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Subject: Text of the draft Agreements between the European Union and the United States of America on extradition and on mutual legal assistance

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 5 February 2003

6177/03

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CATS	7
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NOTE

From : Presidency

To : CATS / COREPER / Council

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Subject : Text of the draft Agreements between the European Union and the United States of America on extradition and on mutual legal assistance

Delegations will find attached the texts of two draft agreements between the European Union and the United States of America. This text has been prepared by the Presidency following the meeting with the US delegation that took place in Athens on 29-30 January 2003.

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DRAFT AGREEMENT ON EXTRADITION BETWEEN THE UNITED STATES OF AMERICA AND THE EUROPEAN UNION ¹

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¹ This text has been prepared by the U.S. and EU negotiating delegations and is subject to the respective internal approval processes. The delegations have treated extradition and mutual legal assistance in two separate agreements that are to enter into force simultaneously.

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The United States of America and the European Union, desiring to further facilitate cooperation between the United States of America and European Union Member States, with due regard for rights of individuals and the rule of law, by concluding a treaty relating to the extradition of offenders,

Have agreed as follows:

Article 1: Object and Purpose¹

The Contracting Parties undertake, in accordance with the provisions of this Agreement, to provide for enhancements to cooperation under bilateral treaties between the United States of America and Member States governing extradition of offenders.

Article 2: Definitions

1. “Contracting Parties” shall mean the European Union and the United States of America;
2. “Member State” shall mean a Member State of the European Union;
3. “Ministry of Justice” shall, for the United States of America, mean the United States Department of Justice; and for a Member State, its Ministry of Justice, except that with respect to a Member State in which functions described in Articles 3, 5, 6, 8 or 12 are carried out by its Prosecutor General, that body may be designated to carry out such function in lieu of the Ministry of Justice in accordance with Article 18.

¹ The delegations will reflect on whether or not “existing” should be added in Articles 1 and 3.

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Article 3: Scope of application of this Agreement in relation to bilateral extradition treaties with Member States

1. The United States of America, and the European Union pursuant to the Treaty on European Union, shall ensure that this Agreement is applied in relation to bilateral extradition treaties in force between the United States of America and the Member States, under the following terms:
 - (a) Article 4 shall be applied in place of bilateral treaty provisions that authorize extradition exclusively with respect to a list of specified criminal offenses.
 - (b) Article 5 shall be applied in place of bilateral treaty provisions governing certification, authentication or legalization of an extradition request and supporting documents transmitted by the requesting State.
 - (c) Article 6 shall be applied in the absence of bilateral treaty provisions authorizing direct transmission of provisional arrest requests between the United States Department of Justice and the Ministry of Justice of the Member State concerned;
 - (d) [Article 7 shall be applied in addition to bilateral treaty provisions governing transmission of extradition requests]¹
 - (e) Article 8 shall be applied in the absence of bilateral treaty provisions governing the submission of supplementary information; where bilateral treaty provisions do not specify the procedure to be used, paragraph 2 shall also be applied;

¹ This provision remains under discussion.

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- (f) Article 9 shall be applied in the absence of bilateral treaty provisions authorizing temporary surrender of persons being proceeded against or serving a sentence in the requested State;
 - (g) [Article 10 shall be applied, except as otherwise specified therein, in place of, or in the absence of, bilateral treaty provisions pertaining to decision on several requests for extradition of the same person;]
 - (h) Article 11 shall be applied in the absence of bilateral treaty provisions authorizing waiver of extradition or simplified extradition procedures;
 - (i) Article 12 shall be applied in the absence of bilateral treaty provisions governing transit; where bilateral treaty provisions do not specify the procedure governing unscheduled landing of aircraft, paragraph 3 shall also be applied;
 - (j) Article 13 may be applied by the requested State in place of, or in the absence of, bilateral treaty provisions governing capital punishment;
 - (k) Article 14 shall be applied in the absence of bilateral treaty provisions governing treatment of sensitive information in a request.
2. (a) The European Union pursuant to the Treaty on European Union shall ensure that each Member State acknowledges, in a written instrument between such Member State and the United States of America, the application, in the manner set forth in this Article, of its bilateral extradition treaty in force with the United States of America [...].
- (b) The European Union, pursuant to the Treaty on European Union, shall ensure that new Member States acceding to the European Union after the entry into force of this Agreement and having bilateral extradition treaties with the United States of America, take the measures referred to in subparagraph (a).

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- (c) The Contracting Parties shall endeavor to complete the process described in paragraph (b) prior to the scheduled accession of a new Member State, or as soon as possible thereafter. The European Union shall notify the United States of America of the date of accession of new Member States.
3. If the process described in paragraph 2(b) is not completed by the date of accession, the United States of America shall not be obligated to apply the provisions of this Agreement in its relations with that new Member State until the completion of its internal proceedings for that purpose. The United States of America shall notify the European Union of the completion of such procedures.
4. The United States of America shall not be obligated to apply the provisions of this Agreement in its relations with a new Member State with which it does not have a bilateral extradition treaty.

Article 4: Extraditable offenses

1. An offense shall be an extraditable offense if it is punishable under the laws of the requested and requesting States by deprivation of liberty for a maximum period of more than one year or by a more severe penalty. An offense shall also be an extraditable offense if it consists of an attempt or conspiracy to commit, or participation in the commission of, an extraditable offense. 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. 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.

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3. For purposes of this Article, an offense shall be considered an extraditable offense:
 - (a) regardless of whether the laws in the requesting and requested States place the offense within the same category of offenses or describe the offense by the same terminology;
 - (b) regardless of whether 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) in criminal cases relating to taxes, customs duties, currency control and the import or export of commodities, regardless of whether 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 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, in its discretion, may grant extradition provided that all other applicable requirements for extradition are met.

Article 5: Transmission and authentication of documents [...]

1. Requests for extradition and supporting documents shall be transmitted through the diplomatic channel, which shall include transmission as provided for in Article 7.

2. Documents which 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.

Article 6: Transmission of requests for provisional arrest

Requests for provisional arrest may be made directly between the Ministries of Justice of the requesting and requested States, as an alternative to the diplomatic channel. The facilities of the International Criminal Police Organization (Interpol) may be used to transmit such a request.

Article 7: Transmission of documents following provisional arrest

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 Article 5, paragraph 1, 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 the applicable extradition treaty to enable the person's continued detention.

Article 8: Supplemental information

1. 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 the applicable extradition treaty.

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2. Such supplementary information may be requested and furnished directly between the Ministries of Justice of the States concerned.

Article 9: Temporary surrender

1. If a request for extradition is granted in the case of 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.
2. The person so surrendered shall be kept in custody in the requesting State and shall be returned to the requested State at the conclusion of the proceedings against that person, in accordance with the conditions to be determined by mutual agreement of the requesting and requested States. The time spent in custody in the territory of the requesting State pending prosecution in that State [may] [shall] be deducted from the time remaining to be served in the requested State.

[Article 10: 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. In making its decision, the requested State shall consider all of the relevant factors, including, but not limited to, factors already set forth in the applicable extradition treaty, and, where not already so set forth, the following:
 - (a) whether the requests were made pursuant to a treaty
 - (b) the places where each of the offenses were committed;
 - (c) the respective interests of the requesting States;
 - (d) the gravity of the offenses;

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- (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.
2. A request for arrest and surrender pursuant to the European Arrest Warrant received by a Member State shall be considered a request for extradition for the purpose of applying this Article.]¹

Article 11: Simplified extradition procedures

If the person sought consents to be surrendered to the requesting State, the requested State may, in accordance with its domestic procedures, surrender the person as expeditiously as possible without further proceedings. The consent of the person sought may include agreement to waiver of protection of the rule of specialty [...].

Article 12: Transit

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

¹ The text shown is from the December 2002 round. The delegations have not yet agreed on its wording and it remains under review.

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2. A request for transit shall be made through the diplomatic channel or directly between the United States Department of Justice and the Ministry of Justice of the Member State concerned. The facilities of the International Criminal Police Organization (Interpol) may be used to transmit such a request. The request 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 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. That State shall detain the person being transported until transit is effected, as long as the request for transit is received within 96 hours of the unscheduled landing.

Article 13: Capital Punishment¹

Where the offense for which extradition is sought is punishable by death under the laws in the requesting State and 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 conditions pursuant to this paragraph, it shall comply with the conditions. If the requesting State does not accept the conditions, the request for extradition may be denied.

¹ With regard to this provision, the EU delegation mentioned the legal problems of one Member State.

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Article 14: 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 15: Consultations

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

Article 16: Temporal Application

1. This Agreement shall apply to offenses committed before as well as after it enters into force.
2. This Agreement shall apply to requests for extradition made after its entry into force. Nevertheless, Articles 4 and 9 of this Agreement shall apply to requests pending in a requested State at the time this Agreement enters into force.
3. This Agreement shall continue to apply to requests received by the requested State prior to the date on which a denunciation pursuant to Article 19, paragraph 2, takes effect.

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[Article 16a: Non-derogation¹

This Agreement is without prejudice to the invocation by the requested State of grounds for refusal available pursuant to a bilateral extradition treaty or, in the absence of a specific treaty provision, its constitutional principles]

Article 17: Future bilateral extradition treaties with Member States

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

Article 18: Designation and notification

The European Union shall notify the United States of any designation pursuant to Article 2, paragraph 3, prior to the exchange of written instruments between the United States and the Member States described in Article 3, paragraph 2.

Article 18a: Territorial application

Option 1:

[Assuming the contents of a future annex can be agreed between the EU and U.S.:

1. This Agreement shall as far as the EU is concerned apply also to such countries and territories, as indicated in the Annex to this Agreement.

¹ The text shown is a new EU proposal. The delegations have not yet agreed on its wording and it remains under review.

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2. Any modifications of the Annex shall be the subject of an exchange of letters to that effect between the Contracting Parties.]

Option 2:

[This Agreement shall apply:

1. to the United States of America:
2. in relation to the European Union:
 - (a) to the territories of the Member States of the European Union;
 - (b) where the Parties agree by exchange of diplomatic note, also to such overseas countries or territories for whose external relations a Member States has responsibility.^{1]}

Article 19: Entry into force and termination

1. This Agreement shall enter into force on the first day following the third month after the date on which the Contracting Parties have exchanged instruments between them indicating that they have completed their internal procedures for this purpose. These instruments shall also indicate that the steps specified in Article 3, paragraph 2 have been completed.
2. Either Contracting Party may terminate this Agreement at any time by giving written notice to the other Party, and such termination shall be effective six months after the date of such notice.

¹ Under consideration is a possible exchange of written instruments of the type described in Article 3, or a combination of options 1 and 2.

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In witness whereof the undersigned Plenipotentiaries have signed this Agreement

Done at [] on [] in duplicate in the [] languages, each text being equally authentic.

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DRAFT AGREEMENT ON MUTUAL LEGAL ASSISTANCE BETWEEN THE UNITED STATES OF AMERICA AND THE EUROPEAN UNION¹

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¹ See footnote 1.

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The United States of America and the European Union, desiring to improve the effectiveness of cooperation between the United States of America and European Union Member States, with due regard for the rights of individuals and the rule of law, by concluding a treaty relating to mutual legal assistance in criminal matters,

Have agreed as follows:

Article 1: Object and Purpose

[The Contracting Parties undertake, in accordance with the provisions of this Agreement, to provide for enhancements to cooperation and mutual legal assistance with a view to [preventing, detecting and combating¹] criminal offenses in accordance with the provisions of this Agreement.]

Article 2: Definitions

1. “Contracting Parties” shall mean the European Union and the United States of America;
2. “Member State” shall mean a Member State of the European Union;

¹ The items of assistance to be listed remain under review. In addition, the delegations will reflect on whether or not “existing” should be added in Articles 1 and 3.

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Article 3: Scope of application of this Agreement in relation to bilateral mutual legal assistance treaties with Member States and in the absence thereof

1. The United States of America, and the European Union pursuant to the Treaty on European Union, shall ensure that the provisions of this Agreement are applied in relation to bilateral mutual legal assistance treaties in force between the United States of America and the Member States, under the following terms:
 - a) Article 4 shall be applied to provide for identification of financial accounts and transactions in addition to any authority already provided under bilateral treaty provisions.
 - b) Article 5 shall be applied to authorize the formation and activities of joint investigative teams in addition to any authority already provided under bilateral treaty provisions.
 - c) Article 6 shall be applied to authorize the taking of testimony of a person located in the requested State by use of video transmission technology between the requesting and requested States in addition to any authority already provided under bilateral treaty provisions.
 - d) Article 7 shall be applied to provide for the use of expedited means of communication in addition to any authority already provided under bilateral treaty provisions.
 - e) Article 8 shall be applied to authorize the providing of mutual legal assistance to the administrative authorities concerned, in addition to any authority already provided under bilateral treaty provisions.

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- f) Subject to Article 9, paragraphs 3 and 4, Article 9 shall be applied in place of, or in the absence of bilateral treaty provisions governing limitations on use of information or evidence provided to the requesting State, and governing the conditioning or refusal of assistance on data protection grounds.
- g) Article 10 shall be applied in the absence of bilateral treaty provisions pertaining to the circumstances under which a requesting State may seek the confidentiality of its request.
2. (a) The European Union pursuant to the Treaty on European Union shall ensure that each Member State acknowledges, in a written instrument between such Member State and the United States of America, the application, in the manner set forth in this Article, of its bilateral mutual legal assistance treaty in force with the United States of America [...].
- (b) The European Union, pursuant to the Treaty on European Union, shall ensure that new Member States acceding to the European Union after the entry into force of this Agreement, and having bilateral mutual legal assistance treaties with the United States of America, take the measures referred to in subparagraph (a).
- (c) The Contracting Parties shall endeavor to complete the process described in paragraph (b) prior to the scheduled accession of a new Member State, or as soon as possible thereafter. The European Union shall notify the United States of America of the date of accession of new Member States.
3. If the process described in paragraph 2(b) is not completed by the date of accession, the United States of America shall not be obligated to apply the provisions of this Agreement in its relations with that new Member State until the completion of its internal proceedings for that purpose. The United States of America shall notify the European Union of the completion of such procedures.

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4. The United States of America, and the European Union pursuant to the Treaty on European Union, shall also ensure that the provisions of this Agreement are applied in the absence of a bilateral mutual legal assistance treaty in force between the United States of America and a Member State.
5. The Contracting Parties agree that this Agreement is intended solely for mutual legal assistance between the States concerned. The provisions of this Agreement shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request, nor expand or limit rights otherwise available under domestic law.

Article 4: Identification of bank information

1. (a) Upon request of the requesting State, the requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The requested State shall promptly communicate the results of its enquiries to the requesting State.
- (b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:
 1. information of natural or legal persons convicted of or otherwise involved in a criminal offense,
 2. information in the possession of non-bank financial institutions, or
 3. financial transactions unrelated to accounts.

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2. A request for information described in paragraph 1 shall include:
- (a) information on the identity of the natural or legal person relevant to locating such accounts or transactions; and
 - (b) sufficient information to enable the competent authority of the requested State to:
 - (i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the requested State may have the information requested; and
 - (ii) conclude that the information sought relates to the criminal investigation or proceeding.
 - (c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry [...].
3. Requests for assistance under this Article shall be transmitted between:
- (a) central authorities responsible for mutual legal assistance in Member States, or national authorities responsible for investigation or prosecution of criminal offences as designated pursuant to Article 15, and
 - (b) [national authorities of the United States responsible for investigation or prosecution of criminal offenses, as designated pursuant to Article 15.]¹

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

¹ This provision is under review.

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4. (a) Subject to subparagraph (b), a State may, pursuant to Article 15, limit its obligation to provide assistance under this Article to:
 - (i) offences punishable under the laws of both the requested and requesting States;
 - (ii) offences punishable by a penalty involving deprivation of liberty or a detention order of a maximum period of at least four years in the requesting State and at least two years in the requested State; or
 - (iii) designated serious offenses punishable under the laws of both the requested and requesting States;
- (b) A State which limits its obligation as provided in subparagraph (a) shall, at a minimum, enable identification of accounts [...] associated with terrorist activity and the concealment of assets generated from a comprehensive range of serious criminal activities, punishable under the law of both the requesting and requested States.
5. Assistance may not be refused under this Article on grounds of bank secrecy.
6. The requested State shall respond to a subsequent request for production of the records concerning the accounts or transactions identified pursuant to this article, in accordance with the provisions of the applicable mutual legal assistance treaty in force between the States concerned, or in the absence thereof, in accordance with the requirements of its domestic law.
7. The Contracting Parties shall take measures to avoid the imposition of extraordinary burdens on requested States through application of this Article. Where extraordinary burdens on a requested State nonetheless result, the Contracting Parties shall immediately consult with a view to facilitating the application of this Article, including the taking of such measures as may be required to reduce pending and future burdens.

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Article 5: Joint investigative teams

1. The Contracting Parties shall, to the extent they have not already done so, take such measures as may be necessary to enable joint investigative teams to be established and operated in the respective territories of the United States and each Member State, for the purpose of facilitating criminal investigations or prosecutions involving the United States and one or more Member States.
2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and the 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 States¹ concerned.
3. The competent authorities 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.

¹ This wording is being reviewed.

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Article 6: Video conferencing

1. The Contracting Parties shall take such measures as may be necessary to enable the use of video transmission technology between the United States of America and each Member State for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in a requested State, to the extent such assistance is not currently available. To the extent not specifically set forth in this article, the modalities governing such procedure shall be as provided under the applicable mutual legal assistance treaty in force between the States concerned, or the law of the requested State, as applicable.
2. Unless otherwise agreed by the requesting and requested States, the requesting State shall bear the costs associated with establishing and servicing the video transmission. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the requested State) shall be borne in accordance with the applicable provisions of the mutual legal assistance treaty in force between the States concerned, or, absent such a treaty, as agreed upon by the requesting and requested States.
3. The requesting and requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.
4. Without prejudice to any jurisdiction under the law of the requesting State, the requested State shall, if it has not already done so, make punishable in the same manner as if it had been committed in the course of its domestic proceedings, an intentionally false statement or other misconduct of the witness or expert during the course of the video conference.
5. This Article is without prejudice to the use of other means for obtaining of testimony in the requested State available under applicable treaty or law.

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

Article 7: Expedited transmission of requests

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

Article 8: Mutual legal assistance to administrative authorities with criminal referral jurisdiction

1. Mutual legal assistance shall also be afforded to national administrative authorities which have the competence to investigate or prosecute criminal offences, or refer for further investigation or prosecution of criminal offences, pursuant to specific statutory or regulatory authority to do so¹. Mutual legal assistance may also be afforded to other administrative authorities for such purposes.

¹ The EU delegation has asked the US delegation to provide it with a list of authorities that come into the scope of this article. In response to this question the US delegation has stated that the most important agencies are SEC and CFTC, but that other federal agencies might also use this clause.

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2. (a) Requests for assistance under this article shall be transmitted between the central authorities designated pursuant to the bilateral mutual legal assistance treaty in force between the States concerned, or between such other authorities as may be agreed by the central authorities.
- (b) In the absence of a treaty, requests shall be transmitted between the United States Department of Justice and the Ministry of Justice or, pursuant to Article 15, comparable Ministry of the Member State concerned responsible for transmission of mutual legal assistance requests, or between such other authorities as may be agreed by the Department of Justice and such Ministry.

Article 9: Limitations on use to protect personal and other data

1. The requesting State may use any evidence or information obtained from the requested State:
 - a. for the purpose of its criminal investigations and proceedings [and for the purpose of proceedings described in article 8]/[for the purpose of proceedings to which this agreement applies];
 - b. for preventing an immediate and serious threat to its public security;
 - c. in its non-criminal judicial or administrative proceedings directly related to a purpose set forth in subparagraphs (a) [...];
 - d. for any other purpose, if the information or evidence has been made public as a normal result of having been provided; and
 - e. for any other purpose, only with the prior consent of the requested State.

2. This Article shall not prejudice the ability of the requested State 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. However, 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 to providing evidence or information.¹
3. A requested State may apply the use limitation provision of the applicable bilateral mutual legal assistance treaty in lieu of the present article, where doing so will result in less restriction on the use of information and evidence than provided for in this article.
4. Where a bilateral mutual legal assistance treaty in force between the United States of America and a Member State permits limitation of the obligation to provide assistance with respect to certain tax offenses, the Member State concerned may indicate, in its exchange of written instruments with the United States described in Article 3, paragraph 2, that, with respect to such offenses, it will continue to apply the use limitation provision of that treaty.²

Article 10: Requesting State's request for confidentiality

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

¹ This formulation is intended to capture the concepts set forth in Paragraph 269 of the Explanatory Report to the Council of Europe Cybercrime Convention.

² This paragraph is intended to apply solely to Luxembourg.

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Article 11: Consultations

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

Article 12: Temporal Application

1. This Agreement shall apply to offenses committed before as well as after it enters into force.
2. This Agreement shall apply to requests for mutual legal assistance made after its entry into force. Nevertheless, Articles 6 and 7 of this Agreement shall apply to requests pending in a requested State at the time this Agreement enters into force.
3. This Agreement shall continue to apply to requests received by the requested State prior to the date on which a denunciation pursuant to Article 16, paragraph 2, takes effect.

Article 13: Non-derogation

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

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Article 14: Future mutual legal assistance treaties with Member States

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

Article 15: Designations and notifications

1. Where a Ministry other than the Ministry of Justice has been designated under Article 8, paragraph 2(b), the European Union shall notify the United States of such designation prior to the exchange of written instruments between the United States and the Member States described in Article 5, paragraph 2.
2. The United States shall notify the European Union of the national authorities designated by it pursuant to Article 4, paragraph 3, prior to the exchange of written instruments between the United States and the Member States described in Article 3, paragraph 2. The European Union shall, prior to such exchange, notify the United States of any national authorities designated by a Member State under Article 4, paragraph 3, and also, for Member States having no mutual legal assistance treaty with the United States, of the identity of the central authorities under Article 4, paragraph 3 [...].
3. The Contracting Parties shall notify each other of any limitations invoked under Article 4, paragraph 4 prior to the exchange of written instruments between the United States and the Member States described in Article 3, paragraph 2.

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Article 15a: Territorial application

Option 1:

[Assuming the contents of a future annex can be agreed between the EU and U.S.]

1. This Agreement shall as far as the EU is concerned apply also to such countries and territories, as indicated in the Annex to this Agreement.
2. Any modifications of the Annex shall be the subject of an exchange of letters to that effect between the Contracting Parties.]

Option 2:

This Agreement shall apply:

1. to the United States of America:
2. in relation to the European Union:
 - (a) to the territories of the Member States of the European Union;
 - (b) where the Parties agree by exchange of diplomatic note, also to such overseas countries or territories for whose external relations a Member States has responsibility.¹

¹ Under consideration is a possible exchange of written instruments of the type described in article 3, or a combination of options 1 and 2.

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Article 16: Entry into force and termination

1. This Agreement shall enter into force on the first day following the third month after the date on which the Contracting Parties have exchanged instruments between them indicating that they have completed their internal procedures for this purpose. These instruments shall also indicate that the steps specified in Article 3, paragraph 2 have been completed.
2. Either Contracting Party may terminate this Agreement at any time by giving written notice to the other Party, and such termination shall be effective six months after the date of such notice.

In witness whereof the undersigned Plenipotentiaries have signed this Agreement

Done at [] on [] in duplicate in the [] languages, each text being equally authentic.

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