

Instrument between the United States of America and the Portuguese Republic as contemplated by Article 3(2) of the Agreement on Extradition between the United States of America and the European Union signed 25 June 2003

1. As contemplated by Article 3(2) 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 the Portuguese Republic acknowledge that, in accordance with the provisions of this Instrument, the U.S.-EU Extradition Agreement is applied in relation to the bilateral Convention on Extradition between the Government of the United States of America and the Government of Portugal signed in Washington the 7th of May 1908 (hereafter "the 1908 Convention on Extradition"), under the following terms:

- (a) Article 4 of the U.S.-EU Extradition Agreement as set forth in Article I of the Annex to this Instrument shall govern the scope of extraditable offences;
- (b) Article 5(1) of the U.S.-EU Extradition Agreement as set forth in Article IV of the Annex to this Instrument shall govern the mode of transmission of the extradition request and supporting documents;
- (c) Article 5(2) of the U.S.-EU Extradition Agreement as set forth in Article V of the Annex to this Instrument shall govern the requirements concerning certification, authentication or legalization of the extradition request and supporting documents;
- (d) Article 6 of the U.S.-EU Extradition Agreement as set forth in Article VI of the Annex to this Instrument shall authorize an alternative channel of transmission of requests for provisional arrest;
- (e) Article 7(1) of the U.S.-EU Extradition Agreement as set forth in Article IV of the Annex to this Instrument shall provide an alternative method for transmission of the request for extradition and supporting documents following provisional arrest;
- (f) Article 8 of the U.S.-EU Extradition Agreement as set forth in Article VII of the Annex to this Instrument shall govern the channel to be used for submitting supplementary information;
- (g) Article 9 of the U.S.-EU Extradition Agreement as set forth in Article III of the Annex to this Instrument shall govern the temporary surrender of a person being proceeded against or serving a sentence in the requested State;
- (h) Article 10 of the U.S.-EU Extradition Agreement as set forth in Article II of the Annex to this Instrument shall govern the decision on requests made by several countries for the extradition or surrender of the same person;
- (i) Article 11 of the U.S.-EU Extradition Agreement as set forth in Article IX of the Annex to this Instrument shall govern the use of simplified extradition procedures;
- (j) Article 12 of the U.S.-EU Extradition Agreement as set forth in Article X of the Annex to this Instrument shall govern requests for transit of persons in custody; and

(k) Article 14 of the U.S.-EU Extradition Agreement as set forth in Article VIII of the Annex to this Instrument shall govern consultations where the requesting country contemplates the submission of particularly sensitive information in support of a request for extradition.

2. The functions described in Article 2(3) of the U.S.-EU Extradition Agreement shall be exercised, for the Portuguese Republic, by the Procuradoria Geral da República; and, for the United States of America, by the United States Department of Justice, in the manner set forth in the Annex to this Instrument.

3. In order to implement the U.S.-EU Extradition Agreement, the Annex reflects the provisions to be applied to the 1908 Convention on Extradition upon entry into force of this Instrument; without prejudice to those provisions of the U.S.-EU Extradition Agreement directly applicable.

4. Where the constitutional principles of, or final judicial decisions binding upon, the requested State may pose an impediment to fulfillment of its obligation to extradite, and neither the Annex to this Instrument nor the 1908 Convention on Extradition resolve the matter, consultations shall take place between the requested and requesting States.

5. In accordance with Article 16 of the U.S.-EU Extradition Agreement, this Instrument shall apply to offences committed before as well as after it enters into force.

6. This Instrument shall not apply to requests for extradition made prior to its entry into force; except that, in accordance with Article 16 of the U.S.-EU Extradition Agreement, Articles I and III of the Annex shall be applicable to requests made prior to such entry into force.

7. This Instrument shall be subject to the completion by the United States of America and the Portuguese Republic of their respective applicable internal procedures for entry into force. The Governments of the United States of America and the Portuguese Republic 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, and shall terminate upon termination of the U.S.-EU Extradition Agreement.

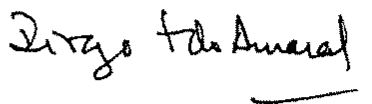
IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Instrument.

DONE at Washington, in duplicate, this 14th day of July 2005, in the English and Portuguese languages, both texts being equally authentic.

FOR THE UNITED STATES OF
AMERICA:



FOR THE PORTUGUESE REPUBLIC:



ANNEX

Article I Extraditable offences

A. The following shall be applied in place of Article II of the 1908 Convention on Extradition:

"ARTICLE II

1. An offence shall be an extraditable offence if it is punishable under the laws of the requesting and requested countries by deprivation of liberty for a maximum period of more than one year or by a more severe penalty. An offence shall also be an extraditable offence if it consists of an attempt or conspiracy to commit, or participation in the commission of, an extraditable offence. Where the request is for enforcement of the sentence of a person convicted of an extraditable offence, the deprivation of liberty remaining to be served must be at least four months.

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

3. For purposes of this Article, an offence shall be considered an extraditable offence:

(a) regardless of whether the laws in the requesting and requested countries place the offence within the same category of offences or describe the offence by the same terminology;

(b) regardless of whether the offence 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 merely for the purpose of establishing jurisdiction in a United States federal court; and

(c) in criminal cases relating to taxes, customs duties, currency control and the import or export of commodities, regardless of whether the laws of the requesting and requested countries 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.

4. If the offence has been committed outside the territory of the requesting country, extradition shall be granted, subject to the other applicable requirements for extradition, if the laws of the requested country provide for the punishment of an offence committed outside its territory in similar circumstances. If the laws of the requested country do not provide for the punishment of an offence committed outside its territory in similar circumstances, the executive authority of the requested country, at its discretion, may grant extradition provided that all other applicable requirements for extradition are met."

B. The phrase "committed within the jurisdiction of one of the Contracting Parties while said person was actually within such jurisdiction when the crime was committed, and who shall seek an asylum or shall be found within the territories of the other" in Article I of the 1908 Convention on Extradition shall not be applied.

Article II
Requests for extradition or surrender made by several states

The following shall be applied in place of Article VII of the 1908 Convention on Extradition:

“1. If the requested country receives requests from the requesting country and from any other country or countries for the extradition of the same person, either for the same offence or for different offences, the executive authority of the requested country shall determine to which country, if any, it will surrender the person.

2. If the Portuguese Republic 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, its competent judicial authority shall determine to which country, if any, it will surrender the person.

3. In making its decision under paragraphs 1 and 2, the requested country shall consider all of the relevant factors, including, but not limited to, 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 countries;
- (d) the seriousness of the offences;
- (e) the nationality of the victim;
- (f) the possibility of any subsequent extradition between the requesting countries; and
- (g) the chronological order in which the requests were received from the requesting countries.”

Article III
Temporary surrender

The following shall be applied to supplement the provisions of the 1908 Convention on Extradition:

“1. If a request for extradition is granted in the case of a person who is being proceeded against or is serving a sentence in the requested country, the requested country may temporarily surrender the person sought to the requesting country for the purpose of prosecution.

2. The person so surrendered shall be kept in custody in the requesting country and shall be returned to the requested country at the conclusion of the proceedings against that person, in accordance with the conditions to be determined by mutual agreement of the requesting and requested countries. The time spent in custody in the territory of the requesting country pending prosecution in that country may be deducted from the time remaining to be served in the requested country.”

Article IV
Transmission of documents

The following shall be applied in place of Article XI, paragraph 2, of the 1908 Convention on Extradition:

“Requests for extradition and supporting documents shall be transmitted through the diplomatic channel. If the person whose extradition is sought is held under provisional arrest by the requested country, the requesting country may satisfy its obligation to transmit its request for extradition and supporting documents through the diplomatic channel by submitting the request and documents to the Embassy of the requested country located in the requesting country. 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 country for purposes of applying the time limit that must be met under Article XII to enable the person’s continued detention.”

Article V
Authentication of documents

The following shall be applied to supplement the provisions of the 1908 Convention on Extradition:

“Documents that bear the certificate or seal of the Procuradoria Geral da República of Portugal or of the Ministry of Foreign Affairs of Portugal shall be admissible in extradition proceedings in the United States of America without further certification, authentication, or other legalization. Documents that bear the certificate or seal of the United States Department of Justice or of the United States Department of State shall be admissible in extradition proceedings in the Portuguese Republic without further certification, authentication, or other legalization.”

Article VI
Transmission of requests for provisional arrest

The following shall be applied to supplement the provisions of the 1908 Convention on Extradition:

“Requests for provisional arrest may be made directly between the Procuradoria Geral da República of Portugal and the United States Department of Justice, as an alternative to the diplomatic channel. The facilities of the International Criminal Police Organization (Interpol) may also be used to transmit such a request.”

Article VII
Supplemental information

The following shall be applied to supplement the provisions of the 1908 Convention on Extradition:

“1. The requested country may require the requesting country to furnish additional information within such reasonable length of time as it specifies, if it considers that the

information furnished in support of the request for extradition is not sufficient to fulfil the requirements of the Convention.

2. Such supplementary information may be requested and furnished directly between the Procuradoria Geral da República of Portugal and the United States Department of Justice.”

Article VIII
Sensitive information in a request

The following shall be applied to supplement the provisions of the 1908 Convention on Extradition:

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

Article IX
Simplified extradition procedures

The following shall be applied to supplement the provisions of the 1908 Convention on Extradition:

“If the person sought consents to be surrendered to the requesting country, the requested country may, in accordance with the principles and procedures provided for under its legal system, surrender the person as expeditiously as possible without further proceedings. The consent of the person sought may include agreement to waiver of protection of the rule of specialty.”

Article X
Transit

The following shall be applied to supplement the provisions of the 1908 Convention on Extradition:

“1. The United States of America may authorize transportation through its territory of a person surrendered to the Portuguese Republic by a third country, or by the Portuguese Republic to a third country. The Portuguese Republic may authorize transportation through its territory of a person surrendered to the United States of America by a third country, or by the United States of America to a third country.

2. A request for transit shall be made through the diplomatic channel or directly between the United States Department of Justice and the Procuradoria Geral da República of Portugal. The facilities of Interpol may also be used to transmit such a request. The request shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit shall be detained in custody

during the period of transit.

3. Authorization is not required when air transportation is used and no landing is scheduled on the territory of the transit country. If an unscheduled landing does occur, the country in which the unscheduled landing occurs may require a request for transit pursuant to paragraph 2. All measures necessary to prevent the person from absconding shall be taken until transit is effected, as long as the request for transit is received within 96 hours of the unscheduled landing."

**Declaration by the Portuguese Republic pursuant to the signature of the
Instrument between the United States of America and the Portuguese Republic as
contemplated by Article 3(2) of the Agreement on Extradition between the United
States of America and the European Union signed 25 June 2003**

"The Portuguese Republic states that under Portuguese constitutional law, impediments exist to extradition with respect to offences punishable by death, or by imprisonment for life or an unlimited duration. As a result, extradition for such offenses may only be granted in accordance with specific conditions considered by the Portuguese Republic to be consistent with its Constitution. Should a case arise in which these constitutional principles are involved, the Portuguese Republic will invoke the terms of Paragraph 4 of this Instrument."