



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 3 February 2009

5702/09

**COPEN 15
USA 4
JAIEX 6**

NOTE

From : General Secretariat
To : Delegations

Subject : EU-US Agreements of 25 June 2003 on extradition and mutual legal assistance -
Notifications and designations

Ratification procedures

1. On 6 June 2003 the Council authorised the Presidency to sign the EU-US Agreements on extradition and mutual legal assistance. Twenty-three Member States availed themselves of the possibility of Article 24(5) TEU and indicated they would need to follow constitutional procedures before the Agreements could be binding upon them. At this moment, two Member States (BE, IT) still need to go through a constitutional procedure with regard to the EU-US Agreements, in accordance with the declaration they made under Article 24(5) TEU on 6 June 2003.
2. Under Article 3 of both Agreements, all Member States need to exchange "written instruments" with the United States in order to acknowledge the way in which the provisions of the EU-US Agreements are implemented at the bilateral level (one on mutual legal assistance and one on extradition). All Member States have in the meantime signed such bilateral instruments with the United States, but three Member States (BE, GR and IT) still need to finalise their constitutional procedures with regard to these bilateral instruments.

3. In 2008, the US Senate finalised its ratification procedure for the two EU-US Agreements and 54 bilateral instruments (two per Member State) and the 43th President of the United States of America signed the instruments of ratification.
4. Article 22 of the EU-US Agreement on extradition and Article 18 of the EU-US Agreement on mutual assistance require that the instruments of ratification of the EU-US Agreements indicate that the "steps referred to in Article 3", that is the "acknowledgment" in bilateral instruments of the way in which the EU-US Agreements will be applied, have been completed.

Designations under the agreements

5. The EU-US Agreements also require the European Union to notify the United States of America of a number of designations that may be made. Article 19 of the EU-US Agreement on extradition and Article 15 of the EU-US Agreement on mutual assistance refer to the situations in which such designations may be made, which are also described in the annexes to this note.

Both Article 19 of the EU-US Agreement on extradition and Article 15 of the EU-US Agreement on mutual assistance require these notifications by the European Union to be made 'prior to the exchange of written instruments' between the Member States and the United States of America. In other words, no bilateral exchange of instruments of ratification may take place before the European Union has notified the United States of America of all the necessary designations.'

6. Given the fact that the above-mentioned constitutional procedures are almost all finalised, the Council Secretariat intends to notify the United States of America as soon as possible of the designations under these two Agreements. This will allow those Member States that wish to do so, to proceed to the exchange of bilateral instruments referred to in Article 3 of the EU-US Agreements. In accordance with standard Council practices, this notification will be done by the Agreements Office of the Council by way of *note verbale*.

7. Obviously this *note verbale* needs to reflect accurately the designations that Member States wish to make, as they result from the bilateral instruments that have been signed between the Member States and the United States of America. The tables which have been annexed to this note give an overview of the designations to be notified under the various relevant provisions of the EU-US agreements. The information set out in these tables has been provided to the General Secretariat by the US State Department. Member States are invited to verify this information and inform the General Secretariat whether the information is correct. To that end, delegations are invited to send, no later than 15 February 2009, an email to Guy Stessens (guy.stessens@consilium.europa.eu, + 32 (0) 2 281.67.11).

Territorial application - exchange of diplomatic notes

8. Both Article 20 of the EU-US Agreement on extradition and Article 16 of the EU-US Agreement on mutual legal assistance allow to apply the Agreements, as far as the European Union is concerned, not only to the territories of the Member States to which the TEU applies, but also to 'territories for whose external relations a Member state has responsibility, or countries that are not Member States for whom a Member State has other duties with respect to external relations'. In such case this should be agreed between the European Union and the United States of America by exchange of diplomatic note, duly confirmed by the relevant Member State.

So far only one Member State (The Netherlands) has informed the Council Secretariat of its wish to avail itself of this possibility. Should other Member States wish to do so as well, they are invited to inform the Council Secretariat thereof, no later than 15 February 2009, by an email to Guy Stessens (guy.stessens@consilium.europa.eu, + 32 (0) 2 281.67.11).

EU-US Extradition Agreement Designations

1. Under the Extradition Agreement designations have to be made only when (1) the functions normally fulfilled by the Ministry of Justice, are carried out by a different body (Article 2(3)), or (2) when the bilateral extradition treaty does not determine the competent authority for deciding upon competing extradition requests (Article 10(2)).
2. Texts of relevant provisions of the EU-US Extradition Agreement:

ARTICLE 19

Designation and notification

The European Union shall notify the United States of America of any designation pursuant to Article 2(3) and Article 10(2), prior to the exchange of written instruments described in Article 3(2) between the United States of America and the Member States.

Article 2(3) [Definitions]

3. "Ministry of Justice" shall, for the United States of America, mean the United States Department of Justice; and for a Member State, its Ministry of Justice, except that with respect to a Member State in which functions described in Articles 3, 5, 6, 8 or 12 are carried out by its Prosecutor General, that body may be designated to carry out such function in lieu of the Ministry of Justice in accordance with Article 19, unless the United States and the Member State concerned agree to designate another body.

Article 10(2) [Competing Requests]

2. If a requested Member State receives an extradition request from the United States of America and a request for surrender pursuant to the European arrest warrant for the same person, either for the same offence or for different offences, the competent authority of the requested Member State shall determine to which State, if any, it will surrender the person. For this purpose, the competent authority shall be the requested Member State's executive authority if, under the bilateral extradition treaty in force between the United States and the Member State, decisions on competing requests are made by that authority; if not so provided in the bilateral extradition treaty, the competent authority shall be designated by the Member State concerned pursuant to Article 19.

3. The below chart only shows information for those Member States that have designated authorities other than the Executive Authority as the competent authority for Article 10, and the Ministry of Justice for purposes of Article 2(3). The United States' Article 10 competent authority is the Executive Authority and its Ministry of Justice per Article 2(3) is the Department of Justice.

Member State	Designations re Article 10 (2) – Competing Requests	Designations re Art. 2(3) (conduct of functions under Arts 5, 6, 8 and 12 (authentication, provisional arrest, supplemental documents and transit requests)).
Austria	No designation ¹	No designation ²
Bulgaria	<i>Competent court of law or such authority as the Republic of Bulgaria may designate</i>	No designation
Belgium	No designation	No designation
Cyprus	No designation	No designation

¹ Since bilateral instrument specifies the executive authority.

² Since the bilateral instrument specifies that the Ministry of Justice carries out these functions.

Czech Republic	No designation	No designation
Denmark	No designation	No designation
Estonia	No designation	No designation
Finland	No designation	No designation
France	<i>Chambre d'instruction de la Cour d'appel.</i>	No designation
Germany	No designation	No designation
Hungary	No designation	No designation
Ireland	<i>High Court, or such other authority as it may designate</i>	No designation
Greece	No designation	No designation
Italy	No designation	No designation
Latvia	No designation	<i>Provisional Arrest, Supplemental Documents and Transit requests are handled by Prosecutor General;</i>
Lithuania	No designation	<i>Provisional arrest requests handled by the Office of the Public Prosecutor.</i>
Luxembourg	No designation	No designation
Malta	No designation	No designation
The Netherlands	No designation	No designation
Poland	No designation	No designation
Portugal	<i>Competent Judicial Authority</i>	<i>Prosecutor General</i>
Romania	<i>Judicial Authority</i>	No designation
Slovak Republic	No designation	No designation
Slovenia	<i>Supreme Court of the Republic of Slovenia</i>	No designation
Spain	No designation	No designation
Sweden	No designation	No designation
United Kingdom	No designation	<i>Home Office</i>

EU-US Mutual Legal Assistance Agreement Designations

1. Under the Mutual Legal Assistance Agreement designations have to be made in three cases. First, for those Member States not having a bilateral mutual legal assistance treaty (MLAT) with the United States of America, the Ministry of Justice shall be the central authority unless a different authority is designated in accordance with Article 8(2)(b). Second, under Article 4(3)(a) Member States may designate a national authority responsible for investigation or prosecution of criminal offences as authority responsible for the transmission of requests for assistance in the area of bank information, should they choose not to allocate this responsibility to their central authority. Third, under Article 4(3)(b) Member States may limit their obligation to provide assistance in the area of bank information to certain types of crimes.
2. Texts of relevant provisions of the EU-US Mutual Legal Assistance Agreement:

ARTICLE 15

Designations and notifications

1. Where a Ministry other than the Ministry of Justice has been designated under Article 8(2)(b), the European Union shall notify the United States of America of such designation prior to the exchange of written instruments described in Article 3(3) between the Member States and the United States of America.
2. The Contracting Parties, on the basis of consultations between them on which national authorities responsible for the investigation and prosecution of offences to designate pursuant to Article 4(3), shall notify each other of the national authorities so designated prior to the exchange of written instruments described in Article 3(2) and (3) between the Member States and the United States of America. The European Union shall, for Member States having no mutual legal assistance treaty with the United States of America, notify the United States of America prior to such exchange of the identity of the central authorities under Article 4(3).

3. The Contracting Parties shall notify each other of any limitations invoked under Article 4(4) prior to the exchange of written instruments described in Article 3(2) and (3) between the Member States and the United States of America.

Article 8 (2)(b): [Assistance to Administrative Authority]

(b) In the absence of a treaty, requests shall be transmitted between the United States Department of Justice and the Ministry of Justice or, pursuant to Article 15(1), comparable Ministry of the Member State concerned responsible for transmission of mutual legal assistance requests, or between such other authorities as may be agreed by the Department of Justice and such Ministry.

Article 4 (3) and (4): [Bank Information]

3. Requests for assistance under this Article shall be transmitted between:

(a) central authorities responsible for mutual legal assistance in Member States, or national authorities of Member States responsible for investigation or prosecution of criminal offences as designated pursuant to Article 15(2), and

(b) national authorities of the United States responsible for investigation or prosecution of criminal offences, as designated pursuant to Article 15(2).

The Contracting Parties may, following the entry into force of this Agreement, agree by exchange of diplomatic note to modify the channels through which requests under this Article are made.

4. (a) Subject to subparagraph (b), a State may, pursuant to Article 15, limit its obligation to provide assistance under this Article to:

(i) offences punishable under the laws of both the requested and requesting States;

- (ii) offences punishable by a penalty involving deprivation of liberty or a detention order of a maximum period of at least four years in the requesting State and at least two years in the requested State; or
- (iii) designated serious offences punishable under the laws of both the requested and requesting States;

(b) A State which limits its obligation pursuant to subparagraph (a)(ii) or (iii) shall, at a minimum, enable identification of accounts associated with terrorist activity and the laundering of proceeds generated from a comprehensive range of serious criminal activities, punishable under the laws of both the requesting and requested States.

3. Unless subsequently modified in accordance with the terms of the agreement:

I. The United States authority designated for purposes of Article 4(3) is the attaché responsible for the Member State concerned of (a) US Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction; (b) US Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction; and (c) US Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

II. Pursuant to Articles 4(4) and 15(3), the assistance described in Article 4 is available from the United States with respect to money laundering and terrorist activity punishable under the laws of the requesting and requested States and with respect to such other criminal activity as the United States may notify the Member State concerned.

III. For the United States, requests under Article 8 will be transmitted by and to its Central Authority under mutual legal assistance treaties in force, and in the absence of a treaty by and to the US Department of Justice. The United States has accordingly not made any designation pursuant to Article 15(1).

IV. The Member States of the European Union have, in the bilateral instruments concluded with the United States, designated authorities pursuant to Article 15 as follows:

Member State	Article 4 (3) and (4) Banking Designation (See Art. 15 (2), (3))	Article 8 (2)(b) Admin. Assist. Designation (See Art. 15(1))
Austria	<p><i>Ministry of Justice.</i></p> <p><i>Assistance will be provided with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as Austria may notify the United States.</i></p>	<p>No designation (i.e. requests shall be transmitted by and to the central authority under the bilateral MLAT with the U.S.)</p>
Belgium	<p><i>Minister of Justice.</i></p> <p><i>Assistance will be provided with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as Belgium may notify the United States</i></p>	<p>No designation (i.e. requests shall be transmitted by and to the central authority under the bilateral MLAT with the U.S.)</p>
Bulgaria	<p><i>Supreme Cassation Prosecutors Office during pretrial and the Ministry of Justice during the trial.</i></p> <p><i>Assistance will be provided with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as the State may notify each other.</i></p>	<p>No designation (i.e. since there is no bilateral MLAT, requests shall be transmitted by and to the Ministry of Justice).</p>

Cyprus	<p><i>Minister of Justice and Public Order or his designee.</i></p> <p><i>Assistance will be provided with respect to offences punishable by a penalty involving deprivation of liberty or a detention order of a maximum period of at least four years in the requesting State and at least two years in the requested States.</i></p>	No designation (i.e. requests shall be transmitted by and to the central authority under the bilateral MLAT with the U.S.)
Czech Republic	<p><i>Office of the Prosecutor General and the Ministry of Justice.</i></p> <p><i>Assistance will be provided with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as the Czech Republic may notify the United States.</i></p>	No designation (i.e. requests shall be transmitted by and to the central authority under the bilateral MLAT with the U.S.)
Denmark	<p><i>Ministry of Justice.</i></p> <p><i>Assistance will be provided with respect to offences punishable under the laws of the requesting State by a penalty of four years and under the laws of the requested State by a penalty of two years.</i></p>	No designation (i.e. since there is no bilateral MLAT, requests shall be transmitted by and to the Ministry of Justice).

Estonia	<p><i>Ministry of Justice.</i></p> <p><i>Assistance will be provided with respect to offences punishable under the laws of the requesting and requested States.</i></p>	No designation (i.e. requests shall be transmitted by and to the central authority under the bilateral MLAT with the U.S.)
Finland	<p><i>Ministry of Justice.</i></p> <p><i>Assistance will be provided with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as Finland may notify the United States.</i></p>	No designation (i.e. since there is no bilateral MLAT, requests shall be transmitted by and to the Ministry of Justice).
France	<p><i>Ministry of Justice.</i></p> <p>No limitation invoked under Article 4(4).</p>	No designation (i.e. requests shall be transmitted by and to the central authority under the bilateral MLAT with the U.S.)
Germany	<p><i>Federal Ministry of Justice.</i></p> <p><i>Assistance will be provided with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as the States may notify each other.</i></p>	No designation (i.e. requests shall be transmitted by and to the central authority under the bilateral MLAT with the U.S.)

Greece	<p><i>Ministry of Justice.</i></p> <p><i>Assistance will be provided with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as the States may notify each other.</i></p>	No designation (i.e. requests shall be transmitted by and to the central authority under the bilateral MLAT with the U.S.)
Hungary	<p><i>Prosecutor General, provided however that a request from Hungary concerning a matter in which trial has commenced shall be transmitted by the Ministry of Justice.</i></p> <p><i>Assistance will be provided with respect of criminal activity punishable under the laws of both States.</i></p>	No designation (i.e. requests shall be transmitted by and to the central authority under the bilateral MLAT with the U.S.)
Ireland	<p><i>Minister of Justice, Equality and Law Reform, or designee.</i></p> <p><i>Assistance will be provided with respect to money laundering and terrorist activity punishable under the laws of both States, and with respect to other criminal activity punishable by a maximum sentence of at least five years' imprisonment or more serious penalty under Irish law and also punishable under United States law.</i></p>	No designation (i.e. requests shall be transmitted by and to the central authority under the bilateral MLAT with the U.S.)

Italy	<p><i>Minister of Justice.</i></p> <p><i>Assistance will be provided with respect to terrorist and money laundering activity punishable under the laws of both States, including activities punishable as the offence of money laundering in the United States but as a predicate offence to money laundering under Italian law, and such other criminal activity as Italy may subsequently designate.</i></p>	No designation (i.e. requests shall be transmitted by and to the central authority under the bilateral MLAT with the U.S.)
Latvia	<p><i>Office of the Prosecutor General during the pretrial investigation, and the Ministry of Justice during trial.</i></p> <p><i>Assistance will be provided with respect to any criminal activity.</i></p>	No designation (i.e. requests shall be transmitted by and to the central authority under the bilateral MLAT with the U.S.)
Lithuania	<p><i>Office of the Prosecutor General.</i></p> <p><i>Assistance will be provided with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as the States may notify each other.</i></p>	No designation (i.e. requests shall be transmitted by and to the central authority under the bilateral MLAT with the U.S.)

Luxembourg	<p><i>Parquet Général.</i></p> <p><i>Assistance will be provided with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as the States may notify each other</i></p>	No designation (i.e. requests shall be transmitted by and to the central authority under the bilateral MLAT with the U.S.)
Malta	<p><i>Office of the Attorney General.</i></p> <p><i>Assistance will be provided with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as the States may notify each other.</i></p>	<i>Office of the Attorney General</i>
The Netherlands	<p><i>Minister of Justice.</i></p> <p><i>Assistance will be provided with respect to activity punishable under the laws of both States and which is a “misdrijf” (crime) under the Dutch law, which includes but is not limited to money laundering and terrorist activity.</i></p>	No designation (i.e. requests shall be transmitted by and to the central authority under the bilateral MLAT with the U.S.)

Poland	<p><i>Minister of Justice-Attorney General, or designee.</i></p> <p><i>Assistance will be provided with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as the States may notify each other</i></p>	No designation (i.e. requests shall be transmitted by and to the central authority under the bilateral MLAT with the U.S.)
Portugal	<p><i>Prosecutor General's Office (Procuradoria Geral da Republica).</i></p> <p><i>Assistance will be provided with respect to money laundering, organized crime, drug trafficking, and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as Portugal may notify the United States.</i></p>	<i>Prosecutor General's Office (Procuradoria General da Republica).</i>
Romania	<p><i>Ministry of Justice.</i></p> <p><i>Assistance provided under this article with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as subsequently may be agreed to by the Parties.</i></p>	No designation (i.e. requests shall be transmitted by and to the central authority under the bilateral MLAT with the U.S.)

Slovak Republic	<p><i>Ministry of Justice.</i></p> <p><i>Assistance will be provided with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as the States may notify each other.</i></p>	No designation (i.e. since there is no bilateral MLAT, requests shall be transmitted by and to the Ministry of Justice).
Slovenia	<p><i>Ministry of Justice.</i></p> <p><i>Assistance will be provided with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as the States may notify each other.</i></p>	No designation (i.e., since there is no bilateral MLAT, requests shall be transmitted by and to the Ministry of Justice).
Spain	<p><i>Ministry of Justice.</i></p> <p><i>Assistance will be provided with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as the States may notify each other.</i></p>	No designation (i.e. requests shall be transmitted by and to the central authority under the bilateral MLAT with the U.S.)

Sweden	<p><i>Ministry of Justice.</i></p> <p><i>Assistance will be provided with respect to offences punishable under the laws of both States.</i></p>	No designation (i.e. requests shall be transmitted by and to the central authority under the bilateral MLAT with the U.S.)
United Kingdom	<p><i>Lord Advocate, where the request relates only to Scotland, the Secretary of State for Northern Ireland, where the request relates only to Northern Ireland, and the Secretary of State for the Home Department in all other cases.</i></p> <p><i>Assistance will be provided with respect to money laundering and terrorist activity punishable under the laws of both States and with respect to such other criminal activity as the States may notify each other.</i></p>	No designation (i.e. requests shall be transmitted by and to the central authority under the bilateral MLAT with the U.S.)
