

# United Nations Office on Drugs and Crime

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

The United States of America and the Republic of Poland;

Desiring to improve the effectiveness of the law enforcement authorities of both countries in the investigation, prosecution, and prevention of crime through [17] 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. The Contracting Parties shall also provide such assistance for forfeiture and other proceedings directly related to criminal offenses, where such assistance is not prohibited by the laws of the Requested State.
2. Assistance shall include:
  - a) taking the testimony or statements of persons;
  - b) providing documents, records, and articles of evidence;
  - c) locating or identifying persons or items;
  - d) serving documents;
  - e) transferring persons in custody for testimony or other purposes;
  - f) executing requests for searches and seizures;
  - g) assisting in proceedings related to immobilization and forfeiture of assets, restitution to the victims of crime, collection of fines; and
  - h) any other form of assistance not prohibited by the laws of the Requested State.
3. Assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution, [18] or proceeding in the Requesting State would constitute an offense under the laws of the Requested State.
4. This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

### Article 2

## Central Authorities

1. Each Contracting Party shall have 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 the Republic of Poland, the Central Authority shall be the Minister of Justice - Attorney General or a person designated by the Minister of Justice - Attorney General.
3. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

## Article 3

### Limitations on Assistance

1. The Central Authority of the Requested 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 request relates to a political offense; [19]
  - c) the execution of the request would prejudice the security or similar essential interests of the Requested State; or
  - d) the request is not made in conformity with the Treaty.
2. Before denying assistance pursuant to this Article, the Central Authorities shall consult to consider whether assistance can be given subject to such conditions as the Central Authority of the Requested State 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, it shall inform the Central Authority of the Requesting State of the reasons for the denial.

## 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 emergency situations. In any such case, the request shall be confirmed in writing within ten days thereafter unless the Central Authority of the Requested State agrees otherwise. The request shall be in the language of the Requested State unless otherwise agreed.
2. The request shall include the following:
  - a) the name of the [20] authority conducting the investigation, prosecution, or proceeding to which the request relates;
  - b) information describing the facts of the offenses and the procedural history of the case;
  - c) the text of the laws describing the offenses for which assistance is requested;
  - d) a description of the evidence, information, or other assistance sought; and

e) a statement of the purpose for which the evidence, information, or other assistance is sought.

3. To the extent necessary and possible, a request shall also include:

a) information on the identity and location of any person who is to provide testimony or evidence;

b) information on the identity and location of a person to be served, that person's status in the case, and the manner in which service is to be made;

c) information on the identity and whereabouts of persons or items to be located;

d) a precise description of the place or person to be searched and of the items to be seized;

e) a description of the manner in which any testimony or statement is to be taken and recorded;

f) a list of questions to be asked of a person from whom testimony or a statement is sought;

g) a description of any particular procedure [21] 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; and

i) any other information that may assist the Requested State in executing 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 judicial or other competent authorities of the Requested State shall 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 the representation in the Requested State of the Requesting State in any proceedings arising out of a request for assistance.

3. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. However, the method of execution specified in the request shall be followed except insofar as it is prohibited by [22] 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 investigation, prosecution, or proceeding in that State, it may postpone execution, or make execution subject to conditions determined 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 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 inquiries 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 [23] Authority of the Requesting State of the outcome of the execution of the request. If 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

The Requested State 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 and translation;
- c) the costs of recording by private parties of testimony or statements, or the costs of preparation by private parties of written records or videotapes of testimony or statements; and
- d) the allowances and expenses related to travel of persons travelling to a place in the Requested State as requested by the Requesting State, or pursuant to Article 10 or Article 11.

## Article 7

### Limitations on Use

1. The Central Authority of the Requested State may request 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 cases, [24] the Requesting State shall comply with this condition.
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 to the extent that such information is exculpatory to a defendant in a criminal prosecution. The Requesting State shall notify the Requested State in advance of any such proposed disclosure.
4. Information or evidence which has been made public in the Requesting State in a manner consistent with paragraph 1 or 2 may thereafter be used for any purpose.

## Article 8

### Testimony or Evidence in the Requested State

1. A person in the Requested State from whom testimony or evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and testify or produce items, including documents, records, and articles of evidence. A person who gives false testimony, either orally or [25] in writing, in execution of a request, shall be subject to prosecution and punishment in the Requested State in accordance with the criminal laws of that State, regardless of whether the person would also be subject to prosecution and punishment in the Requesting State.
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 question the person giving the testimony or evidence.

4. If the person referred to in paragraph 1 invokes a right to decline to provide testimony or evidence under the laws of the Requesting State, the testimony or evidence shall nonetheless be taken as requested. Thereafter, the Central Authority of the Requested State shall transmit the testimony or evidence, together with the asserted claim, for resolution by the competent authorities of the Requesting State.

5. Evidence produced in the Requested State pursuant to this Article or that is the subject of testimony taken [26] 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 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 or nonexistence of such records, shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

## Article 9

### Official Documents and Records of Government Agencies

1. The Requested State shall provide the Requesting State with copies of 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 requirement and are in the possession of an executive, legislative, or judicial authority in the Requested State.

2. The Requested State may provide copies of any documents, records, or information in any form that are in the possession of an executive, legislative, or judicial authority in that State, but that are not publicly available, to the same extent and under the [27] 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 an executive, legislative, or judicial authority 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 or nonexistence 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

### Appearance in the Requesting State

1. When the Requesting State requests the appearance of a person in that State, the Requested State shall invite the person to appear before the appropriate authority in the Requesting State. The Requesting State shall indicate the extent to which the person's expenses will be paid. The Central Authority of the Requested State shall promptly inform the Central Authority [28] of the Requesting State of the person's response.

2. A person appearing in the Requesting State shall not be 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.

3. The safe conduct provided for by this Article shall cease fifteen consecutive days from the date when the person's presence is no longer required, and that person, having had an opportunity to leave, has nevertheless remained in the Requesting State, or, having left, has returned.

## Article 11

### Temporary Transfer of Persons in Custody

1. A person in the custody of the Requested State whose presence in the Requesting State is sought for purposes of assistance under this Treaty shall be transferred temporarily from the Requested State to the Requesting State for that purpose if the person consents and if the Central Authorities of both States agree.
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 shall be transferred temporarily from the Requesting State to the Requested State if the person [29] 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 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

### 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 13

### Service of Documents

1. The Requested State shall use its best efforts to effect service of any document relating to any request for assistance made by the Requesting State under the provisions [30] 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 to the Requesting State in the manner specified in the Request.

## Article 14

### Search and Seizure

1. The Requested State shall execute a request for the search, seizure, and delivery 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 in the Requested State who has had 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 its custody, and any changes in its condition. No further certification shall be required. 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 [31] necessary by the Central Authority of the Requested State to protect third party interests in the item to be transferred.

## Article 15

### 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, or articles of evidence furnished to it in execution of a request under this Treaty.

## Article 16

### Assistance in Forfeiture Proceedings

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

2. The Contracting Parties shall assist each other to the extent [32] permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses, as well as in proceedings relating to 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 Party that has custody over proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws. Either Party may transfer all or part of such assets, or the proceeds of their sale, to the other Party, to the extent permitted by the transferring Party's laws and upon such terms as it deems appropriate.

## Article 17

### Compatibility with Other Treaties

Assistance and procedures set forth in this Treaty shall not prevent either of the Contracting Parties from granting assistance to the other Party through the provisions of other applicable international agreements. The Parties may also provide assistance pursuant to established practices in a manner consistent with their laws.

## Article 18

### Consultation

The Central Authorities of the Contracting Parties shall consult, at times [33] mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

## Article 19

### Ratification, Entry Into Force, and Termination

1. This Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged at Warsaw as soon as possible.
2. This Treaty shall enter into force 30 days after the exchange of instruments of ratification.
3. Either Contracting Party may terminate this Treaty at any time by giving written notice to the other Contracting Party, and the termination shall be effective six months after the date of the receipt of such notice.

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

DONE at Washington, this tenth day of July, 1996, in duplicate, in the English and Polish languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:

FOR THE REPUBLIC OF POLAND

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