

**Protocol to the Extradition Treaty between the Government of the  
Republic of Austria and the Government of the United States of America  
signed 8 January 1998, as contemplated by Article 3(2) of the Agreement on  
Extradition between the European Union and the United States of America  
signed 25 June 2003**

As contemplated by Article 3(2) of the Agreement on Extradition between the European Union and the United States of America signed 25 June 2003 (hereafter “the EU-U.S. Extradition Agreement”), the Governments of the Republic of Austria and the United States of America acknowledge that, in accordance with the provisions of this Protocol, the EU-U.S. Extradition Agreement is applied in relation to the bilateral Extradition Treaty between the Government of the Republic of Austria and the Government of the United States of America signed 8 January 1998 (hereafter “the 1998 Extradition Treaty”) under the following terms:

Article 1: Transmission of documents

Pursuant to Article 5(1) of the EU-U.S. Extradition Agreement, the following shall be applied in place of Article 10(1) of the 1998 Extradition Treaty:

“1. Requests for extradition and supporting documents shall be transmitted through the diplomatic channel, which shall include transmission as provided for in paragraph 6 of this Article.”

Article 2: Authentication of documents

Pursuant to Article 5(2) of the EU-U.S. Extradition Agreement, the following shall be applied in place of Article 10(5) of the 1998 Extradition Treaty:

“5. 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 legalization. “Ministry of Justice” shall, for the Republic of Austria, mean the Austrian Ministry of Justice; and, for the United States of America, the United States Department of Justice.”

Article 3: Transmission of documents following provisional arrest

Pursuant to Article 7(1) of the EU-U.S. Extradition Agreement, the following shall be applied as Article 10(6) of the 1998 Extradition Treaty:

“6. If the person whose extradition is sought is held under provisional arrest by the Requested State, the Requesting State may satisfy its obligation to transmit its request for extradition and supporting documents through the diplomatic channel pursuant to paragraph 1 of this Article, by submitting the request and documents to the Embassy of the Requested State located in the Requesting State. In that case,

the date of receipt of such request by the Embassy shall be considered to be the date of receipt by the Requested State for purposes of applying the time limit that must be met under Article 13(4) of this Treaty to enable the person's continued detention."

#### Article 4: Supplemental information

Pursuant to Article 8(2) of the EU-U.S. Extradition Agreement, the following shall be applied as Article 11(4) of the 1998 Extradition Treaty:

"4. Such supplementary information may be requested and furnished directly between the Austrian Ministry of Justice and the United States Department of Justice."

#### Article 5: Sensitive information in a request

Pursuant to Article 14 of the EU-U.S. Extradition Agreement, the following shall be applied as Article 11 *bis* of the 1998 Extradition Treaty:

#### "Article 11 *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 6: Requests for extradition or surrender made by several states

Pursuant to Article 10 of the EU-U.S. Extradition Agreement, the following shall be applied in place of Article 17 of the 1998 Extradition Treaty:

#### "Article 17 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 the Republic of Austria 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 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 offenses was committed;
- (c) the respective interests of the requesting States;
- (d) the seriousness of the offenses;
- (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 7: Temporal application

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

This Protocol shall not apply to requests for extradition made prior to its entry into force.

#### Article 8: Entry into force and termination

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

2. In the event of termination of the EU-U.S. Extradition Agreement, this Protocol shall be terminated and the 1998 Treaty on Extradition shall be applied. The Parties nevertheless may agree to continue to apply some or all of the provisions of this Protocol.

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

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

FOR THE GOVERNMENT OF THE  
REPUBLIC OF AUSTRIA:

Karin GASTINGER m.p.  
ad referendum

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:

LYONS BROWN m.p.