

Agreement

between the Government of the Republic of Austria and the Government of the United States of America concerning the sharing of confiscated proceeds of crimes.

The Government of the Republic of Austria and the Government of the United States of America (hereinafter called “the Parties”) have agreed as follows:

Article 1

Definition of Terms

For the purposes of this agreement:

- a) “order” shall mean a final decision imposed by a court following proceedings in relation to a criminal offense or offenses (including non-conviction-based forfeiture) and resulting in the deprivation, or in the case of the United States the legal transfer of ownership, of assets. Fines or penalties, compensation to victims of crime, and costs of proceedings will not be considered as “orders”;
- b) “assets” shall mean money and property of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such property, which, in accordance with the ruling of the court of one of the Parties
 - i) represent proceeds from a crime or assets of an equivalent value, or
 - ii) represent the instrumentalities of a crime; and
- c) “cooperation” shall mean the assistance rendered by one Party to the other that has contributed to or facilitated the confiscation of assets, including the assistance described in Article 17 of the Treaty between the Government of the United States of America and the Government of the Republic of Austria on Mutual Legal Assistance in Criminal Matters, signed February 23, 1995 and the Protocol to the Treaty between the Government of the United States of America and the Government of the

Republic of Austria on Mutual Legal Assistance in Criminal Matters signed February 23, 1995, as contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed June 25, 2003; in Articles 7, 13, 18 to 20, 26, and 27 of the 2000 United Nations Convention against Transnational Organized Crime; and in Article 5, Paragraph 4, Article 7, Article 9, Paragraph 1, and Articles 11 and 17 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Article 2

Purpose and Scope of Application

This Agreement is intended to enable the Parties to share assets that have been confiscated in relation to criminal offenses.

This Agreement is intended solely for the purposes of mutual assistance between the Parties. No third party shall derive any rights or benefits from this Agreement.

Article 3

Circumstances Leading to the Sharing of Confiscated Assets

- (1) A Party that has assets confiscated through cooperation provided by the other Party, may, upon request from the other Party, share these assets at its discretion in accordance with this Agreement – without prejudice to Article 14, Paragraph 2 of the 2000 United Nations Convention against Transnational Organized Crime.
- (2) A Party holding assets due to its execution of an order issued by the other Party may also share such assets in accordance with the principles stated in Paragraph 1.

Article 4

Request for Sharing of Confiscated Assets

- (1) A Party may request a share of assets confiscated under circumstances set forth in Article 3. Unless otherwise agreed between the Parties, such a request may be made no later than one year from the date of final judgment of all court proceedings concerning the confiscated assets.
- (2) The request shall set forth the relevant circumstances of the cooperation, sufficient details to identify the case, the confiscated assets and the entities involved, as well as additional information as agreed upon by the Parties.
- (3) On receipt of a request to share confiscated assets made under this Article, the Party holding the confiscated assets shall, without delay, consider the request and inform the requesting Party in writing of the outcome of that consideration.

Article 5

Sharing of Confiscated Assets

- (1) When one Party decides to share confiscated assets, it shall
 - a) determine at its discretion the share of the confiscated assets that represents the extent of the cooperation afforded by the other Party, and
 - b) transfer a sum equivalent to the share set forth in subparagraph (a) to the other Party in accordance with Article 6.
- (2) When determining the sum to be transferred, the Party holding the confiscated assets may add interest or other increase in value accrued since the restraint and deduct the expenses required to obtain and maintain the order and the assets as well as to enforce the order.
- (3) The Parties do not intend to share insignificant assets. Assets valued below EUR 10,000.00 or USD 10,000.00, whichever sum is higher on the day the order is issued, shall be considered insignificant. In exceptional cases, the Parties may agree on sharing assets below this value.
- (4) Consideration of the rights of any identifiable victims of the crimes the confiscated assets resulted from shall have precedence over asset sharing between the Parties.

- (5) The decision in accordance with Article 5, Paragraph 1, in Austria, shall be made by the Federal Ministry of Justice in agreement with the Federal Ministry for Finance. In the United States, such decision shall be made by the Department of Justice or the Department of the Treasury or by any other entity authorized by United States law.
- (6) The decisions and determinations by the Parties under this Agreement cannot be contested in judicial or other proceedings either in the Republic of Austria or the United States of America.

Article 6

Terms of Payment

- (1) Unless otherwise agreed by the Parties, any sum to be transferred pursuant to Article 5, Paragraph 1, Subparagraph b, shall be paid
 - (a) in the currency of the Party holding the confiscated assets, and
 - (b) by an electronic transfer of funds or by check.
- (2) Payment of any such sum shall be made
 - (a) in any case in which the Government of the Republic of Austria is to receive a payment, to the Federal Ministry of Justice;
 - (b) in any case in which the Government of the United States of America is to receive a payment, to the United States of America and sent to the pertinent office or account specified by either the Department of Justice or by the Department of the Treasury; or
 - (c) to such other recipient as may be specified by the Competent Authorities.
- (3) Sums transferred in any particular case may be subject to a written commitment to return as provided by Article 8.

Article 7

Consequences of the Transfer

- (1) Whenever possible, any sums transferred shall not be subject to any further domestic proceedings and shall be free from encumbrances.
- (2) The Party transferring the sums shall not set any terms with regard to their use. The Party receiving the sums shall use them for any lawful purpose in its discretion.

Article 8

Return

Notwithstanding Article 7, upon written request, the Party shall return the sum it received pursuant to Article 6 in the equivalent amount of the other Party if

- (a) The order is cancelled by a domestic judicial decision, or the Party that transferred the sum is ordered by a national court to satisfy a claim related to the confiscation decision; or
- (b) The Party that transferred the sum is ordered by a ruling of a supranational or international court to satisfy a claim related to the confiscation decision; or
- (c) The Party that transferred the sum enters into a settlement requiring the payment of money to satisfy a claim related to the confiscation decision, that avoids or ends judicial proceedings before a national, supranational, or international court.

The written request for the return of the sum shall be submitted within one year of (a), (b), or (c) above having occurred and shall explain the basis for the return. The returned sum shall be used exclusively to satisfy the requirements imposed by (a), (b) or (c) above as explained in the written request for the return of the sum.

Article 9

Competent Authorities

All communications between the Parties pursuant to the provisions of this Agreement shall be conducted through the central authorities named in Article 2 of the Treaty between the Government of the Republic of Austria and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters, signed February 23, 1995, and when appropriate, by the following:

- (a) for the Government of the Republic of Austria, by the Federal Ministry of Justice, Department for International Criminal Matters;
- (b) for the Government of the United States of America, by the Office of International Affairs, Criminal Division, United States Department of Justice. In addition, the Government of the Republic of Austria may transmit requests for asset sharing directly to the pertinent component agency of the United States Department of Justice or of the United States Department of Treasury;
- (c) by such other nominees as a Party may specify.

Article 10

Relation to other Legal Instruments or Treaties

The obligations of the Republic of Austria toward the European Union and its Member States remain unaffected by this Agreement.

Article 11

Consultations

Upon request of one of the Parties, the Parties shall consult without delay on the interpretation, application, or implementation of this Agreement in general or with regard to a specific case.

Article 12

Entry into Force

- (1) This Agreement shall enter into force 90 days after the Republic of Austria has provided written notification to the United States of America that all domestic

procedures required for the implementation of this Agreement have been completed.

- (2) This Agreement shall apply to assets confiscated after it has entered into force. In addition, it shall apply to assets restrained at the time of signature for which an application to share has previously been made and which is reaffirmed in writing within three months following the entry of this agreement into force.

Article 13

Termination of the Agreement

Either Party may terminate this Agreement at any time by giving written notice to the other Party through diplomatic channels. The termination shall become effective six months after receipt of the notice.

In witness whereof the undersigned, being duly authorized by their respective governments, have signed this Agreement.

Done at Vienna, in duplicate, this twenty-ninth day of June, 2010, in the German and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
REPUBLIC OF AUSTRIA:

Claudia Bandion-Ortner m.p.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

Lanny A. Breuer m.p.