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TREATY BETWEEN THE UNITED STATES OF AMERICA AND ROMANIA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The United States of America and Romania,

Desiring [19] to improve the effectiveness 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 Contracting 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 or statements of persons;
 - (b) providing documents, records, and other items;
 - (c) locating or identifying persons or items;
 - (d) serving documents;
 - (e) transferring persons in custody for testimony or other purposes;
 - (f) executing searches and seizures;
 - (g) assisting in proceedings related to immobilization and forfeiture of assets; restitution; collection of fines; and
 - (h) any other form of assistance not prohibited by the laws of the Requested State.
3. Except as otherwise provided in this Treaty, assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution, or proceeding in the Requesting State would constitute [20] an offense under the laws of the Requested State.
4. This Treaty is intended solely for mutual legal assistance between the Contracting 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 Contracting Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.
2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General. For Romania, the Central Authority shall be the Minister of Justice.
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 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;
 - (b) the execution of the request would prejudice the security or similar essential interests of the Requested State;
 - (c) the request relates to an offense which is considered by the Requested [21] State to be a political offense; 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 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 Central Authority of the Requested State denies assistance pursuant to this Article, it shall inform the Central Authority of the Requesting State of the reasons for the denial.
4. The Requested State shall not refuse to execute a request on the ground of bank secrecy.

Article 4

Form and Contents 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. If the request is not in writing, it shall be confirmed in writing within ten days unless the Central Authority of the Requested State agrees otherwise.
2. The request shall be translated into the language of the Requested State unless otherwise agreed. [22] Any supporting documentation shall be translated into the language of the Requested State, if necessary, upon request by the Requested State.
3. 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 that relate to the matter;

(c) a description of the evidence, information, or other assistance sought; and

(d) the reasons for which the evidence, information, or other assistance is sought.

4. 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 the manner in which any testimony [23] or statement is to be taken and recorded;

(f) a description of the testimony or statement sought, which may include a list of questions to be asked of a person;

(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 Requesting State will be entitled;

(i) any time limit within which the request should be executed; and

(j) 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 the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request. The competent judicial or other authorities of the Requested State shall have power to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. The Central Authority of the Requested State shall make all necessary arrangements for representation of the Central Authority of the Requesting [24] State in the execution of a request for assistance in the Requested State.

3. Requests shall be executed according to the laws and procedures of the Requested State except to the extent that this Treaty provides otherwise. Procedures specified in the request shall be followed except to the extent that those procedures cannot lawfully be followed in the Requested State.

4. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that State, it may postpone execution, or make execution subject to conditions determined to be necessary after consultations with 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 such confidentiality, the Central Authority of the Requested State shall,

prior to the execution of the request, so inform the [25] 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 inquiries by the Central Authority of the Requesting State concerning 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 a request. If execution of the request is denied, delayed, or postponed, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the reasons therefor.

Article 6

Costs

1. The Requested State shall pay all costs relating to the execution of a request, including the costs of representation, except for the following, which shall be paid by the Requesting State:

(a) the fees of experts;

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

(c) the allowances and expenses related to travel of persons pursuant to Articles 10, 11 and 12.

2. If during the execution of a request it becomes apparent that complete execution will entail expenses of an extraordinary nature, [26] the Central Authorities shall consult to determine the terms and conditions under which execution may continue.

Article 7

Limitations on Use

1. The Central Authority of the Requested State may require that the Requesting State not use any information or evidence obtained under this Treaty in any investigation, prosecution, or proceeding other than that 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.

2. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential or be used only subject to terms and conditions it may specify. If the Requesting State accepts the information or evidence subject to such conditions, the Requesting State shall use its best efforts to comply with the conditions.

3. Nothing in this Article shall preclude the use or disclosure of information or evidence to the extent that there is an obligation to do so under the Constitution of the Requesting State in a criminal prosecution. The Requesting State shall notify the Requested State in advance of any such use or [27] disclosure.

4. Information or evidence that has been made public in the Requesting State in a manner consistent with paragraph 1 or 2 may thereafter be used.

Article 8

Testimony or Evidence in the Requested State

1. A person in the Requested State from whom testimony or evidence is requested shall be compelled, if necessary, to appear, testify, or produce items, including documents, records and articles of evidence.

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

3. The Requested State shall permit the presence of such persons as specified in the request during the execution of the request and shall allow such persons to pose questions to be asked of the person giving the testimony or evidence. The persons present at the execution of a request shall be permitted to make a verbatim record of the proceedings. The use of technical means to make such a verbatim record shall be permitted.

4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, but not under the laws [28] of the Requested State, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by the authorities of that State.

5. Evidence that has been produced in the Requested State pursuant to this Article or that has been the subject of testimony taken under this Article shall, upon request, be certified by an attestation, including, in the case of business records, certification in the manner indicated in Form A appended to this Treaty. The absence or nonexistence of such records shall, upon request, be certified through the use of Form B appended to this Treaty. Records certified by Form A, or Form B certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting State.

Article 9

Official Records

1. The Requested State shall provide the Requesting State with copies of publicly available records, including documents or information in any form, in the possession of a governmental or judicial authority in the Requested State.

2. The Requested State may provide copies of any records, including documents or information in any form, that are in the possession of a governmental [29] or judicial authority in that State but that are not publicly available, to the same extent and under the same conditions as such copies would be available to the Requested State's own governmental or judicial authorities. The Requested State may in its discretion deny a request for records that are not publicly available, entirely or in part.

3. Records produced pursuant to this Article shall, upon request, be certified 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 by an official responsible for maintaining similar records through the use of Form D appended to this Treaty. No further certification shall be necessary. Records certified by Form C, or Form D certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting State.

Article 10

Appearance Outside of the Requested State

1. When the Requesting State requests that a person in the Requested State appear in the Requesting State or in a third state for the purpose of assistance under this Treaty, the Requested State shall invite the person to do so. The person [30] may agree or refuse to appear. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the person's response. If necessary, the Requesting State shall be responsible for obtaining any authorization from a third state.

2. The Requesting State shall indicate the extent to which the person's 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. The Central Authority of the Requesting State may, in its discretion, determine that a person appearing in the Requesting State 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 that preceded the person's departure from the Requested State.

4. The safe conduct provided for in paragraph 3 of this Article shall cease seven days after the Central Authority of the Requesting State has notified the Central Authority of the Requested State that the person's presence is no longer required, or when the person, [31] having left the Requesting State, voluntarily returns. The Central Authority of the Requesting State 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 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 from the Requested State for that purpose if the person consents and if the Central Authorities of both States agree. If necessary, the Requesting State shall be responsible for obtaining any authorization from a third state.

2. A 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 for that purpose 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 authorized by the sending State;

(b) the receiving State shall [32] return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities;

(c) the receiving State shall not require the sending State to initiate extradition or any other 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 State for time served in the custody of the receiving State.

Article 12

Transit of Persons in Custody

1. The Requested State may authorize the transit through its territory of a person held in custody, by the Requesting State or a third State, whose personal appearance has been requested by the Requesting State in an investigation, prosecution, or proceeding.

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

Article 13

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 14

Service of Documents

1. The Requested State shall use its best efforts [33] 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 Treaty.
2. 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 a reasonable time before the scheduled appearance.
3. The Requested State shall return a proof of service in the manner specified in the Request.

Article 15

Search and Seizure

1. The Requested State shall execute a request that it search for, seize, and transfer 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, every official who has custody of a seized item shall certify, through the use of Form E appended to this Treaty, the identity of the item, the continuity of custody, and any changes in condition. No further certification shall be required. The Forms shall be admissible in evidence in the Requesting State.
3. The Central Authority of the Requested State may require that the Requesting State agree to terms and conditions deemed to be necessary to protect third [34] party interests in the item to be transferred.

Article 16

Return of Items

The Central Authority of the Requested State may require that the Central Authority of the Requesting State return, as soon as possible, any items, including documents, records and other articles of evidence, furnished to it in execution of a request under this Treaty.

Article 17

Proceeds and Instrumentalities of Offenses

1. If the Central Authority of one Contracting Party becomes aware that proceeds or instrumentalities of offenses that may be forfeitable or otherwise subject to seizure are located in the other Contracting Party, it may so inform the Central Authority of the other Contracting Party. If the Contracting Party receiving such information 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. The Central Authority of the Contracting Party that received the information shall inform the Central Authority of the Contracting Party that provided the information of the action taken.
2. The Contracting Parties shall assist each other [35] to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions. This may include action to temporarily immobilize the proceeds or instrumentalities pending further proceedings.

3. The Contracting Party that has custody over proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws. Either Contracting Party may transfer to the other Contracting Party all or part of such assets, or the proceeds of their sale, to the extent not prohibited by the transferring Contracting Party's laws and upon such terms as it deems appropriate.

Article 18

Compatibility with Other Arrangements

Assistance and procedures set forth in this Treaty shall not prevent either Contracting Party from granting assistance to the other Contracting Party through the provisions of other applicable international agreements, or through the provisions of its national laws. The Contracting Parties may also provide assistance pursuant to any bilateral arrangement, agreement, or practice that may be applicable. [36]

Article 19

Consultation

The Central Authorities of the Contracting 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 20

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 its entry into force whether the relevant acts or omissions occurred prior to or after that date.
4. Either Contracting Party may terminate this Treaty by means of written notice to the other Contracting Party. Termination shall take effect six months following the date of receipt of the notification.

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

DONE at Washington, in duplicate, this twenty-sixth day of May, 1999, in the English and Romanian languages, both texts being equally authentic. [37]

FOR THE UNITED STATES OF AMERICA:

FOR ROMANIA:

Form A

CERTIFICATION OF BUSINESS RECORDS

I, ____ [ame], attest on penalty of criminal punishment for false statement or attestation that I am employed by/associated with ____ [ame of business from which documents are sought] in the position of ____ [usiness position or title] and by reason of my position am authorized and qualified to make this attestation. Each of the records attached 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, by (or from information transmitted by) a person with knowledge of those matters;

(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.

____ [ate of execution]

____ [lace of execution]

____ [ignature]

Form B

CERTIFICATION OF ABSENCE OR NONEXISTENCE OF BUSINESS RECORDS

I, ____ [ame], attest on penalty of criminal punishment for false statement or attestation that I am employed by/associated with ____ [ame of business from which documents [38] are sought] in the position of ____ [usiness 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, I am familiar with the business records it maintains. The business maintains records that are:

(A) 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) 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:

____ [ate of execution]

____ [lace of execution]

____ [ignature]

Form C

CERTIFICATION OF OFFICIAL RECORDS

I, ____ [ame], attest on penalty of criminal punishment for false statement or attestation that:

1. ____ [ame of office or agency] [39] is an office or agency of ____ [ountry] and is authorized by law to maintain official records setting forth matters authorized by law to be reported and recorded or filed;

2. My position with the above-named public authority is ____ [fficial 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 Documents:

____ [ignature]

____ [ate]

Official Seal

Form D

CERTIFICATION OF ABSENCE OR NONEXISTENCE OF OFFICIAL RECORDS

I, ____ [ame], attest on penalty of criminal punishment for false statement or attestation that:

1. ____ [ame of office or agency] is an office or agency of ____ [ountry] and is authorized by law to maintain official records setting forth matters authorized by law to be reported and recorded or filed;
2. Records of the type described below set forth matters that are authorized 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 ____ [fficial title] [40] ;
4. I have made or caused to be made a diligent search of the records maintained by that public authority; and
5. No such records have been found to exist therein.

Description of Documents:

____ [ignature]

____ [ate]

Official Seal

Form E

CERTIFICATION WITH RESPECT TO SEIZED ITEMS

I, ____ [ame], attest on penalty of criminal punishment for false statement or attestation that:

1. My position with ____ [ountry] is ____ [fficial title, including agency];
2. I received custody of the items listed below from ____ [ame of person] on ____ [ate], at ____ [lace]; and
3. I relinquished custody of the items listed below to ____ [ame of person] on ____ [ate], at ____ [lace] in the same condition as when I received them (or, if different, as noted below).

Description of Articles:

Changes in condition while in my custody:

____ [ate of execution]

____ [lace of execution]

____ [ignature]

Official Seal

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