



Screening Serbia
Analytical examination of the acquis
Chapter 24 – Justice, freedom and Security
Bruxelles – 3 october 2013
EU – 3rd States Judicial co-operation Agreements



European Commission
Justice

Basic principles of mutual legal assistance and extradition Agreements of the Union with third countries

- External policy of the Union and international judicial cooperation with third countries: balancing between promoting concrete interest of the Union and its citizens and maintaining human rights and fundamental freedoms in international judicial cooperation agreements, in the light of the Charter of Fundamental Rights of the European Union

Legal basis for the EU – third countries MLA and extradition agreements

Until 30 November 2009

- Article 24 and 38 of the Treaty on the European Union – all existing agreements were negotiated and signed under this legal basis
- Negotiations led by the Presidency, assisted by the Commission.
- No involvement of the European Parliament
- Decisions adopted by unanimity

Legal basis for the EU – third countries MLA and extradition agreements

- As of 1 December 2009
- Articles 82(1) and 218(6) of the Treaty on the Functioning of the European Union
- The negotiations will be led by the Commission
- The Council will adopt decisions by qualified majority
- The European Parliament is fully involved – gives its assent

Background EU – US Agreements

- After the events of 9/11 EU and US started to cooperate quickly on modernization of law enforcement and judicial cooperation
- First time an international agreement in the field of justice and home affairs was signed by the EU (on the basis of articles 24 and 38 of the TEU)
- The Agreements were negotiated in very fast and constructive manner (bearing in mind the common threat of terrorism)
- Framework agreements – set common framework for cooperation, but will co-exist together with other EU MS – US bilateral agreements

The Stockholm Programme and judicial cooperation agreements

Commission will have more active role under the new legal framework (negotiator)

The SP calls upon the Commission, the Council and the European Parliament to develop a policy taking into account the following criteria:

- Strategic relationship
- Existence of bilateral agreements
- Adherence of the country to human rights' principles
- General cooperation with the EU
- The EU priorities of law enforcement and judicial cooperation
- Political and economical importance of the country
- The added value of an agreement as compared to the existing legal framework
- The legal standards of the country concerned
- The rule of law and the issue of prohibition of the death penalty must be strictly ensured in the Agreement
- The third country's active approach towards conclusion of an agreement with the EU

EU – US judicial cooperation Agreements

Key features

- Formal negotiations between EU and U.S. began in the spring of 2002 and the two agreements were signed by the United States and the European Union on June 25, 2003.
- The extradition agreement incorporated facets of modern practice that were absent from older extradition treaties between the U.S. and EU MS (e.g., conversion of list treaties to a dual criminality approach; streamlining of process for authentication and transmission of documents)
- The mutual legal assistance (MLA) agreement provides for a number of provisions absent even from newer mutual legal assistance treaties (e.g., tools to identify bank accounts and transactions, and to facilitate the establishment of joint investigative teams).
- The U.S. - EU agreements do not replace the existing bilateral Treaties but supplement them. Thereafter, the U.S. and the individual EU MS began the process of drafting bilateral instruments to reflect the EU-US Agreements based obligations in the bilateral extradition and mutual legal assistance relationships of the United States and the Member States. The negotiation of the bilateral instruments with the 15 EU Member States came next, closely followed by negotiation with the 10 Member States that acceded to the European Union on May 1, 2004. Following the accession of Bulgaria and Romania to the European Union on January 1, 2007, two full extradition treaties and two bilateral mutual legal assistance instruments were concluded with these countries during 2007.

EU – US judicial cooperation Agreements

Key features

- EU as a Contracting Party is responsible for implementation of the obligations contained in each Agreement, even though practical application of those obligations would occur at the Member State level. EU Member States, although not formally Contracting Parties, are bound to the provisions of each EU-US Agreement as a matter of EU law, and they also have separate but parallel international obligations to the U.S.
- **Temporal Application** - The EU-US Agreements and bilateral instruments entered into force on the same date (1 February 2010).
- **Periodic Review of Agreements/Institutional Role of European Union** - Both EU-US Agreements stipulate that the Contracting Parties will review their application no later than five years after entry into force, looking not only at practical aspects but also at the evolving role of the European Union in relation to the subject-matter.
- **Consultations** – Both EU-US Agreements provide for consultations between the EU and the U.S., rather than between the U.S. and a Member State with which a dispute may arise. Bearing in mind that the EU negotiated the EU-US Agreements on behalf of the Member States, and that EU law gives it authority over Member States with respect to the subject matter of the EU-US Agreements, the European Union is in a unique position to assist Member States in understanding the intended meaning, and appropriate application, of particular provisions. In addition, there are a number of consultation provisions contemplated by the EU-US Agreements that apply between the U.S. and the EU MS in their roles as Requesting and Requested States, and the bilateral extradition and MLA treaties modified by the EU-US Agreements also frequently contemplate periodic consultations.

The issue of capital punishment (art. 13 Extradition Treaty)

- The federal US system and 37 states in the United States provide for the death penalty for some offences (capital offences). The EU considers the death penalty to be contrary to fundamental rights. Article 2 of the EU Charter of Fundamental Rights clearly prohibits the death penalty in any circumstance, as does Protocol No 13 to the European Convention on Human Rights. Therefore extradition by a Member State to the United States for a capital offence is possible only with sufficient guarantees. In extradition relationships between the U.S. and Member States, the U.S. routinely obligates itself not to subject the extradited person to the death penalty. The new language reflects the existing practice more precisely.
- Accordingly, under the text of the new provision, the U.S., as a general rule, agrees to the condition that the death penalty shall not be imposed. If the case emanates from one of the U.S. states in which it is not technically possible to assure that the death penalty will not be imposed, the United States agrees to the condition that, if imposed, the death penalty will not be carried out.

EU - Japan MLA Agreement

- Based on political will of both parties
- Negotiated in record time (given the entry into force of the Lisbon Treaty, the negotiations had to be completed before the end of November 2009)
- Unique Agreement - First EU-third country “self-standing” Agreement
- Entered into force on 2 January 2011
- Modern means of cooperation, such as the possibility to request bank information or to organise a hearing of a witness or an expert via videoconference.

EU- Norway and Iceland judicial cooperation agreements

- Agreement EU-Iceland and Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between EU MS and the 2001 protocol thereto – signed in 2003
- Agreement EU-Iceland and Norway on the surrender procedure – signed in 2006
- Extend EAW and EU MLA rules to such countries, members of Schengen area, which will, to some extent, incorporate through such agreements EU rules in their systems where cooperating with EU MS
- Procedure for entry into force about to be completed

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