



TREATY SERIES 2010
Nº 13

**Treaty between the Government of Ireland and the
Government of the United States of America on Mutual
Legal Assistance in Criminal Matters**

Done at Washington on 18 January 2001

Notifications of the completion of the procedures required for the entry into force of
this Treaty exchanged on 10 August 2009 and 11 August 2009

Entered into force on 11 August 2009

Presented to Dáil Éireann by the Minister for Foreign Affairs

**TREATY BETWEEN THE GOVERNMENT OF IRELAND AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA ON MUTUAL
LEGAL ASSISTANCE IN CRIMINAL MATTERS**

The Government of Ireland and the Government of the United States of America,

Desiring to improve the effectiveness of the law enforcement authorities of both countries in the investigation, prosecution, and prevention of crime through cooperation and mutual legal assistance in criminal matters,

HAVE AGREED as follows:

*Article 1
Scope of Assistance*

1. The Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution, and prevention of offenses, and in proceedings related to criminal matters.
2. Assistance shall include:
 - (a) Taking the testimony of statements of persons;
 - (b) Providing documents, records, and articles of evidence;
 - (c) Locating or identifying persons;
 - (d) Serving documents;
 - (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;
 - (h) Such other assistance as may be agreed between Central Authorities.
3. Except when required by the laws of the Requested Party, assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution, or proceeding in the territory of the Requesting Party would constitute an offense under the laws of the Requested Party.
4. 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. Each Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.
2. For the Government of Ireland, the Central Authority shall be the Minister for Justice, Equality and Law Reform or a person designated by the Minister. For the

Government of the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General.

3. 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 deny 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 under the law of the Requested Party for the offense for which assistance is requested, would be entitled to be discharged on the grounds of a previous acquittal or conviction;
 - (c) the request relates to an offense that is regarded by the Central Authority of the Requested Party as:
 - i) an offense of a political character; or
 - ii) an offense under military law of the Requested Party which is not also an offense under the ordinary criminal law of the Requested Party; or
 - (d) the request is not made in conformity with the Treaty.
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 request for assistance shall be in writing except that the Central Authority of the Requested Party may accept a request in another form in emergency situations. In any such case, the request shall be confirmed in writing within ten days thereafter unless the Central Authority of the Requested Party agrees otherwise. The request shall be in an official language of the Requested Party unless otherwise agreed.
2. The request shall include the following:
 - (a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;

- (b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offenses which relate to the matter;
 - (c) a description of the evidence, information, or other assistance sought; and
 - (d) a statement of the purpose for which the evidence, information, or other assistance is sought.
3. To the extent necessary and possible, a request shall also include:
- (a) information on the identity and location of any person from whom evidence is sought;
 - (b) information on the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;
 - (c) 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 procedure 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; and
 - (i) any other information which may be brought to the attention of the Requested Party to facilitate its execution of the request.
4. The Requested Party may ask the Requesting Party to provide 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 by national law, or in accordance with its national practice, the Central Authority of the Requested Party shall take whatever steps it deems necessary to execute promptly 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. The Central Authority of the Requested Party shall make all necessary arrangements for representation in the territory of the Requested Party of the Requesting Party in any proceedings arising out of a request for assistance.
3. The method of execution specified in the request shall be followed except to the extent that it is incompatible with the laws and practices of the Requested Party.
4. If the Central Authority of the Requested Party determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding under the laws of that Party, or prejudice the safety of any person, it may

postpone execution, or make execution subject to conditions determined to be necessary after consultations with the Central Authority of 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, in accordance with its national law and practice, facilitate the presence in the execution of the request of such persons as are specified in the request.

6. 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 wished the request to be executed.

7. The Central Authority of the Requested Party shall respond to reasonable inquiries by the Central Authority of the Requesting Party concerning progress toward execution of the request.

8. 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.

9. The Central Authority of the Requesting Party shall promptly inform the Central Authority of the Requested Party of any circumstances which make it inappropriate to proceed with the execution of the request or which require modification of the action requested.

10. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.

11. 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 Requesting Party of the reasons for the denial.

Article 6 *Costs*

1. The Requested Party shall pay all costs relating to the execution of the request, including the costs of representation, except for the fees of expert witnesses, the costs of translation, interpretation, and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 10 and 11, which costs, fees, allowances, and expenses shall be paid by the Requesting Party.

2. If, during the execution of a request, it becomes apparent that complete execution will entail expenses of an extraordinary nature, the Central Authorities shall consult to determine the terms and conditions under which execution may continue.

Article 7 *Limitations on Use*

1. The Requesting Party shall not use or disclose any information or evidence obtained under this Treaty for any purposes other than those stated in the request without the prior consent of the Requested Party.

2. Nothing in this Article shall preclude the use or disclosure of information to the extent that there is an obligation to do so under the Constitution of the Requesting Party in a criminal prosecution. The Requesting Party shall notify the Requested Party in advance of any such proposed disclosure.

Article 8 *Testimony or Evidence in the Territory of the Requested Party*

1. A person in the territory of the Requested Party from whom testimony or evidence is requested pursuant to this Treaty may be compelled, if necessary, to appear and testify or produce items, including documents, records, and articles of evidence.

2. Upon request, the Central Authority of the Requested Party shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.

3. In accordance with its laws and practice, the Requested Party shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to ask questions directly of the person whose testimony or evidence is being taken or indirectly through a legal representative qualified to appear before the courts of the Requested Party.

4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting Party, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting Party for resolution by the authorities of that Party.

5. Evidence produced in the territory of the Requested Party pursuant to this Article or which is the subject of testimony taken under this Article may be authenticated by an attestation, including, in the case of business records, authentication in the manner indicated in Form A appended to this Treaty. The absence or nonexistence of such records may, upon request, be certified through the use of Form B appended to this Treaty. Records authenticated by Form A, or Form B certifying the absence or nonexistence of such records, shall be admissible in evidence in 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, including documents or information in any form, in the possession of government departments and agencies in the Requested Party.
2. The Requested Party may provide copies of any documents, records, or information which are in the possession of a government department or agency of that Party, but which are not publicly available, to the same extent and under the same conditions as such copies would be available to its own law enforcement or judicial authorities. The Requested Party may in its discretion deny a request pursuant to this paragraph entirely or in part.
3. Records produced pursuant to this Article shall, upon request, be authenticated under the provisions of the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, dated October 5, 1961, or by an official competent to do so through the use of Form C appended to this Treaty. The absence or nonexistence of such records may, upon request, be certified through the use of Form D appended to this Treaty. No further authentication shall be necessary. Records shall be admissible in evidence in 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 10
Testimony in the Territory of the Requesting Party

1. When the Requesting Party requests the appearance of a person in the territory of that Party, the Requested Party shall invite the person to appear voluntarily before the appropriate authority in the territory of the Requesting Party. The Requesting Party shall indicate the extent to which the expenses will be paid. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the response of the person.
2. The Central Authority of the Requesting Party may, in its discretion, determine that a person appearing 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.
3. The safe conduct provided for by this Article shall cease seven 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 when the person, having left the territory of the Requesting Party, voluntarily returns. The Central Authority of the Requesting Party may, in its discretion, extend this period for up to fifteen days if it determines that there is good cause to do so.

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 purposes of assistance under this Treaty shall be transferred for those purposes if the person and the Central Authorities of both Parties consent.
2. For the purposes of this Article:
 - (a) the receiving Party shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorised by the sending Party;
 - (b) the receiving Party shall return the person transferred to the custody of the sending Party as soon as circumstances permit and in any event no later than the date upon which the person would have been released from custody in the territory of the sending Party, unless otherwise agreed by both Central Authorities and the person transferred;
 - (c) the receiving Party shall not require the sending Party to initiate extradition proceedings for the return of the person transferred; and
 - (d) the person transferred shall receive credit for service of the sentence imposed in the sending Party for time served in the custody of the receiving Party.

Article 12

Location or Identification of Persons or Items

The Requested Party shall use its best efforts to ascertain the location or identity of persons or items specified in the request.

Article 13

Service of Documents

1. The Requested Party shall use its best efforts to effect service of any document relating, in whole or in part, to any request for assistance made by the Requesting Party under the provisions of this Treaty.
2. Service of any document 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 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 item 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. Upon request, every official who has custody of a seized item shall certify, through the use of Form E appended to this Treaty, the continuity of custody, the identity of the item, and the integrity of its condition. No further certification shall be required. The certificates shall be admissible in evidence in 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 the terms and conditions deemed to be necessary to protect third party interests in the item to be transferred.

Article 15 Return of Items

The Central Authority of the Requesting Party shall return any items, including documents, records, or articles of evidence furnished to it in execution of a request under this Treaty as soon as possible unless the Central Authority of the Requested Party waives their return.

Article 16 Assistance in Forfeiture Proceedings

1. If the Central Authority of one Party becomes aware of proceeds or instrumentalities of offenses which are located in the territory of the other Party and may be forfeitable or otherwise subject to seizure under the laws of that Party, it may so inform the Central Authority of the other Party. If that other Party has jurisdiction in this regard, it may present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country, and the Central Authority shall report to the Central Authority of the other Party on the action taken.

2. The Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses. This may include action to temporarily freeze the proceeds or instrumentalities pending further proceedings.

3. The Party that has custody over proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws. Either Party may transfer all or part of such assets, or the proceeds of their sale, to the other Party, to the extent permitted by the transferring Party's laws and upon such terms as it deems appropriate.

Article 17 Compatibility with Other Arrangements

Assistance and procedures set forth in this Treaty shall not prevent either Party from granting assistance to the other Party through the provisions of other applicable international agreements, or through the provisions of its national laws. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement, or practice which may be applicable.

Article 18
Consultation

The Central Authorities of the Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

Article 19
Ratification, Entry Into Force, and Termination

1. This Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged as soon as possible.
2. This Treaty shall enter into force upon the exchange of instruments of ratification.
3. This Treaty shall apply to any request presented after the date of the Treaty's entry into force, whether the relevant acts or omissions occurred prior to or after that date.
4. Either Party may terminate this Treaty by means of written notice to the other Party. Termination shall take effect six months following the date of notification. Ongoing proceedings at the time of termination shall nonetheless be completed in accordance with the provisions of this Treaty.

IN WITNESS WHEREOF the undersigned being duly authorised by their respective Governments have signed this Treaty.

DONE at Washington, in duplicate, this 18th day of January, 2001.

**FOR THE GOVERNMENT
OF IRELAND**

John O'Donoghue

**FOR THE GOVERNMENT
OF THE UNITED STATES OF
AMERICA**

Madeline Albright

FORM A (see Article 8)

**CERTIFICATE OF AUTHENTICITY OF
BUSSINESS RECORDS**

I, _____, attest on penalty of
(Name)

criminal punishment for false statement or false attestation that I am employed by

(Name of Business from which documents are sought)

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 records in the custody of _____ .
(Name of Business from which documents are sought)

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 such records as a regular practice;
- (D) if such record is not the original, such record is a duplicate of the original.

Signature

Date

Sworn to or affirmed before me, _____, a

_____ this _____ day of _____, 20____.
(notary public, judicial officer, etc.)

FORM B (see Article 8)

CERTIFICATE OF ABSENCE OR NON-EXISTENCE OF BUSINESS RECORDS

I, _____, attest on penalty of criminal punishment for
(Name)

false statement or false attestation that I am employed by

_____ and that my official title
(Name of business from which documents are sought)

is _____.
(Official Title)

As a result of my employment with the above-named business, I am familiar with the business records it maintains. The business maintains business records that:

- (A) are 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) are kept in the course of a regularly-conducted business activity;
- (C) are made by the business as a regular practice.

Among the records so maintained are records of individuals and entities that have accounts or otherwise transact business with the above-named business. I have made or caused to be made a diligent search of those records. No records have been found reflecting any business activity between the business and the following individuals and entities: _____

If the business had maintained an account on behalf of or had participated in a transaction with any of the foregoing individuals or entities, its business records would reflect that fact.

Signature

Date

Sworn to or affirmed before me, _____, a
(Name)

_____ this _____ day of _____, 20____.
(Notary public, judicial officer, etc.)

FORM C (see Article 9)

ATTESTATION OF AUTHENTICITY OF FOREIGN PUBLIC RECORDS

I, _____, attest on penalty of criminal
(Name)

punishment for false statement or attestation that my position with the Government of
_____ is _____ and that in that
(Country) (Official Title)

position I am duly authorised to attest that the documents attached and described
below are true and accurate copies of original records which are recorded or filed in
_____, which is a government office or agency of
(Name of Office or Agency)

_____.
(Country)

Description of Documents:

(Signature)

(Title)

(Date)

FORM D (see Article 9)

**ATTESTATION REGARDING ABSENCE
OR NON-EXISTENCE OF FOREIGN PUBLIC RECORDS**

I, _____, attest on penalty of criminal
(Name)

punishment for false statement or attestation that my position with the Government of
_____ is _____ and that in that
(Country) (Official Title)
position I am duly authorised to make this attestation.

I do hereby certify that I am the custodian of records of

_____, and that I have made a diligent
(Name of Public Office or Agency)

search of the said records for the

_____, and that
(Description of Records for Which a Search was Done)

no such records are found to exist therein. I further certify that the records for which a
search was conducted set forth matters which are required by the laws of the
Government of _____ to be recorded or filed and reported, and
(Country)

such matters regularly are recorded or filed and reported by

(Name of Public Agency of Office)

Signature

Date

FORM E (see Article 14)

ATTESTATION WITH RESPECT TO SEIZED ARTICLES

I, _____, attest on penalty of criminal punishment for
(Name)
false statements or attestation that my position with the Government of _____
(Country)
is _____. I received the articles listed below from
(Official Title)
_____ on _____,
(Name of Person) (Date)
at _____ in the following condition:
(Place)

Description of Article:

Changes in Condition while in my custody:

Official Seal or Stamp

(Signature)

(Title)

(Date)