

**Treaty**  
**between the Republic of Italy and the Republic of Kazakhstan**  
**on mutual legal assistance in criminal matters**

The Republic of Italy and the Republic of Kazakhstan, hereinafter referred to as the "Parties",

Desiring to promote an effective cooperation between the two Countries in combating crime on the basis of mutual respect for sovereignty, equality and mutual benefit,

Considering that this purpose can be achieved through the conclusion of a bilateral Treaty, which establishes the procedure for provision of legal assistance in criminal matters,

Have agreed as follows:

**Article 1**  
**Scope**

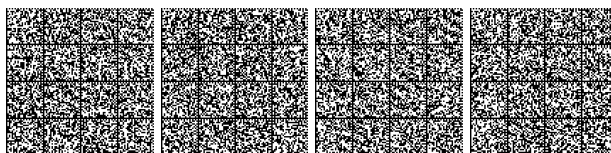
1. In accordance with the provisions of this Treaty, the Parties undertake, upon requests, to afford one another mutual legal assistance in criminal matters.

2. Such legal assistance shall include:

- (a) locating and identifying person;
- (b) serving documents and records relating to criminal proceedings;
- (c) citing witnesses, victims and experts to appear voluntarily before the competent authority of the Requesting Party;
- (d) obtaining and providing documents, records and articles of evidence;
- (e) carrying out questionings and taking the statements of persons;
- (f) temporary transferring persons in custody for their testimony, or taking part in other procedural activities;
- (g) carrying out judicial expertise, examining sites, documents or items;
- (h) executing searches, seizures of evidence, arrests and confiscations of assets related to the criminal activity;
- (i) exchanging information on the national law;
- (j) communicating the criminal judgments and information taken from judicial records;
- (k) any other legal assistance, except for paragraph 3 of this Article, which is not contrary to the national law of the Requested Party.

3. This Treaty shall not apply to:

- (a) the execution of judgments on arrest of persons, or other measure, restricting freedom of a person;
- (b) the extradition of persons;
- (c) the execution of court judgments, except the provisions of this Treaty concerning confiscation of assets;
- (d) the transfer of sentenced persons for further serving a sentence, and



(e) the transfer of criminal proceedings.

## **Article 2**

### **Dual jurisdiction**

1. Legal assistance may be afforded when the act for which it is requested does not constitute a criminal offense in the Requested Party.

2. If the request for legal assistance relates to executing searches, seizures, arrests and confiscations of assets and other activities which affect the fundamental rights of a person, or are invasive of sites or items, legal assistance shall be afforded, if the act for which it is requested is regarded as an offence also by the national law of the Requested Party.

## **Article 3**

### **Refusal or postponement of legal assistance**

1. The Requested Party may refuse entirely or in part the legal assistance requested if:

(a) the execution of the request is contrary to its national law or to the provisions of this Treaty;

(b) the criminal offence for which the request is made, is punished in the Requesting Party by a type of penalty, which is prohibited by the national law of the Requested Party;

(c) the criminal offence for which it is requested is considered by the Requested Party as a political offence or an offence related to such a category of offence. To this end the following shall not be considered as offences of a political nature:

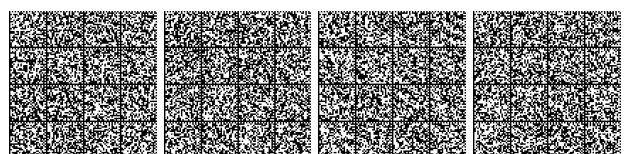
1) homicide or any other offence against the life, physical integrity or freedom of a Head of State or Government or any family members;

2) terrorist offences or any other offence not considered as political offence under any international treaty, convention or agreement which both Parties adhered to;

(d) the request for assistance relates to a military offence that does not constitute a criminal offence under ordinary criminal law applicable generally;

(e) there are reasonable grounds to believe that the request for assistance is made in order to prosecute, punish or promote other types of actions against person on account of his religion, sex, race, nationality or political opinion, or that such person's position may be prejudiced by any of those reasons;

(f) criminal proceedings are already started in the Requested Party or final judgment is already rendered with respect to the same person for the same offence indicated in the request;



(g) execution of the request may impair sovereignty, security, public order or other essential interests of the Requested Party or cause consequences in contrast with the fundamental principles of its national law.

2. The Requested Party may postpone the execution of the request if its executing interferes with the ongoing criminal proceedings in the Requested Party.

3. Before refusing a request or postponing its execution, the Requested Party has the faculty to consider whether the assistance may be granted upon specific conditions. To this end, the Central authorities of the Parties, designated pursuant to Article 4 of this Treaty, shall consult with one another, and if the Requesting Party is consent, the legal assistance shall be granted to it in accordance with established procedure under certain conditions.

4. When the Requested Party refuses or postpones the legal assistance, it shall inform the Requesting Party in writing of the reasons for such refusal or postponement.

#### **Article 4**

##### **The Central authorities**

1. For the purposes of this Treaty the Parties shall designate the Central authorities responsible for its realization:

(a) for the Republic of Italy the Central authority is the Ministry of Justice of the Republic of Italy;

(b) for the Republic of Kazakhstan the Central authority is the Prosecutor General's Office of the Republic of Kazakhstan.

2. Parties shall inform each other through diplomatic channels on any change of its Central authority.

3. When implementing this Treaty, the Central authorities shall communicate directly with each other.

#### **Article 5**

##### **Form and content of the requests**

1. The request shall be made in writing, and must bear the signature of the authorized person and be certified with the stamp of the competent authority of the Requesting Party.

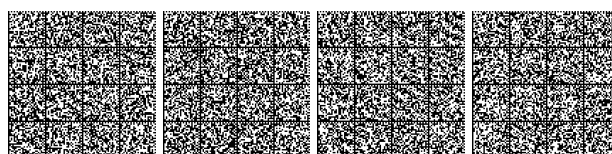
2. Request for assistance shall include the following:

(a) the name of the competent authority conducting the investigation;

(b) a description of the facts of the offense including the time and place of its commission and caused damage, if any;

(c) indication of the national law provisions applying, including the provisions of the statute of limitations and the extract from the criminal law, stipulating responsibility for an offence for which the legal assistance is requested;

(d) description of the requested activities;



(e) in cases of proven urgency, an indication of time limit within which the request should be executed;

(f) indication of the persons whose presence is necessary at the execution of the request, in compliance with paragraph 3 of Article 6 of this Treaty;

(g) information as to the allowance and reimbursements to which is entitled the person who is cited to appear in the Requesting Party for the purpose of taking evidence, in compliance with Article 10 of this Treaty;

(h) information necessary for taking evidence via videoconference, in compliance with paragraph 5 of Article 12 of this Treaty.

3. The request to the extent of necessary shall also include the following:

(a) information on the persons under investigation;

(b) information on the person, to be found and whose location to be determined;

(c) information on the identity and place of residence of the person to whom the service of documents shall be made, as well as on the way it should be made;

(d) information on the identity and place of residence of the person who has to give testimony or evidence;

(e) the location and description of the place or item to be examined;

(f) the location and description of the place to be searched, and the indication of the items to be seized, arrested or confiscated;

(g) the indication of any special procedure sought for giving execution to the request, and the relevant reasons for that;

(h) the level of confidentiality, which is required to comply with, and the reasons for it;

(i) any other information which may facilitate the execution of the request.

4. If the Requested Party considers that the content of the request is not sufficient, it has the faculty to require further information.

5. The request and the supporting documents submitted pursuant to this Article shall be in the language of the Requesting Party, and accompanied by a translation into English.

6. The request, submitted through the Central authorities, indicated in Article 4 of this Treaty, may be anticipated by any operational means of communication, including telex, fax and e-mail. In such cases, the written request shall be received within thirty days therefrom, otherwise it shall be cancelled.

## **Article 6**

### **Execution of the request**

1. The Requested Party shall give immediate execution to the request in compliance with its national law. To this end, the competent authority of the Requested Party shall issue the summons to appear, search orders, orders relevant to seizures, arrest or confiscation, or any other activity necessary to execute the request.



2. The Requested Party shall execute the request in accordance with the modalities requested by the Requesting Party, provided it is not contrary to the national legislation of the Requested Party.

3. The Requested Party may permit the authorized persons specified in the request, to be present to its execution, provided it is not contrary to the national law of the Parties. To this end, the Requested Party shall promptly inform the Requesting Party on the date and place of execution of the request.

4. The Requested Party shall promptly inform the Requesting Party on the results of the execution of the request.

5. If a person, in respect of whom the request is to be executed, before the execution invokes any immunity, privilege right or incapacity in accordance with national law of the Requested Party, the competent authority shall make the relevant decision, and communicate it to the Requesting Party to make a decision upon it.

6. Documents submitted as executing the request, shall be made in the language of the Requested Party and accompanied by a translation into English and stamped by the competent authority of the Requested Party, which has executed the request.

### **Article 7**

#### **Searching for persons**

In compliance with the provisions of this Treaty the Requested Party shall do everything possible to find the persons indicated in the request and presumably located in its territory, and inform on the results the Requesting Party.

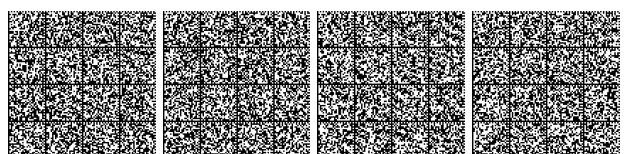
### **Article 8**

#### **Citation to the competent authority and service of documents**

1. The Requested Party shall serve the citations to the competent authority and other documents sent by the Requesting Party in compliance with its national law.

2. The Requested Party after having effected service shall provide the Requesting Party with an attestation of proof of service bearing the signature of the authorized person or stamp of the authority that effected service, and indicating the date, time, place and method of delivery, as well as information on the person, to which the documents have been delivered. If the service is not effected, the Requested Party shall promptly inform the Requesting Party and communicate the reasons of failure of service.

3. The request to serve citations to appear before the competent authority of the Requested Party shall be made within the time limit set in paragraph 2 of Article 10 of this Treaty.





4. The citation to the competent authority of the Requesting Party and the documents served shall not be accompanied by any threat of measures compelling appearance in case of failure to appear.

### **Article 9**

#### **Taking of evidence in the Requested Party**

1. The Requested Party in compliance with its national law shall carry out the taking of evidence from witnesses, victims, persons under investigation or detention, in the Requested Party, experts or other persons, and shall also obtain records, documents and any other evidence indicated in the request, and shall transmit them to the Requesting Party.

2. The Requested Party shall inform promptly the Requesting Party of the date, place and time where the evidence taking from persons indicated in the paragraph 1 of this Article, also for the purposes of paragraph 3 of Article 6 of this Treaty. If it is necessary the Central authorities of the Parties shall consult with one another to set a date, which is convenient for both Parties.

3. The person cited to give evidences, has the faculty to refuse to give them, if the national law of the Requested Party or of the Requesting Party allows it; to this end, the Requesting Party shall mention this expressly in the request.

4. The Requested Party shall allow the presence of the defence counsel of the person, cited to give evidence whenever this is provided by the law of the Requesting Party and is not contrary to the national law of the Requested Party.

5. Documents, items and other evidences indicated by the person to give evidences or make statements may be obtained and are admissible as evidence in the Requesting Party in compliance with the law of the Requesting Party.

### **Article 10**

#### **Taking of evidence in the Requesting Party**

1. The Requested Party upon request shall cite a person to appear before the competent authority of the Requesting Party in order to be questioned, make declarations, or to be heard as an expert or to perform other procedural activities. The Requested Party shall promptly inform the Requesting Party about the availability of said person.

2. The Requesting Party shall transmit to the Requested Party a request for service of the citation to appear before the competent authority, in the territory of the Requesting Party, not later than sixty days before the date set for appearance, except urgent cases, when the Requested Party agreed on a shorter period.

3. The Requesting Party shall indicate in the request the amount of any allowance and reimbursement of expenses the person cited to appear in the territory of the Requesting Party is entitled to.



## **Article 11**

### **Guarantees and Speciality Rule**

1. The person who is present in the territory of the Requesting Party according to Article 10 of this Treaty:

a) shall not be investigated by the Requesting Party nor prosecuted, tried or subjected to any other measure of deprivation of personal liberty in relation to criminal offences committed prior to entering the territory of Requesting Party;

b) shall not be obliged to give testimony or make other evidences nor participate to take part in any activity relevant to a proceeding different from the one indicated in the request for assistance unless the Requested Party and the person concerned give their consent.

2. Paragraph 1 of this Article shall cease to have effect, if the person indicated therein:

(a) does not leave the territory of the Requesting Party within thirty days from the date when he/she has been officially informed that his/her presence is no longer necessary. Such time limit shall not include the period during which said person has not left the territory of the Requesting Party, for reasons beyond his/her control;

(b) after having left the territory of the Requesting Party, voluntarily returns to it.

3. The person, who has received the citation to the competent authority and did not appear or refused to make declarations, give evidence or take part in other activities pursuant to Articles 9 and 10 of this Treaty, shall not be subjected to any coercive measure of being forcibly brought before the competent authority of the Requesting Party, as a consequence of failure to appear or refusal. In such cases, upon request may be applied other measures, provided for by the national law of the Requested Party.

4. The victim, witness or expert, whose examination is carried out in conformity with Articles 9 and 10 of this Treaty, are responsible for the content of the testimonial evidence, expert report or data, while appearing in the competent authority, in compliance with the relevant national law of the Parties, subject to the respective jurisdiction of each Party over the committed offence.

## **Article 12**

### **Activities through videoconference**

1. If the person who is in the territory of the Requested Party, shall be questioned as the witness, victim, suspect, accused or expert by the competent authorities of the Requesting Party, the latter may request the questioning through videoconference, in compliance with the provisions of this Article, if the voluntary appearance of a person on its territory is impossible.

2. Questioning through videoconference may also be requested in respect of a person under investigation, or for his/her prosecution, if he/she consents to such



questioning and if this is not contrary with the national law of each of the Parties. In such a case, the defence counsel of the person must be allowed to be present in the place where said person is in the Requested Party or before the competent authority of the Requesting Party and the defence counsel must be enabled to have distance communication with the person assisted by him/her in a confidential manner.

3. Questioning through videoconference must always be effected, if the person who has to be questioned is detained in the territory of the Requested Party.

4. The Requested Party shall allow conducting the procedural activities by videoconference provided that it has the technical means to realize it.

5. Requests for conducting the procedural activities by videoconference shall indicate, in addition, to what is provided in Article 5 of this Treaty, the reasons it is impossible for the person who is not detained and whose participation in procedural activities should be carried out, to be present in person in the territory of the Requesting Party, and also indicate the competent authority and the persons who will receive the evidence.

6. The competent authority of the Requested Party shall cite to appear the person concerned in compliance with its national law.

7. In respect of conducting the procedural activities by videoconference, the following provisions shall apply:

(a) the competent authorities of both Parties shall be present during the taking of evidence, and, if necessary, with the assistance of an interpreter. The competent authority of the Requested Party shall perform the identification of person appearing and ensure that this activity is carried out in accordance with its national law. If the competent authority of the Requested Party considers that during the taking of evidence, the fundamental principles of national law are not complied with, it shall immediately adopt any necessary measure so that the activity is carried out in compliance with said principles;

(b) the competent authorities of both Parties shall mutually agree on the protection measures for the person cited, if necessary;

(c) the person cited for questioning has the faculty to refuse to give evidence when the law of the Requested Party or the Requesting Party allows it;

(d) the Requested Party shall provide the person cited for questioning with assistance of an interpreter, if necessary.

8. The competent authority of the Requested Party shall draw up an official act of the completion of procedural activities reporting the date and place, the identity of the person who appeared, the identity of other persons participating in this activity and quality of all the other persons who have taken part in the activity, as well as the technical conditions in which the taking of evidence or other proceedings has taken place. The original of said official act is sent promptly to the competent authority of the Requesting Party.

9. The expenses incurred by the Requested Party to effect the videoconference shall be reimbursed by the Requesting Party, unless the requested Party waives reimbursement in whole or in part.





10. The Requested Party may allow the use of videoconference technologies also for purposes different from those specified in paragraphs 1 and 2 of this Article, including in order to effect the recognition of persons and items and for confrontations.

### **Article 13**

#### **Temporary transfer of detained persons**

1. If conducting the videoconference pursuant to paragraph 4 of Article 12 of this Treaty is not possible on the grounds, provided for, the Requested Party may, upon request of the Requesting Party, temporarily transfer the detained person to the Requesting Party, to enable him/her to appear before the competent authority for to be questioned, give evidence, make declarations or participate in other procedural activities, provided that the said person so consents and that Parties previously have reached a written agreement on the transfer and conditions thereof.

2. The temporary transfer of the person may be effected, provided that:

(a) it does not interfere with investigations or prosecutions that are being carried out in respect of the said person in the Requested Party;

(b) the person transferred is retained in detention by the Requesting Party.

3. The time spent in detention on the territory of the Requesting Party, shall be counted for the purposes of execution of the sentence imposed in the Requested Party.

4. In cases, when in order to execute the temporary transfer, the transit of the person detained is required through the territory of a third state, the Requesting Party shall submit to the competent authority of a third state a request for transit and inform in due time the Requested Party of the outcome of said request, transmitting the relevant documentation.

5. The Requesting Party shall immediately return to the Requested Party the person transferred at the end of the activities specified in paragraph 1 of this Article, or at the end of any other time limit agreed upon by the Parties.

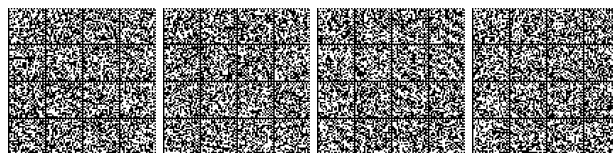
6. The person, who is temporarily transferred in compliance with this Article shall be granted, where applicable, the guarantees, specified in Article 11 of this Treaty.

7. The Requested Party may refuse to temporary transfer in case of substantive grounds, on which it is obliged to inform the Requesting Party.

### **Article 14**

#### **Protection of victims, witnesses and other persons, taking part in the criminal proceedings**

When necessary or in order to ensure the outcome of investigations and the correct administration of justice, both Parties shall adopt the measures provided in



their national laws, for the protection of victims, witnesses and other persons **taking** part in the criminal proceedings, with reference to the criminal offences **and the** assistance activities requested.

### **Article 15**

#### **Providing official or public documents**

1. Upon request, the Requested Party shall provide the Requesting Party with the copies of records or documents which are available to the public, from state offices or public bodies.

2. The Requested Party may provide copies of records or documents which are not available to the public, from state offices or public bodies to the extent and under the conditions as such copies would be available to the judicial or law enforcement authorities of the Requested Party. Such copies must be certified by the competent authority of the Requested Party. The Requested Party shall have the right to reject the aforementioned request in whole or in part, informing on the reasons of this decision.

### **Article 16**

#### **Providing documents, records or items**

1. When the request is related to the transmission of documents or records other than specified in Article 15 of this Treaty, the Requested Party may transmit their copies. However, in each case, when the Requesting Party expressly requests for the transmissions of the originals, the Requested Party shall execute request insofar as possible.

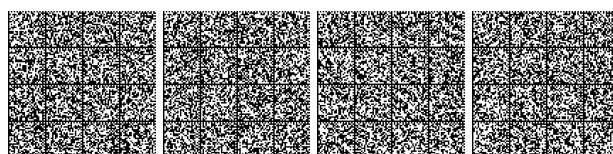
2. The originals of the documents and records, as well as objects, transmitted to the Requesting Party, shall be returned to the Requested Party, in each case at the first opportunity.

### **Article 17**

#### **Searches, seizures, arrests and confiscations**

1. The Requested Party upon request shall make activity for verifications to ascertain whether any proceeds from crime or items related to the criminal offence are present in its territory and shall communicate to the Requesting Party the outcome of such inquiries. In the request, the Requesting Party shall communicate to the Requested Party the grounds of the possible presence in its territory of any proceeds from crime or items related to the criminal offence.

2. At the detection of proceeds from crime or items related to the crime, the Requested Party shall upon the request of the Requesting Party adopt any measures



provided for by its national law, in order to seize, arrest and confiscate proceeds of crime or items related to the crime.

3. Upon request the Requested Party shall transfer in whole or in part any of the proceeds of crime and items related to the crime, as well as any financial assets obtained by the sale of these latter, in accordance with the conditions agreed upon by the Parties.

4. In the application of this Article, any rights of the Requested Party or third parties with regard to said proceeds from crime or items related to the crime shall be safeguarded.

### **Article 18**

#### **Identification of bank and financial information**

1. Upon request the Requested Party shall promptly ascertain whether a physical or legal person who is suspected of or charged with committing a crime, is the holder of a bank account or accounts at any bank located in its territory and shall provide the Requesting Party with the relevant information, including information on the identities of the persons, authorized to use such accounts, the latter's locations and any transactions related to them.

2. Activities indicated in paragraph 1 of this Article, may concern also financial institutions other than banks.

3. The legal assistance referred to in this Article may not be refused on the grounds of bank secrecy.

### **Article 19**

#### **Compatibility with other international treaties**

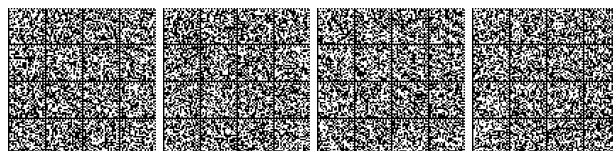
1. The provisions of this Treaty shall not prejudice any recognized right or obligation undertaken by each Party arising for it from other international treaties, in which it takes part.

2. This Treaty shall not prevent the Parties from other forms of cooperation on matters of legal assistance in criminal cases on the basis of the agreements, if they comply with the national law of the Parties.

### **Article 20**

#### **The exchange of information on criminal proceedings**

Upon request and for the purposes of criminal proceedings, the Requested Party shall transmit to the Requesting Party information on criminal proceedings, previous convictions and sentences imposed against citizens of the Requesting Party.



## **Article 21**

### **Exchange of information on Law**

The Parties shall exchange upon request the information on the national laws in force, or which were in force, and on the judicial practice of the Parties.

## **Article 22**

### **Transmission of judgments and criminal records certificates**

1. When transmitting a judgment on a criminal case the Requested Party shall also provide information on the relevant proceedings, if the Requesting Party so requests.

2. Criminal records certificates, which are necessary to the competent authority of the Requesting Party for the purposes of criminal proceedings, shall be transmitted, if in the same circumstances they could be issued to the competent authority of the Requested Party.

## **Article 23**

### **Exemption from legalization and validity of documents and records**

Documents and records submitted in compliance with this Treaty shall not require any legalization, certification or authentication, and are fully admissible as evidence in the Requesting Party.

## **Article 24**

### **Confidentiality**

1. Upon the request of the Requesting Party, the Requested Party shall treat with confidentiality the fact of receipt of the request, the contents and the documents annexed thereto and any documents and records obtained in its execution. If the request cannot be executed without breaching such confidentiality, the Requested Party shall so inform the Requesting Party, which shall decide on the possibility to execute the request.

2. Upon the appropriate request of the Requested Party the Requesting Party shall treat as confidential any evidence and information obtained during the execution of the request for legal assistance, except for the cases of the use of evidence and information in the investigation and judicial examination of criminal matters.





## **Article 25**

### **Expenses**

1. The costs associated with the execution of this Treaty, the Parties shall bear in accordance with their national laws.

2. The Requested Party shall bear the costs related to the execution of the request.

However, the Requesting Party shall bear the following expenses:

(a) travel and stay expenses in the Requested Party of the persons indicated in paragraph 3 of Article 6 of this Treaty;

(b) travel and stay expenses in the Requesting Party, of the persons indicated in Article 10 of this Treaty;

(c) expenses for videoconference, without prejudice to paragraph 9 of Article 12 of this Treaty;

(d) expenses arising from the execution of the request in accordance with Article 13 of this Treaty;

(e) expenses incurred for the purposes indicated in Article 14 of this Treaty;

(f) expenses and fees of experts;

(g) expenses and fees of translation and interpretation and the cost of transcription;

(h) expenses of the storage and handing over the items seized.

3. In the case when the execution of a request entails expenses of an extraordinary nature, the Parties shall consult with a view to agree the conditions under which the request shall be executed, and the criteria for sharing the relevant costs.

## **Article 26**

### **Settlement of disputes**

Any dispute, which may arise in connection with the interpretation or application of this Treaty, shall be settled by means of consultations and negotiations between the Parties.

## **Article 27**

### **Amendments**

By mutual agreement of the Parties to this Treaty amendments may be inserted. These amendments shall constitute integral part of the Treaty and are issued in the form of separate protocols that shall enter into force by the procedure provided by paragraph 1 of Article 28 of this Treaty.



## Article 28

### Entry into force and Termination

1. This Treaty is concluded for an indefinite term and enters into force on the date of receipt of the second written notification by which each Party communicate through diplomatic channels, that its respective internal procedures of ratification have been completed.

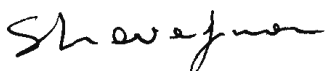
2. This Treaty shall be terminated upon expiration of six (6) months from the date of receipt through diplomatic channels of a written notice of one of the Parties about its intention to terminate this Treaty. In case of termination of this Treaty, the activities of mutual legal assistance started during the period of its validity, remain in force to their full execution.

3. This treaty shall apply to any request submitted after its entry into force, also if the relevant criminal offences were committed before the entry into force of this Treaty.

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

DONE at Astana on 22<sup>nd</sup> of January 2015, in two originals, each in Italian, Kazakh and English languages. In case of any divergence on the interpretation, the English text shall prevail.

**For the Republic of Italy**



**For the Republic of Kazakhstan**

