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ΕΦΗΜΕΡΙΣ ΤΗΣ ΚΥΒΕΡΝΗΣΕΩΣ

ΤΗΣ ΕΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ

ΤΕΥΧΟΣ ΠΡΩΤΟ

Αρ. Φύλλου 225
27 Οκτωβρίου 1999

ΝΟΜΟΣ ΥΠ' ΑΡΙΘ. 2746

Κύρωση της Σύμβασης αμοιβαίας δικαστικής συνδρομής σε ποινικές υποθέσεις μεταξύ της Κυβέρνησης της Ελληνικής Δημοκρατίας και της Κυβέρνησης του Καναδά.

Ο ΠΡΟΕΔΡΟΣ ΤΗΣ ΕΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ

Εκδίδομε τον ακόλουθο νόμο που ψήφισε η Βουλή:

Άρθρο πρώτο

Κυρώνεται και έχει την ισχύ, που ορίζει το άρθρο 28 παράγραφος 1 του Συντάγματος, η Σύμβαση αμοιβαίας δικαστικής συνδρομής σε ποινικές υποθέσεις μεταξύ της Κυβέρνησης της Ελληνικής Δημοκρατίας και της Κυβέρνησης του Καναδά, που υπογράφηκε στην Αθήνα στις 14 Ιουλίου 1998, το κείμενο της οποίας σε πρωτότυπο στην αγγλική, γαλλική και ελληνική γλώσσα έχει ως εξής:

TREATY

BETWEEN

THE GOVERNMENT OF THE HELLENIC REPUBLIC

AND

THE GOVERNMENT OF CANADA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

THE GOVERNMENT OF THE HELLENIC REPUBLIC AND THE GOVERNMENT OF CANADA,

DESIRING to improve the effectiveness of both countries in the investigation, prosecution and suppression of crime through cooperation and mutual legal assistance in criminal matters;

HAVE AGREED as follows:

PART I: GENERAL PROVISIONS

ARTICLE 1

Obligation to Provide Mutual Legal Assistance

1. The Contracting Parties shall, in accordance with this Treaty, provide each other with the widest possible measure of mutual legal assistance in criminal matters.

2. «Mutual legal assistance» is any assistance given by the Requested State in respect of investigations or proceedings in the Requesting State in a criminal matter, irrespective of whether the assistance is sought or to be provided by a court or some other authority.

3. «Criminal matters» means, for the Hellenic Republic, investigations or proceedings relating to any offence created by Parliament and, for Canada, investigations or proceedings relating to any offence created by Parliament or by the legislature of a province.

4. «Criminal matters» includes investigations or proceedings relating to offences concerning taxation, duties and customs.

5. Assistance includes:

- (a) locating and identifying persons and objects;
- (b) serving documents, including documents seeking the attendance of persons;
- (c) providing information, documents or other records;
- (d) providing objects, including lending exhibits;
- (e) search and seizure;
- (f) taking evidence and obtaining statements;
- (g) authorizing the presence of persons from the Requesting State at the execution of requests;
- (h) making detained persons available to give evidence or assist in investigations;
- (i) facilitating the appearance of witnesses or the conduct of investigations;
- (j) taking measures to locate, restrain and forfeit the proceeds of crime;
- (k) providing other assistance consistent with the objects of this Treaty.

ARTICLE 2

Execution of Requests

1. Requests for assistance shall be executed promptly, in accordance with the law of the Requested State and, unless prohibited by that law, in the manner specified by the Requesting State.

2. Upon request, the Requested State shall inform the Requesting State of the date and place of execution of the request for assistance.

3. The Requested State shall provide the Requesting State with bank records requested that may be subject to banking secrecy, to the same extent and under the same

conditions as those under which such documents could be obtained by its own law enforcement or judicial authorities.

ARTICLE 3

Refusal or Postponement of Assistance

1. Assistance may be refused if:

(a) in the opinion of the Requested State, execution of the request would impair its sovereignty, security, public order, essential public interest, or prejudice the safety of any person;

(b) in the opinion of the Requested State, the request relates to a military offence, or

(c) in the opinion of the Requested State, the request pertains to a political offence.

2. Assistance may be postponed by the Requested State if execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.

3. The Requested State shall promptly inform the Requesting State of a decision of the Requested State not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.

4. Before refusing a request for assistance or before postponing the execution of a request, the Requested State shall consider whether assistance may be provided subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with them.

PART II: SPECIFIC PROVISIONS

ARTICLE 4

Locating and Identifying Persons

The competent authorities of the Requested State shall make every effort to ascertain the location and identity of the persons and objects specified in the request.

ARTICLE 5

Service of Documents

1. The Requested State shall serve any document transmitted to it for service.

2. The Requesting State shall transmit a request to serve a document pertaining to a reply or appearance in the Requesting State within a reasonable time before the date fixed for the reply or appearance.

3. The Requested State shall transmit proof of service in the manner prescribed by the Requesting State.

ARTICLE 6

Provision of Information, Documents, Records and Objects

1. The Requested State shall provide copies of publicly available information, documents and records in the possession of government departments and agencies.

2. The Requested State shall provide information, documents, records and objects in the possession of government departments or agencies, but not publicly available, to the same extent and under the same conditions as it would make them available to its own law enforcement and judicial authorities.

3. The Requested State may provide certified true copies of records or documents, unless the Requesting State expressly requests the originals.

4. Originals of records or documents or objects provided to the Requesting State shall be returned to the Requested State as soon as possible, upon request.

5. Unless prohibited by the law of the Requested State, records, documents or objects shall be provided in such form or accompanied by such certification as may be specified by the Requesting State so that they are admissible in evidence according to the law of the Requesting State.

ARTICLE 7

Search and Seizure

1. The Requested State shall execute requests for search and seizure.

2. The competent authority that executes a request for search and seizure shall provide such information as may be required by the Requesting State concerning, but not limited to, the identity, integrity and continuity of possession of the documents, records or objects seized and the circumstances of the seizure.

ARTICLE 8

Taking Evidence in the Requested State

1. A person requested to testify and produce documents, records or other articles in the Requested State shall be compelled, if necessary, to appear and testify or produce such documents, records and other articles of evidence.

2. Upon request, the Central Authority of the Requested State shall provide in advance information regarding the date and place of the taking of the testimony or evidence referred to in paragraph 1.

3. The Requested State shall permit the presence of such persons as specified in the request during the execution of the request and shall allow such persons to question the person giving the testimony or evidence. Specifically, the persons permitted to be present will be:

(a) two representatives of the Requesting State;

(b) all parties to the criminal proceeding that is the basis for the request;

(c) lawyers for the parties; and

(d) support personnel necessary to the proceeding;

4. The support personnel present at the taking of the testimony or evidence shall be permitted to make a verbatim transcript of the proceeding. The use of technical means to make such a verbatim transcript shall be permitted.

ARTICLE 9

Presence of Interested Persons at the Proceedings in the Requested State

To the extent not prohibited by the law of the Requested State, persons specified in the request and referred to in Article 8 paragraph 3 shall be permitted to be present at the execution of the request.

ARTICLE 10

Making Detained Persons Available to the Requesting State to Give Evidence or Assist in an Investigation in the Requesting State

1. Upon request, a person serving a sentence in the Requested State shall be transferred temporarily to the Requesting State to assist in investigations or testify in proceedings, provided that the person agrees to be transferred.

2. When the person transferred is required to be kept in custody under the law of the Requested State, the Requesting State shall keep this person in custody and return this person to the Requested State at the conclusion of the execution of the request.

3. If, during the period of the transfer, the sentence being served by the person transferred expires or the Requested State informs the Requesting State that the person is no longer required to be kept in custody, the person shall set at liberty and be treated as a person present in the Requesting State pursuant to a request seeking that person's attendance.

ARTICLE 11

Testifying in Proceedings and Assisting in Investigations in the Requesting State

Upon request, the Requested State shall invite a person to assist in an investigation or appear as a witness in the Requesting State and shall seek that person's consent. In the request, the Requesting State shall inform the person of any expenses and allowances payable.

ARTICLE 12

Safe Conduct

1. Subject to article 10(2), a person present in the Requesting State in response to a request shall not be prosecuted, detained, subjected to any restriction of personal liberty in the Requesting State for conduct that preceded the person's departure from the Requested State, or be obliged to give evidence in any proceeding other than that to which the request relates.

2. Paragraph 1 of this Article ceases to apply if a person, being free to leave the Requesting State, has not left within thirty days after receiving official notification that the person's presence is no longer required or if, having left, has returned voluntarily.

3. A person who fails to appear in the Requesting State shall not be subjected to any penalty or compulsory measure in either the Requested State or the Requesting State.

ARTICLE 13

Proceeds of Crime

1. Upon request, the Requested State shall endeavour to determine whether any proceeds of crime are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries.

2. When, pursuant to paragraph 1 of this Article, suspected proceeds of crime are found, the Requested State shall take such measures as are permitted under its law to restrain, seize and transmit to the Requesting State upon request or forfeit these proceeds of crime.

3. Proceeds of crime forfeited further to a request made pursuant to this Treaty shall be disposed of in accordance with the law of the Requested State unless otherwise agreed.

ARTICLE 14

Restitution and Fine Enforcement

The Requested State shall, to the extent permitted by its law, assist in making restitution to the victims of crime and in collecting fines imposed as a sentence in a criminal prosecution.

PART III: PROCEDURE

ARTICLE 15

Content of Requests

1. In all cases, requests for assistance shall include the following information:

(a) the identity of the competent authority responsible for the investigation or the proceedings to which the request relates;

(b) a description of the nature of the investigation or proceedings and a summary of the relevant facts and a copy of the applicable laws;

(c) the purpose of the request and the nature of the assistance sought;

(d) a stipulation concerning the degree of confidentiality required and, where applicable, the reasons therefor; and

(e) an indication of the period of time within which the request should be executed.

2. In the following cases, requests for assistance shall contain the following information:

(a) in the case of requests for the taking of evidence, search and seizure, or the location, restraint or forfeiture of proceeds of crime, a statement indicating the basis for the belief that evidence or proceeds of crime may be found in the Requested State;

(b) in the case of requests for the taking of evidence, an indication as to whether sworn or solemnly affirmed statements are required and a description of the subject matter of the evidence or statement sought;

(c) in the case of requests for the lending of exhibits, the current location of the exhibits in the Requested State, the persons or class of persons in the Requesting State who will have custody of the exhibits, the location to which the exhibits are to be removed, the tests to be conducted on the exhibits and the date by which the exhibits will be returned;

(d) in the case of requests to make detained persons available to the Requesting State, the identity of the persons or class of persons that will have custody during the transfer, the place to which the detained person is to be transferred, and the date of the person's return.

3. As required and where possible, requests for assistance shall contain the following information:

(a) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;

(b) details of any particular procedure that the Requesting State wishes to be followed and the reasons therefor.

4. If the Requested State considers that the request does not contain sufficient information, it may request additional information.

5. Requests shall be made in writing. In urgent situations, a request may be made using any means of communication which leaves a written record, but shall be confirmed in writing as quickly as possible.

ARTICLE 16

Central Authorities

Pursuant this Treaty, all requests and replies thereto shall be transmitted and received by the Central Authorities.

The Central Authority in Greece shall be the Ministry of Justice. The Central Authority in Canada shall be the Minister of Justice or the officials designated by the Minister.

ARTICLE 17

Confidentiality

1. The Requested State may require, after consultation with the Requesting State, that information or evidence provided, or the source of such information or evidence, be kept confidential or be disclosed or used only subject to such terms and conditions as it may specify.

2. The Requested State shall protect, to the extent requested, the confidentiality of the request, its content, supporting documents and any action taken pursuant to the request to further its execution. If the request cannot be executed without breaching the confidentiality requirement, the Requested State shall so inform the Requesting State prior to executing the request, and the Requesting State shall then decide whether the request should be executed.

ARTICLE 18

Limitation on the Use of Information

The Requesting State shall not use or disclose information or evidence provided for purposes other than those stated in the request without the prior consent of the Central Authority of the Requested State.

ARTICLE 19

Authentication

Documents, records or objects transmitted pursuant to this Treaty shall not require any form of authentication, except as provided in Article 6.

ARTICLE 20

Language

Requests and supporting documents shall be accompanied by a translation into the official language or one of the official languages of the Requested State.

ARTICLE 21

Costs

1. The Requested State shall bear the cost of executing the request for assistance, with the exception of the following costs which shall be borne by the Requesting State:

(a) the cost of transporting, at the request of the Requesting State, any person to or from the territory of the Requested State, and all expenses and allowances payable to that person while in the Requesting State pursuant to a request under Articles 10 or 11 of this Treaty;

(b) the expenses and fees of experts, whether incurred in the Requested State or in the Requesting State;

(c) the cost of translation, interpretation and transcription.

2. If it becomes apparent that the execution of a request requires expenses of an extraordinary nature, the Contracting Parties shall consult one another to determine the terms and conditions under which the assistance requested can be provided.

PART IV: FINAL PROVISIONS

ARTICLE 22

Other Assistance

This Treaty shall not derogate from obligations subsisting between the Contracting Parties under other treaties, conventions or agreements, or in any way prevent the Contracting Parties from providing or continuing to provide assistance to each other pursuant to other treaties, conventions, agreements or practices.

ARTICLE 23

Consultation

The Contracting Parties shall consult one another promptly, at the request of either Party, concerning the interpretation and the application of this Treaty.

ARTICLE 24

Entry into Force and Termination

1. This Treaty shall enter into force on the date on which the Contracting Parties have notified each other that they have fulfilled their legal requirements.

2. This Treaty shall apply to any request made after its entry into force even if the relevant conduct occurred prior to this date.

3. Either Contracting Party may terminate this Treaty by giving notice to the other Party, and this termination shall take effect one year from the date on which such notice is given.

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

DONE in duplicate at , on the day of one thousand nine hundred and ninety-eight, in Greek, English and French, each version being equally authentic.

FOR THE GOVERNMENT OF
THE HELLENIC REPUBLIC
(Υπογραφή)

FOR THE GOVERNMENT
OF CANADA
ΕΛΕΝΗ ΜΠΑΚΟΠΑΝΟΥ

TRAITÉ D'ENTRAIDE JUDICIAIRE EN MATIÈRE PÉNALE ENTRE

LE GOUVERNEMENT DE LA REPUBLIQUE HELLÉNIQUE

ET

LE GOUVERNEMENT DU CANADA

LE GOUVERNEMENT DE LA RÉPUBLIQUE HEL-
LÉNIQUE ET LE GOUVERNEMENT DU CANADA,

DÉSIREUX de rendre plus efficaces la recherche, la poursuite et la répression du crime dans les deux pays par la coopération et l'entraide judiciaire en matière pénale,

SONT CONVENUS de ce qui suit :

PARTIE I: DISPOSITIONS GÉNÉRALES

ARTICLE PREMIER

Obligation d'accorder l'entraide judiciaire

1. Les Parties Contractantes s'accordent, conformément aux dispositions du présent Traité, l'entraide judiciaire en matière pénale la plus large possible.

2. «Entraide judiciaire» s'entend de toute aide donnée par

l'État requis à l'égard des enquêtes et des procédures en matière pénale menées dans l'État requérant, peu importe que l'aide soit recherchée ou doive être fournie par un tribunal ou une autre autorité.

3. Par «matière pénale» on entend, en ce qui concerne la République hellénique, les enquêtes et les procédures relatives à toute infraction créée par une loi du Parlement et, en ce qui concerne le Canada, les enquêtes et les procédures relatives à toute infraction créée par une loi du Parlement ou de la législature d'une province.

4. Par «matière pénale» on entend également les enquêtes et les procédures se rapportant aux infractions à une loi de nature fiscale, tarifaire ou douanière.

5. L'entraide judiciaire vise notamment :

- a) la localisation de personnes et d'objets, y compris leur identification;
- b) la signification de documents, y compris d'actes de convocation;
- c) la transmission d'informations, de documents ou d'autres dossiers;
- d) la transmission d'objets, y compris le prêt de pièces à conviction;
- e) la perquisition, fouille et saisie;
- f) la prise de témoignages et de dépositions;
- g) l'autorisation de la présence de personnes de l'État requérant à l'exécution des demandes;
- h) l'assistance en vue de rendre disponibles des personnes détenues, afin qu'elles témoignent ou aident à l'avancement des enquêtes;
- i) l'assistance en vue de faciliter la comparution de témoins ou d'aider à l'avancement des enquêtes;
- j) les mesures en vue de localiser, bloquer et confisquer les produits de la criminalité;
- k) toute autre forme d'entraide conforme aux objets du présent Traité.

ARTICLE 2

Exécution des demandes

1. Les demandes d'entraide sont exécutées promptement, conformément au droit de l'État requis et, dans la mesure où ce droit ne le prohibe pas, de la manière exprimée par l'État requérant.

2. Sur demande, l'État requis informe l'État requérant de la date et du lieu d'exécution de la demande d'entraide.

3. L'État requis fournit à l'État requérant les dossiers bancaires demandés et pouvant être couverts par le secret bancaire dans la même mesure et aux mêmes conditions que celles sous lesquelles de tels documents pourraient être obtenus par ses propres autorités d'exécution de la loi ou autorités judiciaires.

ARTICLE 3

Entraide refusée ou différée

1. L'entraide peut être refusée si:

- a) l'État requis estime que l'exécution de la demande porterait atteinte à sa souveraineté, à sa sécurité, à son ordre public, à un autre de ses intérêts publics fondamentaux, ou à la sécurité de toute personne;
- b) l'État requis estime que la demande vise une infraction militaire; ou
- c) l'État requis estime que la demande vise une infraction politique.

2. L'entraide peut être différée si l'exécution de la demande a pour effet de gêner une enquête ou une poursuite en cours dans l'État requis.

3. L'État requis informe sans délai l'État requérant de sa décision de ne pas donner suite, en tout ou en partie, à une demande d'entraide, ou d'en différer l'exécution. Tout refus ou report d'entraide doit être motivé par l'État requis.

4. Avant de refuser de faire droit à la demande d'entraide ou d'en différer l'exécution, l'État requis détermine si l'entraide peut être accordée aux conditions qu'il estime nécessaires. L'État requérant qui accepte cette entraide conditionnelle doit en respecter les conditions.

PARTIE II: DISPOSITIONS PARTICULIÈRES

ARTICLE 4

Recherche ou identification de personnes

Les autorités compétentes de l'État requis prennent toutes les mesures nécessaires pour tenter de trouver et d'identifier les personnes et les objets visés par la demande.

ARTICLE 5

Signification de documents

1. L'État requis signifie tout document qui lui est transmis pour fins de signification.

2. L'État requérant transmet la demande de signification d'un document se rapportant à une réponse ou à une comparution dans l'État requérant dans un délai raisonnable avant la date prévue pour la réponse ou la comparution.

3. L'État requis transmet la preuve de signification dans la forme exigée par l'État requérant.

ARTICLE 6

Fourniture d'information, de documents, de dossiers et d'objets

1. L'État requis fournit copie des éléments d'information, des documents et des dossiers dont les ministères et organismes gouvernementaux sont en possession et qui sont par ailleurs disponibles au public.

2. L'État requis fournit les informations, documents, dossiers et objets dont les ministères et organismes gouvernementaux sont en possession, mais qui ne sont pas disponibles au public, dans la même mesure et aux mêmes conditions qu'il les mettrait à la disposition de ses propres autorités d'exécution de la loi ou autorités judiciaires.

3. L'État requis peut remettre des copies certifiées conformes de tout dossier ou document, à moins que l'État requérant ne demande expressément les originaux.

4. Les dossiers ou documents originaux ou objets remis à l'État requérant sont retournés à l'État requis dans les meilleurs délais, à la demande de ce dernier.

5. Dans la mesure où cela n'est pas prohibé par le droit de l'État requis, les dossiers, les documents ou les objets sont transmis suivant la forme indiquée à la demande ou accompagnés par les certificats demandés par l'État requérant de façon à ce qu'ils soient admissibles en preuve en vertu du droit de l'État requérant.

ARTICLE 7

Perquisition, fouille et saisie

1. L'État requis exécute les demandes de perquisition, fouille et saisie.

2. L'autorité compétente qui exécute une demande de