


# United Nations Office on Drugs and Crime

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## TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE CZECH REPUBLIC ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The United States of America and the Czech Republic,

Desiring to provide more effective cooperation between the two States through mutual legal assistance in criminal matters,

Have agreed as follows:

### Article 1

#### Scope of Assistance

1. The Contracting States shall provide mutual assistance, in accordance with the provisions of this Treaty, for criminal proceedings, including investigations to verify the commission of offenses, to gather evidence of offenses, and to prosecute offenses, the punishment of which, at the time of the request for assistance, would fall within the jurisdiction of the judicial authorities of the Requesting State. The Contracting States shall also provide such assistance for forfeiture and other proceedings related to criminal offenses.

2. Assistance shall include:

- (a) locating or identifying persons or items;
- (b) [20] serving documents;
- (c) taking the testimony or statements of persons;
- (d) transferring persons in custody for testimony or other purposes;
- (e) providing documents, records, and articles of evidence;
- (f) executing requests for searches and seizures;
- (g) immobilizing assets;
- (h) assisting in proceedings related to forfeiture of assets, restitution, and criminal fines; and
- (i) providing any other assistance consistent with the laws of the Requested State.

3. The Requested State shall provide assistance without regard to whether the conduct that is the subject of the request would constitute an offense under the laws of the Requested State, except that the Requested State may refuse to comply in whole or in part with a request for assistance to the extent that the conduct would not constitute an offense under its laws and the execution of the request would require a court order. However, the Requested State shall make every effort to approve a request for assistance requiring such a court order and shall grant assistance where the facts stated in the request establish a reasonable suspicion that the conduct described, if it had occurred in the

Requested State, would constitute an offense [21] under its laws.

4. This Treaty is intended solely for mutual legal assistance between the Contracting States. 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. The Contracting States shall seek and obtain assistance through their Central Authorities. The Central Authority for the United States shall be the Attorney General or such persons in the Department of Justice as the Attorney General designates. The Central Authority for the Czech Republic shall be the Office of the Prosecutor General and the Ministry of Justice.

2. The Central Authority for the United States will make requests on behalf of prosecutors, investigators with criminal law enforcement jurisdiction, and agencies and entities with specific statutory or regulatory authority to refer matters for criminal prosecution. The Central Authority for the Czech Republic will make requests on behalf of prosecutors and courts.

3. The Central Authority for the Requesting State shall use its best efforts to ensure that a request is not made where, in its view :

(a) the [22] offense on which the request would be based does not have serious consequences; or

(b) the extent of the assistance to be requested would be unreasonable in view of the sentence expected upon conviction.

4. The Central Authorities shall communicate with one another directly for the purposes of this Treaty.

## Article 3

### Denial of Assistance

1. The Central Authority of the Requested State may deny assistance if:

(a) the request relates to an offense under military law that would not be an offense under ordinary criminal law applicable generally;

(b) the request relates to a political offense;

(c) the execution of the request is likely to prejudice the sovereignty, security, order public, or similar essential interests of the Requested State; or

(d) the request does not conform to the requirements of the Treaty.

2. Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

3. If the [23] Central Authority of the Requested State denies assistance, it shall inform the Central Authority of the Requesting State of the reasons for the denial.

## Article 4

### Form, Content, and Language of Requests

1. A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another form in urgent situations. In any such situation, the request shall be confirmed in writing within ten days unless the Central Authority of the Requested State agrees otherwise. The request, including any attachments, shall be in the language of the Requested State unless agreed otherwise. The Requested State shall have no obligation to translate the response, including any attachments.

2. The request shall include the following:

- (a) the identity of the authority initiating the request;
- (b) a description of the factual basis of each offense, the text of the applicable provisions of law containing the elements constituting each offense, and the nature and stage of the proceeding;
- (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 [24] 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 proceeding, and the manner in which service is to be made;
- (c) information on the identity and suspected location of a person or item to be located;
- (d) a precise description of the place or person to be searched and of the item to be seized;
- (e) a description of any particular procedure to be followed in executing the request;
- (f) a description of the manner in which any testimony or statement is to be taken and recorded;
- (g) a description of the testimony or statement sought, which may include a list of questions to be asked of a person;
- (h) information as to the allowances and expenses to which a person asked to appear in the Requesting State will be entitled; and
- (i) any other information that may be brought to the attention of the Requested State to facilitate its execution of the request.

## Article 5

### Execution of Requests

1. The Central Authority of the Requested State shall promptly execute a request or, [25] when appropriate, transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State, including courts, shall have the authority to issue such orders to execute a request under this Treaty as are authorized under the laws of the Requested State with respect to domestic proceedings and shall do everything in their power to execute the request.

2. When necessary, the request shall be presented to the appropriate authority by the persons appointed by the Central Authority of the Requested State.

3. A request shall be executed in accordance with the laws of the Requested State except to the extent

that this Treaty provides otherwise. If the Requesting State requests execution in accordance with the procedures of the Requesting State and provides legal reference thereto, the Requested State shall so execute unless such execution would violate the laws of the Requested State.

4. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal proceeding in that State, it may postpone execution, or make execution subject to conditions determined to be necessary after consultations with [26] the Central Authority of the Requesting State. If the Requesting State accepts the assistance subject to the conditions, it shall comply with the conditions.

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

6. The Central Authority of the Requested State shall respond to reasonable requests by the Central Authority of the Requesting State on progress toward execution of the request.

7. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request. If execution of the request is delayed or postponed, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the reasons for the delay or postponement.

## Article 6

### Costs

1. The Requested State [27] shall pay all costs relating to the execution of a request except for the following:

(a) the fees of experts;

(b) the costs of interpretation, translation and transcription; and

(c) the allowances and expenses related to travel of persons travelling outside the local judicial district in the Requested State for the convenience of the Requesting State or pursuant to Articles 11, 12, and 13.

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

### Limitation on Use

The Central Authority of the Requested State may require that the Requesting State not use any information or evidence obtained under this Treaty other than in the proceeding described in the request without the prior consent of the Central Authority of the Requested State. In such situations, the Requesting State shall comply with the requirement.

## Article 8

### Alteration of Conditions

1. To the extent that the Constitution of the Requesting State imposes an obligation to disclose

information provided under this Treaty and such [28] disclosure would conflict with a condition imposed by the Requested State, the Central Authority of the Requesting State shall consult with the Central Authority of the Requested State to consider whether the condition may be modified to permit such disclosure. The Central Authority of the Requested State shall use its best efforts to permit such modification; with respect to a condition imposed pursuant to Article 7, it shall permit such disclosure unless prohibited by its law .

2. Information or evidence that has been used appropriately in the proceeding for which it was provided and in the course of such use has been made public may be used for any purpose.

## Article 9

### Evidence in the Requested State

1. A person in the Requested State from whom evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and either testify or provide a statement, or produce items, including documents, records, and articles of evidence. A person other than an accused who gives false testimony, either orally or in writing, in execution of a request shall be subject to prosecution in the Requested State in accordance with the criminal laws of that State.

2. Upon request, [29] the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the testimony or statement or the production of evidence pursuant to this Article .

3. The Requested State shall allow the presence of such persons as specified in the request during the execution of the request and shall allow such persons to specify questions to be posed to the person giving the testimony or statement or producing the evidence .

4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the testimony, statement, or other evidence shall nonetheless be taken and provided, together with the claim, to the Central Authority of the Requesting State for resolution of the claim by the competent authorities of that State .

5. Evidence produced in the Requested State pursuant to this Article or that is the subject of testimony or a statement taken under this Article shall, upon request, 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 [30] shall, 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 of such records, shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein .

## Article 10

### Official Records

1. The Requested State shall provide the Requesting State with copies of publicly available records in the possession of a government department or agency or a court in the Requested State. Publicly available records are documents, records, or information in any form that are available to members of the public of the Requested State generally or upon compliance with a legal condition .

2. The Requested State may provide copies of any records, including documents or information in any form, that are in the possession of a government department or agency or a court in that State, but that are not publicly available records, 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 State may in its discretion deny a request pursuant to this paragraph entirely or in part .

3. Records of a government [31] department or agency or a court produced pursuant to this Article

shall, upon request, be authenticated by an official responsible for maintaining them through the use of Form C appended to this Treaty. The absence or nonexistence of such records shall, upon request, be certified through the use of Form D appended to this Treaty. Records authenticated by Form C, or Form D certifying the absence of such records, shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

## Article 11

### Appearance Outside The Requested State

1. The Requesting State may request the appearance in the Requesting State or in a third State of any person to assist in criminal proceedings or other proceedings related to criminal offenses. The Requested State shall invite the person to appear and shall inform the Requesting State of the person's response.
2. The Requesting State shall indicate the extent to which the expenses will be paid. A person who agrees to appear may ask that the Requesting State advance money to cover these expenses. This advance may be provided through the Embassy or a consulate of the Requesting State.
3. An invited person may not be [32] prosecuted, detained, or subjected to any restriction of personal liberty in the Requesting State by reason of acts or convictions that preceded that person's departure from the Requested State. The Central Authority of the Requesting State shall have discretion to extend safe conduct to the effects of non-criminal proceedings or to limit the application of safe conduct. Any such extension or limitation of safe conduct shall be communicated to the invited person prior to that person's travel to the Requesting State.
4. The safe conduct provided in the above paragraph shall cease seven days after the person has been notified that the person's presence is no longer required or when the person, having left the Requesting State, voluntarily returns.

## Article 12

### Temporary Transfer Of Persons in Custody

1. A person in the custody of the Requested State whose presence in the Requesting State or in a third State is sought for purposes of assistance under this Treaty shall be transferred temporarily from the Requested State to the Requesting State or to a third State for that purpose if the person consents and if the Central Authorities of the Requesting and the Requested States agree.
2. A [33] person in the custody of the Requesting State whose presence in the Requested State is sought for purposes of assistance under this Treaty may be transferred from the Requesting State to the Requested State if the person consents and if the Central Authorities of both States agree.
3. For purposes of this Article:
  - (a) the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise agreed by the Central Authorities of both States;
  - (b) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed by the Central Authorities of both States;
  - (c) the receiving State shall not require the sending State to initiate extradition proceedings or any other proceedings for the return of the person transferred;
  - (d) time served in the custody of the receiving State by the person transferred shall be credited toward the service of the sentence imposed in the sending State; and

(e) where the receiving State is a third State, the Requesting State shall make all arrangements necessary to meet the requirements of this paragraph.

4. Safe conduct shall be provided [34] in accordance with Article 11, paragraphs 3 and 4, except that the person shall be kept in custody for the offense for which the person is incarcerated in the sending State.

## Article 13

### Transit of Persons in Custody

1. The Requested State may authorize the transit through its territory of a person held in custody by a third State whose personal appearance has been requested by the Requesting State to give testimony or evidence or otherwise provide assistance in criminal proceedings or other proceedings related to criminal offenses.

2. The Requested State shall have the authority and the obligation to keep the person in custody during transit.

3. Each Contracting State may refuse to grant transit of its nationals.

## Article 14

### Location or Identification of Persons or Items

If the Requesting State seeks the location or identity of persons or items in the Requested State, the Requested State shall use its best efforts to ascertain the location or identity.

## Article 15

### Service of Documents

1. The Requested State 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 State under the provisions of this [35] Treaty.

2. The Central Authority of the Requesting State shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting State within a reasonable time in advance.

3. The Central Authority of the Requested State shall return a proof of service in the manner specified in the Request. Acceptable means of proving service may include:

(a) the signature of the person upon whom service has been requested acknowledging receipt of service; or

(b) a report of an official of the Requested State describing the effort to obtain the signature of the person upon whom service has been requested who has refused either to accept service or to acknowledge receipt thereof, and specifying any reasons given for such refusal.

## Article 16

### Search and Seizure

1. The Requested State shall execute a request for the search, seizure, and transfer of any item to the Requesting State if the request includes the information justifying such action under the laws of the Requested State.

2. Upon request by the Central Authority of the Requesting State, every official who has had custody of a seized item shall certify, through the use of Form E appended [36] to this Treaty, the identity of the item, the integrity of its condition, and the continuity of its custody. The certificates shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

3. The Central Authority of the Requested State may require that the Requesting State agree to the terms and conditions deemed necessary to protect third state interests in the item to be transferred.

## Article 17

### Return of Items

At or before the transfer of an item, including a document, record, or article of evidence, furnished to the Requesting State in execution of a request under this Treaty, the Central Authority of the Requested State may require that the Requesting State return such item as soon as possible. A request for return of an item not made until after transfer of the item shall be complied with by the Requesting State to the extent feasible.

## Article 18

### Forfeiture

1. Upon request, the Requested State shall use its best efforts to ascertain whether proceeds or instrumentalities of an offense, potentially forfeitable or otherwise subject to seizure under the laws of either State, are located in the Requested State. The request shall state [37] the grounds for believing that such proceeds or instrumentalities are so located. The Requested State shall inform the Requesting State of the results of its inquiry.

2. If, pursuant to its inquiry, the Requested State locates proceeds or instrumentalities of an offense, it may, to the extent permitted by its laws, take protective measures, including seizure and temporary immobilization, to ensure that such proceeds or instrumentalities are available for forfeiture.

3. The Requested State may, to the extent permitted by its laws, give effect to any final legal determination given in the Requesting State forfeiting such proceeds or instrumentalities, or initiate its own legal action for the forfeiture of such assets.

4. The Contracting State that enforces a final legal determination relating to proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws. Either Contracting State, to the extent permitted by its laws and upon such terms as it deems to be appropriate, giving due consideration to relevant factors including the extent of cooperation provided by the other Contracting State, may transfer all or part of such assets, or the proceeds of their [38] sale, to the other Contracting State.

## Article 19

### Restitution

The Contracting States shall assist each other to the extent permitted by their respective laws to facilitate restitution. Assistance shall include transfer of items obtained through criminal activity.

## Article 20

### Criminal Fines

The Contracting States shall assist each other to the extent permitted by their respective laws in proceedings regarding criminal fines. Assistance shall not include collection of criminal fines.



## Article 21

### Compatibility With Other Treaties

This Treaty is not intended to prevent the Contracting States from seeking and granting assistance to each other through the provisions of other international agreements or domestic laws.

## Article 22

### Consultation

The Central Authorities 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 23

### Ratification, Entry Into Force, and Termination

1. This Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged at Prague as soon as possible.
2. [39] This Treaty shall enter into force two months after the exchange of instruments of ratification.
3. This Treaty shall apply to any requests presented after its entry into force even if the relevant acts or omissions occurred before that date.
4. This Treaty shall remain in force until terminated by either Contracting State by means of written notice to the other Contracting State. Termination shall take effect six months following the date of notification.

IN WITNESS WHEREOF, the undersigned, being duly authorized for this purpose, have signed this Treaty.

DONE at Washington, this fourth day of February 1998 in duplicate, in the English and Czech languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:

FOR THE CZECH REPUBLIC:

APPENDICES:

Form A

### CERTIFICATION OF BUSINESS RECORDS

I, \_\_\_\_ (name), having been advised as a witness that a false attestation subjects me to a penalty of criminal punishment, attest as follows:

I am employed by/associated with \_\_\_\_ (name of business from which documents are sought) in the position of \_\_\_\_ (business position or title) and by reason of my position am authorized and qualified to make this attestation.

Each of the records attached [40] hereto is a record in the custody of the above-named business that:

(A) was made, at or near the time of the occurrence of the matters set forth therein [ircle appropriate number(s)]:

(1) by a person with knowledge of those matters;

(2) from information transmitted by a person with knowledge of those matters;

(3) by a person who otherwise had a duty to record information concerning such matters on behalf of the above-named business;

(B) was kept in the course of a regularly conducted business activity;

(C) was made by the business as a regular practice; and,

(D) if not an original record, is a duplicate of the original.

\_\_\_\_ (date of execution)

\_\_\_\_ (country of execution)

\_\_\_\_ (signature)

Form B

#### CERTIFICATION OF ABSENCE OF BUSINESS RECORDS

I, \_\_\_\_ (name), having been advised as a witness that a false attestation subjects me to a penalty of criminal punishment, attest as follows:

I am employed by/associated with \_\_\_\_ (name of business from which documents are sought) in the position of \_\_\_\_ (business position or title) and by reason of my position am authorized and qualified to make this attestation.

As a result of my employment/association with the above-named business, [41] I am familiar with the business records it maintains. The business maintains business records that are:

(A) made, at or near the time of the occurrence of the matters set forth therein [ircle appropriate number(s)]:

(1) by a person with knowledge of those matters;

(2) from information transmitted by a person with knowledge of those matters;

(3) by a person who otherwise had a duty to record information concerning such matters on behalf of the above-named business;

(B) kept in the course of a regularly conducted business activity; and

(C) 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.

\_\_\_\_ (date of execution)

\_\_\_\_ (country of execution)

\_\_\_\_ (signature) [42]

#### Form C

#### CERTIFICATION OF OFFICIAL RECORDS

I, \_\_\_\_ (name), having been advised as a witness that a false attestation subjects me to a penalty of criminal punishment, attest as follows:

1. \_\_\_\_ (name of public authority) is a government office or agency of \_\_\_\_ (country) and is authorized by law to maintain official records setting forth matters required by law to be reported and recorded or filed;
2. my position with the above-named public authority is \_\_\_\_ (official title);
3. in my official capacity I have caused the production of true and accurate copies of records maintained by that public authority; and
4. those copies are described below and attached.

Description of records:

\_\_\_\_ (signature)

(Official Seal or Stamp)

\_\_\_\_ (date)

#### Form D

#### CERTIFICATION OF ABSENCE OF OFFICIAL RECORDS

I, \_\_\_\_ (name), having been advised as a witness that a false attestation subjects me to a penalty of criminal punishment, attest as follows:

1. \_\_\_\_ (name of public authority) is a government office or agency of \_\_\_\_ (country) and is authorized by law to maintain official records setting forth matters that are required by law to be reported and recorded or filed;
2. records of the [43] type described below set forth matters that are required by law to be reported and recorded or filed, and such matters regularly are recorded or filed by the above-named public authority;
3. my position with the above-named public authority is \_\_\_\_ (official title);
4. in my official capacity I have made, or caused to be made, a diligent search of the above-named public authority's records for the records described below; and;
5. no such records have been found to exist therein.

Description of records:

\_\_\_\_ (signature)

(Official Seal or Stamp)

\_\_\_\_ (date)

Form E

#### CERTIFICATION WITH RESPECT TO SEIZED ITEMS

I, \_\_\_\_ (name), having been advised as a witness that a false attestation subjects me to a penalty of criminal punishment, attest as follows:

1. My position with the Government of \_\_\_\_ (country) is \_\_\_\_ (official title);
2. I received custody of the items listed below from \_\_\_\_ (name of person) on \_\_\_\_ (date) at \_\_\_\_ (place);  
and
3. I relinquished custody of the items listed below to \_\_\_\_ (name of person) on \_\_\_\_ (date) at \_\_\_\_ (place)  
in the same condition as when I received them (or, if different, as noted below).

Description of items:

Changes in condition while [44] in my custody:

\_\_\_\_ (date of execution)

\_\_\_\_ (country of execution)

(Official Seal or Stamp)

\_\_\_\_ (signature)

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