

No. 32472

**BRAZIL
and
PORTUGAL**

**Treaty on mutual assistance in criminal matters. Signed at
Brasília on 7 May 1991**

Authentic text: Portuguese.

Registered by Brazil on 31 January 1996.

**BRÉSIL
et
PORTUGAL**

**Traité d'assistance mutuelle en matière pénale. Signé à Bra-
sília le 7 mai 1991**

Texte authentique : portugais.

Enregistré par le Brésil le 31 janvier 1996.

[TRANSLATION — TRADUCTION]

TREATY¹ ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL AND THE GOVERNMENT OF THE PORTUGUESE REPUBLIC

The Government of the Federative Republic of Brazil and

The Government of the Portuguese Republic

(Hereinafter referred to as the “Contracting Parties”),

Inspired by the ties of fraternity, friendship and cooperation that characterize relations between the two countries,

Aware of the profound affinities that enrich the relationship between their peoples,

Desiring to extend that special relationship in the field of cooperation in areas of common interest,

Seeking to enhance their effectiveness in combating crime,

Convinced that the adoption of common rules in the area of mutual assistance in criminal matters is a means of attaining those objectives,

Have agreed as follows:

Article 1

OBJECT AND SCOPE OF ASSISTANCE

1. The Contracting Parties undertake to afford each other assistance in criminal matters, in accordance with the present Treaty, in conducting the necessary preliminary investigations or proceedings in any criminal case in respect of acts falling within the jurisdiction of the entities competent under the law of each of the Parties.

2. Such assistance shall involve, specifically:

- (a) Effecting service of documents;
- (b) Obtaining evidentiary items;
- (c) Examining persons, sites and objects and executing searches and seizures of goods;
- (d) Effecting service on and examining suspects and defendants, witnesses and experts;
- (e) Providing information concerning the applicable law and the criminal records of suspects, defendants and convicted persons.

¹ Came into force on 1 December 1994, i.e., the first day of the second month following the month of the exchange of the instruments of ratification, which took place at Brasília on 10 October 1994, in accordance with article 20 (2).

3. Such assistance shall not extend to procedural acts subsequent upon the judicial decision to admit the accusation or to indict the defendant.

4. Such assistance shall be independent of extradition and may be provided even in cases where extradition is refused.

5. This Treaty shall not apply to the enforcement of detention orders or sentences or offences under military law which are not offences under ordinary criminal law.

6. Assistance in cases brought for offences in respect of taxes, charges or customs or foreign exchange duties shall be provided only by agreement between the Parties for each category of offence.

Article 2

DUAL CRIMINALITY

1. Assistance shall be provided only in relation to acts punishable under the laws of both Parties.

2. For the purposes of this article, in determining whether an act is an offence under the laws of both Parties, it shall not matter whether the elements constituting the offence are typified or characterized differently or whether the same or different terminology is used.

Article 3

REFUSAL OF ASSISTANCE

1. Assistance shall be refused if the requested Party considers that:

(a) The request relates to a political offence or an offence connected with a political offence;

(b) Granting the request would prejudice its sovereignty, security, public policy or other essential interests;

(c) There are substantial grounds for believing that the request for assistance has been made to facilitate the prosecution of a person on account of that person's race, sex, religion, nationality or political opinions or that that person's position may be prejudiced for any of those reasons;

(d) Granting the request would prejudice fundamental human rights and freedoms.

2. Assistance may be refused if the requested Party considers that there are substantial grounds that would make the granting of assistance unreasonable.

3. Before refusing a request for assistance, the requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the requesting Party accepts assistance subject to these conditions, it shall comply with them.

4. The requested Party shall immediately inform the requesting Party of its decision not to execute, in whole or in part, the request for assistance, and of the reasons for that decision.

5. Offences shall not be considered political if they are not political offences under:

- (a) The law of the requested Party;
- (b) Any international convention to which both Contracting Parties are parties.

Article 4

LAW APPLICABLE TO EXECUTION OF REQUESTS

1. Requests for assistance shall be executed in accordance with the law of the requested Party.

2. When the requesting Party expressly so requests, the request for assistance may be executed in accordance with that Party's legislation, provided that this is not incompatible with the legislation of the requested Party and does not seriously prejudice the parties involved in the proceeding.

Article 5

REQUIREMENTS FOR THE REQUEST FOR ASSISTANCE

1. The request for assistance shall be signed by the competent authority and shall include the following information:

- (a) The name of the requesting authority and of the authority to which the request is addressed;
- (b) A precise description of the assistance requested;
- (c) A statement of the offence to which the request relates, a brief description of the facts and information on the date and place of their occurrence;
- (d) To the extent possible, the identity and nationality of the person who is the subject of the proceedings referred to in the request;
- (e) In the case of service of judicial decisions or any other documents or notifications, the name and address, if known, of the person to be served or notified;
- (f) A statement certifying that examination, search, seizure and surrender of material or negotiable instruments are permitted by the law of the requesting Party;
- (g) Details of any particular procedure or requirement that the requesting Party wishes to be followed, including confidentiality and time limits to be observed.

2. The requesting Party shall send such information sought by the requested Party as is necessary for execution of the request.

Article 6

EXECUTION OF THE REQUEST

1. In execution of the request, the requested Party:

- (a) Shall send such material, documents and other items as may be requested; in the case of documents, it shall send certified copies of these;