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**Canada
and
Germany**

Treaty between Canada and the Federal Republic of Germany on mutual assistance in criminal matters. Mont Tremblant, 13 May 2002

Entry into force: *23 October 2004, in accordance with article 21*

Authentic texts: *English, French and German*

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**Canada
et
Allemagne**

Traité d'entraide judiciaire entre le Canada et la République fédérale d'Allemagne. Mont-Tremblant, 13 mai 2002

Entrée en vigueur : *23 octobre 2004, conformément à l'article 21*

Textes authentiques : *anglais, français et allemand*

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[ENGLISH TEXT – TEXTE ANGLAIS]

**TREATY
BETWEEN
CANADA
AND
THE FEDERAL REPUBLIC OF GERMANY
ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS**

CANADA AND THE FEDERAL REPUBLIC OF GERMANY,

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

HAVE AGREED as follows:

ARTICLE 1

OBLIGATION TO GRANT MUTUAL ASSISTANCE

- (1) The Contracting Parties shall, in accordance with this Treaty, grant each other the widest measure of mutual assistance in criminal matters.
- (2) Mutual assistance, for the purpose of paragraph 1, shall be 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, for the purpose of paragraph 1, means, for the Federal Republic of Germany, investigations or proceedings relating to acts or omissions categorized as criminal offences or regulatory offences (Ordnungswidrigkeiten) in so far as such regulatory offences are before a criminal Court, and, for Canada, investigations or proceedings relating to any offence created by a law of Parliament or by the legislature of a province.
- (4) Criminal matters shall also include investigations or proceedings relating to offences concerning taxation, duties, customs and international transfer of capital or payments.
- (5) Assistance shall include:
 - (a) taking of evidence and obtaining of statements of persons;
 - (b) provision of information, documents and other records, including extracts from criminal records;
 - (c) location of persons and objects, including their identification;
 - (d) search and seizure;
 - (e) delivery of property, including lending of exhibits;
 - (f) making detained persons and others available to give evidence or assist investigations;

- (g) service of documents, including documents seeking the attendance of persons; and
 - (h) other assistance consistent with the objects of this Treaty, which is not inconsistent with the law of the Requested State.
- (6) This Treaty shall not apply to requests for:
- (a) extradition and the arrest or detention of any person with a view to extradition;
 - (b) subject to Article 6 of this Treaty, the execution in the Requested State of criminal judgments imposed in the Requesting State; or
 - (c) the transfer of prisoners to serve sentences.
- (7) This treaty shall not apply to investigations or proceedings under the anti-combines law of either Contracting Party.

ARTICLE 2

REFUSAL OR POSTPONEMENT OF ASSISTANCE

- (1) Assistance may be refused if, in the opinion of the Requested State, the execution of the request would impair its sovereignty, security, public order (ordre public) or similar essential public interest, prejudice the safety of any person or be unreasonable on other grounds.
- (2) Assistance may be postponed by the Requested State on the ground that the immediate granting of the assistance may interfere with an ongoing investigation or proceeding.
- (3) Before refusing to grant a request for assistance or before postponing the grant of such assistance, the Requested State shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with them.
- (4) The Requested State shall promptly inform the Requesting State of a decision not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.

ARTICLE 3

DUAL CRIMINALITY

- (1) The execution of requests for assistance requiring the use of compulsory measures may be refused if the alleged acts or omissions giving rise to the request would not constitute an offence known to law in the Requested State.
- (2) Paragraph 1 shall not apply to compulsory measures concerning the taking of evidence from a witness or an expert.

- (3) The execution of requests for assistance relating to an offence in connection with the international transfer of capital or payments may be refused in the absence of dual criminality.

ARTICLE 4

DELIVERY OF PROPERTY

- (1) In response to a request for assistance, property which may be used in investigations or serve as evidence in proceedings in the Requesting State shall be delivered to that State by the Requested State upon such terms and conditions as the Requested State sees fit. In addition, property may be returned to the person who was deprived of it.
- (2) The delivery of property pursuant to paragraph 1 of this Article shall not affect the rights of third parties.

ARTICLE 5

RETURN OF PROPERTY

Any property, including original records or documents, handed over in execution of a request, shall be returned by the Requesting State to the Requested State as soon as possible, unless the latter State waives the obligation to return that property.

ARTICLE 6

PROCEEDS OF CRIME

- (1) The Requested State shall, upon request, endeavour to ascertain whether any proceeds of a crime are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries. In making the request, the Requesting State shall notify the Requested State of the basis of its belief that such proceeds may be located in its jurisdiction.
- (2) Where, pursuant to a request under paragraph 1 of this Article, suspected proceeds of crime are found, the Requested State shall take such measures as are permitted by its law to freeze, seize and confiscate such proceeds.
- (3) In the application of this Article, the rights of third parties under the law of the Requested State shall be respected.

ARTICLE 7

PRESENCE OF PERSONS INVOLVED IN THE PROCEEDINGS

- (1) The Requested State shall, upon request, inform the Requesting State of the time and place of execution of the request for assistance.
- (2) Judges or officials of the Requesting State and other persons concerned in the investigation or proceedings may be permitted, to the extent not prohibited by the law of the Requested State, to be present at the execution of the request and to participate in the proceedings in the Requested State.

(3) The right to participate in the proceedings shall include the right of any person present to propose questions and other investigative measures. The persons present at the execution of a request shall be permitted to make a verbatim transcript of the proceedings. The use of technical means to make such a verbatim transcript shall be permitted. Visual records shall be permitted only with the consent of the persons concerned.

ARTICLE 8

MAKING DETAINED PERSONS AVAILABLE TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS

(1) A person in custody in the Requested State shall, at the request of the Requesting State, be temporarily transferred to the Requesting State to assist investigations or proceedings provided that the person consents to that transfer and there are no overriding grounds against transferring the person.

(2) While the person transferred is required to be kept in custody under the law of the Requested State, the Requesting State shall hold that person in custody and shall return the person in custody either at the conclusion of the taking of the evidence, or at such earlier time stipulated by the Requested State.

(3) Where the sentence imposed expires, or where the Requested State advises the Requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person present in the Requesting State pursuant to a request seeking that person's attendance.

ARTICLE 9

SAFE CONDUCT

(1) A witness or expert present in the Requesting State in response to a request seeking that person's attendance shall not be prosecuted, detained or subjected to any other restriction of personal liberty in that State for any acts or omissions which preceded that person's departure from the Requested State, nor shall that person be obliged to give evidence in any proceedings other than the proceedings to which the request relates.

(2) Paragraph 1 of this Article shall cease to apply if a person, being free to leave the Requesting State, has not left it within a period of thirty days after being officially notified that that person's attendance is no longer required or, having left that territory, has voluntarily returned.

(3) A person, who does not respond to a request seeking that person's attendance, shall not, even if the request refers to a notice of penalty, be subjected to any punishment or measure of constraint.

ARTICLE 10

CONTENTS OF REQUESTS

(1) In all cases, requests for assistance shall include:

- (a) the name of the competent authority conducting the investigation or proceedings to which the request relates and the authority making the request;