



STATUTORY INSTRUMENTS.

**S.I. No. 45 of 2010**



EXTRADITION ACT 1965 (APPLICATION OF PART II)  
(AMENDMENT) ORDER 2010

**(Prn. A10/0213)**

EXTRADITION ACT 1965 (APPLICATION OF PART II)  
(AMENDMENT) ORDER 2010

WHEREAS by the Treaty on Extradition between the State and the United States of America, signed at Washington D.C. on the 13th day of July 1983 (hereinafter referred to as “the United States Treaty”), an arrangement was made with the United States of America for the surrender of persons wanted for prosecution or punishment for an offence specified in Article II thereof;

AND WHEREAS the terms of the United States Treaty were approved by Dáil Éireann on the 25th day of November 1986;

AND WHEREAS the Agreement on Extradition between the European Union and the United States of America (the terms of which are set out in Part A of Schedule 9 (inserted by Article 2 of this Order) of the Extradition Act 1965 (Application of Part II) Order 2000 (S.I. No. 474 of 2000)), signed at Washington D.C. on the 25th day of June 2003 (hereinafter referred to as “the U.S.-EU Extradition Agreement”), provides for enhancements to cooperation in the context of applicable extradition relations between the Member States of the European Union and the United States of America governing extradition of offenders;

AND WHEREAS the terms of the U.S.-EU Extradition Agreement were approved by Dáil Éireann and Seanad Éireann on the 16th day of October 2008;

AND WHEREAS an Instrument as contemplated by Article 3(2) of the Agreement on Extradition between the European Union and the United States of America signed 25 June 2003, as to the Application of the Treaty on Extradition between Ireland and the United States of America signed on 13 July 1983 (hereinafter referred to as “the Instrument”, the terms of which are set out in Part B of Schedule 9 (inserted by Article 2 of this Order) of the Extradition Act 1965 (Application of Part II) Order 2000 (S.I. No. 474 of 2000)), signed at Dublin on the 14th day of July 2005;

AND WHEREAS the Instrument was approved by Dáil Éireann on the 21st day of October 2008;

AND WHEREAS by Council Decision 2009/820/CFSP, the U.S.-EU Extradition Agreement was approved on behalf of the European Union on the 23rd day of October 2009;

AND WHEREAS by notes exchanged on the 10th day of August 2009 and the 12th day of August 2009, the State and the United States of America, respectively, have, in accordance with Article 5(a) of the Instrument, notified each

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 19th February, 2010.*

other than their respective applicable internal procedures for the entry into force of the Instrument have been completed;

NOW I, Micheál Martin, Minister for Foreign Affairs, in exercise of the powers conferred on me by section 8 (amended by section 49 of the European Arrest Warrant Act 2003 (No. 45 of 2003)) of the Extradition Act 1965 (No. 17 of 1965) and after consultation with the Minister for Justice, Equality and Law Reform, hereby make the following order:

1. (1) This Order may be cited as the Extradition Act 1965 (Application of Part II) (Amendment) Order 2010.

(2) This Order comes into operation on 1 February 2010.

2. The Extradition Act 1965 (Application of Part II) Order 2000 (S.I. No. 474 of 2000) is amended by substituting for Schedule 9 (as amended by Article 3(a) of the Extradition Act 1965 (Application of Part II) (Amendment) Order 2002 (S.I. No. 173 of 2002)) the following:

“SCHEDULE 9

*PART A*

AGREEMENT ON EXTRADITION BETWEEN THE EUROPEAN UNION AND THE UNITED STATES OF AMERICA

THE EUROPEAN UNION AND THE UNITED STATES OF AMERICA,

DESIRING further to facilitate cooperation between the European Union Member States and the United States of America,

DESIRING to combat crime in a more effective way as a means of protecting their respective democratic societies and common values,

HAVING DUE REGARD for rights of individuals and the rule of law,

MINDFUL of the guarantees under their respective legal systems which provide for the right to a fair trial to an extradited person, including the right to adjudication by an impartial tribunal established pursuant to law,

DESIRING to conclude an Agreement relating to the extradition of offenders,

HAVE AGREED AS FOLLOWS:

## **Article 1**

### **Object and Purpose**

The Contracting Parties undertake, in accordance with the provisions of this Agreement, to provide for enhancements to cooperation in the context of applicable extradition relations between the Member States and the United States of America governing extradition of offenders.

## **Article 2**

### **Definitions**

1. “Contracting Parties” shall mean the European Union and the United States of America.
2. “Member State” shall mean a Member State of the European Union.
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 3**

### **Scope of application of this Agreement in relation to bilateral extradition treaties with Member States**

1. The European Union, pursuant to the Treaty on European Union, and the United States of America shall ensure that the provisions of this Agreement are applied in relation to bilateral extradition treaties between the Member States and the United States of America, in force at the time of the entry into force of this Agreement, under the following terms:
  - (a) Article 4 shall be applied in place of bilateral treaty provisions that authorise extradition exclusively with respect to a list of specified criminal offences;
  - (b) Article 5 shall be applied in place of bilateral treaty provisions governing transmission, certification, authentication or legalisation of an extradition request and supporting documents transmitted by the requesting State;
  - (c) Article 6 shall be applied in the absence of bilateral treaty provisions authorising direct transmission of provisional arrest requests between the United States Department of Justice and the Ministry of Justice of the Member State concerned;

- (d) Article 7 shall be applied in addition to bilateral treaty provisions governing transmission of extradition requests;
  - (e) Article 8 shall be applied in the absence of bilateral treaty provisions governing the submission of supplementary information; where bilateral treaty provisions do not specify the channel to be used, paragraph 2 of that Article shall also be applied;
  - (f) Article 9 shall be applied in the absence of bilateral treaty provisions authorising temporary surrender of persons being proceeded against or serving a sentence in the requested State;
  - (g) Article 10 shall be applied, except as otherwise specified therein, in place of, or in the absence of, bilateral treaty provisions pertaining to decision on several requests for extradition of the same person;
  - (h) Article 11 shall be applied in the absence of bilateral treaty provisions authorising waiver of extradition or simplified extradition procedures;
  - (i) Article 12 shall be applied in the absence of bilateral treaty provisions governing transit; where bilateral treaty provisions do not specify the procedure governing unscheduled landing of aircraft, paragraph 3 of that Article shall also be applied;
  - (j) Article 13 may be applied by the requested State in place of, or in the absence of, bilateral treaty provisions governing capital punishment;
  - (k) Article 14 shall be applied in the absence of bilateral treaty provisions governing treatment of sensitive information in a request.
2. (a) The European Union, pursuant to the Treaty on European Union, shall ensure that each Member State acknowledges, in a written instrument between such Member State and the United States of America, the application, in the manner set forth in this Article, of its bilateral extradition treaty in force with the United States of America.
- (b) The European Union, pursuant to the Treaty on European Union, shall ensure that new Member States acceding to the European Union after the entry into force of this Agreement and having bilateral extradition treaties with the United States of America, take the measures referred to in subparagraph (a).
- (c) The Contracting Parties shall endeavour to complete the process described in subparagraph (b) prior to the scheduled accession of a new Member State, or as soon as possible thereafter. The European Union shall notify the United States of America of the date of accession of new Member States.

3. If the process described in paragraph 2(b) is not completed by the date of accession, the provisions of this Agreement shall apply in the relations between that new Member State and the United States of America as from the date on which they have notified each other and the European Union of the completion of their internal procedures for that purpose.

#### **Article 4**

##### **Extraditable offences**

1. An offence shall be an extraditable offence if it is punishable under the laws of the requesting and requested States 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 the purposes of this Article, an offence shall be considered an extraditable offence:

- (a) regardless of whether the laws in the requesting and requested States 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 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.

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

extradition provided that all other applicable requirements for extradition are met.

## **Article 5**

### **Transmission and authentication of documents**

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

2. 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.

## **Article 6**

### **Transmission of requests for provisional arrest**

Requests for provisional arrest may be made directly between the Ministries of Justice of the requesting and requested States, as an alternative to the diplomatic channel. The facilities of the International Criminal Police Organisation (Interpol) may also be used to transmit such a request.

## **Article 7**

### **Transmission of documents following provisional arrest**

1. 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.

2. Where a Member State on the date of signature of this Agreement, due to the established jurisprudence of its domestic legal system applicable at such date, cannot apply the measures referred to in paragraph 1, this Article shall not apply to it, until such time as that Member State and the United States of America, by exchange of diplomatic note, agree otherwise.

## **Article 8**

### **Supplemental information**

1. The requested State may require the requesting State 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 applicable extradition treaty.

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

### **Article 9**

#### **Temporary surrender**

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 State, the requested State may temporarily surrender the person sought to the requesting State for the purpose of prosecution.

2. The person so surrendered shall be kept in custody in the requesting State and shall be returned to the requested State 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 States. The time spent in custody in the territory of the requesting State pending prosecution in that State may be deducted from the time remaining to be served in the requested State.

### **Article 10**

#### **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.

### **Article 11**

#### **Simplified extradition procedures**

If the person sought consents to be surrendered to the requesting State, the requested State 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 12**

#### **Transit**

1. A Member State may authorise transportation through its territory of a person surrendered to the United States of America by a third State, or by the United States of America to a third State. The United States of America may authorise transportation through its territory of a person surrendered to a Member State by a third State, or by a Member State to a third State.

2. A request for transit shall be made through the diplomatic channel or directly between the United States Department of Justice and the Ministry of Justice of the Member State concerned. 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. Authorisation is not required when air transportation is used and no landing is scheduled on the territory of the transit State. If an unscheduled landing does occur, the State 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.

## **Article 13**

### **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.

## **Article 14**

### **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.

## **Article 15**

### **Consultations**

The Contracting Parties shall, as appropriate, consult to enable the most effective use to be made of this Agreement, including to facilitate the resolution of any dispute regarding the interpretation or application of this Agreement.

## **Article 16**

### **Temporal application**

1. This Agreement shall apply to offences committed before as well as after it enters into force.
2. This Agreement shall apply to requests for extradition made after its entry into force. Nevertheless, Articles 4 and 9 shall apply to requests pending in a requested State at the time this Agreement enters into force.

## **Article 17**

### **Non-derogation**

1. This Agreement is without prejudice to the invocation by the requested State of grounds for refusal relating to a matter not governed by this Agreement that is available pursuant to a bilateral extradition treaty in force between a Member State and the United States of America.

2. Where the constitutional principles of, or final judicial decisions binding upon, the requested State may pose an impediment to fulfilment of its obligation to extradite, and resolution of the matter is not provided for in this Agreement or the applicable bilateral treaty, consultations shall take place between the requested and requesting States.

## **Article 18**

### **Future bilateral extradition treaties with Member States**

This Agreement shall not preclude the conclusion, after its entry into force, of bilateral Agreements between a Member State and the United States of America consistent with this 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 Member States and the United States of America.

## **Article 20**

### **Territorial application**

1. This Agreement shall apply:

(a) to the United States of America;

(b) in relation to the European Union to:

— Member States,

— 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, where agreed upon by exchange of diplomatic note between the Contracting Parties, duly confirmed by the relevant Member State.

2. The application of this Agreement to any territory or country in respect of which extension has been made in accordance with subparagraph (b) of paragraph 1 may be terminated by either Contracting Party giving six months' written notice to the other Contracting Party through the diplomatic channel, where duly confirmed between the relevant Member State and the United States of America.

## **Article 21**

### **Review**

The Contracting Parties agree to carry out a common review of this Agreement as necessary, and in any event no later than five years after its entry into force. The review shall address in particular the practical implementation of the Agreement and may also include issues such as the consequences of further development of the European Union relating to the subject matter of this Agreement, including Article 10.

## **Article 22**

### **Entry into force and termination**

1. This Agreement shall enter into force on the first day following the third month after the date on which the Contracting Parties have exchanged instruments indicating that they have completed their internal procedures for this purpose. These instruments shall also indicate that the steps specified in Article 3(2) have been completed.

2. Either Contracting Party may terminate this Agreement at any time by giving written notice to the other Party, and such termination shall be effective six months after the date of such notice.

In witness whereof the undersigned Plenipotentiaries have signed this Agreement

Done at Washington DC on the twenty-fifth day of June in the year two thousand and three in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic.

Por la Unión Europea/For Den Europæiske Union/Für die Europäische Union/Για την Ευρωπαϊκή Ένωση/For the European Union/Pour l'Union européenne/Per l'Unione europea/Voor de Europese Unie/Pela União Europeia/Euroopan unionin puolesta/På Europeiska unionens vägnar

Por los Estados Unidos de América/For Amerikas Forenede Stater/Für die Vereinigten Staaten von Amerika/Για τις Ηνωμένες Πολιτείες της Αμερικής/For the United States of America/Pour les États-Unis d'Amérique/Per gli Stati Uniti d'America/Voor de Verenigde Staten van Amerika/Pelos Estados Unidos da América/Amerikan yhdysvaltojen puolesta/På Amerikas förenta stater vägnar

**EXPLANATORY NOTE ON THE AGREEMENT ON  
EXTRADITION BETWEEN THE EUROPEAN UNION AND THE  
UNITED STATES OF AMERICA**

This Explanatory Note reflects understandings regarding the application of certain provisions of the Agreement on Extradition between the European Union and the United States of America (hereinafter “the Agreement”) agreed between the Contracting Parties.

**On Article 10**

Article 10 is not intended to affect the obligations of States Parties to the Rome Statute of the International Criminal Court, nor to affect the rights of the United States of America as a non-Party with regard to the International Criminal Court.

**On Article 18**

Article 18 provides that the Agreement shall not preclude the conclusion, after its entry into force, of bilateral agreements on extradition between a Member State and the United States of America consistent with the Agreement.

Should any measures set forth in the Agreement create an operational difficulty for either one or more Member States or the United States of America, such difficulty should in the first place be resolved, if possible, through consultations between the Member State or Member States concerned and the United States of America, or, if appropriate, through the consultation procedures set out in this Agreement. Where it is not possible to address such operational difficulty through consultations alone, it would be consistent with the Agreement for future bilateral agreements between the Member State or Member States and the United States of America to provide an operationally feasible alternative mechanism that would satisfy the objectives of the specific provision with respect to which the difficulty has arisen.

*PART B*

INSTRUMENT 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, AS TO THE APPLICATION OF THE TREATY ON EXTRADITION BETWEEN IRELAND AND THE UNITED STATES OF AMERICA SIGNED 13 JULY 1983

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 Ireland acknowledge that, in accordance with the provisions of this Instrument, the U.S.-EU Extradition Agreement is applied in relation to the bilateral Treaty on Extradition between Ireland and the United States of America signed 13 July 1983 (hereafter “the 1983 Treaty on Extradition”) under the following terms:

- (a) Article 5 of the U.S.-EU Extradition Agreement as set forth in Article VIII(1) and (7) of the Annex to this Instrument shall govern the mode of transmission, and requirements concerning certification, authentication or legalisation of the extradition request and supporting documents;
- (b) Article 7(1) of the U.S.-EU Extradition Agreement as set forth in Article VIII(8) of the Annex to this Instrument shall provide an alternative method for transmission of the request for extradition and supporting documents following provisional arrest;
- (c) Article 8(2) of the U.S.-EU Extradition Agreement as set forth in Article IX(3) of the Annex to this Instrument shall govern the channel to be used for submitting supplementary information;
- (d) Article 9 of the U.S.-EU Extradition Agreement as set forth in Article VII bis 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;
- (e) Article 10 of the U.S.-EU Extradition Agreement as set forth in Article XII of the Annex to this Instrument shall govern the decision on requests made by several States for the extradition or surrender of the same person;
- (f) Article 11 of the U.S.-EU Extradition Agreement as set forth in Article XII bis of the Annex to this Instrument shall govern the use of simplified extradition procedures;
- (g) Article 12(3) of the U.S.-EU Extradition Agreement as set forth in Article XV(2) of the Annex to this Instrument shall govern the procedures governing transit in the event of unscheduled landing of aircraft;

- (h) Article 13 of the U.S.-EU Extradition Agreement as set forth in Article VI of the Annex to this Instrument shall govern extradition with respect to conduct punishable by death in the Requesting State;
- (i) Article 14 of the U.S.-EU Extradition Agreement as set forth in Article VIII bis of the Annex to this Instrument shall govern consultations where the Requesting State contemplates the submission of particularly sensitive information in support of a request for extradition.

2. The Annex reflects the integrated text of the provisions of the 1983 Treaty on Extradition and the U.S.-EU Extradition Agreement that shall apply upon entry into force of this Instrument.

3. 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.

4. 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, Article VII bis of the Annex shall be applicable to requests made prior to such entry into force.

5. (a) This Instrument shall be subject to the completion by the United States of America and Ireland of their respective applicable internal procedures for entry into force. The Governments of the United States of America and Ireland 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.

(b) In the event of termination of the U.S.-EU Extradition Agreement, this Instrument shall be terminated and the 1983 Treaty on Extradition shall be applied. The Governments of the United States of America and Ireland nevertheless may agree to continue to apply some or all of the provisions of this Instrument.

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

DONE at Dublin, in duplicate, this 14th day of July 2005.

FOR THE GOVERNMENT OF  
IRELAND:

FOR THE GOVERNMENT OF THE UNITED STATES OF  
AMERICA:

## ANNEX

**TREATY ON EXTRADITION BETWEEN THE UNITED STATES  
OF AMERICA AND IRELAND****Article I****Obligation to Extradite**

Each Contracting Party agrees to extradite to the other, in accordance with the provisions of this Treaty, but subject to the law of the Requested State and to such exceptions as are therein provided, any persons, including its citizens or nationals, who are wanted for prosecution or the imposition or enforcement of a sentence in the Requesting State for an extraditable offence.

**Article II****Extraditable Offences**

1. An offence shall be an extraditable offence only if it is punishable under the law of both Contracting Parties by imprisonment for a period of more than one year, or by a more severe penalty. When the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment, extradition shall be granted only if the duration of the sentence still to be served amounts to at least four months.

2. For the purpose of this Article, it shall not matter:

- (a) whether the laws of the Contracting Parties place the offence within the same category of offence or denominate the offence by the same terminology; or
- (b) whether the offence is one for which United States federal law requires proof of 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.

3. Subject to the conditions set forth in paragraph 1 of this Article, extradition shall also be granted for attempt and conspiracy to commit, aiding, abetting, counselling, procuring, inciting, or otherwise being an accessory to the commission of, an offence referred to in paragraph 1.

4. If extradition is granted for an extraditable offence, it may also be granted for any other offence for which extradition is requested that meets all the requirements for extradition other than the periods of imprisonment specified in paragraph 1 of this Article.



### **Article III**

#### **Place of Commission of Offence**

1. Extradition shall not be refused on the ground that the offence for which extradition is requested was committed outside the Requesting State.

2. Extradition may be refused when the offence for which extradition is requested is regarded under the law of the Requested State as having been committed in its territory.

If extradition is refused pursuant to this paragraph, the Requested State shall submit the case to its competent authorities for the purpose of prosecution.

### **Article IV**

#### **Exceptions to Extradition**

Extradition shall not be granted in any of the following circumstances:

- (a) when the person whose surrender is sought has been convicted or acquitted, or a prosecution is pending against that person, in the Requested State, for the offence for which extradition is requested;
- (b) when the offence for which extradition is requested is a political offence. Reference to a political offence shall not include the taking or attempted taking of the life of a Head of State or a member of his or her family;
- (c) when there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political opinion. Unless the law of the Requested State otherwise provides, decisions under this paragraph shall be made by the executive authority; or
- (d) when the offence for which extradition is requested is a military offence which is not an offence under the ordinary criminal law of the Contracting Parties.

### **Article V**

#### **Discretionary Grounds for Refusal of Extradition**

Extradition may be refused in any of the following circumstances:

- (a) when the person whose surrender is sought has been convicted or acquitted in a third State of the offence for which extradition is requested; or

- (b) when the competent authorities of the Requested State have decided to refrain from prosecuting the person whose surrender is sought for the offence for which extradition is requested, or to discontinue any criminal proceedings which have been initiated against that person for that offence.

## **Article VI**

### **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.

## **Article VII**

### **Postponement of Surrender**

When the person whose extradition is requested is being, or is about to be, proceeded against, or has been convicted, in the Requested State in respect of an offence other than that for which extradition has been requested, surrender may be postponed until the conclusion of the proceedings and the full execution of any punishment the person may be or may have been awarded.

## **Article VII bis**

### **Temporary surrender**

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 State, the Requested State may temporarily surrender the person sought to the Requesting State for the purpose of prosecution.

2. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State 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 States. The time spent in custody in the territory of the Requesting State pending prosecution in that State may be deducted from the time remaining to be served in the Requested State.

## Article VIII

### Extradition Procedure and Required Documents

1. The request for extradition shall be made in writing and shall be transmitted, with supporting documents, through the diplomatic channel, which shall include transmission as provided for in paragraph 8 of this Article.
2. The request for extradition shall contain:
  - (a) information which will help to establish the identity of the person sought;
  - (b) the location of the person if known or, if it is not known, a statement to that effect; and
  - (c) a brief statement of the facts of the case.
3. Every request for extradition shall be supported by documents which contain:
  - (a) as accurate a description as possible of the person sought, together with any other information which will assist in establishing the person's identity and nationality;
  - (b) a statement of the pertinent facts of the case, indicating as accurately as possible the time and place of commission of the offence; and
  - (c) the legal description of the offence and a statement of the maximum penalties therefor and the text of the law setting forth the offence or, where this is not possible, a statement of the relevant law.
4. When the request for extradition relates to a person who has not been convicted, it shall also be supported:
  - (a) by the original or an authenticated copy of the warrant of arrest, or equivalent order, issued by a competent authority of the Requesting State;
  - (b) by the original or an authenticated copy of the complaint, information or indictment; and
  - (c) in the case of a request emanating from Ireland, by a statement of facts, by way of affidavit or statutory declaration, setting forth reasonable grounds for believing that an offence has been committed and that the person sought committed it.
5. When the request for extradition relates to a convicted person, it shall also be supported:

- (a) by the original or an authenticated copy of the judgment of conviction; and
- (b) if a sentence has been imposed, by the original or an authenticated copy of the sentence and a statement of the extent to which it has been carried out and that it is immediately enforceable.

6. All documents transmitted by the Requesting State shall be in English or shall be translated into English by that State.

7. Documents that bear the certificate or seal of the Department of Justice, 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. “Department of Justice” shall, for the United States of America, mean the United States Department of Justice, and, for Ireland, the Department of Justice, Equality and Law Reform.

8. 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 paragraph 1 of this Article, 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 Article X of this Treaty to enable the person’s continued detention.

### **Article VIII *bis***

#### **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.

### **Article IX**

#### **Additional Evidence or Information**

1. If the Requested State requires additional evidence or information to enable it to decide on the request for extradition, such evidence or information shall be submitted to it within such time as that State shall specify.
2. If the person sought is in custody and the additional evidence or information submitted as aforesaid is found insufficient or if such evidence or

information is not received within the period specified by the Requested State, the person shall be discharged from custody. Such discharge shall not preclude the Requesting State from submitting another request in respect of the same offence.

3. Such additional evidence or information may be requested and furnished directly between the United States Department of Justice and the Department of Justice, Equality and Law Reform in Ireland.

## **Article X**

### **Provisional Arrest**

1. In case of urgency, a Contracting Party may request the provisional arrest of a person sought. The request for provisional arrest shall be made through the diplomatic channel or directly between the United States Department of Justice and the Department of Justice, Equality and Law Reform in Ireland, in which case the facilities of INTERPOL may be used. The request may be transmitted by post or telegraph or by any other means affording evidence in writing.

2. The request shall contain:

- (a) a description of the person sought;
- (b) a statement of the nature of the offence and of the time at which and the place where it is alleged to have been committed;
- (c) a statement of the existence of one of the documents referred to in paragraph 4(a) or 5 of Article VIII; and
- (d) a statement that it is intended to send a request for extradition.

3. On receipt of such a request, the Requested State shall take the appropriate steps to secure the arrest of the person sought. The Requesting State shall be promptly notified of the result of its request.

4. Unless the law of the Requested State otherwise provides, a person arrested upon such a request shall be released upon the expiration of forty-five days from the date of that person's arrest if the request for extradition has not been duly received by the Requested State. This stipulation shall not prevent the institution of proceedings with a view to extraditing the person sought if a request for extradition is subsequently received.

## **Article XI**

### **Rule of Speciality**

1. A person extradited under this Treaty shall not be proceeded against, sentenced, punished, detained or otherwise restricted in his or her personal freedom in the Requesting State for an offence other than that for which

extradition has been granted, or be extradited by that State to a third State, unless:

- (a) the person has left the Requesting State after extradition and has voluntarily returned to it;
- (b) the person, having had an opportunity to leave the Requesting State, has not done so within forty-five days of final discharge in respect of the offence for which that person was extradited; or
- (c) the Requested State has consented.

2. Where the description of the offence charged in the Requesting State is altered in the course of proceedings, the person extradited shall not be proceeded against, sentenced, punished, detained or otherwise restricted in his or her personal freedom except insofar as the offence under its new description is composed of the same constituent elements as the offence for which extradition was granted.

3. Unless the law of the Requesting State otherwise provides, the person extradited may be proceeded against, sentenced, punished, detained or otherwise restricted in his or her personal freedom for an offence for which that person could be convicted, under the law of that State, upon trial for the offence for which extradition was granted.

4. These stipulations shall not apply to offences committed after the extradition.

## **Article XII**

### **Multiple Requests**

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 Ireland 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 High Court, or such other authority as it may subsequently designate, shall determine to which State, if any, the person is to be surrendered.

3. In making its decision under paragraphs 1 and 2 of this Article, the Requested State 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 States;
- (d) the seriousness of the offences;
- (e) the nationality of the victim;
- (f) the citizenship or nationality of the person sought;
- (g) the possibility of any subsequent extradition between the requesting States; and
- (h) the chronological order in which the requests were received from the requesting States.

### **Article XII bis**

#### **Simplified extradition procedures**

If the person sought consents to be surrendered to the Requesting State, the Requested State 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 XIII**

#### **Notification of Decision**

1. The Requested State shall promptly communicate to the Requesting State through the diplomatic channel the decision on the request for extradition.

2. The Requested State shall provide reasons for any partial or complete rejection of the request for extradition. It shall also provide the Requesting State with a copy of each opinion issued by its courts in connection with a request for extradition under this Treaty.

3. If a warrant or order for the extradition of a person sought has been issued by the competent authority and the person is not removed from the territory of the Requested

State within such time as may be prescribed by the law of that State, that person may be set at liberty and the Requested State may subsequently refuse to extradite that person for that offence.

## **Article XIV**

### **Surrender of Property**

1. To the extent permitted under the law of the Requested State and subject to the rights of third parties, which shall be duly respected, all property which appears to have been acquired as a result of the offence in question or which may be required as evidence shall, if found, be seized and surrendered to the Requesting State if the person sought is extradited or if extradition, having been granted, cannot be carried out by reason of the death or escape of that person.

2. The Requested State may make the surrender of the property conditional upon satisfactory assurances from the Requesting State that the property will be returned to the Requested State as soon as practicable, and may defer its surrender if it is needed as evidence in the Requested State.

## **Article XV**

### **Transit**

1. Transit through the territory of one of the Contracting Parties of a person surrendered to the other Contracting Party by a third State may be granted on request subject to the law of the State of transit and to such conditions as that State may impose. For the purpose of considering the request, the State of transit may require the submission of such information as it considers necessary.

2. Authorisation is not required when air transportation is used and no landing is scheduled on the territory of the transit State. If an unscheduled landing does occur, the State in which the unscheduled landing occurs may require a request for transit that contains a description of the person being transported and a brief statement of the facts of the case. A request for transit shall be made through the diplomatic channel or directly between the United States Department of Justice and the Irish Department of Justice, Equality and Law Reform. The facilities of the International Criminal Police Organisation (INTERPOL) may be used to transmit such a request. 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.

## **Article XVI**

### **Representation**

1. The Department of Justice of the United States shall advise, assist and represent, or provide for the representation of, Ireland in any proceedings in the United States arising out of a request for extradition made by Ireland.

2. The Attorney General of Ireland shall advise and assist, and represent, or provide for the representation of, the interests of the United States in



any proceedings in Ireland arising out of a request for extradition made by the United States.

3. The functions referred to in this Article may be assumed by any successor agency designated by the State concerned.

## **Article XVII**

### **Expenses**

1. The Requesting State shall bear all expenses arising out of the translation of documents and the transportation of the person sought from the place of the extradition proceedings to the Requesting State. Notwithstanding any law to the contrary, the Requested State shall bear all other expenses arising out of the request for extradition and the proceedings.

2. The Requested State shall make no pecuniary claim against the Requesting State arising out of the arrest, detention, extradition proceedings and surrender of a person sought under this Treaty.

## **Article XVIII**

### **Termination**

Either Contracting Party may terminate this Treaty by giving written notice to the other Contracting Party at any time, and the termination shall become effective six months after the date of receipt of such notice.”.



GIVEN under my Official Seal,  
30 January 2010.

MICHEÁL MARTIN,  
Minister for Foreign Affairs.

## EXPLANATORY NOTE

*(This note is not part of the instrument and does not purport to be a legal interpretation)*

The effect of this Order (which amends the Extradition Act 1965 (Application of Part II) Order 2000) is to apply in relation to the United States of America the provisions of Part II of the Extradition Act, 1965. Its purpose is to enable the extradition of persons in pursuance of the arrangements for extradition entered into by way of the Agreement on Extradition between the European Union and the United States of America, signed at Washington D.C. on 25 June 2003, and the Instrument as contemplated by Article 3(2) of that Agreement as to the Application of the 1983 Treaty on Extradition between Ireland and the United States of America, signed at Dublin on 14 July 2005.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,  
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,  
nó tríd an bpost ó  
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,  
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