

Instrument as contemplated by Article 3, paragraph 2 (a), of the Agreement on Extradition between the United States of America and the European Union signed 25 June 2003 as to the application of the Extradition Treaty between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg signed 1 October 1996

As contemplated by Article 3, paragraph 2 (a) of the Agreement on Extradition between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Extradition Agreement"), the Governments of the United States of America and of the Grand Duchy of Luxembourg acknowledge that, in accordance with the provisions of this Instrument, the U.S.-EU Extradition Agreement is applied in relation to the bilateral Extradition Treaty between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg signed 1 October 1996 (hereafter "the 1996 Bilateral Treaty on Extradition") under the following terms:

I

- A. Article 5, paragraph 1, of the U.S.-EU Extradition Agreement provides:

"Requests for extradition and supporting documents shall be transmitted through the diplomatic channel, which shall include transmission as provided for in Article 7."

- B. Article 5, paragraph 1, of the U.S.-EU Extradition Agreement shall govern the mode of transmission of an extradition request and supporting documents and shall be applied in place of Article 8, paragraph 1, of the 1996 Bilateral Treaty on Extradition. For purposes of applying its terms, the reference to "Article 7" refers to Part III of this Instrument.

II

- A. Article 5, paragraph 2, of the U.S.-EU Extradition Agreement provides:

"Documents that bear the certificate or seal of the Ministry of Justice, or Ministry or Department responsible for foreign affairs, of the requesting State shall be admissible in extradition proceedings in the requested State without further certification, authentication, or other legalisation."

- B. Article 5, paragraph 2, of the U.S.-EU Extradition Agreement shall govern the requirements concerning certification, authentication or legalisation of an extradition request and supporting documents, and shall be applied in place of Article 10 of the 1996 Bilateral Treaty on Extradition. For purposes of applying its terms, "Ministry of Justice" means, for the United States of America, the United States Department of Justice, and, for the Grand Duchy of Luxembourg, the Ministry of Justice of the Grand Duchy of Luxembourg.

III

- A. Article 7, paragraph 1, of the U.S.-EU Extradition Agreement provides:

“If the person whose extradition is sought is held under provisional arrest by the requested State, the requesting State may satisfy its obligation to transmit its request for extradition and supporting documents through the diplomatic channel pursuant to Article 5(1), by submitting the request and documents to the Embassy of the requested State located in the requesting State. In that case, the date of receipt of such request by the Embassy shall be considered to be the date of receipt by the requested State for purposes of applying the time limit that must be met under the applicable extradition treaty to enable the person's continued detention.”

- B. Article 7, paragraph 1, of the U.S.-EU Extradition Agreement shall govern the transmission of a request for extradition and supporting documents following provisional arrest, and shall be applied to supplement the terms of Article 8 of the 1996 Bilateral Treaty on Extradition. For purposes of applying its terms, the reference to “Article 5(1)” relates to Part I of this Instrument.

IV

- A. Article 8, paragraph 2, of the U.S.-EU Extradition Agreement provides:

“Such supplementary information may be requested and furnished directly between the Ministries of Justice of the States concerned.”

- B. Article 8, paragraph 2, of the U.S.-EU Extradition Agreement shall govern the channel to be used for submitting supplementary information, and shall be applied to supplement the terms of Article 9 of the 1996 Bilateral Treaty on Extradition. For purposes of applying its terms, “Ministry of Justice” means, for the United States of America, the United States Department of Justice, and, for the Grand Duchy of Luxembourg, the Ministry of Justice of the Grand Duchy of Luxembourg.

V

- A. Article 10 of the U.S.-EU Extradition Agreement provides:

“Requests for extradition or surrender made by several States

1. If the requested State receives requests from the requesting State and from any other State or States for the extradition of the same person, either for the same offence or for different offences, the executive authority of the requested State shall determine to which State, if any, it will surrender the person.
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. In making its decision under paragraphs 1 and 2, the requested State shall consider all of the relevant factors, including, but not limited to, factors already set forth in the applicable extradition treaty, and, where not already so set forth, the following:
 - (a) whether the requests were made pursuant to a treaty;
 - (b) the places where each of the offences was committed;
 - (c) the respective interests of the requesting States;
 - (d) the seriousness of the offences;
 - (e) the nationality of the victim;
 - (f) the possibility of any subsequent extradition between the requesting States; and
 - (g) the chronological order in which the requests were received from the requesting States.”
- B. Article 10, paragraph 2, of the U.S.-EU Extradition Agreement shall govern the decision by the Grand Duchy of Luxembourg on a request by the United States of America for extradition and a request pursuant to the European arrest warrant for surrender of the same person, and shall be applied to supplement the terms of Article 15 of the 1996 Bilateral Treaty on Extradition. For purposes of applying its terms and for purposes of Article 19 of the U.S.-EU Extradition Agreement:
 1. the Minister of Justice of the Grand Duchy of Luxembourg shall be the competent authority to determine to which State the person will be surrendered;
 2. in making the decision the Minister of Justice shall consider all of the relevant factors, including those referred to in Article 15, paragraphs (a) through (g), of the 1996 Bilateral Treaty on Extradition.

VI

- A. Article 13 of the U.S.-EU Extradition Agreement provides:

“Capital punishment

Where the offence for which extradition is sought is punishable by death under the laws in the requesting State and not punishable by death 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 conditions pursuant to this Article, it shall comply with the conditions. If the requesting State does not accept the conditions, the request for extradition may be denied.”

- B. Article 13 of the U.S.-EU Extradition Agreement shall govern extradition with respect to conduct punishable by the death penalty in the Requesting State and shall be applied in place of Article 7 of the 1996 Bilateral Treaty on Extradition.

VII

- A. Article 14 of the U.S.-EU Extradition Agreement provides:

“Sensitive information in a request

Where the requesting State contemplates the submission of particularly sensitive information in support of its request for extradition, it may consult the requested State to determine the extent to which the information can be protected by the requested State. If the requested State cannot protect the information in the manner sought by the requesting State, the requesting State shall determine whether the information shall nonetheless be submitted.”

- B. Article 14 of the U.S.-EU Extradition Agreement shall govern the treatment of sensitive information in a request for extradition and shall be applied to supplement the provisions of the 1996 Bilateral Treaty on Extradition.

VIII

Pursuant to Article 16, paragraph 1 of the U.S.-EU Extradition Agreement, this Instrument shall apply to offences committed before as well as after it enters into force.

Pursuant to Article 16, paragraph 2 of the U.S.-EU Extradition Agreement, this Instrument shall not apply to requests for extradition made prior to its entry into force.

IX

This Instrument shall be subject to the completion by the United States of America and the Grand Duchy of Luxembourg of their respective applicable internal procedures for entry into force. The Governments of the United States of America and the Grand Duchy of Luxembourg shall thereupon exchange instruments indicating that such measures have been completed. This Instrument shall enter into force on the date of entry into force of the U.S.-EU Extradition Agreement, in accordance with Article 22, paragraph 1, thereof.

In the event of termination of the U.S.-EU Extradition Agreement, this Instrument shall be terminated and the 1996 Bilateral Treaty on Extradition shall be applied.

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

DONE at Washington, in duplicate, this 15 day of February, in the English and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
GRAND DUCHY OF LUXEMBOURG:

