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BEFORE THE COMMITTEE ON FOREIGN RELATIONS  
UNITED STATES SENATE

EXTRADITION AND MUTUAL LEGAL ASSISTANCE AGREEMENTS  
WITH THE EUROPEAN UNION

BILATERAL INSTRUMENTS WITH EUROPEAN UNION MEMBER  
STATES, INCLUDING EXTRADITION TREATIES WITH BULGARIA,  
ESTONIA, LATVIA, MALTA, AND ROMANIA

MUTUAL LEGAL ASSISTANCE TREATY WITH MALAYSIA

MAY 20, 2008

Mr. Chairman,

I am pleased to testify, along with my colleague from the Department of Justice, to express the strong support of the Department of State and the Administration for the Senate's prompt provision of advice and consent to ratification of fifty-seven new agreements for international law enforcement cooperation. The agreements fall into three categories:

- two agreements with the European Union (EU), one each on extradition and mutual legal assistance;

- fifty-four bilateral instruments, done pursuant to the U.S.-EU Agreements, one on extradition and one on mutual legal assistance, with each of the twenty-seven EU member states; and
- a mutual legal assistance treaty (MLAT) with Malaysia.

The Department of State greatly appreciates this opportunity to move towards ratification of these important treaties. I will address the extradition and mutual legal assistance agreements with the European Union and the bilateral instruments with EU member states first, followed by the MLAT with Malaysia.

### Extradition and Mutual Legal Assistance Agreements with the European Union

Mr. Chairman, the extradition and mutual legal assistance agreements between the United States and the European Union are the first law enforcement treaties our government has ever concluded with this important international body. They are concrete results of a dialogue that began between our government and the EU in the immediate aftermath of the

September 11, 2001, attacks, as part of a wide-ranging exploration of ways of improving trans-Atlantic cooperation against terrorism.

From these discussions came a decision to modernize and expand existing law enforcement treaties between the United States and the member states of the European Union. It was agreed to pursue this modernization initially through the negotiation of agreements with the EU itself, to be followed by instruments with the individual member states. Both features – modernization of existing treaties and widening the net of bilateral treaty coverage – became particularly important when the EU in 2004 and 2007 expanded to admit new countries primarily from Central and Eastern Europe, a region where a number of U.S. extradition treaties were antiquated and mutual legal assistance treaties, in some cases, were non-existent.

Among the most important features of the U.S.-EU Extradition Agreement is a provision replacing outdated “lists” of extraditable offenses with the “dual criminality” approach. This modern approach will now apply to our extradition relations with all the countries of the European Union. It allows extradition for a broader range of offenses, and also will encompass newer ones, e.g. cybercrime, as they develop, without the need to amend the

underlying treaties. The Extradition Agreement additionally contains a series of significant improvements to expedite the extradition process, which will be described by my Department of Justice colleague.

The U.S.-EU Mutual Legal Assistance Agreement likewise contains several innovations that should prove of value to U.S. prosecutors and investigators. It creates an improved mechanism for obtaining bank information from an EU member state, delineates a legal framework for the use of new techniques such as joint investigative teams, and establishes a comprehensive and uniform framework for limitations on the use of personal data. The Department of Justice testimony also will describe these features in greater detail.

### Extradition and Mutual Legal Assistance Instruments with EU Member States

The Extradition and Mutual Legal Assistant Agreements with the EU were signed in June, 2003. Thereafter, the United States pursued bilateral implementing instruments, one each on extradition and mutual legal assistance. These instruments were negotiated first with each of the

European Union's then-fifteen member states and thereafter with the twelve additional states that joined in two groups, in 2004 and in 2007.

The conclusion of individual bilateral instruments was undertaken for important reasons. As a matter of international law, the bilateral instruments reflect direct sovereign consent by each EU member state to the changes required by the U.S.-EU Agreements to the pre-existing bilateral extradition or mutual legal assistance treaty between the United States and that member state. As a matter of domestic law, the bilateral instruments should ensure application of the revised extradition treaties and MLATs by practitioners and the judiciary, both in the United States and abroad.

Most of the bilateral extradition instruments simply reflect the modernizing provisions contained in the U.S.-EU Agreement. However, five of the bilateral extradition instruments being considered by the Committee today – those with Bulgaria, Estonia, Latvia, Malta, and Romania – take the form of comprehensive new extradition treaties. (These were transmitted to the Senate separately.) Since the prior extradition treaties with each of these countries had become outdated, it made sense to incorporate the provisions required by the U.S.-EU Extradition Agreement

into fully-modernized new extradition treaties instead of amendments to the existing treaties.

As a matter of substance, what is particularly notable in each of the comprehensive new treaties is the obligation undertaken to extradite nationals. With respect to Estonia and Romania, this obligation is unqualified. In the case of Latvia, its government may request that a Latvian national serve a U.S.-imposed sentence in a Latvian prison, pursuant to a prisoner transfer treaty. With regard to Malta and Bulgaria, their nationals may be extradited for thirty specified offenses corresponding essentially to those offenses for which they also may be surrendered for trial to European Union member states. These countries thus have become the most recent European countries to overcome the historic obstacle that nationality has posed in extradition relations between much of Europe and the United States.

The bilateral mutual legal assistance instruments, like the extradition instruments, reflect the scope of the U.S.-EU MLA Agreement. Notably, where no bilateral law enforcement treaty previously existed between the United States and the EU member state – as is the case with seven member

states in the mutual legal assistance area (Bulgaria, Denmark, Finland, Malta, Portugal, Slovakia, and Slovenia) – the mutual legal assistance instruments, while not serving as comprehensive MLATs, will ensure that the obligations arising from the U.S.-EU Agreement are applied between the United States and the EU member state.

Ratification processes for both the U.S.-EU Agreements and for the bilateral instruments are approaching completion in Europe. While the foreign party to the U.S.-EU Agreements is the European Union itself, most EU member states nonetheless are required or have chosen under their domestic constitutional laws to ratify both the U.S.-EU Agreements and the applicable bilateral instruments. I am pleased to report that twenty-two of the twenty-seven EU member states have completed their domestic procedures to bring the agreements into force. We expect the remainder to do so in coming months, and prompt Senate action on this package of agreements would be very helpful in accelerating the process of ratifications in European Union member states. The U.S.-EU Agreements and the completed bilateral instruments may enter into force only following completion of all ratification procedures by all national governments.

## Mutual Legal Assistance Treaty with Malaysia

The Mutual Legal Assistance Treaty with Malaysia does not have the historic significance and law enforcement impact of the US-EU agreements, but it is nonetheless important. Malaysia is located at the heart of a region of the world where our law enforcement authorities are working every day in partnership with local governments to combat terrorism and organized crime. The MLAT will be a useful tool to help authorities in both the United States and Malaysia investigate and prosecute those offenses. It also will serve – indeed, it has already served – as a model for ongoing negotiations between the United States and other nations in that crucial region.

For the most part, the content of the MLAT with Malaysia is similar to that of the many other MLATs that this Committee has reviewed in recent decades. It provides broad authority for each party to assist the other in gathering evidence necessary for criminal investigations and prosecutions.

One of the less common features of this MLAT is the provision allowing either party to refuse assistance in the absence of so-called “dual criminality” – in other words, if the conduct being investigated or prosecuted



would not also constitute an offense in the state receiving the request punishable by a maximum sentence of at least one year's imprisonment. Unlike extradition treaties, most MLATs do not have, and do not require, such a provision, but it is not unprecedented and we view it as a workable approach. To provide sufficient certainty that cooperation will be available for the range of requests we are likely to submit, our negotiators undertook two important steps: first, they conducted a review and comparison of the criminal codes of the two countries and concluded that there was sufficient commonality between the two that U.S. authorities would be able to obtain assistance in a broad range of matters. In addition, the negotiators prepared and included an annex to the treaty that outlines a set of offenses for which assistance will not be denied on the ground of absence of dual criminality. This annex includes the types of offenses for which U.S. prosecutors generally seek assistance abroad.

Mr. Chairman, I urge that the Committee give prompt and favorable consideration to these agreements.

Thank you.