

Bulgaria International Extradition Treaty with the United States

September 19, 2007, Date-Signed

May 21, 2009, Date-In-Force

Message from the President of the United States

January 22, 2008.--Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

LETTER OF TRANSMITTAL

The White House, January 22, 2008.
To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Extradition Treaty between the Government of the United States of America and the Government of the Republic of Bulgaria (the "Extradition Treaty" or the "Treaty") and the Agreement on Certain Aspects of Mutual Legal Assistance in Criminal Matters between the Government of the United States of America and the Government of the Republic of Bulgaria (the "MLA Agreement"), both signed at Sofia on September 19, 2007. I also transmit, for the information of the Senate, the report of the Department of State with respect to the Extradition Treaty and the MLA Agreement.

The new Extradition Treaty would replace the outdated Extradition Treaty between the United States and Bulgaria, signed in Sofia on March 19, 1924, and the Supplementary Extradition Treaty, signed in Washington countries on mutual legal assistance in on June 8, 1934. between the two criminal matters. The MLA Agreement is the first agreement Both the Extradition Treaty and the MLA Agreement fulfill the requirements for bilateral instruments (between the United States and each European Union (EU) Member State) that are contained in the Extradition and Mutual Legal Assistance Agreements between the United States and the EU currently before the Senate.

The Extradition Treaty follows generally the form and content of other extradition treaties recently concluded by the

United States. It would replace an outmoded list of extraditable offenses with a modern "dual criminality" approach, which would enable extradition for such offenses as money laundering, and other newer offenses not appearing on the list. The Treaty also contains a modernized "political offense" clause, and it provides that extradition shall not be refused based on the nationality of a person sought for any of a comprehensive list of serious offenses. Finally, the new Treaty incorporates a series of procedural improvements to streamline and speed the extradition process.

Because the United States and Bulgaria do not have a bilateral mutual legal assistance treaty in force between them, the MLA Agreement is a partial treaty governing only those issues regulated by the U.S.-EU Mutual Legal Assistance Agreement, specifically: identification of bank information, joint investigative teams, video-conferencing, expedited transmission of requests, assistance to administrative authorities, use limitations, confidentiality, and grounds for refusal. This approach is consistent with that taken with the other EU Member States (Denmark, Finland, Malta, Portugal, Slovak Republic, and Slovenia) with which the United States did not have an existing mutual legal assistance treaty.

I recommend that the Senate give early and favorable consideration to the Extradition Treaty and MLA Agreement, along with the U.S.-EU Extradition and Mutual Legal Assistance Agreements and the other related bilateral instruments between the United States and European Union Member States.

George W. Bush.

Department of State

Washington, November 1, 2007

The President

The White House.

The President: I have the honor to submit to you the Extradition Treaty between the Government of the United States of America and the Government of the Republic of Bulgaria (the "Extradition Treaty") and the Agreement on Certain Aspects of Mutual Legal Assistance in Criminal Matters between the Government of the United States of America and the Government

of the Republic of Bulgaria (the "MLA Agreement"), both signed at Sofia on September 19, 2007. Upon its entry into force, the Extradition Treaty would replace the Extradition Treaty between the United States and Bulgaria, signed at Sofia on March 19, 1924, and the Supplementary Extradition Treaty, signed at Washington on June 8, 1934. The MLA Agreement is the first treaty between the two countries on mutual legal assistance in criminal matters. The Extradition Treaty and the MLA Agreement fulfill the requirements of the Agreements on Extradition and Mutual Legal Assistance between the United States of America and the European Union, both signed on June 25, 2003, which were transmitted to the Senate on September 28, 2006, for implementing bilateral instruments between the United States and each member state of the European Union. The article-by-article analyses of the two instruments are enclosed in this report. I recommend that the Extradition Treaty and the MLA Agreement be transmitted to the Senate for its advice and consent to ratification. Both instruments are self-executing and will not require implementing legislation.

Respectfully submitted,

Condoleezza Rice.

Enclosures: Overviews and analyses of the provisions of the Extradition Treaty and MLA Agreement.

Extradition Treaty Between the Government of the United States of America and the Government of the Republic of Bulgaria

OVERVIEW

The Extradition Treaty between the Government of the United States of America and the Government of the Republic of Bulgaria (the "Extradition Treaty" or the "Treaty") replaces an outdated 1924 extradition treaty, as amended by a 1934 supplementary treaty. This new Extradition Treaty also serves to implement, as between the United States and Bulgaria, the provisions of the Agreement on Extradition between the United States of America and the European Union (the "U.S.-EU Extradition Agreement"), currently before the Senate.

The following is an article-by-article description of the provisions of the Treaty.

Article 1 obligates each Party to extradite to the other,

pursuant to the provisions of the Treaty, persons sought by authorities in the Requesting State for prosecution or for imposition or execution of a sentence for an extraditable offense.

Article 2, which is taken from Article 4 of the U.S.-EU Extradition Agreement, defines extraditable offenses. Article 2(1) defines an offense as extraditable if the conduct on which the offense is based is punishable under the laws in both States by deprivation of liberty for a period of more than one year or by a more severe penalty. The approach taken in the Treaty with respect to extraditable offenses is consistent with the modern "dual criminality" approach, rather than the old "list" approach, and is one of the key benefits of the new Treaty. Use of a "dual criminality" clause, rather than the categories of offenses listed in the 1924 Treaty, obviates the need to renegotiate or supplement the Treaty as additional offenses become punishable under the laws in both States and ensures a comprehensive coverage of criminal conduct for which extradition might be sought.

Article 2(2) further defines an extraditable offense to include an attempt or a conspiracy to commit, or participation in the commission of, an extraditable offense. The Parties intended to include, under the broad description of "participation," the offenses of aiding, abetting, counseling, or procuring the commission of an offense, as well as being an accessory to an offense.

Additional direction is provided by Article 2(3), which provides that an offense shall be an extraditable offense regardless of whether: (a) the laws in the Requesting and Requested States place the acts or omissions constituting the offense within the same category of offenses or describe the offense by the same terminology; (b) the offense is one for which United States federal law requires the showing of such matters as interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being jurisdictional only; or (c) in criminal cases relating to taxes, customs duties, currency control or commodities, the laws of the Requesting and Requested States provide for the same kinds of taxes, customs duties or controls on currency or on the import or export of the same kinds of commodities.

With regard to offenses committed outside the territory of

the Requesting State, Article 2(4) provides that extradition shall be granted in accordance with the provisions of the Treaty if the laws of the Requested State provide for the punishment of such conduct committed outside its territory in similar circumstances. If the laws of the Requested State do not provide for the punishment of such conduct committed outside of its territory in similar circumstances, the executive authority of the Requested State, in its discretion, may proceed with extradition provided that all other requirements for extradition are met.

Article 2(5) provides that, if extradition is granted for an extraditable offense, it shall also be granted for any other offense specified in the request if the latter offense is punishable by one year's deprivation of liberty or less, provided that all other requirements for extradition are met.

Article 2(6) provides that, where the extradition request is for enforcement of a sentence, the deprivation of liberty remaining to be served must be at least four months.

Article 3(1) provides that extradition shall not be refused based on the nationality of the person sought, for any offense falling within a comprehensive list of 30 offenses. The list mirrors those offenses for which surrender of nationals by one member state of the European Union to another is mandatory under the European Arrest Warrant procedure. Under the Bulgarian Constitution, a treaty is required in order for Bulgarian authorities to surrender a Bulgarian citizen to another state for purposes of criminal prosecution. The United States is the first country outside the European Union with which Bulgaria has agreed to extradite nationals.

Article 3(2) provides that the Requested State additionally may choose to extradite a national for an offense not enumerated in paragraph 1. In the event that the Requested State denies extradition on the sole basis of nationality with respect to an offense not enumerated in Article 3(1), under Article 3(3) the Requested State shall, at the request of the Requesting State, submit the case to its competent authorities for prosecution. Under Article 3(4), the Parties also may agree to expand the list in paragraph 1 at a future time.

Article 4 governs political and military offenses as a basis for the denial of extradition. As is customary in extradition treaties, Article 4(1) provides that extradition

shall not be granted if the offense for which extradition is requested constitutes a political offense. Article 4(2) specifies five categories of offenses that shall not be considered to be political offenses:

(a) an offense for which both Parties have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution;

(b) murder, manslaughter, malicious wounding, inflicting grievous bodily harm, assault with intent to cause serious physical injury, and serious sexual assault;

(c) an offense involving kidnapping, abduction, or any form of unlawful detention, including the taking of a hostage;

(d) placing, using, threatening to use, or possessing an explosive, incendiary, or destructive device capable of endangering life, causing substantial bodily harm, or causing substantial property damage; and

(e) a conspiracy or attempt to commit, or participation in the commission of any of the offenses set forth in (a)-(d).

Article 4(3) provides that, notwithstanding Article 4(2), extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated.

Article 4(4) provides that the executive authority of the Requested State may refuse extradition for offenses under military law that are not offenses under ordinary criminal law. Desertion would be an example of such an offense.

Article 5(1) precludes extradition of a person who has been convicted or discharged from proceedings with final and binding effect by the competent authorities in the Requested State for the offense for which extradition is requested. Article 5(1) adopts a similar formulation to the U.S.-Austria Extradition Treaty and clarifies that an acquittal for lack of jurisdiction, or a discharge for lack of jurisdiction, is not

an obstacle to extradition.

Article 5(2) prohibits the Requested State from denying extradition solely based on the existence of criminal jurisdiction in the Requested State. Article 5(2) also ensures that the Parties will apply their domestic law on prior prosecution to give full force and effect to Articles 1 and 3 of the Treaty. Bulgarian criminal law allows for jurisdiction in a wide range of situations, including situations where the accused is a Bulgarian national but committed the crime abroad. In addition, Bulgarian extradition law permits denial of extradition where the offense for which extradition is requested falls within the jurisdiction of Bulgarian courts. Given these provisions of Bulgarian domestic law, Article 5(2) provides important protections to ensure that U.S. extradition requests to Bulgaria will not be denied based on Bulgaria's ability to assert criminal jurisdiction for the same offense for which extradition has been requested.

Article 6 provides that extradition may be denied if prosecution of the offense or execution of the penalty is barred by lapse of time under the laws of the Requesting State. Acts that would interrupt or suspend the prescriptive period in the Requesting State are to be given effect by the Requested State.

Article 7, which is taken from Article 13 of the U.S.-EU Extradition Agreement, concerns capital punishment. It provides that, when an offense for which extradition is sought is punishable by death under the laws in the Requesting State but not under the laws in the Requested State, the Requested State may grant extradition on the condition that the death penalty shall not be imposed on the person sought, or if for procedural reasons such condition cannot be complied with by the Requesting State, on condition that the death penalty, if imposed, shall not be carried out. If the Requesting State accepts extradition subject to such a condition, it must comply with the condition.

Article 8 establishes extradition procedures and describes the documents required to support a request for extradition. Article 8(1), which is taken from Article 5(1) of the U.S.-EU Extradition Agreement, provides that all requests for extradition must be submitted through the diplomatic channel, which shall include transmission through the channel specified in Article 11(4) of the Treaty. Article 8(2) specifies the

documents, information, and legal texts that shall support all extradition requests. Article 8(3) provides that a request for the extradition of a person who is charged with an offense must also be supported by such information as would provide a reasonable basis to believe that the person sought committed the offense for which extradition is sought. Article 8(4) sets forth the items, in addition to those in paragraph 2, that must accompany a request for the extradition relating to a person who has been found guilty or been convicted of the offense for which extradition is sought. It further requires that a request for extradition of a person who has been convicted in absentia must also be supported by such information as would provide a reasonable basis to believe that the person sought committed the offense for which extradition is sought, as well as information regarding the circumstances under which the person was absent from the proceedings. Article 8(5), which is taken from Article 8 of the U.S.-EU Extradition Agreement, authorizes the Requested State to require the Requesting State to furnish additional information to support an extradition request, if the Requested State deems it necessary to fulfill the requirements of the Treaty. It specifies that such information may be requested and supplied directly between the United States Department of Justice and the Ministry of Justice of the Republic of Bulgaria.

Article 9, which is taken from Article 5(2) of the U.S.-EU Extradition Agreement, concerns admissibility of documents. It provides that documents bearing the certificate or seal of either the Ministry or Department of Justice or the foreign affairs Ministry or Department of the Requesting State shall be admissible in extradition proceedings in the Requested State without further certification.

Article 10 provides that all documents submitted under the Treaty by the Requesting State shall be translated into the language of the Requested State, unless otherwise agreed.

Article 11 sets forth procedures and describes the information that is required for the provisional arrest and detention of the person sought pending presentation of the formal extradition request and supporting documents. Article 11(1) provides for provisional arrest and sets forth procedures for transmission of a request for provisional arrest. Article 11(2) specifies the information that must accompany an application for provisional arrest. Article 11(3) requires the Requested State to notify the Requesting State of the

disposition of the provisional arrest request and the reasons for any inability to proceed with the request.

Article 11(4) provides that, if the Requested State has not received the request for extradition and supporting documents within sixty days of the date of provisional arrest, the person may be discharged. Consistent with Article 7 of the U.S.-EU Extradition Agreement, Article 11(4) provides an alternative channel for receipt of extradition requests applicable with respect to persons who have been provisionally arrested, namely, through transmission of the request to the Embassy of the Requested State in the Requesting State. Article 11(5) provides that the discharge of a person from custody pursuant to Article 11(4) does not prejudice the person's subsequent re-arrest and extradition if the extradition request and supporting documents are delivered at a later date.

Article 12 specifies the procedures governing a decision on the extradition request and the surrender of the person sought. It requires the Requested State to promptly notify the Requesting State of its decision regarding a request. If the request is denied in whole or in part, the Requested State must provide an explanation of the reasons for the denial and, upon request, copies of pertinent judicial decisions. If extradition is granted, the States shall agree on the time and place for the surrender of the person sought. If the person sought is not removed from the territory of the Requested State within the time period prescribed by the law of that State, the person may be discharged from custody, and the Requested State, in its discretion, may subsequently refuse extradition for the same offense(s).

Article 13 addresses temporary and deferred surrender. Under Article 13(1), if a person whose extradition is sought is being proceeded against or is serving a sentence in the Requested State, the Requested State may defer extradition proceedings until the proceedings have been concluded or the sentence has been served in the Requested State. Alternatively, the Requested State may conduct the extradition proceedings and, if extradition is authorized, may choose to temporarily surrender the person to the Requesting State for the purpose of prosecution.

Consistent with Article 9 of the U.S.-EU Extradition Agreement, Article 13(2) provides that the Requesting State shall keep the person so surrendered in custody and shall

return that person to the Requested State after the conclusion of the proceedings against that person, in accordance with conditions to be determined by mutual agreement of the States. Time spent in custody in the Requesting State pending prosecution there may be deducted from the time to be served in the Requested State. The return of the person to the Requested State shall not require further extradition procedures.

Article 14, which is taken from Article 10 of the U.S.-EU Extradition Agreement, governs the situation in which the Requested State receives requests for the extradition or surrender of the same person from more than one State, either for the same offense or for different offenses. Under Article 14(1), in the event of requests by more than one State for the same person, the executive authority of the Requested State shall determine to which State, if any, it will surrender that person. Article 14(2) provides that, in the event that Bulgaria receives an extradition request from the United States and a request for surrender pursuant to the European Arrest Warrant for the same person, Bulgaria's competent court of law, or such other authority as Bulgaria may designate, shall determine to which State, if any, it will surrender the person.

Article 14(3) provides a non-exclusive list of factors to be considered by the Requested State in determining to which State to surrender a person who is sought by more than one State.

Article 15 provides that the Requested State may, to the extent permitted under its law, seize and surrender to the Requesting State all items, including articles, documents, evidence, and proceeds, that are connected with the offense in respect of which extradition is granted. Such items may be surrendered even if the extradition cannot be carried out due to the death, disappearance, or escape of the person sought. The Requested State may condition the surrender of the items upon satisfactory assurances from the Requesting State that the property will be returned to the Requested State as soon as practicable. The Requested State may also defer the surrender of such items if they are needed as evidence in the Requested State. The rights of third parties in such items are to be respected in accordance with the laws of the Requested State.

Article 16 sets forth the Rule of Specialty, which, subject to specific exceptions set forth in paragraph 3, prohibits a person extradited under the Treaty from being detained, tried,

or punished in the Requesting State except for:

(a) any offense for which extradition was granted, or a differently denominated offense based on the same facts as the offense for which extradition was granted, provided such offense is extraditable, or is a lesser included offense;

(b) any offense committed after the extradition of the person; or

(c) any offense for which the competent authority of the Requested State consents to the person's detention, trial, or punishment.

Article 16(2) provides that a person extradited under the Treaty may not be the subject of onward extradition or surrender for any offense committed prior to the extradition to the Requesting State unless the Requested State consents. This provision would preclude Bulgaria from transferring a fugitive surrendered to it by the United States to a third country or international tribunal without the consent of the United States.

Article 16(3) sets forth exceptions to the rule of specialty. It provides that the restrictions set forth under paragraphs 1 and 2 shall not prevent the detention, trial, or punishment of an extradited person, or the extradition of a person to a third State, if the extradited person either leaves the territory of the Requesting State after extradition and voluntarily returns to it or fails to leave the territory of the Requesting State within twenty-five days of being free to do so.

Consistent with Article 11 of the U.S.-EU Extradition Agreement, Article 17 provides for simplified procedures in situations where the person sought waives extradition or consents to being surrendered. The rule of specialty protections do not apply if a person waives extradition. If a person consents to surrender, the consent of the person sought may include agreement to waiver of protection of the rule of specialty.

Article 18, which is taken from Article 12 of the U.S.-EU Extradition Agreement, governs the transit through the territory of one State of a person surrendered to the other State by a third country, or to a third country by the other State.

Article 19 contains provisions regarding representation and the expenses associated with extradition. Specifically, the Requested State is required to advise, assist, appear in court on behalf of, and represent the interests of the Requesting State in any proceedings arising out of a request for extradition. Article 19(2) establishes that the Requested State bears all expenses incurred in that State in connection with the extradition proceedings, except that the Requesting State pays expenses related to the translation of extradition documents and the transportation of the person surrendered. Article 19(3) specifies that neither State shall make any pecuniary claim against the other arising out of the arrest, detention, examination, or surrender of persons under the Treaty.

Article 20(1) provides that the U.S. Department of Justice and the Bulgarian Ministry of Justice may consult in connection with the processing of individual cases and in furtherance of efficient implementation of the Treaty.

Article 20(2), which is taken from Article 14 of the U.S.-EU Extradition Agreement, provides for consultation between the Parties when the Requesting State contemplates the submission of particularly sensitive information in support of a request for extradition, in order to determine the extent to which the information can be protected by the Requested State in the event of submission.

Article 21 makes the Treaty applicable to offenses committed both before and after the date it enters into force.

Article 22 contains final clauses addressing the Treaty's ratification and entry into force. It provides that the Treaty is subject to ratification and that the Treaty shall enter into force upon the date of the latter of the diplomatic notes by which the Parties notify each other that their internal legal requirements for the entering into force of the Treaty have been completed. Article 22(3) provides that, upon entry into force of the Treaty, the Treaty shall supersede the Treaty of Extradition between the United States of America and Bulgaria, signed at Sofia on March 19, 1924, as well as the Supplementary Extradition Treaty, signed at Washington on June 8, 1934, and shall apply to all pending requests made under those prior treaties.

Under Article 23, either State may terminate the Treaty with six months' written notice to the other State through the diplomatic channel.

The Department of Justice joins the Department of State in urging approval of this Treaty by the Senate at the earliest possible date.

Agreement on Certain Aspects of Mutual Legal Assistance in Criminal Matters Between the Government of the United States of America and the Government of the Republic of Bulgaria

OVERVIEW

The Agreement on Certain Aspects of Mutual Legal Assistance in Criminal Matters between the Government of the United States of America and the Government of the Republic of Bulgaria (the "MLA Agreement" or the "Agreement") serves to implement, as between the United States and Bulgaria, the provisions of the 2003 Agreement on Mutual Legal Assistance between the United States of America and the European Union (the "U.S.-EU Mutual Legal Assistance Agreement"). Because the United States and Bulgaria do not have a bilateral mutual legal assistance treaty in force between them, the MLA Agreement is a partial treaty governing only those issues regulated by the U.S.-EU Mutual Legal Assistance Agreement. This approach is consistent to the one taken with the other EU member states (Denmark, Finland, Malta, Portugal, Slovak Republic, and Slovenia) with which the United States did not have an existing bilateral mutual legal assistance treaty.

The following is a description of the provisions of the MLA Agreement and the accompanying Annex.

The MLA Agreement

Paragraph 1 of the Agreement specifies the articles of the U.S.-EU Mutual Legal Assistance Agreement applicable between the United States and Bulgaria. These provisions are set forth in detail in the Annex to the MLA Agreement.

Paragraph 2 states that the Agreement 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.

Paragraph 3 provides that the Annex to the Agreement reflects the provisions of the U.S.-EU Mutual Legal Assistance Agreement that shall apply between the United States and Bulgaria.

In accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, paragraphs 4 and 5 make the Agreement applicable to offenses committed both before and after the date it enters into force. In accordance with Article 12(2) of the U.S.-EU Mutual Legal Assistance Agreement, Articles 3 and 4 of the Annex apply to requests pending at the time the Agreement enters into force.

Paragraph 6 sets forth provisions on the entry into force and termination of the Agreement. The Agreement will enter into force after an exchange of instruments between the United States and Bulgaria indicating that they have completed their internal procedures for entry into force and on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement. Should the U.S.-EU Mutual Legal Assistance Agreement be terminated, the Agreement will also be terminated, although the Parties may nevertheless agree to continue to apply some or all of its provisions.

The Annex to the MLA Agreement

Article 1 of the Annex incorporates Article 4 of the U.S.-EU Mutual Legal Assistance Agreement ("Identification of bank information").

Article 1(1) requires the Requested State, upon receiving a request, to promptly ascertain if banks located in its territory possess information on whether a natural or legal person suspected of or charged with a criminal offense as designated pursuant to Article 1(4), holds a bank account or accounts. Subsection (b) permits, but does not obligate, the Requested State to ascertain whether bank information exists pertaining to convicted persons, or whether there is information in the possession of non-bank financial institutions, or financial transactions other than those related to accounts.

Article 1(2) requires a request for this form of cooperation to include, first, the identity of the natural or legal person relevant to locating such accounts or

transactions; second, sufficient information to enable the competent authority of the Requested State to reasonably suspect that such person engaged in a criminal offense and that banks or non-bank financial institutions in the Requested State may have the information requested and to conclude that the information sought relates to the criminal investigation or proceeding for which assistance is sought; and, third, as much information as possible concerning which banks or other institutions may have the information, in order to reduce the breadth of the inquiry.

Article 1(3) designates the U.S. channel of communication for requests for assistance under this article as the U.S. attache responsible for Bulgaria of the Drug Enforcement Administration, the Bureau of Immigration and Customs Enforcement, and the Federal Bureau of Investigation (depending on the nature of the investigation or proceeding giving rise to the request). For Bulgaria, the designated channel is the Supreme Cassation Prosecutors Office during pretrial and the Ministry of Justice during the trial. Article 1(3) also allows the United States and the European Union to modify these designations by exchange of diplomatic notes after the entry into force of the Agreement.

Article 1(4) provides that the United States and Bulgaria will provide assistance 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 to which they may notify each other. U.S. negotiators verified that under Bulgarian law, assistance will be available for a wide range of conduct associated with terrorism (which includes the conduct criminalized in international counter-terrorism conventions to which they are party) and money laundering with respect to an extremely broad range of predicate offenses.

Article 1(5) establishes that assistance may not be refused under Article 1 on the grounds of bank secrecy.

Article 1(6) provides that the Requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this article in accordance with its domestic law.

Article 2 of the Annex incorporates Article 5 of the U.S.-EU Mutual Legal Assistance Agreement (Joint investigative

teams").

Article 2(1) provides that joint investigative teams may be established and operated in the respective territories of the United States and Bulgaria, where the Parties agree to do so.

Under Article 2(2), the manner of the team's operation shall be agreed between the competent authorities, as determined by the respective States concerned.

Article 2(3) describes channels of communication so as to facilitate direct communication between law enforcement authorities with respect to cases arising under Article 2. The paragraph provides that the competent authorities determined by the respective States concerned shall communicate directly for purposes of establishing and operating such teams, except where the complexity, scope or other circumstances involved are deemed to require more central coordination, in which case the States concerned may agree upon other channels of communication. This approach facilitates speed, efficiency and clarity by providing for direct communications in most cases among the affected law enforcement components, rather than through a mutual legal assistance request transmitted through a central authority, as would otherwise generally take place.

Article 2(4) states that, where the joint investigative team needs investigative measures to be taken in one of the States involved in the team, a member of the team of that State may request its own competent authorities to take those measures without the other State having to submit a mutual legal assistance request. The legal standard for obtaining the measure is the applicable domestic standard. Thus, where an investigative measure is to be carried out in the United States, for example, a U.S. team member could do so by invoking existing domestic investigative authority, and would share resulting information or evidence seized pursuant to such an action with the foreign authorities. A formal mutual legal assistance request would not be required. In a case in which there is no domestic U.S. jurisdiction and consequently a compulsory measure cannot be carried out based on domestic authority, the provisions of 28 U.S.C. Section 1782 may furnish a separate legal basis for carrying out such a measure.

Article 3 of the Annex incorporates Article 6 of the U.S.-EU Mutual Legal Assistance Agreement ("Video conferencing").

Article 3(1) provides that the use of video transmission technology shall be available between the United States and Bulgaria for taking testimony in a proceeding for which mutual legal assistance is available. To the extent that procedures for video conferencing are not set forth in Article 3, the law of the Requested State governs the procedures.

Article 3(2) provides that the costs associated with establishing and servicing the video transmission will be borne by the Requesting State, unless otherwise agreed. Other related costs will be borne as agreed upon by the United States and Bulgaria.

Article 3(3) provides for a consultation mechanism in order to facilitate legal, technical or logistical issues that may arise in the execution of a particular request.

Article 3(4) provides that the making of intentionally false statements or other witness or expert misconduct shall be punishable in the Requested State in the same manner as if such conduct had been committed in the course of a domestic proceeding. This is already the case where the United States has been requested to facilitate the taking of video testimony from a witness or expert located in the United States on behalf of a foreign State, since the proceeding to execute the request is a U.S. proceeding and therefore penalties under U.S. law for perjury, obstruction of justice or contempt of court are applicable.

Article 3(5) specifies that the availability of video transmission technology for purposes of facilitating the taking of testimony does not mean that other means of obtaining testimony are no longer available.

Article 3(6) makes clear that the Requested State may also permit the use of video conferencing technology for purposes other than providing testimony, including for purposes of identification of persons or objects, and taking of investigative statements (to the extent these are not considered to be testimony under the law of the Requesting State).

Article 4 of the Annex incorporates Article 7 of the U.S.-EU Mutual Legal Assistance Agreement ("Expedited transmission of requests"). Article 4 provides that requests for mutual legal assistance, and communications related thereto, may be

made by expedited means of communications, including fax or email, with formal confirmation to follow where required by the Requested State. The Requested State may respond to the request by any such expedited means of communication.

Article 5 of the Annex incorporates Article 8 of the U.S.-EU Mutual Legal Assistance Agreement ("Mutual legal assistance to administrative authorities"). Article 5 provides an express legal basis for the provision of assistance to an administrative authority investigating conduct with a view to criminal prosecution or referral to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. If the administrative authority anticipates that no prosecution or referral will take place, assistance is not available. Article 5(2) provides that requests for assistance under Article 5 shall be transmitted between the U.S. Department of Justice and the Bulgarian Ministry of Justice or such other authorities as may be agreed upon by the U.S. Department of Justice and Bulgarian Ministry of Justice.

Article 6 of the Annex incorporates Article 9 of the U.S.-EU Mutual Legal Assistance Agreement ("Limitations on use to protect personal and other data").

Article 6(1) permits the Requesting State to use evidence or information it has obtained from the Requested State for its criminal investigations and proceedings, for preventing an immediate and serious threat to its public security, for non-criminal judicial or administrative proceedings directly related to its criminal investigations or proceedings, for non-criminal judicial or administrative proceedings for which assistance was provided under Article 5 of the Annex, and for any other purpose if the information or evidence was made public within the framework of the proceedings for which it was transmitted or pursuant to the above permissible uses. Other uses of the evidence or information require the prior consent of the Requested State.

Article 6(2)(a) specifies that the Article does not preclude the Requested State from imposing additional conditions where the particular request for assistance could not be granted in the absence of such conditions. Where such additional conditions are imposed, the Requested State may require the Requesting State to give information on the use made of the evidence or information.

Article 6(2)(b) provides that generic restrictions with respect to the legal standards of the Requesting State for processing personal data may not be imposed by the Requested State as a condition under paragraph 2(a) to providing evidence or information. This provision is further elaborated upon in the explanatory note to the U.S.-EU Mutual Legal Assistance Agreement (regarding Article 9(2)(b) of that Agreement), which specifies that the fact that the Requesting and Requested States have different systems of protecting the privacy of data does not give rise to a ground for refusal of assistance and may not as such give rise to additional conditions under Article 6(2)(a). Such refusal of assistance could only arise in exceptional cases in which, upon balancing the important interests involved in the particular case, furnishing the specific data sought by the Requesting State would raise difficulties so fundamental as to be considered by the Requested State to fall within the "essential interests" grounds for refusal contained in Article 8.

Article 6(3) provides that where, following disclosure to the Requesting State, the Requested State becomes aware of circumstances that may cause it to seek additional conditions in a particular case, it may consult with the Requesting State to determine the extent to which the evidence or information can be protected.

Article 7 of the Annex incorporates Article 10 of the U.S.-EU Mutual Legal Assistance Agreement ("Requesting State's request for confidentiality"). Article 7 requires the Requested State, if asked, to use its best efforts to keep confidential a request and its contents, and to inform the Requesting State if the request cannot be executed without breaching confidentiality.

Article 8 of the Annex incorporates Article 13 of the U.S.-EU Mutual Legal Assistance Agreement ("Non-derogation"). Article 8 makes clear that the provisions of the Annex do not preclude the assertion of a ground for refusal of assistance available to the Requested States pursuant to its applicable legal principles, including where execution of the request would prejudice its sovereignty, security, public order or other essential interests, except where such ground for refusal is precluded by Article 1(5) (bank secrecy) or 6(2)(b) (generic restrictions relating to personal data) of the Annex.

The Department of Justice joins the Department of State in urging approval of this Agreement by the Senate at the earliest possible date.