

No. 32467

**BRAZIL
and
ITALY**

**Treaty on judicial assistance in criminal matters. Signed at
Rome on 17 October 1989**

Authentic texts: Portuguese and Italian.

Registered by Brazil on 31 January 1996.

**BRÉSIL
et
ITALIE**

**Traité de coopération judiciaire en matière pénale. Signé à
Rome le 17 octobre 1989**

Textes authentiques : portugais et italien.

Enregistré par le Brésil le 31 janvier 1996.

[TRANSLATION — TRADUCTION]

TREATY¹ ON JUDICIAL COOPERATION IN CRIMINAL MATTERS
BETWEEN THE FEDERATIVE REPUBLIC OF BRAZIL AND
THE ITALIAN REPUBLIC

The Federative Republic of Brazil and
The Italian Republic
(Hereinafter referred to as the “Parties”),
Desiring to intensify their relations in the field of judicial cooperation,
Have agreed as follows:

Article 1

OBJECT OF COOPERATION

1. Each Party shall, on request, afford the other Party, in the manner provided for in this Treaty, broad cooperation in criminal proceedings brought by the judicial authorities of the requesting Party.
2. Such cooperation shall include, in particular, effecting service of judicial documents, questioning suspects or defendants, gathering evidence, transferring persons in custody to give evidence and providing information on criminal records of persons and on sentences passed on nationals of the other Party.
3. Such cooperation shall not include the enforcement of orders restricting individual liberty or the enforcement of sentences.
4. Each Party may request information from the other concerning legislation and legal practice.

Article 2

ACTS GIVING RISE TO COOPERATION

1. Cooperation shall be afforded even if the acts which gave rise to the proceeding do not constitute a crime under the law of the requested Party.
2. For the execution of searches and seizures, cooperation shall be afforded only if the act which gave rise to the proceeding in the requesting Party is also a crime under the law of the requested Party or if it is proved that the accused has freely given his or her express consent. For wire-tapping, cooperation shall be afforded only if, for the offence which is the subject of the proceeding, such wire-tapping would be admissible in analogous circumstances in criminal proceedings in the requested Party.

¹ Came into force on 1 August 1993, i.e., the first day of the second month following the exchange of the instruments of ratification, which took place at Brasília on 14 June 1993, in accordance with article 18 (2).

Article 3

REFUSAL OF COOPERATION

1. Cooperation shall be refused if:

(a) The actions requested are prohibited by the law of the requested Party or are contrary to the fundamental principles of its legal order;

(b) The act which is the subject of the proceeding is regarded by the requested Party as a political or a purely military offence;

(c) The requested Party has reason to believe that considerations of race, religion, sex, nationality, language, political opinion or personal or social status could adversely affect the conduct or outcome of the proceeding;

(d) The accused has already been tried for the same act in the requested Party and has not escaped enforcement of sentence;

(e) The requested Party considers that affording cooperation could prejudice its own sovereignty, security or other vital national interests.

2. Nevertheless, in the cases provided for under subparagraphs *b*, *c* and *d* of paragraph 1, cooperation shall be afforded if it is demonstrated that the accused has freely given his or her consent.

3. The requested Party shall inform the requesting Party promptly if it decides not to comply, in whole or in part, with a request for cooperation, giving its reasons.

Article 4

SENDING OF COMMUNICATIONS

1. The Parties shall send the information and documentation for which provision is made in this Treaty through their respective central authorities.

2. For the purposes of this Treaty, the central authority of the Federative Republic of Brazil shall be the Ministério da Justiça and the central authority of the Italian Republic shall be the Ministero di Grazia e Giustizia.

3. Transmission through the diplomatic channel shall also be permissible.

Article 5

LANGUAGES

1. Requests for judicial cooperation and supporting documents shall be drafted in the language of the requesting Party, accompanied by an official translation into the language of the requested Party.

2. Writs and documents relating to the execution of letters rogatory shall be transmitted to the requesting Party in the language of the requested Party.

3. Requests for information concerning legislation and legal practice shall be drafted in the language of the requested Party, and responses thereto shall be transmitted in that same language.

Article 6

WAIVER OF AUTHENTICATION

For the purposes of this Treaty, documents, copies and translations drafted or authenticated by the competent authority of one Party and bearing a signature and an official stamp or seal shall be exempt from any form of authentication with a view to their use by the authorities of the other Party.

Article 7

REQUIRED ELEMENTS OF THE REQUEST

1. Requests for judicial cooperation shall indicate the following:

(a) The judicial authority conducting the proceeding and the identity of the accused, as well as the purpose and nature of the proceeding and the norms of criminal law applicable to the case;

(b) The purpose of and the reason for the request;

(c) Any other information useful for carrying out the requested actions, in particular, the identity and, if possible, the address of the person to whom the request refers.

2. If the purpose of a request is the gathering of evidence, it shall briefly state the facts of the case and, if witnesses are to be questioned or confronted, indicate the questions to be asked.

Article 8

EXECUTION OF LETTERS ROGATORY

1. In the execution of letters rogatory, the law of the requested Party shall apply. Should the requesting Party request that execution be effected according to particular procedures, the requested Party shall observe such procedures, provided that they do not contravene the fundamental principles of its own legal order.

2. If the information and facts provided by the requesting Party are insufficient to permit the execution of the letter rogatory, the requested Party, if it is unable to obtain such information directly, shall ask the requesting Party to provide the necessary additional information.

3. If the requesting Party so requests, the requested Party shall notify it of the scheduled date and place of execution of the requested actions.

4. Letters rogatory shall be executed as promptly as possible. However, execution of the requested actions may be postponed or made subject to certain conditions where this is necessary for the conduct of a criminal proceeding under way in the requested Party.

5. If it has not been possible to execute a letter rogatory, or if execution of the requested action has been postponed or made subject to certain conditions in accordance with paragraph 4, the requested Party shall inform the requesting Party immediately stating the reasons.

Article 9

TRANSMISSION OF DOCUMENTS AND MATERIAL

1. When the purpose of the request for cooperation is the transmission of documents, the requested Party shall have the option of transmitting certified copies or photocopies, unless the requesting Party expressly requests the originals.

2. The requesting Party shall return original documents and material sent in execution of a request for judicial cooperation as soon as possible, unless the requested Party expresses no interest in their return.

Article 10

SERVICE OF DOCUMENTS

1. Requests for the service of judicial documents shall be transmitted at least 90 days before the end of the period within which service must be effected. In an emergency, the requested Party shall do its utmost to effect service as soon as possible.

2. The requested Party shall provide proof of service in the form of a receipt signed and dated by the addressee or of certification of the manner and date of service giving the full name and particulars of the person who received the document. If the document to be served is transmitted in duplicate, the confirmation of receipt or the certification shall be made on the copy to be returned.

Article 11

APPEARANCE OF PERSONS IN THE REQUESTING PARTY

1. If the purpose of the request is to summons a person to appear before an authority of the requesting Party, an accused, witness or expert who does not so appear shall not be subjected to penalties or coercive measures.

2. A witness or expert who complies with a summons shall be entitled to reimbursement of expenses and to payment of an allowance as provided for by the law of the requesting Party.

Article 12

APPEARANCE OF PERSONS IN THE REQUESTED PARTY

If the purpose of the request is to summons a person for the execution of actions in the territory of the requested Party, that Party may apply the coercive measures and penalties for non-compliance provided for under its own law. If an accused is summonsed, the requesting Party shall specify the measures applicable under its law and the requested Party may not exceed those measures.

Article 13

APPEARANCE OF PERSONS IN CUSTODY

1. If the requesting Party requests that a person in custody in the territory of the requested Party appear before a judicial authority as a witness or for purposes

of confrontation, the person shall be temporarily transferred to the territory of the requesting Party, provided that he or she is returned within the period set by the requested Party and subject to the provisions of article 14.

2. Transfer shall be refused:

(a) If the person in custody does not consent;

(b) If transfer is liable to prolong detention;

(c) If, in the opinion of the competent authorities of the requested Party, there are compelling reasons for not effecting the transfer.

3. Unless the requested Party asks for the transferred person to be set at liberty, he or she shall remain in custody in the territory of the requesting Party.

Article 14

IMMUNITIES

1. If the purpose of the request is to summons an accused, a witness or an expert to appear before an authority in the requested Party, the person shall not, once he or she has appeared, be subjected to custody, protective measures or any other restriction on his or her individual liberty in respect of acts that occurred prior to service of the summons.

2. The immunity provided for in paragraph 1 shall cease if the expert, witness or defendant, having had the opportunity to do so, has not left the territory of the requesting Party within 15 days from the date on which his or her presence was no longer required by the judicial authorities or, having left, has voluntarily returned.

Article 15

INFORMATION ON SENTENCES

Each Party shall inform the other Party annually of any sentences imposed by its own judicial authorities on nationals of the other Party residing in its territory.

Article 16

CRIMINAL RECORDS

Details of criminal records required for a criminal proceeding in the requesting Party shall be transmitted to that Party only if, in the same circumstances, such records would be provided to the judicial authorities of the requested Party.

Article 17

COSTS

1. The requested Party shall bear the costs of the cooperation which it affords.

2. The requesting Party shall bear expenses relating to the transfer of persons in custody and the travel and subsistence costs and allowances of witnesses and experts who have appeared in its territory. Expenses relating to the provision of

expert services in the territory of the requested Party shall be defrayed by that Party and subsequently reimbursed by the requesting Party.

Article 18

RATIFICATION AND ENTRY INTO FORCE

1. This Treaty is subject to ratification. The instruments of ratification shall be exchanged in Brasília.

2. This Treaty shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged.

3. This Treaty shall remain in force indefinitely.

4. Either Party may denounce this Treaty at any time. Denunciation shall take effect six months after the date on which the other Party receives notification thereof.

DONE at Rome, on 17 October 1989, in two originals in the Portuguese and Italian languages, both texts being equally authentic.

For the Federative Republic
of Brazil:

ROBERTO DE ABREU SODRÉ

For the Italian Republic:

GIANNI DE MICHELIS
