



TREATY SERIES 2011
Nº 5

**Instrument as contemplated by Article 3(2) of the
Agreement on Extradition between the United States of
America and the European Union signed 25 June 2003, as to
the application of the Treaty on Extradition between Ireland
and the United States of America signed 13 July 1983**

Done at Dublin on 14 July 2005

Notifications of the completion of the procedures necessary for the entry into force of
the Agreement exchanged on 11 August 2009
and 12 August 2009

Entered into force on 1 February 2010

Presented to Dáil Éireann by the Minister for Foreign Affairs

**INSTRUMENT AS CONTEMPLATED BY ARTICLE 3(2) OF THE
AGREEMENT ON EXTRADITION BETWEEN THE UNITED STATES OF
AMERICA AND THE EUROPEAN UNION SIGNED 25 JUNE 2003, AS TO
THE APPLICATION OF THE TREATY ON EXTRADITION BETWEEN
IRELAND AND THE UNITED STATES OF AMERICA SIGNED 13 JULY
1983**

1. As contemplated by Article 3(2) of the Agreement on Extradition between the United States of America and the European Union signed 25 June 2003 (hereafter “the U.S.-EU Extradition Agreement”), the Governments of the United States of America and Ireland acknowledge that, in accordance with the provisions of this Instrument, the U.S.-EU Extradition Agreement is applied in relation to the bilateral Treaty on Extradition between Ireland and the United States of America signed 13 July 1983 (hereafter “the 1983 Treaty on Extradition”) under the following terms:

- (a) Article 5 of the U.S.-EU Extradition Agreement as set forth in Article VIII(1) and (7) of the Annex to this Instrument shall govern the mode of transmission, and requirements concerning certification, authentication or legalisation of the extradition request and supporting documents;
- (b) Article 7(1) of the U.S.-EU Extradition Agreement as set forth in Article VIII(8) of the Annex to this Instrument shall provide an alternative method for transmission of the request for extradition and supporting documents following provisional arrest;
- (c) Article 8(2) of the U.S.-EU Extradition Agreement as set forth in Article IX(3) of the Annex to this Instrument shall govern the channel to be used for submitting supplementary information;
- (d) Article 9 of the U.S.-EU Extradition Agreement as set forth in Article VII *bis* of the Annex to this Instrument shall govern the temporary surrender of a person being proceeded against or serving a sentence in the Requested State;
- (e) Article 10 of the U.S.-EU Extradition Agreement as set forth in Article XII of the Annex to this Instrument shall govern the decision on requests made by several States for the extradition or surrender of the same person;
- (f) Article 11 of the U.S.-EU Extradition Agreement as set forth in Article XII *bis* of the Annex to this Instrument shall govern the use of simplified extradition procedures;
- (g) Article 12(3) of the U.S.-EU Extradition Agreement as set forth in Article XV(2) of the Annex to this Instrument shall govern the procedures governing transit in the event of unscheduled landing of aircraft;
- (h) Article 13 of the U.S.-EU Extradition Agreement as set forth in Article VI of the Annex to this Instrument shall govern extradition with respect to conduct punishable by death in the Requesting State;

- (i) Article 14 of the U.S.-EU Extradition Agreement as set forth in Article VIII *bis* of the Annex to this Instrument shall govern consultations where the Requesting State contemplates the submission of particularly sensitive information in support of a request for extradition.
2. The Annex reflects the integrated text of the provisions of the 193 Treaty on Extradition and the U.S.-EU Extradition Agreement that shall apply upon entry into force of this Instrument.
3. In accordance with Article 16 of the U.S.-EU Extradition Agreement, this Instrument shall apply to offences committed before as well as after it enters into force.
4. This Instrument shall not apply to requests for extradition made prior to its entry into force; except that, in accordance with Article 16 of the U.S.-EU Extradition Agreement, Article VII *bis* of the Annex shall be applicable to requests made prior to such entry into force.
- 5.
- (a) This Instrument shall be subject to the completion by the United States of America and Ireland of their respective applicable internal procedures for entry into force. The Governments of the United States of America and Ireland shall thereupon exchange instruments indicating that such measures have been completed. This Instrument shall enter into force on the date of entry into force of the U.S.-EU Extradition Agreement.
- (b) In the event of termination of the U.S.-EU Extradition Agreement, this Instrument shall be terminated and the 1983 Treaty on Extradition shall be applied. The Governments of the United States of America and Ireland nevertheless may agree to continue to apply some or all of the provisions of this Instrument.

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

DONE at Dublin, in duplicate, this 14th day of July 2005.

**FOR THE GOVERNMENT
OF IRELAND**

Michael McDowell

**FOR THE GOVERNMENT
OF THE REPUBLIC OF
LATVIA**

James C. Kenny

ANNEX

TREATY ON EXTRADITION BETWEEN THE UNITED STATES OF AMERICA AND IRELAND

Article I

Obligation to Extradite

Each Contracting Party agrees to extradite to the other, in accordance with the provisions of this Treaty, but subject to the law of the Requested State and to such exceptions as are therein provided, any persons, including its citizens or nationals, who are wanted for prosecution or the imposition or enforcement of a sentence in the Requesting State for an extraditable offence.

Article II

Extraditable Offences

1. An offence shall be an extraditable offence only if it is punishable under the law of both Contracting Parties by imprisonment for a period of more than one year, or by a more severe penalty. When the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment, extradition shall be granted only if the duration of the sentence still to be served amounts to at least four months.
2. For the purpose of this Article, it shall not matter:
 - (a) whether the laws of the Contracting Parties place the offence within the same category of offence or denominate the offence by the same terminology; or
 - (b) whether the offence is one for which United States federal law requires proof of 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.
3. Subject to the conditions set forth in paragraph 1 of this Article, extradition shall also be granted for attempt and conspiracy to commit, aiding, abetting, counselling, procuring, inciting, or otherwise being an accessory to the commission of, an offence referred to in paragraph 1.
4. If extradition is granted for an extraditable offence, it may also be granted for any other offence for which extradition is requested that meets all the requirements for extradition other than the periods of imprisonment specified in paragraph 1 of this Article.

Article III
Place of commission of offence

1. Extradition shall not be refused on the ground that the offence for which extradition is requested was committed outside the Requesting State.
2. Extradition may be refused when the offence for which extradition is requested is regarded under the law of the Requested State as having been committed in its territory. If extradition is refused pursuant to this paragraph, the Requested State shall submit the case to its competent authorities for the purpose of prosecution.

Article IV
Exceptions to Extradition

Extradition shall not be granted in any of the following circumstances:

- (a) when the person whose surrender is sought has been convicted or acquitted, or a prosecution is pending against that person, in the Requested State, for the offence for which extradition is requested;
- (b) when the offence for which extradition is requested is a political offence. Reference to a political offence shall not include the taking or attempted taking of the life of a Head of State or a member of his or her family;
- (c) when there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political opinion. Unless the law of the Requested State otherwise provides, decisions under this paragraph shall be made by the executive authority; or
- (d) when the offence for which extradition is requested is a military offence which is not an offence under the ordinary criminal law of the Contracting Parties.

Article V
Discretionary Grounds for Refusal of Extradition

Extradition may be refused in any of the following circumstances:

- (a) when the person whose surrender is sought has been convicted or acquitted in a third State of the offence for which extradition is requested; or
- (b) when the competent authorities of the Requested State have decided to refrain from prosecuting the person whose surrender is sought for the offence for which extradition is requested, or to discontinue any criminal proceedings which have been initiated against that person for that offence.

Article VI
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 VII
Postponement of Surrender

When the person whose extradition is requested is being, or is about to be, proceeded against, or has been convicted, in the Requested State in respect of an offence other than that for which extradition has been requested, surrender may be postponed until the conclusion of the proceedings and the full execution of any punishment the person may be or may have been awarded.

Article VII bis
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 VIII
Extradition Procedure and Required Documents

1. The request for extradition shall be made in writing and shall be transmitted, with supporting documents, through the diplomatic channel, which shall include transmission as provided for in paragraph 8 of this Article.

2. The request for extradition shall contain:

- (a) information which will help to establish the identity of the person sought;
- (b) the location of the person if known or, if it is not known, a statement to that effect; and

- (c) a brief statement of the facts of the case.
3. Every request for extradition shall be supported by documents which contain:
- (a) as accurate a description as possible of the person sought, together with any other information which will assist in establishing the person's identity and nationality;
 - (b) a statement of the pertinent facts of the case, indicating as accurately as possible the time and place of commission of the offence; and
 - (c) the legal description of the offence and a statement of the maximum penalties therefor and the text of the law setting forth the offence or, where this is not possible, a statement of the relevant law.
4. When the request for extradition relates to a person who has not been convicted, it shall also be supported:
- (a) by the original or an authenticated copy of the warrant of arrest, or equivalent order, issued by a competent authority of the Requesting State;
 - (b) by the original or an authenticated copy of the complaint, information or indictment; and
 - (c) in the case of a request emanating from Ireland, by a statement of facts, by way of affidavit or statutory declaration, setting forth reasonable grounds for believing that an offence has been committed and that the person sought committed it.
5. When the request for extradition relates to a convicted person, it shall also be supported:
- (a) by the original or an authenticated copy of the judgement of conviction; and
 - (b) if a sentence has been imposed, by the original or an authenticated copy of the sentence and a statement of the extent to which it has been carried out and that it is immediately enforceable.
6. All documents transmitted by the Requesting State shall be in English or shall be translated into English by that State.
7. Documents that bear the certificate or seal of the Department of Justice, 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 legalisation. "Department of Justice" shall, for the United States of America, mean the United States Department of Justice, and, for Ireland, the Department of Justice, Equality and Law Reform.

8. If the person whose extradition is sought is held under provisional arrest by the Requested State, the Requesting State may satisfy its obligation to transmit its request for extradition and supporting documents through the diplomatic channel pursuant to paragraph 1 of this Article, by submitting the request and documents to the Embassy of the Requested State located in the Requesting State. In that case, the date of receipt of such request by the Embassy shall be considered to be the date of receipt by the Requested State for purpose of applying the time limit that must be met under Article X of this Treaty to enable the person's continued detention.

Article VIII bis
Sensitive Information in a Request

Where the Requesting State contemplates the submission of particularly sensitive information in support of its request for extradition, it may consult the Requested State to determine the extent to which the information can be protected by the Requested State. If the Requested State cannot protect the information in the manner sought by the Requesting State, the Requesting State shall determine whether the information shall nonetheless be submitted

Article IX
Additional Evidence or Information

1. If the Requested State requires additional evidence or information to enable it to decide on the request for extradition, such evidence or information shall be submitted to it within such time as that State shall specify.
2. If the person sought is in custody and the additional evidence or information submitted as aforesaid is found insufficient or if such evidence or information is not received within the period specified by the Requested State, the person shall be discharged from custody. Such discharge shall not preclude the Requesting State from submitting another request in respect of the same offence.
3. Such additional evidence or information may be requested and furnished directly between the United States Department of Justice and the Department of Justice, Equality and Law Reform in Ireland.

Article X
Provisional Arrest

1. In case of urgency, a Contracting Party may request the provisional arrest of a person sought. The request for provisional arrest shall be made through the diplomatic channel or directly between the United States Department of Justice and the Department of Justice, Equality and Law Reform in Ireland, in which case the facilities of INTERPOL may be used. The request may be transmitted by post or telegraph or by any other means affording evidence in writing.
2. The request shall contain:
 - (a) a description of the person sought;

- (b) a statement of the nature of the offence and of the time at which and the place where it is alleged to have been committed;
 - (c) a statement of the existence of one of the documents referred to in paragraph 4(a) or 5 of Article VIII; and
 - (d) a statement that it is intended to send a request for extradition.
3. On receipt of such a request, the Requested State shall take the appropriate steps to secure the arrest of the person sought. The Requesting State shall be promptly notified of the result of its request.
4. Unless the law of the Requested State otherwise provides, a person arrested upon such a request shall be released upon the expiration of forty-five days from the date of that person's arrest if the request for extradition has not been duly received by the Requested State. This stipulation shall not prevent the institution of proceedings with a view to extraditing the person sought if a request for extradition is subsequently received.

Article XI
Rule of Speciality

1. A person extradited under this Treaty shall not be proceeded against, sentenced, punished, detained or otherwise restricted in his or her personal freedom in the Requesting State for an offence other than that for which extradition has been granted, or be extradited by that State to a third State, unless:
- (a) the person has left the Requesting State after extradition and has voluntarily returned to it;
 - (b) the person, having had an opportunity to leave the Requesting State, has not done so within forty-five days of final discharge in respect of the offence for which that person was extradited; or
 - (c) the Requested State has consented.
2. Where the description of the offence charged in the Requesting State is altered in the course of proceedings, the person extradited shall not be proceeded against, sentenced, punished, detained or otherwise restricted in his or her personal freedom except insofar as the offence under its new description is composed of the same constituent elements as the offence for which extradition was granted.
3. Unless the law of the Requesting State otherwise provides, the person extradited may be proceeded against, sentenced, punished, detained or otherwise restricted in his or her personal freedom for an offence for which that person could be convicted, under the law of that State, upon trial for the offence for which extradition was granted.
4. These stipulations shall not apply to offences committed after the extradition.

Article XII
Multiple Requests

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 Ireland 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, its High Court, or such other authority as it may subsequently designate, shall determine to which State, if any, the person is to be surrendered.
3. In making its decision under paragraphs 1 and 2 of this Article, the Requested State shall consider all of the relevant factors, including, but not limited to, the following:
 - (a) whether the requests were made pursuant to a treaty;
 - (b) the places where each of the 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 citizenship or nationality of the person sought;
 - (g) the possibility of any subsequent extradition between the requesting States;
and
 - (h) the chronological order in which the requests were received from the requesting States.

Article XII bis
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 XIII
Notification of Decision

1. The Requested State shall promptly communicate to the Requesting State through the diplomatic channel the decision on the request for extradition.
2. The Requested State shall provide reasons for any partial or complete rejection of the request for extradition. It shall also provide the Requesting State with a copy of each opinion issued by its courts in connection with a request for extradition under the Treaty.

3. If a warrant or order for the extradition of a person sought has been issued by the competent authority and the person is not removed from the territory of the Requested State within such time as may be prescribed by the law of that State, that person may be set at liberty and the Requested State may subsequently refuse to extradite that person for that offence.

Article XIV Surrender of Property

1. To the extent permitted under the law of the Requested State and subject to the rights of third parties, which shall be duly respected, all property which appears to have been acquired as a result of the offence in question or which may be required as evidence shall, if found, be seized and surrendered to the Requesting State if the person sought is extradited, having been granted, cannot be carried out by reason of the death or escape of that person.

2. The Requested State may make the surrender of the property conditional upon satisfactory assurances from the Requesting State that the property will be returned to the Requested State as soon as practicable, and may defer its surrender if it is needed as evidence in the Requested State.

Article XV Transit

1. Transit through the territory of one of the Contracting Parties of a person surrendered to the other Contracting Party by a third State may be granted on request subject to the law of the State of transit and to such conditions as that State may impose. For the purpose of considering the request, the State of transit may require the submission of such information as it considers necessary.

2. Authorisation 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 that contains a description of the person being transported and a brief statement of the facts of the case. A request for transit shall be made through the diplomatic channel or directly between the United States Department of Justice and the Irish Department of Justice, Equality and Law Reform. The facilities of the International Criminal Police Organisation (INTERPOL) may be used to transmit such a request. 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 XVI Representation

1. The Department of Justice of the United States shall advise, assist and represent, or provide for the representation of, Ireland in any proceedings in the United States arising out of a request for extradition made by Ireland.

2. The Attorney General of Ireland shall advise and assist, and represent, or provide for the representation of, the interests of the United States in any proceedings in Ireland arising out of a request for extradition made by the United States.

3. The functions referred to in this Article may be assumed by any successor agency designated by the State concerned.

Article XVII *Expenses*

1. The Requesting State shall bear all expenses arising out of the translation of documents and the transportation of the person sought from the place of the extradition proceedings to the Requesting State. Notwithstanding any law to the contrary, the Requested State shall bear all other expenses arising out of the request for extradition and the proceedings.

2. The Requested State shall make no pecuniary claim against the Requesting State arising out of the arrest, detention, extradition proceedings and surrender of a person sought under this Treaty.

Article XVIII *Termination*

Either Contracting Party may terminate this Treaty by giving written notice to the other Contracting Party at any time, and the termination shall become effective six months after the date of receipt of such notice.