EXTRADITION

Agreement Between the
UNITED STATES OF AMERICA
and the EUROPEAN UNION

Signed at Washington June 25, 2003

with

Explanatory Note

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

EUROPEAN UNION

Extradition

Agreement signed at Washington June 25, 2003;
Transmitted by the President of the United States of America to the Senate September 28, 2006 (Treaty Doc. 109-14, 109th Congress, 2d Session);
Reported favorably by the Senate Committee on Foreign Relations July 29, 2008 (Senate Executive Report No. 110-12, 110th Congress, 2d Session);
Advice and consent to ratification by the Senate September 23, 2008;
Ratified by the President December 11, 2008;
Approved by the European Union October 23, 2009;
Instruments exchanged at Washington October 28, 2009;
Entered into force February 1, 2010.
With explanatory note.

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

ACUERDO
DE EXTRADICIÓN
ENTRE LOS ESTADOS UNIDOS DE AMÉRICA
Y LA UNIÓN EUROPEA

AFTALE
MELLEM AMERIKAS FORENEDE STATER
OG DEN EUROPÆISKE UNION
OM UDLEVERING

ABKOMMEN
ZWISCHEN DEN VEREINIGTEN STAATEN VON AMERIKA
UND DER EUROPÄISCHEN UNION
ÜBER AUSLIEFERUNG

ΣΥΜΦΩΝΙΑ
ΜΕΤΑΞΥ ΤΩΝ ΗΝΩΜΕΝΩΝ ΠΟΛΙΤΕΙΩΝ ΤΗΣ ΑΜΕΡΙΚΗΣ
ΚΑΙ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
ΣΧΕΤΙΚΑ ΜΕ ΤΗΝ ΕΚΔΟΣΗ

ACCORD
ENTRE LES ÉTATS-UNIS D'AMÉRIQUE
ET L'UNION EUROPÉENNE
EN MATIÈRE D'EXTRADITION

ACCORDO
SULL'ESTRADIZIONE
TRA GLI STATI UNITI D'AMERICA
E L'UNIONE EUROPEA

OVEREENKOMST
BETREFFENDE UITLEVERING
TUSSEN DE VERENIGDE STATEN VAN AMERIKA
EN DE EUROPESE UNIE

ACORDO DE
EXTRADIÇÃO
ENTRE OS ESTADOS UNIDOS DA AMÉRICA
E A UNIÃO EUROPEIA

SOPIMUS
RIKOKSEN JOHDOSTA TAPAHTUVASTA LUOVUTTAMISESTA
AMERIKAN YHDYSVALTOJEN
JA EUROOPAN UNIONIN VÄLILLÄ

AVTAL
OM UTLÄMNING
MELLAN AMERIKAS FÖRENTA STATER
OCH EUROPEISKA UNIONEN

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

CONTENTS

Preamble

Article 1 ..... Object and Purpose

Article 2 ..... Definitions

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

Article 4 ..... Extraditable offences

Article 5 ..... Transmission and authentication of documents

Article 6 ..... Transmission of requests for provisional arrest

Article 7 ..... Transmission of documents following provisional arrest

Article 8 ..... Supplemental information

Article 9 ..... Temporary surrender

Article 10 ..... Requests for extradition or surrender made by several States

Article 11 ..... Simplified extradition procedures

Article 12 ..... Transit

Article 13 ..... Capital Punishment

Article 14 ..... Sensitive information in a request

Article 15 ..... Consultations

Article 16 ..... Temporal Application

Article 17 ..... Non-derogation

Article 18 ..... Future bilateral extradition treaties with Member States

Article 19 ..... Designation and notification

Article 20 ..... Territorial application

Article 21 ..... Review

Article 22 ..... Entry into force and termination

Explanatory Note

THE UNITED STATES OF AMERICA AND THE EUROPEAN UNION,

DESIRING further to facilitate cooperation between the United States of America and the European Union Member States,

DESIRING to combat crime in a more effective way as a means of protecting their respective democratic societies and common values,

HAVING DUE REGARD for rights of individuals and the rule of law,

MINDFUL of the guarantees under their respective legal systems which provide for the right to a fair trial to an extradited person, including the right to adjudication by an impartial tribunal established pursuant to law,

DESIRING to conclude an Agreement relating to the extradition of offenders,

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 in the context of applicable extradition relations between the United States of America and the Member States governing extradition of offenders.

ARTICLE 2

Definitions

1. "Contracting Parties" shall mean the United States of America and the European Union.

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 19, unless the United States and the Member State concerned agree to designate another body.

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 the provisions of this Agreement are applied in relation to bilateral extradition treaties between the United States of America and the Member States, in force at the time of the entry into force of this Agreement, 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 offences;

(b) Article 5 shall be applied in place of bilateral treaty provisions governing transmission, 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;

(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 channel to be used, paragraph 2 of that Article shall also be applied;

(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 of that Article 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);

(c) The Contracting Parties shall endeavour to complete the process described in subparagraph (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 provisions of this Agreement shall apply in the relations between the United States of America and that new Member State as from the date on which they have notified each other and the European Union of the completion of their internal procedures for that purpose.

ARTICLE 4

Extraditable offences

1. An offence shall be an extraditable offence if it is punishable under the laws of the requesting and requested States by deprivation of liberty for a maximum period of more than one year or by a more severe penalty. An offence shall also be an extraditable offence if it consists of an attempt or conspiracy to commit, or participation in the commission of, an extraditable offence. Where the request is for enforcement of the sentence of a person convicted of an extraditable offence, the deprivation of liberty remaining to be served must be at least four months.

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

3. For purposes of this Article, an offence shall be considered an extraditable offence:

(a) regardless of whether 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;

(b) regardless of whether 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 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 offence 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 offence committed outside its territory in similar circumstances. If the laws of the requested State do not provide for the punishment of an offence committed outside its territory in similar circumstances, the executive authority of the requested State, at 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 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.

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 also be used to transmit such a request.

ARTICLE 7

Transmission of documents following provisional arrest

1. 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(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.

2. Where a Member State on the date of signature of this Agreement, due to the established jurisprudence of its domestic legal system applicable at such date, cannot apply the measures referred to in paragraph 1, this Article shall not apply to it, until such time as that Member State and the United States of America, by exchange of diplomatic note, agree otherwise.

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 fulfil the requirements of the applicable extradition treaty.

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 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 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 a requested Member State 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 offence or for different offences, the competent authority of the requested Member State shall determine to which State, if any, it will surrender the person. For this purpose, the competent authority shall be the requested Member State's executive authority if, under the bilateral extradition treaty in force between the United States and the Member State, decisions on competing requests are made by that authority; if not so provided in the bilateral extradition treaty, the competent authority shall be designated by the Member State concerned pursuant to Article 19.

3. In making its decision under paragraphs 1 and 2, 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 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 11

Simplified extradition procedures

If the person sought consents to be surrendered to the requesting State, the requested State may, in accordance with the principles and procedures provided for under its legal system, surrender the person as expeditiously as possible without further proceedings. The consent of the person sought may include agreement to waiver of 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 of America by a third State, or by the United States of America to a third State.

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 Interpol may also 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 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. All measures necessary to prevent the person from absconding shall be taken until transit is effected, as long as the request for transit is received within 96 hours of the unscheduled landing.

ARTICLE 13

Capital Punishment

Where the offence 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 Article, it shall comply with the conditions. If the requesting State does not accept the conditions, the request for extradition may be denied.

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 offences 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 shall apply to requests pending in a requested State at the time this Agreement enters into force.

ARTICLE 17
Non-derogation

1. This Agreement is without prejudice to the invocation by the requested State of grounds for refusal relating to a matter not governed by this Agreement that is available pursuant to a bilateral extradition treaty in force between the United States of America and a Member State.

2. Where the constitutional principles of, or final judicial decisions binding upon, the requested State may pose an impediment to fulfilment of its obligation to extradite, and resolution of the matter is not provided for in this Agreement or the applicable bilateral treaty, consultations shall take place between the requested and requesting States.

ARTICLE 18

Future bilateral extradition treaties with Member States

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

ARTICLE 19

Designation and notification

The European Union shall notify the United States of America of any designation pursuant to Article 2(3) and Article 10(2), prior to the exchange of written instruments described in Article 3(2) between the United States of America and the Member States.

ARTICLE 20

Territorial application

1. This Agreement shall apply:

(a) to the United States of America;

(b) in relation to the European Union to:

- Member States;

- territories for whose external relations a Member State has responsibility, or countries that are not Member States for whom a Member State has other duties with respect to external relations, where agreed upon by exchange of diplomatic note between the Contracting Parties, duly confirmed by the relevant Member State.

2 The application of this Agreement to any territory or country in respect of which extension has been made in accordance with subparagraph (b) of paragraph 1 may be terminated by either Contracting Party giving six months' written notice to the other Contracting Party through the diplomatic channel, where duly confirmed between the United States of America and the relevant Member State.

ARTICLE 21

Review

The Contracting Parties agree to carry out a common review of this Agreement as necessary, and in any event no later than five years after its entry into force. The review shall address in particular the practical implementation of the Agreement and may also include issues such as the consequences of further development of the European Union relating to the subject matter of this Agreement, including Article 10.

ARTICLE 22

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 indicating that they have completed their internal procedures for this purpose. These instruments shall also indicate that the steps specified in Article 3(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 Washington D.C. on the twenty-fifth day of June in the year two thousand and three, in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic.

NOTE: Only English text will be printed in this publication.

For the United States of America
Por los Estados Unidos de América
For Amerikas Forenede Stater
Für die Vereinigten Staaten von Amerika
Για τις Ηνωμένες Πολιτείες της Αμερικής
Pour les Etats-Unis d'Amérique
Per gli Stati Uniti d'America
Voor de Verenigde Staten van Amerika
Pelos Estados Unidos da América
Amerikan yhdysvaltojen puolesta
På Amerikas förenta staters vägnar

For the European Union
Por la Unión Europea
For Den Europæiske Union
Für die Europäische Union
Για την Ευρωπαϊκή Ένωση
Pour l'Union européenne
Per l'Unione europea
Voor de Europese Unie
Pela União Europeia
Euroopan unionin puolesta
På Europeiska unionens vägnar

Explanatory Note on the Agreement on Extradition between
the United States of America and the European Union

This Explanatory Note reflects understandings regarding the application of certain provisions of the Agreement on Extradition between the United States of America and the European Union (hereinafter "the Agreement") agreed between the Contracting Parties.

On ARTICLE 10

Article 10 is not intended to affect the obligations of States Parties to the Rome Statute of the International Criminal Court, nor to affect the rights of the United States of America as a non-Party with regard to the International Criminal Court.

On ARTICLE 18

Article 18 provides that the Agreement shall not preclude the conclusion, after its entry into force, of bilateral agreements on extradition between the United States of America and a Member State consistent with the Agreement.

Should any measures set forth in the Agreement create an operational difficulty for the United States of America or either one or more Member States, such difficulty should in the first place be resolved, if possible, through consultations between the United States of America and the Member State or Member States concerned, or, if appropriate, through the consultation procedures set out in this Agreement. Where it is not possible to address such operational difficulty through consultations alone, it would be consistent with the Agreement for future bilateral agreements between the United States of America and the Member State or Member States to provide an operationally feasible alternative mechanism that would satisfy the objectives of the specific provision with respect to which the difficulty has arisen.