


# United Nations Office on Drugs and Crime

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## TREATY BETWEEN CANADA AND THE REPUBLIC OF AUSTRIA ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

CANADA AND THE REPUBLIC OF AUSTRIA,

DESIRING to provide for more effective co-operation in the suppression of crime and to facilitate the relations between the two States in the area of mutual assistance in criminal matters,

REAFFIRMING their respect for each other's legal systems and judicial institutions,

HAVE Agreed as follows:

### ARTICLE 1

#### Obligation to Grant Mutual Assistance

- 1) The Contracting Parties shall, in accordance with this Treaty, grant each other the widest possible measure of mutual assistance in investigations or proceedings in respect of criminal matters.
- 2) For the purpose of this Treaty, criminal matters are:
  - (a) for Austria, investigations or proceedings relating to any offence created by the Penal Code or any other offence subject to the jurisdiction of a criminal court;
  - (b) for Canada, investigations or proceedings relating to any offence created by a law of Parliament or by the legislature of a province and subject to the jurisdiction of a criminal court.
- 3) Criminal matters shall also include investigations or proceedings relating to offences concerning taxation, duties, customs or exchange regulations. Mutual assistance may not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, duty, customs or exchange regulation of the same kind as the law of the Requesting State.
- 4) Mutual assistance to be afforded in accordance with this Treaty shall include:
  - (a) taking of evidence and obtaining of statements of persons;
  - (b) provision of information and physical evidence;
  - (c) provision of originals or certified copies of relevant documents and records;
  - (d) location of persons and objects, including their identification;
  - (e) execution of searches and seizures, including measures to locate, restrain and forfeit the proceeds of crime;
  - (f) making detained persons and others available to give evidence or assist in investigations;
  - (g) service of documents, including documents seeking the attendance of persons; and
  - (h) other assistance consistent with the objects of this Treaty.

## ARTICLE 2

### Execution of Requests

Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, insofar as it is not prohibited by that law, in the manner requested by the Requesting State.

## ARTICLE 3

### Refusal or Postponement of Assistance

- 1) Assistance may be refused if:
  - (a) the Requested State is of the opinion that the request, if granted, would prejudice its sovereignty, security, public order (ordre public) or other essential public interests;
  - (b) the request for assistance relates to conduct which would not constitute an offence under the law of the Requested State;
  - (c) the offence is regarded by the Requested State as being a political offence or an offence only under military law.
- 2) Assistance may be postponed by the Requested State if the execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.
- 3) Before refusing to grant a request or postponing its execution, the Requested State shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with them.
- 4) Reasons shall be given for any refusal or postponement of mutual assistance.

## ARTICLE 4

### Presence of Persons involved in the Proceedings

- 1) The Requested State shall, upon request, inform the Requesting State of the time and place of execution of the request for assistance.
- 2) Judges or officials of the Requesting State and other persons involved in the investigation or proceedings may be permitted, to the extent not prohibited by the law of the Requested State, to be present at the execution of the request and to participate in the proceedings in the Requested State, in cases where, in their absence, the purpose of the request would not be achieved.
- 3) The right to participate in the proceedings shall include the right of any person present to propose questions and other investigative measures. The persons present at the execution of a request shall be permitted to make a verbatim transcript of the proceedings. Officials of the Requesting State shall be permitted to use technical means to make such a verbatim transcript. Visual records shall be permitted only with the consent of the persons concerned.

## ARTICLE 5

### Transmission of Documents and Objects

- 1) When the request for assistance concerns the transmission of records and documents, the Requested State may transmit certified copies thereof, unless the Requesting State expressly requests the originals.

- 2) The original records or documents and the objects transmitted to the Requesting State shall be returned as soon as possible, unless the Requested State waives the return thereof.
- 3) Insofar as it is not prohibited by the law of the Requested State, documents, objects and records shall be transmitted in a form or accompanied by such certification as may be requested by the Requesting State in order to make them admissible according to the law of the Requesting State.

## ARTICLE 6

### Service of Document

- 1) The Requested State shall effect service of documents that are transmitted to it for this purpose by the Requesting State.
- 2) Service may be effected by simple transmission of the document to the person to be served. If the Requesting State expressly so requests, service shall be effected by the Requested State in the manner provided for the service of analogous documents under its own law or in a special manner consistent with such law.
- 3) Proof of service shall be given by means of a receipt dated and signed by the person served or by means of a declaration made by the Requested State that service has been effected and stating the form and date of such service. If service cannot be effected, the reasons shall be communicated immediately by the Requested State to the Requesting State.
- 4) Requests for service of a summons on an accused person who is in the territory of the Requested State shall be transmitted to the competent authority (Article 12 paragraph 2) of that State at least thirty (30) days before the date set for appearance.

## ARTICLE 7

### Availability of Persons to Give Evidence or Assist in Investigations

- 1) The Requesting State may request the assistance of the Requested State in inviting a person to appear and testify in proceedings or assist in investigations.
- 2) The Requested State shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's concurrence thereto.
- 3) The request or the summons shall indicate the approximate allowances payable and the travelling and subsistence expenses refundable by the Requesting State.
- 4) Upon request, the Requested State may grant the person an advance, which shall be refunded by the Requesting State.
- 5) A person who fails to appear in the Requesting State in response to a request or summons shall not, even if the request or summons contains a notice of penalty, be subjected to any punishment or measure of restraint.

## ARTICLE 8

### Making Detained Persons Available to Give Evidence or Assist in Investigations

- 1) A person in custody in the Requested State shall, at the request of the Requesting State, be temporarily, transferred to the Requesting State to give evidence or assist in investigations or proceedings, provided that the person consents to that transfer and there are no overriding grounds against transferring the person.
- 2) Where the person transferred is required to be kept in custody under the law of the Requested

State, the Requesting State shall hold that person in custody and shall return the person in custody at the conclusion of the execution of the request.

3) Where the Requested State advises the Requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person referred to in Article 7.

## ARTICLE 9

### Safe Conduct

1) Subject to paragraph 2 of this Article, where a person is in the Requesting State pursuant to a request made under Articles 7 or 8, that person shall not be detained, prosecuted, punished or subjected to any other restrictions of personal liberty in the Requesting State in respect of any acts or omissions which preceded that person's departure from the Requested State, nor shall that person, without consent, be obliged to give evidence in any proceedings other than the proceedings to which the request relates.

2) Paragraph 1 of this Article shall cease to apply if a person, being free to leave the Requesting State, has not left it within a period of thirty (30) days after being officially notified that person's attendance is no longer required or, having left that territory, has voluntarily returned.

## ARTICLE 10

### Proceeds of Crime

1) The Requested State shall, upon request, endeavour to ascertain whether any proceeds of a crime are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries. In making the request, the Requesting State shall notify the Requested State of the basis of its belief that such proceeds may be located in the latter's jurisdiction.

2) Where, pursuant to paragraph 1 of this Article, suspected proceeds of crime are found, the Requested State shall take such measures as are permitted by its law to freeze, seize and confiscate such proceeds.

3) In the application of this Article, the rights of *bona fide* third parties under the law of the Requested State shall be respected.

## ARTICLE 11

### Contents of Requests

1) Requests for assistance shall be made in writing and shall include, in all cases:

(a) the name of the competent authority conducting the investigation or proceedings to which the request relates;

(b) a description of the nature of the investigation or proceedings, including a summary of the relevant facts and laws, except in cases of a request for service of documents or summons;

(c) the purpose for which the request is made and the nature of the assistance sought;

(d) the need, if any, for confidentiality and the reasons therefor; and

(e) anytime limit within which compliance with the request is desired.

2) Requests for assistance shall also contain the following information:

(a) where possible, the identity, nationality and location of the person or persons who are the

subject of the investigation or proceedings;

(b) where necessary, the identity and location of the person to be served, and the manner in which service is to be made;

(c) where necessary, details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefor;

(d) in the case of requests for search and seizure, a statement indicating the basis for belief that evidence or proceeds of crime may be found in the jurisdiction of the Requested State and a statement that a judge of the Requesting State could compel production of the items in question if they were located in that State;

(e) in the case of requests for the taking of evidence; a statement indicating the basis for belief that evidence may be found in the jurisdiction of the Requested State;

(f) in the case of requests to take evidence from a person, a statement as to whether sworn or affirmed statements are required, and a description of the subject matter of the evidence or statement sought, including, if necessary, a list of questions to be asked;

(g) in the case of lending of exhibits, the person or class of persons who will have custody of the exhibit, the place to which the exhibit is to be removed, any tests to be conducted and the date by which the exhibit will be returned;

(h) in the case of making detained persons available, the person or class of persons who will have custody during the transfer, the place to which the detained person is to be transferred and the date of that person's return;

(i) information as to the allowances and expenses to which a person asked to appear in the Requesting State will be entitled.

3) If the Requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, it shall request that additional details be furnished.

## ARTICLE 12

### Making and Transmission of Requests

1) Each Contracting Party shall have a Central Authority. These Central Authorities shall directly transmit and receive all requests and responses thereto for the purposes of this Treaty. For the Republic of Austria, the Central Authority shall be the Federal Ministry of Justice. For Canada, the Central Authority shall be the Minister of Justice for Canada or an official designated by that Minister.

2) For the Republic of Austria, requests shall be made on behalf of courts or prosecutors. For Canada, requests shall be made on behalf of authorities which by law are responsible for investigations or proceedings related to criminal matters.

3) In cases of urgency, requests for assistance may be transmitted by any means affording a record in writing. Where electronic means of transmission are used, the original of the request shall be transmitted as soon as possible.

## ARTICLE 13

### Limitation of Use

The Requested State may require, after consultation with the Requesting State, that information or evidence furnished be used only subject to such terms and conditions as it may specify.

## ARTICLE 14

### Confidentiality

- 1) The Requested State shall, to the extent requested, keep confidential a request, its contents, supporting documents and any action taken pursuant to the request, except to the extent necessary to execute it or where the disclosure is specifically authorized by the Requesting State in accordance with any terms and conditions it may specify.
- 2) Subject to paragraph 1 of this Article, if the request cannot be executed without breaching the confidentiality requirements stated in the request, the Requested State shall so inform the Requesting State which shall then determine the extent to which it wishes the request to be executed.

## ARTICLE 15

### Information from Judicial Records

Upon request, a Contracting Party shall, through the channel established in Article 12 paragraph 1, communicate extracts from, and information relating to, judicial records to the same extent that these may be made available to its own competent authorities in a like case.

## ARTICLE 16

### Certification and Authentication

A request for assistance and the supporting documents, as well as documents or other evidence transmitted in response to such a request, shall not require certification or authentication, save as is specified in Article 5.

## ARTICLE 17

### Language

Requests and supporting documents shall be in or accompanied by a translation into one of the official languages of the Requested State.

## ARTICLE 18

### Expenses

- 1) The Requested State shall meet the costs of executing the request for assistance, except that the Requesting State shall bear:
  - (a) the expenses associated with conveying any person to or from the territory of the Requested State at the request of the Requesting State, and any allowance or expenses payable to that person while in the Requesting State pursuant to a request under Articles 7 or 8 of this Treaty;
  - (b) the allowances and expenses incurred in conveying custodial or escorting officers; and
  - (c) the expenses associated with experts.
- 2) If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Contracting Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

## ARTICLE 19

### Other Assistance

This Treaty shall not derogate from obligations subsisting between the Contracting Parties whether pursuant to other treaties, arrangements or otherwise, or prevent the Contracting Parties providing or continuing to provide assistance to each other pursuant to other treaties, arrangements or otherwise.

## ARTICLE 20

### Scope of Application

This Treaty shall apply to any requests presented after its entry into force even if the relevant acts or omissions occurred before that date.

## ARTICLE 21

### Consultation

The Contracting Parties shall consult promptly, at the request of either Party, concerning the interpretation and the application of this Treaty.

## ARTICLE 22

### Final Provisions

- 1) This Treaty is subject to ratification. The instruments of ratification shall be exchanged at Ottawa as soon as possible.
- 2) This Treaty shall enter into force on the first day of the third month following the month in which the instruments of ratification have been exchanged.
- 3) Either Contracting Party may terminate this Treaty at any time by giving written notice to the other Party, through diplomatic channels. The termination shall be effective six months following the date on which such notice was received.

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

DONE at Vienna, this 8<sup>th</sup> day of September One Thousand nine hundred and ninety-five in duplicate, in the English, French and German languages, each version being equally authentic.

FOR CANADA:

Allan Rock

FOR THE REPUBLIC OF AUSTRIA:

Nikolaus Michalek

