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EXTRADITION TREATY WITH ROMANIA AND PROTOCOL TO THE TREATY ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS WITH ROMANIA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

EXTRADITION TREATY BETWEEN THE UNITED STATES OF AMERICA AND ROMANIA (THE "EXTRADITION TREATY" OR THE "TREATY") AND THE PROTOCOL TO THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND ROMANIA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (THE "PROTOCOL"), BOTH SIGNED AT BUCHAREST ON SEPTEMBER 10, 2007

JANUARY 22, 2008.—Treaty 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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U.S. GOVERNMENT PRINTING OFFICE

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *January 22, 2008.*

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 Extradition Treaty between the United States of America and Romania (the "Extradition Treaty" or the "Treaty") and the Protocol to the Treaty between the United States of America and Romania on Mutual Legal Assistance in Criminal Matters (the "Protocol"), both signed at Bucharest on September 10, 2007. I also transmit, for the information of the Senate, the reports of the Department of State with respect to the Extradition Treaty and Protocol.

The Extradition Treaty would replace the outdated Extradition Treaty between the United States and Romania, signed in Bucharest on July 23, 1924, and the Supplementary Extradition Treaty, signed in Bucharest on November 10, 1936. The Protocol amends the Treaty Between the United States of America and Romania on Mutual Legal Assistance in Criminal Matters, signed in Washington on May 26, 1999 (the "1999 Mutual Legal Assistance Treaty"). Both the Extradition Treaty and the Protocol also fulfill the requirements for bilateral instruments (between the United States and each European Union (EU) Member State) that are contained in the Extradition and Mutual Legal Assistance Agreements between the United States and the EU currently before the Senate.

The Extradition Treaty follows generally the form and content of other extradition treaties recently concluded by the United States. It would replace an outmoded list of extraditable offenses with a modern "dual criminality" approach, which would enable extradition for such offenses as money laundering and other newer offenses not appearing on the list. The Treaty also contains a modernized "political offense" clause, and it provides that neither Party shall refuse extradition based on the citizenship of the person sought. Finally, the new Treaty incorporates a series of procedural improvements to streamline and speed the extradition process. The Protocol primarily serves to amend the 1999 Mutual Legal Assistance Treaty in areas required pursuant to the U.S.-EU Mutual Legal Assistance Agreement, specifically: mutual legal assistance to administrative authorities; expedited transmission of requests; use limitations; identification of bank information; joint investigative teams; and video conferencing.

I recommend that the Senate give early and favorable consideration to the Extradition Treaty and the Protocol, along with the U.S.-EU Extradition and Mutual Legal Assistance Agreements and

the other related bilateral instruments between the United States and European Union Member States.

GEORGE W. BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, November 1, 2007.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Extradition Treaty between the United States of America and Romania (the "Extradition Treaty") and the Protocol to the Treaty between the United States of America and Romania on Mutual Legal Assistance in Criminal Matters (the "Protocol"), both signed at Bucharest on September 10, 2007. Upon its entry into force, the Extradition Treaty would replace the Extradition Treaty between the United States of America and Romania, signed at Bucharest on July 23, 1924, and the Supplementary Extradition Treaty, signed at Bucharest on November 10, 1936. The Extradition Treaty and the Protocol fulfill the requirements of the Agreements on Extradition and Mutual Legal Assistance between the United States of America and the European Union, both signed on June 25, 2003, which were transmitted to the Senate on September 28, 2006, for implementing bilateral instruments between the United States and each member state of the European Union. The article-by-article analyses of the two instruments are enclosed with this report. I recommend that the Extradition Treaty and the Protocol be transmitted to the Senate for its advice and consent to ratification. Both instruments are self-executing and will not require implementing legislation.

Respectfully submitted.

CONDOLEEZZA RICE.

Enclosures: Overviews and analyses of the provisions of the Extradition Treaty and Protocol.

PROTOCOL TO THE TREATY BETWEEN ROMANIA AND THE UNITED STATES OF AMERICA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

OVERVIEW

The Protocol to the Treaty between Romania and the United States of America on Mutual Legal Assistance in Criminal Matters (the "Protocol") serves to implement, as between the United States and Romania, the provisions of the 2003 Agreement on Mutual Legal Assistance between the United States of America and the European Union (the "U.S.-EU Mutual Legal Assistance Agreement"). It does this through amendment of the Treaty between Romania and the United States of America on Mutual Legal Assist-

ance in Criminal Matters, signed at Washington on May 26, 1999 (the "1999 Mutual Legal Assistance Treaty").

The following is an article-by-article description of the provisions of the Protocol.

Article 1 of the Protocol incorporates Article 8 of the U.S.-EU Mutual Legal Assistance Agreement ("Mutual legal assistance to administrative authorities"), thereby providing an express legal basis for the provision of assistance to an administrative authority investigating conduct with a view to criminal prosecution or referral 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. This provision is added as Article 1 bis of the 1999 Mutual Legal Assistance Treaty.

Article 2 of the Protocol replaces Article 2 of the 1999 Mutual Legal Assistance Treaty. The only change is that the amended treaty will reflect that, for Romania, the Central Authority is the Ministry of Justice.

Article 3 of the Protocol replaces Article 4(1) of the 1999 Mutual Legal Assistance Treaty and provides that requests transmitted by fax or email shall be considered to be in writing. It also adds Article 4(1) bis to the 1999 Mutual Legal Assistance Treaty to incorporate Article 7 of the U.S.EU Mutual Legal Assistance Agreement ("Expedited transmission of requests"), which 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.

Article 4 of the Protocol incorporates Article 6(2) of the U.S.-EU Mutual Legal Assistance Agreement, providing that the costs associated with establishing and servicing a video-conference for mutual legal assistance purposes, as well as the allowances and expenses related to travel of persons in relation to such video-conferences, will be borne by the Requesting State unless otherwise agreed. This provision replaces Article 6(1) of the 1999 Mutual Legal Assistance Treaty.

Article 5 of the Protocol incorporates Article 9 of the U.S.-EU Mutual Legal Assistance Agreement ("Limitations on use to protect personal and other data") by replacing Article 7 of the 1999 Mutual Legal Assistance Treaty. Paragraph 1 of the new Article 7 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 serious threat to its public security, for non-criminal judicial or administrative proceedings directly related to its criminal investigations or proceedings, for non-criminal judicial or administrative proceedings for which assistance was provided under Article 1 of the Protocol, 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.

Paragraph 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.

Paragraph 2(b) provides that 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(a) to providing evidence or information. This provision is further elaborated upon in the explanatory note to the U.S.-EU Mutual Legal Assistance Agreement (regarding Article 9(2)(b) of that 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.

Paragraph 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 6 of the Protocol incorporates Article 4 of the U.S.-EU Agreement ("Identification of Bank Information") as Article 17 bis of the 1999 Mutual Legal Assistance Treaty.

Paragraph 1(a) requires the requested State 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.

Paragraph 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.

Paragraph 3 designates the U.S. channel of communication for requests for assistance under this article as the U.S. legal attaché

to Romania representing the Drug Enforcement Administration, the Bureau of Immigration and Customs Enforcement, and the Federal Bureau of Investigation (depending on the nature of the investigation or proceeding giving rise to the request). For Romania, the designated channel is the Prosecutor's Office of the High Court of Cassation and Justice. Paragraph 3 also allows the United States and the European Union to modify these designations by exchange of diplomatic notes after the entry into force of the Protocol.

Paragraph 4 provides that the United States and Romania 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 to which may subsequently be agreed by the Parties. U.S. negotiators verified that under Romanian law assistance will be available for a wide range of conduct associated with terrorism (which includes the conduct criminalized in international counterterrorism conventions to which they are party) and money laundering with respect to an extremely broad range of predicate offenses.

Paragraph 5 indicates that 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 1999 Mutual Legal Assistance Treaty, as amended by the Protocol.

Article 7 of the Protocol incorporates Article 5 of the U.S.-EU Mutual Legal Assistance Agreement ("Joint Investigative Teams"), and is added as Article 17 ter of the 1999 Mutual Legal Assistance Treaty.

Paragraph 1 of the new Article 17 ter provides that joint investigative teams may be established and operated in the respective territories of the United States and Romania, where the Parties agree to do so.

Under paragraph 2, the manner of the team's operation shall be agreed between the competent authorities, as determined by the respective States concerned.

Paragraph 3 describes channels of communication so as to facilitate direct communication between law enforcement authorities with respect to cases arising under the Treaty. The paragraph provides that the competent authorities determined by the respective States concerned shall communicate directly for purposes of establishing and operating such teams, 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 Mutual Legal Assistance Treaty.

Paragraph 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 applica-

ble domestic standard. Thus, where an investigative measure is to be carried out in the United States, for example, a U.S. team member could do so by invoking existing domestic investigative authority, and would share resulting information or evidence seized pursuant to such an action with the foreign authorities. A formal mutual legal assistance request would not be required. 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 1999 Mutual Legal Assistance Treaty, as amended by the Protocol, may furnish a separate legal basis for carrying out such a measure.

Article 8 of the Protocol incorporates Article 6 of the U.S.-EU Mutual Legal Assistance Agreement ("Video Conferencing"), except that Article 6 (2), relating to the costs of video conferencing is addressed, as noted above, in Article 4 of the Protocol. Article 8 is applied as Article 17 quater of the 1999 Mutual Legal Assistance Treaty.

Paragraph 1 of the new Article 17 quater provides that the use of video transmission technology shall be available between the United States of America and Romania for taking testimony in a proceeding for which mutual legal assistance is available. The procedures to be applied in taking such testimony are as otherwise set forth in the 1999 Mutual Legal Assistance Treaty, as amended by the Protocol.

Paragraph 2 provides for a consultation mechanism in order to facilitate legal, technical or logistical issues that may arise in the execution of a particular request.

Paragraph 3 provides that the making of intentionally false statements or other witness or expert misconduct shall be punishable in the requested State 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.

Paragraph 4 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 available.

Paragraph 5 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 9 of the Protocol sets out the temporal application of the Protocol in accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement. Paragraph 1 provides that the Protocol will apply to offenses committed before as well as after it enters into force. Paragraph 2 provides that the Protocol shall apply to requests for assistance made after its entry into force; however, Articles 3 ("Expedited transmission of requests"), 4 ("Cost of video con-

ferencing"), and 8 ("Video conferencing") shall apply to requests pending in the Requested State at the time the Protocol enters into force.

Article 10 of the Protocol provides for entry into force and termination of the Protocol. Entry into force of the Protocol occurs, following an exchange of notifications regarding the completion of applicable internal procedures, 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, the Protocol also will terminate. Thereupon the 1999 Mutual Legal Assistance Treaty will apply along with any provisions of the Protocol for which the United States and Romania agree to continue application.

The Department of Justice joins the Department of State in urging approval of this Protocol by the Senate at the earliest possible date.

U.S.-ROMANIA EXTRADITION TREATY

OVERVIEW

The U.S.-Romania Extradition Treaty (the "Extradition Treaty" or the "Treaty") replaces an outdated 1924 extradition treaty, as amended by a 1936 supplementary treaty. This new Extradition Treaty also serves to implement, as between the United States and Romania, the provisions of the Agreement on Extradition between the United States of America and the European Union ("the U.S.-EU Extradition Agreement"), currently before the Senate.

The following is an Article-by-Article description of the provisions of the Treaty.

Article 1 obligates each Party to extradite to the other, pursuant to the provisions of the Treaty, persons whom the authorities in the Requesting State have charged with, found guilty of, or convicted of an extraditable offense.

Article 2, which is taken from Article 4 of the U.S.-EU Extradition Agreement, defines extraditable offenses. Article 2(1) defines an offense as extraditable if the conduct on which the offense is based is punishable under the laws in both States by deprivation of liberty for a period of more than one year or by a more severe penalty. The approach taken in the Treaty with respect to extraditable offenses is consistent with the modem "dual criminality" approach, rather than the old "list" approach, and is one of the key benefits of the new Treaty. Use of a "dual criminality" clause, rather than the categories of offenses listed in the 1924 Treaty, obviates the need to renegotiate or supplement the Treaty as additional offenses become punishable under the laws in both States and ensures a comprehensive coverage of criminal conduct for which extradition might be sought.

Article 2(2) further defines an extraditable offense to include an attempt or a conspiracy to commit, or participation in the commission of, an extraditable offense. The Parties intended to include, under the broad description of "participation," the offenses of aiding, abetting, counseling, or procuring the commission of an offense, as well as being an accessory to an offense.

Additional direction is provided by Article 2(3), which provides that an offense shall be an extraditable offense: (a) whether or not the laws in the Requesting and Requested States place the acts or omissions constituting the offense within the same category of offenses or describe the offense by the same terminology; (b) whether or not the offense is one for which United States federal law requires the showing of such matters as interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being jurisdictional only; or (c) whether or not, in criminal cases relating to taxes, customs duties, currency control, or commodities, the laws of the Requesting and Requested States provide for the same kinds of taxes, customs duties or controls on currency, or on the import or export of the same kinds of commodities.

With regard to offenses committed outside the territory of the Requesting State, Article 2(4) provides that extradition shall be granted in accordance with the provisions of the Treaty if the laws of the Requested State provide for the punishment of such conduct committed outside its territory in similar circumstances. If the laws of the Requested State do not provide for the punishment of such conduct committed outside of its territory in similar circumstances, the executive authority of the Requested State, in its discretion, may proceed with extradition provided that all other requirements of the Treaty are met.

Article 2(5) provides that, if extradition is granted for an extraditable offense, it shall also be granted for any other offense specified in the request if the latter offense is punishable by one year's deprivation of liberty or less, provided that all other requirements for extradition are met.

Article 3 provides that extradition shall not be refused based on the citizenship of the person sought. This provision reflects a significant development in the U.S.-Romania extradition relationship. The 1924 Treaty does not require that the Parties extradite their citizens, and this provision required an amendment both to the Romanian Constitution and Romania's domestic law on international extradition.

Article 4 governs political and military offenses as a basis for the denial of extradition. As is customary in extradition treaties, paragraph 1 provides that extradition shall not be granted if the offense for which extradition is requested constitutes a political offense. Article 4(2) specifies six categories of offenses that shall not be considered to be political offenses:

(a) a murder or other violent crime against a Head of State of one of the Parties, or of a member of the Head of State's family;

(b) an offense for which both Parties have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution;

(c) murder, manslaughter, malicious wounding, inflicting grievous bodily harm, assault with intent to cause serious physical injury, or serious sexual assault;

(d) an offense involving kidnapping, abduction, or any form of unlawful detention, including the taking of a hostage;

(e) placing, using, threatening to use or possessing an explosive, incendiary, or destructive device capable of endangering life, causing substantial bodily harm, or causing substantial property damage; and

(f) a conspiracy or attempt to commit, or participation in the commission of any of the offenses set forth in.(a)–(e).

Article 4(3) provides that, notwithstanding Article 4(2), extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated.

Article 4(4) provides that the competent authority of the Requested State may refuse extradition for offenses under military law that are not offenses under ordinary criminal law. Desertion would be an example of such an offense.

Article 4(5) provides that the Executive Branch is the "competent authority" for the United States for purposes of Article 4.

Article 5 governs those circumstances in which the person whose extradition is sought has been the subject of a prior prosecution. Article 5(1) provides that extradition shall not be granted when the person sought has been convicted or acquitted in the Requested State for the offense for which extradition is requested.

Article 5(2) provides that extradition shall not be precluded by the fact that the competent authorities of the Requested State have decided:

(a) not to prosecute the person sought for the acts for which extradition is requested;

(b) to discontinue any criminal proceedings which have been instituted against the person sought for those acts; or

(c) to investigate the person sought for the same acts.

Article 6 provides that extradition may be denied if prosecution of the offense or execution of the penalty is barred by lapse of time under the law of the Requesting State. Acts that would interrupt or suspend the prescriptive period in the Requesting State are to be given effect by the Requested State.

Article 7, which is taken from Article 13 of the U.S.-EU Extradition Agreement, concerns capital punishment. It provides that, when an offense for which extradition is sought is punishable by death under the laws in the Requesting State but not under the laws in the Requested State, the Requested State may grant extradition on the condition that the death penalty shall not be imposed on the person sought, or if for procedural reasons such condition cannot be complied with by the Requesting State, on condition that the death penalty, if imposed, shall not be carried out. If the Requesting State accepts extradition subject to such a condition, it must comply with the condition.

Article 8 establishes extradition procedures and describes the documents required to support a request for extradition. Article 8(1), which is taken from Article 5(1) of the U.S.-EU Extradition Agreement, provides that all requests for extradition must be submitted through the diplomatic channel, which shall include transmission through the channel specified in Article 12(4) of the Treaty.

Article 8(2) specifies the documents, information, and legal texts that shall support all extradition requests. Article 8(3) provides

that a request for the extradition of a person who is charged with an offense must also be supported by: a) a copy of the warrant or order of arrest issued by a judge, court, or other competent authority; b)a copy of the charging document; and c) such information as would provide a reasonable basis to believe that the person sought committed the offense for which extradition is sought.

Article 8(4) sets forth the items, in addition to those set forth in Article 8(2), that must accompany a request for the extradition relating to a person who has been found guilty or been convicted of the offense for which extradition is sought.

Pursuant to Article 8(4)(d), a request for extradition of a person who has been convicted in absentia must also be supported by those documents required for a request for a person who has been charged with an offense, as well as information regarding the circumstances under which the person was absent from the proceedings.

Article 9, which is taken from Article 8 of the U.S.-EU Extradition Agreement, authorizes the Requested State to require the Requesting State to furnish additional information to support an extradition request, if the Requested State deems it necessary to fulfill the requirements of the Treaty. It specifies that such information may be requested and supplied directly between the United States Department of Justice and the Ministry of Justice of Romania.

Article 10, which is taken from Article 5(2) of the U.S.-EU Extradition Agreement, concerns admissibility of documents. It provides that documents bearing the certificate or seal of either the Ministry or Department of Justice or the foreign affairs Ministry or Department of the Requesting State shall be admissible in extradition proceedings in the Requested State without further certification.

Article 11 provides that all documents submitted under the Treaty by the Requesting State shall be translated into the language of the Requested State.

Article 12 sets forth procedures and describes the information that is required for the provisional arrest and detention of the person sought pending presentation of the formal extradition request and supporting documents. Article l2(1) provides for provisional arrest and sets forth procedures for transmission of a request for provisional arrest. Article 12(2) specifies the information that must accompany an application for provisional arrest. Article 12(3) requires the Requested State to notify the Requesting State of the disposition of the provisional arrest request and the reasons for any inability to proceed with the request.

Article 12(4) provides that, if the Requested State has not received the request for extradition and supporting documents within sixty days of the date of provisional arrest, the person shall be discharged, unless good cause is shown to maintain custody. Consistent with Article 7 of the U.S.-EU Extradition Agreement, Article 12(4) provides an alternative channel for receipt of extradition requests applicable with respect to persons who have been provisionally arrested, namely, through transmission of the request to the Embassy of the Requested State in the Requesting State. Article 12(5) provides that the discharge of a person from custody pursuant to Article 12(4) does not prejudice the person's subsequent

rearrest and extradition if the extradition request and supporting documents are delivered at a later date.

Article 13 specifies the procedures governing a decision on the extradition request and the surrender of the person sought. It requires the Requested State to promptly notify the Requesting State of its decision regarding a request. If the request is denied in whole or in part, the Requested State must provide an explanation of the reasons for the denial and, upon request, copies of pertinent judicial decisions. If extradition is granted, the States shall agree on the time and place for the surrender of the person sought. If the person sought is not removed from the territory of the Requested State within the time period prescribed by the law of that State, the person may be discharged from custody, and the Requested State, in its discretion, may subsequently refuse extradition for the same offense(s).

Article 14 addresses temporary and deferred surrender. Article 14(1), on temporary surrender, is taken from Article 9 of the U.S.-EU Extradition Agreement. It provides that, if a person whose extradition is sought is being proceeded against or is serving a sentence in the Requested State, the Requested State may temporarily surrender the person to the Requesting State for the purpose of prosecution. The Requesting State shall keep the person so surrendered in custody and shall return that person to the Requested State after the conclusion of the proceedings against that person, in accordance with conditions to be determined by mutual agreement of the States. Time spent in custody in the Requesting State pending pros'ecution there may be deducted from the time to be served in the Requested State.

Article 14(2), on deferred surrender, provides that the Requested State may postpone the extradition proceedings against a person who is being prosecuted or who is serving a sentence in the Requested State until that prosecution has concluded or sentence has been served.

Article 15, which is taken from Article 10 of the U.S.-EU Extradition Agreement, governs the situation in which the Requested State receives requests for the extradition or surrender of the same person from more than one State, either for the same offense or for different offenses. In the event of requests by more than one State for the same person, the executive authority of the Requested State shall determine to which State, if any, it will surrender that person. In the event that Romania receives requests both from the United States and pursuant to a European arrest warrant for the same person, Romania's judicial authority, or such other authority as Romania may designate, shall determine to which State, if any, it will surrender the person. Article 15(3) provides a non-exclusive list of factors to be considered by the Requested State in determining to which State to surrender a person who is sought by more than one State.

Article 16 provides that the Requested State may, to the extent permitted under its law, seize and surrender to the Requesting State all items, including articles, documents, evidence, and proceeds, that are connected with the offense in respect of which extradition is granted. Such items may be surrendered even if the extradition cannot be carried out due to the death, disappearance, or

escape of the person sought. The Requested State may condition the surrender of the items upon satisfactory assurances from the Requesting State that the property will be returned to the Requested State as soon as practicable. The Requested State may also defer the surrender of such items if they are needed as evidence in the Requested State. The rights of third parties in such items are to be respected in accordance with the laws of the Requested State.

Article 17 sets forth the Rule of Specialty, which, subject to specific exceptions set forth in paragraph 3, prohibits a person extradited under the Treaty from being detained, tried, or punished in the Requesting State except for:

(a) any offense for which extradition was granted, or a differently denominated offense based on the same facts as the offense for which extradition was granted, provided such offense is extraditable, or is a lesser included offense;

(b) any offense committed after the extradition of the person; or

(c) any offense for which the competent authority of the Requested State consents to the person's detention, trial, or punishment.

Article 17(2) provides that a person extradited under the Treaty may not be the subject of onward extradition or surrender for any offense committed prior to the extradition to the Requesting State unless the Requested State consents. This provision would preclude Romania from transferring a fugitive surrendered to it by the United States to a third country or international tribunal without the consent of the United States.

Article 17(3) sets forth exceptions to the rule of specialty. It provides that the restrictions set forth under Article 17 shall not prevent the detention, trial, or punishment of an extradited person, or the extradition of a person to a third State, if the extradited person either leaves the territory of the Requesting State after extradition and voluntarily returns to it or fails to leave the territory of the Requesting State within twenty days of being free to do so.

Article 17(4) provides that the Executive Branch is the "competent authority" for the United States for purposes of Article 17.

Article 18, which is taken from Article 11 of the U.S.-EU Extradition Agreement, permits surrender without further proceedings if the person sought consents to being surrendered to the Requesting State. The consent of the person sought may include agreement to waiver of protection of the rule of specialty.

Article 19, which is taken from Article 12 of the U.S.-EU Extradition Agreement, governs the transit through the territory of one State of a person surrendered to the other State by a third country, or to a third country by the other State. .

Article 20 contains provisions regarding representation and the expenses associated with extradition. Specifically, the Requested State is required to advise, assist, appear in court on behalf of, and represent the interests of the Requesting State in any proceedings arising out of a request for extradition. Article 20(2) establishes that the Requested State bears all expenses incurred in that State in connection with the extradition proceedings, except that the Requesting State pays expenses related to the translation of extra-

dition documents and the transportation of the person surrendered. Article 20(3) specifies that neither State shall make any pecuniary claim against the other arising out of the arrest, detention, examination, or surrender of persons under the Treaty.

Article 21(1) provides that the parties may consult in connection with the processing of individual cases and in furtherance of efficient implementation of the Treaty. Article 21(2), which is taken from Article 14 of the U.S.-EU Extradition Agreement, provides for consultation between the parties when the Requesting State contemplates the submission of particularly sensitive information in support of a request for extradition, in order to determine the extent to which the information can be protected by the Requested State in the event of submission.

Article 22 makes the Treaty applicable to offenses committed both before and after the date it enters into force.

Article 23 contains final clauses addressing the Treaty's ratification, entry into force, and termination. It provides that the Treaty is subject to ratification and that the Treaty shall enter into force upon the exchange of the instruments of ratification. Article 23(3) provides that, upon entry into force of the Treaty, the Treaty of Extradition between the United States of America and Romania, signed at Bucharest on July 23, 1924, as well as the Supplementary Extradition Treaty, signed at Bucharest on November 10, 1936, shall cease to have any effect except that they shall apply in extradition proceedings in which extradition documents have already been submitted to the courts of the Requested State at the time the Treaty enters into force. In such cases, only Articles 2, 14(1), and 18 of this Treaty will apply, and Article 17 of the Treaty, regarding the rule of specialty, will apply to persons found extraditable under the earlier treaties. Under Article 23(4), where a request for extradition was received by the Requested State but not submitted to its courts before the entry into force of this Treaty, the Requesting State, after entry into force of this treaty, may amend or supplement the request for extradition as necessary in order for it to be submitted to the courts of the Requested State under this Treaty.

Under Article 23(5), either State may terminate the Treaty with six months' written notice to the other State through the diplomatic channel.

The Department of Justice joins the Department of State in urging approval of this Treaty by the Senate at the earliest possible date.

EXTRADITION TREATY

BETWEEN

THE UNITED STATES OF AMERICA

AND

ROMANIA

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The United States of America and Romania (hereinafter referred to as "the Parties"):

Recalling the Treaty of Extradition between the United States of America and Romania, signed at Bucharest on July 23, 1924, and the Supplementary Extradition Treaty, signed at Bucharest on November 10, 1936;

Noting that both the United States of America and Romania currently apply the terms of these Treaties;

Mindful of obligations set forth in the Agreement on Extradition between the United States of America and the European Union, signed at Washington, D.C. on June 25, 2003;

Having due regard for rights of individuals and the rule of law; and

Desiring to provide for more effective cooperation between the Parties in the fight against crime, and, for that purpose, to conclude a new treaty for the extradition of offenders;

Have agreed as follows:

Article 1
Obligation to Extradite

The Parties agree to extradite to each other, pursuant to the provisions of this Treaty, persons whom the authorities in the Requesting State have charged with, found guilty of, or convicted of an extraditable offense.

Article 2
Extraditable Offenses

1. An offense shall be an extraditable offense if it is punishable under the laws in both Parties by deprivation of liberty for a period of more than one year or by a more severe penalty. Where the request is for enforcement of the sentence of a person convicted of an extraditable offense, the deprivation of liberty remaining to be served must be at least four months.

2. An offense shall also be an extraditable offense if it consists of an attempt or a conspiracy to commit, or participation in the commission of any offense described in paragraph 1 of this Article.

3. For the purposes of this Article, an offense shall be an extraditable offense:

(a) whether or not the laws in the Requesting and Requested States place the acts or omissions constituting the offense within the same category of offenses or describe the offense by the same terminology;

(b) whether or not the offense is one for which United States federal law requires the showing of such matters as interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court; and

(c) whether or not, in criminal cases relating to taxes, customs duties, currency control and the import or export of commodities, the laws of the Requesting and Requested States provide for the same kinds of taxes, customs duties, or controls on currency or on the import or export of the same kinds of commodities.

4. If the offense has been committed outside of the territory of the Requesting State, extradition shall be granted, subject to the other applicable requirements for extradition, if the laws of the Requested State provide for the punishment of an offense committed outside its territory in similar circumstances. If the laws of the Requested State do not provide for the punishment of an offense committed outside its territory in similar circumstances, the executive authority of the Requested State, at its discretion, may proceed with extradition provided that all other applicable requirements for extradition are met.

5. If extradition has been granted for an extraditable offense, it shall also be granted for any other offense specified in the request even if the latter offense is punishable by

one year's deprivation of liberty or less, provided that all other requirements for extradition are met.

Article 3
Citizenship

Extradition shall not be refused based on the citizenship of the person sought.

Article 4
Political and Military Offenses

1. Extradition shall not be granted if the offense for which extradition is requested is a political offense.

2. For the purposes of this Treaty, the following offenses shall not be considered political offenses:

(a) a murder or other violent crime against a Head of State of one of the Parties, or of a member of the Head of State's family;

(b) an offense for which both Parties have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution;

(c) murder, manslaughter, malicious wounding, inflicting grievous bodily harm, assault with intent to cause serious physical injury, or serious sexual assault;

(d) an offense involving kidnapping, abduction, or any form of unlawful detention, including the taking of a hostage;

(e) placing, using, threatening the use of, or possessing an explosive, incendiary or destructive device capable of endangering life, of causing substantial bodily harm, or of causing substantial property damage; and

(f) a conspiracy or attempt to commit any of the foregoing offenses, or participation in the commission of such offenses.

3. Notwithstanding the terms of paragraph 2 of this Article, extradition shall not be granted if the competent authority of the Requested State determines that the request was politically motivated.

4. The competent authority of the Requested State may refuse extradition for offenses under military law that are not offenses under ordinary criminal law.

5. For the United States of America, the Executive Branch is the competent authority for purposes of this Article.

Article 5
Prior Prosecution
(*Non Bis in Idem*)

1. Extradition shall not be granted when the person sought has been convicted or acquitted in the Requested State for the offense for which extradition is requested.

2. Extradition shall not be precluded by the fact that the authorities of the Requested State have decided:

(a) not to prosecute the person sought for the acts for which extradition is requested;

(b) to discontinue any criminal proceedings which have been instituted against the person sought for those acts; or

(c) to investigate the person sought for the same acts for which extradition is sought.

Article 6
Lapse of Time

Extradition may be denied if prosecution of the offense or execution of the penalty is barred by lapse of time under the laws of the Requesting State. Acts that would interrupt or suspend the prescriptive period in the Requesting State are to be given effect by the Requested State.

Article 7
Capital Punishment

When the offense for which extradition is sought is punishable by death under the laws in the Requesting State and is not punishable by death under the laws in the Requested State, the Requested State may grant extradition on the condition that the death penalty shall not be imposed on the person sought, or, if for procedural reasons such condition cannot be complied with by the Requesting State, on condition that the death penalty, if imposed, shall not be carried out. If the Requesting State accepts extradition subject to the condition attached pursuant to this Article, it shall comply with the condition.

Article 8
Extradition Procedure and Required Documents

1. Requests for extradition and supporting documents shall be submitted through the diplomatic channel, which shall include transmission as provided for in Article 12(4).

2. Requests for extradition shall be supported by:

(a) documents, statements, or other types of information that describe the identity and probable location of the person sought;

(b) information describing the facts of the offense and a brief procedural history of the case;

(c) the relevant text of the law(s) describing the essential elements of the offense for which extradition is requested;

(d) the relevant text of the law(s) prescribing punishment for the offense for which extradition is requested;

(e) the relevant text of the law(s) describing any time limit on the prosecution or enforcement of the penalty and information describing the application of the law(s) to the offense for which extradition is sought; and

(f) the documents, statements, or other types of information specified in paragraphs 3 or 4 of this Article, as applicable.

3. In addition to the requirements in paragraph 2 of this Article, a request for extradition of a person who is charged with an offense shall also be supported by:

(a) a copy of the warrant or order of arrest or detention issued by a judge, court, or other competent authority;

(b) a copy of the charging document; and

(c) such information as would provide a reasonable basis to believe that the person sought committed the offense for which extradition is sought.

4. In addition to the requirements in paragraph 2 of this Article, a request for extradition relating to a person who has been found guilty or convicted of the offense for which extradition is sought shall also be supported by:

(a) a copy of the conviction and sentence, or, if the person sought has been found guilty but not sentenced, a statement by a judicial authority as to the finding of guilt;

(b) information establishing that the person sought is the person to whom the finding of guilt refers;

(c) if the person sought has been sentenced, a statement establishing to what extent the sentence has been carried out; and

(d) in the case of a person who has been found guilty or convicted in absentia, the documents required by paragraph 3 of this Article and information regarding the circumstances under which the person was absent from the proceedings.

Article 9
Supplemental Information

The Requested State may require the Requesting State to furnish additional information within such reasonable length of time as it specifies, if it considers that the information furnished in support of the request for extradition is not sufficient to fulfill the requirements of this Treaty. Such supplementary information may be requested and furnished directly between the United States Department of Justice and the Ministry of Justice of Romania.

Article 10
Admissibility of Documents

Documents that bear the certificate or seal of the Ministry or Department of Justice, or the Ministry or Department responsible for foreign affairs, of the Requesting State shall be admissible in extradition proceedings in the Requested State without further certification, authentication, or other legalization.

Article 11
Translation

All documents submitted by the Requesting State shall be translated into the language of the Requested State, unless otherwise agreed.

Article 12
Provisional Arrest

1. In case of urgency, the Requesting State may request the provisional arrest of the person sought pending presentation of the request for extradition and supporting documentation. A request for provisional arrest may be transmitted through the diplomatic channel or directly between the United States Department of Justice and the Ministry of Justice of Romania. The facilities of the International Criminal Police Organization (Interpol) also may be used to transmit such a request.

2. The application for provisional arrest shall contain:

(a) a description of the person sought;

(b) the location of the person sought, if known;

(c) a brief statement of the facts of the case, including, if possible, the date and location of the offense(s);

(d) a description of the law(s) violated;

(e) a statement of the existence of a warrant or order of arrest or detention or a finding of guilt or judgment of conviction against the person sought; and

(f) a statement that the request for extradition for the person sought and supporting documentation will follow within the time specified in this Treaty.

3. The Requesting State shall be notified without delay of the disposition of its request for provisional arrest including the reasons for any inability to proceed with the request.

4. Unless good cause is shown to maintain custody, a person who is provisionally arrested shall be discharged upon the expiration of sixty (60) days from the date of provisional arrest pursuant to this Treaty if the Requested State has not received the formal request for extradition and the documents supporting the extradition request as required in Article 8. For this purpose, receipt of the formal request for extradition and supporting documents by the Embassy of the Requested State in the Requesting State, by the date specified in this paragraph, shall constitute receipt by the Requested State.

5. The fact that the person sought has been discharged from custody pursuant to paragraph 4 of this Article shall not prejudice the subsequent re-arrest and extradition of that person if the extradition request and supporting documents are delivered at a later date.

Article 13
Decision and Surrender

1. The Requested State shall promptly notify the Requesting State of its decision on the request for extradition.

2. If the request is denied in whole or in part, the Requested State shall provide an explanation of the reasons for the denial. The Requested State shall provide copies of pertinent judicial decisions upon request.

3. If the request for extradition is granted, the authorities of the Requesting and Requested States shall agree on the time and place for the surrender of the person sought.

4. If the person sought is not removed from the territory of the Requested State within the time period prescribed by the law of that State, that person may be discharged from custody, and the Requested State, in its discretion, may subsequently refuse extradition for the same offense(s).

Article 14
Temporary Surrender and Deferred Surrender

1. If the extradition request is granted for a person who is being proceeded against or is serving a sentence in the Requested State, the Requested State may temporarily surrender the person sought to the Requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after the conclusion of the proceedings against that person, in accordance with conditions to be determined by mutual agreement of the Parties. The time spent in custody in the territory of the Requesting State pending prosecution in that State may be deducted from the time remaining to be served in the Requested State.

2. The Requested State may postpone the extradition proceedings against a person who is being prosecuted or who is serving a sentence in that State. The postponement may continue until the prosecution of the person sought has been concluded or until such person has served any sentence imposed.

Article 15
Requests for Extradition or Surrender Made by Several States

1. If the Requested State receives requests from the Requesting State and from any other State or States for the extradition of the same person, either for the same offense or for different offenses, the executive authority of the Requested State shall determine to which State, if any, it will surrender the person.

2. If Romania receives an extradition request from the United States of America and a request for surrender pursuant to the European arrest warrant for the same person, either for the same offense or for different offenses, its judicial authority, or such other authority as it may subsequently designate, shall determine to which State, if any, it will surrender the person.

3. In making its decision under paragraphs 1 and 2, the Requested State shall consider all relevant factors, including, but not limited to:

(a) whether the requests were made pursuant to a treaty;

(b) the place where each offense was committed;

(c) the respective interests of the Requesting States;

(d) the gravity of the offenses;

(e) the nationality or citizenship of the victim;

(f) the possibility of any subsequent extradition between the Requesting States; and

(g) the chronological order in which the requests were received from the respective Requesting States.

Article 16
Seizure and Surrender of Property

1. To the extent permitted under its law, the Requested State may seize and surrender to the Requesting State all items, including articles, documents, evidence, and proceeds, that are connected with the offense in respect of which extradition is granted. The items mentioned in this Article may be surrendered even when the extradition cannot be effected due to the death, disappearance, or escape of the person sought and may be surrendered prior to the extradition.

2. The Requested State may condition the surrender of the items upon satisfactory assurances from the Requesting State that the property will be returned to the Requested State as soon as practicable. The Requested State may also defer the surrender of such items if they are needed as evidence in the Requested State.

3. The rights of third parties in such items shall be duly respected in accordance with the laws of the Requested State.

Article 17
Rule of Specialty

1. A person extradited under this Treaty may not be detained, tried, or punished in the Requesting State except for:

(a) any offense for which extradition was granted, or a differently denominated offense based on the same facts as the offense for which extradition was granted, provided such offense is extraditable, or is a lesser included offense;

(b) any offense committed after the extradition of the person; or

(c) any offense for which the competent authority of the Requested State consents to the person's detention, trial, or punishment. For the purpose of this subparagraph:

(i) the Requested State may require the submission of the documentation called for in Article 8; and

(ii) the person extradited may be detained by the Requesting State for 90 days, or for such longer period of time as the Requested State may authorize, while the request for consent is being processed.

2. A person extradited under this Treaty may not be the subject of onward extradition or surrender for any offense committed prior to extradition to the Requesting State unless the Requested State consents.

3. Paragraphs 1 and 2 of this Article shall not prevent the detention, trial, or punishment of an extradited person, or the extradition or surrender of that person to a third State, if:

(a) that person leaves the territory of the Requesting State after extradition and voluntarily returns to it; or

(b) that person does not leave the territory of the Requesting State within 20 days of the day on which that person is free to leave.

4. For the United States of America, the Executive Branch is the competent authority for purposes of this Article.

Article 18
Simplified Procedures

If the person sought consents to be surrendered to the Requesting State, the Requested State may, in accordance with the principles and procedures provided for under its legal system, surrender the person as expeditiously as possible without further proceedings. The consent of the person sought may include agreement to waiver of the protection of the rule of specialty.

Article 19
Transit

1. The United States may authorize transportation through its territory of a person surrendered to Romania by a third State, or by Romania to a third State. Romania may authorize transportation through its territory of a person surrendered to the United States by a third State, or by the United States to a third State.

2. A request for transit shall be transmitted through the diplomatic channel or directly between the United States Department of Justice and the Ministry of Justice of Romania. The facilities of the International Criminal Police Organization (Interpol) may also be used to transmit such a request to the above-mentioned authorities. The request for transit shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit shall be detained in custody during the period of transit.

3. Authorization is not required when air transportation is used by one State and no landing is scheduled on the territory of the transit State. If an unscheduled landing does occur, the State in which the unscheduled landing occurs may require a request for transit pursuant to

paragraph 2 of this Article, and it may detain the person until the request for transit is received and the transit is effected, as long as the request is received within 96 hours of the unscheduled landing.

Article 20
Representation and Expenses

1. The Requested State shall advise, assist, appear in court on behalf of, and represent the interests of the Requesting State in any proceedings arising out of a request for extradition.

2. The Requesting State shall pay all the expenses related to the translation of extradition documents and the transportation of the person surrendered. The Requested State shall pay all other expenses incurred in that State in connection with the extradition proceedings.

3. Neither State shall make any pecuniary claim against the other State arising out of the arrest, detention, examination, or surrender of persons under this Treaty.

Article 21
Consultation

1. The Parties may consult with each other in connection with the processing of individual cases and in furtherance of efficient implementation of this Treaty.

2. Where the Requesting State contemplates the submission of particularly sensitive information in support of a request for extradition, it may consult the Requested State to determine the extent to which the information can be protected by the Requested State. If the Requested State cannot protect the information in the manner sought by the Requesting State, the Requesting State shall determine whether the information shall nonetheless be submitted.

Article 22
Application

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

Article 23
Ratification, Entry into Force, and Termination

1. This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged as soon as possible.

2. This Treaty shall enter into force upon the exchange of the instruments of ratification.

3. Upon the entry into force of this Treaty, the Treaty of Extradition between the United States of America and Romania, signed at Bucharest July 23, 1924, and the Supplementary Extradition Treaty, signed at Bucharest November 10, 1936 (together, the "prior Treaties"), shall cease to have any effect. Nevertheless, the prior Treaties shall apply to any extradition proceedings in which the extradition documents have already been submitted to the courts of the Requested State at the time this Treaty enters into force, except that Articles 2, 14(1), and 18 of this Treaty shall be applicable to such proceedings, and Article 17 of this Treaty shall apply to persons found extraditable under the prior Treaties.

4. With respect to any extradition proceedings in which the request for extradition was received by the Requested State but not submitted to its courts before the entry into force of this Treaty, the Requesting State, after entry into force of this Treaty, may amend or supplement the request for extradition as necessary in order for it to be submitted to the courts of the Requested State under this Treaty.

5. Either State may terminate this Treaty at any time by giving written notice to the other State through the diplomatic channel, and the termination shall be effective six months after the date of receipt of such notice.

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

DONE at Bucharest, in duplicate, this tenth day of September, 2007, in the English and Romanian languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:
Nicholas F. TAUBMAN
Ambassador Extraordinary and Plenipotentiary of the United States of America to Romania

FOR ROMANIA:
Tudor-Alexandru CHIUARIU
Minister of Justice

Protocol to the Treaty between the United States of America and Romania on Mutual Legal Assistance in Criminal Matters signed in Washington on 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 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the United States of America and Romania agree as follows, and 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 United States of America and Romania on Mutual Legal Assistance in Criminal Matters signed 26 May 1999 (hereafter, "the 1999 Mutual Legal Assistance Treaty"), under the following terms:

Article 1: Mutual legal 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 *bis* of the 1999 Mutual Legal Assistance Treaty:

"Article 1 *bis*:

Mutual Legal Assistance to Administrative Authorities

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 Article 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

This article shall be applied in place of Article 2 of the 1999 Mutual Legal Assistance Treaty:

"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 Romania, the Central Authority shall be the Ministry of Justice.

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

Article 3: 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 1999 Mutual Legal Assistance Treaty:

" 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. 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.

1 *bis*. 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 4: Cost of video conferencing

Pursuant to Article 6 of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied in place of Article 6 (1) of the 1999 Mutual Legal Assistance Treaty:

"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, 11, 12, and 17 *quater*; 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."

Article 5: 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 1999 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 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 *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 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 17 *bis* of the 1999 Mutual Legal Assistance Treaty:

"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 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. In addition to the requirements of Article 4(3) 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 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; 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 Romania, in lieu of the channel described in Article 2(2) of this Treaty, the Prosecutor's Office of the High Court of Cassation and Justice, and

(b) for the United States of America, in lieu of the channel described in Article 2(2) of this Treaty, the attaché responsible for Romania 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; and

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

4. The United States of America and Romania 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 subsequently may be agreed to by the Parties.

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 17 *ter* of the 1999 Mutual Legal Assistance 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 Romania 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 Romania.

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 8: Video conferencing

Pursuant to Article 6 of the U.S.-EU Mutual Legal Assistance Agreement, the following shall be applied as Article 17 *quater* of the 1999 Mutual Legal Assistance Treaty:

"Article 17 *quater*:

Video Conferencing

1. The use of video transmission technology shall be available between the United States of America and Romania 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 9: Temporal application

1. 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.

2. This Protocol 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, 4, and 8 of this Protocol shall apply to requests pending in the Requested State at the time this Protocol enters 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 Romania of their respective applicable internal procedures for entry into force. The United States of America and Romania 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 1999 Mutual Legal Assistance Treaty shall be applied. The United States of America and Romania nevertheless may agree to continue to apply some or all of the provisions of this Protocol.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Protocol.

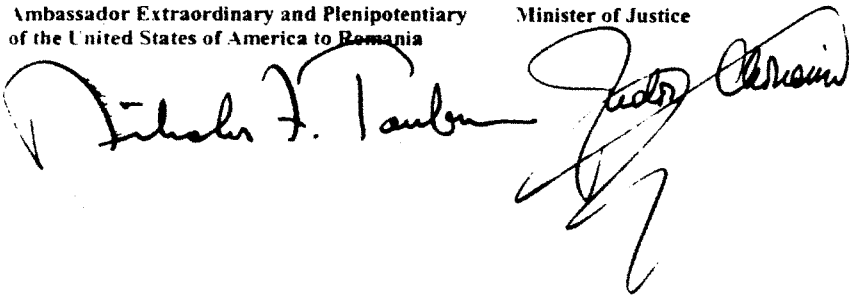
DONE at Bucharest, in duplicate this tenth day of September 2007, in the English and Romanian languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:

Nicholas F. TAUBMAN
Ambassador Extraordinary and Plenipotentiary of the United States of America to Romania

FOR ROMANIA:

Tudor-Alexandru CHIUARIU
Minister of Justice



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