminal punishment, attest as follows:

I am employed by/associated with (name of business from which documents are sought), in the position of (business position or title) and by reason of my position am authorized and qualified to make this attestation.

As a result of my employment/association with the above-named business, I am familiar with the business records it maintains. The business maintains business records that:

(A) are made, at or near the time of the occurrence of the matters set forth therein by, or from information transmitted by, a person with knowledge of those matters;

(B) are kept in the course of a regularly conducted business activity; and

(C) are made by the business as a regular practice.

Among the records so maintained are records of individuals and entities that have accounts or otherwise transact business with the above-named business. I have made or caused to be made a diligent search of those records. No records have been found reflecting any business activity between the business and the following individuals and entities:

If the business had maintained an account on behalf of or had participated in a transaction with any of the foregoing individuals or entities, its business records would reflect that fact.

_____
date of execution

_____
place of execution

_____
signature

Form C
CERTIFICATION OF OFFICIAL RECORDS

I, (name), certify as follows:

1. (Name of public authority) is a government office or agency of (country) and is authorized by law to maintain official records setting forth matters authorized by law to be reported and recorded or filed;

2. my position with the above-named public authority is (official title);

3. in my official capacity I have caused the production of true and accurate copies of records maintained by that public authority; and

4. those copies are described below and attached.

Description of records:

_____
signature

(Official Seal or Stamp)

_____
date

Form D
CERTIFICATION OF ABSENCE OR NONEXISTENCE OF OFFICIAL RECORDS

I, (name), certify as follows:

1. (Name of public authority) is a government office or agency of (country) and is authorized by law to maintain official records setting forth matters that are authorized by law to be reported and recorded or filed;

2. records of the type described below set forth matters that are authorized by law to be reported and recorded or filed, and such matters regularly are recorded or filed by the above-named public authority;

3. my position with the above-named public authority is (official title);

4. in my official capacity I have made, or caused to be made, a diligent search of the above-named public authority's records for the records described below; and

5. no such records have been found to exist.

Description of records:

_____
signature

(Official Seal or Stamp)

_____
date

Form E
CERTIFICATION WITH RESPECT TO SEIZED ITEMS

I, (name), having been advised as a witness that a false attestation subjects me to a penalty of criminal punishment, attest as follows:

1. I am employed by (country) and my position or title is (position or title);

2. I received custody of the items listed below from (name of person) on (date) at (place); and

3. I relinquished custody of the items listed below to (name of person) on (date) at (place) in the same condition as when I received them (or, if different, as noted below).

Description of items:

Changes in condition while in my custody:

_____
date of execution

_____
place of execution

(Official Seal or Stamp)

_____
signature

Instrument as contemplated by Article 3, paragraph 2 (a), of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003, as to the application of the Treaty between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg on Mutual Legal Assistance in Criminal Matters signed 13 March 1997

As contemplated by Article 3, paragraph 2 (a), of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the Governments of the United States of America and of the Grand Duchy of Luxembourg acknowledge that, in accordance with the provisions of this Instrument, the U.S.-EU Mutual Legal Assistance Agreement is applied in relation to the bilateral Treaty between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg on Mutual Legal Assistance in Criminal Matters signed 13 March 1997 (hereafter "the 1997 Bilateral Mutual Legal Assistance Treaty") under the following terms:

I.

A. Article 4, paragraphs 1 through 7, of the U.S.-EU Mutual Legal Assistance Agreement provides:

"Identification of Bank Information

1. (a) Upon request of the requesting State, the requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offence is the holder of a bank account or accounts. The requested State shall promptly communicate the results of its enquiries to the requesting State;

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offence;

(ii) information in the possession of non-bank financial institutions; or

(iii) financial transactions unrelated to accounts.

2. A request for information described in paragraph 1 shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions; and

(b) sufficient information to enable the competent authority of the requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offence and that banks or non-bank financial institutions in the territory of the requested State may have the information requested; and

(ii) conclude that the information sought relates to the criminal investigation or proceeding;

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Requests for assistance under this Article shall be transmitted between:

(a) central authorities responsible for mutual legal assistance in Member States, or national authorities of Member States responsible for investigation or prosecution of criminal offences as designated pursuant to Article 15(2), and

(b) national authorities of the United States responsible for investigation or prosecution of criminal offences, as designated pursuant to Article 15(2).

The Contracting Parties may, following the entry into force of this Agreement, agree by exchange of diplomatic note to modify the channels through which requests under this Article are made.

4. (a) Subject to subparagraph (b), a State may, pursuant to Article 15, limit its obligation to provide assistance under this Article to:

(i) offences punishable under the laws of both the requested and requesting States;

(ii) offences punishable by a penalty involving deprivation of liberty or a detention order of a maximum period of at least four years in the requesting State and at least two years in the requested State; or

(iii) designated serious offences punishable under the laws of both the requested and requesting States;

(b) A State which limits its obligation pursuant to subparagraph (a)(ii) or (iii) shall, at a minimum, enable identification of accounts associated with terrorist activity and the laundering of proceeds generated from a comprehensive range of serious criminal activities, punishable under the laws of both the requesting and requested States.

5. Assistance may not be refused under this Article on grounds of bank secrecy.

6. The requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article, in accordance with the provisions of the applicable mutual legal assistance treaty in force between the States concerned, or in the absence thereof, in accordance with the requirements of its domestic law.

7. The Contracting Parties shall take measures to avoid the imposition of extraordinary burdens on requested States through application of this Article. Where extraordinary burdens on a requested State nonetheless result, including on banks or by operation of the channels of communications foreseen in this Article, the Contracting Parties shall immediately consult with a view to facilitating the application of this Article, including the taking of such measures as may be required to reduce pending and future burdens. "

B. Article 4, paragraphs 1 through 7, of the U.S.-EU Mutual Legal Assistance Agreement shall govern the identification of financial accounts and transactions, in addition to any authority already provided for under the 1997 Bilateral Mutual Legal Assistance Treaty, and shall supplement the terms of that Treaty. For purposes of applying its terms and for purposes of Article 15, paragraphs 2 and 3 of the U.S.-EU Mutual Legal Assistance Agreement :

1. Requests for assistance shall contain the information required by Article 4, paragraph 2 a) through d) of the 1997 Bilateral Mutual Legal Assistance Treaty, in addition to the information set forth in Article 4, paragraph 2 (a) through (c), of the U.S.-EU Mutual Legal Assistance Agreement.

2. The designated authorities between whom requests for assistance shall be transmitted pursuant to Article 4, paragraph 3, of the U.S.-EU Mutual Legal Assistance Agreement are:

- for the United States of America, the attaché responsible for the Grand Duchy of Luxembourg of the

  (a) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;

  (b) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;

  (c) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

- for the Grand Duchy of Luxembourg, its Central Authority under Article 2, paragraph 2 of the 1997 Bilateral Mutual Legal Assistance Treaty.

3. Pursuant to Article 4, paragraph 4, of the U.S.-EU Mutual Legal Assistance Agreement, the United States of America and the Grand Duchy of Luxembourg shall provide assistance with respect to money laundering and terrorist activity punishable under the laws of both the Requesting and Requested States, and with respect to such other criminal activity as to which they may notify each other.

4. Article 4, paragraph 5, has the same effect as the more general provisions of Article 5 of the 1997 Bilateral Mutual Legal Assistance Treaty, under which bank secrecy is not a permissible ground for refusal.

II.

A. Article 5 of the U.S.-EU Mutual Legal Assistance Agreement provides:

"Joint Investigative Teams

1. The Contracting Parties shall, to the extent they have not already done so, take such measures as may be necessary to enable joint investigative teams to be established and operated in the respective territories of each Member State and the United States of America for the purpose of facilitating criminal investigations or prosecutions involving one or more Member States and the United States of America where deemed appropriate by the Member State concerned and the United States of America.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offences, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other States having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities."

B. Article 5 of the U.S.-EU Mutual Legal Assistance Agreement shall govern the formation and activities of joint investigative teams in addition to any authority already provided for under the 1997 Bilateral Mutual Legal Assistance Treaty, and shall supplement the terms of that Treaty.

III.

A. Article 6 of the U.S.-EU Mutual Legal Assistance Agreement provides:

"Video Conferencing

1. The Contracting Parties shall take such measures as may be necessary to enable the use of video transmission technology between each Member State and the United States of America for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in a requested State, to the extent such assistance is not currently available. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as provided under the applicable mutual legal assistance treaty in force between the States concerned, or the law of the requested State, as applicable.

2. Unless otherwise agreed by the requesting and requested States, the requesting State shall bear the costs associated with establishing and servicing the video transmission. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the requested State) shall be borne in accordance with the applicable provisions of the mutual legal assistance treaty in force between the States concerned, or where there is no such treaty, as agreed upon by the requesting and requested States.

3. The requesting and requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

4. Without prejudice to any jurisdiction under the law of the requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the requested State in the same manner as if it had been committed in the course of its domestic proceedings.

5. This Article is without prejudice to the use of other means for obtaining of testimony in the requested State available under applicable treaty or law.

6. This Article is without prejudice to application of provisions of bilateral mutual legal assistance agreements between Member States and the United States of America that require or permit the use of video conferencing technology for purposes other than those described in paragraph 1, including for purposes of identification of persons or objects, or taking of investigative statements. Where not already provided for under applicable treaty or law, a State may permit the use of video conferencing technology in such instances."

B. Article 6 of the U.S.-EU Mutual Legal Assistance Agreement shall govern the taking of testimony of a person located in the Requested State by use of video transmission technology between the Requesting and Requested States, in addition to any authority already provided under the 1997 Bilateral Mutual Legal Assistance Treaty, and shall supplement the terms of that Treaty. For purposes of applying its terms, costs associated with establishing and servicing the video transmission shall be borne by the requesting State unless otherwise agreed by the Requesting and Requested States, and

all other costs shall be borne in accordance with Article 6 of the 1997 Bilateral Mutual Legal Assistance Treaty.

IV.

A. Article 7 of the U.S.-EU Mutual Legal Assistance Agreement provides:

"Expedited Transmission of Requests

Requests for mutual legal assistance, and communications related thereto, may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the requested State. The requested State may respond to the request by any such expedited means of communication."

B. Article 7 of the U.S.-EU Mutual Legal Assistance Agreement shall govern the use of expedited means of communication, in addition to any authority already provided for under the 1997 Bilateral Mutual Legal Assistance Treaty, and shall supplement the terms of that Treaty. For purposes of applying its terms:

1. For purposes of Article 4, paragraph 1, of the 1997 Bilateral Mutual Legal Assistance Treaty, requests for assistance transmitted by fax or attached to an e-mail shall be accepted by the requested State. Formal confirmation shall follow where required by the requested State.

2. The use of expedited means of communications shall not be limited to urgent circumstances.

V.

A. Article 8, paragraph 2(a), of the U.S.-EU Mutual Legal Assistance Agreement provides:

"Mutual Legal Assistance to Administrative Authorities

2.(a) Requests for assistance under this Article shall be transmitted between the central authorities designated pursuant to the bilateral mutual legal assistance treaty in force between the States concerned, or between such other authorities as may be agreed by the central authorities;"

B. For the purposes of Article 8, paragraph 2 a), of the U.S.-EU Mutual Legal Assistance Agreement, requests for mutual legal assistance from agencies or entities with specific statutory or regulatory authority to refer matters for criminal prosecution as set forth in Article 1, paragraph 6, of the 1997 Bilateral Mutual Legal Assistance Treaty, shall be transmitted between the Central Authorities referred to in Article 2, paragraph 2, thereof, unless the Governments of the United States of America and the Grand Duchy of Luxembourg agree to designate an alternate channel of transmission.

VI.

A. Article 9 of the U.S.-EU Mutual Legal Assistance Agreement provides:

"Limitations on Use to Protect Personal and Other Data

1. The requesting State may use any evidence or information obtained from the requested State:

(a) for the purpose of its criminal investigations and proceedings;

(b) for preventing an immediate and serious threat to its public security;

(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

(i) set forth in subparagraph (a); or

(ii) for which mutual legal assistance was rendered under Article 8;

(d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

(e) for any other purpose, only with the prior consent of the requested State.

2. (a) This Article shall not prejudice the ability of the requested State to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the requested State may require the requesting State to give information on the use made of the evidence or information;

(b) Generic restrictions with respect to the legal standards of the requesting State for processing personal data may not be imposed by the requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the requesting State, the requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the requested State may consult with the requesting State to determine the extent to which the evidence and information can be protected.

4 A requested State may apply the use limitation provision of the applicable bilateral mutual legal assistance treaty in lieu of this Article, where doing so will result in less restriction on the use of information and evidence than provided for in this Article.

5. Where a bilateral mutual legal assistance treaty in force between a Member State and the United States of America on the date of signature of this Agreement permits

limitation of the obligation to provide assistance with respect to certain tax offences, the Member State concerned may indicate, in its exchange of written instruments with the United States of America described in Article 3(2), that, with respect to such offences, it will continue to apply the use limitation provision of that treaty. "

B. Article 9 of the U.S.-EU Mutual Legal Assistance Agreement shall govern the limitation on use of information or evidence provided to the Requesting State and the conditioning or refusal of assistance on data protection grounds, and shall be applied in place of Article 7 of the 1997 Bilateral Mutual Legal Assistance Treaty. For purposes of applying its terms:

1. The reference to "Article 8" in Article 9, paragraph 1(c) (ii), of the U.S.-EU Mutual Legal Assistance Agreement relates to assistance provided to agencies or entities with specific statutory or regulatory authority to refer matters for criminal prosecution as set forth in Article 1, paragraph 6 of the 1997 Bilateral Mutual Legal Assistance Treaty.

2. The "additional conditions" referred to in Article 9, paragraph 2(a), of the U.S.-EU Mutual Legal Assistance Agreement are other conditions that may be imposed in accordance with the 1997 Bilateral Mutual Legal Assistance Treaty.

3. Pursuant to Article 9, paragraph 4, of the U.S.-EU Mutual Legal Assistance Agreement, the Requested State may apply Article 7 of the 1997 Bilateral Mutual Legal Assistance Treaty where doing so would result in less restriction on use.

4. Pursuant to Article 9, paragraph 5 of the U.S.-EU Mutual Legal Assistance Agreement, the Grand Duchy of Luxembourg indicates that, in lieu of Article 9, paragraph 1 thereof, it shall continue to apply Article 7, paragraphs 1 through 4, of the 1997 Bilateral Mutual Legal Assistance Treaty with respect to the tax offences described in the 1997 Bilateral Mutual Legal Assistance Treaty.

VII.

Pursuant to Article 12, paragraph 1, of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall apply to offences committed before as well as after it enters into force.

Pursuant to Article 12, paragraph 2, of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall apply to requests for mutual legal assistance made after its entry into force, except that Parts III and IV shall apply to requests pending in a requested State at the time this Instrument enters into force.

VIII.

This instrument shall be subject to the completion by the United States of America and the Grand Duchy of Luxembourg of their respective applicable internal procedures for entry into force. The Governments of the United States of America and the Grand Duchy of Luxembourg shall thereupon exchange instruments indicating that such measures have been completed. This instrument shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement, in accordance with Article 18, paragraph 1 thereof.

In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall be terminated and the 1997 Bilateral Mutual Legal Assistance Treaty shall be applied.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Instrument.

DONE at Washington, in duplicate, this 1st day of February, in the English and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG:

Treaty on Certain Aspects of Mutual Legal Assistance in Criminal Matters between the Government of the United States of America and the Government of Malta

1. As contemplated by Article 3(3) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the Governments of the United States of America and Malta acknowledge that, in accordance with the provisions of this Treaty, the U.S.-EU Mutual Legal Assistance Agreement is applied between them under the following terms:

(a) This Treaty is intended solely for mutual legal assistance between the United States of America and Malta in accordance with the terms of the U.S.-EU Mutual Legal Assistance Agreement, and shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request, nor expand or limit rights otherwise available under domestic law;

(b) Article 4 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 1 of the Annex to this Treaty shall govern the identification of financial accounts and transactions;

(c) Article 5 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 2 of the Annex to this Treaty shall govern the formation and activities of joint investigative teams;

(d) Article 6 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 3 of the Annex to this Treaty shall govern the taking of testimony of a person located in the requested State by use of video transmission technology between the requesting and requested States;

(e) Article 7 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 4 of the Annex to this Treaty shall govern the use of expedited means of communication;

(f) Article 8 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 5 of the Annex to this Treaty shall govern the providing of mutual legal assistance to the administrative authorities concerned;

(g) Article 9 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 6 of the Annex to this Treaty shall govern the limitation on use of information or evidence provided to the requesting State, and governing the conditioning or refusal of assistance on data protection grounds;

(h) Article 10 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 7 of the Annex to this Treaty shall govern the circumstances under which a requesting State may seek the confidentiality of its request;

(i) Article 13 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 8 of the Annex to this Treaty shall govern the invocation by the requested State of grounds for refusal.

2. The Annex reflects the provisions on mutual legal assistance applicable between the United States of America and Malta upon entry into force of this Treaty.

3. In accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, this Treaty shall apply to offenses committed before as well as after it enters into force.

4. This Treaty shall apply to requests made after its entry into force. Nevertheless, in accordance with Article 12(2) of the U.S.-EU Mutual Legal Assistance Agreement, Articles 3 and 4 of the Annex apply to requests pending in the Requested State at the time this treaty enters into force.

5. (a) This Treaty shall be subject to the completion by the United States of America and Malta of their respective applicable internal procedures for entry into force. The Governments of the United States of America and Malta shall thereupon exchange notifications indicating that such measures have been completed. This Treaty shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement.

(b) In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Treaty shall be terminated. The Governments of the United States of America and Malta nevertheless may agree to continue to apply some or all of the provisions of this Treaty.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

DONE at Valletta, this 18th day of May 2006, in the English language.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF MALTA:

ANNEX

Article 1:
Identification of bank information

1 (a) Upon request of the requesting State, the requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The requested State shall promptly communicate the results of its enquiries to the requesting State.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;
(ii) information in the possession of non-bank financial institutions; or
(iii) financial transactions unrelated to accounts.

2. A request for information described in paragraph 1 of this Article shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions;

(b) sufficient information to enable the competent authority of the requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the requested State may have the information requested; and
(ii) conclude that the information sought relates to the criminal investigation or proceeding; and

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic notes between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

(a) for Malta, the Office of the Attorney General; and

(b) for the United States of America, the attaché responsible for Malta of the:

(i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;

(ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;

(iii) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. The United States of America and Malta shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both States, and with respect to such other criminal activity as they may notify each other.

5. Assistance may not be refused under this Article on grounds of bank secrecy.

6. The requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the requirements of its domestic law.

Article 2:
Joint investigative teams

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and Malta for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union where deemed appropriate by the United States of America and Malta.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offenses, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other State(s) having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

Article 3:
Video conferencing

1. The use of video transmission technology shall be available between the United States of America and Malta for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the requested State. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as provided for under the law of the requested State.

2. Unless otherwise agreed by the requesting and requested States, the requesting State shall bear the costs associated with establishing and servicing the video transmission. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the requested State) shall be borne as agreed upon by the requesting and requested States.

3. The requesting and requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

4. Without prejudice to any jurisdiction under the law of the requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the requested State in the same manner as if it had been committed in the course of its domestic proceedings.

5. This Article is without prejudice to the use of other means for obtaining of testimony in the requested State available under applicable treaty or law.

6. The requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements.

Article 4:
Expedited transmission of requests

Requests for mutual legal assistance, and communications related thereto, may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the requested State. The requested State may respond to the request by any such expedited means of communication.

Article 5:
Mutual legal assistance to administrative authorities

1. Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

2. Requests for assistance under this article shall be transmitted between the United States Department of Justice and the Office of the Attorney General of Malta, or between such other authorities as may be agreed by the Department of Justice and the Ministry of Justice of Malta.

Article 6:
Limitations on use to protect personal and other data

1. The requesting State may use any evidence or information obtained from the requested State:

(a) for the purpose of its criminal investigations and proceedings;
(b) for preventing an immediate and serious threat to its public security;
(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:
    (i) set forth in subparagraph (a); or
    (ii) for which mutual legal assistance was rendered under Article 5 of this Annex;
(d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and
(e) for any other purpose, only with the prior consent of the requested State.

2 (a) This Article shall not prejudice the ability of the requested State to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the requested State may require the requesting State to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the requesting State for processing personal data may not be imposed by the requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the requesting State, the requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the requested State may consult with the requesting State to determine the extent to which the evidence and information can be protected.

ARTICLE 7:
Requesting State's request for confidentiality

The requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the requesting State. If the request cannot be executed without breaching the requested confidentiality, the Department of Justice for the United States, and, for Malta, the Office of the Attorney General, shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed.

ARTICLE 8:
Refusal of assistance

Subject to Article 1(5) and 6(2)(b) of this Annex, the provisions of this Annex are without prejudice to the invocation by the requested State of grounds for refusal of assistance available pursuant to its applicable legal principles, including where execution of the request would prejudice its sovereignty, security, ordre public or other essential interests.

AGREEMENT COMPRISING THE INSTRUMENT AS CONTEMPLATED BY ARTICLE 3(2) OF THE AGREEMENT ON MUTUAL LEGAL ASSISTANCE BETWEEN THE UNITED STATES OF AMERICA AND THE EUROPEAN UNION SIGNED AT WASHINGTON ON 25 JUNE 2003, AS TO THE APPLICATION OF THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF THE NETHERLANDS ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS SIGNED AT THE HAGUE ON 12 JUNE 1981

The Government of United States of America

and

the Government of the Kingdom of the Netherlands,

have agreed as follows:

Article 1

As contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed at Washington on 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the Governments of the United States of America and the Kingdom of the Netherlands acknowledge that, in accordance with the provisions of this Instrument, the bilateral Treaty between the United States of America and the Kingdom of the Netherlands on Mutual Assistance in Criminal Matters signed at The Hague on 12 June 1981 (hereafter "the 1981 Mutual Assistance Treaty") is applied in relation to the U.S.-EU Mutual Legal Assistance Agreement under the following terms:

a) Pursuant to Article 4 of the U.S.-EU Mutual Legal Assistance Agreement, Article 9 *bis* of the Annex to this Agreement shall be applied to supplement the provisions of the 1981 Mutual Assistance Treaty;

b) Pursuant to Article 5 of the U.S.-EU Mutual Legal Assistance Agreement, Article 9 *ter* of the Annex to this Agreement shall be applied to supplement the provisions of the 1981 Mutual Assistance Treaty;

c) Pursuant to Article 6 of the U.S.-EU Mutual Legal Assistance Agreement, Articles 9 *quater* and 17(1) of the Annex to this Agreement shall be applied to supplement the provisions of the 1981 Mutual Assistance Treaty;

d) Pursuant to Article 7 of the U.S.-EU Mutual Legal Assistance Agreement, Article 14(2) of the Annex to this Agreement shall be applied to supplement the provisions of the 1981 Mutual Assistance Treaty;

e) Pursuant to Article 8 of the U.S.-EU Mutual Legal Assistance Agreement, Article 1(1 *bis*) of the Annex to this Agreement shall be applied to supplement the provisions of the 1981 Mutual Assistance Treaty;

f) Pursuant to Article 9 of the U.S.-EU Mutual Legal Assistance Agreement, Article 11 *bis* of the Annex to this Agreement shall be applied in place of Article 11(2) of the 1981 Mutual Assistance Treaty.

g) Pursuant to Article 10 of the U.S.-EU Mutual Legal Assistance Agreement, Article 11 (2) of the Annex to this Agreement shall be applied to supplement the provisions of the 1981 Mutual Assistance Treaty.

Article 2

The Annex to this Agreement reflects the text of the provisions of the 1981 Mutual Assistance Treaty and the U.S.-EU Mutual Legal Assistance Agreement as a result of paragraph 1 of this Agreement. This integrated text shall apply upon entry into force of this Agreement.

Article 3

This Agreement shall apply to the United States of America and the Kingdom of the Netherlands in Europe. The application of the 1981 Mutual Assistance Treaty to the Netherlands Antilles and Aruba shall remain unaffected by the U.S.-EU Mutual Legal Assistance Agreement. Accordingly, this Agreement shall not apply to the Netherlands Antilles or Aruba unless the United States of America and the European Union, by exchange of diplomatic notes in accordance with Article 16(1)(b) of the U.S.-EU Mutual Legal Assistance Agreement, agree to extend its application to them. Such application may be terminated in accordance with Article 16(2) of the U.S.-EU Mutual Legal Assistance Agreement.

Article 4

In accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, this Agreement shall apply to offenses committed before as well as after it enters into force.

Article 5

This Agreement shall not apply to requests made prior to its entry into force; except that, in accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, Articles 9 *quater,* 14(2) and 17(1) of the Annex shall be applicable to requests made prior to such entry into force.

Article 6

(a) This Agreement shall be subject to the completion by the United States of America and the Kingdom of the Netherlands of their respective applicable internal procedures for entry into force. The Governments of the United States of America and the Kingdom of the Netherlands shall thereupon exchange instruments indicating that such measures have been completed. This Agreement shall enter into force on the date of entry into force of the U.S-EU Mutual Legal Assistance Agreement.

(b) In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Agreement shall be terminated at the same time, and application of the original text of the 1981 Mutual Assistance Treaty shall resume six months after the notice of termination.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at The Hague, in duplicate, 29 September 2004 in the English and Dutch languages, both texts being equally authentic.

For the Government of the United States of America

For the Government of the Kingdom of the Netherlands

ANNEX

ARTICLE 1: Obligation to Render Assistance

1. The Contracting Parties undertake to afford each other, upon request and in accordance with the provisions of this Treaty, mutual assistance in criminal investigations and proceedings.

1 bis.

(a) Mutual assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

(b) Requests for assistance under this paragraph shall be transmitted between the Competent Authorities designated pursuant to Article 14 of this Treaty, or between such other authorities as may be agreed by the Competent Authorities.

2. Assistance shall include, but not be limited to:

a. locating persons;
b. serving documents;
c. providing records;
d. taking the testimony or statements of persons;
e. producing documents;
f. executing requests for search and seizure; and
g. transferring persons in custody for testimonial purposes.

ARTICLE 2: Locating Persons

The Requested State shall make thorough efforts to ascertain the location of persons specified in the request and believed to be within the Requested State.

ARTICLE 3: Serving Documents

1. The Requested State shall cause service of any legal document transmitted for this purpose by the Requesting State.

2. Any request for the service of a document requiring the appearance of a person before an authority in the Requesting State shall be transmitted a reasonable time before the scheduled appearance.

3. The Requested State shall return as proof of service a dated receipt signed by the person served or a declaration signed by the officer making service, specifying the form and date of service.

ARTICLE 4: Providing Records of Government Offices or Agencies

1. The Requested State shall provide a copy of a publicly available record of a government office or agency, duly authenticated by an appropriate official.

2. The Requested State may provide any record or information in the possession of a government office or agency, but not publicly available, to the same extent and under the same conditions as it would be available to its own law enforcement or judicial authorities. The Requested State in its discretion may deny the request entirely or in part.

ARTICLE 5: Taking Testimony and Producing Documents in the Requested State

1. A person from whom evidence is sought shall, if necessary, be compelled by subpoena to appear and testify or produce documents, records and articles to the same extent as in investigations or proceedings in the Requested State. Testimonial privileges under the laws of the Requesting State shall not apply in the execution of requests under this Article.

2. On request, the Requested State shall state the date and place of the taking of testimony.

3. At the execution of a request, the Requested State shall permit the presence of an accused, counsel for the accused, and any other interested person specified in the request.

4. The executing authority shall provide any person permitted to be present the opportunity to pose questions for the person whose testimony is sought.

ARTICLE 6: Executing Requests for Search and Seizure

1. The Requested State shall execute requests for search and seizure in accordance with its laws and practices if the subject offense is punishable under the laws of both Contracting Parties by deprivation of liberty for a period exceeding one year, or, if less, is specified in the Schedule of this Treaty. The Competent Authorities referred to in Article 14 may agree in writing upon any modifications of the Schedule. Such modifications shall take effect on a date to be determined in an exchange of diplomatic notes.

2. An offense shall be deemed punishable under the laws of the Requested State if the acts or omissions alleged, occurring in similar circumstances in the Requested State, would constitute a criminal offense under the laws of that State. For purposes of this paragraph, purely jurisdictional elements of United States Federal offenses, such as the use of the mails or interstate commerce, shall not be considered as essential elements of these offenses.

3. A request to the Kingdom of the Netherlands for the production of documents from private persons shall comply with this Article.

4. A request to the United States for a search and seizure shall be accompanied by a statement made under oath before, or by a judge in the Kingdom of the Netherlands, which shall establish good cause to believe that an offense has taken place or is about to take place and that evidence of the offense is to be found on the persons or the premises to be searched, and shall provide a precise description of the person or premises to be searched. Such a statement shall be considered in the United States in lieu of an affidavit sworn before a United States judicial officer.

5. Documents produced under this Article shall be duly authenticated as specified in the request, and a record shall be made of every transfer of other articles or evidence seized. Such records of transfer shall be admitted as evidence of the truth of the facts they assert.

ARTICLE 7: Transferring Persons in Custody to the Requesting State

1. A person in custody needed as a witness or for purposes of confrontation before an authority in the Requesting State shall be transported to the Requesting State if:

a. the person in custody consents;

b. no substantial extension of that person's custody is anticipated; and

c. the Requested State has no reason to deny the transfer.

2. The Requested State may postpone execution of the request for as long as the presence of the person is necessary for an investigation or proceeding in the Requested State.

3. The Requesting State shall have authority and be obligated to keep the person in custody unless the Requested State has ordered release.

4. The Requesting State shall return a person not released under paragraph 3 to the custody of the Requested State as soon as circumstances permit or as otherwise agreed. The Requesting State shall not decline to return a person transferred because such person is a national of that State.

ARTICLE 8: Transferring Persons in Custody to the Requested State

1. When the Requesting State requires the transfer to the other State of a person in custody for purposes of confrontation, the request shall so state.

2. The Requested State shall hold the person in custody, unless the Requesting State has ordered release.

3. The Requested State shall return a person not released under paragraph 2 to the custody of the Requesting State as soon as circumstances permit or as otherwise agreed. The Requested State shall not decline to return the person transferred because such person is a national of that State.

ARTICLE 9: Safe Conduct

1. A person appearing before an authority in either State pursuant to this Treaty shall not be subject to suit, or be detained or subjected to any other restriction of personal liberty, with respect to any act or conviction which preceded departure, except as provided in Articles 7 and 8 and in the following paragraph.

2. A person, of whatever nationality, summoned before the judicial authorities of the Requesting State as an accused, shall not be prosecuted or subjected to any restriction of personal liberty for acts or convictions prior to departure from the Requested State and not specified in the summons.

3. Safe conduct provided in this Article shall cease if, ten days after the person appearing has been notified that his or her presence is no longer required, that person has not left the Requesting State or, having left, has returned.

4. A person appearing as a witness in the Requesting State may refuse to testify when that person, because of occupation, has an obligation or right to do so under the laws of the Requested State and the testimony required relates to protected information. The Requesting State shall respect the obligation or right when the Competent Authority of the Requested State verifies that such obligation or right exists.

Article 9 bis: Identification of Bank Information

1 (a) Upon request of the Requesting State, the Requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The Requested State shall promptly communicate the results of its enquiries to the Requesting State.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;

(ii) information in the possession of non-bank financial institutions, or

(iii) financial transactions unrelated to accounts.

2. In addition to the requirements of Article 13(1) of this Treaty, a request for information described in paragraph 1 of this Article shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions;

(b) sufficient information to enable the authority of the Requested State deciding the request to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the Requested State may have the information requested; and

(ii) conclude that the information sought relates to the criminal investigation or proceeding; and

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic notes between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

(a) For the Kingdom of the Netherlands, its Competent Authority mentioned in Article 14, and

(b) For the United States of America, the attaché responsible for the Kingdom of the Netherlands of the:

(i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;

(ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;

(iii) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. The Kingdom of the Netherlands shall provide assistance under this Article with respect to activity punishable under the laws of both the Requested and Requesting States, provided the offense is a "misdrijf" (crime) under Dutch law, which includes but is not limited to money laundering and terrorist activity. The United States of America shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both the Requesting and Requested States, and with respect to such other criminal activity as the United States of America may notify the Kingdom of the Netherlands.

5. The Requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the other provisions of this Treaty.

Article 9 ter: Joint Investigative Teams

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and the Kingdom of the Netherlands, for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union where deemed appropriate by the United States of America and the Kingdom of the Netherlands.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the authorities responsible for the investigation or prosecution of criminal offences, as determined by the respective States concerned.

3. The authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its authorities to take those measures without the other State(s) having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

Article 9 quater: Video Conferencing

1. The use of video transmission technology shall be available between the United States of America and the Kingdom of the Netherlands for taking testimony in a proceeding for which mutual assistance is available of a witness or expert located in the Requested State. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under this Treaty.

2. Unless otherwise agreed by the Requesting and Requested States, the Requesting State shall bear the costs associated with establishing and servicing a video transmission. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the Requested State) shall be borne in accordance with the provisions of Article 17.

3. The Requesting and Requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

4. Without prejudice to any jurisdiction under the law of the Requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the Requested State in the same manner as if it had been committed in the course of its domestic proceedings.

5. This Article is without prejudice to the use of other means for obtaining of testimony in the Requested State available under applicable treaty or law.

6. The Requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements.

ARTICLE 10: Limitations on Compliance

1. The Requested State may deny a request to the extent that:

a. execution of the request would prejudice the security or other essential public interests of the Requested State;

b. the request relates to a matter considered a political offense by the Requested State;

c. the request relates to the prosecution of a person who is immune from prosecution for the offense for which assistance is requested, by reason of the laws of the Requested State relating to prior jeopardy; or

d. the request does not comply with the provisions of this Treaty.

2. The Requested State may postpone execution of a request or grant it subject to conditions, if execution would interfere with an ongoing investigation or legal proceeding in the Requested State.

3. The Requested State shall immediately inform the Requesting State of the reason for denying or postponing the execution of a request.

ARTICLE 11: Protecting Confidentiality

1. When necessary, the Requested State may require that evidence and information provided under this Treaty and information derived therefrom be kept confidential in accordance with stated conditions, except to the extent that disclosure is necessary as evidence in a public proceeding.

2. The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Requesting State. If the request cannot be executed without breaching the requested confidentiality, the Competent Authority of the Requested State shall so inform the Requesting State, which shall then determine whether the request should nevertheless be executed.

Article 11 bis: Limitations on use to protect personal and other data

1. The Requesting State may use any evidence or information obtained from the Requested State:

(a) for the purpose of its criminal investigations and proceedings;

(b) for preventing an immediate and serious threat to its public security;

(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

(i) set forth in subparagraph (a); or

(ii) for which mutual legal assistance was rendered under Article 1(1 *bis*) of this Treaty;

(d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

(e) for any other purpose, only with the prior consent of the Requested State.

2.(a) This Article shall not prejudice the ability of the Requested State to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the Requested State may require the Requesting State to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the Requesting State for processing personal data may not be imposed by the Requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the Requesting State, the Requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested State may consult with the Requesting State to determine the extent to which the evidence and information can be protected.

ARTICLE 12: Executing Requests

1. The Competent Authority of the Requested State shall promptly comply with the request or, when appropriate, transmit it for execution to the authority having jurisdiction.

2. Requests shall be executed according to the domestic law and procedures of the Requested State except to the extent that this Treaty provides otherwise. Procedures specified in the request, even if unfamiliar to the Requested State, shall be followed except to the extent specifically prohibited by the laws of the Requested State.

ARTICLE 13: Contents of Requests

1. A request for assistance shall indicate:

a. the name of the authority conducting the investigation or proceeding to which the request relates;

b. the subject matter and nature of the investigation or proceeding;

c. a description of the evidence or information sought or the acts to be performed; and

d. the purpose for which the evidence, information or action is sought.

2. To the extent necessary and possible, a request shall include:

a. available information on the identity and whereabouts of a person to be located;

b. the identity and location of a person to be served, that person's relationship to the proceeding and the manner in which service is to be made;

c. the identity and location of persons from whom evidence is sought;

d. a description of the manner in which any testimony is to be taken and recorded;

e. a list of questions to be answered;

f. a precise description of the place to be searched and the objects to be seized;

g. a description of any particular procedure to be followed in executing the request; and

h. information as to the allowances and expenses to which a person appearing in the Requesting State will be entitled.

ARTICLE 14: Competent Authorities

1. Except as otherwise provided in this Treaty, requests for assistance shall be made and executed through a Competent Authority for each Contracting Party. The Competent Authorities of the two States shall communicate directly with each other for the purpose of carrying out the provisions of this Treaty. For the United States of America, the Competent Authority shall be the Attorney General or that person's designee. For the Kingdom of the Netherlands, the Competent Authority shall be the Minister of Justice in the Netherlands or, should the territorial application of this Treaty be extended in accordance with Article 16 (1)(b) of the U.S.-EU Mutual Legal Assistance Agreement, as specified in the exchange of diplomatic notes pursuant thereto.

2. Requests for mutual assistance, and communications related thereto, may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the Requested State. The Requested State may respond to the request by any such expedited means of communication.

ARTICLE 15: Return of Completed Requests

1. Upon completion of a request the Requested State shall, unless otherwise agreed, return the original request together with all information and evidence obtained, indicating place and time of execution, to the Requesting State.

2. To the extent possible, all documents and records to be furnished pursuant to a request under this Treaty shall be complete and in unedited form. Upon application of the Requesting State, the Requested State shall make every effort to furnish original documents and records.

ARTICLE 16: Return of Documents, Records or Articles of Evidence

The Requesting State shall return any documents, records or articles of evidence furnished in execution of requests as soon as possible unless the Requested State waives their return.

ARTICLE 17: Costs and Translations

1. The Requested State shall render assistance without cost to the Requesting State except for fees of private experts specified in the request and the costs associated with establishing and servicing a video transmission, to the extent set forth in Article 9 *quater*.

2. The Requesting State shall bear all expenses related to the transfer under Articles 7 and 8 of a person in custody.

3. Requests shall be provided in both Dutch and English. Translation of documents provided pursuant to requests is incumbent on the Requesting State.

ARTICLE 18: Other Treaties and Domestic Laws

1. Assistance and procedures provided by this Treaty shall be without prejudice to, and shall not prevent or restrict, any assistance or procedure available under other international conventions or arrangements or under the domestic laws of the Contracting Parties.

2. Except where this Treaty specifically sets forth rules for the admissibility of evidence, the provisions of this Treaty shall not give rise to a right on the part of any person to take any action in a criminal proceeding to suppress or exclude any evidence. This Treaty does not expand or limit rights to judicial review otherwise available under domestic law.

3. No provision governing extradition of persons, whether of domestic law or treaty, shall apply to the transfer of persons under Articles 7 and 8 or to appearance under paragraph 2 of Article 9.

ARTICLE 19: Denunciation

Either Contracting Party may terminate this Treaty at any time by giving notice to the other Party and the termination shall be effective six months after the date of receipt of such notice.

SCHEDULE

Requests for search and seizure may be executed under paragraph 1 of Article 6 of the Treaty, if they relate to offenses covered by:

I

A. For the Kingdom of the Netherlands (Europe): The Criminal Code (Wetboek van Strafrecht), Articles 194, 272, 328 bis, 328 ter and 336.

B. Should the territorial application of this Treaty be extended in accordance with Article 16 (1)(b) of the U.S.-EU Mutual Legal Assistance Agreement, as specified in the exchange of diplomatic notes pursuant thereto.

II

For the United States of America: Title 26, United States Code (The Internal Revenue Code), § 7203.

Texts of the relevant legal provisions:

Netherlands Criminal Code

ARTICLE 194

1. Any person who has been declared bankrupt or is married "in community of property" to a bankrupt or who is a manager or director of a corporation, and who has been legally summoned to give information in such capacity and either fails to appear without good reason or appears but refuses to give the required information or deliberately furnishes false information shall be liable to a term of imprisonment not exceeding one year or a fine of the third category.
2. Anyone to whom the debt rescheduling arrangement for natural persons applies, and his spouse, if he married in community of property, shall be liable to the same penalty if found guilty of the offence referred to in paragraph 1.

ARTICLE 272

(1) Any person who deliberately discloses information which he knows or should reasonably be assumed to know he is bound not to disclose on account of his present or former profession or office or of a statutory regulation, shall be liable to a term of imprisonment not exceeding one year or a fine of the fourth category.

(2) If such an offence is committed against a particular person proceedings may be brought only if the person concerned registers a complaint.

ARTICLE 328 BIS

Any person who commits a fraudulent act in order to mislead the public or a particular person, with the intention of building up, protecting or increasing his own sales or those of another person, shall, if this could result in any disadvantage to his competitors or those of such other person, be guilty of engaging in unfair competition and be liable to a term of imprisonment not exceeding one year or a fine of the fifth category.

ARTICLE 328 TER

(1) Any person other than a public servant, who is in paid employment or acts as an agent and who accepts a gift or promise in consideration of his performing or failing to perform some act in the course of his duties as employee or agent and dishonestly conceals the fact from his employer or principal shall be liable to a term of imprisonment not exceeding one year or a fine of the fifth category.

(2) The same penalty shall be applicable to any person who offers a gift or makes a promise to another person, who is not a public servant but is in paid employment or acts as an agent, in consideration of the latter performing or failing to perform some act in the course of his duties as employee or agent, if the gift or promise is of such a nature or is offered or made under such circumstances that it is reasonable to assume that he will dishonestly conceal the gift or promise from his employer or principal.

ARTICLE 336

The "merchant", manager, managing partner or member of the board of a company, association or foundation who deliberately discloses untrue accounts, or a balance sheet, profit and loss account, statement of assets and liabilities or information explaining any of the above or who deliberately permits disclosure shall be liable to a term of imprisonment not exceeding one year of the fifth category.

The Internal Revenue Code (Title 26, United States Code)

§ 7203

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

No. 33

I have the honor to refer to the Agreement between the United States of America and the Kingdom of the Netherlands, signed this day, comprising the instrument as contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed at Washington 25 June 2003, as to the application of the Treaty between the United States of America and the Kingdom of the Netherlands on Mutual Assistance in Criminal Matters signed at The Hague 12 June 1981. In view of the signature of this instrument, I wish to clarify the legal status of certain notes relating to the 1981 Mutual Legal Assistance Treaty and to the 2003 U.S.-EU Mutual Legal Assistance Agreement.

On 12 June 1981, at the time of signing of the Mutual Legal Assistance Treaty, related diplomatic notes containing understandings on certain articles of the treaty also were exchanged. This exchange of notes shall continue to apply, except for the second paragraph pertaining to Article 11 of the 1981 Mutual Legal Assistance Treaty, in view of Article 9 of the 2003 U.S.-EU Mutual Legal Assistance Agreement. In addition, the provisions of this exchange of notes relating to Article 14 of the 1981 Mutual Legal

Assistance Treaty shall be interpreted to permit application of Article 8 of the 2003 U.S.-EU Mutual Legal Assistance Agreement.

On 31 December 1985, the Government of the Kingdom of the Netherlands conveyed to the Government of the United States of America a diplomatic note confirming that, inter alia, the 1981 Treaty on Mutual Assistance in Criminal Matters continue to apply to the Netherlands Antilles and to Aruba. The Mutual Legal Assistance Agreement signed this day provides that the application of the 1981 Mutual Legal Assistance Treaty to the Netherlands Antilles and to Aruba shall remain unaffected by the 2003 U.S.-EU Mutual Legal Assistance Agreement. As a result, the 1981 Mutual Legal Assistance Treaty in its original form shall continue to apply to the Netherlands Antilles and to Aruba.

It is also noted that the 2003 U.S.-EU Mutual Legal Assistance Agreement includes an explanatory note that "reflects understandings regarding the application of certain provisions of the Agreement" and constitutes an integral part of it. The understandings set forth in the explanatory notes are binding upon both the parties to the 2003 U.S.-EU Mutual Legal Assistance Agreement and the member states of the European Union, and thus are applicable as well to the corresponding provisions of the Mutual Legal Assistance Agreement signed this day.

If the foregoing understandings are shared by the Kingdom of the Netherlands,

I have the honor to propose that this Note and Your Excellency's Note in reply shall constitute an understanding between the two Governments.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Embassy of the United States of America,

The Hague, September 29, 2004.

His Excellency
Mr. C.M. Sobel
Ambassador of the United States of America
At the Hague

The Hague, 29 September 2004

I have the honor to acknowledge receipt of your Note of today's date, which reads as follows:

> "I have the honor to refer to the Agreement between the United States of America and the Kingdom of the Netherlands, **signed this day,** comprising the instrument as contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed at Washington 25 June 2003, as to the application of the Treaty between the United States of America and the Kingdom of the Netherlands on Mutual Assistance in Criminal Matters signed at The Hague 12 June 1981. In view of the signature of this instrument, I wish to clarify the legal status of certain notes relating to the 1981 Mutual Legal Assistance Treaty and to the 2003 U.S.-EU Mutual Legal Assistance Agreement.
>
> On 12 June 1981, at the time of signing of the Mutual Legal Assistance Treaty, related diplomatic notes containing understandings on certain articles of the treaty also were exchanged. This exchange of notes shall continue to apply, except for the second paragraph pertaining to Article 11 of the 1981 Mutual Legal Assistance Treaty, in view of Article 9 of the 2003 U.S.-EU Mutual Legal Assistance Agreement. In addition, the provisions of this exchange of notes relating to Article 14 of the 1981 Mutual Legal Assistance Treaty shall be interpreted to permit application of Article 8 of the 2003 U.S.-EU Mutual Legal Assistance Agreement.
>
> On 31 December 1985, the Government of the Kingdom of the Netherlands conveyed to the Government of the United States of

America a diplomatic note confirming that, inter alia, the 1981 Treaty on Mutual Assistance in Criminal Matters continue to apply to the Netherlands Antilles and to Aruba. The Mutual Legal Assistance Agreement signed this day provides that the application of the 1981 Mutual Legal Assistance Treaty to the Netherlands Antilles and to Aruba shall remain unaffected by the 2003 U.S.-EU Mutual Legal Assistance Agreement. As a result, the 1981 Mutual Legal Assistance Treaty in its original form shall continue to apply to the Netherlands Antilles and to Aruba.

It is also noted that the 2003 U.S.-EU Mutual Legal Assistance Agreement includes an explanatory note that "reflects understandings regarding the application of certain provisions of the Agreement" and constitutes an integral part of it. The understandings set forth in the explanatory notes are binding upon both the parties to the 2003 U.S.-EU Mutual Legal Assistance Agreement and the member states of the European Union, and thus are applicable as well to the corresponding provisions of the Mutual Legal Assistance Agreement signed this day".

If the foregoing understandings are shared by the Kingdom of the Netherlands, I have the honor to propose that this Note and Your Excellency's Note in reply shall constitute an understanding between the two Governments.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

I have the honor to confirm that the understanding described above is also the understanding of the Kingdom of the Netherlands and that Your Excellency's Note together with this Reply Note shall constitute an understanding between the two Governments.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Mr. J.P.H. Donner
Minister of Justice

Agreement between the United States of America and the Republic of Poland on the Application of the Treaty between the United States of America and the Republic of Poland on Mutual Legal Assistance in Criminal Matters signed 10 July 1996, pursuant to Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed at Washington 25 June 2003

The United States of America and the Republic of Poland, (the "Contracting Parties" referred to in the Annex to this Agreement),

In view of Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed at Washington 25 June 2003,

Have agreed as follows:

Article 1

As contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the United States of America and the Republic of Poland acknowledge that, in accordance with the provisions of this Agreement, the bilateral Treaty between the United States of America and the Republic of Poland on Mutual Legal Assistance in Criminal Matters, signed at Washington 10 July 1996 (hereafter "the U.S.-Poland Mutual Legal Assistance Treaty") is applied in relation to the U.S.-EU Mutual Legal Assistance Agreement, under the following terms:

a) Article 1 bis of the Annex to this Agreement shall be applied to supplement the provisions of the U.S.-Poland Mutual Legal Assistance Treaty, pursuant to Article 8 of the U.S.-EU Mutual Legal Assistance Agreement;

b) Article 3 bis of the Annex to this Agreement shall be applied to supplement the provisions of the U.S.-Poland Mutual Legal Assistance Treaty, pursuant to Article 4 of the U.S.-EU Mutual Legal Assistance Agreement;

c) Article 4(1) of the Annex to this Agreement shall be applied in place of Article 4(1) of the U.S.-Poland Mutual Legal Assistance Treaty, pursuant to Article 7 of the U.S.-EU Mutual Legal Assistance Agreement;

d) Article 6(e) of the Annex to this Agreement shall be applied to supplement Article 6 of the U.S.-Poland Mutual Legal Assistance Treaty, pursuant to Article 6(2) of the U.S.-EU Mutual Legal Assistance Agreement;

e) Article 7 of the Annex to this Agreement shall be applied in place of Article 7 of the U.S.-Poland Mutual Legal Assistance Treaty, pursuant to Article 9 of the U.S.-EU Mutual Legal Assistance Agreement;

f) Article 8 bis of the Annex to this Agreement shall be applied to supplement the provisions of the U.S.-Poland Mutual Legal Assistance Treaty, pursuant to Article 6 of the U.S.-EU Mutual Legal Assistance Agreement;

g) Article 9 bis of the Annex to this Agreement shall be applied to supplement the provisions of the U.S.-Poland Mutual Legal Assistance Treaty, pursuant to Article 5 of the U.S.-EU Mutual Legal Assistance Agreement;

h) In view of Article 5 of this Agreement, Article 19(1) and (2) of the U.S.-Poland Mutual Legal Assistance Treaty shall be deleted. Accordingly, Article 19(3) of the U.S.-Poland Mutual Legal Assistance Treaty shall be renumbered as Article 19 of the Annex, which shall be entitled "Termination."

Article 2

The Annex reflects the integrated text of the provisions of the U.S.-Poland Mutual Legal Assistance Treaty and the U.S.-EU Mutual Legal Assistance Agreement as a result of Article 1 of this Agreement. This integrated text shall apply upon entry into force of this Agreement.

Article 3

In accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, this Agreement shall apply to offenses committed before as well as after it enters into force.

Article 4

This Agreement shall apply to requests made after its entry into force. Nonetheless, in accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, Articles 4(1), 6(e), and 8 bis of the Annex shall apply to requests pending in the Requested State at the time this Agreement enters into force.

Article 5

1. This Agreement shall be subject to ratification, and the instruments of ratification shall be exchanged as soon as possible. This Agreement shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement.

2. In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Agreement shall be terminated as of the date of termination of the U.S.-EU Mutual Legal Assistance Agreement and the Mutual Legal Assistance Treaty shall be applied instead. The United States of America and the Republic of Poland nevertheless may agree to continue to apply some or all of the provisions of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Instrument.

DONE at Warsaw, in duplicate, this 9th day of June, 2006, in the English and Polish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF POLAND:

ANNEX

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF POLAND ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Article 1
Scope of Assistance

1. The Contracting Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution, and prevention of offenses. The Contracting Parties shall also provide such assistance for forfeiture and other proceedings directly related to criminal offenses, where such assistance is not prohibited by the laws of the Requested State.

2. Assistance shall include:

a) taking the testimony or statements of persons;

b) providing documents, records, and articles of evidence;

c) locating or identifying persons or items;

d) serving documents;

e) transferring persons in custody for testimony or other purposes;

f) executing requests for searches and seizures;

g) assisting in proceedings related to immobilization and forfeiture of assets, restitution to the victims of crime, collection of fines; and

h) any other form of assistance not prohibited by the laws of the Requested State.

3. Assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution, or proceeding in the Requesting State would constitute an offense under the laws of the Requested State.

4. This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

Article 1 bis
Mutual Legal Assistance to Administrative Authorities

1. Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

2. Requests for assistance under paragraph 1 shall be transmitted between the Central Authorities designated pursuant to Article 2 of this Treaty, or between such other authorities as may be agreed by the Central Authorities.

Article 2
Central Authorities

1. Each Contracting Party shall have a Central Authority to make and receive requests pursuant to this Treaty.

2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General. For the Republic of Poland, the Central Authority shall be the Minister of Justice - Attorney General or a person designated by the Minister of Justice - Attorney General.

3. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

Article 3
Limitations on Assistance

1. The Central Authority of the Requested State may deny assistance if:

a) the request relates to an offense under military law that would not be an offense under ordinary criminal law;

b) the request relates to a political offense;

c) the execution of the request would prejudice the security or similar essential interests of the Requested State; or

d) the request is not made in conformity with the Treaty.

2. Before denying assistance pursuant to this Article, the Central Authorities shall consult to consider whether assistance can be given subject to such conditions as the Central Authority of the Requested State deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

3. If the Central Authority of the Requested State denies assistance, it shall inform the Central Authority of the Requesting State of the reasons for the denial.

Article 3 bis
Identification of Bank Information

1. Upon request of the Requesting State, the Requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The Requested State shall promptly communicate the results of its enquiries to the Requesting State.

2. The actions described in paragraph 1 may also be taken for the purpose of identifying:

   a) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;

   b) information in the possession of non-bank financial institutions; or

   c) financial transactions unrelated to accounts.

3. In addition to the requirements of Article 4(2) of this Treaty, a request for information described in this Article shall include:

   a) the identity of the natural or legal person relevant to locating such accounts or transactions;

   b) sufficient information to enable the competent authority of the Requested State to:

      - reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the Requested State may have the information requested; and

      - conclude that the information sought relates to the criminal investigation or proceeding; and

c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

4. Unless subsequently modified by exchange of diplomatic notes between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

a) for the Republic of Poland, the Central Authority designated pursuant to Article 2 of this Treaty, and

b) for the United States of America, the attaché responsible for the Republic of Poland of the:

- U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;
- U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;
- U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

5. The Contracting Parties shall provide assistance to each other under this Article with respect to money laundering and terrorist activity punishable under the laws of both the Requesting and Requested States, and with respect to such other criminal activity as they notify each other.

6. The Requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the other provisions of this Treaty.

Article 4
Form and Contents of Requests

1. a) A request for assistance and communications related thereto, may be made in writing, or by expedited means of communications including fax or e-mail, with written confirmation to follow where required by the Requested State. The Requested State may also respond to the request by any such expedited means of communications.

b) In emergency situations, a request for assistance may be made orally, but must be confirmed in writing within ten days thereafter.

c) The request shall be in the language of the Requested State unless otherwise agreed.

2. The request shall include the following:

   a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;

   b) information describing the facts of the offenses and the procedural history of the case;

   c) the text of the laws describing the offenses for which assistance is requested;

   d) a description of the evidence, information, or other assistance sought; and

   e) a statement of the purpose for which the evidence, information, or other assistance is sought.

3. To the extent necessary and possible, a request shall also include:

   a) information on the identity and location of any person who is to provide testimony or evidence;

   b) information on the identity and location of a person to be served, that person's status in the case, and the manner in which service is to be made;

   c) information on the identity and whereabouts of persons or items to be located;

   d) a precise description of the place or person to be searched and of the items to be seized;

   e) a description of the manner in which any testimony or statement is to be taken and recorded;

   f) a list of questions to be asked of a person from whom testimony or a statement is sought;

   g) a description of any particular procedure to be followed in executing the request;

   h) information as to the allowances and expenses to which a person asked to appear in the Requesting State will be entitled; and

   i) any other information that may assist the Requested State in executing the request.

Article 5
Execution of Requests

1. The Central Authority of the Requested State shall promptly execute the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request. The judicial or other competent authorities of the Requested State shall issue subpoenas, search warrants, or other orders necessary to execute the request.

2. The Central Authority of the Requested State shall make all necessary arrangements for the representation in the Requested State of the Requesting State in any proceedings arising out of a request for assistance.

3. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. However, the method of execution specified in the request shall be followed except insofar as it is prohibited by the laws of the Requested State.

4. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that State, it may postpone execution, or make execution subject to conditions determined necessary after consultations with the Central Authority of the Requesting State. If the Requesting State accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Central Authority of the Requesting State. If the request cannot be executed without breaching such confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of the Requesting State, which shall then determine whether the request should nevertheless be executed.

6. The Central Authority of the Requested State shall respond to reasonable inquiries by the Central Authority of the Requesting State on progress toward execution of the request.

7. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request. If the request is delayed or postponed, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the reasons for the delay or postponement.

Article 6
Costs

The Requested State shall pay all costs relating to the execution of a request, except for the following:

a) the fees of experts;

b) the costs of interpretation and translation;

c) the costs of recording by private parties of testimony or statements, or the costs of preparation by private parties of written records or videotapes of testimony or statements;

d) the allowances and expenses related to travel of persons traveling to a place in the Requested State as requested by the Requesting State, or pursuant to Article 10 or Article 11; and

e) the costs associated with establishing and servicing a video transmission pursuant to Article 8 bis, unless otherwise agreed by the Requesting and Requested States; other costs arising in the course of providing such assistance (including costs associated with travel of participants in the Requested State) shall be borne in accordance with the other provisions of this Article.

Article 7
Limitations on Use

1. The Requested State may require that the Requesting State limit the use of any information or evidence obtained from the Requested State to the following purposes:

a) for the purpose of its criminal investigations and proceedings;

b) for preventing an immediate and serious threat to its public security;

c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

- set forth in subparagraph (a); or
- for which mutual legal assistance was rendered under Article 1 bis of this Treaty;

d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

e) for any other purpose, only with the prior consent of the Requested State.

2. a) This Article shall not prejudice the ability of the Requested State in accordance with this Treaty to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the Requested State may require the Requesting State to give information on the use made of the information or evidence.

b) Generic restrictions with respect to the legal standards of the Requesting State for processing personal data may not be imposed by the Requested State as a condition under subparagraph (a) to providing information or evidence.

3. Where, following disclosure to the Requesting State, the Requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested State may consult with the Requesting State to determine the extent to which the evidence and information can be protected.

4. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential or be used only subject to terms and conditions it may specify. If the Requesting State accepts the information or evidence subject to such conditions, the Requesting State shall use its best efforts to comply with the conditions.

Article 8
Testimony or Evidence in the Requested State

1. A person in the Requested State from whom testimony or evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and testify or produce items, including documents, records, and articles of evidence. A person who gives false testimony, either orally or in writing, in execution of a request, shall be subject to prosecution and punishment in the Requested State in accordance with the criminal laws of that State, regardless of whether the person would also be subject to prosecution and punishment in the Requesting State.

2. Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.

3. The Requested State shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to question the person giving the testimony or evidence.

4. If the person referred to in paragraph 1 invokes a right to decline to provide testimony or evidence under the laws of the Requesting State, the testimony or evidence

shall nonetheless be taken as requested. Thereafter the Central Authority of the Requested State shall transmit the testimony or evidence, together with the asserted claim, for resolution by the competent authorities of the Requesting State.

5. Evidence produced in the Requested State pursuant to this Article or that is the subject of testimony taken under this Article shall, upon request, be authenticated by an attestation, including, in the case of business records, authentication in the manner indicated in Form A appended to this Treaty. The absence or nonexistence of such records shall, upon request, be certified through the use of Form B appended to this Treaty. Records authenticated by Form A, or Form B certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

Article 8 bis
Video Conferencing

1. The use of video transmission technology shall be available between the Contracting Parties for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the Requested State. To the extent not specifically set forth in this Article, the manner of taking the testimony shall be as otherwise provided under this Treaty.

2. The Contracting Parties may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

3. Without prejudice to any jurisdiction under the law of the Requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the Requested State in the same manner as if it had been committed in the course of its domestic proceedings.

4. This Article is without prejudice to the use of other means for obtaining of testimony in the Requested State available under applicable treaty or law.

5. The Requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements.

Article 9
Official Documents and Records of Government Agencies

1. The Requested State shall provide the Requesting State with copies of documents, records, or information in any form that are available to members of the public of the Requested State generally or upon compliance with a legal requirement and are in the possession of an executive, legislative, or judicial authority in the Requested State.

2. The Requested State may provide copies of any documents, records, or information in any form that are in the possession of an executive, legislative, or judicial authority in that State, but that are not publicly available, to the same extent and under the same conditions as such copies would be available to its own law enforcement or judicial authorities. The Requested State may in its discretion deny a request pursuant to this paragraph entirety or in part.

3. Records of an executive, legislative, or judicial authority produced pursuant to this Article shall, upon request, be authenticated by an official responsible for maintaining them through the use of Form C appended to this Treaty. The absence or nonexistence of such records shall, upon request, be certified through the use of Form D appended to this Treaty. Records authenticated by Form C, or Form D certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

Article 9 bis
Joint Investigative Teams

1. Joint investigative teams involving the Contracting Parties, and where applicable other Member States of the European Union, may be established and operated in the respective territories of the Contracting Parties for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union, where deemed appropriate by the Contracting Parties.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offenses, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other States having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

Article 10
Appearance in the Requesting State

1. When the Requesting State requests the appearance of a person in that State, the Requested State shall invite the person to appear before the appropriate authority in the Requesting State. The Requesting State shall indicate the extent to which the person's expenses will be paid. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the person's response.

2. A person appearing in the Requesting State shall not be prosecuted, detained, or subjected to any restriction of personal liberty in the Requesting State by reason of acts or convictions that preceded that person's departure from the Requested State.

3. The safe conduct provided for by this Article shall cease fifteen consecutive days from the date when the person's presence is no longer required, and that person, having had an opportunity to leave, has nevertheless remained in the Requesting State, or, having left, has returned.

Article 11
Temporary Transfer of Persons in Custody

1. A person in the custody of the Requested State whose presence in the Requesting State is sought for purposes of assistance under this Treaty shall be transferred temporarily from the Requested State to the Requesting State for that purpose if the person consents and if the Central Authorities of both States agree.

2. A person in the custody of the Requesting State whose presence in the Requested State is sought for purposes of assistance under this Treaty shall be transferred temporarily from the Requesting State to the Requested State if the person consents and if the Central Authorities of both States agree.

3. For purposes of this Article:

a) the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the sending State;

b) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities;

c) the receiving State shall not require the sending State to initiate extradition or any other proceedings for the return of the person transferred; and

d) the person transferred shall receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State.

Article 12
Location or Identification of Persons or Items

If the Requesting State seeks the location or identity of persons or items in the Requested State, the Requested State shall use its best efforts to ascertain the location or identity.

Article 13
Service of Documents

1. The Requested State shall use its best efforts to effect service of any document relating to any request for assistance made by the Requesting State under the provisions of this Treaty.

2. The Requesting State shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting State a reasonable time before the scheduled appearance.

3. The Requested State shall return a proof of service to the Requesting State in the manner specified in the request.

Article 14
Search and Seizure

1. The Requested State shall execute a request for the search, seizure, and delivery of any item to the Requesting State if the request includes the information justifying such action under the laws of the Requested State.

2. Upon request by the Central Authority of the Requesting State, every official in the Requested State who has had custody of a seized item shall certify, through the use of Form E appended to this Treaty, the identity of the item, the continuity of its custody, and any changes in its condition. No further certification shall be required. The certificates shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

3. The Central Authority of the Requested State may require that the Requesting State agree to the terms and conditions deemed necessary by the Central Authority of the Requested State to protect third party interests in the item to be transferred.

Article 15
Return of Items

The Central Authority of the Requested State may require that the Central Authority of the Requesting State return as soon as possible any items, including documents, records, or articles of evidence furnished to it in execution of a request under this Treaty.

Article 16
Assistance in Forfeiture Proceedings

1. If the Central Authority of one Contracting Party becomes aware of proceeds or instrumentalities of offenses that are located in the other Party and may be forfeitable or at least subject to immobilization under the laws of the other Party, it may so inform the Central Authority of the other Party. If the other Party has jurisdiction in this regard, it may present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country, and shall, through their Central Authority, report on the action taken to the other Party that provided the initial information.

2. The Contracting Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses, as well as in proceedings relating to restitution to the victims of crime and the collection of fines imposed as sentences in criminal prosecutions. This may include action to temporarily immobilize the proceeds or instrumentalities pending further proceedings.

3. The Party that has custody over proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws. Either Party may transfer all or part of such assets, or the proceeds of their sale, to the other Party, to the extent permitted by the transferring Party's laws and upon such terms as it deems appropriate.

Article 17
Compatibility with Other Treaties

Assistance and procedures set forth in this Treaty shall not prevent either of the Contracting Parties from granting assistance to the other Party through the provisions of other applicable international agreements. The Parties may also provide assistance pursuant to established practices in a manner consistent with their laws.

Article 18
Consultation

The Central Authorities of the Contracting Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

Article 19
Termination

Either Contracting Party may terminate this Treaty at any time by giving written notice to the other Contracting Party, and the termination shall be effective six months after the date of the receipt of such notice.

Form A
CERTIFICATION OF BUSINESS RECORDS

I, (name), having been advised as a witness that false testimony subjects me to a penalty of criminal punishment, testify as follows:

I am employed by/associated with (name of business from which documents are sought), in the position of (business position or title) and by reason of my position am authorized and qualified to provide this testimony.

Each of the records attached hereto is a record in the custody of the above-named business that:

(1) was made, at or near the time of the occurrence of the matters set forth therein, by, or from information transmitted by, a person with knowledge of those matters;

(2) was kept in the course of a regularly conducted business activity;

(3) was made by the business as a regular practice; and,

(4) if not an original record, is a duplicate of the original.

_____
date of execution

_____
place of execution

_____
signature

Form B
CERTIFICATION OF ABSENCE OR NONEXISTENCE OF BUSINESS RECORDS

I, (name), having been advised as a witness that false testimony subjects me to a penalty of criminal punishment, testify as follows:

I am employed by/associated with (name of business from which documents are sought), in the position of (business position or title) and by reason of my position am authorized and qualified to provide this testimony.

As a result of my employment/association with the above-named business, I am familiar with the business records it maintains. The business maintains business records that:

(1) are made, at or near the time of the occurrence of the matters set forth therein by, or from information transmitted by, a person with knowledge of those matters;

(2) are kept in the course of a regularly conducted business activity; and

(3) are made by the business as a regular practice.

Among the records so maintained are records of individuals and entities that have accounts or otherwise transact business with the above-named business. I have made or caused to be made a diligent search of those records. No records have been found reflecting any business activity between the business and the following individuals and entities:

If the business had maintained an account on behalf of or participated in a transaction with any of the foregoing individuals or entities, its business records would reflect that fact.

_____
date of execution

_____
place of execution

_____
signature

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Form C
CERTIFICATION OF OFFICIAL DOCUMENTS AND RECORDS

I, (name), certify as follows:

1. (Name of public authority) is a government office or agency of (country) and is authorized by law to maintain official documents and records setting forth matters required by law to be reported and recorded or filed;

2. my position with the above-named public authority is (official title);

3. in my official capacity I have caused the production of true and accurate copies of documents and records maintained by that public authority; and

4. those copies are described below and attached.

Description of documents and records:

_____
signature

(Official Seal or Stamp)

_____
date

Form D
CERTIFICATION OF ABSENCE OR NONEXISTENCE OF OFFICIAL DOCUMENTS AND RECORDS

I, (name), certify as follows:

1. (Name of public authority) is a government office or agency of (country) and is authorized by law to maintain official documents and records setting forth matters that are required by law to be reported and recorded or filed;

2. documents and records of the type described below set forth matters that are required by law to be reported and recorded or filed, and such matters regularly are recorded or filed by the above-named public authority;

3. my position with the above-named public authority is (official title);

4. in my official capacity I have made, or caused to be made, a diligent search of the above-named public authority's records for the documents and records described below; and

5. no such document or records have been found to exist therein.

Description of documents and records:

_____
signature

(Official Seal or Stamp)

_____
date

Instrument between the United States of America and the Portuguese Republic as contemplated by Article 3(3) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003

1. As contemplated by Article 3(3) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the Governments of the United States of America and of the Portuguese Republic acknowledge that, in accordance with the provisions of this Instrument, the U.S.-EU Mutual Legal Assistance Agreement is applied between them under the following terms:

(a) (i) Article 4 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 1 of the Annex to this Instrument shall govern the identification of financial accounts and transactions;

(ii) Pursuant to Article 4(3) of the U.S.-EU Mutual Legal Assistance Agreement, requests for assistance under this Article shall be transmitted between, for the Portuguese Republic the Procuradoria Geral da República, and for the United States of America the attaché responsible for Portugal of the:

- U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;
- U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;
- U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

(iii) Pursuant to Article 4(4) of the U.S.-EU Mutual Legal Assistance Agreement, the Portuguese Republic shall provide assistance with respect to organized crime, money laundering, drug trafficking, and terrorist activity, punishable under the laws of both the requesting and requested States, and with respect to such other criminal activity as the Portuguese Republic may notify the United States of America. The United States of America shall provide assistance with respect to money laundering and terrorist activity punishable under the laws of both the requesting and requested States, and with respect to such other criminal activity as the United States of America may notify the Portuguese Republic.

(b) Article 5 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 2 of the Annex to this Instrument shall govern the formation and activities of joint investigative teams;

(c) Article 6 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 3 of the Annex to this Instrument shall govern the taking of testimony of a person located in the requested State by use of video transmission technology between the requesting and requested States;

(d) Article 7 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 4 of the Annex to this Instrument shall govern the use of expedited means of communication;

(e) (i) Article 8 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 5 of the Annex to this Instrument shall govern the providing of mutual legal assistance to the administrative authorities concerned;

(ii) Pursuant to Article 8(2)(b) of the U.S.-EU Mutual Legal Assistance Agreement, requests for assistance under this Article shall be transmitted between the United States Department of Justice and the Procuradoria Geral da República, or between such other authorities as may be agreed by the Department of Justice and Procuradoria Geral da República.

(f) Article 9 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 6 of the Annex to this Instrument shall govern the limitation on use of information or evidence provided to the requesting State, and governing the conditioning or refusal of assistance on data protection grounds;

(g) Article 10 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 7 of the Annex to this Instrument shall govern the circumstances under which a requesting State may seek the confidentiality of its request;

(h) Article 13 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 8 of the Annex to this Instrument shall govern the invocation by the requested State of grounds for refusal.

2. The Annex reflects the provisions of the U.S.-EU Mutual Legal Assistance Agreement that shall apply between the United States of America and the Portuguese Republic upon entry into force of this Instrument.

3. In accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall apply to offenses committed before as well as after it enters into force.

4. This Instrument shall not apply to requests made prior to its entry into force; except that, in accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, Articles 3 and 4 of the Annex shall be applicable to requests made prior to such entry into force.

5. (a) This Instrument shall be subject to completion by the United States of America and the Portuguese Republic of their respective applicable internal procedures for entry into force. The Governments of the United States of America and of the Portuguese Republic shall thereupon exchange instruments indicating that such measures have been completed. This Instrument shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement.

(b) In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall be terminated.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Instrument.

DONE at Washington, in duplicate, this 14th day of July 2005, in the English and Portuguese languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:

FOR THE PORTUGUESE REPUBLIC:

ANNEX

Article 1
Identification of bank information

1 (a) Upon request of the requesting State, the requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The requested State shall promptly communicate the results of its enquiries to the requesting State.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;
(ii) information in the possession of non-bank financial institutions; or
(iii) financial transactions unrelated to accounts.

2. A request for information described in paragraph 1 of this Article shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions;

(b) sufficient information to enable the competent authority of the requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the requested State may have the information requested; and
(ii) conclude that the information sought relates to the criminal investigation or proceeding; and

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic notes between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

(a) for the Portuguese Republic, the Procuradoria Geral da República, and
(b) For the United States of America, the attaché responsible for Portugal of the:

(i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;

(ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;

(iii)U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. The Portuguese Republic shall provide assistance under this Article with respect to organized crime, money laundering, drug trafficking, and terrorist activity, punishable under the laws of both the requesting and requested States, and with respect to such other criminal activity as the Portuguese Republic may notify the United States of America. The United States of America shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both the requesting and requested States, and with respect to such other criminal activity as the United States of America may notify the Portuguese Republic.

5. Assistance may not be refused under this Article on grounds of bank secrecy.

6. The requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the requirements of its domestic law.

Article 2
Joint investigative teams

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and Portugal for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union where deemed appropriate by the United States of America and the Portuguese Republic.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offenses, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other States having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

Article 3
Video conferencing

1. The use of video transmission technology shall be available between the United States of America and the Portuguese Republic for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in a requested State. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under the law of the requested State.

2. Unless otherwise agreed by the requesting and requested States, the requesting State shall bear the costs associated with establishing and servicing the video transmission. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the requested State) shall be borne as agreed upon by the requesting and requested States.

3. The requesting and requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

4. Without prejudice to any jurisdiction under the law of the requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the requested State in the same manner as if it had been committed in the course of its domestic proceedings.

5. This Article is without prejudice to the use of other means for obtaining of testimony in the requested State available under applicable treaty or law.

6. The requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements.

Article 4
Expedited transmission of requests

Requests for mutual legal assistance, and communications related thereto, may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the requested State. The requested State may respond to the request by any such expedited means of communication.

Article 5
Mutual legal assistance to administrative authorities

1. Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution

authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

2. Requests for assistance under this article shall be transmitted between the United States Department of Justice and the Procuradoria Geral da República, or between such other authorities as may be agreed by the Department of Justice and Procuradoria Geral da República.

Article 6
Limitations on use to protect personal and other data

1. The requesting State may use any evidence or information obtained from the requested State:

(a) for the purpose of its criminal investigations and proceedings;
(b) for preventing an immediate and serious threat to its public security;
(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:
  (i) set forth in subparagraph (a); or
  (ii) for which mutual legal assistance was rendered under Article 5 of this Annex;
(d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and
(e) for any other purpose, only with the prior consent of the requested State.

2. (a) This Article shall not prejudice the ability of the requested State to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the requested State may require the requesting State to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the requesting State for processing personal data may not be imposed by the requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the requesting State, the requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the requested State may consult with the requesting State to determine the extent to which the evidence and information can be protected.

Article 7
Requesting State's request for confidentiality

The requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the requesting State. If the request

cannot be executed without breaching the requested confidentiality, the central authority of the requested State (in the case of the United States of America, the United States Department of Justice, and in the case of the Portuguese Republic, the Procuradoria Geral da República) shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed.

Article 8
Refusal of assistance

Subject to Article 1(5) and 6(2)(b) of this Annex, the provisions of this Annex are without prejudice to the invocation by the requested State of grounds for refusal of assistance available pursuant to its applicable legal principles, including where execution of the request would prejudice its sovereignty, security, ordre public or other essential interests.

Instrument between the United States of America and the Slovak Republic, as contemplated by Article 3(3) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003

1. As contemplated by Article 3(3) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U. S.-EU Mutual Legal Assistance Agreement"), the United States of America and the Slovak Republic acknowledge that the U. S.-EU Mutual Legal Assistance Agreement is applied between them in the manner set forth in this Instrument and its Annex.

2. The Annex, which is an integral part of this Instrument, reflects the provisions of the U. S.-EU Mutual Legal Assistance Agreement that shall apply between the United States of America and the Slovak Republic upon entry into force of this Instrument.

3. In accordance with Article 12 of the U. S.-EU Mutual Legal Assistance Agreement, this Instrument shall apply to offenses committed before as well as after it enters into force.

4. This Instrument shall not apply to requests made prior to its entry into force; except that, in accordance with Article 12 of the U. S.-EU Mutual Legal Assistance Agreement, Articles 3 and 4 of the Annex shall be applicable to requests made prior to such entry into force.

5. (a) This Instrument shall be subject to completion by the United States of America and the Slovak Republic of their respective applicable internal procedures for entry into force. The United States of America and the Slovak Republic shall thereupon exchange instruments indicating that such measures have been completed. This Instrument shall enter into force on the date of entry into force of the U. S.-EU Mutual Legal Assistance Agreement.

(b) In the event of termination of the U. S.-EU Mutual Legal Assistance Agreement, this Instrument shall be terminated. The United States of America and the Slovak Republic nevertheless may agree to continue to apply some or all of the provisions of this Instrument.

IN WITNESS WHEREOF, the undersigned, being duly authorized for this purpose, have signed this Instrument.

Done at Bratislava, in duplicate, this 6th day of February, 2006, each in the English and Slovakian languages, both texts being equally authentic.

For the United States of America:

For the Slovak Republic:

ANNEX

Article 1
Identification of bank information

Pursuant to Article 4 of the U. S.-EU Mutual Legal Assistance Agreement, the United States of America and the Slovak Republic agree to provide identification of financial accounts and transactions in the following manner:

"1 (a) Upon request of the requesting State, the requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The requested State shall promptly communicate the results of its enquiries to the requesting State.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;
(ii) information in the possession of non-bank financial institutions; or
(iii) financial transactions unrelated to accounts.

2. A request for information described in paragraph 1 of this Article shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions;

(b) sufficient information to enable the competent authority of the requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the requested State may have the information requested; and
(ii) conclude that the information sought relates to the criminal investigation or proceeding; and

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic notes between the United States of America and the European Union, requests for assistance under this Article shall be transmitted between:

(a) for the Slovak Republic, the Ministry of Justice, and

(b) for the United States of America, the attaché responsible for the Slovak Republic of the:

(i) U. S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;
(ii) U. S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;
(iii) U. S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. The United States of America and the Slovak Republic shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both States, and with respect to such other criminal activity as they may notify each other.

5. Assistance may not be refused under this Article on grounds of bank secrecy.

6. The requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the requirements of its domestic law."

Article 2
Joint investigative teams

Pursuant to Article 5 of the U. S.-EU Mutual Legal Assistance Agreement, the United States of America and the Slovak Republic agree to provide for the formation and activities of joint investigative teams in the following manner:

"1. Joint investigative teams may be established and operated in the respective territories of the United States of America and the Slovak Republic for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union where deemed appropriate by the United States of America and the Slovak Republic.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offenses, as determined and notified by the respective States concerned.

3. The competent authorities determined and notified by the respective States concerned shall communicate directly for the purposes of the establishment and

operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other States having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities."

Article 3
Video conferencing

Pursuant to Article 6 of the U. S.-EU Mutual Legal Assistance Agreement, the United States of America and the Slovak Republic agree to provide for the use of video transmission technology between the requesting and requested States for taking testimony and other purposes in the following manner:

"1. The use of video transmission technology shall be available between the United States of America and the Slovak Republic for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the requested State. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under the law of the requested State.

2. Unless otherwise agreed by the requesting and requested States, the requesting State shall bear the costs associated with establishing and servicing the video transmission. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the requested State) shall be borne as agreed upon by the requesting and requested States.

3. The requesting and requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

4. Without prejudice to any jurisdiction under the law of the requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the requested State in the same manner as if it had been committed in the course of its domestic proceedings.

5. This Article is without prejudice to the use of other means for obtaining of testimony in the requested State available under applicable treaty or law.

6. The requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements."

Article 4
Expedited transmission of requests

Pursuant to Article 7 of the U. S.-EU Mutual Legal Assistance Agreement, the United States of America and the Slovak Republic agree to provide for the use of expedited means of communications, with respect to requests for mutual legal assistance, of any kind, in the following manner:

"Requests for mutual legal assistance, and communications related thereto, may be made by expedited means of communications, including fax or e-mail, with the original request to follow where required by the requested State. The requested State may respond to the request by any such expedited means of communication."

Article 5
Mutual legal assistance to administrative authorities

Pursuant to Article 8 of the U. S.-EU Mutual Legal Assistance Agreement, the United States of America and the Slovak Republic agree to provide to administrative authorities mutual legal assistance of any kind available to criminal law authorities in the following manner:

"1. Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

2. Requests for assistance under this Article shall be transmitted between the United States Department of Justice and the Ministry of Justice of the Slovak Republic, or between such other authorities as may be agreed by the Department of Justice and Ministry of Justice."

Article 6
Limitations on use to protect personal and other data

Pursuant to Article 9 of the U. S.-EU Mutual Legal Assistance Agreement, the United States of America and the Slovak Republic agree to limit use of information or evidence provided to the requesting State as mutual legal assistance, of any kind, and the conditioning or refusal of assistance on data protection grounds, in the following manner:

"1. The requesting State may use any evidence or information obtained from the requested State:

(a) for the purpose of its criminal investigations and proceedings;
(b) for preventing an immediate and serious threat to its public security;
(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:
  (i) set forth in subparagraph (a); or
  (ii) for which mutual legal assistance was rendered under Article 5 of this Annex;
(d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and
(e) for any other purpose, only with the prior consent of the requested State.

2. (a) This Article shall not prejudice the ability of the requested State to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the requested State may require the requesting State to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the requesting State for processing personal data may not be imposed by the requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the requesting State, the requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the requested State may consult with the requesting State to determine the extent to which the evidence and information can be protected."

Article 7
Requesting State's request for confidentiality

Pursuant to Article 10 of the U. S.-EU Mutual Legal Assistance Agreement, the United States of America and the Slovak Republic agree that the requesting State may seek the confidentiality of its requests, of any kind, and their contents, in the following manner:

"The requested State shall use its best efforts to keep confidential a request and its contents, if such confidentiality is requested by the requesting State. If the request cannot be executed without breaching the requested confidentiality, the Department or Ministry of Justice of the requested State shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed."

Article 8
Refusal of assistance

Pursuant to Article 13 of the U. S.-EU Mutual Legal Assistance Agreement, the United States of America and the Slovak Republic agree that the requested State may invoke grounds for refusal in the following manner:

"Subject to Article 1(5) and 6(2)(b) of this Annex, the provisions of this Annex are without prejudice to the invocation by the requested State of grounds for refusal of assistance available pursuant to its applicable legal principles, including where execution of the request would prejudice its sovereignty, security, ordre public or other essential interests."

Agreement between the Government of the United States of America and the Government of the Republic of Slovenia comprising the Instrument as contemplated by Article 3(3) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed at Washington on 25 June 2003

The Government of the United States of America and the Government of the Republic of Slovenia have agreed as follows:

Article 1

As contemplated by Article 3(3) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the Governments of the United States of America and the Republic of Slovenia acknowledge that, in accordance with the provisions of this Agreement, the U.S.-EU Mutual Legal Assistance Agreement is applied between them under the following terms:

(a) Article 4 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 1 of the Annex to this Agreement shall govern the identification of financial accounts and transactions;

(b) Article 5 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 2 of the Annex to this Agreement shall govern the formation and activities of joint investigative teams;

(c) Article 6 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 3 of the Annex to this Agreement shall govern the taking of testimony of a person located in the requested State by use of video transmission technology between the requesting and requested States;

(d) Article 7 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 4 of the Annex to this Agreement shall govern the use of expedited means of communication;

(e) Article 8 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 5 of the Annex to this Agreement shall govern the providing of mutual legal assistance to the administrative authorities concerned;

(f) Article 9 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 6 of the Annex to this Agreement shall govern the limitation on use of information or evidence provided to the requesting State, and governing the conditioning or refusal of assistance on data protection grounds;

(g) Article 10 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 7 of the Annex to this Agreement shall govern the circumstances under which a requesting State may seek the confidentiality of its request;

(h) Article 13 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 8 of the Annex to this Agreement shall govern the invocation by the requested State of grounds for refusal.

Article 2

The Annex, which is an integral part of this Agreement, reflects the provisions of the U.S.-EU Mutual Legal Assistance Agreement that shall apply between the United States of America and the Republic of Slovenia upon entry into force of this Agreement.

Article 3

In accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, this Agreement shall apply to offenses committed before as well as after it enters into force.

Article 4

This Agreement shall not apply to requests made prior to its entry into force; except that, in accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, Articles 3 and 4 of the Annex shall be applicable to requests made prior to such entry into force.

Article 5

(a) This Agreement shall be subject to completion by the United States of America and the Republic of Slovenia of their respective applicable internal procedures for entry into force. The Governments of the United States of America and the Republic of Slovenia shall thereupon exchange instruments indicating that such measures have been completed. This Agreement shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement.

(b) In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Agreement shall be terminated. The Governments of the United States of America and the Republic of Slovenia nevertheless may agree to continue to apply some or all of the provisions of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Ljubljana in duplicate, this 17 day of October, 2005, in the English and Slovenian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA:

ANNEX

Treaty on Certain Aspects of Mutual Legal Assistance in Criminal Matters between the Governments of the United States of America and the Republic of Slovenia

Article 1
Identification of bank information

1. (a) Upon request of the requesting State, the requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The requested State shall promptly communicate the results of its enquiries to the requesting State.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;
(ii) information in the possession of non-bank financial institutions; or
(iii) financial transactions unrelated to accounts.

2. A request for information described in paragraph 1 of this Article shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions;

(b) sufficient information to enable the competent authority of the requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the requested State may have the information requested; and
(ii) conclude that the information sought relates to the criminal investigation or proceeding; and

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic notes between the United States of America and the European Union, requests for assistance under this Article shall be transmitted between:

(a) for the United States of America, the attaché responsible for the Republic of Slovenia of the:

(i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;
(ii) U.S. Department of Homeland Security, Bureau of Immigration

and Customs Enforcement, with respect to matters within its jurisdiction;

(iii) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters; and

(b) for the Republic of Slovenia, the Ministry of Justice of the Republic of Slovenia.

4. The United States of America and the Republic of Slovenia shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both the requesting and requested States, and with respect to such other criminal activity as they may notify each other.

5. Assistance may not be refused under this Article on grounds of bank secrecy..

6. The requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the requirements of its domestic law.

Article 2
Joint investigative teams

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and the Republic of Slovenia for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union where deemed appropriate by the United States of America and the Republic of Slovenia.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offenses, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other States having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

Article 3
Video conferencing

1. The use of video transmission technology shall be available between the United States of America and the Republic of Slovenia for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the requested State. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as provided under the law of the requested State.

2. Unless otherwise agreed by the requesting and requested States, the requesting State shall bear the costs associated with establishing and servicing the video transmission. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the requested State) shall be borne as agreed upon by the requesting and requested States.

3. The requesting and requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

4. Without prejudice to any jurisdiction under the law of the requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the requested State in the same manner as if it had been committed in the course of its domestic proceedings.

5. This Article is without prejudice to the use of other means for obtaining of testimony in the requested State available under applicable treaty or law.

6. The requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements.

Article 4
Expedited transmission of requests

Requests for mutual legal assistance, and communications related thereto, may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the requested State. The requested State may respond to the request by any such expedited means of communication.

Article 5
Mutual legal assistance to administrative authorities

1. Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to

other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

2. Requests for assistance under this article shall be transmitted between the United States Department of Justice and the Ministry of Justice of the Republic of Slovenia, or between such other authorities as may be agreed by the Department of Justice and the Ministry of Justice.

Article 6
Limitations on use to protect personal and other data

1. The requesting State may use any evidence or information obtained from the requested State:

(a) for the purpose of its criminal investigations and proceedings;
(b) for preventing an immediate and serious threat to its public security;
(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:
  (i) set forth in subparagraph (a); or
  (ii) for which mutual legal assistance was rendered under Article 5 of this Annex;
(d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and
(e) for any other purpose, only with the prior consent of the requested State.

2. (a) This Article shall not prejudice the ability of the requested State to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the requested State may require the requesting State to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the requesting State for processing personal data may not be imposed by the requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the requesting State, the requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the requested State may consult with the requesting State to determine the extent to which the evidence and information can be protected.

Article 7
Requesting State's request for confidentiality

The requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the requesting State. If the request cannot be executed without breaching the requested confidentiality, the Department or

Ministry of Justice of the requested State shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed.

Article 8
Refusal of assistance

Subject to Article 1(5) and 6(2)(b) of this Annex, the provisions of this Annex are without prejudice to the invocation by the requested State of grounds for refusal of assistance available pursuant to its applicable legal principles, including where execution of the request would prejudice its sovereignty, security, ordre public or other essential interests.

Instrument as contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003, as to the application of the Treaty on Mutual Legal Assistance in Criminal Matters between the United States of America and the Kingdom of Spain signed 20 November 1990

1. As contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the Governments of the United States of America and the Kingdom of Spain acknowledge that, in accordance with the provisions of this Instrument, the U.S.-EU Mutual Legal Assistance Agreement is applied in relation to the bilateral Treaty on Mutual Legal Assistance in Criminal Matters between the United States of America and the Kingdom of Spain signed 20 November 1990 (hereafter "the 1990 Mutual Legal Assistance Treaty") under the following terms:

a) Article 4 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 16 bis of the Annex to this Instrument shall govern the identification of financial accounts and transactions, in addition to any authority already provided under the 1990 Mutual Legal Assistance Treaty. Article 4(5) of the U.S.-EU Mutual Legal Assistance Agreement is not set forth in Article 16 bis of the Annex, insofar as bank secrecy is not a permissible grounds for refusal under Article 3 of the Annex;

b) Article 5 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 16 ter of the Annex to this Instrument shall govern the formation and activities of joint investigative teams, in addition to any authority already provided under the 1990 Mutual Legal Assistance Treaty;

c) Article 6 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Articles 6 and 16 quater of the Annex to this Instrument shall govern the taking of testimony of a person located in the Requested State by use of video transmission technology between the Requesting and Requested States, in addition to any authority already provided under the 1990 Mutual Legal Assistance Treaty;

d) Article 7 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 4(1) of the Annex to this Instrument shall govern the use of expedited means of communication, in addition to any authority already provided under the 1990 Mutual Legal Assistance Treaty;

e) Article 8 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 1(1 bis) of the Annex to this Instrument shall govern the providing of mutual assistance to the administrative authorities concerned, in addition to any authority already provided under the 1990 Mutual Legal Assistance Treaty;

f) Article 9 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 7(2)-(4) of the Annex to this Instrument shall govern the limitation on use of information or evidence provided to the Requesting State, and the conditioning or refusal of assistance on data protection grounds.

2. In order to implement the U.S.-EU Mutual Legal Assistance Agreement, the Annex reflects the integrated text of the provisions of the 1990 Mutual Legal Assistance Treaty

and the U.S.-EU Mutual Legal Assistance Agreement that shall apply upon entry into force of this Instrument.

3. In accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall apply to offenses committed before as well as after it enters into force.

4. This Instrument shall not apply to requests made prior to its entry into force; except that, in accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, Articles 4(1), 6(b) and 16 quater of the Annex shall be applicable to requests made prior to such entry into force.

5. a) This Instrument shall be subject to the completion by the United States of America and the Kingdom of Spain of their respective applicable internal procedures for entry into force. The Governments of the United States of America and the Kingdom of Spain shall thereupon exchange instruments indicating that such measures have been completed. This Instrument shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement.

b) In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall be terminated and the 1990 Mutual Legal Assistance Treaty shall be applied. The Governments of the United States of America and the Kingdom of Spain nevertheless may agree to continue to apply some or all of the provisions of this Instrument.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Instrument.

DONE at Madrid, in duplicate, this 17th day of December 2004, in the English and Spanish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE KINGDOM OF SPAIN:

ANNEX

INTEGRATED TEXT OF THE PROVISIONS OF THE 1990 MUTUAL LEGAL ASSISTANCE TREATY AND THE U.S-EU MUTUAL LEGAL ASSISTANCE AGREEMENT THAT SHALL APPLY UPON ENTRY INTO FORCE OF THIS INSTRUMENT

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ARTICLE 1

Object of the Treaty

1. The Contracting States shall provide mutual assistance, in accordance with the provisions of this Treaty with respect to investigations and prosecutions in criminal matters conducted in each.

1 bis. (a) Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

(b) Requests for assistance under this paragraph shall be transmitted between the Central Authorities designated pursuant to Article 2 of this Treaty, or between such other authorities as may be agreed by the Central Authorities.

2. Assistance shall include:

a) taking the testimony or statements of persons;

b) providing documents, records, and articles of evidence;

c) serving documents;

d) locating or identifying persons or items;

e) transferring persons in custody for testimony or other purposes;

f) executing requests for searches and seizures;

g) immobilizing assets;

h) assisting in proceedings related to forfeiture and restitution;

i) initiating criminal proceedings in the Requested State; and

j) any other form of assistance not prohibited by the laws of the Requested State.

3. Assistance shall be provided without regard to whether the act giving rise to the request for assistance is a crime in the Requested State. If, however, assistance is requested for purposes of paragraph 2(h), it will be necessary for the act giving rise to that proceeding to constitute a crime and be punishable by a sentence consisting of the deprivation of liberty for a period of more than one year under the laws of both Contracting States.

4. This Treaty is intended solely for mutual legal assistance between the Contracting States. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

ARTICLE 2

Central Authorities

1. Each Contracting State shall designate a Central Authority to make and receive requests pursuant to this Treaty.

2. For the United States of America, the Central Authority shall be the Attorney General or such persons designated by him. For Spain, the Central Authority shall be the Ministry of Justice or such persons designated by it.

3. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

ARTICLE 3

Limitations on Assistance

1. The Central Authority of the Requested State may deny assistance if:

(a) the request relates to an offense under military law which would not be an offense under ordinary criminal law; or

(b) the execution of the request would prejudice the security or similar essential interests of the Requested State.

2. Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

3. If the Central Authority of the Requested State denies assistance, it shall inform the Central Authority of the Requesting State of the reasons for the denial.

ARTICLE 4

Form and Content of Requests

1. (a) A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another form in cases of urgency. In any such case, the request shall be confirmed in writing within ten days unless the Central Authority of the Requested State agrees otherwise. For purposes of this paragraph, requests transmitted by fax or e-mail shall be considered to be in writing.

(b) Communications related to requests for assistance may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the Requested State. The Requested State may respond by any such expedited means of communication.

(c) The request shall be in the language of the Requested State, unless otherwise agreed.

2. The request shall include the following:

(a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;

(b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offenses which relate to the matter;

(c) a description of the evidence, information, or other assistance sought; and

(d) a statement of the purpose for which the evidence, information, or other assistance is sought.

3. To the extent necessary and possible, a request shall also include:

(a) information on the identity and location of any person from whom evidence is sought;

(b) information on the identity and location of a person to be served, that person's relationship to the proceeding, and the manner in which service is to be made;

(c) information on the identity and whereabouts of a person to be located;

(d) a precise description of the place or person to be searched and of the items to be seized;

(e) a description of the manner in which any testimony or statement is to be taken and recorded;

(f) a list of questions to be asked of a witness;

(g) a description of any particular procedure to be followed in executing the request;

(h) information as to the allowances and expenses to which a person asked to appear in the Requesting State will be entitled; and

(i) any other information which may be brought to the attention of the Requested State to facilitate its execution of the request.

ARTICLE 5

Execution of Requests

1. The Central Authority of the Requested State shall promptly execute the request or, when appropriate, transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request. The Courts of the Requested State shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. When necessary, the request shall be presented to the appropriate authority by the persons designated by the Central Authority of the Requested State.

3. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. However, the method of execution specified in the request shall be followed except insofar as it is prohibited by the laws of the Requested State.

4. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation or proceeding in that State, it may postpone execution, or make execution subject to conditions determined to be necessary after consultations with the Central Authority of the Requesting State. If the Requesting State accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Central Authority of the Requesting State. If the request cannot be executed without breaching the requested confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of the Requesting State, which shall then determine whether the request should nevertheless be executed.

6. The Central Authority of the Requested State shall respond to reasonable inquiries by the Central Authority of the Requesting State concerning progress toward execution of the request.

7. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request. If the request is denied, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the reasons for the denial.

ARTICLE 6

Costs

The Requested State shall pay all costs relating to the execution of the request, except for:

(a) the fees of expert witnesses, the costs of translation and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 10 and 11, which fees, allowances, and expenses shall be paid by the Requesting State;
(b) the costs associated with establishing and servicing a video transmission pursuant to Article 16 quater, which the Requesting State shall bear unless otherwise agreed by the Requesting and Requested States; other costs arising in the course of providing such assistance (including costs associated with travel of participants in the Requested State) shall be borne in accordance with the other provisions of this Article.

ARTICLE 7

Limitations of Use

1. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential in accordance with terms and conditions it may specify. In that case, the Requesting State shall use its best efforts to comply with such conditions.

2. The Requested State may require that the Requesting State limit the use of any evidence or information obtained from the Requested State to the following purposes:

(a) for the purpose of its criminal investigations and proceedings;

(b) for preventing an immediate and serious threat to its public security;

(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

(i) set forth in subparagraph (a); or
(ii) for which mutual legal assistance was rendered under Article 1(1 bis) of this Treaty;

(d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

(e) for any other purpose, only with the prior consent of the Requested State.

3. (a) This Article shall not prejudice the ability of the Requested State in accordance with this Treaty to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the

Requested State may require the Requesting State to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the Requesting State for processing personal data may not be imposed by the Requested State as a condition under subparagraph (a) to providing evidence or information.

4. Where, following disclosure to the Requesting State, the Requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested State may consult with the Requesting State to determine the extent to which the evidence and information can be protected.

ARTICLE 8

Taking Testimony or Evidence in the Requested State

1. A person in the Requested State from whom evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and testify or produce any item, including, but not limited to, documents, records, and articles of evidence. A person who gives false testimony, either orally or in writing, in execution of a request, shall be subject to prosecution and punishment in the Requested State in accordance with the criminal laws of that State.

2. Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.

3. The Requested State shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to question the person whose testimony or evidence is being taken.

4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by the authorities of that State.

5. Any items produced in the Requested State pursuant to this Article or which are the subject of testimony taken under this Article may be authenticated by an attestation, including, in the case of business records, authentication in the manner indicated in Form A appended to this Treaty. Documents authenticated by Form A shall be admissible in evidence in the Requesting State as proof of the matters set forth therein.

ARTICLE 9

Records of Government Agencies

1. The Requested State shall provide the Requesting State with copies of publicly available documents, records, or information in the possession of government departments and agencies in the Requested State.

2. The Requested State may provide copies of any documents, records, or information which are in the possession of a government department or agency in that State, but which are not publicly available, to the same extent and under the same conditions as such copies would be made available, in Spain, to its judicial authorities and the Fiscal Ministry, and, in the United States, to its own law enforcement and judicial authorities. The Requested State may, in its discretion, deny a request pursuant to this paragraph entirely or in part.

3. Official records produced pursuant to this Article may be authenticated under the provisions of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, dated 5 October 1961. No further authentication shall be necessary. Documents authenticated under this paragraph shall be admissible in evidence in the Requesting State.

ARTICLE 10

Testimony in the Requesting State

1. Upon request, the Requested State shall invite a person in that State to appear before the appropriate authority in the Requesting State. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the person's response.

2. The request shall indicate the extent to which the invited person's expenses will be reimbursed. If that person so requests, the Requesting State may provide funds with respect to those expenses in advance through its embassy in the Requested State.

3. The request may indicate the extent to which the Requesting State will give the invited person assurances pursuant to Article 11(4). If the Requesting State provides no assurances, the Requested State shall so notify the person.

4. Any safe conduct provided pursuant to this Article shall cease when the person invited voluntarily extends his stay in the Requesting State more than 15 days from the time his presence is no longer required by that State or when the person, having left the Requesting State, voluntarily returns.

ARTICLE 11

Transfer of Persons in Custody

1. A person in the custody of the Requested State whose presence in the Requesting State is needed for purposes of assistance under this Treaty shall be transferred to the Requesting State if both the person and the Central Authority of the Requested State consent to the transfer.

2. A person in the custody of the Requesting State whose presence in the Requested State is needed for purposes of assistance under this Treaty may be transferred to the Requested State if both the person consents and the Central Authorities of both States agree.

3. For purposes of this Article:

(a) the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the sending State;

(b) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities;

(c) the receiving State shall not require the sending State to initiate extradition proceedings for the return of the person transferred; and

(d) the person transferred shall receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State.

4. A person transferred pursuant to this Article may not, while in the receiving State:

(a) be subject to service of process or be detained or subject to any restriction of personal liberty by reason of any acts which preceded his departure from the sending State other than as provided in paragraph 3; or

(b) without his consent, be required to testify in proceedings not specified in the request.

5. The safe conduct established in the above paragraph shall cease when a person freed in accordance with paragraph 3 voluntarily extends his stay in the receiving State more than 15 days from the time his presence is no longer required by that State or when the person, having left the receiving State, voluntarily returns.

6. Persons appearing in a trial in the Requesting State under the provisions of this Article may not be prosecuted on the basis of their testimony except for contempt or perjury.

ARTICLE 12

Location or Identification of Persons or Items

The Requested State shall use its best efforts to ascertain the location or identity of persons or items specified in the request.

ARTICLE 13

Service of Documents

1. The Requested State shall use its best efforts to effect service of any document relating to a request for assistance made by the Requesting State under the provisions of this Treaty.

2. The Requesting State shall transmit a request for the service of a document requiring the appearance of a person before an authority in the Requesting State a reasonable time before the scheduled appearance.

3. The Requested State shall return a proof of service in the manner specified in the request or acceptable under the provisions of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

ARTICLE 14

Search and Seizure

1. The Requested State shall execute a request for the search, seizure and delivery of any item, including, but not limited to, any document, record, or article of evidence, to the Requesting State if the request includes the information justifying such action under the laws of the Requested State.

2. Upon request, every official who has custody of a seized item shall certify, through the use of Form B appended to this Treaty, the continuity of custody, the identity of the item, and the integrity of its condition. No further certification shall be required. The certificate shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

3. The Central Authority of the Requested State may require that the Requesting State agree to terms and conditions deemed necessary to protect the interests of bona fide third parties in the item to be transferred.

ARTICLE 15

Return of Items

The Central Authority of the Requesting State shall return all original documents, records, or articles of evidence furnished to it in execution of a request as soon as possible unless the Central Authority of the Requested State waives their return. The Central Authority of the Requesting State need not return any copy so furnished unless the Central Authority of the Requested State specifically so requests at the time it furnishes the copy.

ARTICLE 16

Proceeds of Crime

1. The Central Authority of either State shall notify the Central Authority of the other State of proceeds of crime believed to be located in the territory of the other State.

2. The Contracting States shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the fruits and instrumentalities of offenses and restitution to the victims of crime.

3. Proceeds or property forfeited to a Contracting State pursuant to this Article shall be disposed of by that State according to its domestic law and administrative procedures. Either State may transfer such property, the proceeds of its sale, or a percentage thereof, to the other State, to the extent permitted by its respective laws, upon such terms as they may determine.

ARTICLE 16 bis
Identification of Bank Information

1. (a) Upon request of the Requesting State, the Requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The Requested State shall promptly communicate the results of its enquiries to the Requesting State.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;
(ii) information in the possession of non-bank financial institutions; or
(iii) financial transactions unrelated to accounts.

2. In addition to the requirements of Article 4(2) of this Treaty, a request for information described in paragraph 1 shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions;

(b) sufficient information to enable the competent authority of the Requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the Requested State may have the information requested; and

(ii) conclude that the information sought relates to the criminal investigation or proceeding; and

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic notes between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

(a) for Spain, the Ministry of Justice of Spain, and

(b) for the United States of America, the attaché responsible for Spain of the:

(a) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;

(b) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;

(c) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. The United States of America and Spain shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both the Requesting and Requested States, and with respect to such other criminal activity as they may notify each other.

5. The Requested State shall respond to a request for production of records concerning the accounts or transactions identified pursuant to this Article in accordance with the other provisions of this Treaty.

ARTICLE 16 ter
Joint Investigative Teams

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and Spain for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more

Member States of the European Union where deemed appropriate by the United States of America and Spain.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offenses, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other State(s) having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

ARTICLE 16 quater
Video Conferencing

1. The use of video transmission technology shall be available between the United States of America and Spain for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the Requested State. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under this Treaty.

2. The Requesting and Requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

3. Without prejudice to any jurisdiction under the law of the Requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the Requested State in the same manner as if it had been committed in the course of its domestic proceedings.

4. This Article is without prejudice to the use of other means for obtaining of testimony in the Requested State available under applicable treaty or law.

5. The Requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements.

ARTICLE 17

Compatibility With Other Agreements

Assistance and procedures set forth in this Treaty shall not prevent either of the Contracting States from granting assistance to the other State through the provisions of other international agreements to which it may be a party, or through the provisions of its national laws. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement, or practice which may be applicable.

ARTICLE 18

Consultations

1. The Central Authorities may consult, at times mutually agreed to by them, to enable the most effective use to be made of this Treaty.

2. The Contracting States agree to consult as appropriate to develop other specific agreements or arrangements, formal or informal, on mutual legal assistance.

ARTICLE 19

Initiation of Criminal Proceedings in the Requested State

1. Either Contracting State may transmit a request for the purpose of initiating a criminal proceeding before the appropriate authorities of the other Contracting State where both States have jurisdiction to investigate or prosecute. Such requests shall be transmitted through the respective Central Authorities.

2. The Requested State shall consider initiating an investigation or prosecution to the extent appropriate under its laws, practices and procedures. The Requested State shall notify the Requesting State of any action taken on the request.

3. The request and documentation shall be written in the language of the Requested State or accompanied by a translation into that language.

ARTICLE 20

Termination

This Treaty shall have no fixed term. Either of the two States may terminate it by written notification through the diplomatic channel. The termination shall take effect beginning on the last day of the sixth month following the month of notification.

Form A

CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS

I, _____ (name), attest on penalty of criminal punishment for false statement or false attestation that I am employed by _____ (name of business from which documents are sought) and that my official title is _____ (official title). I further state that each of the records attached hereto is the original or a duplicate of the original records in the custody of _____ (name of business from which documents are sought).

I further state that:

A) such records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

B) such records were kept in the course of a regularly conducted business activity;

C) the business activity made such records as a regular practice; and

D) if such record is not the original, such record is a duplicate of the original.

_____ _____

Signature Date

Sworn to or affirmed before me, _____ (name), a

_____ (Judge, Magistrate, or Commissioner of the Court), this

_____ day of _____, _____.

Form B

ATTESTATION WITH RESPECT TO SEIZED ITEMS

I, _____ (name), attest on penalty of criminal punishment for false statement or attestation that my position with the Government of _____ (country) is _____. I received custody of the items listed below from _____ (name of person) on _____ (date) at _____ (place) in the same condition as when I received them (or, if different, as noted below).

Description of Item:

Changes in condition while in my custody:

Official Seal

_____ Signature

_____ Title

_____ Place

_____ Date

Instrument as contemplated by Article 3(2) of
the Agreement on Mutual Legal Assistance between
the United States of America and the European Union signed 25 June 2003,
as to the application of the Treaty between the Government of
the United States of America and the Government of the Kingdom of Sweden
on Mutual Legal Assistance in Criminal Matters signed 17 December 2001

1. As contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the Mutual Legal Assistance Agreement"), the Governments of the United States of America and the Kingdom of Sweden acknowledge that, in accordance with the provisions of this Instrument, the Mutual Legal Assistance Agreement is applied in relation to the bilateral Treaty between the Government of the United States of America and the Government of the Kingdom of Sweden on Mutual Legal Assistance in Criminal Matters signed 17 December 2001 (hereafter "the 2001 Mutual Legal Assistance Treaty") under the following terms:

(a) Article 4 of the Mutual Legal Assistance Agreement as set forth in Article 18 bis of the Annex to this Instrument shall govern the identification of financial accounts and transactions, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty;

(b) Article 5 of the Mutual Legal Assistance Agreement as set forth in Article 18 ter of the Annex to this Instrument shall govern the formation and activities of joint investigative teams, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty;

(c) Article 6 of the Mutual Legal Assistance Agreement as set forth in Articles 6 and 18 quater of the Annex to this Instrument shall govern the taking of testimony of a person located in the Requested State by use of video transmission technology between the Requesting and Requested States, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty;

(d) Article 7 of the Mutual Legal Assistance Agreement as set forth in Article 4 (1) of the Annex to this Instrument shall govern the use of expedited means of communication, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty;

(e) Article 8(2) of the Mutual Legal Assistance Agreement as set forth in Article 2(3) of the Annex to this Instrument shall govern the transmission of requests for mutual legal assistance to administrative authorities, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty; and

(f) Article 9 of the Mutual Legal Assistance Agreement as set forth in Article 7 of the Annex to this Instrument shall govern the limitation on use of information or evidence provided to the Requesting State, and the conditioning or refusal of assistance on data protection grounds.

2. The Annex reflects the integrated text of the provisions of the 2001 Mutual Legal Assistance Treaty and the Mutual Legal Assistance Agreement that shall apply upon entry into force of this Instrument.

3. In accordance with Article 12 of the Mutual Legal Assistance Agreement, this Instrument shall apply to offenses committed before as well as after it enters into force.

4. This Instrument shall not apply to requests made prior to its entry into force; except that, in accordance with Article 12 of the Mutual Legal Assistance Agreement, Articles 4(1), 6(1)(d) and 18 quater of the Annex shall be applicable to requests made prior to such entry into force.

5. (a) This Instrument shall be subject to the completion by the United States of America and the Kingdom of Sweden of their respective applicable internal procedures for entry into force. The Governments of the United States of America and the Kingdom of Sweden shall thereupon exchange instruments indicating that such measures have been completed. This Instrument shall enter into force on the date of entry into force of the Mutual Legal Assistance Agreement.

(b) In the event of termination of the Mutual Legal Assistance Agreement, this Instrument shall be terminated and the 2001 Mutual Legal Assistance Treaty shall be applied. The Governments of the United States of America and the Kingdom of Sweden nevertheless may agree to continue to apply some or all of the provisions of this Instrument.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Instrument.

DONE at Brussels, in duplicate, this 16th day of December 2004, in the English and Swedish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE KINGDOM OF SWEDEN:

ANNEX

TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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Article 1
Scope of Assistance

1. The Contracting Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation and prosecution of offenses and in proceedings related to criminal matters.

2. Assistance shall include:

a) locating or identifying persons or items;

b) serving documents;

c) taking the testimony or statements of persons;

d) transferring persons in custody for testimony or other purposes;

e) providing documents, records, and items;

f) executing requests for searches and seizures;

g) assisting in proceedings related to immobilization and forfeiture of assets and restitution;

h) initiating criminal proceedings in the Requested State; and

i) providing any other form of assistance consistent with the purposes of this Treaty and not prohibited by the laws of the Requested State.

3. Assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution, or proceeding in the Requesting State would constitute an offense under the laws of the Requested State. However, before executing a request that requires transfer of persons in custody pursuant to Article 12, search and seizure pursuant to Article 16, or assistance in forfeiture proceedings pursuant to Article 18, the Requested State may require that the subject offense be punishable under its penal or administrative laws.

4. This Treaty is intended solely for mutual legal assistance between the Contracting Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

Article 2
Central Authorities

1. Each Contracting Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.

2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General. For the Kingdom of Sweden, the Central Authority shall be the Ministry of Justice.

3. (a) Each Central Authority shall make requests on behalf of authorities that by law are responsible for investigations, prosecutions, or proceedings related to criminal matters. For the United States of America, these authorities are prosecutors, investigators with criminal law enforcement jurisdiction, and agencies or entities with specific statutory or regulatory authority to refer matters for criminal prosecution. For Sweden, these authorities are courts, public prosecutors, and other authorities authorized to conduct criminal investigations.

(b) Requests under subparagraph (a) from agencies or entities with specific statutory or regulatory authority to refer matters for criminal prosecution shall be transmitted between the Central Authorities, or between such other authorities as may be agreed by the Central Authorities.

4. The Central Authorities shall communicate directly with one another for purposes of this Treaty.

Article 3
Limitations on Assistance

The Central Authority of the Requested State may deny assistance if:

a) the request relates to an offense under military law that would not be an offense under ordinary criminal law;

b) the request relates to a political offense;

c) the request relates to an offense for which the penalty in the Requesting State is deprivation of liberty for a period of a year or less;

d) execution of the request would prejudice the security or other essential interests ("ordre public") of the Requested State; or

e) the request is not made in conformity with the Treaty.

2. Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

3. If the Central Authority of the Requested State denies assistance, it shall inform the Central Authority of the Requesting State of the reasons for the denial.

Article 4
Form and Contents of Requests

1. a) A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another form in urgent situations. In that event, the request shall be confirmed in writing within 10 days unless the Central Authority of the Requested State agrees otherwise. For purposes of this paragraph, requests transmitted by fax or e-mail shall be considered to be in writing.

b) Communications related to requests for assistance may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the Requested State. The Requested State may respond by any such expedited means of communication.

c) A request and any supporting documents shall be in the language of the Requested State or accompanied by a translation into that language unless agreed otherwise.

2. A request shall include the following:

   a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;

   b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including a statement of the facts and the legal provisions applicable to the specific criminal offenses that relate to the matter;

   c) a description of the evidence, information, or other assistance sought; and

   d) a statement of the purpose for which the evidence, information, or other assistance is sought and its connection to the facts.

3. To the extent necessary and possible, a request shall also include:

   a) information on the identity and suspected location of a person to be located;

   b) information on the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;

   c) information on the identity and location of any person from whom evidence is sought;

   d) a precise description of the place or person to be searched and of the items to be seized;

e) a description of the testimony sought, which may include a list of questions to be asked of a witness;

f) a description of the manner in which any testimony or statement is to be taken and recorded;

g) a description of any particular procedure to be followed in executing the request;

h) information as to the allowances and expenses to which a person asked to appear in the Requesting State will be entitled; and

i) any other information that may be brought to the attention of the Requested State to facilitate its execution of the request.

Article 5
Execution of Requests

1. The Central Authority of the Requested State shall promptly execute a request or, when appropriate, transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request. The courts of the Requested State shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. The Requested State shall make all necessary arrangements for and meet the costs of representing the Requesting State in any proceedings in the Requested State arising out of a request for assistance.

3. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. However, the method of execution specified in a request shall be followed except insofar as it is prohibited by the laws of the Requested State.

4. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that State, it may postpone execution, or make execution subject to conditions determined to be necessary after consultation with the Central Authority of the Requesting State. If the Requesting State accepts assistance subject to conditions, it shall comply with the conditions.

5. The Central Authority of the Requested State shall respond to reasonable inquiries by the Central Authority of the Requesting State regarding the progress toward execution of a request.

6. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of a request. If the request cannot be executed due to impossibility, lack of compliance with domestic legal requirements in the Requested State, or any other reason, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the reasons for its inability to execute the request.

Article 6
Costs

1. The Requested State shall pay all costs relating to the execution of a request except for the following, which shall be paid by the Requesting State:

a) the fees of experts;

b) the costs of translation, interpretation, and transcription;

c) the allowances and expenses related to travel of persons traveling either in the Requested State for the convenience of the Requesting State or pursuant to Articles 11, 12 or 13; and

d) the costs associated with establishing and servicing a video transmission pursuant to Article 18 quater, unless otherwise agreed by the Requesting and Requested States; other costs arising in the course of providing such assistance (including costs associated with travel of participants in the Requested State) shall be borne in accordance with the other provisions of this Article.

2. If during the execution of a request it becomes apparent that complete execution will entail expenses of an extraordinary nature, the Central Authorities shall consult to determine the terms and conditions under which execution may continue.

Article 7
Limitations on use to protect personal and other data

1. The Requested State may require that the Requesting State use any evidence or information obtained from the Requested State for the following purposes:

(a) for the purpose of its criminal investigations and proceedings;

(b) for preventing an immediate and serious threat to its public security;

(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

(i) set forth in subparagraph (a); or
(ii) for which mutual legal assistance was rendered to agencies or entities with specific statutory or regulatory authority to refer matters for criminal prosecution under this Treaty;

(d) for any other purpose, if the evidence or information has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

(e) for any other purpose only with the prior consent of the Requested State.

2 (a) This Article shall not prejudice the ability of the Requested State in accordance with this Treaty to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the Requested State may require the Requesting State to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the Requesting State for processing personal data may not be imposed by the Requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the Requesting State, the Requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested State may consult with the Requesting State to determine the extent to which the evidence and information can be protected.

Article 8
Confidentiality

1. The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Central Authority of the Requesting State. If the request cannot be executed without breaching such confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of the Requesting State, which shall then determine whether the request should nevertheless be executed.

2. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential or be disclosed only subject to terms and conditions it may specify. If the Requesting State accepts the information or evidence subject to such conditions, the Requesting State shall use its best efforts to comply with the conditions.

Article 9
Testimony or Evidence in the Requested State

1. A person in the Requested State from whom evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and be questioned or give testimony or produce items including, but not limited to, documents, records, and articles of evidence. A person who gives false testimony, or makes a false certification during the execution of a request, shall be subject to prosecution and punishment in the Requested State in accordance with the criminal laws of that State.

2. Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.

3. The Requested State shall permit the presence of persons designated in a request during execution of the request and shall allow such persons to question or present questions to be posed to the person giving the testimony or evidence.

4. A person giving testimony or evidence may assert such claims of immunity, incapacity, or privilege as are available under the laws of either State. If a person asserts such a claim under the laws of the Requesting State, the Requested State shall rely, with respect thereto, on the representation of the Central Authority of the Requesting State as evidence of the existence of the immunity, incapacity, or privilege. Where the person's testimony or evidence has been taken in the Requested State, that person may reassert the claim for consideration by the judicial authorities in the Requesting State.

5. The Requesting State may request that items produced in the Requested State pursuant to this Article or Article 16, or that are the subject of testimony taken pursuant to this Article, be authenticated by an attestation. The Requesting State may request that the absence of such items be certified by an attestation. Where such items are business records, the attestation may be:

a) by a certificate such as Form A or A-1 appended to this Treaty;

b) by a written summary of testimony containing the essential information sought in form A or A-1; or

c) by a document containing the essential information required by the Requesting State.

Records so authenticated in Sweden, or documentation so attesting to the absence of such records, shall be admissible in evidence in the United States as proof of the truth of the matters set forth therein.

Article 10
Official Records

1. The Requested State shall provide the Requesting State with copies of publicly available records, including documents or information in any form, in the possession of public authorities in the Requested State.

2. The Requested State may provide copies of any records, including documents or information in any form, in the possession of public authorities in that State, but not publicly available, to the same extent and under the same conditions as such copies would be available to its own public authorities. The Requested State may, in its discretion, deny a request pursuant to this paragraph entirely or in part.

3. The Requesting State may request that official records produced in the Requested State pursuant to this Article be authenticated in accordance with the provisions of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, dated 5 October 1961, or by an official charged with maintaining them through the use of Form B appended to this Treaty. No further

authentication shall be necessary. The Requesting State may request that the absence or nonexistence of such records be certified by an attestation through the use of Form B-1 appended to this Treaty. Records so authenticated in Sweden, or Form B-1 attesting to the absence of such records, shall be admissible in evidence in the United States as proof of the truth of the matters set forth therein.

Article 11
Appearance in the Requesting State

1. The Requested State shall invite a person in that State to appear before the appropriate authority in the Requesting State. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the person's response.

2. The request shall indicate the extent to which the invited person's expenses will be reimbursed. If that person so requests, the Requesting State may provide funds with respect to those expenses in advance through its embassy in the Requested State.

3. An invited person who is not a suspect or defendant may not be prosecuted, detained, or subjected to any restriction of personal liberty in the Requesting State by reason of acts or convictions that preceded that person's departure from the Requested State. An invited person who is a suspect or defendant may not be prosecuted, detained, or subjected to any restriction of personal liberty in the Requesting State by reason of acts or convictions that preceded that person's departure from the Requested State that are not specified in the request. For the United States, such safe conduct may also extend to the effects of service of process. For the United States, safe conduct provided in this paragraph shall apply only to the extent authorized by the Central Authority. Any safe conduct authorized by the Central Authority of the United States shall be communicated to the Central Authority of Sweden.

4. The safe conduct provided in the above paragraph shall cease 10 days after the person has been notified that the person's presence is no longer required or when the person, having left the Requesting State, voluntarily returns.

Article 12
Transfer of Persons in Custody

1. A person in the custody of the Requested State whose presence in the Requesting
State is sought for purposes of assistance under this Treaty shall be transferred from the
Requested State to the Requesting State for that purpose if both the person and the Requested State consent.

2. A person in the custody of the Requesting State whose presence in the Requested State is sought for purposes of assistance under this Treaty may be

transferred from the Requesting State to the Requested State if the person consents and both States agree.

3. For purposes of this Article:

a) the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the sending State;

b) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit unless otherwise agreed by both States;

c) the receiving State shall not require the sending State to initiate extradition or other proceedings for the return of the person transferred; and

d) the person transferred shall receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State.

4. A person transferred pursuant to this Article may not, while in the receiving State:

a) be prosecuted, detained, or subjected to any restriction of personal liberty by reason of acts or convictions that preceded his departure from the sending State other than as provided in paragraph 3; or

b) be required to testify in proceedings not specified in the request.

5. The safe conduct provided in the above paragraph shall cease when a person released in accordance with paragraph 3 voluntarily remains in the receiving State more than 10 days after the person has been notified that the person's presence is no longer required or when the person, having left the receiving State, voluntarily returns.

6. A person appearing in a trial in the Requesting State under the provisions of this Article may not be prosecuted in that State on the basis of such testimony except for contempt or perjury.

Article 13
Transit of Persons in Custody

1. The Requested State may authorize the transit through its territory of a person held in custody by a third State whose personal appearance has been requested by the Requesting State to give testimony or evidence or otherwise provide assistance in criminal proceedings or other proceedings related to criminal offenses.

2. The Requested State shall have the authority and the obligation to keep the person in custody during transit.

Article 14
Location or Identification of Persons or Items

The Requested State shall use its best efforts to ascertain the location or identity of persons or items specified in the request.

Article 15
Service of Documents

1. The Requested State shall use its best efforts to effect service of any document relating, in whole or in part, to any request for assistance made by the Requesting State under the provisions of this Treaty.

2. The Requesting State shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting State a reasonable time and, with respect to a defendant, no less than 30 days, before the scheduled appearance.

3. The Requested State shall return a proof of service in the manner specified in the request or acceptable under the provisions of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, done at The Hague, November 15, 1965.

Article 16
Search and Seizure

1. The Requested State shall execute a request for the search, seizure, and transfer of any item to the Requesting State if the request includes the information justifying such action under the laws of the Requested State.

2. The Requesting State may request that every official who has custody of a seized item certify, through the use of Form C appended to this Treaty, the identity of the item, the continuity of its custody, and the integrity of its condition. No further authentication shall be required. Items so certified in Sweden shall be admissible in evidence in the United States.

3. The Central Authority of the Requested State may require that the Requesting State agree to terms and conditions deemed to be necessary to protect third-party interests in the item to be transferred.

Article 17
Return of Items

The Central Authority of the Requested State may require that the Central Authority of the Requesting State return any items transferred to it in execution of a request under this Treaty as soon as possible.

Article 18
Assistance in Forfeiture Proceedings

1. If the Central Authority of one Contracting Party becomes aware of proceeds or instrumentalities of offenses that are located in the territory of the other Party and may be forfeitable or otherwise subject to seizure under the laws of that Party, it may so inform the Central Authority of the other Party. If that other Party has jurisdiction, it may present this information to its authorities for a determination as to whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country, and shall, through their Central Authority, report to the other Party on the action taken.

2. The Contracting Parties shall assist each other to the extent permitted by their respective laws in proceedings and enforcement of judgments relating to the forfeiture of the proceeds and instrumentalities of offenses and restitution to the victims of crime. This may include identifying, tracing, and provisionally freezing, seizing, or otherwise immobilizing proceeds or instrumentalities in support of such proceedings or enforcement of judgments.

3. Upon request, the Party that has instituted provisional measures pursuant to paragraph 2 shall secure, to the extent permitted by its laws, an order authorizing the transfer of the property concerned to the jurisdiction of the Requesting State.

4. Proceeds and instrumentalities forfeited to a Contracting Party pursuant to this Article shall be disposed of by that Party according to its laws. Either Party may transfer such property, the proceeds of its sale, or a portion thereof to the other Party, to the extent permitted by their respective laws, upon such terms as they deem appropriate.

Article 18 bis:
Identification of Bank Information

1 (a) Upon request of the Requesting State, the Requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The Requested State shall promptly communicate the results of its enquiries to the Requesting State.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;
(ii) information in the possession of non-bank financial institutions; or
(iii) financial transactions unrelated to accounts.

2. In addition to the requirements of Article 4(2) of this Treaty, a request for information described in paragraph 1 shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions;

(b) sufficient information to enable the competent authority of the Requested State to:

i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the Requested State may have the information requested; and
ii) conclude that the information sought relates to the criminal investigation or proceeding; and

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic notes between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

(a) The Ministry of Justice of Sweden, and
(b) for the United States of America, the attaché responsible for Sweden of the:
i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;
ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;
iii) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. Sweden shall provide assistance under this Article with respect to offenses punishable under the laws of both the Requesting and Requested States. The United States of America shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both the Requesting and Requested States, and with respect to such other criminal activity as the United States of America may notify Sweden.

5. The Requested State shall respond to a request for production of records concerning the accounts or transactions identified pursuant to this Article in accordance with the other provisions of this Treaty.

Article 18 ter:
Joint Investigative Teams

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and Sweden for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and

one or more Member States of the European Union where deemed appropriate by the United States of America and Sweden.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offenses, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other States having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

Article 18 quater:
Video Conferencing

1. The use of video transmission technology shall be available between the United States of America and Sweden for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the Requested State. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under this Treaty.

2. The Requesting and Requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

3. Without prejudice to any jurisdiction under the law of the Requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the Requested State in the same manner as if it had been committed in the course of its domestic proceedings.

4. This Article is without prejudice to the use of other means for obtaining of testimony in the Requested State available under applicable treaty or law.

5. The Requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements.

Article 19
Initiation of Criminal Proceedings in the Requested State

1. Either Contracting Party may transmit a request for the purpose of initiating a criminal proceeding before the appropriate authorities of the other Party where both Parties have jurisdiction to investigate or prosecute. Such requests shall be transmitted through the respective Central Authorities.

2. The Requested State shall consider initiating an investigation or prosecution to the extent appropriate under its laws, practices and procedures. The Requested State shall notify the Requesting State of any action taken on the request.

Article 20
Compatibility with Other Treaties

Assistance and procedures set forth in this Treaty shall not prevent either Contracting Party from granting assistance to the other Party through the provisions of other applicable international agreements or through the provisions of its national laws. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement, or practice that may be applicable.

Article 21
Consultation

The Central Authorities of the Contracting Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

Article 22
Termination

Either Contracting Party may terminate this Treaty by means of written notice to the other Party. Termination shall take effect one year after the date upon which the other Party has received such notice through the diplomatic channel.

Form A
CERTIFICATION OF BUSINESS RECORDS

I, (name), attest on penalty of criminal punishment for false statement or attestation that I am employed by/associated with (name of business from which documents are sought) in the position of (business position or title). I further state that each of the records attached hereto is a
record in the custody of (name of business from which documents are sought).

I further state that:

(A) such records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

(B) such records were kept in the course of a regularly conducted business activity;

(C) the business activity made such records as a regular practice; and

(D) if any such record is not the original, it is a duplicate of the original.

_____
(signature)

_____
(date of execution)

_____
(place of execution)

Form A-1
CERTIFICATION OF ABSENCE OF BUSINESS RECORDS

I, (name), attest on penalty of criminal punishment for false statement or attestation that I am employed by/associated with (name of business from which documents are sought) in the position of (business position or title). As a result of my employment/association with the above-named business, I am familiar with the business records it maintains. The business maintains records that are:

(A) made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

(B) kept in the course of a regularly conducted business activity; and

(C) made by the business as a regular practice.

Among the records so maintained are records of individuals and entities that have accounts or otherwise transact business with the above-named business. I have made or caused to be made a diligent search of those records. No records have been found reflecting any business activity between the business and the following individuals and entities:

If the business had maintained an account on behalf of or had participated in a transaction with any of the foregoing individuals or entities, its business records would reflect that fact.

_____
(signature)

_____
(date of execution)

_____
(place of execution)

Form B

ATTESTATION WITH RESPECT TO OFFICIAL RECORDS

I, (name), attest on penalty of criminal punishment for false statement or attestation that:

(1) (Name of public authority) is a public authority in Sweden authorized by Swedish law to maintain official records setting forth matters authorized by law to be reported and recorded or filed;

(2) my position with the above-named public authority is (official title);

(3) in my official capacity I have caused the production of true and accurate copies of records maintained by that public authority; and

(4) those copies are described below and attached.

Description of Records:

_____
(signature)

_____
(date of execution)

_____
(place of execution)

Form B-1

ATTESTATION WITH RESPECT TO ABSENCE OF OFFICIAL RECORDS

I, (name), attest on penalty of criminal punishment for false statement or attestation that:

(1) (Name of public authority) is a public authority in Sweden authorized by Swedish law to maintain official records setting forth matters authorized by law to be reported and recorded or filed;

(2) records of the type described below set forth matters that are required by law to be reported and recorded or filed, and such matters regularly are recorded or filed by the above-named public authority;

(3) my position with the above-named public authority is (official title);

(4) in my official capacity I have made, or caused to be made, a diligent search of the above-named public authority's records for the records described below; and

(5) no such records have been found to exist therein.

Description of Records:

_____
(signature)

_____
(date of execution)

_____
(place of execution)

Form C
ATTESTATION WITH RESPECT TO SEIZED ITEMS

I, (name), attest on penalty of criminal punishment for false statement or attestation that my position with the (public authority) in Sweden is (official title). I received custody of the items listed below from (name of person) on (date), at (place). They are now in the same condition as when I received them (or, if different, as noted below).

Description of Items:

Changes in condition while in my custody:

_____
(signature)

_____
(date of execution)

Official Seal

_____
(place of execution)

Instrument as contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003,
as to the application of the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland on Mutual Legal Assistance in Criminal Matters signed 6 January 1994

1. As contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the Mutual Legal Assistance Agreement"), the Governments of the United States of America and the United Kingdom of Great Britain and Northern Ireland acknowledge that, in accordance with the provisions of this Instrument, the Mutual Legal Assistance Agreement is applied in relation to the bilateral Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland on Mutual Legal Assistance in Criminal Matters signed 6 January 1994 (hereafter "the 1994 Mutual Legal Assistance Treaty") under the following terms:

(a) Article 4 of the Mutual Legal Assistance Agreement shall be applied as set forth in Article 16 bis of the Annex to this Instrument to provide for the identification of financial accounts and transactions, in addition to any authority already provided under the 1994 Mutual Legal Assistance Treaty;

(b) Article 5 of the Mutual Legal Assistance Agreement shall be applied as set forth in Article 16 ter of the Annex to this Instrument to provide for the formation and activities of joint investigative teams, in addition to any authority already provided under the 1994 Mutual Legal Assistance Treaty;

(c) Article 6 of the Mutual Legal Assistance Agreement shall be applied as set forth in Articles 6 and 16 quater of the Annex to this Instrument to provide for the taking of testimony of a person located in the Requested Party by use of video transmission technology between the Requesting and Requested Parties, in addition to any authority already provided under the 1994 Mutual Legal Assistance Treaty;

(d) Article 7 of the Mutual Legal Assistance Agreement shall be applied as set forth in Article 4 (1) of the Annex to this Instrument to provide for the use of expedited means of communication, in addition to any authority already provided under the 1994 Mutual Legal Assistance Treaty;

(e) Article 8 of the Mutual Legal Assistance Agreement shall be applied as set forth in Article 1 (1 bis) of the Annex to this Instrument to provide for mutual legal assistance to the administrative authorities concerned, in addition to any authority already provided under the 1994 Mutual Legal Assistance Treaty;

(f) Article 9 of the Mutual Legal Assistance Agreement shall be applied as set forth in Article 7 of the Annex to this Instrument to provide for limitations on use of information or evidence provided to the Requesting Party, and the conditioning or refusal of assistance on data protection grounds.

2. The Annex reflects the integrated text of the operative provisions of the 1994 Mutual Legal Assistance Treaty and the Mutual Legal Assistance Agreement that shall apply upon entry into force of this Instrument.

3. (a) This Instrument shall apply to the United States of America and to Great Britain and Northern Ireland. Subject to subparagraph b), the application of the 1994 Mutual Legal Assistance Treaty to the Channel Islands, the Isle of Man, and any other territory of the United Kingdom to which the 1994 Mutual Legal Assistance Treaty may apply in accordance with its terms, shall remain unaffected by the Mutual Legal Assistance Agreement and this Instrument.

(b) This Instrument shall not apply to any territory for whose international relations the United Kingdom is responsible unless the United States of America and the European Union, by exchange of diplomatic notes duly confirmed by the United Kingdom in accordance with Article 16(1)(b) of the Mutual Legal Assistance Agreement, agree to extend its application thereto with such technical modifications as may be agreed between the United States of America and the United Kingdom. Such application may be terminated by either the United States of America or the European Union by giving six months' written notice to the other through the diplomatic channel where duly confirmed between the United States of America and the United Kingdom in accordance with Article 16(2) of the Mutual Legal Assistance Agreement.

4. In accordance with Article 12 of the Mutual Legal Assistance Agreement, this Instrument shall apply to offences committed before as well as after it enters into force.

5. This Instrument shall not apply to requests made prior to its entry into force; except that, in accordance with Article 12 of the Mutual Legal Assistance Agreement, Articles 4(1), 6 and 16 quater of the Annex shall be applicable to requests made prior to such entry into force.

6. (a) This Instrument shall be subject to the completion by the United States of America and the United Kingdom of Great Britain and Northern Ireland of their respective applicable internal procedures for entry into force. The Governments of the United States of America and the United Kingdom of Great Britain and Northern Ireland shall thereupon exchange instruments indicating that such measures have been completed. This Instrument shall enter into force on the date of entry into force of the Mutual Legal Assistance Agreement.

(b) In the event of termination of the Mutual Legal Assistance Agreement, this Instrument shall be terminated and the 1994 Mutual Legal Assistance Treaty shall be applied. The Governments of the United States of America and the United Kingdom of Great Britain and Northern Ireland nevertheless may agree to continue to apply some or all of the provisions of this Instrument.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Instrument.

DONE at London, in duplicate, this 16th day of December 2004.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

ANNEX

TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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ARTICLE 1

Scope of Assistance

1. The Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, for the purpose of proceedings as defined in Article 19 of this Treaty.

1*bis*. Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place. Requests for assistance under this paragraph shall be transmitted between the Central Authorities designated pursuant to Article 2 of this Treaty, or between such other authorities as may be agreed by the Central Authorities.

2. Assistance shall include:

(a) taking the testimony or statements of persons;

(b) providing documents, records, and evidence;

(c) serving documents;

(d) locating or identifying persons;

(e) transferring persons in custody for testimony (or other purposes);

(f) executing requests for searches and seizures;

(g) identifying, tracing, freezing, seizing, and forfeiting the proceeds and instrumentalities of crime and assistance in related proceedings; and

(h) such other assistance as may be agreed between Central Authorities.

3. This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

ARTICLE 2

Central Authorities

1. Central Authorities shall be established by both Parties.

2. For the United States of America, the Central Authority shall be the Attorney

General or a person or agency designated by him. For the United Kingdom, the Central Authority shall be the Secretary of State for the Home Department or a person or agency designated by him.

3. Except as otherwise provided in this Treaty, requests under this Treaty shall be made by the Central Authority of the Requesting Party to the Central Authority of the Requested Party.

4. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

ARTICLE 3

Limitations on Assistance

1. The Central Authority of the Requested Party may refuse assistance if:

(a) the Requested Party is of the opinion that the request, if granted, would impair its sovereignty, security, or other essential interests or would be contrary to important public policy;

(b) the request relates to an offender who, if proceeded against in the Requested Party for the offence for which assistance is requested, would be entitled to be discharged on the grounds of a previous acquittal or conviction; or

(c) the request relates to an offence that is regarded by the Requested Party as:

(i) an offence of a political character; or

(ii) an offence under military law of the Requested Party which is not also an offence under the ordinary criminal law of the Requested Party.

2. Before denying assistance pursuant to this Article, the Central Authority of the Requested Party shall consult with the Central Authority of the Requesting Party to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with the conditions.

ARTICLE 4

Form and Contents of Requests

1.a) Requests for mutual legal assistance and communications related thereto may be made and responded to by expedited means of communications, including fax or e-mail, with formal confirmation of requests to follow where required by the Requested Party.

b) In urgent cases, requests for mutual legal assistance may be made orally but shall be confirmed in writing within ten days.

c) The Requested Party may respond by any such expedited means of communication.

2. The request shall include the following:

(a) the name of the authority conducting the proceedings to which the request relates;

(b) the subject matter and nature of the proceedings for the purposes of which the request is made;

(c) a summary of the information giving rise to the request;

(d) a description of the evidence or information or other assistance sought; and

(e) the purpose for which the evidence or information or other assistance is sought.

3. To the extent necessary and possible, a request shall also include:

(a) the identity, date of birth and location of any person from whom evidence is sought;

(b) the identity, date of birth and location of a person to be served, that person's relationship to the proceedings, and the manner in which the service is to be made;

(c) available information on the identity and whereabouts of a person to be located;

(d) a precise description of the place or person to be searched and of the articles to be seized;

(e) a description of the manner in which any testimony or statement is to be taken and recorded;

(f) a list of questions to be asked of a witness;

(g) a description of any particular procedures to be followed in executing the request;

(h) information as to the allowances and expenses to which a person asked to appear in the territory of the Requesting Party will be entitled;

(i) any other information which may be brought to the attention of the Requested Party to facilitate its execution of the request; and

(j) requirements for confidentiality.

4. The Requested Party may ask the Requesting Party to provide any further information which appears to the Requested Party to be necessary for the purpose of executing the request.

ARTICLE 5

Execution of Requests

1. As empowered by this Treaty or by national law, or in accordance with its national practice, the Requested Party shall take whatever steps it deems necessary to give effect to requests received from the Requesting Party. The courts of the Requested Party shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. When execution of the request requires judicial or administrative action, the request shall be presented to the appropriate authority by the persons appointed by the Central Authority of the Requested Party.

3. The method of execution specified in the request shall be followed to the extent that it is not incompatible with the laws and practices of the Requested Party.

4. If the Central Authority of the Requested Party determines that execution of the request would interfere with ongoing proceedings or prejudice the safety of any person in the territory of the Requested Party, the Central Authority of that Party may postpone execution, or make execution subject to conditions determined necessary after consultation with the Requesting Party. If the Requesting Party accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Central Authority of the Requested Party shall facilitate the participation in the execution of the request of such persons as are specified in the request.

6. The Central Authority of the Requested Party may ask the Central Authority of the Requesting Party to provide information in such form as may be necessary to enable it to execute the request or to undertake any steps which may be necessary under the laws and practices of the Requested Party in order to give effect to the request received from the Requesting Party.

7. The Central Authority of the Requesting Party shall inform the Central Authority of the Requested Party promptly of any circumstances which make it inappropriate to proceed with the execution of the request or which require modification of the action requested.

8. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the outcome of the execution of the request. If the request is denied, the Central Authority of the Requested Party shall inform the Central Authority of the reasons for the denial.

ARTICLE 6

Costs

1. The Requested Party shall, subject to paragraphs (2) and (3) of this Article, pay all costs relating to the execution of the request, except for the fees of expert witnesses and the allowances and expenses related to the travel of persons pursuant to Articles 10 and 11 of this Treaty, which fees, allowances, and expenses shall be paid by the Requesting Party.

2. If the Central Authority of the Requested Party notifies the Central Authority of the Requesting Party that execution of the request might require costs or other resources of an extraordinary nature, or if it otherwise requests, the Central Authorities shall consult with a view to reaching agreement on the conditions under which the request shall be executed and the manner in which costs shall be allocated.

3. Unless otherwise agreed by the Requesting and Requested Parties, the Requesting Party shall bear the costs associated with establishing and servicing the video transmission under Article 16 quater. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the Requested Party) shall be borne in accordance with the other provisions of this Article.

ARTICLE 7

Confidentiality and Limitations on Use

1. The Requested Party shall, upon request, keep confidential any information which might indicate that a request has been made or responded to. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine the extent to which it wishes the request to be executed.

2. The Requesting Party may use any evidence or information obtained from the Requested Party:

(a) for the purpose of its criminal investigations and proceedings;

(b) for preventing an immediate and serious threat to its public security;

(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

(i) set forth in subparagraph (a); or
(ii) for which mutual legal assistance was rendered under Article 1 (1 bis) of this Treaty;

(d) for any other purpose, if the evidence or information has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

(e) for any other purpose, only with the prior consent of the Requested Party.

3. (a) This Article shall not prejudice the ability of the Requested Party in accordance with this Treaty to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the Requested Party may require the Requesting Party to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the Requesting Party for processing personal data may not be imposed by the Requested Party as a condition under subparagraph (a) to providing evidence or information.

4. Where, following disclosure to the Requesting Party, the Requested Party becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested Party may consult with the Requesting Party to determine the extent to which the evidence or information can be protected.

ARTICLE 8

Taking Testimony and Producing Evidence in the Territory of the Requested Party

1. A person in the territory of the Requested Party from whom evidence is requested pursuant to this Treaty may be compelled, if necessary, to appear in order to testify or produce documents, records, or articles of evidence by subpoena or such other method as may be permitted under the law of the Requested Party.

2. A person requested to testify or to produce documentary information or articles in the territory of the Requested Party may be compelled to do so in accordance with the requirements of the law of the Requested Party. If such a person asserts a claim of immunity, incapacity or privilege under the laws of the Requesting Party, the evidence shall nonetheless be taken and the claim be made known to the Requesting Party for resolution by the authorities of that Party.

3. Upon request, the Central Authority of the Requested Party shall furnish information in advance about the date and place of the taking of the evidence pursuant to this Article.

4. The Requested Party shall allow persons specified in the request to ask questions of the person whose testimony or evidence is being taken, through a legal representative qualified to appear before the courts of the Requested Party.

5. Documentary information produced pursuant to this Article may be authenticated by the attestation of a person competent to do so in the form indicated in Appendix A to this Treaty. No further authentication or certification shall be necessary in order for such documentary information to be admissible in evidence in proceedings in the territory of the Requesting Party. Documentary information produced pursuant to this Article may also be authenticated pursuant to such other form or manner as may be prescribed from time to time by either Central Authority.

ARTICLE 9

Records of Government Agencies

1. The Requested Party shall provide the Requesting Party with copies of publicly available records of government departments and agencies of the Requested Party.

2. The Requested Party may provide a copy of any record or information in the possession of a government department or agency but not publicly available to the same extent and on the same conditions as to its own law enforcement or judicial authorities. The Requested Party may refuse a request pursuant to this paragraph entirely or in part.

3. Official records provided pursuant to this Article shall be authenticated by the Central Authority of the Requested Party in the manner indicated in Appendix B to this Treaty. No further authentication or certification shall be necessary in order for such records to be admissible in evidence in proceedings in the territory of the Requesting Party. Records provided pursuant to this Article may also be authenticated pursuant to such other form or manner as may be prescribed from time to time by either Central Authority.

ARTICLE 10

Personal Appearance in the Territory of the Requesting Party

1. A request under this Treaty may seek assistance in facilitating the appearance of any person in the territory of the Requesting Party for the purpose of giving evidence before a court or of being identified in, or otherwise by his presence assisting, any proceedings.

2. The Central Authority of the Requested Party shall:

(a) ask a person whose voluntary appearance in the territory of the Requesting Party is desired whether he agrees to appear; and

(b) promptly inform the Central Authority of the Requesting Party of his answer.

3. If the Central Authority of the Requesting Party so indicates, a person agreeing to appear in the territory of the Requesting Party pursuant to this Article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions which preceded his departure from the territory of the Requested Party.

4. The safe conduct provided for by this Article shall cease fifteen days after the Central Authority of the Requesting Party has notified the Central Authority of the Requested Party that the person's presence is no longer required, or if the person has left the territory of the Requesting Party and voluntarily returned to it.

ARTICLE 11

Transfer of Persons in Custody

1. A person in the custody of one Party whose presence in the territory of the other Party is sought for the purpose of providing assistance under this Treaty shall be transferred for that purpose if the person and both Parties consent.

2. For the purposes of this Article:

(a) the Requesting Party shall be responsible for the safety of the person transferred and shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the Requested Party;

(b) the Requesting Party shall return the person transferred to the custody of the Requested Party as soon as circumstances permit and in any event no later than the date upon which he would have been released from custody in the territory of the Requested Party, unless otherwise agreed by both Central Authorities and the person transferred; and

(c) the Requesting Party shall not require the Requested Party to initiate extradition proceedings for the return of the person transferred.

ARTICLE 12

Location or Identification of Persons

1. The Requested Party shall make best efforts to ascertain the location or identity of persons specified in the request.

2. The Central Authority of the Requested Party shall promptly communicate the results of its inquiries to the Central Authority of the Requesting Party.

ARTICLE 13

Service of Documents

1. The Requested Party shall, as far as possible, effect service of any document relating to or forming part of any request for assistance properly made pursuant to this Treaty by the Requesting Party, including any subpoena or other process requiring the appearance of any person before any authority or tribunal in the territory of the Requesting Party.

2. Service of any subpoena or other process by virtue of paragraph (1) of this Article shall not impose any obligation under the law of the Requested Party to comply with it.

3. The Central Authority of the Requesting Party shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting Party a reasonable time before the scheduled appearance.

4. The Requested Party shall return a proof of service in the manner specified in the request.

ARTICLE 14

Search and Seizure

1. The Requested Party shall execute a request for the search, seizure and delivery of any article to the Requesting Party if the request includes the information justifying such action under the laws of the Requested Party and it is carried out in accordance with the laws of that Party.

2. The Requested Party may refuse a request if it relates to conduct in respect of which powers of search and seizure would not be exercisable in the territory of the Requested Party in similar circumstances.

3. Every official who has custody of a seized article shall certify the continuity of custody, the identity of the article and the integrity of its condition in the form indicated in Appendix C to this Treaty. No further authentication or certification shall be necessary in order to establish these matters in proceedings in the territory of the Requesting Party. Certification under this Article may also be provided in any other form or manner as may be prescribed from time to time by either Central Authority.

4. The Central Authority of the Requested Party may require that the Requesting Party agree to terms and conditions which the Requested Party may deem necessary to protect third party interests in the item to be transferred.

ARTICLE 15

Return of Documents and Articles

The Central Authority of the Requesting Party shall return any documents or articles furnished to it in the execution of a request under this Treaty as soon as is practicable unless the Central Authority of the Requested Party waives the return of the documents or articles.

ARTICLE 16

Assistance in Forfeiture Proceedings

1. The Parties shall assist each other in proceedings involving the identification, tracing, freezing, seizure or forfeiture of the proceeds and instrumentalities of crime and in relation to proceedings involving the imposition of fines related to a criminal prosecution.

2. If the Central Authority of one Party becomes aware that proceeds or instrumentalities are located in the territory of the other Party and may be liable to freezing, seizure or forfeiture under the laws of that Party, it may so inform the Central Authority of the other Party. If the Party so notified has jurisdiction, this information may be presented to its authorities for a determination whether any action is appropriate. The said authorities shall issue their decision in accordance with the laws of their country and the Central Authority of that country shall ensure that the other Party is aware of the action taken.

3. A Requested Party in control of forfeited proceeds or instrumentalities shall dispose of them according to its laws. Either Party may transfer forfeited assets or the proceeds of their sale to the other Party to the extent permitted by their respective laws, upon such terms as may be agreed.

ARTICLE 16 bis

Identification of Bank Information

1. (a) Upon request of the Requesting Party, the Requested Party shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offence is the holder of a bank account or accounts. The Requested Party shall promptly communicate the results of its enquiries to the Requesting Party.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offence;
(ii) information in the possession of non-bank financial institutions; or
(iii) financial transactions unrelated to accounts.

2. In addition to the requirements of Article 4(2) of this Treaty, a request for information described in paragraph 1 shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions;

(b) sufficient information to enable the competent authority of the Requested Party to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offence and that banks or non-bank financial institutions in the territory of the Requested Party may have the information requested; and
(ii) conclude that the information sought relates to the criminal investigation or proceeding; and

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic notes between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

(a) for the United Kingdom:
(i) The Lord Advocate, where the request relates only to Scotland;
(ii) The Secretary of State for Northern Ireland, where the request relates only to Northern Ireland;
(iii) The Secretary of State for the Home Department, in all other cases; and

(b) for the United States of America, the attaché responsible for the United Kingdom of the:
(i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;
(ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;
(iii) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. The United States of America and the United Kingdom shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both the Requesting and Requested Parties, and with respect to such

other criminal activity as to which they may notify each other.

5. The Requested Party shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the other provisions of this Treaty.

ARTICLE 16 ter

Joint Investigative Teams

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and the United Kingdom for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union where deemed appropriate by the United States of America and the United Kingdom.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offences, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other States having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

ARTICLE 16 quater

Video Conferencing

1. The use of video transmission technology shall be available between the United States of America and the United Kingdom for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the Requested Party. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under this Treaty.

2. The Requesting and Requested Parties may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

3. Without prejudice to any jurisdiction under the law of the Requesting Party, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the Requested Party in the same manner as if it had been committed in the course of its domestic proceedings.

4. This Article is without prejudice to the use of other means for obtaining of testimony in the Requested Party available under applicable treaty or law.

5. The Requested Party may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements.

ARTICLE 17

Compatibility with Other Arrangements

Assistance and procedures set forth in this Treaty shall not prevent either of the Parties from granting assistance to the other Party through the provisions of other international agreements to which it may be a party, or through the provisions of its national laws. The Parties may also provide assistance pursuant to any arrangement, agreement, or practice which may be applicable between the law enforcement agencies of the Parties.

ARTICLE 18

Consultation

1. The Parties, or Central Authorities, shall consult promptly, at the request of either, concerning the implementation of this Treaty either generally or in relation to a particular case. Such consultation may in particular take place if, in the opinion of either Party or Central Authority, the expenses or other resources required for the implementation of this Treaty are of an extraordinary nature, or if either Party has rights or obligations under another bilateral or multilateral agreement relating to the subject matter of this Treaty.

2. With respect to any matter for which assistance could be granted under this Treaty, neither Party shall enforce any compulsory measure requiring an action to be performed by any person located in the territory of the other Party, unless the Party proposing such enforcement has first exhausted the procedures established in paragraphs (3) and (4) of this Article.

3. If a Party is aware that its authorities are intending to take measures referred to in paragraph (2) of this Article, its Central Authority shall inform the other Central Authority, who may request consultations. If the other Party is aware of or considers that the authorities of the first Party have taken or are about to take any such measures, its Central Authority may request consultations. Thereafter, the Central Authorities shall consult with a view to determining whether the assistance sought can be provided under this Treaty, or otherwise resolving the matter.

4. Where consultations fail to resolve the matter, or unreasonable delay may be jeopardizing the successful completion of a proceeding, either Central Authority may give the other written notice to that effect.

5. Unless otherwise agreed by the Parties, the obligations under paragraphs (2), (3) and (4) of this Article shall have been fulfilled 21 days after receipt of this written notice, provided that this is not less than 60 days after receipt of the request referred to in paragraph (3) above.

6. Even in those cases in which the Parties' obligations under this Article have been fulfilled, each Party shall continue to exercise moderation and restraint.

ARTICLE 19

Definition

For the purposes of this Treaty, "proceedings" means proceedings related to criminal matters and includes any measure or step taken in connection with the investigation or prosecution of criminal offences, including the freezing, seizure or forfeiture of the proceeds and instrumentalities of crime, and the imposition of fines related to a criminal prosecution.

ARTICLE 20

Termination

Either Party may terminate this Treaty by means of a written notice to the other Party. Termination shall take effect six months following the date of notification.

Appendix A

CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS

I,(Name), attest on penalty of criminal punishment for false statement or false attestation that I am employed by (Name of Business from which documents are produced) and that my official title is (Official Title). I further state that each of the records attached hereto is the original or a duplicate of the original of records in the custody of (Name of Business from which documents are produced). I further state that:

A) such records were made at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those, matters;

B) such records were kept in the course of a regularly conducted business activity;

C) the business activity made the records as a regular practice; and

D) if any of such records is not the original, such record is a duplicate of the original.

_____

_____

(Signature) (Date)

Sworn to or affirmed before me,

_____,

(Name)

a _____, this _____ day

(notary public, judicial officer, etc.)

of _____, 20__.

Appendix B

ATTESTATION OF AUTHENTICITY OF FOREIGN PUBLIC DOCUMENTS

I, (Name), attest on penalty of criminal punishment for false statement or attestation that my position with the Government of (Country) is (Official Title) and that in that position I am authorized by the law of (Country) to attest that the documents attached and described below are true and accurate copies of original official records which are recorded or filed in (Name of Office or Agency) which is a government office or agency of the Government of (Country).

Description of Documents:

_____

(Signature)

_____

(Title)

_____

(Date)

Appendix C

ATTESTATION WITH RESPECT TO SEIZED ARTICLES

I, (Name), attest on penalty of criminal punishment for false statement or attestation that my position with the Government of (Country) is (Title). I received custody of the articles listed below from (Name of Person) on (Date), at (Place). I relinquished custody of the articles listed below to (Name of Person) on (Date) at (Place) in the same condition as when I received them (or if different, as noted below).

Description of Articles:

Changes in condition while in my custody:

Official Seal

_____ (Signature)

_____ (Title)

_____ (Place)

_____ (Date)

EMBASSY OF THE
UNITED STATES OF AMERICA

No. 121

The Embassy of the United States of America at London, England, presents its compliments to Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs and has the honor to refer to the Instrument as contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed June 25, 2003, as to the application of the Treaty on Mutual Legal Assistance in Criminal Matters between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland signed January 6, 1994.

The Embassy wishes to confirm that two exchanges of Notes related to the 1994 Treaty, one done simultaneous with its signature and the other done on April 30 and May 1, 2001, shall remain the understandings of the Governments with respect to this Instrument, until such time as they may agree otherwise.

If the foregoing is acceptable to your Government, the Embassy has the honor to propose that this Note and your Note in reply shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the Instrument.

The Embassy avails itself of the opportunity to express to Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs the renewed assurance of its highest consideration.

Embassy of the United States of America
London, England. December 16, 2004

The Consular Directorate of the Foreign and Commonwealth Office presents its compliments to the Embassy of the United States of America and has the honour to refer to the Embassy's Note No. 121 of 16 December 2004 which reads as follows:

"The Embassy of the United States of America at London, England, presents its compliments to Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs and has the honour to refer to the Instrument as contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed June 25, 2003, as to the application of the Treaty on Mutual Legal Assistance in Criminal Matters between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland signed January 6, 1994.

The Embassy wishes to confirm that two exchanges of Notes related to the 1994 Treaty, one done simultaneous with its signature and the other done on April 30 and May 1, 2001, shall remain the understandings of the Governments with respect to this Instrument, until such time as they may agree otherwise.

If the foregoing is acceptable to your Government, the Embassy has the honour to propose that this Note and your Note in reply shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the Instrument.

The Embassy avails itself of this opportunity to express to Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs the renewed assurance of its highest consideration."

In reply, the Foreign and Commonwealth Office has the honour to confirm that the proposal set out in the Embassy's Note is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland and that the Embassy's Note, and this Reply, shall constitute an agreement between the two Governments which shall enter into force on the date of entry into force of the Instrument.

The Consular Directorate of the Foreign and Commonwealth Office avails itself of this opportunity to renew to the Embassy of the United States the assurances of its highest consideration.

London
16 December 2004

FOREIGN AND COMMONWEALTH OFFICE
LONDON

I certify this to be a true copy of the signed original.

Daphne W. Cook
Treaty Analyst

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