

**No. 48533**

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**Austria  
and  
United States of America**

**Agreement between the Government of the Republic of Austria and the Government of the United States of America concerning the sharing of confiscated proceeds of crimes. Vienna, 29 June 2010**

**Entry into force:** *15 March 2011 by notification, in accordance with article 12*

**Authentic texts:** *English and German*

**Registration with the Secretariat of the United Nations:** *Austria, 6 May 2011*

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**Autriche  
et  
États-Unis d'Amérique**

**Accord entre le Gouvernement de la République d'Autriche et le Gouvernement des États-Unis d'Amérique concernant le partage du produit du crime confisqué. Vienne, 29 juin 2010**

**Entrée en vigueur :** *15 mars 2011 par notification, conformément à l'article 12*

**Textes authentiques :** *anglais et allemand*

**Enregistrement auprès du Secrétariat des Nations Unies :** *Autriche, 6 mai 2011*

[ ENGLISH TEXT – TEXTE ANGLAIS ]

## **Agreement**

**between the Government of the Republic of Austria and the Government of the United States of America concerning the sharing of confiscated proceeds of crimes**

The Government of the Republic of Austria and the Government of the United States of America (hereinafter called “the Parties”) have agreed as follows:

### **Article 1**

#### **Definition of Terms**

For the purposes of this agreement:

- (a) “order” shall mean a final decision imposed by a court following proceedings in relation to a criminal offense or offenses (including non-conviction-based forfeiture) and resulting in the deprivation, or in the case of the United States the legal transfer of ownership, of assets. Fines or penalties, compensation to victims of crime, and costs of proceedings will not be considered as “orders”;
- (b) “assets” shall mean money and property of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such property, which, in accordance with the ruling of the court of one of the Parties
  - i) represent proceeds from a crime or assets of an equivalent value, or
  - ii) represent the instrumentalities of a crime; and
- (c) “cooperation” shall mean the assistance rendered by one Party to the other that has contributed to or facilitated the confiscation of assets, including the assistance described in Article 17 of the Treaty between the Government of the United States of America and the Government of the Republic of Austria on Mutual Legal Assistance in Criminal Matters, signed February 23, 1995 and the Protocol to the Treaty between the Government of the United States of America and the Government of the Republic of Austria on Mutual Legal Assistance in Criminal Matters signed February 23, 1995, as

contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed June 25, 2003; in Articles 7, 13, 18 to 20, 26, and 27 of the 2000 United Nations Convention against Transnational Organized Crime; and in Article 5, Paragraph 4, Article 7, Article 9, Paragraph 1, and Articles 11 and 17 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

## Article 2

### Purpose and Scope of Application

This Agreement is intended to enable the Parties to share assets that have been confiscated in relation to criminal offenses.

This Agreement is intended solely for the purposes of mutual assistance between the Parties. No third party shall derive any rights or benefits from this Agreement.

## Article 3

### Circumstances Leading to the Sharing of Confiscated Assets

- (1) A Party that has assets confiscated through cooperation provided by the other Party, may, upon request from the other Party, share these assets at its discretion in accordance with this Agreement – without prejudice to Article 14, Paragraph 2 of the 2000 United Nations Convention against Transnational Organized Crime.
- (2) A Party holding assets due to its execution of an order issued by the other Party may also share such assets in accordance with the principles stated in Paragraph 1.

#### Article 4

##### Request for Sharing of Confiscated Assets

- (1) A Party may request a share of assets confiscated under circumstances set forth in Article 3. Unless otherwise agreed between the Parties, such a request may be made no later than one year from the date of final judgment of all court proceedings concerning the confiscated assets.
- (2) The request shall set forth the relevant circumstances of the cooperation, sufficient details to identify the case, the confiscated assets and the entities involved, as well as additional information as agreed upon by the Parties.
- (3) On receipt of a request to share confiscated assets made under this Article, the Party holding the confiscated assets shall, without delay, consider the request and inform the requesting Party in writing of the outcome of that consideration.

#### Article 5

##### Sharing of Confiscated Assets

- (1) When one Party decides to share confiscated assets, it shall
  - (a) determine at its discretion the share of the confiscated assets that represents the extent of the cooperation afforded by the other Party, and
  - (b) transfer a sum equivalent to the share set forth in subparagraph (a) to the other Party in accordance with Article 6.
- (2) When determining the sum to be transferred, the Party holding the confiscated assets may add interest or other increase in value accrued since the restraint and deduct the expenses required to obtain and maintain the order and the assets as well as to enforce the order.
- (3) The Parties do not intend to share insignificant assets. Assets valued below EUR 10,000.00 or USD 10,000.00, whichever sum is higher on the day the order is issued, shall be considered insignificant. In exceptional cases, the Parties may agree on sharing assets below this value.

- (4) Consideration of the rights of any identifiable victims of the crimes the confiscated assets resulted from shall have precedence over asset sharing between the Parties.
- (5) The decision in accordance with Article 5, Paragraph 1, in Austria, shall be made by the Federal Ministry of Justice in agreement with the Federal Ministry for Finance. In the United States, such decision shall be made by the Department of Justice or the Department of the Treasury or by any other entity authorized by United States law.
- (6) The decisions and determinations by the Parties under this Agreement cannot be contested in judicial or other proceedings either in the Republic of Austria or the United States of America.

#### Article 6

##### Terms of Payment

- (1) Unless otherwise agreed by the Parties, any sum to be transferred pursuant to Article 5, Paragraph 1, Subparagraph b, shall be paid
  - (a) in the currency of the Party holding the confiscated assets, and
  - (b) by an electronic transfer of funds or by check.
- (2) Payment of any such sum shall be made
  - (a) in any case in which the Government of the Republic of Austria is to receive a payment, to the Federal Ministry of Justice;
  - (b) in any case in which the Government of the United States of America is to receive a payment, to the United States of America and sent to the pertinent office or account specified by either the Department of Justice or by the Department of the Treasury; or
  - (c) to such other recipient as may be specified by the Competent Authorities.
- (3) Sums transferred in any particular case may be subject to a written commitment to return as provided by Article 8.