



United States No. 1 (2009)

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 Kingdom of Great Britain and Northern Ireland and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters signed 6 January 1994

Instrument

as contemplated by Article 3 (2) of the Agreement on Extradition between the United States of America and the European Union signed 25 June 2003, as to the application of the Extradition Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of signed 31 March 2003

with Exchange of Notes

London, 16 December 2004

[The Instruments are not in force]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
May 2009*

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**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 KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND AND THE GOVERNMENT OF THE
UNITED STATES OF AMERICA 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 Kingdom of Great Britain and Northern Ireland and the United States of America 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 Kingdom of Great Britain and Northern Ireland and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters signed 6 January 1994¹ (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

¹ Treaty Series No. 14 (1997) Cm 3546

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 authorised by their respective Governments, have signed this Instrument.

DONE at London, in duplicate, this Sixteenth day of December 2004.

FOR THE GOVERNMENT OF
THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND:

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:

CHARLES CLARKE

JOHN ASHCROFT

**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**

CONTENTS

Article 1	Scope of Assistance
Article 2	Central Authorities
Article 3	Limitations on Assistance
Article 4	Form and Contents of Requests
Article 5	Execution of Requests
Article 6	Costs
Article 7	Confidentiality and Limitations on Use
Article 8	Taking Testimony and Producing Evidence in the Territory of the Requested Party
Article 9	Records of Government Agencies
Article 10	Personal Appearance in the Territory of the Requesting Party
Article 11	Transfer of Persons in Custody
Article 12	Location or Identification of Persons
Article 13	Service of Documents
Article 14	Search and Seizure
Article 15	Return of Documents and Articles
Article 16	Assistance in Forfeiture Proceedings
Article 16 bis	Identification of Bank Information
Article 16 ter	Joint Investigative Teams
Article 16 quater	Video Conferencing
Article 17	Compatibility with Other Arrangements
Article 18	Consultation
Article 19	Definition
Article 20	Termination

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.

1bis. 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 authorised 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.

4. 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, 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 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 authorised 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)

EXCHANGE OF NOTES

NO. 1

The Embassy of the United States to the Secretary of State for Foreign and Commonwealth Affairs

London
16 December 2004

Excellency,

I have 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.

I wish 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, I have 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.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Note No. 121

No. 2

The Consular Directorate of the Foreign and Commonwealth Office to the Embassy of the United States

London
16 December 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:

[As in No. 1]

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.

**INSTRUMENT AS CONTEMPLATED BY ARTICLE 3(2) OF THE
AGREEMENT ON EXTRADITION BETWEEN THE UNITED STATES OF
AMERICA AND THE EUROPEAN UNION SIGNED 25 JUNE 2003, AS TO
THE APPLICATION OF THE EXTRADITION TREATY BETWEEN
THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND AND THE GOVERNMENT OF THE
UNITED STATES OF AMERICA SIGNED 31 MARCH 2003**

1. As contemplated by Article 3(2) of the Agreement on Extradition between the United States of America and the European Union signed 25 June 2003 (hereafter "the Extradition Agreement"), the Governments of the United Kingdom of Great Britain and Northern Ireland and the United States of America acknowledge that, in accordance with the provisions of this Instrument, the Extradition Agreement is applied in relation to the bilateral Extradition Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America signed 31 March 2003¹ (hereafter "the 2003 Extradition Treaty") under the following terms:

- (a) Article 5(1) of the Extradition Agreement shall be applied as set forth in Article 8(1) and 12(4) of the Annex to this Instrument to provide for the mode of transmission of the extradition request and supporting documents;
- (b) Article 5(2) of the Extradition Agreement shall be applied as set forth in Article 9 of the Annex to this Instrument to provide for the requirements concerning certification, authentication or legalisation of the extradition request and supporting documents;
- (c) Article 7(1) of the Extradition Agreement shall be applied as set forth in Article 12(4) of the Annex to this Instrument to provide for an alternative method for transmission of the request for extradition and supporting documents following provisional arrest;
- (d) Article 8(2) of the Extradition Agreement shall be applied as set forth in Article 10(2) of the Annex to this Instrument to provide for the channel to be used for submitting supplementary information;
- (e) Article 10 of the Extradition Agreement shall be applied as set forth in Article 15 of the Annex to this Instrument to provide for the decision on requests made by several States for the extradition or surrender of the same person; and
- (f) Article 14 of the Extradition Agreement shall be applied as set forth in Article 8 bis of the Annex to this Instrument to provide for consultations where the

¹ United States No. 1 (2003) Cm 5821

Requesting State contemplates the submission of particularly sensitive information in support of a request for extradition.

2. The Annex reflects the integrated text of the operative provisions of the 2003 Extradition Treaty and the Extradition 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 2003 Extradition Treaty to the Channel Islands, the Isle of Man, and any other territory of the United Kingdom to which the 2003 Extradition Treaty may apply in accordance with its terms, shall remain unaffected by the Extradition 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 20(1) (b) of the Extradition Agreement, agree to extend its application thereto. The exchange of notes shall specify the authority in the territory responsible for the measure set forth in Article 9 of the Annex and the channels between the United States of America and the territory for transmissions pertaining to the extradition process, in lieu of those designated in the Annex. 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 20(2) of the Extradition Agreement.

4. In accordance with Article 16 of the Extradition 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 for extradition made prior to its 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 Extradition Agreement.

(b) In the event of termination of the Extradition Agreement, this Instrument shall be terminated and the 2003 Extradition 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 authorised by their respective Governments, have signed this Instrument.

DONE at London, in duplicate, this Sixteenth day of December 2004.

FOR THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND:

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:

CHARLES CLARKE

JOHN ASHCROFT

**EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE
UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND**

TABLE OF CONTENTS

Article 1	Obligation to Extradite
Article 2	Extraditable Offences
Article 3	Nationality
Article 4	Political and Military Offences
Article 5	Prior Prosecution
Article 6	Statute of Limitations
Article 7	Capital Punishment
Article 8	Extradition Procedures and Required Documents
Article 8 <i>bis</i>	Sensitive Information in a Request
Article 9	Authentication of Documents
Article 10	Additional Information
Article 11	Translation
Article 12	Provisional Arrest
Article 13	Decision and Surrender
Article 14	Temporary and Deferred Surrender
Article 15	Requests for Extradition or Surrender Made by Several States
Article 16	Seizure and Surrender of Property
Article 17	Waiver of Extradition
Article 18	Rule of Specialty
Article 19	Transit
Article 20	Representation and Expenses
Article 21	Consultation
Article 22	Termination

ARTICLE 1

Obligation to Extradite

The Parties agree to extradite to each other, pursuant to the provisions of this Treaty, persons sought by the authorities in the Requesting State for trial or punishment for extraditable offences.

ARTICLE 2

Extraditable Offences

1. An offence shall be an extraditable offence if the conduct on which the offence is based is punishable under the laws in both States by deprivation of liberty for a period of one year or more or by a more severe penalty.
2. An offence shall also be an extraditable offence if it consists of an attempt or a conspiracy to commit, participation in the commission of, aiding or abetting, counselling or procuring the commission of, or being an accessory before or after the fact to any offence described in paragraph 1 of this Article.
3. For the purposes of this Article, an offence shall be an extraditable offence:
 - (a) whether or not the laws in the Requesting and Requested States place the offence within the same category of offences or describe the offence by the same terminology; or
 - (b) whether or not the offence 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.
4. If the offence has been committed outside the territory of the Requesting State, extradition shall be granted in accordance with the provisions of the Treaty if the laws in the Requested State provide for the punishment of such conduct committed outside its territory in similar circumstances. If the laws in 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 grant extradition provided that all other requirements of this Treaty are met.
5. If extradition has been granted for an extraditable offence, it may also be granted for any other offence specified in the request if the latter offence is punishable by less than one year's deprivation of liberty, provided that all other requirements for extradition are met.

ARTICLE 3

Nationality

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

ARTICLE 4

Political and Military Offences

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

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

- (a) an offence 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;
- (b) a murder or other violent crime against the person of a Head of State of one of the Parties, or of a member of the Head of State's family;
- (c) murder, manslaughter, malicious wounding, or inflicting grievous bodily harm;
- (d) an offence involving kidnapping, abduction, or any form of unlawful detention, including the taking of a hostage;
- (e) placing or using, or threatening the placement or use of, an explosive, incendiary, or destructive device or firearm capable of endangering life, of causing grievous bodily harm, or of causing substantial property damage;
- (f) possession of an explosive, incendiary, or destructive device capable of endangering life, of causing grievous bodily harm, or of causing substantial property damage;
- (g) an attempt or a conspiracy to commit, participation in the commission of, aiding or abetting, counselling or procuring the commission of, or being an accessory before or after the fact to any of the foregoing offences.

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. In the United States, the executive branch is the competent authority for the purposes of this Article.

4. The competent authority of the Requested State may refuse extradition for offences under military law that are not offences under ordinary criminal law. In the United States, the executive branch is the competent authority for the purposes of this Article.

ARTICLE 5

Prior Prosecution

1. Extradition shall not be granted when the person sought has been convicted or acquitted in the Requested State for the offence for which extradition is requested.
2. The Requested State may refuse extradition when the person sought has been convicted or acquitted in a third state in respect of the conduct for which extradition is requested.
3. Extradition shall not be precluded by the fact that the competent authorities of the Requested State:
 - (a) have decided not to prosecute the person sought for the acts for which extradition is requested;
 - (b) have decided to discontinue any criminal proceedings which have been instituted against the person sought for those acts; or
 - (c) are still investigating the person sought for the same acts for which extradition is sought.

ARTICLE 6

Statute of Limitations

The decision by the Requested State whether to grant the request for extradition shall be made without regard to any statute of limitations in either State.

ARTICLE 7

Capital Punishment

When the offence 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 executive authority in the Requested State may refuse extradition unless the Requesting State provides an assurance that the death penalty will not be imposed, or, if imposed, will not be carried out.

ARTICLE 8

Extradition Procedures and Required Documents

1. All requests for extradition shall be submitted through the diplomatic channel.
2. All requests for extradition shall be supported by:
 - (a) as accurate a description as possible of the person sought, together with any other information that would help to establish identity and probable location;
 - (b) a statement of the facts of the offence(s);
 - (c) the relevant text of the law(s) describing the essential elements of the offence for which extradition is requested;
 - (d) the relevant text of the law(s) prescribing punishment for the offence for which extradition is requested; and
 - (e) 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 sought for prosecution shall be supported by:
 - (a) a copy of the warrant or order of arrest issued by a judge or other competent authority;
 - (b) a copy of the charging document, if any; and
 - (c) for requests to the United States, such information as would provide a reasonable basis to believe that the person sought committed the offence for which extradition is requested.
4. In addition to the requirements in paragraph 2 of this Article, a request for extradition relating to a person who has been convicted of the offence for which extradition is sought shall be supported by:
 - (a) information that the person sought is the person to whom the finding of guilt refers;
 - (b) a copy of the judgment or memorandum of conviction or, if a copy is not available, a statement by a judicial authority that the person has been convicted;
 - (c) a copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing to what extent the sentence has been carried out; and

- (d) in the case of a person who has been convicted *in absentia*, information regarding the circumstances under which the person was voluntarily absent from the proceedings.

ARTICLE 8 bis

Sensitive Information in a Request

Where the Requesting State contemplates the submission of particularly sensitive information in support of its 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 9

Authentication of Documents

Documents that bear the certificate or seal of the Ministry of Justice, or 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 legalisation. "Ministry of Justice" shall mean, for the United States, the United States Department of Justice; and, for the United Kingdom, the Home Office.

ARTICLE 10

Additional Information

1. If the Requested State requires additional information to enable a decision to be taken on the request for extradition, the Requesting State shall respond to the request within such time as the Requested State requires.
2. Such additional information may be requested and furnished directly between the United States Department of Justice and the Home Office.

ARTICLE 11

Translation

All documents submitted under this Treaty by the Requesting State shall be in English or accompanied by a translation into English.

ARTICLE 12

Provisional Arrest

1. In an urgent situation, the Requesting State may request the provisional arrest of the person sought pending presentation of the request for extradition. A request for provisional arrest may be transmitted through the diplomatic channel or directly between the United States Department of Justice and such competent authority as the United Kingdom may designate for the purposes of this Article.

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 offence(s);
- (d) a description of the law(s) violated;
- (e) a statement of the existence of a warrant or order of arrest or a finding of guilt or judgment of conviction against the person sought; and
- (f) a statement that the supporting documents for the person sought 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 and the reasons for any inability to proceed with the request.

4. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of provisional arrest pursuant to this Treaty if the executive authority of 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 shall constitute receipt by the executive authority of 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. Such notification should be transmitted directly to the competent authority designated by the Requesting State to receive such notification and through the diplomatic channel.

2. If the request is denied in whole or in part, the Requested State shall provide 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 offence(s).

ARTICLE 14

Temporary 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. If the Requested State requests, 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.

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 offence or for different offences, the executive authority of the Requested State shall determine to which State, if any, it will surrender the person.
2. If the United Kingdom receives an extradition request from the United States and a request for surrender pursuant to the European arrest warrant for the same person, either for the same offence or for different offences, its executive authority shall determine to which State, if any, it will surrender the person.
3. In making its decision under paragraphs 1 and 2 of this Article, the Requested State shall consider all of the relevant factors, including, but not limited to, the following:
 - (a) whether the requests were made pursuant to a treaty;
 - (b) the places where each of the offences was committed;
 - (c) the respective interests of the requesting States;
 - (d) the seriousness of the offences;
 - (e) the nationality 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 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 in whatever form, and assets, including proceeds, that are connected with the offence in respect of which extradition is granted. The items and assets 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.
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.

ARTICLE 17

Waiver of Extradition

If the person sought waives extradition and agrees to be surrendered to the Requesting State, the Requested State may surrender the person as expeditiously as possible without further proceedings.

ARTICLE 18

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 offence for which extradition was granted, or a differently denominated offence based on the same facts as the offence on which extradition was granted, provided such offence is extraditable, or is a lesser included offence;
- (b) any offence committed after the extradition of the person; or
- (c) any offence for which the executive authority of the Requested State waives the rule of specialty and thereby consents to the person's detention, trial, or punishment. For the purpose of this subparagraph:
 - (i) the executive authority of 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 authorise, 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 offence 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 of the person to a third State, if the person:

- (a) leaves the territory of the Requesting State after extradition and voluntarily returns to it; or
- (b) does not leave the territory of the Requesting State within 20 days of the day on which that person is free to leave.

4. If the person sought waives extradition pursuant to Article 17, the specialty provisions in this Article shall not apply.

ARTICLE 19

Transit

1. Either State may authorise transportation through its territory of a person surrendered to the other State by a third State or from the other State to a third State. A 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.

2. Authorisation is not required when air transportation is used by one State and no landing is scheduled on the territory of the other State. If an unscheduled landing does occur, the State in which the unscheduled landing occurs may require a request for transit pursuant to paragraph 1 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, and appear on behalf of, the Requesting State in any proceedings in the courts of the Requested State arising out of a request for extradition or make all necessary arrangements for the same.

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

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

ARTICLE 22

Termination

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.

EXCHANGE OF NOTES

NO. 1

The Embassy of the United States to the Secretary of State for Foreign and Commonwealth Affairs

London
16 December 2004

Excellency,

I have the honor to refer to the Instrument as contemplated by Article 3(2) of the Agreement on Extradition between the United States of America and the European Union signed June 25, 2003, as to the application of the Extradition Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland signed March 31, 2003 (the “2003 Extradition Treaty”).

Having been informed by the Government of the United Kingdom of Great Britain and Northern Ireland that it will be unable to apply Article 5(2) of the Agreement on Extradition between the United States of America and the European Union, as set forth in Article 9 of the Annex to the Instrument, relating to authentication of extradition documents, until a corresponding change is made in its domestic law governing extradition, I have the honor to propose on behalf of my Government as follows:

Article 5(2) of the Agreement on Extradition between the United States of America and the European Union, as set forth in Article 9 of the Annex to the Instrument, shall not be applied until the United States of America and the Government of Great Britain and Northern Ireland indicate in a subsequent exchange of notes that the required internal procedures have been completed. Until that time, the parties agree to apply the procedure for authentication of extradition documents set forth in Article 9 of the Extradition Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland signed March 31, 2003, upon its entry into force. The Government of the United Kingdom of Great Britain and Northern Ireland shall undertake to seek the necessary legislation at the earliest possible time.

I also wish to confirm that two exchanges of letters related to the 2003 Extradition Treaty and done simultaneous with its signature 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, I have 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.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Note No. 120

No. 2

The Consular Directorate of the Foreign and Commonwealth Office to the Embassy of the United States

London
16 December 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. 120 of 16 December 2004 which reads as follows:

[As in No. 1]

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.



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