



Study on judicial cooperation,
mutual legal assistance
and extradition of drug traffickers
and other drug-related crime
offenders, between
the EU and its Member States
and Latin American and Caribbean
(LAC) countries

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0. Acronyms & abbreviations

AECID	Spanish Agency for International Development Cooperation
AIAMP	Ibero-American Association of Public Prosecution Services
ALADI	Latin American Integration Association
ALBA	Bolivarian Alliance for Countries of Our America
CARICOM	Caribbean Community
CAIS	Central American Integration System
CAN	Andean Community
CARIN	Camden Asset Recovery Interagency Network
CEFIR	Training Centre for Regional Integration
CEJA-JSCA	Justice Studies Center of the Americas
CELAC - CALC	Latin America and the Caribbean on Integration and Development
CETS	Council of Europe Treaty Series
CICAD	Inter-American Drug Abuse Control Commission
CMC	Mercosur Council
CNCP	Commonwealth Network of Contact Persons
COMECON	Council for Mutual Economic Assistance (founded in 1949 by the Soviet Union, Bulgaria, Czechoslovakia, Hungary, Poland, and Romania)
COMJIB	Conference of Ministers of Justice of Ibero-American Countries
COPOLAD	Cooperation Programme on Drugs Policies between Latin America and the European Union
DT	Drug trafficking and drug related cases
EAW	European Arrest Warrant
EDF	European Development Fund
EJN	European Judicial Network (for criminal matters)
EU	European Union
EuroJust	The European Union's Judicial Cooperation Unit
EUROsociAL	European Program for Social Cohesion in Latin America
GRUCA	Central American Ambassadors' Group to EEC
HCCH	Hague Conference on Private International Law
IberRED	Ibero American Network for International Legal Cooperation
IDB	Inter-American Development Bank
INALUD	United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders
IRELA	Institute for European-Latin American Relations
IT	Information Technology
JIT	Joint Investigation Team
LA	Latin American
LAC	Latin American and Caribbean
LoR	Letter Rogatory
MERCOSUR	Southern Common Market

MLA	Mutual Legal Assistance
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
MS	Member State
OAS	Organisation of American States
OHCR	Office of the High Commissioner for Human Rights
PARLACEN	Central American Parliament
Palermo Convention	United Nations Convention Against Transnational Organised Crime
PND	Spanish National Board against Drugs
REFCO	Central American Network of Organised Crime Prosecutors
REMJA	Meeting of Ministers of Justice, or other Ministers or Attorneys General of the Americas.
SI	Statistical Information
STE	Short Term Expert
TCP	Transfer of Convicted Persons
ToR	Terms of Reference
UK	United Kingdom
UNASUR	The South American Community of Nations and the Union of South American Nations
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention Against Transnational Organised Crime
USA	United States of America
Vienna Convention	United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
VPN	Virtual Private Network

1. Executive Summary

Purposes and objectives

The main goal of this study is to provide facts and figures as well as a detailed analysis on the function, use, obstacles to the implementation of, and any potential gaps in, Mutual Legal Assistance (MLA) existing mechanisms and extradition agreements. It also addresses other relevant elements to allow for an initial evaluation based on the relevant information. This is to enable a decision to be made on whether, and if so how, judicial cooperation should/could be improved and with which instruments. It includes an evaluation of the need and the potential added value of entering into EU level MLA and extradition agreements, while also taking into account de facto situations such as the functioning of the judicial system and the application of fundamental principles.

Within this main framework the objectives of this report are addressed in to offer outcomes which stem from the research process. The research strategy combines a general study of the existing cooperation between EU Member States and LAC countries, with a detailed study of judicial cooperation in Latin America, based on thorough research of particular LAC and European countries, together with a specific analysis of some variables related to this subject matter.

Methods and sources

The research strategy assesses two criteria: the existing international judicial cooperation instruments and the statistics from MLA and Extradition agreements relating to drug trafficking and drug-related crimes. It aims to explore the existing relationship between these international cooperation agreements and the number of drug-related cases, with a view to determining whether the existing international judicial cooperation framework is sufficient, or whether any other tools or amendments are necessary. In addition to these criteria other factors are taken into account, particularly: the overall efficiency of the local justice systems, the relationship between the judiciary and the executive and legislative powers, the degree of independence of the judiciary, data protection and the position of detained persons including EU citizens. Pre-existing reliable sources on these subjects have also been consulted.

The study combines different approaches and research techniques. It specifically seeks to collect information about the legal and policy framework that each Latin American and Caribbean country applies to international judicial cooperation, especially in the field of drug trafficking.

Furthermore, it attempts to gather information about the institutional framework that each country has established to execute this task, and about the participation of these countries in multilateral treaties and agreements. Both qualitative and quantitative techniques are used to obtain information and process data on the performance of judicial cooperation in every LAC country. The information has been gathered by means of missions to key countries, official Websites, official journals, interviews, direct contact with contact points and questionnaires to LAC central authorities and to Eurojust.

Contents and Outcomes

Introduction to Cooperation, MLA and Extradition between EU and its MS and LAC countries

Section 2 sketches the current landscape with regards to international judicial cooperation between the EU and LAC regions. It tracks the development of the EU-LAC Summits from their inception in 1999 to the present day, and outlines the issues which it aims to address and which are viewed as important. Specifically the VI Summit in Madrid in 2010 is mentioned where the 2010-2012 Action Plan introduced, under the title 'The World Drug Problem', various initiatives for tackling this important issue. Further, there is an introduction to the work of the Conference of Ministers of Justice of Latin American Countries (COMJIB) and its promotion of measures to be used in the area of MLA and extradition – for example the simplified extradition procedure and videoconferencing. Its 2011-2012 Action Plan provides for the adoption of a framework convention on Joint Investigation Teams (JITs). After a brief summary of other organisations whose aims are to improve international judicial cooperation the Ibero-American Association of Public Prosecutors (AIAMP) and their work is mentioned.

State of the art within the LAC Region: analysis of the MLA/extradition system in place

Section 3 starts with a description of the existing judicial cooperation policies and treaties within the various frameworks in and around the LAC region. It details the beginnings and current workings of the Organisation of American States (OAS) and the Meetings of Ministers of Justice or other Ministers, or Attorneys General of the Americas (REMJA), and the extensive number of declarations, instruments and conventions that exist within the ambit of these organisations. A similar study is made of the Southern Common Market (MERCOSUR) and the Central American Integration System (CAIS) and their policies within the ambit of international judicial cooperation. At a sub-regional level,

there is mention of the Union of South American Nations (UNASUR), the Andean Community (CAN) and the Caribbean Community (CARICOM).

The section then examines the setup and policies of the justice systems in the LAC region, and outlines recent developments with regards to further independence of the judiciary. This chapter also elaborates on the position of individuals who are prosecuted and detained in custody in the LAC region for drugs trafficking/drugs related crimes. This stems not only from academic research in the area, but also from interviews conducted during field missions. Historically there have been issues in the region's prisons of over-crowding and there have been documented cases of corruption and abuse, however it is clear that there are countries where significant improvements have and are being made. After a brief outline of Diplomatic Assurances, there is a study of the current role of prosecutors in the LAC region, and how their role is developing within a general move towards an accusatorial model of criminal justice.

Section 3.2 starts with a comparative study of three of the major instruments currently in existence in the LAC region - The Inter-American Convention on Mutual Assistance in Criminal Matters ("Convention of Nassau"), The Protocol on Mutual Legal Assistance in Criminal Matters ("Protocol of San Luis") and the Protocol on Mutual Legal Assistance in Criminal Matters between the States Parties to MERCOSUR, the Republic of Bolivia and the Republic of Chile, and the Treaty among the Republics Of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua And Panama On Legal Mutual Assistance In Criminal Matters. The instruments are compared with reference to the inclusion or not of the most common type of articles, relating to for example, the types of assistance permitted under the agreement, the reason assistance can be refused, double criminality, specialty, and also with regard to procedural aspects. The section ends with some considerations on central authorities, and their roles. This is an area which in terms of the Conclusions is an important one and the theme is developed throughout the report and specifically in the field missions and questionnaires.

The final part of section 3 is concerned with an overview of the legislation of countries in the LAC region, both countries which are key countries for the sake of the study and other countries which play important roles in the ambit of DT and international judicial cooperation. The legislation is examined both with regard to international cooperation and how that has been incorporated, and also with regard to the

criminalization and punishment of drug offences. There is also an analysis of the position in the LAC region with regard to data protection – an area undergoing a deep reform process in search of more transparency. Finally there is a short overview of various EU cooperation projects on drugs within the LAC – such as the Drug policy cooperation programme between Latin America and the European Union (COPOLAD) and the Cocaine Route Programme (CRP).

Overview of LAC participation in multilateral conventions with EU MS

Section 4 gives an advanced picture of the normative map including multilateral and bilateral conventions. It refers to the existing international judicial cooperation instruments, (MLA and Extradition agreements relating to drug trafficking) from a quantitative and a qualitative perspective. Furthermore it tackles the analysis of the LAC countries' participation in international agreements and the transfer of sentenced drug traffickers as well as extradition to serve sentences at home. Information has been gathered from central authorities, law journals and official Websites.

The functioning of international legal instruments signed between LAC countries and EU MS, and of other practical tools

Section 5 deals with the use and functioning of the international legal instruments and practical tools related to drug trafficking between LAC countries and EU MS. This section gives an overview of the functioning benchmarks, sources of verification and technical aspects referred to in the information requested, collected and processed for this project. The analysis of the functioning of international judicial cooperation instruments is dealt with by way of a double approach for the purpose of this study: from the quantitative and from the qualitative point of view.

In relation to the **quantitative approach**, this study has resorted to the statistical analysis of figures regarding extradition and mutual legal assistance on drug related crimes. In relation to the **qualitative approach**, it tackles the operative analysis of the cooperation by means of the study's casework and questionnaires. The purpose of this appraisal is to obtain additional information by means of the evaluation of the functioning of cooperation and legal instruments from the practical and operative point of view: legal permeability to extradition and MLA, application of the *aut dedere aut iudicare* principle, obstacles to cooperation, forms and measures of cooperation, type of requests, role

and behavior of central authorities and other legal practitioners.

Each mission to an LAC country had the commitment, among others, to gain access to and examine real extradition and mutual legal assistance requests (received and/or issued) related to Drug trafficking and drug related cases (hereinafter DT). Therefore, in addition to the quality of cooperation interviews with judges, prosecutors and representatives from central authorities, the consultants have examined, where possible, cooperation procedures dealing with extradition and MLA on related DT between the visited country and any EU State. Regarding the second qualitative methodology, perception questionnaires have been distributed among targeted legal practitioners such as specialised prosecutors in drug related crimes, judges, court secretaries, court officers, central authorities, IberRED contact points, Eurojust, EJM contact points, UNODC and its Central American network of international cooperation focal points, Interpol officers and other relevant legal practitioners.

Main Findings and Conclusions

The core of the study is sections 6 and 7 which are divided into three parts:

- Main Findings; (sec 6.1)
- Conclusions and (sec 7.1)
- Key Conclusions (sec. 7.2).

Main Findings

The total of 38 “**Main Findings**” of the Study have come about through all the process of information gathering and research undertaken during the Study, including the interviews and questionnaires undertaken during missions, and also take into account the results of other reports, studies and publications on the subject matter. Some of the findings lead to later Conclusions and Key Conclusions, but not all of them have an immediate corollary in those sections. The findings relate to all areas of law and cooperation with regards to DT crime, and include assessments of other indicators such as treatment of citizens in the penal system, the Rule of Law and data protection. Many of the findings relate to the current MLA and extradition situations between the EU and LAC countries, and indicate areas where the present practices and or legislative bases could be improved.

Conclusions

“**Conclusions**” included are based on the considerations and reflections contained within the present study, Main Findings, mission reports, statistical information, answers and remarks to questionnaires and previous scientific research, studies and official reports, (particularly those official reports coming

from EU entities or UNODC). Special attention is paid to those considerations related to the reinforcement of central authorities and other legal players such as cooperation networks and liaison magistrates. The legal and operational approaches contain the most relevant Conclusions in relation to the existing and possible legal framework.

Finally, as an outcome from the other sections, the “**Key Conclusions**” include the considerations proposed by the research team to be taken into account by competent authorities and pondered by policy makers. This section has been divided into two – operational Conclusions and general Conclusions. As mentioned in the introduction to the Conclusions, these Key Conclusions are offered in the spirit of proposals for improving the pertaining situation, which although functional clearly exhibits areas where there is room for improvement and increased efficiency resulting in more successful prosecutions and a lessening of DT crime in both the LAC and EU areas.

A) Operational Key Conclusions

One of the main gaps that the study shows is the inefficiency in some central authorities. The staff of some central authorities in certain countries lacks sufficient knowledge about applicable conventions, and existing networks and tools created to improve judicial cooperation. There is no available compilation of all the applicable conventions and it is not easy to find the appropriate conventions, to ascertain how many countries have signed them and even to discover the date they came into force. The elaboration of a compendium of e-books, handbooks and practical guides on international judicial cooperation would be very useful, not only for Latin American partners but also for the European authorities.

In some cases the central authorities’ staff do not come from Prosecutors’ Offices and have insufficient knowledge not only about legal cooperation, but about criminal investigation methods in general. Where central authorities are integrated by prosecutors, examining judges or acting practitioners they are in a better position to implement their functions. They should have a minimum of legal training and develop institutional expertise in the area of MLA and extradition. We propose to organize training courses to achieve their capabilities in this area. In addition practitioners, especially anti-drug prosecutors, lack knowledge of the possibilities offered by international cooperation, conventions, tools and networks. They also need to improve their skills in managing judicial cooperation. The proposal of training courses would

also cover the needs of anti-drug prosecutors.

This training should be combined with programmes for the temporary exchange of central authorities' personnel and anti-drug prosecutors between EU – LAC key countries.

The existing inter-American and intercontinental contact point networks are not exploited sufficiently from both sides of the Atlantic. For that reason, it is necessary to promote these networks and strengthen and extend the existing MoUs (IberRed - Eurojust and IberRed - EJM). The possibilities of contacting REMJA to further explore areas of common interest and future cooperation should also be studied.

These networks only cover some of the countries involved in the study and some countries do not have the possibility of using some of the more interesting tools – such as iber@. It would be useful to allow European Judicial Networks contact points and all Caribbean countries to have access to iber@.

When collecting data and figures regarding international legal requests we realised that most of the countries do not maintain a reliable register of these requests, neither active nor passive. It is necessary to create a more efficient statistical system for central authorities

Long distance legal cooperation between EU – LAC countries often involves delays in the exchange of information and execution of legal requests. It is therefore necessary to adapt their competent organisations (legal frameworks and methods) to the 21st Century information society and to promote the use of IT, in particular by accepting the use of electronic communications, especially through secure virtual networks

There are very few European legal officers in the embassies of LAC countries. Nevertheless the experiences of France and Spain in having liaison magistrates have proved useful in improving judicial cooperation. We support the creation of the figure of the “Eurojust Liaison Magistrate” to be posted in competent institutions of selected LAC countries along significant drug trafficking routes. The enhancement of the position of liaison police officers posted in LAC countries along significant drug trafficking routes would also be positive.

B) General Key Conclusions

Whilst there is an extensive legal framework in existence in terms of both national legislation and international treaties

and conventions, there is a tendency among LAC countries to favour regional or bi-lateral treaties in place of the Vienna or Palermo Conventions. It is also correct that the vast majority of bilateral international legal instruments still contain important grounds for refusal and requirements which in day-to-day casework may be interpreted as obstacles to feasible judicial cooperation.

On the other hand, multilateral instruments, such as the Vienna and Palermo conventions, foresee relevant provisions in MLA and extradition in DT related cases which represent a good base for judicial cooperation with the EU MS. They are good bases, but not sufficient for the challenges to be faced up to in DT cases. Legal practitioners and judicial authorities tend frequently to apply the Vienna Convention and bilateral agreements relying on excessive formal interpretation (see main finding 26). In addition, this Study reveals the extent to which there are several areas in which the diversity of national laws hinders LAC-EU international cooperation in the fight against drug trafficking. States should strive to provide extensive cooperation to each other, in order to ensure that national enforcement authorities are not limited in pursuing drug-trafficking offenders who usually seek to shield their actions by scattering evidence and proceeds of crime in different countries, (see Main Findings 06 and 07).

Before considering drafting any new Ibero-American and Caribbean legal instruments, we think it would be useful to promote the enlargement of the area of application of several existing international legal conventions. The extension of the accession to existing regional MLA or extradition conventions should be considered. There is a precedent for this in the case of the European Convention on Mutual Assistance in Criminal Matters of the [Council of Europe](#) 1959 and especially its [Second Additional Protocol](#), legal instruments which are already ratified by certain LAC countries: i.e. Chile. On the other hand, certain EU countries (or the EU itself) could study the convenience of accession as third states to the [Inter-American Convention on Mutual Assistance in Criminal Matters](#) of 1992.

Finally the possibility of putting into place of a tailored, stronger and binding intercontinental EU – LAC agreement should not be excluded.

Follow-up

The Study shows that some of the new regional agreements emulate certain methods and legal practices already in place within the EU. Moreover, all of them are evolving rapidly to keep pace with new technologies. As shown in the following sections of the study their intensification over the past 10

years reflects the determination of many countries to work more closely with each other to face the growing threats of organised crime and drug trafficking. In addition to the 1988 Vienna Convention, two other conventions are crucial to promoting international cooperation in the fight against organised crime and corruption: the United Nations Convention against Transnational Organised Crime and the Protocols thereto; and the United Nations Convention against Corruption.

To ensure its effectiveness and that it respects established EU legal principles, any future bilateral or multilateral legal instrument should include binding provisions in relation to:

- Endorsing obligatory official model forms for the requesting authorities
- Foreseeing appropriate data protection provisions;
- Incorporating compulsory alert systems and priority-track for serious and urgent drug trafficking cases from central authorities;
- Including an immediate response from the receiving central authorities giving confirmation of receipt to the requesting central authorities;
- Promoting efficiency by eliminating or minimising the use of grounds for refusal and limitations;
- Extending as a general principle the execution of requests in accordance with procedures foreseen by the Requesting State's law;
- Exploring legal solutions to conflicts of jurisdictions including provisions on the transfer of proceedings and joint investigation teams;
- Making the recovery of assets and the proceeds of DT crime more feasible using creative solutions such as asset sharing between the Requesting and Requested countries or giving choice to the competent authority to seek confiscation within MLA requests;
- Providing for the possibility of affording mutual legal assistance in asset recovery proceedings and non-conviction based confiscation proceedings;
- Promoting complementary direct contact between competent authorities throughout the request

process, (issuing, receiving, executing and processing) and allowing for direct transmission of mutual legal assistance requests between competent authorities in urgent cases;

- Provisions allowing expeditious interception of telecommunications, including where telecommunications gateways are located in the territory of the Requested State, but are accessible from the territory of the Requesting State;
- Specific provisions for assistance in computer crime investigations;
- Allowing the use of 'real-time' tracking of banking information and the monitoring of accounts;
- Promoting the use of IT for transmitting and providing cooperation, according to the availability of the required IT in the involved authorities;
- Allowing in a feasible way efficient measures against DT such as controlled deliveries, undercover agents, joint investigation teams; and fostering the practice of spontaneous exchanges of information,
- Reinforcing procedures for the protection of witnesses and law enforcement authorities

However, it is well known that the legal framework alone does not suffice to assure proper and effective cooperation. First of all it is of paramount importance to have national legislation in place to implement fully those legal instruments. The adoption of the administrative measures necessary to support the various types of international cooperation is also very important.

Secondly, competent authorities should be encouraged to interpret extradition requests and letters rogatory in a more flexible manner in favour of cooperation. This implies a need to eliminate unnecessary formal prerequisites and to minimise any legal grounds for refusal.

Many other factors, such as the training of competent legal players, resources, IT means and facilities of central authorities, support and backstopping from judicial networks and, moreover, the probity and attitude of competent authorities play a decisive role in LAC – EU judicial cooperation. As evidenced by the 2011 Report of the International Narcotics Control Board when dealing with the

recommendations to Governments, the UN and other relevant international and regional organisations, which includes Recommendation 4, as follows: *“Certain parties have not fully complied with their obligations under the international drug control treaties, as some of their **state and/or provincial legislative and judicial structures have implemented action contrary to the treaties**”*.

There is a history of successful cooperation between the LAC area and the EU, in both MLA and extradition, and a will to cooperate. This is especially true with regards to cooperation traffic between former historical colonial powers and the countries which formed part of those colonies.

Furthermore, there are international network bodies in existence which are in a position to facilitate such cooperation and to ease communications between cooperating countries.

However, despite the above, the study has revealed that there are areas where it is possible to improve significantly the current situation in terms of both the legal framework and the operational framework, and it is with these improvements in mind that the Conclusions below are drafted. These Conclusions, as mentioned, arise from the Main Findings, and in some cases give rise to Key Conclusions where it is thought that the issue is particularly important.

Since the research tackles topics from both the legal and the practical point of view, we understand that the study contains Main Findings and Conclusions which might provoke further considerations and possible proposals (or *“food for thought”*), not only from a policy-maker’s perspective but also from a legal practitioners’ approach. For instance, and bearing in mind some of the Key Conclusions, a study of this magnitude may merit a possible joint workshop or international forum with relevant legal players; experts on DT judicial cooperation could also contribute to the disseminations of good practices as a follow-up action. Furthermore, the study and specially its Key Conclusions could be used for the implementation of a Web compendium of international legal instruments on MLA and extradition, and of good practices between LAC and EU countries.

2. Introduction to Cooperation, MLA and Extradition between EU and its MS and LAC countries

2.1. Introductory note

Drug trafficking is undoubtedly a major threat to Rule of Law and Governance. The problem has global dimension, and transnational crime organisations have shown a great level of sophistication in their criminal activity. Transnational criminal organisations offshore their production, distribution networks, transit routes or financial structures, taking into consideration legal gaps and lack of coordination among countries. Responses to this phenomenon need to be coordinated if it is intended that they should have any real impact. International Judicial Cooperation, and particularly MLA and extradition agreements, is the global response to this phenomenon.

Historically, the European international judicial cooperation strategy and policies have prioritised MLA and extradition agreements between the European Union and the United States and Japan.

However, the European countries have also been aware of the importance of the LAC countries as major global actor against international criminality related to drug-trafficking; especially to major criminality. European and LAC countries have shared an effort over the last years to coordinate their policies. From the 1996 summit in Viña del Mar, almost 20 years of shared work shows the interest of both partners in building a strong International Judicial Cooperation network, able to face contemporary challenges. The path travelled during these decades of cooperation has not always been simple or upward, but the results obtained so far are undoubtedly positive and encouraging.

This Study would like to show a picture of the status of this common project: The achievements, the lessons learned, the new challenges we will need to face, and what is more important, what can be done to improve international judicial cooperation with LAC countries. The Study will provide facts and figures, analysis of the state of the art, comparative legal studies and conclusions. With this, we hope that we will provide practitioners and decision makers with relevant information that will help them to design the future of International Judicial Cooperation between European and LAC countries, and will help them to take the necessary steps towards a better mutual understanding.

The methodology used in conducting this undertaking has been essentially threefold:

- Academic analysis. Including the study of the current position with regards to conventions and treaties signed, implemented or proposed in the LAC and EU regions, along with a study of the domestic legal provisions in LAC dealing with drug trafficking and how it is prosecuted, and how

international cooperation is integrated into the legislation; there is also a analysis of the 'permeability' of LAC countries to MLA or extradition requests based on the treaties or conventions they are party to and the legal impediments contained within those treaties to efficient cooperation.

- Practical analysis. Field Missions have been conducted by experts in international cooperation to a number of countries in the LAC region where they have met with practitioners and examined a selection of real cases of international cooperation and their outcomes.
- Perception research. Questionnaires have been widely distributed amongst practitioners in the field throughout the EU and LAC regions to ascertain the current thinking on what the practical and legal barriers are which currently exist to prevent swift and efficient international judicial cooperation.

Whilst the scope of the Study has been broad and extensive, there are inherent limitations to any investigation of this type: the field missions were conducted by spending a week in each country. This inevitably entails gathering only a snapshot of a view of the current functioning of international cooperation in that country. Inevitably some persons whom it may have been useful to interview were not available at the time of the visit, other visits were adversely effected by extreme weather conditions. Although questionnaires were returned from a broad range of countries and organisations, and all the major players in terms of ministries or prosecutors' offices were targeted, in terms of overall numbers of people working in this arena throughout the EU and LAC the percentage of answers received was inevitably small. Some central authorities do not keep up to date or reliable records of the quality or quantity of international cooperation requests, which hampers effective analysis.

Despite the above, the authors believe this Study offers a significant insight into the status quo of international judicial cooperation between the EU MS and LAC and the analyses and conclusions herein serve both to highlight and to offer tangible solutions to the challenges currently faced in this area.

2.2. Historical development of EU-LAC bi-regional cooperation

This section outlines the historical development of EU-LAC bi-regional cooperation in justice matters, specifically in relation to drugs, and details cooperation initiatives of governments and other organisations (judges, prosecutors and police forces) which are currently operating in the EU-LAC area.

With thirty-seven Conventions on Mutual Legal Assistance (MLA) in Criminal Matters between EU Member States and LAC; over eighty more instruments on Extradition; and forty-one international treaties on matters related to the Illicit Traffic in Narcotics, Psychotropic Drugs and Precursors, if the number of treaties alone allowed for a diagnosis of the existing situation, this would be unbeatable. The more than 150 instruments would be an example of abundant and expanding cooperation between the two regions.

However, it is right to say that many of these international instruments are in fact particular agreements between EU Member States and LAC States, most of which correspond to historical, cultural or strategic relationships. They are mostly individual initiatives and as such not overtly centred around the wider objective of the construction of “an area of cooperation on justice between the EU-LAC”, although they come within that general framework.

The smuggling of cocaine from South America via Central America and West Africa (the cocaine route) is a major concern for the EU. Trafficking generates violence, it fuels domestic consumption, regional instability and boosts transnational organised crime. It enriches and strengthens organised crime networks, which are invest in an array of criminal activities. It undermines the rule of law and governance and it weakens the state institutions, in particular the judicial systems. It disrupts and undermines legal economies, feeds corruption and diminishes national assets, inhibiting the sustainable development of societies.

The EU-LAC Coordination and Cooperation Mechanism on Drugs is the key forum for inter-regional cooperation on drug-related problems, especially cocaine. The EU-CAN (Andean Community) High Level Specialised Dialogue on Drugs dovetails with this. The EU has also signed drug precursors’ agreements with each of the Andean states, Bolivia, Colombia, Ecuador and Peru. The EU is a major donor for operational projects to prevent drug production and trafficking in Latin America and the Caribbean.

However, for clamping down sustainably on drug trafficking more could be done to improve judicial cooperation with the concerned producing and transit countries. The EU needs to assess its international judicial cooperation tools and to consider the need to enhance or enter new agreements concerning offences related to drug trafficking with the main cocaine producers and transit countries of Latin America and the Caribbean. It needs to explore ways to enhance the framework for Mutual Legal Assistance (MLA) or extradition agreements with Latin American and Caribbean countries. These countries are increasingly open towards such judicial cooperation mechanisms.

Judicial cooperation is essential for fighting efficiently against drug trafficking and drug-related crimes. The regular evaluation of the implementation of the EU Drugs Strategy and action plans has shown that additional efforts are needed to improve the effectiveness of drugs policy. A better use of judicial and law enforcement tools may help achieve a better impact.

Cocaine is primarily manufactured in the South American Andean region. With a change in the early nineties to the traffic patterns of the drug (from being primarily concentrated in the American continent to increasing quantities being exported to Europe via air or sea) the importance of tackling the associated problems via coordinated action and cooperation between the EU and LAC regions grew.

In the political arena too, the nineties gave fresh momentum to the process of democratic consolidation in Latin America, the rapprochement of the two regions in terms of shared values, and the strengthening of links between their respective civil societies. In the economic arena, the process of economic reforms in Latin America intensified.

This favourable context led to the holding of the Summit between the Heads of State and Government of Latin America and the Caribbean and the European Union in Rio de Janeiro (1999), itself the result of a French-Hispanic initiative launched on the occasion of the Latin American Conference of Viña del Mar in November 1996. The Summit, which brought together forty-eight Heads of State and Government of both regions, had been conceived as an exceptional occasion to promote bi-regional relationships beyond the year 2000. The agenda was articulated around three particular issues: political dialogue, economic and trade relations, and cultural, educational and human relations.

Since that first summit, a further six have been held, most recently the latest bi-regional Summit took place in Santiago de Chile and was the first one under the new CELAC format. It was held on January 26-27, 2013, and around sixty Heads of State and Governments from both sides of the Atlantic attended it. The Santiago Declaration which was drafted in that summit also made reference to the first CELAC-EU Judicial Summit which was held in Santiago a few weeks before on 10th and 11th of the same month. The judicial summit was considered as a preparatory event for the later one. Its objective was to create a bi-regional forum to analyse 'Shared principles in matters of International Judicial Cooperation'.

Whilst the subjects addressed and discussed at the summits have been various, and have included for example democracy and human rights, social cohesion, respect for international law and the fight against poverty, drugs and the world drug problem has been prominent on the cooperation agenda. Specifically the Action Plan 2010 - 2012 which was formulated at the VI EU-LAC Summit held in Madrid on May 18, 2010, in its sixth part under the title "The world drug problem", states that "The objective is to strengthen bi-regional dialogue and effectiveness of joint efforts to tackle the world drug problem as identified and developed in the framework of the EU-LAC Coordination and Cooperation Mechanism on Drugs in accordance with the principle of common and shared responsibility through an integrated and balanced approach and in conformity with international law." For which two lines of dialogue are provided: i) Further develop and strengthen the EU-LAC Coordination and Cooperation Mechanism on Drugs; and ii) Intensify our cooperation in the framework of the United Nations, notably within the Commission on Narcotic Drugs (CND) to combat, among other issues, drug trafficking carried out by organised crime and criminal organisations.

Furthermore, the Cooperation activities and initiatives of the VI EU-LAC Summit were as follows:

- Support the establishment of EU-LAC networks to share experiences, know-how and best practices to tackle the world drug problem, via policy development and capacity building such as the Cooperation Programme on Drugs Policies between Latin America and the European Union “COPOLAD”.
- Strengthen regional security cooperation structures and foster regional cooperation in the fight against illicit drugs and related crimes, in the Caribbean under the 10th EDF regional programme.
- Strengthen cooperation against the diversion and illicit trafficking of chemical precursors.
- Strengthen cooperation against drug related money laundering.
- Promote comprehensive prevention programmes, health assistance, drug addiction and social treatment and social re-integration to reduce drug consumption and abuse
- Cooperate on alternative development in regions where crops are cultivated for the production of illicit drugs, including as appropriate, preventative alternative development, on an integrated and sustainable basis. Give due attention to technical assistance, in relation to the chain of production and commercialisation of products of alternative development.
- Promote initiatives to tackle to consequences of the world drug problem on the environment, in accordance with national policies.
- Advance implementation of commitments adopted in the Political Declaration and Plan of Action approved at the 52nd session of the CND held in 2009.

Likewise, at this last Summit, the Heads of State and Governments announced the creation of the European Union-Latin American and Caribbean (EU-LAC) Foundation with headquarters in Hamburg, which the European Commission endowed with a budget of three million Euros in order to carry out its activity until 2013. The continuity of these meetings was not only guaranteed but also on December 3, 2011, the Community of Latin American and Caribbean States, that is the entity that represents the Latin American and Caribbean region in the dialogue with the EU regarding EU-LAC Conference process, was launched.

2.3. EU Cooperation Projects for CELAC

The following programmes all come within the framework of EU-LAC cooperation on drugs:

Drug policy cooperation programme between Latin America and the European Union (COPOLAD)

COPOLAD is a cooperation programme between Latin America and the European Union aiming to improve the coherence, balance and impact of drugs policies in the fight against drugs in participating countries, reinforcing the exchange of mutual experience and bi-regional cooperation.

The programme focuses on four main areas:

- The consolidation of the EU-CELAC Coordination and Cooperation Mechanism on Drugs.
- The consolidation of national observatories in Latin American countries.
- Capacity building to reduce demand.
- Capacity building to reduce supply.

While the 1st Annual Conference was held in Bogotá, Colombia, in 2011, the 2nd Annual Conference for the Programme was held in Brussels on the 6th and 7th June 2012. The event was structured around two keynote speeches and four round table discussions on the four areas comprising the Programme. Specifically, the round table discussions were: “Bi-regional dialogue within the framework of the EU-CELAC Coordination and Cooperation Mechanism on Drugs”; “Making informed decisions on drug policy: the role of the Observatories”; “Evidence of the effectiveness of reducing the demand for drugs: implications and challenges”, and “Advances and challenges in the reduction of the supply of drugs”.

The 3rd Annual Conference of COPOLAD will be held on the 11th and 12th June 2013, in Quito (Ecuador).

Cocaine Route Programme (CRP)

The first world conference on the Cocaine Route Programme was held in Buenos Aires on the 10th and 11th May 2012. The conference looked at the objectives of the 2009-2011 Instrument for Stability programme, via which the EU supports the global action *Fight against organised crime on the cocaine route*. The programme enables cooperation at an international level and between legal services in member countries which are fighting these criminal organisations. One of the main objectives of the Buenos Aires conference was to strengthen cooperation between Latin America and the Caribbean in the fight against criminal networks and money laundering.

The addresses and, in particular, the opening speech, emphasised the global context of the European fight against organised crime, identified as a global threat. Mention was also made of the need for coherence between internal and external security, highlighting the role of the EU in fighting the infiltration of organised crime in political and state structures through corruption.

Organised by the EU, the event boasted the participation of the European officials responsible for the programme, as well as around 50 representatives from member countries and projects in the programme, including Quality Education for All, and the Regional Project for Education in Latin America and the Caribbean (PRELAC), AIRCOP, SEACOP, The South American Financial Action Group (GAFISUD), AMERIPOL and COPOLAD.

In broad terms, the general objective of this programme is to improve the capacity of member countries’ security forces and judicial bodies to cooperate at an international level in combating international criminal conspiracies. The project consists of the five aforementioned areas which will gradually be linked to each other to help create cross-regional synergies to tackle organised crime along the cocaine route.

The next International Conference will be held in Europe this year (2013).

The following programmes for these areas stand out:

AIRCOP: The main objective of this programme is to reinforce the capacity to combat drugs at specific airports. It focuses on fourteen international airports in Latin America and the Caribbean and aims to intercept shipments of cocaine arriving by air. The project is jointly carried out by UNODC, WCO and INTERPOL, with the participation of EU experts and agents. The programme covers the following airports: Brazil (Sao Paulo, member), Cape Verde, the Ivory Coast, Ghana, Guinea, Mali, Nigeria, Senegal, Togo, Argentina, Benin, Cameroon, Colombia, the Dominican Republic, Jamaica, Kenya, Venezuela, South Africa (Johannesburg, associate), Ethiopia (Addis Ababa, associate) and possibly Gambia.

SEACOP: Seaport Cooperation Project. The main objective of this project is to reinforce cooperation in the fight against trafficking by sea in Western Africa, Latin America and the Caribbean. Observation missions were carried out from July to September 2011 in Togo, Benin, Colombia, Venezuela, Brazil, Gambia, Sierra Leone and Guinea-Bissau. The decision was made to focus on Western Africa and increase the capacity for future exchange with CELAC. The project covers the following countries: Senegal, Ghana and Cape Verde (in phase 1); and Sierra Leone, Togo, Benin, Guinea-Bissau and Gambia (in phase 2).

AMERIPOL: Comprising 20 Member States and 11 permanent observers. The main objective of the project is to help reinforce cooperation between police authorities, legal authorities and public prosecution offices in Latin America, the Caribbean and the EU in their fight against cross-regional organised crime. The project contract was signed in December 2010.

Both the Police Forces and the Public Prosecution Offices have signed Memoranda of Understanding.

This project covers the following countries: Colombia, Bolivia, Brazil, Ecuador, Peru and Panama, Martinique, Venezuela, Barbados, Trinidad and Tobago, and Argentina.

GAFISUD: This project was set up in 2009 for a period of 36 months with the main objective of providing support in the fight against money laundering and organised crime in Latin America and the Caribbean. It has carried out a basic diagnosis of the non-banking financial sector, including seven sub-sectors, in the 12 GAFISUD group countries. Several training courses have also been organised. This project covers the following countries: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru and Uruguay. Costa Rica and Panama joined more recently.

In addition to the abovementioned projects, there is the PRELAC programme: Prevention of the diversion of drugs precursors in Latin America and the Caribbean. This project has now been integrated into the Cocaine Route Programme.

Other Areas of EU-LAC Cooperation

The Latin American Community of Nations has consolidated itself with strength and outreach. Undoubtedly, this experience cannot be overlooked in the construction of EU-LAC relations in the area of justice, for this is a Community that has made significant progress in the creation of a shared space of judicial cooperation, namely the Conference of Ministers of Justice of Latin American Countries (COMJIB) (born out of the extinct Conference of Ministers of Justice of the Hispanic-Portuguese-American Countries and the Philippines), an international body that has already had XVII reunions, the latest of which was held in Mexico in October 2010.

COMJIB has a Permanent General Secretariat that is also that of IberRED (the Ibero-American Network of International Legal Cooperation), and a Delegated Commission - as set out in its Founding Treaty and later in the 'Acuerdo de Sede' or Host Agreement signed with the Kingdom of Spain.

Ever since it was created, the Conference has promoted the adoption of legal instruments of judicial cooperation as of the greatest importance, for example:

- The Convention on Simplified Extradition, signed by Argentina, Brazil, Spain and Portugal;
- The Ibero-American Convention on the Use of Videoconferencing in International Cooperation between Justice Systems and its Additional Protocol.

This Convention, signed by Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Spain, Guatemala, Panama, Paraguay, Portugal and the Dominican Republic at the Ibero-American Summit of Heads of State and Governments held at Mar del Plata in December 2010, and later ratified by Mexico, validates the use of videoconferencing for the examination of a person as a party, witness or expert within the framework of a criminal procedure. The Convention on the use of videoconferencing was later complemented by an Additional Protocol related to cost, language rules, and submission of applications.

The COMJIB Action Plan of 2011-2012 provides, among others, for the adoption of a Latin American Framework Convention on Joint Investigation Teams in coordination with the Technical Commission of Justice of the Southern Common Market (MERCOSUR), the regional convention of which (set forth with the support of the COMJIB) shall serve as a starting point.

Parallel to this political movement, led by the Heads of State and Governments and developed through sector ministerial conferences, the I Madrid Conference of Heads of Supreme Courts of Latin America, Spain and Portugal was held in 1990. Two other conferences followed, both of which were also held in Madrid in 1994 and 1997 respectively. In 1998 and 1999 two meetings were held in Caracas under the name of the Conference of Presidents of Supreme Courts of Justice. From 2001 onwards, these meetings began to be known as Latin American Conferences of Presidents of Supreme

Courts and Supreme Tribunals, thus covering the different names of the jurisdictional supreme bodies. Under this name, the VI Conference was held in the Canary Islands in 2001 and the VII in Cancun in 2002. When Atlantic Judiciary Councils emerged on both sides of the Atlantic, a dynamics of periodical meetings of the Judiciary began: the I Meeting of Judiciary Councils took place in Sucre in 1998, the II in Barcelona (2001) and the III in Zacatecas (2002).

Within this context, important instruments were adopted, such as the Statute of the Latin American Judge (Canary Convention of 2001), the Charter of Citizens' Rights to Justice in the Latin American Judicial Area (Cancun Convention 2002). Furthermore, several judicial networks were created, such as the Latin American Network of Judicial Schools, the Latin American Network of Judicial Information and Documentation, the Latin American Classroom of the General Council of the Judiciary and the Latin American Centre for Virtual Judicial Training. It was decided that the following Conventions and Meetings would be held in a jointly and successive manner. Thus, after a first preparatory meeting held in Santa Cruz de la Sierra, the IV Ibero-American Meeting of Juridical Councils and the VIII Ibero-American Summit of Presidents of Supreme Courts and Supreme Tribunals of Justice were held together and successively in Copan Ruinas and in San Salvador in June 2004, at the end of which a joint Declaration was signed in which the reconstitution of both structures was agreed upon. After the reconstitution with numerical respect to the previous meetings, in 2006 in Santa Domingo the XIII Latin American Conference was called, and the following Conferences drafted a Latin American Code of Judicial Ethics (XIII Conference Santo Domingo 2006) and two important documents approved at the XIV Conference, Brazil 2008: the Rules of Brazil on access of vulnerable people to Justice and the minimum Rules on Legal Security in the Latin American environment.

Within this institutional framework is it also important to mention the work of the Iberoamerican Association of Public Prosecutors (AIAMP) which was founded in Brazil in 1954. This association arranges annual meetings of the General Public Prosecutors from 21 Iberoamerican countries. From 2007 they have worked on concrete subjects relating to international cooperation and they have approved various documents and made commitments to improve mutual collaboration. AIAMP has as a principal aim the promotion of international legal cooperation and assistance in criminal matters with the purpose of improving and encouraging the prosecution of those involved in organised crime.

AIAMP have drafted the 'Fiches AIAMP' which are virtual files which contain information about the legal procedures in criminal matters in each country member of AIAMP. They are a useful know-how tool on how to request investigation procedures or the way to obtain information in criminal cases, the terms, necessary formalities, and contacts.

AIAMP is specially focused on improving criminal cooperation in drugs cases and in 2011 produced a document entitled 'Good Practice Manuals: the fight against drugs trafficking'.¹

This institutional framework has spread to all levels and bodies. Thus, there is a Latin American Federation of Ombudsmen, an Inter-American Association of Public Defenders, a Latin American Union of Bars and Lawyers' Associations and a Latin American Association of Public Ministries.

A significant contribution to the strengthening of international judicial cooperation in Central America was initiated through the creation in 2011 of the Central American Network of Organised Crime Prosecutors (REFCO). REFCO is a forum for sharing knowledge and experience with respect to common issues regarding organised crime and drug trafficking, such as modes of investigation, the interception of communications, witness protection and money-laundering. REFCO provides a structure for developing uniform capacity-building, in cooperation with training institutes for prosecutors. It also offers intraregional training, facilitates prosecutor exchanges between offices within the region and promotes the exchange of operational information.

For all this, there is no doubt that the process that has been followed in the Latin American region must be deemed a positive experience and a precursor to the EU-LAC cooperation policies.

¹ <http://www.aiamp.org/index.php/noticias-semanales/93-gu%C3%ADas-de-buenas-pr%C3%A1cticas-contr-el-narcotr%C3%A1fico>

3. State of the art within the LAC Region: analysis of the MLA/extradition system in place

This section examines and outlines the current situation with regards to legal cooperation, and systems and organisations geared to such cooperation, in the LAC area. It details the historical development of cooperation in the area, and the different allegiances and regional groups which have developed international cooperation as a theme.

3.1. Justice system and legal cooperation in the Region: historical and cultural factors and institutional design

To speak of cooperation policies in the LAC region is to speak of the different political integration processes occurred in the region. The development of legal cooperation policies has had much to do with the different ways in which regional and sub-regional integrations have been achieved. Hence the most important instruments on mutual legal assistance developed so far are either regional or sub-regional in nature.

Undoubtedly, cooperation has importantly developed in the American Continent within the framework of the Organisation of American States (OAS). At the same time, other more restrictive regional and sub-regional cooperation frameworks have developed. So much so that the Latin American integration framework has become in recent times the best example of how cooperation policies based on bilateral assistance are giving way to multilateral cooperation based on a political basis, i.e. the increasingly institutionalised Latin American Community, and to the construction of a true Latin American judicial space.

3.1.1. Legal cooperation policies within the OAS framework. The leading role of REMJA.

A) Institutional Framework

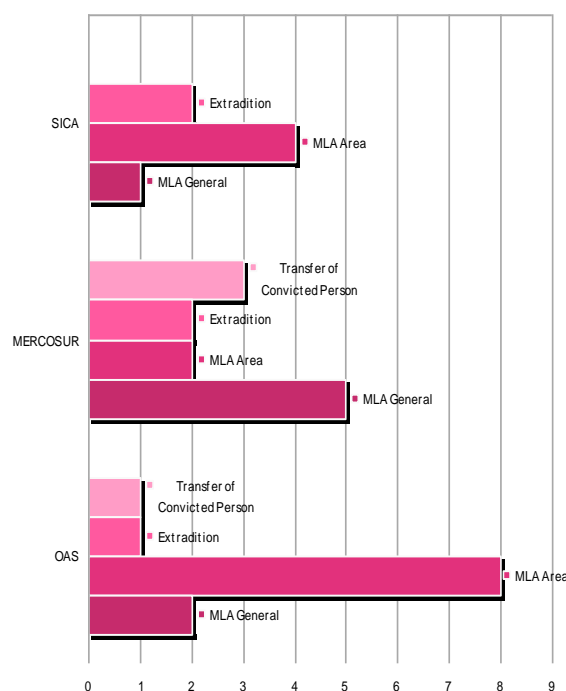
The OAS is the oldest international organisation in the region. Its predecessors hark back to the First International Conference of American States, held in Washington D.C from October 1889 to April 1890. At this meeting, the predecessor of the OAS, namely the International Union of American Republics, better known as the Pan-American Union, was established. The OAS Statement was signed in Bogota in 1948, entering into force in December 1951. From its signature, the OAS adopted its current official name. Today, the OAS is made up of 35 Independent American States.²

² Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Ecuador, El Salvador, the United States, Grenada, Guatemala, Guyana, Haiti Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, the Dominican Republic, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay and Venezuela.

OAS' main objective is to bring the countries of the Western hemisphere together in order to strengthen mutual cooperation and defend common interests. It is the principal forum of the region for multilateral dialogue and concerted action. Its actions are based on the unquestionable commitment to democracy. Thus, Article 1 of the Charter sets out what it seeks, namely "to achieve an order of peace and justice, encourage its solidarity, strengthen its collaboration and defend its sovereignty its territorial integrity and its independence" Starting from these premises, the OAS strives to encourage good governance, strengthen human rights, encourage peace and security, expand trade and deal with complex issues caused by poverty, drugs and corruption. Through its political bodies' decisions and the programmes executed by the Secretary General, the OAS promotes collaboration and understanding among American countries.

OAS Member States intensified mutual cooperation from the end of the Cold

Conventions adopted in the different regional areas



On June 3, 2009, the Ministers of Foreign Affairs of the Americas adopted resolution AG/RES. 2438 (XXXIX-O/09), that resolves that the 1962 resolution, which excluded the Government of Cuba from participation in the inter-American system, ceases to have effect in the Organisation of American States (OAS). Therein, a gradual participation of Cuba in the OAS was foreseen. Likewise, on July 5, 2009 the provisions of Article 21 of the Letter were used and it was decided unanimously to suspend the right of participation of Honduras as a consequence of the Coup d' État of June 28 against President Zelaya. This suspension only took effect on June 1, 2011 after the agreements of Cartagena de Indias that permitted the return of ex-President Zelaya.

Three sub-regional groups maintain a coordinated activity in the Organisation: Central America or GRUCA, the Caribbean or CARICOM, and ALADI, made up of the remaining Latin American countries. Canada and the USA do not belong to any specific group.

War, assuming new and important challenges. In 1994, thirty-four democratically elected Presidents and Prime Ministers from the hemisphere met in Miami in order to hold the First Conference of the Americas, in which broad objectives of political, economical and social development were established. Thenceforth, leaders of the region have continued to meet periodically in order to examine common interests and priorities. Through these Summits of the Americas, a growing number of responsibilities aimed at promoting a shared vision among its Members have been entrusted to the OAS.

From its beginning, the OAS has placed great importance on judicial cooperation. Thus, the more than thirty conventions approved at its core bear some relation to it. As for mutual legal assistance in criminal matters, this has occupied a key place on the political agendas, being considered a key policy in the development of the region, as it has been undoubtedly reflected in the number of instruments and declarations approved within the Meetings of Ministers of Justice or other Ministers, or Attorneys General of the Americas (REMJA) framework.

Before examining its achievements in the area of judicial cooperation it is worth pointing out that the OAS has been the architect of the institutionalisation of the inter-American system on human rights through two fundamental texts: i) the American Declaration of Rights and Duties of Man of 1948 and ii) the American Convention on Human Rights of 1969, which enabled the creation of the Inter-American Commission on Human Rights with its headquarters in Washington and the Inter-American Court of Human Rights with headquarters in San Jose.

Within the OAS framework, we find a great number of inter-American conventions in the area of international judicial cooperation in criminal matters. Four of them are of a general nature, while at least eight address specific topics. All of them undoubtedly evidence the interest awakened by this subject in the Region. However, the number of States that have signed and subsequently ratified OAS Conventions is scarce. Consequently, while the Inter-American Convention on Mutual Assistance in Criminal Matters has been ratified by twenty-seven countries, the Inter-American Convention on Extradition has only been ratified by six countries, and none of them has designated a central authority therein. This casts doubt on the operability of the institutional framework for international judicial cooperation developed within the OAS, but the process is an on-going one.

Aside from the OAS conventions, within the framework of international cooperation in the area, there are other legal instruments that establish both principles and guarantees. The following are worth highlighting:

- Inter-American Democratic Statement
- The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 ("Protocol of San Salvador")

- Inter-American Convention for the Elimination of all forms of Discrimination against Persons with Disabilities
- Inter-American Convention on Granting Civil Rights to Women.
- Inter-American Convention on Granting Political Rights to Women
- Declaration of Principal on the Liberty of Expression
- Principals and Good Practices on the Protection of Private Persons of Liberty in the Americas

All this allows us to draw conclusions on the state of the protection of Human Rights in this area.

In order to encourage legal and judicial cooperation in the Americas, the OAS Member States agreed to hold periodical meetings from 1997 onwards: Meetings of Ministers of Justice or other Ministers, or Attorneys General of the Americas (REMJA).

So far, nine such meetings have been held: I REMJA - Argentina, 1997; II REMJA - Peru, 1999; III REMJA - Costa Rica; IV REMJA - Trinidad and Tobago, 2002; V REMJA - Washington D.C., 2004; VI REMJA - The Dominican Republic, 2006 y VII REMJA Washington DC 2008; REMJA VIII - Brazil, 2010; and REMJA IX - Ecuador 2012, all with the aim of establishing a mechanism for encouraging the exchange of information and supporting the processes of reform and modernisation of the justice systems in the region.

In all these meetings, legal assistance in criminal matters has played a leading role. Proof of that is especially clear from the last two meetings in Brazil in 2010 and Ecuador in 2012, at which important recommendations and advances in mutual assistance in criminal matters were made. After the Brazil meeting, in its document on conclusions and recommendations³, under “Mutual Assistance in Criminal Matters and Extradition” and among its recommendations, the need to improve mutual assistance in criminal matters, among others, is stressed. To this end, the following measures are recommended to improve cooperation in this area:

- Perfecting national legislation relative to mutual assistance in criminal matters;
- Implementing REMJA’s recommendations in order to perfect mutual assistance in criminal matters in the Hemisphere, and
- Considering measures for perfecting mutual assistance in criminal matters with countries outside the Hemisphere, and when appropriate, for expanding the application of the Inter-American Convention on Mutual Assistance in Criminal Matters in those countries.

In terms of strengthening the position with regards to extradition, REMJA IX included a decision by Member States in its recommendations document⁴ to *‘Continue with its consideration of a streamlined and expeditious Inter-American legal instrument for extradition matters, including the progress and*

³ http://www.oas.org/dil/esp/REMJA-VIII_doc_4-10_rev1_esp.doc

⁴ For full document see: http://www.oas.org/en/sla/dlc/remja/pdf/recomm_IX.pdf

new developments made at the bilateral and sub regional levels, based on the proposal that the working group led by the delegation of Argentina and also involving the delegations of Brazil, Chile, Guatemala, Jamaica, Panama, Paraguay, and Uruguay is to draw up for consideration at the Sixth Meeting (of the Working Group on Legal Cooperation in Criminal Matters)".

REMJA IX also decided to "Continue making progress through the informal working group led by the delegation of El Salvador and also involving the delegations of Brazil, Bolivia, Paraguay, and Uruguay and with those States that find it necessary to do so on the preparation of the draft 'Protocol to the Inter-American Convention on Mutual Assistance in Criminal Matters Relative to the Use of New Communication Technologies and Hearings by Videoconference' to be considered at the Sixth Meeting".

The REMJA process constitutes, without a doubt, the political and technical forum of greatest importance on a hemispheric level in matters related to the strengthening of and accessing justice and international legal cooperation in general, and to mutual assistance in criminal matters, extradition, penitentiary and prison policies in particular.

Among the most important achievements, it is worth mentioning the creation of the Hemispheric Network of Information Exchange for Mutual Assistance in Criminal Matters and Extradition, created in 2000 on the occasion of the III REMJA in order to increase and enhance the exchange of information among OAS members in the area of mutual assistance in criminal matters. The Network comprises three elements: a public site on the Internet, a private site on the Internet and a system of secure electronic communications. The public component of the Network is a virtual library that provides legal information on mutual assistance and extradition related to OAS Member States. The private component provides information that is aimed at those directly interested in legal cooperation in criminal matters, such as documents drafted at meetings, contact data in the other countries, a glossary of terms and information on training in the secure electronic communication system. The system for secure electronic communication is aimed at facilitating the exchange of information among central authorities dealing with issues related to mutual assistance in criminal matters and extradition. This system not only provides an instantaneous and secure electronic mail service, it also provides a space for virtual meetings and the exchange of pertinent documents.

B) List of Conventions

OAS Framework	INTERNATIONAL LEGAL COOPERATION INSTRUMENTS IN THE CRIMINAL AREA
MLA IN GENERAL	The Inter-American Convention on Mutual Assistance in Criminal Matters signed in Nassau on May 23, 1992. Additional Protocol to the Inter-American Convention on Mutual Assistance in Criminal Matters, signed in Managua on June 11, 1993.
MLA IN SPECIFIC MATTERS	Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance, drafted in Washington on February 2, 1971. Inter-American Convention to Prevent and Punish Torture, drafted in Cartagena de Indias on December 9, 1985 Inter-American Convention on International Traffic in Minors of March 18, 1994. Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, drafted in Belem do Para on June 9, 1994. Inter-American Convention on Forced Disappearance of Persons, drafted in Belem do Para on June 9, 1994. Inter-American Convention against Corruption on March 29, 1996. Inter-American Convention against Manufacturing and Illegal Traffic in Firearms, Ammunition, Explosives and other Related Materials of November 13, 1997. Inter-American Convention against Terrorism of June 3, 2002.
EXTRADITION	Inter-American Convention on Extradition, drafted in Caracas on February 25, 1981.
TRANSFER OF CONDEMNED PERSONS	Inter-American Convention on Serving Criminal Sentences Abroad, drafted in Managua on June 9, 1993.

C) List of Party States

INTER-AMERICAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS		
SIGNATORY COUNTRY	SIGNATURE	RATIFIC./ADHESION
ANTIGUA Y BARBUDA	-	07/14/2004
ARGENTINA	06/06/2004	10/09/2006
BAHAMAS	04/26/2001	04/22/2009
BARBADOS	-	-
BELIZE	-	-
BOLIVIA	-	11/28/2006
BRAZIL	01/07/1994	10/10/2007
CANADA	06/03/1996	05/29/1996
CHILE	04/24/1997	06/05/2003
COLOMBIA	-	12/04/2002
COSTA RICA	03/08/2002	01/03/2012
DOMINICA	-	09/14/2004
ECUADOR	10/15/1992	12/26/2001
SALVADOR	07/02/2002	04/21/2004
UNITED STATES	01/10/1995	01/05/2001
GRENADA	03/10/1993	11/29/2001
GUATEMALA	12/19/2002	01/24/2003
GUYANA	02/28/2006	04/07/2008
HAITI	-	-
HONDURAS	-	09/25/2006
JAMAICA	-	07/14/2004
MEXICO	06/05/2001	01/07/2003
NICARAGUA	03/04/1993	09/24/2002
PANAMA	11/13/2000	10/28/2001
PARAGUAY	06/02/1998	07/30/2004
PERU	10/28/1994	04/03/1995
DOMINICAN REPUBLIC	-	-
ST KITTS AND NEVIS	-	-
ST. LUCIA	-	-
ST. VINCENT & THE GRENADINES	-	-
SURINAM	05/16/1995	02/28/2008
TRINIDAD & TOBAGO	-	06/01/2004
URUGUAY	01/22/1993	01/20/2012
VENEZUELA	08/27/1992	03/11/1995

LATIN AMERICAN CONVENTION ON EXTRADITION		
SIGNATORY COUNTRY	SIGNATURE	RATIFICATION AND ADHESION
ANTIGUA AND BARBUDA	-	03/13/03
ARGENTINA	02/11/94	-
BOLIVIA	08/02/83	-
CHILE	02/25/81	-
COSTA RICA	02/25/81	03/02/00
ECUADOR	02/25/81	02/05/98
SALVADOR	02/25/81	-
GUATEMALA	02/25/81	-
HAITI	02/25/81	-
NICARAGUA	02/25/81	-
PANAMA	02/25/81	01/02/92
PARAGUAY	06/02/98	-
DOMINICAN REP.	02/25/81	-
ST. LUCIA	-	01/23/03
URUGUAY	02/25/81	-
VENEZUELA	02/25/81	06/09/82

3.1.2. The policies of legal cooperation in The Southern Common Market (MERCOSUR)

A) Institutional Framework

Within MERCOSUR there has been an important regulatory development in the area of legal cooperation. The signatory countries of the Treaty of Asuncion in 1991 undertook to “harmonise their laws” in order to make effective the Treaty that gave birth to MERCOSUR which establishes as its main objective the economic integration of the four States, including free circulation of goods and services, a common external tax and the adoption of a common trade policy and coordinated macro-economical policies.

With the 1994 Protocol of Ouro Preto, an institutional structure was established, endowed with an international legal personality. Since its foundation, MERCOSUR is not just an economic agreement but also a political and legal agreement that proposes the creation of a “network of political security” and, ultimately, a common political space. In order to reach these objectives, the harmonisation of laws is sought in pertinent areas. In 1996, the Declaration on a Democratic Commitment was signed and espoused by the Presidents of Bolivia and Chile, who would later sign the Protocol of Ushuaia on Democratic Commitment too. Recently Venezuela joined, and on the 7th December 2012 the parties adopted a Protocol incorporating Bolivia in the organisation. On July 8, 2004, MERCOSUR adopted Decision 018/2004 in Puerto Iguaza, thereby providing ALADI Member States the possibility of acquiring the status of Associated States that today applies to Peru, Ecuador and Colombia, in addition to the already mentioned Bolivia and Chile.

This institutional framework has favoured the signing of numerous agreements on international judicial cooperation among Member States of MERCOSUR and Associated States. In fact, from its beginning, MERCOSUR has bestowed much importance on international legal cooperation. Hence its five instruments relative to MLA in general, two on extradition, and three on the transfer of sentenced persons. And as a complement to this institutional framework, the Presidents of MERCOSUR Member States, together with Venezuela, Bolivia, Chile and Ecuador, and representatives of Colombia and Peru, agreed in December 2008, on the occasion of the 36th Meeting of the Council of the Common Market, on carrying out a research study on the creation of “Joint Investigation Teams” and a “MERCOSUR Capture Order” with a scope similar to the European Order of Detention and Delivery. The former was approved in the city of Buenos Aires, the Republic of Argentina on June 1, 2006, within the COMJIB framework, as a Framework Agreement for Cooperation among MERCOSUR Member and Associated States for the creation of joint investigation teams.

The agreement on the MERCOSUR Detention Order and Delivery Procedures among MERCOSUR Member and Associated States was finally adopted at the XL Ordinary Meeting of the Council on the Common Market and Conference of MERCOSUR Presidents and Associated States held in Foz de Iguazu on December 16-17, 2010 as Decision CMC No. 48/10 among the Four MERCOSUR Member States and the Pluri-national States of Bolivia, the Republic of Ecuador and the Republic of Peru.

B) List of Conventions⁵

MERCOSUR FRAMEWORK	INTERNATIONAL LEGAL COOPERATION INSTRUMENTS IN THE CRIMINAL AREA
MLA IN GENERAL	<p>Protocol of Mutual Legal Assistance in Criminal Matters signed in San Luis on June 25, 1996. Agreement between the States Parties to MERCOSUR and the Republic of Chile and the Republic of Bolivia on Mutual Legal Assistance in Criminal Matters of 1991, signed in Buenos Aires on February 18, 2002 (in effect between Argentina, Paraguay, Chile and Ecuador, having adhered to it.) Complementary Agreement to the "Agreement between the States Parties to MERCOSUR and the Republic of Chile and the Republic of Bolivia on Mutual Legal Assistance in Criminal Matters" of December 6, 2002 (not yet into effect). Agreement between the States Parties to MERCOSUR on the Benefits of Litigating with no Litigation Costs and Gratuitous Legal Advice between Member States of MERCOSUR, Bolivia and Chile, signed in Florianopolis, Brazil on December 15, 2000 (in effect only between Brazil and Paraguay).</p>
MLA IN SPECIFIC MATTERS	<p>Agreement between the States Parties to MERCOSUR and Associated States on order of detention and delivery procedure (Decision CMC No. 48/10) Framework Agreement between the States Parties to MERCOSUR and Associated States on the Creation of Joint Investigation Teams in the Area of Transnational Crime, drafted in the city of Buenos Aires, the Argentine Republic on June 1, 2006.</p>
EXTRADITION	-
TRANSFER OF CONVICTED PERSONS	<p>Agreement between the States Parties to MERCOSUR on the Transfer of Convicted Persons of December signed in Belo Horizonte on December 16, 2004. (not yet in effect, though) Agreement among the States Parties to MERCOSUR and the Republic of Chile and the Republic of Bolivia on the Transfer of Convicted Persons of December 16, 2004 (not yet in effect) Protocol on Transfer of Persons subject to Special Regimes, complementing the Agreement between the States Parties to MERCOSUR and the Republic of Chile and the Republic of Bolivia on the Transfer of Convicted Persons of June 20, 2005 (not in effect)</p>

C) List of party states

Protocol of Mutual Legal Assistance in Criminal Matters (MERCOSUR)	
SIGNATORY COUNTRIES	DATE/Law
ARGENTINA	L: 25.095 D: 9-DEC-9
BRAZIL	DTO. LEG. 3 26-JAN-00 D: 28-MAR-00-
PARAGUAY	L: 1204 23-DEC/97 D: 20-JAN98
URUGUAY	L: 17145 9-AUG-99 D: 7-JUL-00
VENEZUELA	-

MLA Agreement on Criminal Matters between the States Parties to MERCOSUR, the Republic of Bolivia and the Republic of Chile. Buenos Aires, February 18, 2002.	
SIGNATORY COUNTRIES	DATE/Law
ARGENTINA	L: 26004 D: 02-AUG 05
BOLIVIA	-
BRAZIL	Pending
CHILE	Pending
PARAGUAY	L: 2048 16-JAN-03 D: 29-MAY- 03

⁵ The texts of the Mercosur Conventions can be found at: http://www.mercosur.int/t_generic.jsp?contentid=4827&site=1&channel=secretaria

URUGUAY	Pending-
VENEZUELA	-

AGREEMENT ON EXTRADITION BETWEEN THE STATES PARTIES TO MERCOSUR, RIO DO JANEIRO, DECEMBER 10, 1998

SIGNATORY COUNTRIES	DATE/Law
ARGENTINA	Pending
BRAZIL	DTO. LEG. 605 11-SEPT 03 D: 2-DEC-03
PARAGUAY	L: 2753 18-OCT-05 D: 26-DEC 05
URUGUAY	L: 17.499 27-MAY-02 D: 20-SEPT-02
VENEZUELA	-

AGREEMENT ON EXTRADITION AMONG STATE PARTIES TO MERCOSUR AND THE REPUBLIC OF BOLIVIA AND THE REPUBLIC OF CHILE. RIO DE JANEIRO, DECEMBER 10, 1998.

SIGNATORY COUNTRIES	DATE/Law
ARGENTINA	Pending
BOLIVIA	L: 2830 03-SEP-04 D: 11-APRIL-05-
BRAZIL	DTO. LEG. 35 11APRIL-02 D; 9-SEPT-02
CHILE	D: 19-DEC-11-
PARAGUAY	L: 2882 21-APRIL-06 D: 2-NOV-06
URUGUAY	L: 17.498 27-MAY-02 D: 22-AUG-02
VENEZUELA	-

3.1.3.The legal cooperation policies within the framework of the Central American Integration System (CAIS)

A) Institutional Framework

Undoubtedly, the oldest integration process may be found in Central America. Yet it was not until 1960 that the Central American Common Market was agreed to. In short, the current process dates back to 1991, the year in which the Central American Integration System (CAIS) was established, by means of the Tegucigalpa Protocol, as an institutional framework for the regional integration of Central America States. It was espoused initially by the Presidents of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama; subsequently, Belize joined. The Dominican Republic participates in it as an Associated State. In addition, the System has six Regional Observers: Mexico, the Republic of Argentina, Chile, Brazil; Peru and U.S.A. and nine extra-regional observers: Spain, Taiwan, Germany, Italy, Japan, Australia, Korea, France and the Vatican City State.

The Tegucigalpa Protocol is completed with other instruments, such as the General Treaty on Economic Integration signed in 1993, the Treaty on Social Integration of 1995, the Alliance for Sustainable Development of 1995 and the 1995 Framework Treaty on Democratic Security in Central America.

The institutional organisational chart of CAIS is made up of the Meeting of Presidents, which is the supreme body, the Council of Ministers for Foreign Affairs and the Security Commission (SC-CAIS), composed of delegations from the Central American States and in charge of implementing, through the General Secretariat (GS-CAIS), the decisions in security matters entrusted to it by the two previous bodies.

The institutional chart is completed with the Meeting of Vice-Presidents, the Central American Parliament (PARLACEN) with headquarters in the City of Guatemala, the Central American Court of Justice and the Consulting Committee (CC-CAIS). The origins of the Central American Court of Justice date back to 1908, when it was agreed that a First Court of Central American Justice be established in Cartago (Costa Rica). Its existence did not last later than 1918, however. After numerous setbacks, the Court, as provided in the Tegucigalpa Protocol, began its activities in October 1994 with headquarters in Managua and comprised of two full justices, and two substitutes for each one of the countries that signed the Convention of its Statute, that is El Salvador, Honduras, and Nicaragua, designated by their respective Supreme Courts. Its essential function is that of “guaranteeing respect for the Central American Law Community” by means of the uniform interpretation and execution thereof in all Member States of the System of Central American Integration. It provides expertise and broad access to community justice with a view to contributing to the legal development of the region and strengthening the integration process. Its competences are decisive, as well as consultative and arbitral. The nucleus of these competences is providing binding resolutions of controversies between Member States, and annulment of legislative or executive acts of Member States that are deemed contrary to community law. It also has competence to resolve questions raised by judges or tribunals of the member States relative to community law.

The Central American Conventions on Judicial Assistance in Criminal Matters date back to 1923, when a Convention on Extradition was signed between Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.

More recently, and already within CAIS framework, the Treaty of Mutual Legal Assistance in Criminal Matters was signed in the city of Guatemala on October 29, 1993 between the Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua and Panama. On December 2, 2005, a Central American Treaty on the Order of Detention and Extradition was signed in Leon, Santiago de los Caballeros, between Belize, El Salvador, Honduras, Nicaragua and the Dominican Republic, which came to replace the Convention of 1923. It has not yet entered into effect. These countries, together with Costa Rica and Panama, have also adhered to the Central American Convention on the Protection of Victims, Witnesses, Experts and other Subjects that play a part in the Investigation and the Criminal Process, particularly in the Narco-activity and Organised Delinquency. This Convention has not yet entered into force either, because the minimum ratifications required have not yet been reached.

Lastly, sector Conventions have been subscribed to, such as the Central American Convention and the Convention between Costa Rica, El Salvador, Honduras, Nicaragua, Panama and the Dominican Republic on the prevention and repression of the laundering of money and assets related to illegal drug trafficking and related crimes, both in 1997, or the Central American Treaty on the recovery and return of robbed, stolen, appropriated or illegally or unduly retained vehicles in 1995.

B) List of Conventions

CAIS Framework	INTERNATIONAL LEGAL COOPERATION INSTRUMENTS IN THE CRIMINAL AREA
MLA IN GENERAL	Treaty on Mutual Legal Assistance in Criminal Matters between the Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua and Panama of October 29, 1993.
MLA IN SPECIFIC MATTERS	The Central American Convention for the Prevention and Repression of Money Laundering Offences Associated with Illegal Traffic in Drugs and Narcotics of July 11, 1997 Agreement between Central America and the Dominican Republic for the Prevention and Repression of Money and Assets Laundering Offences related to Illicit Drug Trafficking and Related Crimes of November 6, 1997 Central American Treaty on recovery and return of stolen, illegally or unlawfully taken or retained vehicles of 1995. Central American Convention for the protection of victims, witnesses, experts and other persons involved in the investigation and in the criminal process, particularly in the drug traffic and organised crime.
EXTRADITION	Central American Treaty on Arrest Warrants and Simplified Extradition Procedures between Guatemala, Belize, Honduras, El Salvador, Nicaragua and the Dominican Republic. Central American Convention on Extradition, signed in Washington on February 7, 1923 by Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.

3.1.4. Other initiatives on MLA at a sub-regional level in UNASUR, CAN, and CARICOM

Union of South American Nations (UNASUR)

There are other integration areas in which policies for legal cooperation have not played a key role so far. Nevertheless, the actions developed in the within the framework of UNASUR, The Andean Community and the Caribbean Community deserve some attention.

The Union of South American Nations, the Founding Treaty of which was signed in Brasilia on May 23, 2008, culminated an initiative arising in Cusco in December 2004 (when the South American Community of Nations was founded - this later became UNASUR). The Founding Treaty was initially signed by Argentina, Bolivia, Brazil, the Republic of Colombia, Chile, Ecuador, Guyana, Paraguay, the Republic of Peru, Suriname, Uruguay and Venezuela. The treaty entered into force on March 11, 2011, once it had been ratified by nine States, in accordance with its provisions. Then came ratifications of Colombia, Brazil and Paraguay, the last of which was on August 11, 2011, which completed the twelve Member States of the organisation. Among the specific objectives of the Union as stated in Article 3 of the Founding Treaty, is the "coordination among the specialised bodies of the Member States, taking into account the international rules in order to strengthen the fight against terrorism, corruption, the world drug problem the treatment of persons, the trafficking of small and lights arms, transnational organised crime and other threats as well as the disarmament and non-proliferation of nuclear weapons and weapons of mass destruction and de-mining", as well as

“the promotion of cooperation between the judicial authorities of the Member States of UNASUR.”. Nevertheless, no legal instrument, tending to achieve these has been approved so far.

On the 4th May 2010 UNASUR created the South American Council for the World Drugs Problem (*Consejo Sudamericano Sobre el Problema Mundial de las Drogas*). The council was set up by way of a statute, and meetings are held once a year. The stated aims of the council are, inter alia, ‘to promote effective cooperation between the judicial, police and financial intelligence bodies, to increase and facilitate the capacity for tackling crime related to the world drugs problem within the framework of the international obligations assumed by member states and the mechanisms of this Council.’

In the recent meeting held in Peru-Lima on 30 November 2012 of the Ordinary Meeting of Heads of State and Government, a declaration was specifically approved which states in its point 46:

“46. Its permanent interest in strengthening cooperation against the threats of Transnational Organised Crime in all its forms, and in meeting citizen security challenges. In this sense, they welcome the creation, as part of this Summit, of the Council for Citizens’ Security, Justice, and the Fight against Transnational Organised Crime. They also note the proposal made by the Republic of Ecuador concerning the creation of a Criminal Court within UNASUR.”

The most recent meeting of this Council in March 2012 in Asunción-Paraguay, approved, among others, several points for analysis and work, including:

- Starting a number of projects for legislative strengthening and harmonisation towards a South American drugs Observatory.
- Strengthening the treatment of the problem of transnational organised crime and public security within the general framework of UNASUR, and
- Reasserting the importance of maintaining a comprehensive and balanced approach to the world drug problem.

ANDEAN COMMUNITY

The Andean Community ([CAN](#)) consists of four members (Colombia, Peru, Bolivia and Ecuador) and five associated states (Argentina, Chile, Brazil, Paraguay and Uruguay). The community was founded on 26th May 1969 by the Cartagena Agreement.

The community is active in its concern about the demand, supply and production of narcotic drugs. All the members are signatories to the 1998 Vienna Convention. The community has developed an international network for the provision of data to the United Nations Office on Drugs and Crime (UNODC).

On 22nd June 2001 the Andean Council of Ministers of Foreign Affairs initiated the ‘Andean Cooperation Plan for the Struggle against Illegal Drugs and Related Offences’ by Council Decision 505. The Plan nominates the Andean

Council of Ministers of Foreign Affairs (whose task it is to supervise the Plan and approve the biannual Action Programmes) and the Executive Committee (made up of high-level foreign ministry officials and officials from specialist national organisations, whose task is to formulate the Operative Plans). The Plan incorporates the Action Programme for the strengthening of national and international strategies, and for the development of a community strategy. The community strategy relates to actions which are better developed via cooperation rather than individual action, and one of the themes included in this area is the signing of agreements in the judicial cooperation arena. CAN has legal support to act in the fight against drugs, following the Institution Community Resolutions numbers: 458, 505, 549, 587,602, and 614.

CAN is involved in several joint projects in cooperation with the EU:

CAN Precursors Project (PRECAN): Developed between September 2004 and December 2006, contributed to the development and implementation of the Andean Policy on the Control of Chemical Substances used in the production of Cocaine and Heroin.

Support for CAN in the area of Synthetic Drugs (DROSICAN): Developed between February 2007 and May 2010, it led to the development of an epidemiological study on the consumption of synthetic drugs among university students; raising of awareness on the problem and better regional coordination; the training of professionals to act towards the reduction of demand; control and research measures, and exchange of experiences.

The CAN Anti-Illegal Drugs Programme (PRADICAN): Developed between November 2009 and April 2013. It is expect to result in the strengthening of the National and Andean Drug Observatories, the promotion of the dialogue on the drug problem, the improvement of control of precursors, and the improvement of the capacity for drug-related analysis.

The relationship strategy of Andean Community with the EU with regard to drugs takes place within the framework of the "High-Level Specialized Dialogue on Drugs between the European Union and the Andean Community". In this area, both the regularity of annual dialogues at the highest political level, which make it possible to perfect bi-regional cooperation in this respect, and the validity of the agreement for Control of Chemical Precursors between the Andean Community and the European Union, should be highlighted.

In Quito-Ecuador, on 30 October 2010, the Andean region countries presented the progress achieved through the joint work carried out as part of the Anti-Illegal Drug Programme of the Andean Community - PRADICAN, as well as the project for an Andean Strategy on the World Drug Problem. The Document drafted - the Joint Communication of the 11th Meeting for High-Level Specialised Dialogue on Drugs Andean Community - European Union - specifically calls for compliance with the principle of common, shared

responsibility, with desirable, effective impact. Moreover, it was agreed to strengthen and harmonise bi-regional cooperation for in-depth examination of the impact of the public policies on drugs, which are being currently implemented. The joint commitment to consolidate the various programmes and cooperation projects under execution or to be executed, based on relevance and sustainability criteria, was also ratified.⁶ The most recent 12th High-Level Specialised Dialogue on Drugs was held on 30th and 31st October 2012.

In February 2013 PRADICAN designed a new strategy – The Andean Strategy on the World Drug Problem 2013 – 2019, which is expected to be formally adopted in 2013. This strategy will reinforce the CAN General Secretariat, which will be responsible for the annual evaluation report. It will also create an Andean Council on Drugs and an executive committee. The strategy, when adopted, will form a comprehensive document which will contain the different Andean norms in this area.

On 20th November 2012 the General Secretaries of UNASUR and CAN held a meeting where they both expressed a desire to strengthen the synergies between the two groups.

Caribbean Community

Finally we must mention that the Caribbean Community ([CARICOM](#)), which is comprised of Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Granada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago with Anguila, Bermuda, the British Virgin Island, the Caiman Island and Turks and Caicos as associated states, also has note-worthy initiatives in the area of mutual legal assistance, as for example the Caribbean Agreement on Mutual Legal Assistance for Serious Crimes of July 6, 2005 and the Arrest Warrant Treaty of July 4, 2008.

3.1.5. The Justice System in the Region: independence, institutional model of the Judiciary (the body of judges, magistrates, etc), degree of access to justice by the beneficiaries.

The following section examines the state of judicial systems, their operations and access to them, within the LAC region. It includes a schematic revision of the various Judicial Powers, and ends with a brief examination of the treatment of detainees in the region, an assessment of Diplomatic Assurances and their use, and an outline of the role of the prosecutor within the LAC justice systems.

The LAC region has recently been engaged in strengthening and transforming their Judicial Systems, at an institutional as well as a procedural level.

⁶The final document can be found at: http://www.comunidadandina.org/doc2011/can_ue_drogas.pdf

In recent times and generally, as a consequence of democratic transitions, Argentina, El Salvador, Panama and Ecuador have reformed their Constitutions in order to set up Councils of Magistrates, with a view to providing autonomy to and strengthening the independence of the judiciary. Guatemala, Honduras, Chile and Nicaragua, have discussed similar constitutional reform projects.

With a view to strengthening the judicial power, a significant number of countries have reformed their Magnas Cartas to guarantee that a percentage of their public budgets go towards the justice system, thereby establishing the capacity of the Councils of Magistrates to administer said funds. A likewise significant number of Latin American countries have changed the way they nominate judges, the terms of their mandates and budgets for the exercise of jurisdictional function.

All these reforms, aimed at the construction of a democratic, independent and impartial judicial power/body submitted exclusively to the dictates of the Law, have provided for substantial changes in Latin American judicial institutions.

In recent decades, the great reform undertaken by the LAC countries has been that of the criminal process. These have on the whole been aimed at the elimination of the inquisitive model, the implementation of the oral method, the re-enforcement of the Public Ministry in the investigation stage and the enhancement of both victims' and defendants' guarantees and rights within the procedural framework.

Almost all the countries in the Region have also improved the education, both initial and continuous of judges. Most have established judicial colleges. There is also better provision of free legal assistance, and supervisory figures of the Ombudsman have been created.

In this transformation of Latin American Systems, international agencies have played their role. Not only has there been investment that has come from the Inter-American Development Bank (IDB), The World Bank and the US Agency for International Development; but the EU has also lent support through the EUROsociAL Programme designed for the region, and Spain has provided funds through The Spanish Agency of International Cooperation and Development (AECID). Of particular interest for the purposes of this study, is the support that has been given to the institutional tools favourable to legal cooperation. The EU in its role of first world donor has provided important support to cooperation networks by means of regional assistance plans, the institutional strengthening of judicial and Latin American and Caribbean power. To this end, the EUROsociAL programme within the Justice System was conceived to help create the necessary conditions for making Justice more accessible to vulnerable groups, focusing on increasing the capacity of the institutions responsible for the creation, approval and management of public judicial policies. Since 2006, the development assistance has focused on the following areas: i) the access of vulnerable sectors to justice; ii) the

Administration of Justice as a public service; iii) the development of public policies of the State and Institutional Development Plans of the Justice sector; and iv) trans-border justice and the cooperation mechanism of international legal cooperation.

In the last few decades, owing to the leading role that the Supreme Courts have played in the region, they have come to occupy a highly relevant position. Courts have come to play a key role in the stability and development of the economy, in the maintenance of public order, and the guaranteeing of Human Rights.

Source Web Pages of Power/Judicial Body Ministry/Secretary of Economy, Finances Taxes of each country-Study CEJ-JSCA

Countries	Budget of the PJ per capital		Tax Priority of the FJ	
	PJ Expenditure / Population (US\$)		PJ Expenditure/ Public Expenditure	
	2003	2007	2003	2007
BOLIVIA	5.1	4.7	0.8	0.6
CHILE	15.8	26.8	1.2	1.5
COLOMBIA	6.8	14.3	1.1	1.2
COSTA RICA	37.4	53.1	4.0	4.5
ECUADOR	8.9	10.8	1.7	1.5
EL SALVADOR	19.7	29.0	3.1	3.5
GUATEMALA	7,4	9,2	4.2	4.5
HONDURAS	5.5,	7.3	2.2	2.0
PANAMA	13.0	17.3	0.8	0.7
PERU	6.0	10.0	1.2	1.5
DOMINICAN REPUBLIC	4.0	9.8	1.2	1.2
VENEZUELA	14.8	51.8	1.6	2.2

Table 2 -Characteristics of the Legal Systems of Latin America.

Source: VII Seminar of Judicial Management -CEJA-JSCA 2010

Countries	Structure of Judiciary	Members that comprise the Supreme Court	Nomination and Duration of Position	Public ascribed Judiciary	Ministry to the Public ascribed Judiciary	Defence to the Public ascribed Judiciary	Training of judges
BOLIVIA	<p>The Ordinary Jurisdiction: The Supreme Tribunal of Justice, Department Tribunal of Justice, Sentence of Justice and courts.</p> <p>The Agro-environmental Jurisdiction.</p> <p>Special Jurisdictions.</p> <p>The Indigenous Origin Jurisdiction.</p>	9 members and 9 alternates make up 4 specialized chambers (civil, two criminals and labour and administrative).	The nine members and nine alternates, representing the nine departments of Bolivia ⁷ , elected in popular, non-partisan elections to terms of six years. Reelection is forbidden.	No		No	Judicial School of State

⁷The Political Constitution of *the Plurinational State of Bolivia* came into effect on February 7, 2009, when it was promulgated by President Evo Morales after being approved in a referendum. It elevates the electoral authorities, to become a fourth constitutional power (executive, legislative and judiciary branch). The judiciary is reformed, and judges of the Supreme Court will be elected in the future and no longer appointed by the National Congress. Sucre will be acknowledged as Bolivia's capital, but the institutions will remain where they are (executive and legislative in La Paz, judiciary in Sucre). The electoral authorities will be situated in Sucre.

The Supreme Tribunal of Justice, based in Sucre, is the highest court of ordinary jurisdiction in Bolivia. Its powers are set out in Articles 181-185 of the 2009 Constitution and the Law of the Judicial Organ (Law 025, promulgated on 24 June 2010). It was first seated on 2 January 2012. The Tribunal superseded the Supreme Court of Bolivia, which operated from 1825 to 2011. Due to vacancies on the Court and other problems in its final years, the Supreme Tribunal of Justice inherited a backlog of some 8,800 cases in January 2012, which it is charged with resolving within 36 to 48 months. The elected members are: Maritza Suntura (La Paz), Jorge Isaac Von Borries Méndez (Santa Cruz), Rómulo Calle Mamani (Oruro), Pastor Segundo Mamani Villca (Potosí), Antonio Guido Campero Segovia (Tarija), Gonzalo Miguel Hurtado Zamorano (Beni); Fidel Marcos Tordoya Rivas (Cochabamba), Rita Susana Nava Durán (Chuquisaca), and Norka Natalia Mercado Guzmán (Pando).[3] The elected alternates are: William Alave (La Paz), María Arminda Ríos García (Santa Cruz), Ana Adela Quispe Cuba (Oruro), Elisa Sánchez Mamani (Potosí), Carmen Núñez Villegas (Tarija), Silvana Rojas Panoso (Beni); María Lourdes Bustamante (Cochabamba), Javier Medardo Serrano Llanos (Chuquisaca), and Delfín Humberto Betancour Chinchilla (Pando).

Countries	Structure of Judiciary	Members that comprise the Supreme Court	Nomination and Duration of Position	Public ascribed to the Judiciary	Ministry to the Public ascribed to the Defence of the Judges	Training of
CHILE	Justice Tribunals and Special Tribunals without prejudice to the arbitrary judges which can only exercise their jurisdictional attributions in the jurisdictional territory that the law assigns.	Ordinary functioning is constituted in 3 specialized Chambers Civil, Criminal and Constitutional Matters and Administrative Contentious Headquarters in Santiago de Chile	Nominated by the President of the Republic with agreement of the Senate, chosen from a list of 5 persons that the Court itself proposes 3 year period	No	No	Judicial Academy
COLOMBIA	Comprised of ordinary contentious administrative, constitutional and special jurisdictions peace and indigenous). Integrated by the General Prosecutor of the Nation, the Superior Council of Judiciary	23 magistrates divided in 5 chamber, Full, Govern, Civil Appeal and Agriculture, Labour Appeal and Criminal Appeal Headquarters in Bogota	Elected from a list produced by the Superior Council of Magistrates for individual periods of 8 years.	No	No	Rodrigo Lara Bonilla Judicial School
COSTA RICA	Jurisdictional Area: chambers, tribunals, courts of greater and less amounts Council of the Judiciary; Administrative Area and Auxiliary Area of Justice. Such as Public Ministry, Public Defence Judicial school, among others	22 Magistrates that are made up of Cassation chambers and a Constitutional Chamber. Each one is integrated by 5 magistrates with the exception of the Constitutional Chamber comprised of 7. Headquarters in San Jose.	Chosen by two thirds of the deputies that make up the Legislative Assembly for a period of 8 years.	Yes	Yes	Edgar Cervantes Villalta Judicial School
ECUADOR	Supreme Court of Justice, National Council of Judiciary, Superior Courts, Tribunals and Courts	31 Magistrates and comprised of 10 specialized chambers: 3 in Criminal, 3 in Civil and Mercantile, 2 in Labour and social, 1 in Contentious-Administrative and 1 in Tax. Headquarters in Quito	Nominated by the national Congress for a period of 4 years, being able to be re-elected indefinitely	No	Yes	Judicial School
EL SALVADOR	Supreme Court, Chambers of Second Instance, Courts of First Instance and the Courts of Peace.	15 magistrates distributed as such: 5 in Constitutional Chamber, 3 in Civil Chamber, 3 in Criminal Chamber and 4 Contentious-Administrative. Headquarters in San Salvador	Chosen by the Legislative Assembly Period of 9 years, being able to be re-elected and renewed for third parties every three years.	No	No	Arturo Zeledón Castrillo Judicial School

Countries	Structure of Judiciary	Members that comprise the Supreme Court	Nomination and Duration of Position	Public ascribed to the Judiciary	Ministry to the Defence	Public ascribed to the Judiciary	Training of judges
GUATEMALA	Supreme Court of Justice, the Court of Appeals, the Tribunals of First Instance and the Court of Peace.	13 magistrates divided into specialized chambers (civil, Criminal and recourse and ante judgement) Supreme Court of Justice of Guatemala possesses powers of parliamentary initiative. Headquarters in Guatemala City.	Elected by the Congress of the Republic for a 5 year period from a list of a proposal by a commission of postulation presided by a representative of university deans.	No		No	School of Judicial Studies
HONDURAS	Supreme Court of Justice, tribunals and courts of appeals	15 magistrates in specialized chambers (constitutional, labour, civil Criminal) Headquarters in Tegucigalpa	Elected by the National Congress on the proposal of the Nominating Council for a period of 7 years.	No		Yes	Francisco Salomón Jiménez Castro Judicial School
PANAMÁ	Supreme Court of Justice, the Superior Tribunals of Justice, Circuit Courts, Municipal Courts and the Institute of the Public Defence	9 Magistrates divided into Civil, Criminal, Contentious-Administrative and General Business It has its headquarters in the City of Panama	Nominated by means of an agreement with Council of Cabinet subject to the approval of Legislative Body. Period of 10 years.	No		Yes	Judicial School
PERU	Supreme Court, Superior Courts, Specialized and Mixed Courts, Court of Peace, Attorney and Court of Peace	33 Supreme Judges (18 full fledged and 15 provisional) and divided into 7 specialized chambers (3 permanent, 3 transitory and 1 special). The special ones are civil, Criminal constitutional and social Headquarters in Lima	Nominated by the National Council of Magistrates They can be ratified every 7 years	No		No	Magistrates' Academy
DOMINICAN REPUBLIC	Supreme Court of Justice, Courts of Appeals, Courts of First Instance, Courts of Peace	16 magistrates divided into 3 chambers, civil and commercial matters, Criminal matter and matters of land, labour, administrative contentious and tax. Headquarters Santo Domingo	Chosen by the National Council of Magistrates. 4 year renewable period	No		Yes	National School of the Judiciary
VENEZUELA	Supreme Court of Justice and Tribunals of Ordinary Jurisdiction: Courts of Appeals, Superior Tribunals, Tribunals of First Instance, and Municipal and Special Tribunals such as martial court	32 magistrates and seven chambers: Constitutional, Elections, Civil Appeal, Criminal Appeal, Social and Administrative Political Appeal. Headquarters in Caracas.	Chosen by the National Assembly for a Period of 12 years without election	No		Yes	National School of Judges

Treatment of detainees (LAC and EU Nationals in LAC Countries)

The treatment of detainees in LAC prisons has been an area for concern for the United Nations Office of the High Commissioner for Human Rights, along with other organisations. In February of 2012, after a series of violent deaths of detainees in the region, the Regional Representative for South America of the UN Human Rights Office pointed out: "The poor conditions of detention, the major cause of this violence, are exacerbated by judicial delays and excessive resort to pre-trial detention." It is the opinion of the OHCHR that the conditions in many prisons amount to violations of international obligations to meet minimum human rights standards, including the right to

Real Story n°1: Undercover agent

[Treatment of detainees (LAC and EU Nationals in LAC Countries)]

Police officer n° xxx lived for ten days in prison in a LAC country as an undercover agent. He posed as a moneyless prisoner to discover who the corrupt officers were who trafficked in drugs inside the prison. Poor Prisoners are called "frogs". They sleep on the floor with mice and vermin around them. They have no private rooms or baths and they must use latrine-type holes in the gaol yard and evacuate in public. Police officer n° xxx witnessed the lack of sanitary, hygienic and humane conditions, and the lack of resources for attendances at the hearings convened by the courts.

life, integrity and humane treatment for all persons deprived of liberty.

In 2011, as part of UNODC's efforts to strengthen criminal justice in Latin America and the Caribbean, a

Centre of Excellence on Prison Reform and Drug Demand Reduction was set up in Santo Domingo, the Dominican Republic. The Centre promotes effective policies and the delivery of training programmes. In August 2012 it hosted a high level meeting on best practices in the treatment of prisoners, which was attended by experts from 22 countries in the region. A primary aim of the meeting was to assist in the exchange of best practices related to the implementation of the United Nations [Standard Minimum Rules for the treatment of prisoners](#) in Latin American and Caribbean countries.

Many of the area's governments are currently engaged in extensive improvement and reform processes aimed at tackling some of the issues which affect, to a greater or lesser extent, their prisons (from poor sanitary conditions, complications with consular access and legal representation, and over-crowding, through to torture and ill-treatment, and even in some circumstances, the corruption and criminal acquiescence of prison officials).

Diplomatic Assurances

'Diplomatic Assurances' is the term used where a person is handed over from one country to another in reference to the compromise given by the receiving country that the person will be treated in accordance with the conditions laid down in the country's domestic legislation, but also with that country's human rights obligations according to international law. The term can be used with reference to extradition, deportation, expulsion or 'extraordinary rendition'.

In the context of extradition, these assurances are used to allow a state to extradite a person without violating its obligations with regards to human

rights imposed by international treaties or by constitutional or domestic law. They can be used with regards to cases where the death penalty might be imposed, or where there concerns over the impartiality of the judicial processes in the requesting state, or if there are fears that extradition might place the requested person in danger of torture or other degrading treatment.

Diplomatic assurances tend to be requested on an individual case by case basis, although some countries (notably the UK) have entered into memorandums of understanding with other countries which incorporate the assurances. The organisation Human Rights Watch has linked the growth in the number of diplomatic assurances to the perceived increased terrorist threat post 11th September 2001. Diplomatic assurances tend to be used by EU MS countries or the US and Canada.

One of the main arguments used against the use of diplomatic assurances is that they provide a way to avoid a country's obligations to recognise the importance and absolute nature of Article 3 of the United Nations Convention on Human Rights: that 'no one shall be subjected to torture or inhuman or degrading treatment or punishment'.

The assurances given by the receiving country are not usually judicially binding. In general mechanisms for their execution do not exist nor are legal recourses available to the sending state or the person extradited in cases where they are not adhered to. These difficulties have been highlighted by various NGOs and other bodies. Amnesty International in its 2010 report 'Dangerous Deals - Europe accepts Diplomatic Assurances against torture' outlines the status of the use of such assurances by EU MS since 2008. The report details how many governments still seek to use diplomatic assurances especially with regard to cases involving threats to national security or terrorist suspects. This is despite the opposition of many intergovernmental and non-governmental organisations. The United Nations, European Parliament committees and Council of Europe Assembly committees have urged EU MS to abstain from using diplomatic assurances in cases of possible torture or other mistreatment. The UN Special Rapporteur on Torture observed in his report presented to the Human Rights Council in February 2010 as he had 'on repeated occasions', that 'diplomatic assurances with regards to torture are no more than attempts to evade the absolute nature of the principle of non-refoulement'.

Chahal v. UK was a landmark case for Article 3 of European Convention on Human Rights. The European Court of Human Rights ruled that the return to India of Karamjit Singh Chahal, an alleged Sikh militant, would violate the UK's obligations under Article 3. The Indian government had given assurances that Chahal would not suffer mistreatment under Indian authorities. The Court established that the diplomatic assurances negotiated in that case did not provide an adequate guarantee when torture is endemic and an enduring problem. This ruling has become known as the Chahal Principle. This principle was essential in reinforcing the importance of non-refoulement in Europe.

Another difficulty with diplomatic assurances is the monitoring of their progress once the person is handed over. These become especially grave when there is corruption within the justice system or penal system in the receiving country. The UK has sought in countries with which it has entered memorandums of understanding to use local or international organisations to monitor the situation (for example in Algeria, Jordan, Lebanon and Ethiopia). However, these organisations do not have a legal mandate which would permit unlimited access to places of detention, and nor can they guarantee an impartial investigation or any redress where they find abuses.

In a 2011 study for the International Centre for Counter-Terrorism, The Hague, entitled 'Use of Diplomatic Assurances in Terrorism Cases', Dr. Bibi Van Ginkel analysed the situation regarding diplomatic assurances. Whilst recognising the rupture at the centre of the debate between governments and human rights organisations, he formulated the following recommendations:

- Governments should be reluctant to use diplomatic assurances because of the risks involved. There should be an effect monitoring system put in place.
- Other measures should be improved to avoid the use of diplomatic assurances (capacity building in receiving states, reform of judicial systems)
- Stronger collaboration between governments and NGOs
- The European Union should play a stronger role in the process
- Enforcement mechanisms should be stronger and transparent
- The principle of non-refoulement and Chalal should not be diluted but should be reinforced.

3.1.6. Role of the prosecutor: organic and procedure aspects. The prosecutor as director of the pre-trial investigation in criminal procedure. Key-role in the international cooperation proceedings.

Most countries belonging to the LAC region build their justice systems in relation with criminal procedure contemplating the essential role of the Public Prosecutor as director of the pre-trial investigation in line with the latest models established in European countries. This used to be the case of legal systems based on Common Law tradition such as UK and US but also nowadays this is the situation in many of those countries following Civil Law tradition: the best examples today can be found in Germany after the abolition of the *Untersuchungsrichter* in 1975 and Italy with the approval of the new criminal procedure code in 1988.⁸ The present situation is explicitly related to the enforcement of accusatorial versus inquisitorial model in criminal procedure; each of them also gives place to respective model of prosecutorial or judicial investigation in criminal proceedings.

⁸ See for a comparative review in relation to worldwide criminal procedures BRADLEY, C.M. *Criminal procedure. A worldwide study*, 2 ed., Carolina Academic Press, Durham 2007.

Obviously, the new role to be carried out by the LAC prosecutors would encompass his or her managing role in the promotion of judicial cooperation in criminal matters. The Public Prosecutor is broadly recognised as a judicial authority.

The role of the public prosecutor in countries belonging to the LAC region is very active in relation with the promotion of judicial cooperation in line with the model of the direction of the pre-trial investigation in criminal procedure previously mentioned. Also activism by prosecutors is appreciated in the institutional context as far as the existence of a common network composed of all Prosecution Offices of Ibero-American countries under the nomination of '*Asociación Ibero-Americana de Ministerios Públicos (AIAMP)*' which was created in 1954. This currently is comprised of 21 Prosecution Offices.⁹ This official network is similar to the European model of judicial networks¹⁰: A good example of this is the inclusion in their website of useful information related with Ibero-American Prosecution Offices' organisation in the form of *fiches* (*fiches AIAMP*) similar to *fiches belges* of the EJN.;¹¹ In this context information of national prosecutors' structure is included as well as characteristics and functions for each country,

A) Organic aspects: structure and organisation.

Most of the General Prosecution Offices existing in Latino-American countries are considered to be independent bodies with administrative, functional and financial autonomy in accordance with their constitutional rules. In some cases General Prosecution Offices are attached to one of the three state branches, usually the executive; this is the case in the Dominican Republic and Mexico. There are countries where this attachment is to the Judiciary as happens in Costa Rica. Finally, we should take into account those countries where a federal model of the territory is implanted and, consequently, different Public Prosecution Offices coexists such as Brazil, México and Argentina.

Many more differences exist in the nomination, appointment and period of mandate of the General Prosecutor or General Attorney. Some of them provide direct appointment by the President of the Republic with intervention or not of the Senate; the former situation can be found in Argentina, Brazil, Chile and the latter in the Dominican Republic. Other countries regulate the nomination of chief prosecutorial authority by the Congress or even the Supreme Court; in first place, e.g., Bolivia, Ecuador and in second place, e.g., Colombia, Costa Rica. In other cases there is no mention of such nomination and even of the period of mandate as happens in Uruguay, where this information could not be found. Also there is wide variation in the period of

⁹ Further information available at <http://www.aiamp.org/index.php/la-aiamp/quienes-somos> (last visited May 1, 2013).

¹⁰ For example European Judges and Prosecutors Association; further information available at <http://www.amue-ejpa.org>. Nomination of other forums and associations composed by European prosecutors is indicated in official Spanish Prosecution Office website ULR <http://www.fiscal.es/Fiscal-especialista/Cooperación-Internacional/Foros-y-asociaciones-internacionales-de-Fiscales> (last visited on May 1, 2013).

¹¹ They are available at <http://www.aiamp.org/index.php/fichas> (last visited on May 1, 2013).

mandate and possibility of re-election; the period can be extended from 2 years (eg, Brazil) to 10 years (eg, Panama) with variation between 3, 4, 5, 6, 7 and 8 years in all different countries.

Finally there are also differences in relation with principles regulating the Public Prosecution institution. In some cases there are specific provisions in constitutional rules by contrast to the cases where this mention is included in specific legislation related to Public Prosecution. The most common written principles are hierarchy, unity, indivisibility, independency and accountability. As an additional remark, some differences can also be appreciated between the legality or the opportunity rule. The legality rule is generally mentioned, but in some cases this rule is combined with the possibility of discretionary prosecution. But in some particular instances discretionary prosecution appears as general rule without any mention of the legality rule. This is the situation in Ecuador, whose constitutional rules impose the principles of discretionary prosecution and minimum criminal intervention.¹²

B) Procedure aspects: functions in criminal procedure.

There is much more similarity in the functions of Public Prosecutors in all Latino-American countries. All the constitutional and ordinary legislations entrust the public prosecutor with the task of defending the legality rule as well as the public interest. They have other relevant functions in criminal proceedings such as the protection of victims.

In addition, some national legislation provides for judicial cooperation as a competence falling within the remit of the public prosecutor; as is the case in Bolivia where an Act on Public Prosecution Office including this task has recently been enacted.¹³

Of course, promotion of the public criminal action is provided for in all cases. The exercise of a civil action jointly with the criminal action is foreseen under some national legislation, such as Argentina, Bolivia, Brazil and Chile.

As previously mentioned, the vast majority of the countries are moving towards the implementation of the accusatorial model governed by the orality and publicity principles. In this context, the direction of the pre-trial investigation is conferred on the public prosecutor in almost all the countries falling within the scope of this study and only two exceptions of judicial investigation being carried out by investigative judges can be found.

One is the case in Argentina where the institution of the investigative judge still exists in the Federal Justice System (not in the Provincial Justice System where the role of the investigation is competence of prosecutors). Pursuant the Argentinean System, the direction of the pre-trial investigation in federal

¹² See section 195 Constitution of Ecuador Republic 2008 available at http://www.oas.org/juridico/mla/sp/ecu/sp_ecu-int-text-const.pdf (last visited May 5th, 2013).

¹³ See section 12 (9) Act on Public Prosecution Office enacted on July 11th, 2012, available at <http://www.lexivox.org/norms/BO-L-N260.xhtml> (last visited on May 5th, 2013).

cases is attributed to the investigative judge¹⁴ who can eventually decide to transfer the conduction of the investigation to the prosecutor (Section 196 Criminal Procedure Code). Further amendments¹⁵ provide cases where the direction of the pre-trial investigation is directly attributed to the prosecutor (Sections 196 *bis ter* and *quarter* Criminal Procedure Code). In fact, this is an important step towards a future attribution of the direction of the pre-trial investigation phase to the public prosecutor as ordinary rule.

The other example of judicial investigation conducted by the investigative judge in Latin-America is Uruguay. A project on a new Criminal Procedural Code where the investigation is attributed to the Prosecutor is currently under discussion in the Parliament.

Finally, the case of Brazil, where the pre-trial investigation is conducted by police officers under the supervision of the public prosecutor and judicial control, should be highlighted; according to this system, the law enforcement units conduct an investigation which is at a later stage presented before the prosecutor for its validation; the legal basis is provided in Section 129 (8) Brazilian Constitution 1988.¹⁶

¹⁴ See section 26 Criminal Procedure Code enacted by Law n. 23984 on August 21st, 1991, available at <http://www.infoleg.gov.ar/infolegInternet/anexos/0-4999/383/texact.htm#4> (last visited on May 5th, 2013).

¹⁵ In concrete such one adopted by Law n. 25.409 published on April 20th, 2001 and also, to some point, by Law n. 25.760 published on August 11th, 2003.

¹⁶ Textually, it is function of the Public Prosecution 'to request investigatory procedures and the institution of police investigation, indicating the legal grounds of its procedural acts'; English version is available at <http://pdba.georgetown.edu/constitutions/brazil/english96.html#mozTocId613566> (last visited on May 5th, 2013).

Table 3: structure, organisation, principles, functions and others related to prosecution offices in LAC countries¹⁷

Countries	Structure of public prosecution office	Nomination and duration of General Attorney/Public Prosecutor	Principles	Functions	Training prosecutors	Sources
ARGENTINA	<p>The Public Prosecution Office is an independent body with functional and financial autonomy. It contemplates the General Attorney and the Public Defender Offices as well as a federal regime for every Argentina province</p> <p>Organisation of the General Attorney Office:</p> <ul style="list-style-type: none"> - General Attorney of the Nation - Prosecutor Attorneys before Supreme Court and National Prosecutor of Administrative Investigations - General prosecutors before collegiate bodies (Cassation Courts, Appeal Courts and others) - Adjunct General prosecutors - Prosecutors of First Instance Courts - Assistant prosecutors of First Instance Courts 	<p>The General Attorney is appointed by the President with the consent of at least the 2/3 Senate presenting members' vote</p>	<p>Objectivity</p> <p>Hierarchy</p> <p>Unity</p> <p>Coherence of action</p>	<p>Defence of the legality rule and public interests</p> <p>Promotion of the criminal action</p> <p>Promotion of civil action when it is explicitly contemplated by law</p> <p>Other functions, eg, supervision of the observance of the due process of law, protection of human rights, defence of Constitution ...</p>	<p>School of Federal Public Prosecution Office</p>	<p>Constitution of the Argentina Nation 1994</p> <p>Act on Public Prosecution enacted by Law n. 24.946 on March 11th, 1998</p> <p>Criminal Procedure Code enacted by Law n. 23.984 on August 21st, 1991</p>

¹⁷ Be notice that present table considers some LAC countries, essentially the Latino-American ones as far as they are the ones, which information is included in AIAMP website. Further information about other countries is available at <http://www.oas.org/juridico/mla/en/dom/index.html> as indicated.

Countries	Structure of public prosecution office	Nomination and duration of General Attorney/Public Prosecutor	Principles	Functions	Training prosecutors	Sources
BOLIVIA	<p>The Public Prosecution Office has functional, administrative and budgetary autonomy</p> <p>Organisation:</p> <ul style="list-style-type: none"> - General Attorney/Public Prosecutor - Department prosecutors - High prosecutors - Prosecutors in Matters 	<p>The General Attorney of the Bolivian Republic is nominated by the National Congress with 2/3 votes from presenting members</p>	<p>Legality</p> <p>Discretionary prosecution</p> <p>Objectivity</p> <p>Responsibility</p> <p>Autonomy</p> <p>Unity and hierarchy</p> <p>Celerity</p> <p>Transparency</p>	<p>Promotion of the criminal action, defence of the legality rule and public interests</p> <p>In some cases promotion of civil action as well, eg, offences related to the state heritage and affecting collective interests</p> <p>Direction of the pre-trial investigation</p> <p>Other functions, eg, managing international cooperation</p>	<p>Prosecutors School of State located in Sucre</p>	<p>Bolivian Constitution 2009</p> <p>Act on Public Prosecution enacted by Law n. 260 on July 11th, 2012</p> <p>Code of Criminal Proceeding enacted by Law n. 1970 on March 25th, 1999</p>
BRAZIL	<p>The Public Prosecution Office is an independent and autonomous body. In Brazil coexists 28 Public Prosecution Offices: one Federal Public Prosecution Office and 27 State Public Prosecution Offices</p> <p>Organisation:</p> <ul style="list-style-type: none"> - Public Prosecution Office of the Union, including Federal Public Prosecution Office, Labour Prosecution Office, Military Prosecution Office and Federal District and Territory Public Prosecution Office. Head of this Public Prosecution Office of the Union is the General Attorney of the Republic - 27 State Public Prosecution Offices according to federative division in Brazil 	<p>The General Attorney of the Republic is nominated by the President after approval by absolute majority of the Federal Senate members for a period of 2 years; one re-election is possible.</p>	<p>Unity</p> <p>Indivisibility</p> <p>Functional independency</p>	<p>Promotion of the public criminal action</p> <p>In some cases promotion of civil action, eg, defence of the state heritage, defence of collective interests such as natural environment</p> <p>Collector of evidence presented by police forces</p> <p>Defence of the observance of the legality rule</p> <p>Supervision of police action</p> <p>Other functions, eg, defence of observance of law and public powers, defence of indigenous population's rights,</p>	<p>High School of Public Prosecutor Office of the Union</p>	<p>Constitution of the Federative Republic of Brazil 1988</p> <p>Complementary Law on Public Prosecution Office of the Union enacted by Law n. 75 on May 20th, 1993</p> <p>Code of Criminal Procedure enacted by Law Decree n. 3689 on October 3rd, 1941</p>

Countries	Structure of public prosecution office	Nomination and duration of General Attorney/Public Prosecutor	Principles	Functions	Training prosecutors	of Sources
CHILE	<p>The Public Prosecution Office is an autonomous and hierarchical body</p> <p>Organisation:</p> <ul style="list-style-type: none"> - National Prosecutor - Regional prosecutors - Adjunct prosecutors 	<p>The National Prosecutor is nominated by the President of the Republic under proposal of the Supreme Court and agreement of 2/3 Senate for a period of 8 years; re-election is not possible</p> <p>The regional prosecutors are nominated by the National Prosecutor for same period and without possibility of re-election too</p>	<p>Legality</p> <p>Constitutionality</p> <p>Autonomy</p> <p>Hierarchy</p>	<p>Promotion of criminal action</p> <p>Direction of the pre-trial investigation in criminal procedure</p> <p>Protection of victims and witnesses</p>	National Division of Training	<p>Political Constitution of 1980</p> <p>Constitutional Act on Public Prosecution enacted by Law n. 19.640 on October 8th, 1999</p> <p>Criminal Procedure Code enacted by Law n. 19.696 on September 29th, 2000</p>
COLOMBIA	<p>The General Prosecution Office of the Nation is attached to the Judiciary</p> <p>Organisation:</p> <ul style="list-style-type: none"> - General Attorney/Prosecutor - National Units with nationwide competence in specific matters, inter alia human rights, anticorruption, antinarcotics, money laundering, terrorism, intellectual property, environmental crimes, along with specialized units in matters related to the so called "Justice and Peace process". - Territorial division: regional prosecutors, district prosecutors and provincial prosecutors. 	<p>The General Attorney is nominated by the Supreme Court for a period of 4 years without possibility of re-election.</p>	<p>Administrative autonomy</p> <p>Budgetary autonomy</p> <p>Technical autonomy</p>	<p>Exercise the public accusation</p> <p>Direction of the pre-trial investigation</p> <p>Other functions such as protection of victims</p>	Institute of Studies of Public Prosecution Office (IEMP)	<p>Political Constitution of the Colombian Republic of 1991</p> <p>Law on General Prosecution Office of the Nation enacted by Law n. 201 on July 28th, 2005; further and important amendments by Decree n. 262 of February 22th, 2000</p> <p>Code on Criminal Proceeding enacted by Law n. 906 on August 31th, 2004</p>

Countries	Structure of public prosecution office	Nomination and duration of General Attorney/Public Prosecutor	Principles	Functions	Training prosecutors	of Sources
COSTA RICA	<p>The General Prosecution Office is attached to the Judiciary</p> <p>Organisation:</p> <ul style="list-style-type: none"> - General Prosecutor of the Republic - Adjunct General Prosecutor - General Secretary - Prosecutors at Trial Courts - Prosecutors at Appeal Courts - Prosecutor Agents - Assistant Prosecutors 	<p>The General Prosecutor and the Adjunct General Prosecutor are nominated by the majority of the Supreme Court</p>	<p>Legality although there is certain application of the discretionary prosecution criteria</p> <p>Functional independency</p> <p>Unity</p> <p>Hierarchy</p>	<p>Supervision of the observance of the legality rule</p> <p>Promotion of the criminal action and exercise of the accusation</p> <p>Direction of the pre-trial investigation</p>	<p>Training, Supervision and Selection Division</p>	<p>Political Constitution of the Costa Rica Republic 1949</p> <p>Act n. 7442 on Public Prosecution Office enacted on October 18th, 1994</p> <p>Criminal Procedure Code n. 7594 enacted on March 28th, 1996</p>
CUBA	<p>The General Prosecution Office is an organic body attached to the National Assembly of the Popular Power and the Council of State</p> <p>Organisation:</p> <ul style="list-style-type: none"> - General Prosecution Office - Provincial Prosecution Offices - Municipal Prosecution Offices - Military Prosecution Office 	<p>The General Prosecutor of the Republic and the General Vice-prosecutors are elected by the National Assembly of the State Power (legislative)</p>	<p>Subordination to National Assembly and Council of State (the General Prosecutor of the Republic receives directly instructions from the Council of State)</p> <p>Hierarchy</p> <p>Vertical organisation of all prosecution bodies attached to the General Prosecution Office of the Republic</p>	<p>Control and supervision of the legality of rule</p> <p>Control of the observance of the Constitution as well as legal provisions</p> <p>Promotion and exercise of the public criminal action representing the state</p> <p>Direction of the pre-trial investigation</p> <p>Other functions, eg, initiative in administrative proceedings, participation in the prevention and fight against the crime,</p>	<p>Division on Training of the General Prosecution Office</p>	<p>Constitution of the Cuban Republic 1976</p> <p>Law on General prosecution Office of the Republic enacted by Law n. 83 on July 11th, 1997</p> <p>Law on Criminal Proceeding enacted on August 13th, 1977</p>

Countries	Structure of public prosecution office	Nomination and duration of General Attorney/Public Prosecutor	Principles	Functions	Training prosecutors	Sources
DOMINICAN REPUBLIC	<p>The General Prosecution Office in Dominican Republic depends on the executive branch although it has functional and budgetary autonomy</p> <p>Organisation:</p> <ul style="list-style-type: none"> - General Attorney of the Republic - First Adjunct General Attorney - Second Adjunct General Attorney - Adjunct General Attorneys (at least 7) - General Attorneys at Appeal Courts - Adjunct Attorneys at Appeal Courts (at least 2) - Prosecutor attorneys - Adjunct prosecutors - Prosecutors before Judges of the Peace 	<p>The General Attorney of the Republic shall be nominated by the President of the Republic for same period that this last one; re-election is also possible for same period</p>	<p>Legality</p> <p>Objectivity</p> <p>Unity of action</p> <p>Hierarchy</p> <p>Indivisibility</p> <p>Accountability</p> <p>Independency</p> <p>Integrity (honesty)</p> <p>Discretionary prosecution</p>	<p>Defence of the legality rule and public interest</p> <p>Prosecution of the crimes and offences</p> <p>Promotion of the public criminal action</p> <p>Direction of the pre-trial investigation</p> <p>Effective protection of victims and witnesses</p> <p>Promotion of alternative dispute resolution</p>	<p>National School of the Public Prosecution Office</p>	<p>Constitution of the Dominican Republic 2010</p> <p>Law on the Statute of Public Prosecution Office enacted on April 8th, 2003</p> <p>Criminal Procedure Code enacted by Law n. 76-02 on July 2nd, 2002</p>
ECUADOR	<p>The General Prosecution Office is an autonomous body of the Judiciary; it has administrative and budgetary autonomy</p> <p>Organisation:</p> <ul style="list-style-type: none"> - General prosecutor - District prosecutors - Prosecutor agents - National Director of Legal Counsel - General Secretary 	<p>General prosecutor is-nominated by the National Congress for a period of 6 years and re-election is not-possible</p>	<p>Autonomy and independency</p> <p>Discretionary prosecution</p> <p>- Minimum criminal intervention</p>	<p>Defence of public interest and victims</p> <p>Promotion of the criminal action and exercise of the accusation</p> <p>Direction of the pre-trial investigation</p>	<p>School of Prosecutors Training</p>	<p>Constitution of the Ecuador Republic 2008</p> <p>Act on Public Prosecution Office enacted on March 8th, 2006</p> <p>Code on Criminal Proceeding enacted on November 11th, 1999</p>

Countries	Structure of public prosecution office	Nomination and duration of General Attorney/Public Prosecutor	Principles	Functions	Training prosecutors	Sources
EL SALVADOR	<p>The Public Prosecution Office is aside from the three branches of government</p> <p>Organisation:</p> <ul style="list-style-type: none"> - General Prosecutor of the Republic: it includes the General Prosecutor, the Adjunct General Prosecutor, the Auditor Prosecutor, the General Secretary, the Prosecution Council and the Assistants to the General Prosecution Office - General Attorney of the Republic - Prosecutor for the Defence of Human Rights 	<p>The General Prosecutor, the General Attorney and the Prosecutor for the Defence of Human Rights are nominated for a period of 3 years and can be re-elected.</p>	<p>Legality rule</p> <p>Impartiality</p> <p>Unity of action</p>	<p>Defence of the state and community interests</p> <p>Promotion of the criminal action</p> <p>Direction of the pre-trial investigation</p>	<p>School of Prosecution Training</p>	<p>Constitution of El Salvador Republic 1983</p> <p>Act on General Prosecution Office of the Republic enacted on April 27th, 2006</p> <p>Criminal Procedure Code enacted on October 22th, 2008</p>
GUATEMALA	<p>The Public Prosecution Office is an autonomous institution</p> <p>Organisation:</p> <ul style="list-style-type: none"> - General Prosecutor of the Republic - Prosecution Office Council - District and Section Prosecutors - Prosecutor agents - Prosecutor assistants 	<p>The General Prosecutor is nominated by the President of the Republic under proposal of specific Nomination Commission, which will require at least 2/3 votes for each candidate. He shall be elected for a period of 4 years.</p>	<p>Legality rule</p> <p>Autonomy</p> <p>Unity</p> <p>Hierarchy</p>	<p>Supervise the observance of the law</p> <p>Promotion of the criminal action; also civil action in some cases</p> <p>Direction of the pre-trial investigation</p> <p>Supervision of police forces in relation with their functions in the pre-trial investigation</p> <p>Protection of the state of law and defence of human rights</p>	<p>Unity of Training</p>	<p>Political Constitution of Guatemala Republic 1985</p> <p>Act on Public Prosecution Office enacted by Decree n. 40/94 on May 12th, 1994</p> <p>Criminal Procedure Code enacted by Decree n. 51-92 on September 28th, 1992</p>

Countries	Structure of public prosecution office	Nomination and duration of General Attorney/Public Prosecutor	Principles	Functions	Training prosecutors	Sources
HONDURAS	<p>The Public Prosecution Office is a specialized professional institution with function independency from the state powers</p> <p>Organisation:</p> <ul style="list-style-type: none"> - General prosecutor of the Republic - Adjunct General Prosecutor - General Director of the Public Prosecution Office - Agents of Public Prosecution, called 'Agents on Courts' - Assistant Agents of Public Prosecution 	<p>The General Prosecutor and the Adjunct General Prosecutor are nominated by the National Congress with at least 2/3 votes after proposal of a specific Nomination Assembly. Both of them are nominated for a period of 5 years and only can be re-elected once</p>	<p>Autonomy</p> <p>Functional, administrative, technical and budgetary independency</p> <p>Unity</p>	<p>Supervise the observance of the Constitution and laws</p> <p>Promotion of the public criminal action</p> <p>Direction of the pre-trial investigation</p> <p>Fight against drug-trafficking</p>	<p>Training Department</p>	<p>Constitution of the Honduras Republic 1982</p> <p>Law on the Public Prosecution Office enacted on August 1st, 1998</p> <p>Criminal Procedure Code enacted by Decree 9-99-E on December 19th, 1999</p>
MÉJICO	<p>The General Attorney Office is attached to the federal executive and is presided by the General Attorney</p> <p>Organisation:</p> <ul style="list-style-type: none"> - General Attorney - Sub-Attorneys - Major Officer - General Inspector - Coordinators - Specialized unities entitled persons - General Directors - Delegates - Assistants - Agents of Federal Prosecution Office - Others 	<p>The General Prosecutor of the Republic is nominated by the federal executive entitled person with approval by the Senate and can be removed by the executive</p>	<p>Certainty</p> <p>Legality (although discretionary prosecution is also admitted in some cases)</p> <p>Objectivity</p> <p>Impartiality</p> <p>Efficiency</p> <p>Professional career</p> <p>Integrity (honesty)</p> <p>Loyalty</p> <p>Discipline</p> <p>Observance of the human rights</p>	<p>Promotion of the public criminal action</p> <p>Direction of the pre-trial investigation</p> <p>Protection of victims</p> <p>Supervision of the observance of the legality rule</p> <p>Other functions, eg, participation in extradition and surrender proceedings</p>	<p>Institute of Training and Career in Federal Public Prosecution Office</p>	<p>Political Constitution of the Mexican United States 1917</p> <p>Act on the General Attorney Office of the Republic enacted on April 30th, 2009</p> <p>Federal Code on Criminal Proceedings enacted on August 28th, 1934</p>

Countries	Structure of public prosecution office	Nomination and duration of General Attorney/Public Prosecutor	Principles	Functions	Training prosecutors of	Sources
NICARAGUA	<p>The Public Prosecution Office is an independent body with organic, functional and administrative autonomy only attached to the Political Constitution of the Nicaraguan Republic and its legislation</p> <p>Organisation:</p> <ul style="list-style-type: none"> - General Attorney of the Republic - Adjunct General Attorney - General Inspector - Department and Regional Prosecutors (last ones existing in the Autonomous Regions of Atlantic Coast) - Assistant prosecutors - Special prosecutors 	<p>The General Attorney of the Republic and the adjunct General Attorney shall be elected by the National Assembly with a favourable vote of at least 60% of the Members of the Parliament; they shall be appointed for a period of 5 years</p>	<p>Speciality</p> <p>Indivisibility</p> <p>Unity</p> <p>Hierarchy</p> <p>Legality and objectivity</p> <p>Independency</p> <p>Accountability</p>	<p>Promotion ex officio or ex parte the investigation and prosecution of the public crimes</p> <p>Remission of the denunciations to the police forces</p> <p>Reception of the investigations carried out by the police forces and decision about the prosecution</p> <p>Promotion of the public criminal action; also private criminal action when victims are handicapped without legal representation</p> <p>Promotion of the civil action when is legally provided</p> <p>Other functions</p>	<p>Training Department of the Public Prosecution Office</p>	<p>Political Constitution of the Nicaraguan Republic 2007</p> <p>Act on Public Prosecution Office enacted by Law n. 346 on Mayo 2nd, 2000</p> <p>Criminal Procedure Code enacted by Law n. 406 on November 13th, 2001</p>
PANAMÁ	<p>The Public Prosecution Office is independent from the Judiciary.</p> <p>Organisation:</p> <ul style="list-style-type: none"> - General Attorney of the Nation - Attorney of the Administration - Prosecutors and Prosecution Agents 	<p>The General Attorney and the Attorney of the Administration shall be nominated for a period of 10 years</p>	<p>Integrity</p> <p>Independency</p> <p>Unity</p>	<p>Supervision of the legality rule and human rights</p> <p>Defence of state and municipal interests</p> <p>Prosecution of the crime</p> <p>Promotion of the criminal action</p>	<p>Department of Training and Development</p>	<p>Political Constitution of the Panamá Republic 1972</p> <p>Law n. 1 establishing the Public Prosecution Career enacted on January 9th, 2009</p> <p>Criminal Procedure Code enacted by Law n. 63 on August 28th, 2008</p>

Countries	Structure of public prosecution office	Nomination and duration of General Attorney/Public Prosecutor	Principles	Functions	Training prosecutors	Sources
PARAGUAY	<p>The Public Prosecution Office represents the society before the Judiciary; it has functional and administrative autonomy</p> <p>Organisation:</p> <ul style="list-style-type: none"> - General Prosecutor of the State - Adjunct prosecutors - Prosecutor agents - Prosecutor reporters - Prosecutor assistants 	<p>The General Prosecutor of the State is designated by the executive branch with the Senate approval after proposal of 3 candidates by the Judiciary Council; he is appointed for a period of 5 years and can be re-elected</p>	<p>Autonomy</p> <p>Activity</p> <p>Unity of action</p> <p>Ex officio</p> <p>Hierarchy</p> <p>Publicity</p>	<p>Supervision of the defence of the constitutional rights and safeguards</p> <p>Promotion of public criminal action in order to protect the public and social heritage, natural environment and other collective interests as well as rights belonging to indigenous peoples</p> <p>Promotion of criminal action when the initiative ex parte is no longer necessary</p> <p>Other functions, eg, gather information of civil servants</p>	<p>Training Centre of the Public Prosecution Office</p>	<p>Constitution of the Republic 1992</p> <p>Act on Public Prosecution Office enacted by Law n. 1562 on May 11th, 2000</p> <p>Criminal Procedure Code enacted by Law 1286 on July 8th, 1998</p>
PERU	<p>The Public Prosecution Office is a constitutional and autonomous institution</p> <p>Organisation:</p> <ul style="list-style-type: none"> - Prosecutor of the Nation - Supreme Prosecutors - High Prosecutors - Provincial Prosecutors - Adjunct Prosecutors - Prosecutors Assemblies 	<p>The Prosecutor of the Nation is nominated by the Prosecutors Assemblies for a period of 3 years; re-election is possible but only for a period of 2 years</p>	<p>Functional and budgetary independency</p> <p>Exclusivity and unity</p> <p>Hierarchy</p>	<p>Defence of the legality and public interests</p> <p>Representation of the community and social interests at the trial</p> <p>Supervision of independence of judges and courts</p> <p>Promotion of the criminal public action</p> <p>Direction of the pre-trial investigation</p>	<p>School of Public Prosecution Office named 'Gonzalo Ortiz de Zavallos Roedell' (he was the first Prosecutor of the Nation)</p>	<p>Political Constitution of Peru 1993</p> <p>Act on Public Prosecution Office enacted by Legislative Decree n. 052 on March 18th, 1981</p> <p>New Criminal Procedure Code enacted by Legislative Decree n. 957 on July 29th, 2004</p>

Countries	Structure of public prosecution office	Nomination and duration of General Attorney/Public Prosecutor	Principles	Functions	Training prosecutors	Sources
URUGUAY	<p>The Public Prosecution constitutes a technical and administrative body attached to the executive branch under intermediation of the Ministry of Education and Culture.</p> <p>Organisation:</p> <ul style="list-style-type: none"> - General Prosecution Office of the Court and General Attorney Office of the Nation - Legal National Prosecution Offices of Civil, Criminal and Tax Matters - Adjunct Prosecution Office of the Court - Temporary Legal Prosecution Office - Department Legal Prosecution Offices - Adjunct Legal Prosecution Offices 	No mention	<p>Independency</p> <p>Hierarchy</p> <p>Discretionary prosecution</p>	<p>Protection and defence of the general interests belonging to the society; action before the judges and courts in civil and criminal procedure representing the public cause</p> <p>Surveillance and defence of the patrimony interests of the state; promotion of appropriate action before judges and courts</p> <p>Promotion of the criminal action</p>	<p>Training Area of the Institutional Division on Strengthening of the Criminal Prosecution and Tax Office</p>	<p>Constitution of the Oriental Republic of Uruguay 1997</p> <p>Act on Public Prosecution and Tax Office enacted by Law n. 15.365 on December 21st, 1982</p> <p>Criminal Procedure Code enacted by Law 15.032 on July 7th, 1980</p>
VENEZUELA	<p>The Public Prosecution Office is under supervision of the General Attorney of the Republic</p> <p>Organisation:</p> <ul style="list-style-type: none"> - General Prosecutor of the Republic - General Vice-Prosecutor of the Republic - High Prosecutors - Prosecutors - Assistant Prosecutors - Adjunct Counsellors 	The General Prosecutor of the Republic shall be nominated for a period of 7 years	<p>Functional, administrative and budgetary independency</p> <p>Unity and indivisibility</p> <p>Hierarchy</p> <p>Objectivity</p> <p>Transparency</p> <p>Integrity (honesty)</p> <p>Accountability</p> <p>Celerity</p> <p>Gratuity</p>	<p>Defence of the legality and constitutional rights</p> <p>Defence of the celerity and due process of law</p> <p>Direction and conduction of the pre-trial investigation</p> <p>Promotion of the criminal public action</p> <p>Promotion of actions against civil servants in order to determine their disciplinary, administrative, civil, labour or military accountability</p>	<p>National School of Prosecutors</p>	<p>Constitution of the Bolivarian Republic of Venezuela 2009</p> <p>Act on Public Prosecution Office enacted on March 13th, 2007</p> <p>Organic Criminal Procedure Code enacted on August 26th, 2009</p>

3.2. Characteristics of Judicial Cooperation in LAC countries

3.2.1. Judicial Cooperation within the LAC region: legal and institutional frameworks

A) Approach to legal instruments and institutional tools.

An approach to the legal framework of mutual legal assistance in criminal matters in an LAC context requires examining the main regional and sub-regional treaties so as to get an overall view of the principles and processes that govern international judicial cooperation in the region.

MLA within the OAS framework: The Inter-American Convention on Mutual Assistance in Criminal Matters (“Convention of Nassau”).

The Inter-American Convention on Mutual Assistance in Criminal Matters, drafted in Nassau on May 23, 1992, and its Additional Protocol adopted in Managua on June 11, 1993, was approved during the twenty-second and twenty-third periods of the General Assembly of the OAS. Both have become the model for many other regional treaties, whether bilateral or multilateral in nature. Indeed, they have been, for example, the direct source of inspiration of the Protocol of Mutual Legal Assistance in Criminal Matters, drafted in San Luis on June 25, 1996 and the Agreement on Mutual Legal Assistance in Criminal Matters between the States Parties to MERCOSUR, the Republic of Bolivia and the Republic of Chile, signed in Buenos Aires, on February 18, 2002.

There we find a clear system of rules relative to MLA. Its first part is dedicated to the rules of assistance (Articles 1 to 16). The second to specific provisions related to the various specific models of cooperation (Articles 17 to 31), and the third and last one concludes with some final provisions (Articles 32 to 40). Its extensive and systematic regulation permits the obtaining of a comprehensive overview of MLA related to criminal matters, hence the interest in its detailed analysis. In addition, the Inter-American Convention is an instrument that has contributed decisively to the transformation of international judicial cooperation in America continent; it has become the framework and benchmark for many other bilateral and multilateral agreements in the sub-regional context.

The Nassau Convention has contributed decisively to the establishment of a common framework for the Mutual Assistance in Criminal Matters, making Article 2 of OAS’ Charter a reality, as it lays down some common rules aimed at finding the solution to the legal problems that may arise between two or more American States, hence favouring cooperation between them.

As to the scope of the Convention, it applies to all criminal acts except those that are subject exclusively to military legislation (Article 8), and this provided the act for which cooperation is requested is punished with deprivation of

liberty for a period of at least twelve months in the requesting State (Article 6).

Generally speaking, the principle of double criminality does not apply to cooperation acts. This means that the requested State shall render the assistance even if the act that gave rise to the request is not punishable under its own legislation. In some particular cases the principle of double criminality can apply, namely when the assistance is requested for seizures of goods, inspections, attachments, and searches, including house searches and submissions. In such cases, and provided double criminality is not fulfilled, the rendering of assistance will be optional for the requested State.

The Convention provides for an open list of acts of assistance, among which the following:

- Notification of rulings and judgments;
- Taking of testimony or statements from persons;
- Summoning of witnesses and expert witnesses to provide testimony;
- Immobilisation and sequestration of property, freezing of assets, and assistance in procedures related to seizures;
- Searches or seizures;
- Examination of objects and places;
- Service of judicial documents;
- Transmission of documents, reports, information, and evidence;
- Transfer of detained persons for the purpose of this convention;

The list concludes with a closing clause which states that assistance shall be rendered “for any other procedure provided there is an agreement between the requesting State and the requested State.”

The reasons for refusal are optional. The following are mentioned (Article 9):

- The principle of ne bis in idem;
- The principle of non-discrimination by reason of sex, race, social status, nationality, religion or ideology;
- Requests having been issued by an exceptional or ad hoc tribunal, and
- Requests relating to public order, sovereignty, security or fundamental public interests.

The procedure for executing the request for assistance shall be carried out in conformity with the national legislation of the requested State and, to the degree that it does not contradict it, requests for assistance shall be rendered provided they conform to the form and requisites set forth by the requesting State (Article 10).

Finally, this model of cooperation is structured on the basis of direct communication between the central authorities. These are not only entrusted with the sending and reception of requests for assistance, they are also responsible for communicating the state of the handling of the request to the

requesting State. And if what has been requested is the presence of a witness or expert in the requesting State, they will also be responsible for handing over the written consent of the person to appear abroad and inform promptly the Central Authority of the requesting State of said consent.

In relation to legal assistance for obtaining witness and expert proof, the Inter-American Conference on Mutual Judicial Assistance, as many others in this area, establishes two models. Firstly, it regulates the possibility that the proof be obtained by means of a declaration in the territory of the requested State (Article 18). Secondly, it provides that the witness' testimony or the expert's report be issued in the requesting State, facilitating the transportation of the person to that territory. (Article 19)

Apart from being more economical, the first possibility mentioned above is undoubtedly the simplest, insofar as it does not require the consent of the witness or expert to execute the request. What is actually required is that the request for assistance be accompanied with a list of the questions that the witness or expert may be asked. (Article 23).

As regards assistance costs, the requested state shall assume all regular costs of executing the request in its territory, except for the fees for expert witnesses and any travel costs and expenses related to the transportation of summoned persons from the requested to the requesting State. While this is the simplest mode, it is however also the least consistent with the principle that must govern evidence. This activity involves a total failure in all expedient cases in the reception on the part of the Requesting State, who shall appreciate and value it ultimately. This could be nevertheless overcome by adopting certain precautions, namely, that of requiring in the request that the body in charge of evaluating said evidence in the Requesting State may be transferred to the Requested State in order to be present and intervene therein. This possibility is expressly provided for in the Convention, as well as in numerous bilateral conventions. Thus, in its Article 16.2, it is stated that "Officials and interested parties of the requesting State or their representatives may, after informing the central authority of the requested state, be present at and participate in the execution of the request for assistance, to the extent not prohibited by the law of the requested state, and provided that the authorities of the requested state have given their express consent thereto." This way of taking the evidence undoubtedly improves its production, although it makes it more expensive.

Another possibility not expressly provided for in the Convention yet not contrary to its provisions is that the Requesting State demands that evidence taking be done by using videoconferencing. To the extent that the Convention contemplates the possibility of the requesting State demanding that the assistance be executed according to certain formalities or requisites provided they do not contradict the domestic legislation of the requested State, nothing seems to prevent the use of such a means, and as a matter of practice, most countries allow the conduct of videoconferences under this Convention. In regard to the use of videoconferencing for actions framed

within legal cooperation, [The Ibero-American Convention on the Use of Videoconferencing in International Cooperation between Justice Systems](#) is a step forward, since it sets forth the rules to follow and measures to guarantee the procedural action practiced through this technology of information and communication in international legal cooperation.

The second possibility contemplated in the Convention is to take testimonial or expert evidence in the territory of the requesting State itself. This is a way to ensure that the taking of evidence is carried out in conformity with the domestic legislation of the requesting State. It also allows for the participation in the trial itself, or with all the guarantees for its appreciation and valuation. One inconvenience is that to attend said request, the requested State shall previously have to obtain the conformity of the witness or expert. The Convention clearly says no coercive methods shall be used. (Article 19). It does not seem necessary to explain the difficulties that emanate from this, for although the Convention clearly states that travel costs shall be the covered by the requesting State (Article 29 b), nothing is said about who will bear and what will be the regime of compensation costs for those who will have to travel to give testimony or issue a report.

The inclusion of the safe-conduct (Article 22) as a means to guarantee that while in the receiving State, the person who travels to the requesting State as witness or expert shall not be able to:

- Be detained or prosecuted for offences committed prior to his departure from the territory of the sending state;
- Be required to make a statement or to give testimony in proceedings not specified in the request; or
- Be detained or prosecuted on the basis of any statement he makes, except in case of contempt of court or perjury.

The safe-conduct is, in any case, temporary, and shall terminate when the person prolongs voluntarily his stay in the territory of the receiving State for more than ten days from the moment in which his presence was no longer necessary in that State, in conformity with that which was communicated to the sending State.

MLA in the MERCOSUR framework: The Protocol on Mutual Legal Assistance in Criminal Matters (“Protocol of San Luis”) and the Protocol on Mutual Legal Assistance in Criminal Matters between the States Parties to MERCOSUR, the Republic of Bolivia and the Republic of Chile.

As regards MERCOSUR, it was commonly thought that economic integration could not move forward outside legal integration, insofar as legal confidence and security were thought to be essential for the process and objectives of integration to prosper. Hence, no time was wasted in creating the necessary instrument for judicial cooperation, namely: the Protocol of San Luis on

Mutual Legal Assistance in Criminal Matters, approved by the Council of the Common Market by decision of 02/96 of June 25, which served precisely that idea.

The Protocol of San Luis systematises and regulates the rendering of international judicial assistance in criminal matters in a way that is very similar to that of the Nassau Convention, both as regards its inspiring principles and the modes of assistance it lays down. Therefore, we will strive not to repeat ourselves on those points that are clearly the same, also because its contents are almost identical to the contents of the Protocol on Mutual Legal Assistance in Criminal Matters of the States Parties to MERCOSUR, the Republic of Bolivia and the Republic of Chile, approved on February 18, 2002.

As for the Convention of Nassau, the Protocol does not require the principle of double criminality to be fulfilled to render the requested legal assistance. (Article 1.4). Nevertheless, as with the former, this principle will be required when the assistance is requested for searches, delivery of property, precautionary measures of assurance etc.

Regarding the procedure of execution of the assistance, the rule of the requested State shall prevail, with the possibility of monitoring the forms or special procedures indicated in the request by the requesting State if there is no incompatibility with the domestic law of the requested State (Article 7). This Protocol also provides for the presence and participation of the authorities of the requesting State (Article 17.3) in the execution of the assistance. The transfer of the request for assistance shall be executed through the central authorities designated for such purposes via direct communication between them (Article 3).

The following are causes for denial of assistance:

- A crime characterised as such by military legislation but not in ordinary criminal legislation.
- A crime that the requested State deems political or common in connection with a political crime or pursued for political reasons, and
- A tax crime.

Rendering assistance upon request may also be refused when the person for whom the measure is requested has been absolved or has fulfilled the sentence in the requested State for the same crime mentioned in the request. Nevertheless, this provision may not be used in order to deny assistance in relation to other persons.

Finally, the assistance may also be denied when the fulfilment of the request is contrary to the security, public order or other essential interests of the requested State (Article 5).

As for the types of assistance, the Protocol contains a much more detailed regulation of their content as opposed to their form (Article 6). In practice, this regulation does not reach further than the Convention of Nassau, given that the latter contains a generic clause that invites the provision of the broadest cooperation, thereby extending it to any act when agreed to by the requesting State and the requested State (Article 7).

The fact that measures and procedures in these international instruments are so similar allows us to assert that there is a highly homogenous American judicial cooperation framework in place for a very broad territorial space.

In relation to the possibility of notification, the Protocol only provides that it shall correspond to the central authority of the requesting State to transmit the request for the appearance of a person before a competent authority of the requesting State. To this end, the request will have to be executed well in advance of the date on which that person is expected to make an appearance. If the notification is not executed, the competent authority of the requested State shall inform the competent authority of the requesting State, through the central authority, of the reasons for which the summons could not be performed (Article 14.)

In relation to legal assistance for the attainment and production of evidence, two types of evidence are here contemplated. (Articles 17 and 18):

- The witness' testimony takes place in the requested State, or
- The witness or expert testifies in the territory of the requesting State.

In the first case, the witness or expert who has been summoned to testify or issue a report shall appear in conformity with the laws of the requested State before the competent authority. The latter shall inform with sufficient notice about where and when the witness evidence or expert report is to take place. When necessary, the competent authorities shall be consulted through the central authorities for the purposes of fixing a date that is appropriate both for the requesting as well as the requested authority.

If the requesting State has requested to be present at the hearing, the requested State shall give notice of this as soon as possible. If the presence of the authorities indicated in the request are authorised during the execution of the cooperation procedures, they shall be allowed to ask questions provided they are not contrary to the legislation of the requested State. The hearing shall take place according to the procedures established by the laws of the required State. If the person that has to be interrogated in conformity with the request for assistance alleges any type of immunity, privilege or incapacity under the laws of the requested State, the authority of the latter shall issue a decision prior to the fulfilment of the request and communicate it to the requesting State through the central authority.

Once the measure requested is agreed upon, the expert report and the documents that could result from the taking of the evidence shall be

forwarded to the requesting State together with the statements (Article 17). If this were the assistance type requested or finally agreed upon, the request shall contain the text of the questions to be addressed to the witness as well as, if need be, the description of the forms and special procedures which the request has to fulfil, if required (Article 6).

When that which is requested by the requesting State is the appearance before the competent authority of a person to give testimony or issue an expert report in its territory, the requested State shall request the consent of the witness or expert and shall promptly inform the central authority of the requesting State about the response. In the summons request, the competent authority of the requesting State shall indicate the costs of the transfer or stay for which it shall be responsible (Articles 6.3 and 18.3).

When it has been agreed that the testimony or expert testimony will be taken before the competent authority of the requesting State, subject to prior consent, the receiving State shall undertake to grant a safe-conduct to the witness or expert in conformity with Article 20 of the Protocol so as not to:

- Be detained or tried for crimes prior to his/her departure from the requested State; and
- Be summoned to give statements or testimony in a procedure not specified in the request.

This safe-conduct shall cease to be effective when the person voluntarily prolongs his stay in the territory of the requesting State for more than ten days from the moment in which his presence was not longer necessary in that State, in conformity with what was communicated to the requested State.

MLA within the CAIS framework: The Treaty Among The Republics Of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua And Panama On Legal Mutual Assistance In Criminal Matters.

This Treaty, unlike the Conventions examined so far, establishes as a requisite for accepting the request that the act for which the assistance is requested be typified as a punishable act by both the requesting and requested States (Article 2).

Legal assistance shall be rendered when what is requested is:

- Statements of witnesses;
- Evidence gathering and execution;
- Amendment of adjudications and other documents extracted from incumbent authorities; documents from authorities with jurisdiction;
- Execution of precautionary measures;
- Locating persons;

In addition, it contemplates the possibility of rendering any other legal assistance agreed upon between two or more States Parties to the Treaty.

Here, unlike with the other Conventions, the period for the fulfilment of assistance requests for notification is specified. To this end, it provides that in cases where notification is required by a deadline. The requesting State shall have to submit the request for assistance to the requested State at least 30 days before the expiration of the deadline contained in the request. Nevertheless, in urgent cases the Requested State might waive this term of notification (Article 11). No other particular provision is contained in the Convention in relation to notifications of judicial decisions and other documents emanating from the competent authority. After that, the request of notification or transfer of documents shall be governed by the general provisions contained in the Treaty for the handling of assistance requests.

The request shall be made in writing and shall contain some indication of the term within which the requesting State wishes the request to be fulfilled, and any other relevant information on the identity and whereabouts of the person or persons that need to be located (Article 4).

As regards the gathering of evidence, the Treaty does not contain any peculiarities with respect to the other Conventions. The two possibilities for taking testimony or expert evidence seen in the other Conventions are also provided for in this Treaty. Although in case the witness's statement or the expert's report takes place before the authority of the requested State it expressly provides that any commercial documents presented during the hearing shall be signed by the person that has them in custody and certified by the central authority. To this end, the stamp which appears in the exhibit to the Treaty shall be used. Once the documents are certified in this way, no other authentication shall be necessary, and they will be admitted as evidence of the veracity of the matter set forth therein (Article 7.5). This does not prevent that the veracity of the said documents may be proved in any other way, in conformity with the principal of evidentiary freedom.

The Central American Treaty is the only treaty on assistance in which it is expressly stated that "Any omission of the Requesting State that hinders or impedes the legal right of a person in the proceedings, shall be the exclusive liability of the Requesting State" (Article 7.4). This provision is unique in that it obliges the requesting State to provide all the information it may have in order to execute the assistance.

The Treaty also provides that interviews shall be made in writing whenever the gathering of the evidence is performed before the authorities of the requested State. In addition, the second section of Article 12 provides that after receiving the said questions, the requested State shall decide whether they are admissible or not. This provision could give rise to some confusion, since more than the appropriateness of the interrogatory, what the requested State may be able to evaluate is whether or not it is contrary to its domestic law, as provided in paragraph 3 of the said Article.

The possibility that the testimony is taken before the competent authority of the requesting States is regulated in more detail than in the rest of the instruments. It provides expressly, for example, that not only the consent of the witness must be obtained for its taking, itself an unavoidable premise in all regulations, it also specifies that the required person shall be informed of the class and the totality of the expenses that the requesting State has agreed to pay (Article 8.1). It also requires that, when what is actually sought is that the person travels to the requesting State to provide testimony, the request for assistance must arrive at least thirty days before the hearing, unless agreed otherwise. The requested State shall send the requesting State proof of having performed the notification, detailing the manner and the date on which it was performed.

The Treaty also regulates the granting of safe-conducts, albeit under the title of “temporary guarantee”. Indeed, it states that no person called upon to give testimony in the territory of the requesting State in fulfilment of a request for assistance shall be liable to be summoned, judged, sued, detained or subject to any other limitation of their personal liberty due to acts committed prior to their departure from the requested State. This guarantee is temporary except in a fortuitous case or force majeure, expiring ten days after said person, being notified that he is free to go, has not left the Requesting State or, having done so, has returned.

As regards the cost of the request for assistance, the Treaty establishes that the requested State shall assume all the ordinary expenses in order to fulfil the request for assistance within its borders. However, unless otherwise agreed, the following expenses shall be covered by the requesting State:

- Translation and transcription expenses;
- travel and incidental expenses of witnesses having been summoned by the requesting State, including the expenses of those civil servants accompanying them;
- the fees of the experts;
- the legal fees of the appointed attorney, prior the approval of the Requesting State, to advise witnesses.

B) An approach to the common legal regime in legal assistance.

The different instruments of legal cooperation, both multilateral as well as bilateral, contain their own regulation of mutual legal assistance and, of course, particular rules and unique procedures for the achievement of their own objectives. Nevertheless, common regulatory provisions of a substantive nature may be extracted from all of them. In this respect, we have deemed it appropriate in this section, to examine the specific cooperation instruments that are developed in other areas of this report, thereby trying to systemise which are those common assistance rules in order to have a vision, albeit a schematic one, of these instruments that may allow us to draw a picture of the state of cooperation in the criminal area within the LAC context.

Substantive Rules

The principle of double criminality

As a general rule, although not without exception, the treaties on cooperation rest on the principal of double criminality as a requisite for initiating and dealing with any request for cooperation. The verification of the double criminality refers exclusively on the need that the fact is punishable both in the requested and the requesting States.

There are some exceptions to this rule, particularly when it refers to notifications or transfer of judicial documents or decisions and to evidentiary activity, for which it is interpreted more loosely.

When it comes to extradition, double criminality becomes almost the norm. In fact, the States Parties' legislation usually incorporates provisions that refer to it. Double criminality is a principle that is closely linked with the guarantees of the Rule of Law and the principle of legality. This can be clearly appreciated, for example, in the Legal System of Venezuela, in which the Criminal Code, specifically in its Article 6, paragraph 2 stipulates that "Extradition shall not be granted to a foreigner for any act that is not termed a criminal offence under Venezuelan law". The provision is based on Number 6, Article 49 of the Constitution of the Bolivarian Republic of Venezuela, according to which "Due process shall be applied to all judicial and administrative proceedings, and, consequently [...] No persons may be punished for acts or omissions that were not stipulated as crimes, violations, or offences in pre-existing laws."

This principle has traditionally been the basis of conventions on extradition. In time, it has been projected even further, making it all the more difficult to advance towards the principle of mutual recognition, which requires a certain homogenisation of laws. Actually, harmonisation in the substantive area (crimes and sentences) will allow the elimination of double criminality in the area of cooperation. Proof of this is that in November 2010, as a direct consequence of the encouragement and support decided at the Conference of Ministers of Justice of Latin American Countries (COMJIB), the Ministers of Justice of the Argentine Republic, the Federal Republic of Brazil, the Kingdom of Spain and the Portuguese Republic signed the Agreement on the Simplification of Extradition, which seeks to facilitate extradition through measures such as the establishment of a single and simple procedure. A bilingual form to request extradition is introduced, and direct transfer among central authorities is conceived as a general rule. Likewise, it is stated it is necessary to act quickly and efficiently, thereby introducing a period of thirty days in order to perform the delivery once the decision that grants the extradition has been adopted.

This agreement is also a significant step forward towards the elimination of the principle of double criminality, as it is here contemplated (Article 3): “It shall be understood that double criminality concurs if the extradition is requested for some act that both the requesting and required Parties have led to typify by virtue of the international instruments they themselves have ratified over the years, particularly those that appear in Exhibit 1 of this Agreement”. These international instruments include:

United Nations Convention against Organised Transnational Delinquency (Convention of Palermo), New York, 15/11/2000; Additional Protocol to the United Nations Convention against Organised Transnational Delinquency relative to Preventing, Suppressing and Sanctioning the Treatment of Persons, especially Women and Children, New York, 15/11/2000; Additional Protocol to the Convention of the United Nations against Organised Transnational Delinquency against the Illegal Traffic of Migrants by Earth, Sea and Air, New York 15/11/2000; Statute of Rome of the International Criminal Court, Rome 17/07/1998; Convention on the Prevention and Punishment of the Crime of Genocide, Paris 11/12/1948; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna 20/12/1988; Convention on Offences and Certain Other Acts Committed on board Aircraft, Tokyo 14/09/1963; Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague, 16/12/1970; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal 23/09/1971; Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, complementing the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 24.02.1988; Convention on the Marking of Plastic Explosives for Purposes of Detection, Montreal, 01/03/1991; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Rome, 10/03/1988; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, complementing the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Rome, 10/03/1988; Convention on the Physical Protection of Nuclear Materials, Vienna 03/03/1980; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, New York, 14/12/1973; International Convention against the Taking of Hostages, New York, 17/12/1979; International Convention for the Suppression of the Financing of Terrorism, New York, 09/12/1999; and International Convention for the Suppression of Terrorist Bombings, New York, 15/12/1997.

Thus, it can be said that the Agreement between the Argentine Republic, the Federal Republic of Brazil, the Kingdom of Spain and the Portuguese Republic on the Simplification of Extradition constitutes a significant step towards mutual recognition regarding extradition in the Region.

Grounds on which assistance is refused or prohibited

All cooperation treaties mention the causes of rejection that the requested State Party can allege in order not to render the requested assistance.

The following circumstances are all causes that would justify the refusal of the requested assistance:

- The requested State considers that rendering the requested assistance may damage its sovereignty, security, public order and other fundamental interests;
- The legislation of the requested State prohibits its authorities from executing a request in relation to a crime which has already been the object of investigations, processes or actions in the exercise of its own competence;
- The execution of the assistance request is contrary to the legal order of the requested State as regards judicial assistance.

Reasons must be provided to support any rejection. On occasions, treaties even provide the possibility of a temporary rejection on the grounds that its fulfilment may disturb on-going investigations or judicial processes in the requested State. In this case, instead of flatly rejecting the request, the requested State may propose to postpone its execution. Then, before formalising the rejection, the requested State shall consult with the requesting State whether it is possible to agree to the cooperation request in some other way or to adapt it to the conditions that may be deemed necessary.

Finally, for acts of cooperation other than extraditions, which may also entail movement to the requesting State of an involved or convicted person in the requested State, the request is made conditional on the fact that the subject renders his express consent to be an object of an act of cooperation. Therefore, the lack of consent of those whose cooperation has been requested may be a reason for the rejection of the cooperation request.

The conventions are usually very clear when contemplating rules that may prohibit, in all cases, the use of cooperation procedures with regard to certain causes. For example, they usually foresee the prohibition on cooperation for the persecution of persons for discriminatory or repressive reasons based on:

- Sex,
- Race,
- Social status,
- Nationality,
- Religion, or
- Political opinions.

It is also frequent to exclude from mutual assistance those requests that are filed for the persecution of political, military or tax crimes. This gives rise in practice to quite a few problems, particularly in relation to the interpretation of conducts that involve terrorist acts or political crimes. Thus, some conventions attempt to remove these doubts by listing those crimes which under no circumstances may be deemed political.

Law applicable to the execution of the measure.

In respect of the regime that governs the procedural action requested through judicial cooperation, the conventions usually contain a rule according to which the action shall have to be performed in full compliance with the legislation of the requested State. Accordingly, for example, Article 10 of the Inter-American Convention on Mutual Judicial Assistance in Criminal Matters states that “the requests for cooperation made by the requesting State shall have to be made in writing and be executed in conformity with the internal law of the requested State.”

This cooperation regime is the consequence of cooperation being conceived as an “act of solidarity among sovereign States.” It is evident in almost all the Conventions on judicial assistance in relation to criminal matters in the Latin American¹⁸ context that much still needs to be done to overcome a traditional concept of cooperation that is based on a horizontal structure in which commitments are attempted to be integrated by means of bilateral, multilateral or regional treaties and internal legislations of the Party State¹⁹. This is why steps need to be made towards so-called “associations for integration” - which is precisely the trend that is pursued in the European context and that gives rise, as Vogel²⁰ has indicated, to nothing more or less than an “integrated system of criminal justice.” Actually, this integrated system is characterised by the reciprocal recognition and confidence in the Party States’ criminal justice systems; in the slight rapprochement of substantive and procedural criminal law, and in the complementation of cooperation by means of coordination through institutions, which has made the creation of joint investigation teams possible.

¹⁸ Cfr Article 7 of the Protocol on Mutual Legal Assistance on Criminal Matters, drafted in St Luis on June 25, 1996; Article 7 also in the Agreement on Mutual Legal Assistance on Criminal Matters, among the States party to MERCOSUR, the Republic of Bolivia and the Republic of Chile, drafted in Buenos Aires on February 18, 2002; Article 2.5 of the Treaty on Mutual Legal Assistance on Criminal Matters between the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, drafted in Guatemala on October 28, 1993; and Article 10 of the Inter-American Convention on Letters Rogatory drafted in Panama on January 30, 1975.

¹⁹ Such is the case, for example, of Argentina's Law of International Cooperation in the criminal area of December 1996, or Article 74 to 80 of Eastern Republic of Uruguay's Law Number 17.016 on Drugs and Narcotics that Produce Physical or Mental Dependence.

²⁰ “Cooperación penal: Cinco tendencias. Cinco propuestas para una acción futura” 2006 in www.cienciaspenales.net, page 3.

These treaties sometimes contemplate the possibility that, to the degree that it is not contrary to the legislation of the requested State, the forms and requisites of the internal legislation of the requesting State may be followed for the execution of the requested measures²¹. A good example of this is the second paragraph of Article 10 of the Latin American Convention which provides that “to the degree that the legislation of the requested State is not contradicted, the steps mentioned in the request for assistance in the form expressed by the requesting State” shall be fulfilled. This means the opening of the *lex fori*, and therefore, of foreign laws in the internal procedures actions which, when dealing with investigative phases may be especially useful, above all when it involves “adding” certain guarantees or safeguards during the practice of the measure that prevents a possible risk of ineffective proof in the requesting State (i.e. certain documentation or recording of the act, the presence of certain subjects when carrying them out).

Lastly, to all the provisions contained in the treaties on mutual assistance one must add the numerous internal laws arising from national sources referring to international cooperation in criminal matters in the broadest sense, or in relation to specific aspects thereof.

These circumstances inhibit the requesting States’ view on how and in what way cooperation may be carried out. One recalls here the Model Code on Inter-jurisdictional Cooperation for Ibero-America, that started to be worked on back in 2005, and the final text of which was approved on September 15, 2007 in Salvador on the occasion of the XIII World Congress of the International Association of Procedural Law. Its preamble states:

“Transnational judicial guardianship is demanded by the current times, since constantly legal relations on various aspects cross the borders of a State. Ensuring the effectiveness of a judicial guardianship without borders means much more than merely recognizing the foreign judicial executed issues at trials.

[...]

The aim of a Model Inter-jurisdictional Cooperation Code resides exactly in unifying the fundamental principles and general rules inherent in the transnational jurisdiction that, with the necessary adaptations to each State, can be applied in all the legal systems that are devoted to a State of law.”

Today, the work that institutions such as IberRED carry out, which favours and strengthens cooperation mechanisms by means of informal activity, is

²¹Accordingly, for example it is set forth in Article 7 of the Protocol on Mutual Legal Assistance in Criminal matters, drafted in San Luis on June 25, 1996 that “1. The undertaking of the requests shall be governed by the required State and in accordance with the provisions of this Protocol 2. On the request of the requiring State, the required State shall comply with the assistance in accordance with the forms and special procedures indicated in the request lest they are incompatible with its internal law.”

essential to ensure the effectiveness of the formal mechanisms of cooperation.

Cost

Concerning the costs of cooperation, as a general rule the treaties provide that the ordinary costs that arise from the execution of the request are paid for by the requested State, except when the interested States have agreed otherwise. The conventions also provide for the possibility that the request for cooperation generates other types of expenses. When these are costly and extraordinary, it is usually provided that the parties consult one another in order to establish the terms and conditions that will govern the fulfilment of the request and how the costs shall be paid.

In any case, the costs arising from the transfer of witnesses or experts as well as persons deprived of liberty in order to take their testimony in the requesting State shall be assumed by the requesting State, thereby involving a contemplated exception, almost a mere formality in all treaties on mutual assistance.

Principle of specialty: Limitation on the use of information and confidentiality

Likewise, conventions on international legal cooperation contemplate limitations relative to the content and form of handling the cooperation request. On one side, restrictions are usually established in the use of both the information as well as the proof provided in the assistance framework for investigations, processes or judicial actions different from those contained in the request. Usually, and unless agreed otherwise by the States, the assistance and its results are subject to the exclusive application relating to the relevant crime which is the subject of the request. They cannot be used for another purpose except if it is otherwise agreed by the cooperating States. This is what is known as the “principle of specialty”. For example, in Article 19 of the Treaty of Mutual Legal Assistance in Criminal Matters between the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, drafted in Guatemala, Republic of Guatemala on October 28, 1993, one can read that the “Requesting State shall not use any information or proof obtained under this Treaty for other purposes that are not declared in the request or that stem from it as logical consequence without the prior consent of the requested State”.

Furthermore, the conventions usually refer to the confidential nature of the request and of its handling. This means that the publication of the request and its results shall be restricted. Regarding confidentiality, Article 10 of the Protocol on Mutual Legal Assistance in Criminal Matters, drafted in San Luis, states that “on the request of the requesting State the confidential nature of the request and its handling shall be maintained. If the request cannot be fulfilled without infringing on that confidential nature, the requested State

shall inform the requesting State of it, which will then decide if it agrees to the request.” Article 20 of the Treaty on Mutual Legal Assistance in Criminal Matters between the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, provides similar terms. In order to reach this goal, the Ibero-American Network of International Legal Cooperation has an Iber@ secure communication system.

Clause of Reciprocity.

The reference to the principle of reciprocity seems almost a mere formality. That is, in all that which is not addressed in Treaties on mutual assistance, there shall be reciprocity. Despite its extended use, the appeal to the principle of reciprocity constitutes a failure of the principle of legality, insofar as through this principle, the requests of cooperation not addressed in the conventions shall be governed by the practice of the States. And this highlights precisely how endemic the protection of that which is national is, to the degree that what is given is received - the idea inherent in the principle of reciprocity (do ut des).

In any case, this commitment to the principle of reciprocity in the absence of a legal instrument to regulate the request for assistance is even reflected at times in the national legislation, since through it favouring cooperation between sovereign states has been dealt with even in the cases where a regulatory framework did not exist.

Procedural rules

Form and content of the request for judicial assistance

In general, requests for assistance shall contain as a minimum the indications that will be briefly reviewed in what follows. In relation to the process that is followed in the requested State and for which cooperation is requested, the request shall have to specify: i) the status of the authority that makes the request, that is to say, the judicial organ entrusted with the process or, if necessary, the authority that carries out the investigation ii) the data relative to the identity of the processed person iii) likewise, the request shall make mention of the object and type of investigation, the process and the judicial actions to which the request refers iv) the object and reason for the assistance request. Here, the type of measure in question and the reason why it is needed for the action, process or investigation under way must be specified. With that, the appropriateness and proportionality of that asked for in relation to the process that is being carried out in the requesting State is sought to be verified.

It is also necessary to include a clear and precise description of the facts that constitute the crime that is the reason for the assistance in conformity with the internal law of the requiring country. There should be also a summary of the pertinent data that facilitates the handling of the request. This requisite shall not be necessary when the object of the request is limited to the presentation of judicial documents.

If need be, a description of the requested and detailed assistance on any particular procedure that the requesting State wants to be adopted in the action should be included. If the requesting State needs an action or particular procedure, the rules and special modes which will be eventually required for the execution of the measure requested shall have to be specified. Similarly, the identifying data of the authorities of the requiring country and the private parties that may participate therein will need to be given in detail. By so endowing the procedure with flexibility what is sought is, when possible, to be able to execute the request in conformity with the legislation of the requesting State, in order to avoid a strict application of the *lex loci*, and to ensure that the action is not contrary or insufficient in conformity with the *lex fori*, thereby preventing it validly effecting the process for which the cooperation was requested.

The reason why the evidence, information or actions are requested needs to be specified. Some conventions provide that this formality is removed from the authentication to the degree that the documentation is official and is sent by the competent central authority.

Finally, the request may be accompanied by any other data or complementary information that may result useful for the execution of the request. This additional information may refer to means of proof or legal

instruments. In any case, the requested State shall be able to request any additional information it may deem appropriate and necessary in order to be able to proceed in conformity with its own legal system.

Regarding the language in which the requests for assistance must be written, it is provided that the requests be drafted in any of the languages acceptable to the requested State. In any case, the requesting State shall bear the costs of the translation of copies that must accompany them.

Dealing with the Request

The international conventions in the LAC area usually include very similar laws with respect to the procedure for dealing with requests of mutual assistance. We will try to determine which are the minimum steps to request and comply with a request of mutual assistance.

Regarding the way in which the request is transmitted, the general rule is that it be done in writing. If needed urgently, the request may be sent by any means, provided a record is kept.

The bodies entrusted with issuing or receiving the requests shall be the competent authorities of each country, unless the instrument establishes that the central authorities are responsible for its execution, in which case these will be the bodies in charge. These central authorities shall be designated for such purposes by each of the party States.

Regarding duration, international conventions intend that assistance requests be handled and attended to as soon as possible. And as has already been stated, if the request needs to be postponed because it interferes with an investigation or procedure in the requested State, the requesting State shall have to be informed immediately thereof.

Finally, it corresponds to the central authority of the requested State to oversee the handling of the request for assistance before the competent jurisdictional authority in its country. Nevertheless, it is important to note that this is a task carried out by IberRED contact points and links, out of a desire to facilitate procedures and collaborate with foreign authorities as much as possible.

The competent authority is responsible for i) fixing the date of the performance of the measure requested through cooperation and ii) communicating the said date to the requesting State with sufficient notice. The way these actions are carried out will be decisive in those cases in which the requesting State has requested assisting to the programmed undertakings and its origin has been agreed to. To this end, the fixing of a date and its communication to the requesting State are fundamental in order to make these types of interventions possible.

3.2.2. Central authorities, means and deficiencies, practical facilities and resources in the LAC Region

Some considerations regarding Central Authorities

The first of the obligations contemplated generally in the treaties of judicial assistance is that of the designation in each of the States of a specific body or institution entrusted with the procedure or the handling of judicial assistance.

In many cases the Public Ministry is designated as the central authority. This is what occurs as a general rule when dealing with Chile, Colombia, Ecuador, Guatemala, Nicaragua, Mexico, Paraguay and Peru. This tends to be the trend more and more in the LAC environment, where the generalised attribution to the Public Ministry of the investigative or preparatory phase of the Criminal process increases its determining role in international judicial cooperation especially in that which refers to the fight against organised transnational delinquency. Although in many cases, attributing the status of the central authority to the Public Ministry has been growing due to the changes in the Criminal procedural model. Nor can one ignore the fact that this body usually also has a particular structure that on occasions facilitates the exchange of information and handling of the request. Moreover, this attribution is not inconvenient.

In May 2012 at the Fifth Meeting of the REMJA Working Group on Mutual Legal Assistance and Extradition held in Paraguay, the working group reported on the 'state of the region', using the data collected from questionnaires returned from 16 of the OEA countries (Argentina, Barbados, Brazil, Canada, Chile, Colombia, Ecuador, U.S.A, Guatemala, Guyana, Jamaica, Nicaragua, Panama, Paraguay, Peru y Uruguay).

With regard to central authorities, the data revealed that 5 of the 14 LAC countries involved (excluding the USA and Canada) do not have a single central authority designated for the receipt of requests for mutual legal assistance (not relating to extradition). The picture is further complicated by virtue of the fact that although some countries in theory have one unified and sole central authority, in for example Uruguay, the practice is that the named central authority in certain cases (where no bi-lateral convention exists) passes responsibility to another government department. With regards to Bolivia, for example, according to the DECRETO SUPREMO N°29894 about of the organisation of the Executive Branch of the Plurinational State of Bolivia (9 February 2009) the central authority in international judicial cooperation matters is the Ministry of Foreign Relations (Article 17, x). Furthermore, some countries have designated different bodies as the central authority, governmental or otherwise, under different conventions. This multiplicity of central authorities within a single jurisdiction can have serious adverse consequences for the efficient processing of requests - ranging from confusion for requesting states over the correct authority to use, to internal national issues and discussions over the competency of each authority. AIAMP

has identified this issue as important, and has recommended that the designated central authority with regards to conventions dedicated to international cooperation in criminal matters in all of the Ibero-American countries should be the national prosecutors' office.

Nevertheless, as MORAN MARTINEZ highlights with the status of the Public Prosecutor as the central authority, "it must depart from the fact that international legal cooperation does not involve in principal the exercise of jurisdictional power in the strict sense of "hear and execute that which is heard" for which it is not an activity designated exclusively to judges".²².

The central authorities have to be designated by the State Party at one of the following moments: i) upon signing of the convention ii) upon ratification or, if the case, iii) upon adhesion to the international instrument. Once designated, these central authorities are responsible for responding to the requests and overseeing them. Its functions are specified in generic terms of:

- sending and receiving of assistance requests:
- the establishment of direct communication for all the effects of the Treaty.
- the examination of the requests and
- exercising control that they contain the necessary information in order to justify the adoption of the required action.

The designation of the central authority is a highly important question and so it must be highlighted that the guaranteeing of rights and the effectiveness of cooperation depend not so much on the institution finally designated as on the legal regulation in regard to the matter. The greater development that the latter reaches the less is the scope for discretion and the less relevance the designation of the central authority will have. Although in practice, the lack of procedural operations of central authorities with a distinct political and more bureaucratic nature demonstrates that another type of institution, such as the Public Ministry, functions better.

²²"The Framework Decision of July 22, 2003 relative to the execution in the EU of the resolutions of precautionary seizures of goods and ensuring evidence." In the Proof in the European Space for Security and Criminal Justice Navarra 2006 page 71.

Outline of Attributions in the Principal Conventions

	CENTRAL AUTHORITY FUNCTIONS
Inter-American Convention on mutual assistance in Criminal Matters	<p>Receive Assistance Requests</p> <p>Mutually communicated directly for all the effects of the Convention.</p> <p>Determine that the request contains the information that justify the proposed measure..</p> <p>Communicate with the Central Authority of the other State party the information that it possess on the existence in the territory of the latter regarding the earnings, profits or instruments of a crime.</p> <p>Previously find out the whether the authorities and the interested parties or their representatives of the requesting State will be present and participate in the execution of the assistance request.</p> <p>Register the written consent of the person to appear in the requesting State and promptly inform the Central Authority of the requesting State of said consent..</p> <p>Agree on the moment of the return of the detained transferred to the State that delivered them</p> <p>Receive notification with respect to the transfer from its territory of the detained.</p> <p>Give its prior consent in order for the requesting State to reveal or use information or evidence obtained in the application of this Convention for different purposes than those specified in the assistance request.</p> <p>Specify the conditions in order to maintain the confidentiality of the information or evidence supplied on the request of the requested State. Consult among themselves when the requiring part cannot fulfil the request for determining the conditions of confidentiality that are mutually appropriate..</p>
Inter-American Convention on Serving Criminal Sentences Abroad	<p>Perform the functions provided in the Convention</p> <p>Serve as an intermediary in the management relative to the transfer request.</p> <p>Agree on the place of the delivery of the sentenced person by the sentencing State.</p> <p>Serve as an intermediary between the States parties in order that the authorities of the sentencing State may request reports on the situation in which the serving of the sentence of any sentenced person transferred to the receiving State in conformity with this Convention</p>
Inter-American Convention on the Reception of Evidence Abroad	Receive and distribute pleas or requesting letters for purposes provided in the Conventions
Additional Protocol to the Inter-American Convention on the Reception of Evidence Abroad.	<p>Receive from the Central Authority of a State Party pleas or demanding letters and forward them to the competent jurisdictional body for their undertakings in conformity with the internal law that is applicable..</p> <p>Receive from the jurisdictional body or bodies that which has been undertaken, the pleas or letter rogatory together with the pertinent documents.</p> <p>Certify the fulfilment of the plea or demanding letter to the Central Authority of the requesting State party or the reasons that prevent agreeing to the plea of demanding letter..</p> <p>Send the corresponding documentation to the requiring party in order for the latter to send it together with the exhorto or demanding letter to the jurisdictional body that has issued the latter</p>
Inter-American Convention on Proof of and Information on Foreign Law	<p>Receive the queries made by the authorities of its State and transfer them to the Central Authority of the requested State..</p> <p>Serve as an intermediary between the State Parties in order to respond to the queries performed between them</p> <p>Serve an intermediary between the requesting State and the requested State when they send each other requests.</p>
Inter-American Convention on Letters Rogatory	<p>Receive and distribute letters rogatory for purposes provided in the Convention.</p> <p>Transmit to the required body letters rogatory.</p>

Additional Protocol to the Inter- American Convention on Letters Rogatory	<p>Receive and distribute letters rogatory for purposes provided in the Protocol</p> <p>Transmit a letter rogatory that it receives from the Central Authority of a State Party to the competent jurisdictional organ for its undertaking</p> <p>Receive from the jurisdictional organ or organs that have undertaken, the letter rogatory together with the pertinent documents..</p> <p>Certify the fulfilment of the letter rogatory to the Central Authority of the requesting State Party</p> <p>Send the corresponding documentation to the requesting State in order for the latter to send together with the letter rogatory to the jurisdictional organ that has issued the latter.</p>
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List of Central Authorities designated by the LAC countries in the principal ALM conventions.

Inter-American Convention on MLA

	Central Authorities		Central Authorities	
	Public Ministry		Others	
	One	More than one		
ANTIGUA AND BARBUDA	No designated Central Authority			
ARGENTINA	X		Ministry of Foreign Affairs, International Commerce and Culture - Directorate General of Judicial Affairs	
BOLIVIA	X		Ministry of Foreign Affairs	
BRAZIL	No designated Central Authority			
CHILE	X		Ministry of Foreign Affairs	
COLOMBIA		X	General Prosecutor's Office	Ministry of Justice and Law
DOMINICA	No designated Central Authority			
ECUADOR	X		General Prosecutor's Office	
EL SALVADOR	X		Ministry of Foreign Affairs	
GRANADA	No designated Central Authority			
GUATEMALA	X		Public Ministry	
HONDURAS	No designated Central Authority			
JAMAICA	X			Ministry of Justice
MEXICO	X		General Prosecutor's Office	
NICARAGUA	X		General Prosecutor's Office	
PANAMA	X		Ministry of Government and Justice - National Directorate of MLA Treaties	
PARAGUAY		X	General Prosecutor's Office	Directorate of International Affairs and External Judicial Assistance
PERU		X	General Prosecutor's Office	International Judicial Cooperation and Extradition Unit
TRINIDAD AND TOBAGO	No designated Central Authority			
VENEZUELA	X			Ministry of Justice

Inter-American Extradition Convention²³

	Central Authorities	
	One	More than one
ANTIGUA AND BARBUDA		No designated Central Authority
COSTA RICA		No designated Central Authority
ECUADOR		No designated Central Authority
PANAMA		No designated Central Authority
ST. LUCÍA		No designated Central Authority
VENEZUELA		No designated Central Authority

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (Convention of Vienna)

	Central Authorities		Public Ministry	Others
	One	More than one		
ANTIGUA AND BARBUDA	X		General Prosecutor's Office Art. 7 (88 Conv.)	Ministry of Foreign Affairs Art. 17 (88 Conv.)
ARGENTINA	X			Ministry of Foreign Affairs, International Commerce and Culture Art. 6 (88 Conv.), 7 (88 Conv.), 17 (88 Conv.)
BAHAMAS		X	General Prosecutor's Office Art. 7 (88 Conv.) Ministry of Foreign Affairs – General Prosecutor's Office Art. 6 (88 Conv.)	Ministry of Transport and Aviation Art. 17 (88 Conv.)
BARBADOS	X		General Prosecutor's Office Art. 7 (88 Conv.)	
BELIZE		X	Ministry of the General Prosecutor Art. 6 (88 Conv.), 7 (88 Conv.)	Ministry of Foreign Affairs Art. 17 (88 Conv.) Ministry of Health Art. 6 (88 Conv.), 7 (88 Conv.), 17 (88 Conv.)
BOLIVIA				Ministry of Foreign Affairs Art. 6 (88 Conv.), 7 (88 Conv.)
BRAZIL		X		General Coordinator of the International Criminal Police Art. 6 (88 Conv.), 7 (88 Conv.), 17 (88 Conv.) General Coordinator of the Federal Police Drugs Control Office Art. 7 (88 Conv.), 17 (88 Conv.) General Coordinator of the Immigration Police Art. 7 (88 Conv.), 17 (88 Conv.) National Justice Secretary, Ministry of Justice Art. 6 (88 Conv.), 7 (88 Conv.)

²³ Only six OAS Member States are parties to the Inter-American Extradition Convention: Antigua and Barbuda, Costa Rica, Ecuador, Panama, St. Lucia and Venezuela

CHILE	X		Ministry of Foreign Affairs Art. 6 (88 Conv.), 7 (88 Conv.) Chilean Navy Art. 17 (88 Conv.)
COLOMBIA	X	General Prosecutor's Office Art. 6 (88 Conv.), 7 (88 Conv.)	Ministry of the Interior and Justice Art. 6 (88 Conv.), 7 (88 Conv.) National Anti-drugs and Maritime Intervention Unit (UNAIM) Art. 17 (88 Conv.) Ministry of Foreign Affairs Art. 6 (88 Conv.) Supreme Court of Justice Art. 6 (88 Conv.)
COSTA RICA	X	General Prosecutor's Office Art. 6 (88 Conv.), 7 (88 Conv.)	National Coastguard Service Art. 17 (88 Conv.) Costa Rican Drugs Institute Art. 7 (88 Conv.)
CUBA	X	General Prosecutor's Office Art. 7 (88 Conv.)	General Directorate of the Revolutionary National Police Art. 17 (88 Conv.) Ministry of Justice Art. 6 (88 Conv.)
DOMINICA		General Prosecutor's Office Art. 6 (88 Conv.)	Ministry of Judicial Affairs, Immigration and Employment Art. 7 (88 Conv.) Police Commissioner Art. 17 (88 Conv.)
ECUADOR	X		National Anti-Money Laundering, Financial Investigation Unit Art. 6 (88 Conv.), 7 (88 Conv.), 17 (88 Conv.)
EL SALVADOR	X	Financial Investigation Unit, (UIF), General Prosecutor's Office Art. 7 (88 Conv.) Specialist Drug-trafficking Investigation Unit, General Prosecutor's Office Art. 7 (88 Conv.)	Supreme Court of Justice Art. 6 (88 Conv.), 7 (88 Conv.) Navy Art. 17 (88 Conv.), National Civil Police Art. 17 (88 Conv.) Deputy Minister for Justice and Public Security Art. 6 (88 Conv.), 7 (88 Conv.)
GRANADA	X		Minister for National Security Art. 17 (88 Conv.) Minister for Judicial Affairs Art. 6 (88 Conv.), 7 (88 Conv.)
GUATEMALA	X		Division for the Registering and Control of Medicines and Foods Art. 7 (88 Conv.) Ministry of Foreign Affairs Art. 6 (88 Conv.) Supreme Court of Justice Art. 6 (88 Conv.) Minister for National Defence Art. 17 (88 Conv.)
GUAYANA	X		Ministry of Foreign Affairs Art. 6 (88 Conv.) Ministry of Internal Affairs Art. 7 (88 Conv.), 17 (88 Conv.)

HAITI			Ministry of Justice Art. 7 (88 Conv.) National Police Art. 17 (88 Conv.) Ministry of Foreign Affairs Art. 6 (88 Conv.)
HONDURAS			Public Ministry Art. 7 (88 Conv.)
JAMAICA	X	General Prosecutor's Office Art. 7 (88 Conv.)	Jamaican Coastguard Art. 17 (88 Conv.) Ministry of Justice Art. 6 (88 Conv.)
MEXICO	X	General Prosecutor's Office Art. 6 (88 Conv.), 7 (88 Conv.)	Naval Secretariat of Mexico Art. 17 (88 Conv.) General Directorate of Judicial Affairs Art. 6 (88 Conv.)
NICARAGUA	No designated Central Authority		
PANAMA	X	General Prosecutor's Office Art. 7 (88 Conv.)	Ministry of Foreign Affairs Art. 6 (88 Conv.) National Fleet Air Arm Service Art. 17 (88 Conv.)
PARAGUAY	X	Public Ministry Art. 7 (88 Conv.)	Ministry of Foreign Affairs Art. 17 (88 Conv.) Ministry of Justice and Employment Art. 17 (88 Conv.)
PERU	X	General Prosecutor's Office Art. 6 (88 Conv.), 7 (88 Conv.)	General Directorate of the Harbourmasters and Coastguard Art. 17 (88 Conv.)
DOMINICAN REPUBLIC ST KITTS AND NEVIS ST. LUCÍA		General Prosecutor's Office Art. 7 (88 Conv.) General Prosecutor's Office Art. 7 (88 Conv.)	Supreme Court of Justice, Criminal Division Art. 6 (88 Conv.) Secretariat of the Assessment Council for Substance Abuse Art. 7 (88 Conv.)
ST VINCENT AND THE GRANADINES SURINAME	X	General Prosecutor's Office Art. 7 (88 Conv.)	Ministry of Justice and Police Art. 6 (88 Conv.) Art. 7 (88 Ministry of Justice and Police Conv.), 17 (88 Conv.)
TRINIDAD AND TOBAGO	X	Central Authority Unit, General Prosecutor's Office Art. 6 (88 Conv.), 7 (88 Conv.)	Trinidad and Tobago Coastguard Art. 17 (88 Conv.)
URUGUAY			National Drugs Council Art. 17 (88 Conv.) Ministry of Foreign Affairs Art. 6 (88 Conv.) Ministry of Education and Culture Art. 7 (88 Conv.)
VENEZUELA	X		Ministry of Foreign Affairs Art. 6 (88 Conv.), 7 (88 Conv.) Venezuelan Navy Art. 17 (88 Conv.)

United Nations Convention on Organised Transnational Crime.
(UNODC).

ANTIGUA AND BARBUDA	No designated Central Authority	
ARGENTINA	X	Ministry of Foreign Affairs (art. 18)

			Naval Prefecture of Argentina (art. 8)
BAHAMAS	No designated Central Authority		
BARBADOS	No designated Central Authority		
BELIZE	X	General Prosecutor's Office (art. 18)	
BOLIVIA	X		Ministry of Foreign Affairs and Culture (art. 18)
BRASIL	X		National Secretary of Justice, Ministry of Justice (arts. 18 y 16)
			Foreigners Department, Ministry of Justice (art. 16)
CHILE	X		Ministry of Foreign Affairs (art. 18)
COLOMBIA	X	General Prosecutor's Office (art. 18)	Ministry of Justice and Law (art. 18)
COSTA RICA	X	Costa Rican Public Ministry (arts. 8, 16 y 18)	
CUBA	X		Ministry of Justice (art. 18)
DOMINICA	No designated Central Authority		
ECUADOR	X	General Prosecutor's Office (art. 18)	
EL SALVADOR	X	Financial Investigation Unit (UIF) General Prosecutor's Office (art. 18)	Navy (art. 8)
		Specialist Drug-trafficking Investigation Unit, General Prosecutor's Office (art. 18)	Supreme Court of Justice (art. 18)
			Deputy Ministry of Justice and Public Security (arts. 8, 18 , 16 y 13)
			Ministry of National Defence (art. 13)
			General Directorate, Ministry of Justice and Public Safety (art. 8)
GRANADA	X		Office of Judicial Power and Public Ministry (art. 8)
GUATEMALA	X	Public Ministry (art. 18)	Ministry of National Defence (art. 8)

GUAYANA	X		Ministry of Internal Affairs (arts. 8 , 18 y 13)
HAITI	No designated Central Authority		
HONDURAS	No designated Central Authority		

	Authority		
JAMAICA	X	General Prosecutor's Office (art. 18, 8 y 13)	Ministry of Justice art. 16)
MEXICO	X	General Prosecutor's Office (art. 16)	General Directorate for Judicial Affairs -Foreign Affairs Secretariat (art. 16) National Migration Institute (art. 8) The National Centre for Planning, Analysis and Information for Combating Delinquency (art. 13)
NICARAGUA* (Conflicting information between the UN list and Ibered)	X	Public Ministry (art. 18)	General Prosecutor's Office (art. 8)
PANAMA	X	General Prosecutor's Office (art. 18)	Ministry of Foreign Affairs (art. 16)
PARAGUAY	X	Public Ministry, General Prosecutor's Office (art. 18)	Ministry of Foreign Affairs (art. 16) Ministry of Justice and Employment (art. 16)
PERU	X	General Prosecutor's Office(arts. 8, 18 y 16)	
DOMINICAN REPUBLIC	No designated Central Authority		
ST KITTS AND NEVIS	No designated Central Authority		
ST. LUCÍA	No designated Central Authority		
ST VINCENT AND THE GRANADINES	X		Police Commissioner (art. 8)
SURINAME	No designated Central Authority		
TRINIDAD AND TOBAGO	X		Office for Organised Crime, Drugs and Firearms (art. 13)
URUGUAY* (Conflicting information between the UN list and Ibered)	X		Ministry of Education and Culture (art. 18)

3.2.3. Domestic Laws dealing with MLA in Criminal Matters and Extradition.

In this section, within the space limitations allowed, a brief analysis of current national legislation governing mutual legal assistance in criminal matters and extradition has been made. To this end, and based on the objectives of the project approved, we have chosen to distinguish between different groups of countries, depending on the importance each of them has for the EU's own study.²⁴

Firstly, the most salient features of the legislations of Colombia, Bolivia, Peru, Dominican Republic, Mexico, Uruguay, Venezuela and Jamaica are analysed. Then, the legislations of the second category of countries studied in this report, namely Argentina and Brazil, will be examined, together with the legislations of some Central American countries. These countries are not expressly included in the objective of the report, yet due to the level of regional violence generated within them and their important role as transit drug trafficking routes, especially to Mexico and the US, they are highly relevant. We have chosen Honduras, Guatemala, El Salvador and Panama, the first three for being transit countries to the North, and the last one for its proximity to Colombia, the largest producer.

Not wanting to ignore the CARICOM countries, we have also looked at their respective national legislations, albeit not in detail. Indeed, this will be done at a later stage. What interests us here is their special relationship with the Commonwealth and the US. Regarding the eight most important countries for this report and those with a secondary level of importance, we have found it important to focus on domestic legislation relating to drug trafficking and the fight against organised crime, so much present in the region, beyond the general provisions governing criminal legal assistance or extradition.

As for the parameters of the Study, we have first of all identified any specific legislation or its inclusion into more general criminal procedure codes. Thus, in this section comments are made on the prevalence of criteria relating to mutual legal assistance sources; investigative measures that may be requested within the scope of that request for assistance; the influence of bilateral and multilateral treaties on mutual assistance in criminal matters on domestic legislation; and any provision of temporary or territorial application

²⁴ The well-documented and extensive research carried out for this section, could be further complemented with the information that is available on the **UNODC Legal Library**. It contains laws and regulations per country regarding mutual legal assistance, extradition, confiscation, money laundering, drugs, controlled delivery and undercover operations and illicit trafficking by sea. It provides examples of how States have addressed specific difficulties. Searches can be carried out in different ways: via a "country pages" menu, a traditional search form or a more detailed "explore" view.

in some cases, for the sake of countries' idiosyncrasies, particularly in relation to organised crime. We also make mention of the existence or not of bank secrecy and the possibility of requesting its lifting as a specific measure related to money laundering offences, the other side of the coin of drug trafficking.

In terms of domestic legislation on extradition, we identify it, we examine the possibility or impossibility of extraditing nationals, identify also the authorities that are involved in the process, and we touch slightly on some special points regarding minimum sentences, the foundation of extradition, etc. The more precise definition of other equally important parameters, such as the existence or lack of a simplified extradition convention, the temporary surrender of citizens, the competing extradition warrants by third countries, etc., is left for a later stage.

A) Countries specifically included in the Project:

COLOMBIA

- Internal rules on Mutual Assistance in Criminal Matters are found in the Code of Criminal Procedure, Book V.
- Internal rules on Extradition are found in the Code of Criminal Procedure - Book V on "International Cooperation".
- Act 600 of 2000: Title I, Section 508-534.
- Act 906 of 2004: Book V, Section 490-517.

The Colombian criminal procedural law lays down the norms governing judicial cooperation in criminal matters. Colombia is party to several multilateral agreements. It has also signed several agreements on criminal matters with various countries. The procedures prescribed in the field of judicial cooperation are developed in the *Manual de Intercambio de Pruebas con el Exterior* [Handbook on the exchange of evidence with third countries], issued by *Fiscalía General de la Nación* (Res. 0024 of January 15, 2002).

In the reform of the implementation of the adversarial system, the judicial cooperation structure is preserved under the same criteria of Act 600 of 2000, within the limits and functions set out in Articles 484 et seq. of Act 906 of 2004. The general cooperation principle in Article 484 differs from the provisions of Article 503 of Act 600 of 2000, in so far as it incorporates the possibility of sending International Criminal Court requests to national authorities.

The Act also establishes the possibility of directly responding to the requirements of INTERPOL red notices, provided the person detained under such circumstances is made available to the *Fiscalía General de la Nación* for extradition purposes and proceedings. Likewise, the principle of dual criminality, is complemented in the reform with the possibility of creating joint operating units across different countries, in accordance with domestic law constraints under the direction and coordination of the *Fiscalía General de la Nación*. In any case, these proceedings are conducted with full observation of and absolute respect for the territorial jurisdiction requirements that govern such events.

Finally, it is to be noted that criminal legal assistance may be provided even if the conduct for which it has been requested is not criminalised under domestic law, unless contrary to the values and principles enshrined in the political constitution of Colombia.

International cooperation between States in criminal matters is governed by bilateral and multilateral agreements on the subject signed and ratified by several countries. In the absence of any specific agreement, it will be governed by the principles of voluntarism and reciprocity. In Colombia, one may request, through the *Fiscalía General de la Nación*, to enter into a specific agreement to implement certain special investigative techniques,

always in terms similar to the provisions of multilateral international conventions, such as the UN Convention on Drugs (1988), or the Palermo Convention (2000), for example in matters related to the infiltration of criminal organisations, undercover agents, controlled deliveries or international operations.

It is interesting to note that Decrees 1860 and 2105 of 1989 include certain exceptional measures to combat drug trafficking crime in the context of martial law for the whole territory of Colombia or part thereof.

Regarding extradition matters, Colombia extradites its nationals if the acts for which their extradition is requested were committed after December 17, 1997. There is no mention of the principle of reciprocity in the granting of extradition in Colombia. Rather, extradition is based on international treaties or, in the absence of any treaties, on domestic legislation. It is optional for the Government of the Nation. In any case, the offence for which extradition is requested must be punishable in Colombia, and with no less than 4 years imprisonment and an indictment or similar must have been issued. When it comes to extradition, the route chosen is the diplomatic channel, i.e. the request for extradition must be addressed to the Ministry of Foreign Affairs of the Republic of Colombia. Yet this is a rather complex issue, for the ultimate authority can actually be the national government itself. Nevertheless, several state authorities are involved in the extradition process: the Ministry of Foreign Affairs, which represents the Colombian government for communication purposes with the requesting State; the Ministry of the Interior, which is the body that decides on extradition; the *Fiscalía General de la Nación*, which is the authority in charge of issuing the arrest warrant and holding the person whose extradition has been requested in custody throughout the procedure.

PERU

Mutual legal assistance in criminal matters is dealt with in the Code of Criminal Procedure, Book Seven, on "International Judicial Cooperation", in force since 1 February, 2006.

Extradition is taken care of in the Code of Criminal Procedure, Book Seven, Articles 514 to 527, in force since 1 February, 2006, and in Supreme Decree 016-2006-JUS. In accordance with Peruvian criminal procedural law, mutual legal assistance in criminal matters is governed by the treaties signed and ratified by Peru and, in the absence of any treaties, by the principle of reciprocity and the domestic legislation, based on the respect for human rights. When the extradition request is based on treaties or conventions, the requirements contained in those instruments shall prevail; otherwise, the following requirements contained in the procedural rule (article 530) shall apply:

- Name of the foreign authority in charge of the investigation or prosecution of those who issued the request.

- The nature of the investigation or prosecution.
- Offence to which the extradition request refers and description of the facts.
- Complete and accurate description of the assistance requested.

A passive mutual legal assistance shall be requested in accordance with and in the form established in the respective Treaty. In the absence of a Treaty, the request shall meet the requirements of Peruvian law and be submitted to the Central Authority, directly or through diplomatic channels. In urgent cases, requests may be forwarded by email or fax, or through the NCB INTERPOL Lima, with the commitment to send the original document as soon as possible. Upon receipt of the request, the Central Authority shall take into account the competency rules and submit it to the competent Judge, who shall then issue the resolution for admission and execute the request, provided it is not contrary to the Peruvian legal system. Following this, the Judge shall transmit the proceedings to the Central Authority, who shall in turn transmit them to the requesting State.

Peruvian domestic legislation conceives extradition and the temporary transfer of sentenced persons to appear as witnesses when required, as acts of international legal cooperation in their own right. In the absence of a Treaty, extradition is governed by the principle of reciprocity. In this case, dual criminality is required and, in any case, the offence must be punishable with at least one year of imprisonment. Peruvian domestic law regulates in detail the whole extradition process, the conditions for refusal and other formal requirements. Peru's Political Constitution, in Article 37, defines the mixed nature of extradition when stating that shall only be granted by the Executive, on the report of the Supreme Court, in compliance with the law and treaties, and the principle of reciprocity. Moreover, it establishes that extradition shall not be granted if it is considered to have been requested for the purposes of prosecuting or punishing the person whose extradition has been requested on the grounds of religion, nationality, or race. Neither are political offences or related acts considered as extraditable, genocide, assassination and terrorism not being considered as such.

BOLIVIA

In May 2001 a new Criminal Procedure Code came into force in Bolivia (Law 1970 of March 25, 1999) which came into full force as of 31 May, 2001, in accordance with its final provisions. The Code incorporates rules on Mutual Legal Assistance and Extradition under "Title VI, International Judicial and Administrative Cooperation, Chapter I" and "Chapter II Extradition" respectively.

In the absence of a specific agreement, Bolivian regulations on mutual legal assistance in criminal matters provide for the possibility of cooperating with foreign authorities in criminal matters on request, in respect of the Criminal Procedure Code and the constitution of the Plurinational State of Bolivia. It particularly provides for the training of Joint Investigative Teams for transnational investigations, with criminal organisations in this area.

Extradition, for its part, is governed by the rules contained in the Criminal Procedure Code or by the principle of reciprocity in the absence of a bilateral convention. In case of contradiction between the rules contained in this Code and those incorporated in a convention or treaty on extradition, the latter will prevail. There is an express reference to the possibility of extraditing nationals, provided that the penalty is greater than two years.

DOMINICAN REPUBLIC

The [Criminal Procedure Code](#), Ley 76-02, de 19 de julio de 2002 (CPP) regulates the mutual legal assistance in Articles 155 and following of the CPP, under the principle of maximum cooperation as a mandate addressed to judges and prosecutors. In cases of urgency, requests may be directed by any means to any judicial or administrative authority.

Extradition is established in the Constitution, treaties, conventions, and other international agreements, and the special law unless it is contrary to that Code (art. 160 of the CPP). Although there is a specific law which regulates the matter ([Law 489 of October 22nd, 1969](#)) it is the unanimous opinion of the Public Prosecutor's Office and the Judicial Power that the Criminal Procedure Code has surpassed this law, because the surrender procedure is now essentially judicial. This way, normative gaps are filled through judicial solutions, in line with the provisions of the new [Constitution of 2010](#) applied directly.

Active extradition. The competent court has the power to order the processing of the extradition, at the request of the public prosecutor or the parties. The Secretariat of State for Foreign Affairs certifies and organises the translations where appropriate, and it presents the request to the foreign government within two months (art. 161 CPP).

Passive extradition. The request for extradition of a person who is in the territory of the Dominican Republic must be submitted by the Executive Power (which physically takes place through the International Criminal Cooperation Area) to the Supreme Court, which is empowered to decide as appropriate (art. 162 CPP). The Supreme Court may order the application of enforcement measures under the principle of dual criminality and specifically may order the arrest of the subject by the security forces.

It should be pointed out that:

- Extradition is optional.
- Extradition may be granted for trial or for punishment once sentenced.

MEXICO

There are no specific provisions regulating international judicial cooperation. There are some scattered regulations in the 1975 International Extradition Law, in the 2011 Migration Law, in the Federal Criminal Code recently

reformed in June 2012, in the Federal Criminal Procedure Code (in the same reform as the previous code), and in other administrative laws, such as the Attorney-General of the Republic Law or the Organic Law on Federal Administration.

As regards International Legal Assistance, the liaison body is the Attorney-General of the Republic, as it is specifically with regard to assistance on drug trafficking issues. It is also the competent authority as regards Extradition, always through its Directorate-General for Extraditions and Legal Assistance.

The international legal assistance process is based on the international conventions signed by the states that request assistance of Mexico, and must meet the requirements in said conventions. Internal processing in Mexico of the request makes it possible to request or obtain data from all kinds of federal, state, or municipal organisations, as well as from private citizens. If a request does not meet the stipulated requirements, it can be amended or expanded.

As regards passive extradition, Mexico follows the Treaty or the international extradition law signed for this purpose. There are clearly defined stages - judicial and governmental, with a final decision by the Mexico Chancellery on the internationally requested extradition.

The basic Extradition regulations are contained in the International Extradition law, published in the Official Gazette of the Federation on 29 December 1975, which came into force in December 1975, and which was reformed by publication in the Official Gazette of the Federation on 18 May 1999.

VENEZUELA

The Venezuelan constitution forbids the extradition of Venezuelan nationals; the double criminality principle is in force; there is no extradition for political crimes; the death penalty, life sentence, or sentences higher than 30 are causes for compulsory denial of extradition; extradition speciality applies; non-prescription of the crime or penalty according to the legislation of either one of the states involved is also a necessity. Extradition in Venezuela is internally governed by the Penal Procedural Organic Code. The Treaties, Conventions, and Agreements signed by the Republic are also sources for extradition.

The possibility for the foreign State to appoint an Attorney to defend its interests in the special extradition process should be highlighted, as should the fact the final decision on active or passive extradition falls exclusively to the Supreme Court of Justice, and thus there is no government involvement.

JAMAICA

Jamaica has an internal 1995 International Judicial Cooperation Law. The Law distinguishes between requests made by Jamaica and those made by foreign countries. It also distinguishes between requests for assistance from Commonwealth countries and by countries that are signatories of a bilateral or multilateral convention. It is a complex Law, which practically requires prior contact with the Jamaica Central Authority to find about the possibilities of success of a request.

Later use of evidence or information obtained or of the documents or objects

Real Story nº2: The extradition of 'Dudas' Coke

[Social repercussion of extradition under weak conditions of rule of law enforcement]

Christopher Michael Coke, also known as Dudas Coke, was born in Jamaica on 13/03/1969. His father was a well-known drugs lord and when he was killed in 1990, Dudas took over his role at the age of 21. He was the leader of the Shower Posse and was involved in the exportation of cocaine and marijuana to the USA. He also became a leader of the Tivoli Gardens area of West Kingston.

On the 25th August 2009 the USA issued a diplomatic note requesting the extradition of Dudas Coke to face trial on charges of conspiracy to distribute cocaine and marijuana, and trafficking in firearms. The then Jamaican Labour Government refused the extradition on the grounds that the evidence against Dudas Coke came from telephone intercepts which were only granted by the Supreme Court of Jamaica for supply to the commissioner of police and other local bodies, but not to any US authority.

The US put considerable pressure on the Jamaican Government to hand over Dudas Coke, and on the 17th May 2010 the government relented and agreed to the extradition. Coke's supporters rallied around him and Tivoli Gardens was fortified. There were shootings and firebombs in Kingston and the government placed the city under a state of emergency. On the 24th May 2010 there was a large scale operation to capture Dudas Coke, which lasted for three days and resulted in the deaths of over 70 people.

On the 22nd June 2010 Dudas Coke was stopped at a road block and arrested. He has since been condemned in the USA to 23 years' imprisonment. The issue of his extradition nearly brought down the Jamaican government and had severe repercussions in Jamaican society. It also exposed the powers in that society of both the drugs lords and the police and army. It is a very recent and telling

produced in judicial assistance is expressly restricted. These can in principle be used only in the proceedings that led to the request for international assistance request, a provision which also applies to the active requests for assistance made by Jamaica .

The aforementioned Law regulates in detail all the possibilities for the request for judicial

assistance made by foreign states, specifically mentioning the possibility that both states, by means of an Agreement, can include in the request all that is the object of international judicial cooperation pertaining to the matters described in the text of the norm itself. The Jamaica Central Authority is competent to determine whether foreign assistance should be requested or not. It is an administrative authority, as no reference is made to Judges or Attorneys in this domain. Its criteria are also wide-ranging as regards the final decision to provide assistance or not, or to provide it partially. There is an Organised Crime Investigation Unit which also takes part in execution of international judicial assistance requests. The need for confidentiality regarding the evidence or information obtained from Jamaican authorities is regulated.

In order to request judicial assistance of Jamaica, a previous bilateral or multilateral Agreement is required. If there is no such agreement, no arrest warrants or financial searches can be obtained. Internal Jamaica law allows

reciprocal judicial assistance, which can include taking individuals' testimonies or statements, submitting judicial documents, performing inspections and seizures, examining objects and places, providing information and evidence, delivery original or certified copies of relevant documents and files, instruments, and other items for evidentiary purposes.

Foreign authorities making a request for assistance are required to follow a model, established in the Law, which depends on the type of assistance requested by the foreign state. On this basis, Jamaica requires certain documents. There is a specific procedure to request the blocking of financial assets. Banking secrecy and other confidentiality regulations do not constitute an obstacle to reciprocal judicial assistance. Even though there is no law allowing controlled deliveries, their use can be approved on a case-by-case basis by the competent authority, in this case the Director of Public Prosecutions.

As regards Extradition, its internal Law is the 1991 and 1992 Extradition, more specifically Section 20 of said law, which applies to non-Commonwealth, non-USA countries. Under Jamaican legislation, extradition, including the extradition of Jamaican nationals, is possible in cases of illegal drug trafficking and asset laundering. Jamaica has fulfilled the obligation of designating a competent authority, the Director of Public Prosecutions, to receive, respond to, and process requests for extradition. In addition, Jamaican legislation makes it possible for a person whose extradition for a crime of illegal drug trafficking has been denied to be brought to trial for said crime in Jamaica, though not in the case of asset laundering.

B) Countries specifically included in the Project in a secondary way.-

BRAZIL

Brazil does not have a specific national law on international judicial cooperation. The 1941 Penal Procedural Code, which has undergone many modifications, includes some provisions on international cooperation. Book V, after article 780, regulates Jurisdictional Relationships with Foreign Authorities, but basically concerning delivery of Letters of Requests or delivery of foreign sentences.

As regards extradition, the Foreign Statute, Law 6815/80 of 19 August 1980 regulates extradition in art. 75ff.

Brazil did not adopt a rigid form which must be completed by the competent foreign authorities when submitting requests for judicial assistance to Brazil, but they must complete internationally recognised documents for this kind of process. Depending on the nature of the request, DRCI may forward it alternatively or jointly to the Federal Police Department in the event that police measures should be later taken. Finally, in the case of acts which, under Brazilian legislation, do not require jurisdictional intervention, DRCI may forward the request for assistance directly to the competent authority.

Of particular interest is LAW No. 9,613, of 3 March 1998, a law which, in the specific domain of asset laundering, concerns laundering or concealment of assets, rights, and securities; prevents use of the financial system for the cases envisaged by this Law; and creates the Council for Control of Financial Activities (COAF).

This law, which is of a federal nature, includes specific Procedural Provisions in such matters as the possibility of requesting measures for seizure of assets or rights at the request of a foreign authority, always subject to international conventions, or, in their absence, if reciprocity is offered.

Law 6815/80 of 19 August 1980 regulates extradition in art.75 to 93. It is based on conventions or treaties, or, in their absence, in accordance with the reciprocity criterion. It came into force on 10 December 1981. Brazilian nationals cannot be extradited. In all cases, double criminality is required. A period of 90 days is established to send the request for extradition to Brazil, after the subject whose extradition is requested has been sentenced to prison in the country in question.

ARGENTINA

In Argentina Law 24767 of 18 December 1996 is in force as regards international judicial cooperation. Decrees that complement it: Decree 1052/1998; Decree 1581/2001; Decree 420/2003.

As regards extradition, the Cooperation Law itself, Law 24767 of 18 December 1996, now regulates extradition, derogating the specific extradition Law, Law 1612. Cooperation Law 24767 is aimed above all at fighting transnational organised crime. It is divided into chapters on penal assistance, extradition, transfer of convicted individuals, and fines and confiscation. Argentina provides wide assistance to requests from other countries, and does not require double criminality. If the measures for which assistance is required concern interception of communications, searches, seizures, etc. which constitute exceptions to the individual rights established by the National Constitution, double criminality will be required.

The law is highly detailed, with 126 articles regulating mainly, for purposes of our study, passive extradition, providing the general requirements and procedure to be followed, which has an administrative process and a judicial process, and then active extradition.

As regards extradition, Argentina does not make delivery of a person dependent on whether he or she is an Argentinean national, unless a treaty establishes otherwise and is thereby not optional but mandatory for Argentina. If the treaty establishes that extradition of an Argentinean national is optional, it is the Executive Power (Ministry of Foreign Relations, International Trade, and Religion) that decides whether the person in question will be handed over or not, in accordance with the International Cooperation

law as regards penal matters. In addition, simplified extradition is regulated, as is temporary delivery to the State requested extradition, so that the person in question can make a statement in the lawsuit against him or her before said authorities, and is then returned to the authorities where he or she has been locally sentenced.

The aforementioned Law has a specific chapter on transfer of convicted individuals to Argentina to serve the sentence imposed by a foreign Court in Argentina. This applies to convicted individuals who are Argentinean nationals.

The Law also provides a chapter on serving sentences passed in Argentina in a foreign country. The request can be made by the convicted person, by third parties on his or her behalf, or by the foreign State of which the convicted person is a citizen.

Finally, Law 23,737 on Drug Possession and Trafficking of 1989, modified in 1995, should be mentioned as it provides in 47 articles various provisions on drug control at a national level, regulates the figure of the undercover agent, does not include any provision on international judicial cooperation and provides wide-ranging powers of investigation on a federal level to the Argentinean Federal Police, together with the National Customers Administration and security bodies.

C) Central American countries which are used as drug trafficking routes: Honduras, El Salvador, Guatemala, and Panama.

HONDURAS

In Honduras there is no special Law regulating international judicial cooperation. However, paragraph 2 of Article 16 of the Constitution of the Republic establishes that “the international treaties between Honduras and other states become part of internal law once they come into force”. For this reason, the procedures for fulfilment of and request for International Judicial Cooperation Conventions are performed as established in the treaties signed, particularly in the American multilateral and bilateral treaties.

If a Reciprocal Assistance Convention has been signed with a country, or in the cases envisaged in the Vienna Convention, it suffices for the requesting country to send the request to the Attorney General of the Republic as the Central Authority who will forward it to the relevant Special Prosecutor’s Office. Once the request is processed, it will be sent to the Foreign Office to be signed by the Attorney General, and all the processed documents will be directly sent to the requesting country.

As regards Extradition, the Constitution of the Republic, in force since 1982, specifies in number 4 of Article 313 that one of the attributions of the Supreme Court of Justice is “Considering extradition cases and other cases to be tried in accordance with International Law”. In addition, paragraph three of

Article 101 of the Constitution of the Republic establishes: “The State shall not authorise extradition of individuals convicted of political crimes and related common crimes” and Article 102 of the Constitution of the Republic, the reform of which came into force on 17 October 2012, establishes that: “No Honduran national may be expatriated or delivered by the authorities to a Foreign State. Exceptions to this are the cases related to Drug Trafficking crimes in any of its varieties, Terrorism, or any other case of Organised Crime, and when there is an Extradition Treaty or Convention with the requesting country. Under no circumstances will a Honduran national be extradited for political crimes and related common crimes”.

The attributions of the Supreme Court of Justice in this matter are also established in number 8 of Article 78 the Law of Court Organisation and Attributions, which establishes that it is in charge of “Considering cases of capture, extradition, and others which must be tried in accordance with International Law”.

Articles 148 and 149 of the Penal Procedural Code, which came into force on 20 February 2002, include minimum provisions as regards the requests for assistance from foreign authorities and the basic extradition regime. Moreover, the Anti-Asset Laundering Law which came into force in June 2002 includes a specific provision on international cooperation, article 46, which establishes the possibility of requesting all kinds of assistance in this regard on the basis of the Law, treaties, conventions, and, in their absence, in accordance with the reciprocity principle.

Also in the internal domain, the Law on Drug and Psychotropic Substance Abuse and Trafficking, which came into force in September 1989, includes specific provisions on cooperation in this matter, more specifically as regards extradition. In accordance with article 10 of the Penal Code and the treaties signed by Honduras, generally speaking extradition is accepted pursuant to the Law and the Treaties, always for crimes with sentences of more than 1 year. The impossibility of extraditing Honduran nationals has been surpassed by means of the recent reform of the Honduran Constitution, at least as regards drug trafficking crimes and organised crime, as was previously stated.

GUATEMALA

There is no general norm on International Judicial Cooperation. However, the Law against Drug Trafficking, Decree 48-92; the Law Against Laundering of Money or Other Assets, Decree 67-2001; the Law on Prevention and Repression of Terrorism Financing, Decree 58-2005, and the Law on Expiry of Ownership, Decree 55-2010, include specific sections on Mutual Legal Assistance. As regards Extradition, the Regulatory Law on the Extradition Procedure is Decree 28-2008.

There is a general statement on the interest in international cooperation in article 7 of the Law against Drug Trafficking, which came into force in October

1992, without further specification. However, this Law, after article 63, does define very wide-ranging international judicial assistance measures, comprising even all those which are not forbidden in Guatemalan internal law.

The aforementioned law also includes specific provisions on Extradition in the absence of international treaties or conventions. Reciprocity is also contemplated in other cases. Simplified extradition is regulated. However, the specific provision concerning Extradition is the Regulatory Law on the Extradition Procedure, Decree 28-2008, which came into force in May 2008. It is expressly stated that in the event of a discrepancy between this Law and the International Treaty, the latter shall prevail in all cases. Simplified extradition is expressly regulated.

In August 2006 a comprehensive Law against Organised Crime came into force, which envisages application of many ordinary and special investigation measures against organised crime, although it does not envisage any specific norm on international cooperation in this domain. Finally, Decree 67-2001 approved the Law against Laundering of Assets, which in this domain does include specific provisions on international judicial assistance, even to foreign administrative authorities, regarding a wide range of possible actions within Guatemala, and which can be taken abroad.

EL SALVADOR

In the field of International Criminal Judicial Cooperation, El Salvador's Penal Code generally governs the remission of the Letters Rogatory from Foreign Courts, which will be processed in the cases and manners established by the treaties or international customs and by the laws of the country, and the response will be issued by the Foreign Ministry, per Article 140. As for letters rogatory, there is currently no national legislation beyond the provisions cited above, so these must directly rely on the application of international treaties in force in El Salvador, or where applicable, on international customs and the direct application of the national law in effect.

Extradition will proceed when the offence was committed within the territorial jurisdiction of the requesting country, except in the case of transnational crimes, and may not be stipulated in any case for political offences, but as a consequence of these ordinary offences. Extradition shall be regulated in accordance with the International Treaties and when dealing with Salvadorans, will only proceed if the corresponding treaty expressly stipulates it and has been approved by the Legislative Bodies of the signatory countries. In any case, its provisions should preserve the principle of reciprocity and grant Salvadorans all criminal and procedural guarantees established by this Constitution. Extradition in Salvadoran law appears in the founding legislation of the country: Constitution of the Republic of El Salvador of 1983 Article 182 No. 3, Article 28.

Extradition is regulated by both domestic and international law; internally, it may be regulated constitutionally, in the Penal Code or in a Special Law on Extradition. Internationally, it may be regulated by International Treaties, be they bilateral or multilateral, and in the principles recognized by International Law. Extradition is granted by the Supreme Court of Justice, by constitutional provision.

PANAMA

There are no specific laws regarding international judicial cooperation. Notwithstanding, judicial cooperation is granted through a multilateral or bilateral agreement or treaty and in the event one does not exist, through the principle of reciprocity. Extradition is regulated in the Penal Code and the Special Law on Drug-Related Offences. With regards to the requirements to formalise a request for assistance, the Republic of Panama only relies on those delineated in the treaties themselves.

In the cases where a State does not have any international judicial ties in penal matters, it may send its request for international assistance through diplomatic channels to the Panamanian Foreign Ministry, which will submit it to the Supreme Court of Justice. In this case, the Court would have to defer to the principle of reciprocity, solidarity, and good faith that should prevail among countries within the international community, through which it is possible to access requests formulated abroad by States with whom the Republic of Panama has not signed a judicial assistance agreement. On the

other hand, it must be noted that reciprocity is viable only for those requests or letters rogatory that do not conflict with Panamanian law.

Extradition will be as established by the public treaties to which the Republic of Panama is a party and, in the absence of these, by the provisions established in Sections 1 and 2 of Chapter V of the Panamanian Judicial Code. So that extradition may proceed, it is necessary that the acts constituting the offence for which the person is being prosecuted, punished, or pursued, be carried out in the jurisdiction of the requesting State and that a custodial sentence be indicated, both in the legislation of said State and in that of the Republic of Panama. The request for extradition must be made to the Ministry of Foreign Affairs through the appropriate diplomatic channels or, failing this, by the country's consular office or that of a friendly nation, accompanied by the documents referred to in paragraphs one through five of Article 2498 of the Judicial Code. The extradition of Panamanian nationals is not allowed.

The Penal Law on Drug Trafficking of August 1994 contains specific provisions regarding extraditions related to drug trafficking offences, though it prohibits the extradition of Panamanian citizens for this offence.

3.2.4. Jurisdiction, Transfer of Convicted Persons (TCP), data protection and position of EU Citizens prosecuted in LAC countries.

The previous section discussed concrete provisions in the domestic legislation of the main countries mentioned in the project report, with the addition of another four Central American countries particularly sensitive to the issue of drug trafficking due to their geographic location near the major drug trafficking routes in the region: Honduras, El Salvador, and Guatemala due to their proximity to and influence on Mexican trafficking, and Panama due to its proximity to Colombia as a major producer. As a continuation of this overview, the table below indicates the presence or absence of certain indicators within the domestic legislation on international judicial cooperation on criminal matters and extradition. The parameters require brief clarification.

With regards to the data on Jurisdiction, and its application to Mutual Legal Assistance as well as to Extradition, it is based on the requirement to mention the ability of the requesting State to request the extradition of a subject outside its borders, as well as to obtain the needed penal judicial assistance to carry out proceedings abroad, normally based on an express jurisdictional act, be it an Indictment, judgment, or other judicial act in the cause of the requesting State. This is a requirement envisaged by all legislations examined. An example of this is article 1 of the Law of International Penal Cooperation of Argentina (ARTICLE 1- The Republic of Argentina will provide to any State that requires it, the most extensive assistance related to the investigation, judgment, and punishment of crimes related to its jurisdiction); article 489 of the Colombian Penal Code, which mentions the 'competent

foreign authority' even in connexion with requests for the confiscation of property with the intent to expropriate;; article 784 of the Brazilian Procedural Code, which mentions letters rogatory issued by foreign authorities; in the case of Mexico, it always requires the requesting authority to indicate what judicial or fiscal authority it is that is conducting the investigation, judgment, or proceeding, even if it does not have a specific law for international cooperation; in Venezuela's Organic Code of Criminal Procedure there is an initial requirement to identify the competent authority of the requesting party; and finally, to wrap up these examples, in Central America the procedural law of Honduras requires that in that identification of the foreign authority, the name of the judge or tribunal requesting assistance be specified.

Another question, which could be set aside for future consideration in the context of this Study, is to what extent the jurisdiction of the requested State comes into play for granting assistance in the criminal matter or delivery requested. The jurisdiction could be shifted to the requesting State and the act of assistance could reside in an investigation or a denial of extradition for prosecution in the requested country. This normally occurs in those cases where the original concurrent jurisdiction prevails to hear the case.

In regards to data concerning transfer of condemned persons, where transfer is definitive and not merely provisional for investigations or statements during trials, and is of persons of a nationality other than that of the condemning State, we have only detected domestic legislation in this matter in Argentina's recent legislation. This is ,without prejudice to the CARICOM countries, and setting aside bilateral or multilateral norms. In Argentina's Law on International Cooperation in Criminal Matters, signed in January 1997, in articles 105 following, under the heading of "Compliance abroad of convictions dictated in Argentina", various provisions exist regarding prison sentences, probationary sentences, fines, forfeitures, and disqualification, with procedures and conditions similar to the cases of convictions abroad, which can be fulfilled in Argentina for citizens of that nationality. Only in cases of custodial sentences to be served abroad is it a requirement that the prisoner not be of Argentinean nationality.

With regards to data protection in domestic legislation regarding Mutual Legal Assistance or Extradition, it has been examined in depth if the relevant legislation has any provisions relating to:

- Practical limitations designed to protect personal data and other measures.
- Limitations regarding testimony provided - statements, evidence, and information.
- Requests for confidentiality on behalf of the requesting State.

No specific references were found in the legislation examined in eight of the mentioned countries, Brazil and Argentina and the other four in Central America; Without prejudice to the comments on CARICOM countries, where

these provisions do have extensive and detailed relevance, Jamaica stands out among the primary Study countries, as having the most detailed regulation on the matter. For example, in its Law on Judicial Assistance in Criminal Matters from 1997 it includes a number of specific provisions, namely:

Under article 24 of this law, the Central Jamaican Authority may limit and request the confidentiality of the information obtained or the probationary evidence provided to the foreign authority, and if it does not comply with these terms, the assistance may be denied outright *ab initio*.

Jamaican law distinguishes among the requesting countries between Commonwealth countries and other signatories to mutual assistance agreements with Jamaica, and others outside that realm which are not signatories to agreements with Jamaica.

Jamaica can reject outright requests for assistance if the result that will be obtained in terms of evidence or documents is not used for the specific purpose of the request presented by the foreign country, which must be agreed upon prior to execution.

Another question directly related to the above is whether the inclusion of data, specifically at the national level, is regulated, thanks to which there would be greater judicial security for the competent authorities in the fields of judicial cooperation in criminal matters and police cooperation.

There have been no references found in the domestic legislations concerning Mutual Legal Assistance or Extradition in relation to data regarding the specific or general mention of the procedural position of EU citizens accused of drug trafficking in the countries of Latin America and the Caribbean. In CARICOM, there are references regarding Commonwealth countries as well as the USA.

It is worth mentioning the regulations about data protection implemented by two key countries for the purposes of this study: Mexico and Colombia.

In MEXICO, the ACT OF TRANSPARENCY AND PUBLIC ACCESS TO GOVERNMENT INFORMATION of JUNE 2012 aims to provide public access to information held by the Federal powers, Constitutional Autonomous bodies and any other federal entity. Among the objectives of the law is the promotion of the transparency of public administration through the dissemination of information generated by the affected civil servants, ensuring the protection of personal data in the possession of the administration; the promotion of accountability to citizens, and the management of the organisation, classification and handling of documents.

This Act was published in the Official Journal of the Federation on June 11, 2002, entering into force on the day after its publication and includes, among its main aspects, how to improve the organisation, classification and handling

of documents; the exceptions to the principle of publicity; the classification period for sensitive documents; the publication of information without prior consent; the cost of information; the request for access and revision; judicial control, and the relevant responsibilities and sanctions for breaches.

This piece of legislation also created the Federal Institute for Access to Public Information, as an organ of the Federal Government, with operational, budgetary and decision-making autonomy, which aims to promote and disseminate the right of access to information. It is also responsible for the resolution of queries related to the administrative refusal of requests for access to information and protection of personal data held by the agencies and entities of the Federal Public Administration.

Also relevant to data protection and public access to information, is the creation of the Code of Ethics for the Federal Government, which was published in the Official Journal of the Federation on July 31, 2002. This Code aims at the dissemination of clear rules for transparency and dignity in the performance of public servants.

Moreover, the Commission on Transparency and Fight against Corruption in the Federal Public Administration, issued the White Book. "First Actions on transparency and fight against corruption in the Federal Government." This report presents information to the general public regarding the actions undertaken by the Federal Government, the Attorney General of the Republic and other public institutions, during the first year of functioning of the Commission, through the commitments made by these actors in their Operational Programmes for Transparency. This document is available on the following website www.OIQgramaanticorruptcion.90b.mx.

On October 24, 2002, the Senate adopted the draft law on civil service careers in the federal public service. The approved project aims to establish the basis for the organisation, operation and development of the system of civil service careers in the departments and agencies of the Federal Government.

Regarding the statements of assets, it was reported that under the Agreement published in the Official Journal of the Federation on April 19, 2002, all public servants currently present their declaration of assets (initial, completion and modification) on a mandatory basis. The presentation is made by electronic means, which helps to manage the information and track the evolution of the personal patrimony of each civil servant.

Moreover, the Decree approving the so called "National Program to Combat Corruption and Promote Transparency and Administrative Development 2001 - 2006" was published in the Official Journal of the Federation on April 22, 2002. It is a mandatory compliance program for the offices of the Federal Public Administration and its requirement will be extended to state entities, in accordance with the applicable provisions.

Other actions are also worthy of note, including the implementation of a pilot program called "Complaints and denunciations against Public Servants". The creation of a structure for the management and successful resolution of matters of this nature will depend on the results from this pilot programme. In turn through the programme "Transparent Company" different topics on corruption are shared and electronic dialogues are held on the subject.

Other programmes worthy of mention are:

- "Va no más mordidas" [No more bribery];
- the Electronic System for Citizen attention, whose fundamental objective is to control, monitor and evaluate the follow up made by the administration to the citizens requests,
- "TRAMITANET" as a tool for conducting electronic relations with governmental bodies as well as fulfil and manage various official procedures electronically,. www.tramitanetgob.mx.
- the Electronic Government Procurement System "COMPRANET" implemented with the purpose of performing automated procurement, enabling suppliers and contractors to bid electronically, and monitor all procurement actions .

In Colombia, on October 17, 2012 the 1581 STATUTORY LAW was issued, including "general provisions for the protection of personal data". The new law seeks to protect personal data on any database that allows operations such as collection, storage, use, movement or deletion (hereinafter 'treatment') by entities of both a public and a private nature. Importantly, financial data will not be subject to the new law, since this is regulated under Act 1266 of 2008.

The law prohibits the transfer of personal data to third countries which do not provide adequate levels of data protection. For this purpose the Superintendency of Industry and Commerce has been appointed as the agency responsible for certifying the countries with an adequate level of protection. Those cases in which the transfer is to be made to a country that does not have an adequate level of protection will require the specific consent of the person the subject of the data. This provision shall also apply to financial data.

OVERALL SCOREBOARD.

	Jurisdiction	TPC	Data Protection	EU Citizens
COLOMBIA	YES	NO	YES	NO
BOLIVIA	YES	NO	NO	NO
PERU	YES	NO	NO	NO

DOMINICANA	YES	NO	YES	NO
MEXICO	YES	NO	YES	NO
URUGUAY	YES	NO	NO	NO
VENEZUELA	YES	NO	NO	NO
JAMAICA	YES	NO	YES	NO
ARGENTINA	YES	YES	NO	NO
BRAZIL	YES	NO	NO	NO
HONDURAS	YES	NO	NO	NO
EL SALVADOR	YES	NO	NO	NO
GUATEMALA	YES	NO	NO	NO
PANAMÁ	YES	NO	NO	NO

Regarding the CARICOM countries, the table below shows the situation regarding indicators already discussed in the rest of the CARICOM countries, after examining their domestic legislation, excluding Jamaica, which is in the previous table as a member of the group of states of greatest interest in this study.

As such, we must begin by clarifying that we have added two columns alongside the classic data regarding the presence or absence of domestic laws concerning international cooperation in criminal matters and domestic laws on extradition, currently without further details, to correspond to and amplify the first table.

Finally, as an added interest item, we evaluated whether there are domestic laws to combat drug trafficking, organised crime, and money laundering, as the OECD traditionally considers there to be some “tax havens” in this region. Following the financial scandals of 2008, there has been an increase in domestic legislation to counter money laundering, whose links to drug trafficking are undeniable as a prior offence in the majority of cases.

We have opted to reflect exclusively the mere existence of these laws, in the hope of defining the parameters for the study of this legislation in future reports or studies.

In all cases of analysing domestic legislation, we observed that relative to the countries in the first section, there is greater sensitivity with regards to data protection and confidentiality in requests for judicial assistance, and in the definitive use of the information. It is not clear whether this is because the legislation meets the standard required in the Commonwealth area or as a result of relations maintained between these countries and the USA, given

that many of them have agreements signed with the United States and Canada.

We also noted, without prejudice to similar regulation for the sake of joining the Commonwealth, the presence of articles permitting the temporary transfer of detained or imprisoned persons - both pre- and post- sentencing - in order to assist another proceeding in another country, with conditions of ensuring safe transfer and return. Compared to the group of the countries more pertinent to the study, there are no provisions on the transfer of condemned persons in the domestic legislation of CARICOM countries.

FIRST EXPLANATORY TABLE.

	Jurisdiction	TPC	Data Protection	EU Citizens	Domestic Law MLA	Extradition Act
ANTIGUA AND BARBUDA	YES	NO	YES	NO	YES	YES
BAHAMAS	YES	NO	YES	NO	YES	YES
BARBADOS	YES	NO	YES	NO	YES	YES
BELIZE	YES	NO	NO	NO	NO	YES
GRENADA	YES	NO	NO	NO	YES	YES
GUYANA	YES	NO	YES	NO	YES	YES
HAITI	YES	NO	NO	NO	NO	NO
ST KITTS	YES	NO	NO	NO	NO	NO
ST LUCIA	YES	NO	NO	NO	NO	YES
ST. VINCENT AND THE GRENADINES	YES	NO	YES	NO	YES	YES
SURINAME	YES	NO	NO	NO	NO	YES
TRINIDAD AND TOBAGO	YES	NO	NO	NO	YES	YES

SECOND EXPLANATORY TABLE.-

	Domestic Law Drug Traffic	Domestic Law Organised Crime	Domestic Law Money Laundering
ANTIGUA AND BARBUDA	YES	NO	NO

BAHAMAS	YES	NO	YES
BARBADOS	NO	NO	YES
BELIZE	NO	NO	YES
GRENADA	NO	NO	YES
GUYANA	NO	NO	YES
HAITI	YES	NO	YES
ST KITTS	NO	YES	YES
ST LUCIA	YES	NO	YES
ST. VINCENT AND THE GRENADINES	NO	NO	YES
SURINAME	NO	NO	NO
TRINIDAD AND TOBAGO	YES	NO	YES

To cap off the two sections of the study, it must be noted that the form and content of the domestic legislation in certain Latin American makes both analysis and comparison with the European and advanced LAC legal systems difficult. Furthermore, within CARICOM, it is necessary to identify parameters for an analysis of the domestic legislation, if needed, regarding the European Union's interest in the area. These would serve as a model for the examination of specific regulations within these countries, as well as specific chapters in their legislation regarding judicial assistance or extradition when requested by another country in the Commonwealth or a country that is a signatory to a relevant bilateral agreement.

3.3. Drug Trafficking in the LAC Region

According to figures provided by the last report of the United Nation Office on Drugs and Crime (UNODC-12), several countries are facing high rates of violence and corruption related to drug trafficking, some of them in Central America and the Caribbean. From a global perspective, the total production and cultivation of cocaine in LAC remains stable, although cannabis and amphetamines remain the most consumed drugs.

In Colombia, there has been a major decline in cocaine manufacture in the five-year period 2006-2010, while coca bush cultivation and coca production increased in Bolivia and Peru during the same period. This trend has had an influence on drug consumption in Europe and the United States. Traffickers are making increasing use of containers to introduce cocaine in Europe, where they sell it at prices similar to those in 2007. An expansion of the

cocaine market has also been observed, particularly of “crack” cocaine, in some countries of South America.

In Central America, seizures of amphetamine-type stimulants (especially amphetamines) have significantly increased in the period 2008-2010. According to UNODC report, a shift away from developed to developing countries has been observed as regards drug consumption, one which is influenced by demographic trends in developing countries, and by their younger populations and rapid urbanization rates.

Finally, Governments and societies evince many different sensibilities to drug-related problems throughout the world, and in LAC countries too. These countries tackle drug offences and criminality from different policy approaches, while securing international peace and development and upholding human rights.

3.3.1. General overview of the classification of drug trafficking offences in LAC countries' national legislations.

ARGENTINA

In Argentina, the relevant law is the 1989 Law 23737, currently in force, on Drug Possession and Trafficking, which includes criminal and procedural provisions, and whose main lines are the following:

- Various types of trafficking behaviors are listed and penalties are increased (4- to 15-year prison terms).
- (Simple) illegal possession is punishable by the same sentence (1- to 6-year prison terms); possession of drugs for personal consumption is punishable by a shorter sentences (1-month to 2-year prison terms) and the possibility of diverting the process towards security healing measures (in the case of “addicts”) or educational measures (in the case of “experimenters”).

The various types of behaviors punishable include the sowing and growing of plants or seeds to obtain drugs; the production, manufacturing, extraction, and preparation of drugs; marketing of any type, storage and transport; and various types of behaviors involving the delivery of drugs for money. Delivery of drugs for free is punishable by shorter prison sentences, between 3 and 12 years. In all cases, fines are also imposed.

Organisation and financing of these offences raises the prisons sentences to between 8 and 20 years plus a fine.

A number of aggravating circumstances are envisaged depending on the nature of the subjects to whom drugs are supplied or the objective domain where they are disseminated, as well as the cases of public servants.

All the offences envisaged by this law fall under federal jurisdiction in all of Argentina.

In no case does the death penalty apply to this kind of offence in Argentina.

BOLIVIA

The Bolivian Penal Code, which dates back to 1972 and was updated in 2003 deals with the violation of the Narcotics Law in a separate instrument from the Penal Code, since the article of the Penal Code was derogated by Law 1768.

The local Law dealing with coca, dated 19 July 1988, is significant. It begins by making a legal distinction in article 3 between coca in its natural form, which is not harmful to human health, and coca “*iter criminis*”, which refers to the leaf after it has undergone chemical transformation to isolate the cocaine alkaloid that is used criminally and produces psycho-physiological and biological effects that are harmful to human health. Based on the above, the Law defines all uses destined for the fabrication of paste, sulphate and hydrochloride of cocaine and other substances that extract the alkaloid for the manufacture of any type of controlled substance as illegal, as well as the acts of illicit smuggling and trafficking of coca, in contrast to the provisions contained in the current law.

With respect to ILLICIT TRAFFICKING: The law states that the term illicit trafficking of controlled substances covers any act directed towards or stemming from the actions of producing, manufacturing, malicious possession, holding in warehouses or storage, transportation, delivery, supply, purchase, sale, donation, introducing into the country, removing from the country or carrying out transactions of any nature; financing activities that go against the provisions of the present law or other legal regulations. The sentences are severe and vary between 10 and 25 years in prison and a fine.

Consumption and possession for consumption are not punishable by a prison sentence, in contrast to the other offences classified in the Law, such as the manufacture, trafficking, management, supply, and criminal association and criminal organisation, with these sentences attracting an increase of one third over and above the original sentence. The transportation, instigation and particularly murder using controlled substances is also punished, in addition to forgery and importing. There are also punishments for favorable acts by public workers and qualified professionals.

The death sentence is not involved in the separate Law for these offences. However, the Law does provide for the agreement of treaties to allow Bolivian citizens to serve sentences for crimes committed abroad in Bolivia and similarly to allow foreign nationals to be transferred to their country of origin for crimes committed in Bolivia.

BRAZIL

The law currently relevant in Brazil is Law no. 11343 of 23 August 2006. This law introduced a significant change in drugs legislation in Brazil by

decriminalizing consumption and rejecting prison sentences for consumers, even in the case of repeated offenders. Article 28 of the 2006 Law only envisages alternative measures as penalties. However, the law does not establish a clear distinction between consumption and trafficking. The 2006 law increased the legal difference between consumers – subject only to alternative measures – and dealers – who face long prison sentences – but it does not strictly define who falls under each of these categories. It is also a comprehensive law, with a specific section on public drug policies.

The purchasing, storing, holding in deposit, transport, and possession for personal consumption are strictly punished but do not constitute criminal offences, and non-prison sentences are given.

Illegal drug trafficking has a different, more serious consideration, with a wide range of types of behavior, such as export, import, preparation, production, manufacturing, sale, etc. always with no authorization or breaking the law or regulations. These are punishable by prison sentences ranging between 5 and 15 years and fines. These types of behavior also apply to precursors, seeds, and harvests.

Criminal association for these offences is punishable by prison sentences ranging between 3 and 10 years and fines.

These types of offences are not punishable by death on a federal level in Brazil.

COLOMBIA

In Colombia Law 599 (2000) defines the current Penal Code and includes Crimes against the Public Health in Section XIII.

As recently as 2011 and by means of the Law 1453 published in June, a sound modification of penalties for drug-related crimes has taken place. Articles 376 and 382 have been modified, to reconstitute the punishable conducts to their original regulation. The new regulation envisages literally conducts of trafficking, fabrication, or portage of illegal substances and trafficking of substances necessary for drug processing.

The offences of drug trafficking and other infractions are dealt with from article 375 onward. The cultivation, conservation or financing of marijuana plants or any other plant from which cocaine, morphine, heroin or any other addictive drug can be obtained without permission from the competent authority is punishable. The standard sentences for these offences vary between 6 and 12 years in prison and a fine. The same acts are also punishable for more than 1 kg of seeds of these plants.

Similarly, the trafficking, manufacture or carrying of narcotics in various forms is also punishable, and express mention is made of introducing their various forms into the country and transportation, with sentences between 8 and 20 years in prison and a fine. Sentences vary depending on the quantity

of the drug involved for each offence, meaning the quantity is of obvious importance in determining sentences. For example, for cocaine, less than 100 g is punishable by a prison sentence of between 4 and 6 years, increasing to between 6 and 8 years for up to 2 kg.

The illicit use of assets or real estate destined for the storage, manufacture or trafficking of these substances is also expressly punishable. There is a general offence that covers encouraging or propagating the illicit use of these drugs in any form, punishable by 3 to 8 years in prison.

The trafficking of substances for obtaining narcotics, such as precursors, is specifically punishable with a prison sentence of 6 to 10 years and a fine. Carrying substances such as scopolamine, which can make people unable to defend themselves in public places without justification, can carry a prison sentence of 1 to 2 years.

There are punitive aggravations for restricted cases relative to minors, educational or public institutes, teachers or education professionals, and in cases where an extremely large quantity is seized, such as the seizure of 5 kg of cocaine.

A relevant feature of these drug-related crimes against the public health is the inclusion in this section of a penal offence specific to behaviour related to the existence, construction and illegal use of runways, with prison sentences between 4 and 10 years and a fine.

There is an offence of conspiracy to commit crime for drug trafficking offences with prison sentences for each individual of between 6 and 12 years and longer sentences for those higher up the organisation's chain of command.

The government submitted to Congress in September 2012 for discussion a proposal for a new National drug and psychoactive substances Statute to replace the Act 30 of 1986. In addition, the Public Safety Act, 2011 introduced amendments to the Criminal Code in relation to drug offences.

The death penalty is not included in the current Colombian Penal Code.

CHILE

With regards to drugs trafficking in particular, Chile has recently passed a law which deals in detail with this crime. [Law 20,000](#), published on 16 February 2005, replaced the previous Law 19,366.

This new law is extensive in its remit, and includes articles on the technicalities of investigations (controlled deliveries, undercover agents, interception of communications, informants), the protection of witnesses, experts, and agents, and also on International Cooperation (Art. 47 - 49). There are also provisions allowing for confidentiality of the investigations into

drug trafficking crimes (Art. 38) and for restraint and confiscation of property (Art. 40).

The penalties under Chilean law for drug trafficking differ depending on the quantity of drugs involved. For larger quantities the penalties range from 5 years and one day imprisonment to a maximum of 15 years, along with a fine from 40 to 400 Monthly Fine Units (UTM - with a value of one unit in April 2013 of \$40.125 Chilean Pesos).

For smaller amounts (known locally as micro-trafficking) the penalties are less - 541 days imprisonment to a maximum of 5 years, and a fine of between 10 to 40 UTM.

Information received from the prosecutors' office revealed certain geographical discrepancies between the definition of what might constitute micro-trafficking. The same amount of drugs would be viewed as involving more serious criminality if it were intercepted in the south of the country as opposed to the north, where there is the free port of Iquique and the special position of Arica with regards to Bolivian commercial traffic.

Money laundering is also legislated for as a crime in Chile in [Law 19.913 of 18 December 2003](#). Art. 27 of that law creates as a crime the hiding or covering up of the illicit origin of property, knowing that the property comes, directly or indirectly from the crimes contemplated in the legislation regarding the trafficking of drugs (as well as other crimes, for example terrorism, arms dealing, insider dealing). This law also created the Financial Analysis Unit (UAF), whose mission is 'To prevent money laundering and the financing of terrorism in Chile, by means of the collation of financial intelligence, the creation of regulation, the monitoring of such regulation, and the propagation of public information, with a view to protect the country and its economy from the distortions which both crimes create'.

There is a further law which relates to legal entities specifically, which is [Law 20393 of 2nd December 2009](#).

The penalties for money laundering range from five years and one day to 15 years and a fine of between 200 and 1000 UTM.

DOMINICAN REPUBLIC

In the Dominican Republic there is a separate law (Law 50-88, 1988) on Drugs and Controlled Substances in the Dominican Republic, as amended by national drug law Law 72-2002, whose statement of intent notes “that the number of foreign nationals caught for the offences of trafficking, possession, consumption and the illicit use of dangerous drugs in violation of the customs and traditions of our people and current Law No. 168, as well as Law No. 95 on immigration is alarming”.

The Law first sets out a list of definitions for the purposes of the legislation. It also makes distinctions depending on the type of controlled substance, cocaine, marijuana and LSD for analyzing specific cases subject to the application of the Law.

It is a comprehensive penal, procedural and administrative Law and covers the acts of asset laundering. The list of Offences and Punishments is given from article 58 onward. Illicit trafficking, in the broad sense of the term, manufacture, distribution or possession of precursor materials and asset laundering, also in the broad sense of the term, are regarded as serious offences. Prison sentences vary between 5 and 20 years. Illicit trafficking is regarded as an international offence. Removing a controlled drug from the country, an offence that can be perpetrated by foreign nationals, is punishable by a prison sentence between 5 and 20 years and a fine. The cultivation of controlled plants and their seeds is punishable, with the final prison sentence depending on the quantity of plants seized.

There is a specific procedural provision for foreign nationals who have committed these crimes:

ARTICLE 79. Foreign nationals involved in the perpetration of any offence covered by this Law may not be deported, repatriated or expelled from the country until the penal process has been concluded and, where they are sentenced, they have served the sentences imposed.

Foreign nationals that have served the imposed sentence will be deported or expelled from the country, even when they have legally established domicile in the national territory, and their re-entry will be prohibited.

There is a series of aggravating circumstances for all offences, which, due to their severity, fall within the scope of application of the Penal Code of the Dominican Republic, which include activities related to criminal organisations or organised gangs. In all these cases, maximum prison sentence will be given.

The death penalty is not applicable for drug trafficking offences or any other offences covered by the Dominican Republic Penal Code.

ECUADOR

It is also important to make a reference to the recent legal decision in Ecuador regarding the proposal for pardon to drug trafficking “mules”.

In 2008, the Ecuadorian Government proposed a humane change in the social rehabilitation system with regard to drug trafficking sentences, as it believed that the penalties were disproportionate to the offences. (Majority Report; Report on the social rehabilitation system, Republic of Ecuador, Constituent Assembly, Montecristi, 3rd April 2008).

The proposal establishes the requirements that define the cases in which the pardon can apply “to persons for drug transport”. The existence of a sentence prior to 10th July 2008, although the trial is still in the Consultation or Cassation stage; no-recidivism in the offences established in the Drug law; the amount of drug must be equal to or less than 2 kg; and finally, serving ten per cent of the sentence, with a 1-year minimum.

In July 2008, the Constituent Assembly passed this pardon to micro-dealers as part of a wider reform of the Constitution of Ecuador, which anticipates a comprehensive reform of drug legislation in Ecuador.

The Drug and Psychotropic Substance Law or Law 108 has been in force since 1990. Its latest legal drafting took place in December 2004.

Article 364 of the New Constitution, states: “Addictions are a public health problem. It falls to the State to develop coordinated programs for information, prevention, and control of consumption of alcohol, tobacco, and drugs and psychotropic substances; as well as to offer treatment and rehabilitation to occasional, usual, and problematic consumers. Under no circumstances will their criminalization be allowed or their constitutional rights breached”.

EL SALVADOR

In El Salvador, the comprehensive 2003 Law Regulating Drug Activities to approach the entire problem of drug trafficking in its various aspects specifically regulates drug-related offences and their penalties in El Salvador. It is implemented through extensive administrative regulation of organisation, processes, and control procedures regarding drugs in the state domain.

For purposes of this law, illegal drug trafficking is defined as any activity related to cultivation, purchase, dispossession of any kind, import, export, deposit, storage, transport, distribution, supply, and transit of the substances specified in article 2 that is not authorized by a competent authority.

The growing, sowing, and harvesting seeds that serve to produce drugs are punishable by prison sentences ranging between 5 and 15 years plus a fine.

Manufacturing and transformation for these purposes are punishable by prison sentences ranging between 10 and 15 years plus a fine.

Illicit trafficking is broadly defined, including its international scope, as follows: Any person who without due authorization purchases, dispossesses in any significant manner, exports, deposits, stores, transports, distributes, supplies, sells, disseminates, or carries out any other trafficking of seeds, leaves, plants, flowers, and substances or products specified in this Law shall be sentenced to a prison term ranging between ten and fifteen years and a fine ranging between fifty and fifty thousand current urban minimum salaries.

If international drug trafficking is carried out, whether using the national territory as transit state or as an import or export location, the penalty shall be increased by a third of the maximum of the established penalty.

Possession and ownership of drugs is punishable depending on whether the amount surpasses 2 g or not, with penalties ranging between 1- to 3-year prison terms plus a fine in the former case, and 3- to 6-year prison terms plus a fine in other cases. If the purpose of possession is trafficking, the penalties shall increase by a 6- to 10-year prison term plus a fine.

There are other punishable offences such as promotion and encouragement, provision of means, premises, real estate, and establishments, with prison sentences no shorter than 5 years and no longer than 15 years plus fines.

There are also aggravating circumstances depending on the objective or subjective scope where the basic behaviors take place.

The Law also includes other procedural regulations for the fights against drug trafficking. It is a special law that prevails over any other law that contradicts it.

Death penalty does not apply to this kind of offence in El Salvador.

GUATEMALA

In Guatemala, the 1992 Law against Drug Activities, partially amended in 1999 and 2003 with no essential changes in criminal behaviors and the established penalties, is also a comprehensive criminal and procedural law to fight against this kind of offences.

Punishable behaviors comprise illegal trafficking in a very extensive manner (the production, manufacturing, extraction, preparation, offer, distribution, deposit, storage, transport, sale, supply, transit, possessions, purchase, or holding of any drug or psychotropic substance without legal authorization). It also punishes what is known as international transit: when the active offender imports, exports, facilitates, or transports drugs or psychotropic substances from one country to another by any means.

These offences are punishable by death and prison sentences. Prison sentences of less than 5 years can be replaced by fines.

International transit is punishable by prison sentences ranging between 12 and 20 years plus a fine. Sowing and cultivation is punishable by prison sentences ranging between 5 and 20 years plus a fine. Illegal dealing, trafficking, and storage are punishable by prison sentences ranging between 12 and 20 years plus a fine.

Possession of drugs for personal consumption is punishable by prison sentences ranging between 4 months and 2 years plus a fine.

Facilitating the means for these criminal activities is punishable by prison sentences ranging between 5 and 10 years plus a fine.

Criminal association for this kind of offence is also punishable by prison sentences ranging between 6 and 10 years plus a fine.

The aforementioned Law also regulates international legal assistance and extradition for this kind of drug trafficking offences.

HONDURAS

In Honduras, the 1989 Law on Undue Drug Use and Trafficking is a public order law of preferential application over other national regulations on this matter. It punishes illegal production, manufacturing, marketing, use, possession, and trafficking of drugs, psychotropic substances, and dangerous drugs, as well as any other product that is regarded as such by the technical and scientific bodies of the Public Health Secretariat, the World Health Organisation, and international conventions.

Illegal cultivation, sowing, planting, and harvesting of drugs and controlled substances are punishable by prison sentences ranging between 9 and 12 years plus a fine. Illegal manufacturing is punishable by prison sentences ranging between 9 and 15 years plus a fine. General trafficking is punishable by prison sentences ranging between 15 and 20 years plus a fine, as is the financing of these activities. Provision of facilities or means of transport are also punishable by prison sentences ranging between 6 and 9 years plus a fine. Money laundering is also punishable by serious sentences.

Illegal diversion of precursors is punishable by shorter prison sentences ranging between 3 and 6 years plus a fine.

Possession of marihuana and other drugs in minimal amounts, for personal consumption, does not entail a prison sentence but rather security measures.

Foreign nationals in the aforementioned case have a fine imposed and be expelled from Honduran territory.

Organisation for commission of these crimes entails the application of one further third of the penalty in all cases.

The Law also includes prevention regulations and procedural regulations for trying these offences.

Extradition for drug trafficking offences is ruled by the general Criminal Code, and can be granted for offences punishable by prison sentences starting at 1 year (with the exception of Honduran nationals, whose extradition is not allowed).

In no case does the death penalty apply to this type of offence in Honduras.

JAMAICA

In Jamaica, legal issues pertaining to drugs are governed by the 1948 Dangerous Drug Act and the 1998 Maritime Drug Trafficking Act. The 1948 law, amended in several occasions, most recently in 1994, broadly punishes types of behavior that encourage drug trafficking, especially regulating import and export, production, and distinguishing between coke and opium and its derivatives, as well as these types of behaviors in relation to “ganja”, as cannabis is known in Jamaica. The penalties established depend on the degree of authority of the person ruling on the offences, and can range between 35-year prison terms for the most serious crimes to 5-year prison terms or fines in less serious cases.

Jamaican laws and regulations do not envisage (legal) possession of drugs for personal consumption, nor do they establish possession of drugs for personal use. Possession of any amount of drugs surpassing 8 oz. is regarded as a “sale” for trafficking purposes. Amounts of less than 8 oz. are regarded as possession. In addition to criminal penalties, Jamaican courts can apply alternative measures, such as treatment for first-time or sometimes even second-time offenders.

There is no death penalty for drug trafficking crimes in Jamaica.

MEXICO

As regards the various types of criminal behaviours in drug trafficking and their respective penalties:

- Drugs legislation in Mexico is established in the 1984 General Health Law, together with the provisions as regards drugs in the Federal Criminal Code after the 1994 reform. Moreover, in 1996 the Federal Law against Organised Crime was established, which exponentially increased the penalties for crimes committed by organised criminal groups. In addition, on 21 August 2009 a decree reforming the General Health law, the Federal Criminal Code, and the Federal Criminal Procedure Code came into force. This decree is popularly known as the *Narcomenudeo* Law (the Drug Peddling Law), as its main aim is fighting against minor drug trafficking. The decree also establishes the maximum amounts allowed for personal consumption of various drugs.

- Article 193ff of the Federal Criminal Code envisages crimes against health, referring to behaviors encoded in the General Health Law, which constitute a serious problem for public health. The penalties established range between 10 and 25 years plus a fine and encompass production, transport, supply, and dealing, as well as transit traffic in Mexico. There are additional tables that establish the specific penalties depending on the amount of drug seized, as long as the person in question does not belong to a criminal group. Cultivation of narcotic drugs is also punishable by 1 to 6 years of prison plus a fine. Illegal diversion of chemical precursors is also punishable.
- The Mexican Federal Criminal Code does not include the death penalty in its penalty catalogue, but prison sentences can go up to 60 years.

PANAMA

In Panamá, the 1986 Law on Offences related to Drugs was partially modified in 1994, when crime penalties were substantially modified, and 2007 and 2010. The two latter reforms did not affect offences or penalties.

Possession of a drug introduced by a foreigner for personal use is punishable by prison sentences ranging between 1 and 3 years plus a fine. Drug trafficking in the modality of introduction into the country or as export to other countries is punishable by prison sentences ranging between 8 and 15 year plus a fine.

Basic drug trafficking behaviors, which extensively encompass all possible behaviours, are punishable by prison sentences ranging between 5 and 10 years plus a fine.

In no case does the death penalty apply to this kind of offence in Panama.

PERU

The Penal Code published on 8 April 1991 by means of Legislative Decree No. 635 legislates on Crimes against the Public Health from article 286 onward.

It includes specific punishments for the acts of manufacturing or trafficking destined to promote, favour or facilitate the trafficking of drugs, narcotics and psychotropics, punishable by a prison sentence between 8 and 15 years and a fine. Possession for illicit trafficking is also punished with a prison sentence of between 6 and 12 years and a fine. There is also a specific offence for the trafficking of precursor chemicals, which covers a broad range of acts, with a prison sentence between 5 and 10 years and a fine.

Conspiracy to traffic drugs is punishable separately with a prison sentence of between 5 and 10 years.

The cultivation and dealing of opium poppies and marijuana and their compulsive sowing, including seeds of these species is also punishable separately, with severe sentences for the former of between 8 and 15 years in prison, and a sentence of between 5 and 10 years in prison for the latter, both in addition to a fine.

There is a series of aggregated offences that can carry up to 25 years in prison and a fine that specifically apply to members of a criminal organisation.

In Peru, so-called micro-dealing or micro-production is punishable, based on the seizure of small quantities for dealing, such as 50 g of cocaine or 2 g of ecstasy or amphetamine derivatives, with a prison sentence of between 3 and 7 years and a fine.

The possession of drugs for personal and immediate consumption is not punishable for quantities up to: 5 g of cocaine paste; 2 g of cocaine hydrochloride; 8 g of marijuana, or 2 g of its derivatives; 1 g of opium latex, or 200 mg of its derivatives; and 250 mg of ecstasy containing Methylenedioxyamphetamine (MDA), Methylenedioxymethamphetamine (MDMA), Methamphetamine or similar substances.

Finally, the improper supply of drugs by healthcare professionals is punishable, as well as the acts of coercing others to consume drugs, and inducing and instigating the consumption of drugs.

Foreign nationals who have served a sentence imposed for these drug-trafficking crimes will be expelled from the country and will not be allowed to re-enter.

The Peruvian Penal Code does not involve the death penalty for offences of this nature or any other in its legislation.

SURINAM

In the area of drugs, the main legal instrument is the *Wetop Verdoven de Middelen* (WVM) (Act on Intoxicating Substances) of February 12, 1998 (Off. Rec. 1998 No.14, as amended), which follows the international standards and treaties. The WVM contains a variety of sentences, ranging from a maximum prison term for life or 20 years for producing, preparing, selling, importing, and exporting drugs to a maximum prison term of 13 years for mere possession (Art. 11 WVM). The act does not make a distinction between the various kinds of drugs (e.g., Between so-called soft drugs and hard drugs). However, according to the representatives of Public Prosecutor's Office, both the practice of the PPO and that of the courts of justice do distinguish between the two kinds of drugs in terms of the sentences that can be imposed: sentences tend to be more lenient if the offence refers to a soft drug such as marijuana or hashish. Furthermore the possession of small amounts of soft drugs is not prosecuted unless it is aimed at selling or trafficking.

URUGUAY

The Uruguayan Criminal Code only includes one article on drug trafficking crimes, namely article 223 on traffic of coke, opium, or derivatives, and punishing dealing, possession, and deposit other than established in the

specific regulations with penalties ranging between 6 months and 5 years in prison.

The 1998 law 17016 on Drugs regulates this matter in more detail. The drug law allows consumption, establishes penalties for possession other than for consumption purposes, but does not establish the legal means to obtain drugs, nor the acceptable amounts of drugs or individual use. The latter is left to the judge's opinion.

In general, planting, growing, harvesting, and marketing any plant from which drugs or any substances that generate a physical or mental dependency can be obtained are forbidden, with the exception – if applicable – of those with an exclusive purpose of scientific research or for the production of therapeutic products for medical use. Basic penalties ranging between 20 months and 10 years in prison are established. Organised or financed activities can have penalties of up to 20 years in prison. Drug exporting is punishable by up to 8 years in prison; illegal traffic for consumption can reach 8 years in prison. The special law also establishes procedural regulations for this kind of crimes and money laundering.

The death penalty does not apply to this kind of crime. Prison sentences can reach a legal maximum of 30 years.

VENEZUELA

In Venezuela, the 2010 Organic Law on Drug is in force, which repeals the previous 2005 law on Illegal Traffic and Consumption of Drugs and Psychotropic Substances. This is a comprehensive law that combines administrative and legal criminal provisions, trying to encompass all domains of this specific illegal activity from the public point of view in all areas of Venezuelan Administration.

Under criminal law, and always associated with organised crime, all behaviors favoring illegal drug traffic are punishable by prison sentences ranging between 15 and 25 years. The persons heading or financing those activities can have their penalties increased to 25 to 30 years. Punishable activities are those performed by “whoever illegally deals, distributes, conceals, transports by any means, storage, and performs brokerage activities with the substances or their raw materials, precursors, solvents, and deviated essential chemical products mentioned in this Law, even as waste, for the production of drugs and psychotropic substances will receive a prison sentence ranging between fifteen and twenty-five years”.

Prison sentences for small amounts are never less than 8 years.

The manufacturing and production as well as illegal trafficking of seeds, resins, and plants are also punishable by prison sentences ranging between 12 and 18 years.

Illegal possession of drugs other than for personal consumption is punishable by prison sentences of up to 2 years, and specific amounts are established in

each case to determine what constitutes illegal possession. Under no circumstances does this law take the purity of the drug into account.

Illegal transactions of controlled chemical substances are also punishable by prison sentences of up to 5 years. This penalty is broadly established for many types of behavior related to illegal diversion of precursors.

Incitation or provocation to consumption is punishable by a fine, except in the case of repeated offenders, in which case it is punishable by prison sentences of up to 4 years.

Conditional suspension of the penalty for these offences does not extend to foreigners who are tourists in Venezuela when the offence is committed, nor does it apply if the prison sentence is more than 6 years. Expulsion from Venezuela is established for foreigners who commit these offences only after they serve the sentence imposed in Venezuela.

The new 2010 Law establishes a significant increase in prison sentences, and does not include the death penalty for any of the punishable offences, as the death penalty does not apply in any case.

3.3.2. The drug problem in the Americas - OAS Report presented in Colombia on the 17th of May 2013.

The report, presented by the General Secretary of the OAS to the Colombian president, Juan Manuel Santos, in May 2013 in Bogotá, evaluates the results of the anti-drug policies implemented in the region in recent decades. It supports addressing the drug use problem as a public health problem, rather than exclusively from the point of view of security, which is the approach that has been taken up to this point.

It is important to emphasise the view that there is a necessity for “the decriminalisation of drug use as the basis for any public health strategy.” Thus, the OAS defends reductions in sentences, a preference towards rehabilitation and the use of specific courts for crimes of this nature.

This OAS document was the basis of the political agenda debated at the beginning of June in the OAS General Assembly, where the main topic of discussion was the comprehensive policy against drugs in the Americas.

The OAS envisages four scenarios in its report, from the starting point that in no other region is there so great an interrelation between cultivation, production, trafficking, sale and use of drugs as in the American continent. At the same time it draws attention to the strong relationship between drug trafficking, crime and corruption, which, to a large extent represent the cornerstones of social inequality, which affects democratic stability in many American states.

Within the rigid context of legal repercussions, the report contemplates an approach where greater flexibility might enable the possibility of transforming

national legislations or promoting changes within international legislation. Within the context of the UN conventions, transformation stems from the possibility of making the current system for the control of drugs and psychotropic substances more flexible, as well as enabling countries collectively to explore options in relation to policies on drugs that take into consideration the specific needs, conduct and traditions of each state.

The Drug Problem in the Americas report presents four possible scenarios which outline the ways in which the drug-related problems of the continent might develop in the future. These scenarios show the manner in which the “problem” might develop were certain events to come to pass or certain political decisions to be taken.

The first scenario is referred to as ***Together***. Here, the drug problem is understood as part of a greater problem relating to a lack of security, with weak state institutions that prove incapable of controlling its consequences, such as organised crime, violence and corruption. Within this context a response is sought via the strengthening of the capacity of legal institutions and public security institutions through higher degrees of professionalism, better alliances with citizens, new indicators of success and improved international cooperation. The objectives pursued via this action are the following: improved citizen security; improved credibility of state institutions, which would lend support to increases in taxation to continue to strengthen security; and a renewed hemispheric alliance. The challenges associated with this course of action derive from the reconstruction of state institutions in the face of opposition from deep-rooted interests; dispersed and unstable international cooperation; and the ‘balloon effect’ incurred when criminal activities are transferred to other areas with weaker institutions.

The second scenario is referred to as ***Pathways***. Here, attention is drawn to the problem encountered by the current legal and regulatory system when attempting to control drug use via criminal sanctions (particularly arrests and imprisonment), measures which are deemed to be overly detrimental. The response would be, starting primarily with cannabis, to test and learn from other, alternative legal and regulatory systems. The objectives pursued via such action are as follows: the development of better drug policies via rigorous experimentation; reassignment of resources for the control of drugs and drug users in order to prevent and treat the problem of drug use; and the elimination of a number of markets and criminal proceeds via regulation. The challenges this course of action would face come from the management of risks within the experimentation, particularly those relating to the transition from criminal markets to regulated markets (including a possible increase in problematic use); combating new criminal markets; and new intergovernmental tensions arising as a result of the existence of different systems in different jurisdictions.

The third scenario is referred to as ***Resilience***. Here, the drug problem is interpreted as a manifestation of underlying social and economic dysfunction

that generates violence and addiction. As a result, programs are to be implemented to strengthen communities and improve public security and health. These programs will be created, from start to finish, by local governments, companies and organisations.

The fourth scenario is referred to as **Rupture**. Here, the drug problem is understood to be focused within those countries where drugs are produced (particularly cocaine) and those through which drugs are transited, which are paying unsustainable and unjust social costs as a result of this transit to consumer countries. As a result, a number of countries unilaterally abandon the fight against production and transiting within their territory, or come to accept these practices. Via such action, these countries seek to achieve the following objectives: the reduction of violence; a greater focus on domestic rather than international priorities; and the freeing up of resources that are currently assigned to security and law enforcement. The challenges that would be faced by this course of action are those associated with the fact that a reduction in law enforcement would enable drug markets to expand and would increase the proceeds thereof; the co-option of states by criminal organisations; and conflicts arising from violations of international treaties.

As the Colombian president stated, “we are not advocating any particular standpoint, neither legalisation nor war at any price.” The OAS report aims to promote dialogue in order to trace out a joint strategy throughout the continent to address this problem.

The OAS study has promoted even greater debate within key international forums:

20-22 of May: In Washington, the OAS report was presented and discussed in the biannual meeting of the Inter-American Drug Abuse Control Commission (CICAD).

4-6 of June: In Antigua, Guatemala, *Towards a comprehensive policy against drugs in the Americas* was the main point on the agenda within the annual sessions of the General Assembly, which included the participation of Ministers of Foreign Affairs within the region. **In this meeting, within the 43rd OAS general assembly, the so-called Declaration of Antigua was approved, wherein the member states of the organisation undertook to "discuss a continental policy to address the drug problem in greater depth".** The road map agreed upon by the ministers in this document includes the celebration of an extraordinary OAS general assembly in 2014, in order to define the areas for discussion for a continental drugs strategy for 2016-2020.

4. Analysis of extradition and MLA between LAC countries and the EU.

This section tackles the legal framework of the relationships between LAC and EU countries regarding Extradition and MLA in criminal matters. A separate mapping of existing MLA conventions in criminal matters in general is included here, aside from legal instruments on drug-related crimes. The reason for this is that not all States have bilateral MLA agreements in drug trafficking. This approach also allows for a broader perspective.

LAC participation in multilateral conventions with EU MS is analysed under Point 4.1.; Points 4.2. and 4.3. look at the whole map of bilateral agreements on extradition, (extradition of nationals and obstacles to the extradition of nationals, comparative examination of extraditable crimes); point 4.4 focuses on international conventions on drug trafficking between LAC and EU MS, including an analysis of different crucial topics such as clauses relating to grounds for refusal and data protection .

The chapter ends with an analysis of the legal possibilities for intercontinental transfer of sentenced persons in drug trafficking cases (point 4.5)

4.1. Overview of LAC participation in multilateral conventions with EU MS

For the purposes of this study several multilateral agreements between LAC and EU MS will be examined. These will be examined in relation to all the issues discussed throughout this project, namely: MLA, Extradition and Transfer of Sentenced Persons. Most of these agreements involve several countries from both sides of the Atlantic. Others, such as the Commonwealth schemes, are agreements between three EU MS (Cyprus, Malta and UK) and Caribbean countries, often also involving other third countries.

The main multilateral legal instrument at international level is undoubtedly the UN [Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances](#), Vienna 1988. The [United Nations Convention against Transnational Organized Crime](#) of 2000, (the UNTOC or Palermo Convention) also plays an important role in the area. In addition, there are other multilateral conventions between EU and LAC countries. Some of the Council of Europe conventions have been ratified by a number of LAC countries. Although there are important regional legal instruments, such as the [Inter-American Convention on Mutual Assistance in Criminal Matters of 1992](#), no Inter-American multilateral conventions in criminal matters within the OAS framework or similar have been ratified to date by any EU MS. Nevertheless, some EU MS (for example Spain) have ratified civil OAS conventions, as for example the [Inter-American Convention on Rogatory Letters](#) adopted in Panama in 1975.

In brief, the following multilateral conventions will be examined in this section:

- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna 1988;
- United Nations Convention against Transnational Organized Crime, New York, 15 November 2000;
- Harare Scheme relating to Mutual Assistance in criminal matters within the commonwealth;
- London Scheme for Extradition with the commonwealth;
- Convention on the Transfer of Sentenced Persons, Council of Europe 1983.
- Scheme for the Transfer of Convicted offenders within the Commonwealth.

Finally, only one LAC country –Chile- has ratified the [European Convention on Mutual Assistance in Criminal Matters of 1959](#).²⁵.

A) The 1988 Vienna Convention

As has already been pointed out, the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances is the main multilateral legal instrument at international level that is relevant for the purposes of this study.

As has been noted ([Evans, 1997](#)), the initial impetus for coordinated international action to combat money laundering arose out of a growing concern within the world community about the problems of drug abuse and illicit trafficking. Prior to 1988, there were two central pillars which supported that effort. The first was the 1961 UN Single Convention on Narcotic Drugs, as amended by a 1972 Protocol and the 1971 UN Convention on Psychotropic Substances, which extended the concept of international control to a wide range of synthetic drugs. However it was gradually becoming apparent that these conventions were inadequate to deal with the range of complex issues raised by modern international drug trafficking. This resulted in the 1988 [Vienna Convention or the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances](#), (the Vienna Convention). Since then, it has been widely recognized as the foundation of the international legal regime in this area.

The most significant milestone for the advancement of cooperation in the field of drug trafficking was the entry into force of the Vienna Convention. For the first time, the pursuit of the proceeds of criminal activity was given a "starring" role in an international instrument intended to combat crime. The reason behind the Convention containing measures that are directed at the restraint and forfeiture of proceeds of crime are well described in the introductory Paragraphs to the Convention,

²⁵ The updated status of ratifications can be consulted at: <http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=030&CM=8&DF=12/07/2012&CL=ENG>

"...Aware that illicit traffic generates large financial profits and wealth enabling transnational criminal organisations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business and society at all its levels, Determined to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing ..."

The Vienna Convention provided an effective strategy to counter modern international drug trafficking, coupled with provisions to provide the law enforcement community with the necessary tools to undermine the financial power of the cartels and other groups. By embracing the concepts of mutual legal assistance and extradition, the UN convention made a major contribution towards increasing their availability in many areas of the world, and specifically within legal traditions where these concepts were underdeveloped or even unknown. In addition it provided a critical level of support for those involved with prosecuting drug trafficking offences with a substantial international dimension.

The Vienna Convention has significantly contributed to improving judicial cooperation in drug-trafficking cases. In fact, much of the success of the Convention hinges on enhanced mutual legal assistance and extradition processes. Given the variety of legal systems, languages and political interests in the world such matters are not resolved easily. To assist Nation States in seeking solutions in these areas, the UN has developed two model treaties: the UN Model Treaty on Mutual Assistance in Criminal Matters and the UN Model Treaty on Extradition²⁶, both of them designed to recognise differences in legal systems and suggest bridges between them. As a significant consequence other international instruments followed the format of the 1988 Vienna Convention.

More than 40% of the Vienna Convention signatory countries come from the LAC or EU areas. Indeed, this important UN legal instrument has been signed by all LAC and EU countries, and even by the EU as an international legal entity in its own right. So far, all 60 LA and EU countries have joined the Treaty. The current status²⁷ is as follows:

States	Signature	Ratification, Accession(a), Acceptance(A), Approval(AA), Formal confirmation(c), Succession(d)
Antigua and Barbuda		5 Apr 1993 a
Argentina	20 Dec 1988	28 Jun 1993
Austria	25 Sep 1989	11 Jul 1997
Bahamas	20 Dec 1988	30 Jan 1989
Barbados		15 Oct 1992 a

²⁶ General Assembly resolution 45/117, UN GAOR 45th Sess., Supp No. 49A at 215.

²⁷ Source: UN Treaty Collection. An updated status of the treaty can be obtained at: http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-19&chapter=6&lang=en

Belgium	22 May 1989	25 Oct 1995
Belize		24 Jul 1996 a
Bolivia (Plurinational State of)	20 Dec 1988	20 Aug 1990
Brazil	20 Dec 1988	17 Jul 1991
Bulgaria	19 May 1989	24 Sep 1992
Chile	20 Dec 1988	13 Mar 1990
Colombia	20 Dec 1988	10 Jun 1994
Costa Rica	25 Apr 1989	8 Feb 1991
Cuba	7 Apr 1989	12 Jun 1996
Cyprus	20 Dec 1988	25 May 1990
Czech Republic ⁴		30 Dec 1993 d
Denmark	20 Dec 1988	19 Dec 1991
Dominica		30 Jun 1993 a
Dominican Republic		21 Sep 1993 a
Ecuador	21 Jun 1989	23 Mar 1990
El Salvador		21 May 1993 a
Estonia		12 Jul 2000 a
European Union	8 Jun 1989	31 Dec 1990 c
Finland	8 Feb 1989	15 Feb 1994 A
France	13 Feb 1989	31 Dec 1990 AA
Germany ⁵	19 Jan 1989	30 Nov 1993
Greece	23 Feb 1989	28 Jan 1992
Grenada		10 Dec 1990 a
Guatemala	20 Dec 1988	28 Feb 1991
Guyana		19 Mar 1993 a
Haiti		18 Sep 1995 a
Honduras	20 Dec 1988	11 Dec 1991
Hungary	22 Aug 1989	15 Nov 1996
Ireland	14 Dec 1989	3 Sep 1996
Italy	20 Dec 1988	31 Dec 1990 AA
Jamaica	2 Oct 1989	29 Dec 1995
Latvia		24 Feb 1994 a
Lithuania		8 Jun 1998 a
Luxembourg	26 Sep 1989	29 Apr 1992
Malta		28 Feb 1996 a
Mexico	16 Feb 1989	11 Apr 1990
Netherlands ⁷	18 Jan 1989	8 Sep 1993 A
Nicaragua	20 Dec 1988	4 May 1990
Panama	20 Dec 1988	13 Jan 1994
Paraguay	20 Dec 1988	23 Aug 1990
Peru	20 Dec 1988	16 Jan 1992
Poland	6 Mar 1989	26 May 1994
Portugal ²	13 Dec 1989	3 Dec 1991
Romania		21 Jan 1993 a
Slovakia ⁴		28 May 1993 d
Slovenia ¹		6 Jul 1992 d
Spain	20 Dec 1988	13 Aug 1990
St. Kitts and Nevis		19 Apr 1995 a
St. Lucia		21 Aug 1995 a
St. Vincent and the Grenadines		17 May 1994 a
Suriname	20 Dec 1988	28 Oct 1992
Sweden	20 Dec 1988	22 Jul 1991
Trinidad and Tobago	7 Dec 1989	17 Feb 1995
United Kingdom of Great Britain and Northern Ireland ^{3, 9}	20 Dec 1988	28 Jun 1991
Uruguay	19 Dec 1989	10 Mar 1995
Venezuela (Bolivarian Republic of)	20 Dec 1988	16 Jul 1991

The Vienna Convention provides specific Articles on MLA and extradition for drug trafficking cases, (Articles 6 and 7). Other forms of cooperation linked to judicial and investigation tasks are foreseen in Articles 8 (transfer of proceedings) and 9 (other forms of cooperation and training). In addition, and perhaps most significantly, Article 5 (confiscation) of the Convention requires

State Parties to create domestic mechanisms to allow the tracing, restraint (freeze or seize) and confiscation of the proceeds of drug related crimes. In recognition of the transnational dimension of this criminal activity, State Parties also must be able to respond to requests presented by other States, seeking the tracing, restraint and confiscation of the proceeds of drug offences²⁸.

Mutual Legal Assistance in the Vienna Convention

As regards MLA, the Convention aims at establishing a minimum cooperation standard for courts and prosecution proceedings in relation to the criminal offences under the Convention (Article 3.1.). The Convention is intended to complement, facilitate and cover gaps in international instruments in the field of mutual legal assistance in drug trafficking cases. Therefore, the 1988 provisions on MLA do not affect the obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual legal assistance in criminal matters. Paragraphs 8 to 19 apply where the countries concerned are not bound by any treaty of mutual legal assistance. On the contrary, if States are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the Parties agree to apply Paragraphs 8 to 19 in lieu thereof. With the same purpose in mind, Article 7.20, does not exclude the possibility of States concluding bilateral or multilateral agreements or arrangements that may serve the purposes of, give practical effect to, or enhance MLA provisions. Hence, in this sense, as happens with the Extradition provision, the Convention follows a sort of *complementarity principle*.

As many other multilateral conventions in criminal matters, the 1988 Convention starts with the *favour commisionis* principle: the “Parties shall afford one another... the widest measure of mutual legal assistance²⁹ in investigations, prosecutions and judicial proceedings in relation to criminal offences...”.

²⁸ The latter requirement is critical because experience clearly demonstrates that sophisticated criminal organizations launder and distribute the proceeds of their activities, through many countries and through a vast array of businesses, institutions and organizations. The reality is that without the assistance of other States, no country can successfully investigate, restrain and confiscate the profits of a sophisticated criminal organization. It is not enough that each country has its discrete domestic scheme for restraint and confiscation. There must be a developed network for fast and effective international cooperation, which allows for cross border restraint and confiscation. At the same time, that process must respect the rights of individuals; those whose property may be improperly restrained and innocent third parties. The 1988 Drug Convention marked the first recognition internationally that any efforts to pursue the profits of crime, requires the cooperation of states, (K. PROST, *Breaking down the barriers: inter-national cooperation in combating transnational crime*).

²⁹ The wording *-the widest measure of mutual ... assistance-* is taken from article 1.1 of the 1959 [Council of Europe Convention on Mutual Legal Assistance in Criminal Matters](#).

Paragraph 2 regulates the different types of assistance to be rendered in accordance with the Convention. Many of these types of cooperation are found in several bilateral agreements between LAC and EU States in drug-trafficking, sometimes following the exact wording:

- Taking evidence or statements from persons;
- Obtaining documents and effecting service of judicial documents;
- Executing searches and seizures;
- Examining objects and sites;
- Providing information and evidential items;
- Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records;
- Identifying or tracing proceeds, property, instrumentalities or other assets for evidential purposes.

Following the complementarity principle above mentioned, this is not a *numerus clausus* list, since the competent authorities may afford one another any other forms of mutual legal assistance allowed by the domestic law of the requested Authority.

Provisions regarding the channel of communication (central authorities, Paragraph 9), request contents and formalities (Paragraph 10), limitation on the use of the information (Paragraphs 13 and 14) and ordinary costs (Paragraph 19) are similar to most bilateral and multilateral conventions on MLA. On the other hand, there is no exemption of certification, legalization or authentication of the requests and enclosed documents, as we find in most international legal instruments in the area³⁰. Hence when applying the 1988 Convention as the sole legal support of the MLA, an **authentication or legalisation**³¹ process has to be obtained through diplomatic channels, unless both States have signed the [*Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents*](#). The “[*Apostille Convention*](#)” is one the of the most widely accepted and applied of all international treaties concluded under the auspices of the Hague Conference on Private International Law; all the EU States have ratified the

³⁰ For instance, Article 27 of the 1992 Inter-American Convention on Mutual Assistance in Criminal Matters, or Article 17 of the 1959 European Convention on Mutual Assistance in Criminal Matters.

³¹ In fact, the UNDOC Report of the [*Informal Working Group on MLA Casework Best Practice, Vienna 2001*](#), (pages 17 and 23) and the recent *UNODC Manual on Mutual Legal Assistance and Extradition*, Vienna 2012 envisage the official Apostille form when dealing with model checklists and forms for good practice in requesting MLA. Therefore, many bilateral extradition agreements foresee a specific provision for exempting parties from requests legalization. Nevertheless for the MLA purposes in criminal matters it is important to remark the fact that not all States impose the requirement of legalization on foreign public documents that have to be produced in their territory. This is particularly the case for many States with a common law tradition. However, the Apostille Convention is still important for these States, as it facilitates the circulation of public documents executed in their own territory that have to be produced in another Contracting State.

Apostille Convention and a large part of the LAC region has already done so too –several others (Brazil, Chile...) are in the process of signing it.

Special attention should be paid to the **procedural regime** foreseen when executing requests (Paragraph 12) since this provision has important consequences for any later trial and use of the evidence by the requesting authorities when prosecuting or judging drug-trafficking cases. Following the traditional *locus regit actum* principle, requests shall be executed in accordance with the domestic law of the requested State and to the extent not contrary to the domestic law of the requested Authority. As an exemption and only where possible, the *forum regit actum* principle (execution in accordance with the procedures specified in the request from the requesting country) shall enter into force. For mutual assistance to succeed, the operative principle must be that requests will be executed in accordance with the law of the requested state and to the extent not prohibited by that law, will be provided in the manner sought by the requesting State. In other words, while the authorities of the requested State must always meet the standards prescribed by domestic law, unless the rendering of assistance in the form sought would constitute a violation of that law, it should be provided. In many cases that solution is crucial for complying with evidential requirements needed for the later trials in many systems. If that principle does not govern at the operational level, mutual assistance will fail. This is unquestionably a central challenge that practitioners face on a daily basis, especially when requests cross between civil and common law systems.

Paragraph 15 relates to possible grounds for refusal of MLA requests. Apart from lack of conformity with the 1988 Convention, the Paragraph lays down three barriers to cooperation, quite common in many international legal instruments in this area:

- Public Policy. *If the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*
- Non bis in idem. *If the authorities of the requested Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or proceedings under their own jurisdiction;*
- Dual Criminality Rule. *If it would be contrary to the legal system of the requested Party relating to mutual legal assistance for the request to be granted.*

In any case, reasons must be given for any refusal of mutual legal assistance. Paragraph 5 constitutes a significant value provision, as it excludes the refusal to render mutual legal assistance on the grounds of banking secrecy.

Extradition in the Vienna Convention

Many of the above comments also apply when examining the extradition provisions of the Convention. The Vienna Convention aims at establishing a minimum extradition standard in relation to criminal offences fixed in the Convention, (Article 3, Paragraph 1). The Convention is intended to complement, facilitate and cover lacunae in international instruments on extradition related to drug trafficking cases. Where under the domestic legislation of a country extradition is conditional on the existence of a treaty, a complementary principle is laid down according to which only the Vienna Convention can be considered as the legal basis for extradition. And, of course, where there is a treaty, the list of drug-trafficking offences shall be recognised in any event (Paragraph 4 and 5). As was the case for MLA, parties are encouraged to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

Furthermore, the criminal offences established in Article 3 shall be applied in any case as extraditable offences between the Parties. However, in the event that there is no bilateral agreement, Article 6 (3) foresees that this Convention may be considered as the legal basis for extradition in respect of any offence to which this article applies.

Regarding the procedural scheme for extradition, the *locus regit actum* is established in the Vienna Convention as the sole principle: extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties. This provision has important consequences for the procedural steps to be complied with under extradition requests. Except for those European countries which operate the [European Arrest Warrant](#)³² (EAW) in the framework of the EU (where the role of the Central Authorities in the execution of a European Arrest Warrant is limited to practical and administrative assistance), most countries in the world include in their treaties and national laws a double phase for deciding on extradition: one judicial before the Courts, and another governmental phase before the Central Authorities or other branches of the Executive Power of the requested State. Therefore, the Vienna Convention does not close any possibilities and makes extradition dependent on national legislation or on bilateral treaties, as will be seen under Section 4.3.

Paragraphs 7 and 8 seek to promote extradition procedures, simplifying the evidential requirements and allowing, under domestic laws and treaties, to take persons related to the extradition into custody or take other appropriate measures to ensure their presence at extradition proceedings.

In relation with the refusal of extradition, the Vienna Convention identifies the following grounds for refusal:

- Due process grounds, (Paragraph 6).

³² Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

- Territorial jurisdictional grounds, (Paragraph 9, Article 4).
- Nationality of the person affected by the request, (Paragraph 9 and Paragraph 10, Article 4).

Taking into account the safeguard of human rights in the framework of a due process, Paragraph 6 allows the requested State the possibility of denying the extradition where there are “substantial grounds” to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions, or would cause prejudice for any of those reasons to any person affected by the request. The provision is in concordance with the 1966 UN [International Covenant on Civil and Political Rights](#) and is included in many bilateral treaties.

The following refusal grounds (territoriality and nationality) are connected in Paragraph 7 with the international ***aut dedere - aut iudicare*** rule (which provides that offences are brought before the court or that extradition is granted to the requesting States). In fact, since the Vienna Convention does not exclude extraterritorial and judicial protection of nationals, this principle is meant to ensure or promote the prosecution or enforcement of sentences in case where the requested State alleges these grounds of refusal. Bearing in mind other bilateral texts, in the context of the Convention at the time, this is a very valuable provision.

B) United Nations Convention against Transnational Organized Crime, New York, 15 November 2000

The [United Nations Convention against Transnational Organized Crime](#), (UNTOC or Palermo Convention) was adopted by General Assembly resolution 55/25 of 15 November 2000. It is the main international instrument in the fight against transnational organised crime. It opened for signature by Member States at a High-level Political Conference convened for that purpose in Palermo, Italy, on 12-15 December 2000 and entered into force on 29 September 2003. The Convention is further complemented by three Protocols, which target specific areas and manifestations of organised crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.

The Convention represents a major step forward in the fight against transnational organised crime and, for the purposes of this study, it provides well for competent authorities seeking judicial cooperation or extradition in drug trafficking cases in the framework of organised crimes. The text lays down an important range of measures which are wider than those in the Vienna Convention, with the adoption of new and sweeping frameworks for extradition, transfer of convicted persons, mutual legal assistance and law enforcement cooperation.

This Convention's use is appreciated by many judicial authorities when dealing with drug trafficking cases due to its ample scope and technical approach. It is also right that many competent judicial authorities and judicial networks are persuaded by applying the 2000 UNOTC Convention for MLA purposes in drug trafficking cases. Indeed, EUROJUST in many coordination meetings suggests the use of this Convention as an alternative way to achieve the same or better results rather than using other available international instruments³³.

Except for Barbados, Dominica and Czech Republic, the Convention has been incorporated into all LAC and EU States legislation³⁴.

States	Signature	Ratification, Accession(a), Acceptance(A), Approval(AA), Formal confirmation(c), Succession(d)
Antigua and Barbuda	26 Sep 2001	24 Jul 2002
Argentina ¹	12 Dec 2000	19 Nov 2002
Austria	12 Dec 2000	23 Sep 2004
Bahamas	9 Apr 2001	26 Sep 2008
Barbados	26 Sep 2001	
Belgium	12 Dec 2000	11 Aug 2004
Belize		26 Sep 2003 a
Bolivia (Plurinational State of)	12 Dec 2000	10 Oct 2005
Brazil	12 Dec 2000	29 Jan 2004
Bulgaria	13 Dec 2000	5 Dec 2001
Chile	13 Dec 2000	29 Nov 2004
Colombia	12 Dec 2000	4 Aug 2004
Costa Rica	16 Mar 2001	24 Jul 2003
Cuba	13 Dec 2000	9 Feb 2007
Cyprus	12 Dec 2000	22 Apr 2003
Czech Republic	12 Dec 2000	
Denmark ³	12 Dec 2000	30 Sep 2003
Dominica		
Dominican Republic	13 Dec 2000	26 Oct 2006
Ecuador	13 Dec 2000	17 Sep 2002
El Salvador	14 Dec 2000	18 Mar 2004
Estonia	14 Dec 2000	10 Feb 2003
European Union	12 Dec 2000	21 May 2004 AA
Finland	12 Dec 2000	10 Feb 2004
France	12 Dec 2000	29 Oct 2002
Germany	12 Dec 2000	14 Jun 2006
Greece	13 Dec 2000	11 Jan 2011
Grenada		21 May 2004
Guatemala	12 Dec 2000	25 Sep 2003
Guyana		14 Sep 2004
Haiti	13 Dec 2000	19 Apr 2011
Honduras	14 Dec 2000	2 Dec 2003

³³ See, EUROJUST Strategic Project on: "Enhancing the work of Eurojust in drug trafficking cases", January 2012. Page 28: *Lack of ratification of judicial cooperation instruments. Eurojust's role in these cases has been to find alternative ways to accomplish the same results using the other international cooperation instruments available (for instance, the provisions on spontaneous exchange of information in article 18 of the UNTOC Convention)*[http://eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Enhancing%20the%20work%20of%20Eurojust%20in%20drug%20trafficking%20cases%20\(jan%202012\)/drug-trafficking-report-2012-02-13-EN.pdf](http://eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Enhancing%20the%20work%20of%20Eurojust%20in%20drug%20trafficking%20cases%20(jan%202012)/drug-trafficking-report-2012-02-13-EN.pdf).

³⁴ The updated list of ratifications can be consulted at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en.

Hungary	14 Dec 2000	22 Dec 2006
Ireland	13 Dec 2000	17 Jun 2010
Israel	13 Dec 2000	27 Dec 2006
Italy	12 Dec 2000	2 Aug 2006
Jamaica	26 Sep 2001	29 Sep 2003
Latvia	13 Dec 2000	7 Dec 2001
Liechtenstein	12 Dec 2000	20 Feb 2008
Lithuania	13 Dec 2000	9 May 2002
Luxembourg	13 Dec 2000	12 May 2008
Malta	14 Dec 2000	24 Sep 2003
Mexico	13 Dec 2000	4 Mar 2003
Netherlands ⁵	12 Dec 2000	26 May 2004
Nicaragua	14 Dec 2000	9 Sep 2002
Panama	13 Dec 2000	18 Aug 2004
Paraguay	12 Dec 2000	22 Sep 2004
Peru	14 Dec 2000	23 Jan 2002
Poland	12 Dec 2000	12 Nov 2001
Portugal	12 Dec 2000	10 May 2004
Romania	14 Dec 2000	4 Dec 2002
Slovakia	14 Dec 2000	3 Dec 2003
Slovenia	12 Dec 2000	21 May 2004
Spain ⁷	13 Dec 2000	1 Mar 2002
St. Kitts and Nevis	20 Nov 2001	21 May 2004
St. Lucia	26 Sep 2001	
St. Vincent and the Grenadines	24 Jul 2002	29 Oct 2010
Suriname		25 May 2007 a
Sweden	12 Dec 2000	30 Apr 2004
Trinidad and Tobago	26 Sep 2001	6 Nov 2007
United Kingdom of Great Britain and Northern Ireland ^{7, 8}	14 Dec 2000	9 Feb 2006
Uruguay	13 Dec 2000	4 Mar 2005
Venezuela (Bolivarian Republic of)	14 Dec 2000	13 May 2002

Like the Vienna Convention, the Palermo Convention lays down specific provisions on extradition and judicial cooperation in general. Since competent authorities rely on particular legal instruments for drug trafficking, we will focus on both the added value and the limitations of the 2000 UNTOC.

The Palermo Convention follows the same *complementarity principle* as the Vienna Convention. The aim is to complete and complement other treaties in the matter (and cover for the possible lack of them).

Dealing with **extradition**, the Palermo Convention maintains a similar structure and provision Vienna. However two observations are worth making in relation to the implications for extradition requests.

On one hand, the 2000 UNTOC modifies the approach to the scope of extradition, something one may consider as an added value. Indeed, while the Vienna Convention is based on a closed list of offences, Palermo moves towards the “non – list approach” concept. Indeed, most extradition treaties developed in the late 1800's to early - mid 1900's, defined extradition crimes by reference to an exclusive list of offences. The offence had to be a crime in both States, and had to be one of the offences listed in the relevant treaty. The problems with that approach are legendary. New crimes would develop and the treaties, generally stagnant for many years, would not cover them. Terminology would change, making it difficult to bring the alleged offences

within the treaty list³⁵. The "new" approach to extradition instruments, which is now widely accepted in the international community, eliminates the list approach and substitutes it with a conduct and a penalty test. This can be seen in the very definition of "serious crime" in UNTOC: *"Serious crime" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty*, (definition b of Article 2 in relation with Article 16 and with the scope of application of Paragraph 1 of Article 3), the conduct involved must constitute an offence prescribed with a period of incarceration, as defined by the two States.

On the other hand, at first sight it might be thought that the Convention took a step backwards as it seemingly reintroduced the dual criminality rule in Paragraph 1 of Article 16 *in fine: provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party*. However, the UNTOC Convention's approach is much more nuanced since upon becoming parties to the Convention, all States must adopt legislation to establish the offences envisaged by the Convention. As a result, once the Convention is fully implemented, there will automatically be a commonality of law between a requesting and requested State, both of which have ratified the Convention, allowing for the dual criminality question to be resolved.

In relation to the complementarity principle, the Palermo Convention seeks to promote as much as possible commitment of the signatory States to it, whether States Parties make extradition conditional on the existence of a treaty or not. Thus, there is a specific Paragraph (5) setting out an obligation to inform the Secretary-General whether they will take this Convention as their legal basis for cooperation regarding extradition. In compliance with that provision, 17 LAC and EU States have sent their respective notifications, namely: Argentina, Belize, Bolivia, El Salvador, Estonia, Latvia, Lithuania, Malta, Mexico, the Netherlands, Paraguay, Slovenia, St. Vincent and Grenadines and Venezuela. Of these, only Argentina³⁶, Bahamas³⁷ and

³⁵ K. PROST, *Breaking down the barriers: inter-national cooperation in combating transnational crime*. OAS: <http://www.oas.org>.

³⁶ Argentina made the following notification dealing with article 16 (5) (Extradition):
Where a treaty exists, the requirements established therein should be met. If there is no treaty governing extradition, the following requirements should be met:
When the requested person has been charged:

- a) A clear description of the offence, with specific information on the date, place and circumstances under which it was committed, and the identity of the victim;*
- b) The legal characterization of the offence;*
- c) An explanation of the basis for the competence of the courts of the requesting State to try the case, as well as the reasons for which the limitations period has not expired.*
- d) Affidavit or certified copy of the court order for the detention of the accused, with an explanation of the grounds on which the person is suspected of taking part in the offence, and the court order for the delivery of the extradition request;*
- e) The text of the criminal and procedural provisions applicable to the case as they relate to the foregoing paragraphs;*
- f) All available information for the identification of the requested person, including name, nicknames, nationality, date of birth, marital status, profession or occupation, distinguishing*

Slovenia³⁸ have laid down conditions (reciprocity or compliance of some procedural requirements). The rest have accepted the Palermo Convention as the legal basis for extradition where there is no treaty.

Regarding **MLA**, the Palermo Convention contains a “stand alone” Article (Article 18) that is very similar to its equivalent Article 7 in the Vienna Convention. An important added value is the widening of the material scope. Indeed, for this Article allows new forms of cooperation, such as the informal transmission of information³⁹, (Paragraphs 4 and 5). In fact, as has been noted earlier, EUROJUST⁴⁰ considers that particular form of cooperation –

marks, photographs and fingerprints, and any available information on his domicile or whereabouts in Argentine territory.

In the event that the requested person has been convicted, in addition to the foregoing, the following shall be added:

g) An affidavit or certified copy of the court decision of conviction;

h) Certification that the decision is not rendered in absentia and is final. If the judgment rendered in absentia, assurances must be given that the case will be reopened so that the convicted person may be heard and allowed to exercise the right of defence, and that a new judgment will be issued accordingly;

i) Information on the length of the sentence remaining to be served;

j) An explanation of the reasons for which the sentence has not been completed.

³⁷ Bahamas made the following notification: “In accordance with Article 16 paragraph 5 (a), the Commonwealth of The Bahamas declares that it takes the Convention as the legal basis for cooperation on extradition on the basis of reciprocity with those States Parties which likewise have accepted the same.

With respect to States Parties with which extradition agreements have been signed, the Convention shall apply whenever these agreements are incompatible with it”.

³⁸ Slovenia made the following notification regarding article 16 (5): “Pursuant to Article 16, Paragraph 5 (a) of the Convention, the Republic of Slovenia declares that it will take this Convention as the legal basis for co-operation on extradition with other States Parties to this Convention. In the absence of an international agreement or any other arrangement regulating extradition between the Republic of Slovenia and another State Party to this Convention, the Republic of Slovenia will require documents relating to extradition in compliance with its domestic law.

³⁹ Paragraph 4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

Paragraph 5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

⁴⁰ See EUROJUST Strategic Project on: “Enhancing the work of Eurojust in drug trafficking cases”, January 2012, page 28;

[http://eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Enhancing%20the%20work%20of%20Eurojust%20in%20drug%20trafficking%20cases%20\(Jan%202012\)/drug-trafficking-report-2012-02-13-EN.pdf](http://eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Enhancing%20the%20work%20of%20Eurojust%20in%20drug%20trafficking%20cases%20(Jan%202012)/drug-trafficking-report-2012-02-13-EN.pdf) .

spontaneous exchange of information- under the UNTOC Article 18 as a feasible way of solving the regulation lacunae on other bilateral or multilateral agreements on drug trafficking.

Finally, although it does not form part of that stand alone Article, we must refer to the provisions related to transfer of sentenced persons, (Article 17) and other forms of legal cooperation joint investigation teams (Article 19), interception of communications and other for technical forms of investigation (Article 20) and transfer of criminal proceedings (Article 21).

C) Harare Scheme within the Commonwealth

Since the sixties, the international Community has been committed to developing a framework of multilateral instruments for better rendering of assistance. The first significant instrument of mutual assistance was the European Convention on Mutual Assistance in Criminal Matters, developed by the Council of Europe. At the time, this Convention was an important achievement, as it recognised the necessity for specific instruments of cooperation for evidence gathering. Similarly, within the Commonwealth⁴¹, Law Ministers in Harare, Zimbabwe, adopted a scheme for mutual assistance in 1986, that is, a **non - treaty scheme** based on the common legal systems, which depends on States enacting domestic legislation to permit the rendering of assistance in criminal matters.

The Harare Scheme relating to Mutual Assistance in criminal matters within the Commonwealth has been amended by Law Ministers in April 1990, November 2002, and October 2005. The Scheme is on an on-going updating process⁴².

⁴¹ Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth, Commonwealth Secretariat, London, LMN (86) 13.

⁴² The last Commonwealth Law Minister Meeting took place in Sydney, Australia July 2011 with the following statements regarding with the Scheme: 20. *The Harare Scheme relating to Mutual Legal Assistance in Criminal Matters within the Commonwealth has for a quarter of a century provided a constructive and pragmatic approach to mutual co-operation between Commonwealth countries in combating transnational crime. At their Meeting in Edinburgh in 2008, Ministers asked for a comprehensive review of the Scheme in the light of the contemporary upsurge and increased sophistication of transnational criminal activity. The present Meeting received the results of this review in the form of a revised and updated Scheme including new provisions as to the interception of telecommunications and postal items; covert electronic surveillance; the use of live video links in the course of investigations and judicial procedures; and asset recovery. The revised Scheme which, like other rules and guides issued by the Commonwealth Law Ministers, provides a non-binding arrangement for the widest possible co-operation in criminal matters between Commonwealth countries is to be applied in a flexible manner in compliance with domestic law and international law. It does not preclude police-to-police co-operation.*

21. *Ministers resolved:*

- a. *to adopt the revised and updated Harare Scheme relating to Mutual Legal Assistance in Criminal Matters within the Commonwealth; and*
- b. *to approve the Secretariat's continuing programme of work in this area, which includes:*
 - i *the development of model legislation to assist member countries in implementing the revised Harare Scheme;*

From the point of view of its territorial scope, and for the purposes of this paper, the Harare Scheme involves the EU MS of Cyprus, Malta and UK and the following Caribbean Countries: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Granada, Guyana, Haiti, Jamaica, St Kitts y Nevis, St. Lucia, St Vincent and the Grenadines, Suriname and Trinidad and Tobago. As noted under Section 3.2 of this Study, all these countries have incorporated the Scheme into their respective domestic legislations.

Since the material scope of the Scheme has been extended in successive amendments, it allows for a wide range of assistance between States in the production of evidence, in a direct and efficient manner, including assistance in criminal matters involving:

- Identifying and locating persons;
- Serving documents;
- Examining witnesses;
- Search and seizure;
- Obtaining evidence;
- Facilitating the personal appearance of witnesses;
- Effecting a temporary transfer of persons in custody to appear as a witness;
- Obtaining production of judicial or official records;
- Tracing, seizing and confiscating the proceeds or instrumentalities of crime; and
- Preserving computer data.

In relation with the procedural features and limitations to assistance, the Harare Scheme lays down a range of grounds for refusal similar to other instruments:

- *Ordre Public* or Public Policy. *If it appears to the Central Authority of that country that compliance would be contrary to the Constitution of that country, or would prejudice the security, international relations or other essential public interests of that country; point 8 (2) a.*
- *Non bis in idem. Conduct in relation to which the person accused or suspected of having committed an offence has been acquitted or convicted by a court in the requested country; point 8 (1) d.*
- Dual Criminality Rule. From two approaches. From the substantive point of view, taking into account the concrete offence: *the conduct would not constitute an offence under the law of that country, point 8 (1) a;* and from the procedural perspective, taking into account the procedural steps: *when the steps required to be taken in order to comply with the request cannot*

ii the development and delivery of capacity-building initiatives by 30 June 2013, in particular on the interception of telecommunications and asset recovery, to further enhance international co-operation within the Commonwealth; and
iii the promotion of the Commonwealth Network of Contact Persons and other similar networks.

under the law of that country be taken in respect of criminal matters arising in that country.

- Protection of Human Rights and Due Process Principle. *Where there are substantial grounds leading the Central Authority ... to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions or would cause prejudice for any of these reasons to any person affected by the request; point 8 (2) b.*
- Type of the offence. *The crime or proceedings of a political character or conduct which in the requesting country is an offence only under military law or a law relating to military obligations;*

The Scheme includes proper and advanced provisions on confidentiality⁴³ (point 11) and limitation of use of the information or evidence (point 12).

D) The London Scheme for Extradition within the Commonwealth

Commonwealth States, from the legal tradition of the common law, have adopted an alternate approach in the form of the Commonwealth Scheme for Rendition. The scheme has its roots in the system for rendition between British possessions that was originally governed by an 1843 Imperial statute and subsequently by the 1881 Fugitive Offenders Act.

The London Scheme, as this Scheme is known, was adopted at the 1966 Meeting of Commonwealth Law Ministers and subsequently amended in 1986 and 1990. Unlike the European Convention, the scheme is not an actual instrument for rendition. Rather, it is a set of agreed recommendations, intended to guide Commonwealth governments in regulating their rendition relations with other Commonwealth states. Generally the scheme will be implemented within the relevant states through legislation and administrative action. The goal of the scheme is not to prescribe uniform legislation but rather to encourage the adoption of national legislation and practices amongst member states which will afford a high level of cooperation.

As to its territorial scope, for the purposes of this paper, the London Scheme involves the EU MS of Cyprus, Malta and the UK and the Caribbean Countries: Antigua and Barbuda, Bahamas, Barbados, Belize, Granada, Guyana, Haiti, Jamaica, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Suriname and Trinidad and Tobago. As noted under section 3.2 of this study, all these countries have incorporated the Scheme into their respective legislations.

⁴³ Paragraph 11 and 12: 11. *The Central Authorities and the competent authorities of the requesting and requested countries shall use their best efforts to keep confidential a request and its contents and the information and materials supplied in compliance with a request except for disclosure in criminal proceedings and where otherwise authorized by the Central Authority of the other country.* 12. *The requesting country shall not use any information or evidence obtained in response to a request for assistance under this Scheme in connection with any matter other than the criminal matter specified in the request without the prior consent of the Central Authority of the requested country.*

The London Scheme can be classified among the so-called new generation of agreements, i.e. an agreement that applies a “non – List approach” of extraditable offences. Unlike the Vienna Convention and many other bilateral treaties that define extraditable offences by reference to a closed-list of offences, this Scheme sets out a minimum imprisonment period of two years or more for the offence to be considered extraditable. Moreover, the dual criminality rule is prescribed, therefore the extradition offence must be an offence that is punishable in both the requesting and requested States Paragraph 2 (1).

It is worth mentioning here the basis and grounds for refusal of extradition in the London Scheme, (p. 14 and 15). On one hand, the text includes the “*discretionary basis for refusal of extradition*,” which are the following:

- Judgment in absentia. When the accused was not present, either without a counsel or with a counsel who was not permitted to participate in the proceedings.
- Extraterritorial jurisdiction grounds. The offence for which extradition is requested has been committed outside the territory of either the requesting or requested country and the law of the requested country does not enable it to assert jurisdiction over such an offence committed outside its territory in comparable circumstances;
- Limitation by the lapse of time or amnesty.
- Military offence. The offence is an offence only under military law or a law relating to military obligations.

On the other hand, the Scheme refers to “*discretionary grounds of refusal*”, but where adopted the other States can apply the reciprocity principle (Paragraph 15 (1)) appealing to:

- Human Rights reasons. The person is likely to suffer the death penalty, or an unjust or oppressive or too severe a punishment.
- Nationality reasons. The requested person is a national or permanent resident of the requested country.

Section 16 of the Scheme seeks the best possible application of the “*aut dedere aut iudicare*” principle as it sets up the following alternative measures in case of refusal based on the nationality or residence of the person:

- Submitting the case to the competent authorities of the requested country for prosecution;
- Permitting temporary extradition for trial and later returning for serving sentence
- Permitting transfer of convicted offenders;
- Promoting transfers of proceedings by means of enabling a request to be made to the relevant authorities in the requesting country for the provision to the requested country of such evidence and other information as would

enable the authorities of the requested country to prosecute the person for the offence.

E) Convention on the Transfer of Sentenced Persons, Council of Europe 1983, ([CETS No.: 112](#))

The purpose of this Convention is to facilitate the transfer of foreign prisoners to their home countries by providing a procedure which is simple as well as expeditious. With a view to overcoming the difficulty of delays and administrative complexities, the Convention on the Transfer of Sentenced Persons seeks to provide a simple, speedy and flexible mechanism for the repatriation of prisoners.

As noted in the [Explanatory Report](#), in facilitating the transfer of foreign prisoners, the Convention takes account of modern trends in crime and penal policy and gives an added value to other instruments of that time in four respects:

- With a view to facilitating the rapid transfer of foreign prisoners, it provides for a simplified procedure.
- A transfer may be requested not only by the State in which the sentence was imposed ("sentencing State"), but also by the State of which the sentenced person is a national ("administering State"), thus enabling the latter to seek the repatriation of its own nationals.
- The transfer is subject to the sentenced person's consent.
- The Convention confines itself to providing the procedural framework for transfers. It does not contain an obligation on Contracting States to comply with a request for transfer; for that reason, it was not necessary to list any grounds for refusal, nor to require the requested State to give reasons for its refusal to agree to a requested transfer.

Unlike the other conventions on international cooperation in criminal matters prepared within the framework of the Council of Europe, the Convention on the Transfer of Sentenced Persons does not carry the word "*European*" in its title. This reflects the draftsmen's opinion that the instrument should be open also to like-minded democratic States outside Europe. Indeed, relevant to this study it is the Council of Europe convention which has been ratified by the most LAC countries:

States	Ratification	Entry into force
Bahamas	12/11/1991 a	1/3/1992
Bolivia	2/3/2004 a	1/6/2004
Chile	30/7/1998 a	1/11/1998
Costa Rica	14/4/1998 a	1/8/1998
Ecuador	12/7/2005 a	1/11/2005

Honduras	9/3/2009 a	1/7/2009
Mexico	13/7/2007 a	1/11/2007
Panama	5/7/1999 a	1/11/1999
Trinidad and Tobago	22/3/1994 a	1/7/1994
Venezuela	11/6/2003 a	1/10/2003

On the European side, all the EU MS have ratified the Convention.

Five LAC signatory countries have not done any type of declaration with respect to this treaty. Three of them, Bolivia, Mexico and Panama have asked for the clarification of the concept of “national”, and Bahamas *excludes the application of the procedure provided for in Article 9, Paragraph 1.b. of the Convention in cases when the Commonwealth of The Bahamas is the Administering State*. However, no LAC country has adopted the [Additional Protocol to the Convention on the Transfer of Sentenced Persons](#)⁴⁴ which changes the regime for the consent of the person.

According to Article 3, the following conditions must be met for the transfer to take place:

- Nationality. The affected person must be a national of the administering State;
- Judgment. The judgment must be final;
- Length of sentence. At the time of receipt of the request for transfer, the sentenced person has still to serve a minimum of six months, or else the sentence be indeterminate;
- Consent. The transfer must be consented to by the sentenced person or, where in view of his age or his physical or mental condition one of the two States considers it necessary, by the sentenced person's legal representative;
- Dual Criminality rule. The acts or omissions on account of which the sentence has been imposed must constitute a criminal offence according to the law of the administering State, or would constitute a criminal offence if committed on its territory; and
- States’ agreement. The sentencing and administering States must agree to the transfer.

F) Scheme for the Transfer of Convicted Offenders within the Commonwealth

As in other studied areas, the [Commonwealth States](#), from the legal tradition of the common law, have adopted an alternate approach in the form of the Commonwealth Scheme for transfer of prisoners.

⁴⁴ CETS No.: 167

This Scheme involves the UK and the Caribbean Countries: [Antigua and Barbuda](#), [Bahamas](#), [Barbados](#), [Belize](#), [Granada](#), [Guyana](#), [Haiti](#), [Jamaica](#), [St Kitts and Nevis](#), [St. Lucia](#), [St Vincent and the Grenadines](#), [Suriname](#) and [Trinidad and Tobago](#). Nevertheless, only Bahamas, Malta, Trinidad Tobago and UK have so far enacted national legislation in order to give this Scheme effect.

The regulation follows the Council of Europe Convention, and it does not give any remarkable added value.

G) Other relevant international legal instruments

There are other important regional legal instruments which have only regional scope for the LAC Region or for some European countries. They are treaties which are valuable tools for international cooperation but applicable on a regional basis without any intercontinental implications for the moment.

This is the case of the [Inter-American Convention on Mutual Assistance in Criminal Matters](#) of 1972, [European Convention on the Transfer of Proceedings](#) of 1972 and the [European Convention on the International Validity of Criminal Judgments](#) of 1974 which are not dealt in this study due to their lack of LAC – EU application.

4.2. Mapping of LAC & EU MS participation in bilateral MLA agreements

Mutual assistance or *Mutual Legal Assistance* in criminal matters (MLA) is a mechanism of cooperation which allows for a wide range of assistance between States in the production of evidence and other forms of judicial cooperation, in a direct and efficient manner. Generally rendered on the basis of bilateral treaty or agreement or multilateral convention mutual assistance provides a means for one State to obtain evidence or procedural cooperation from another State for use in a criminal investigation, prosecution or proceedings.

Traditionally MLA has been conceptualized as a process by which States seek and provide assistance in gathering evidence for use in criminal cases, (among other areas, taking evidence or statements from persons, search and seizure, the provision of documents or evidential items). However a more developed and **wider notion of MLA** involves other forms of legal cooperation, on procedural areas, such as the service of documents, the temporary transfer of persons to assist an investigation or appear as a witness, or on enforcement of judicial orders such as tracing, seizing and confiscating the proceeds or instrumentalities of crime or even the preserving computer data.

This wide concept of MLA also includes assistance rendered at any stage of a criminal process, from investigation to appeal, and from any judicial

authority, courts, prosecutors or even other enforcement authorised judicial agencies.

On the other hand, although there are many bilateral LAC-EU treaties that deal with MLA and extradition jointly, the concept of mutual assistance does not strictly cover extradition or transfer of sentenced persons.

The bilateral MLA treaties can also be classified from the perspective of their material scope: those related to MLA specifically in drug trafficking and related crimes, and those dealing with MLA in general. This section gives an overview of the second group, while the first one will be dealt jointly with the quality benchmarks of all bilateral MLA treaties under section 4.4. The global chart of this second group of general bilateral MLA agreements can be represented as following:

	A U	B E	B U	C Y	C Z	D E	ES	FI	F R	G E	G R	HU	IR	IT	LA	LI	L U	MA	N E	P O	PT	R O	S K	SL	S P	SW	U K
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<u>Argentina</u>																											
<u>Bahamas</u>																											
<u>Barbados</u>																											
<u>Belize</u>																											
<u>Bolivia</u>																											
<u>Brazil</u>																											
<u>Chile</u>																											
<u>Colombia</u>																											
<u>Costa R.</u>																											
<u>Cuba</u>																											
<u>Dominica</u>																											
<u>Ecuador</u>																											
<u>El Salvador</u>																											
<u>Grenada</u>																											
<u>Guatemala</u>																											
<u>Guyana</u>																											
<u>Haiti</u>																											
<u>Honduras</u>																											
<u>Jamaica</u>																											
<u>Mexico</u>																											

Besides the multilateral and specific conventions on drug matters, LAC countries and EU MS are linked by almost 50 bilateral general MLA agreements. Most of them date from the nineteen-eighties to the present. Indeed, over the last two decades great strides have been made in the development of a framework of bilateral instruments for the rendering of assistance.

In order properly to contextualise this major boost for bilateral MLA agreements the relevant factors which determined this driving force must be considered.

The first significant MLA instrument was the [European Convention on Mutual Assistance in Criminal Matters](#), developed by the Council of Europe, entered into on April 20, 1959, in force June 12, 1962. It was a remarkable achievement of its time in its recognition of the necessity for specific instruments for legal cooperation. Recently, it has entered into force with respect to one LAC country, Chile. It ratified the European Convention on 25th May 2011.

Within the OAS framework, the most significant MLA instrument was the [Inter - American Convention on Mutual Legal Assistance in Criminal Matters](#), a regional instrument adopted in 1992 and entered into force on April 14, 1996.

But the most important driving forces behind the bilateral phenomenon came from the UN under its two international instruments in the field of mutual assistance: the [United Nations Model Treaty on Mutual Assistance](#), the 1988 Vienna Convention - which as noted earlier contains a "stand alone" article on mutual legal assistance - and the later Palermo Convention.

Those agreements are further supplemented by domestic legislation within some states which allows for assistance to be rendered on the basis of reciprocity, designation or administrative arrangement.

Most of those bilateral general MLA agreements are modern treaties signed under the impulse of the UN multilateral instruments. Indeed, there is only one before the II World War, the [Treaty of extradition and Mutual Assistance in criminal matters between Italy and Venezuela](#), signed in Caracas in 1930. There are few agreements signed before the Vienna Convention: the [Treaty of Extradition and Mutual Assistance in criminal matters between Spain and the Dominican Republic](#), adopted in Madrid in 1981, the [Treaty of Extradition and Mutual Assistance in criminal matters between Spain and Argentina](#), adopted in Buenos Aires in 1987 and the Convention on Mutual assistance in criminal matters between Argentina and Italy, signed in Rome in 1987.

Besides these, there are some modern bilateral conventions pending entry into force, such as the [Treaty of Cooperation in Criminal Matters between](#)

[Brazil and Germany](#)⁴⁵, signed in Berlin, December 3, 2009, and the most recent Treaty on Mutual Assistance in Criminal Matters between Mexico and Italy, signed in Rome, June 28, 2011.

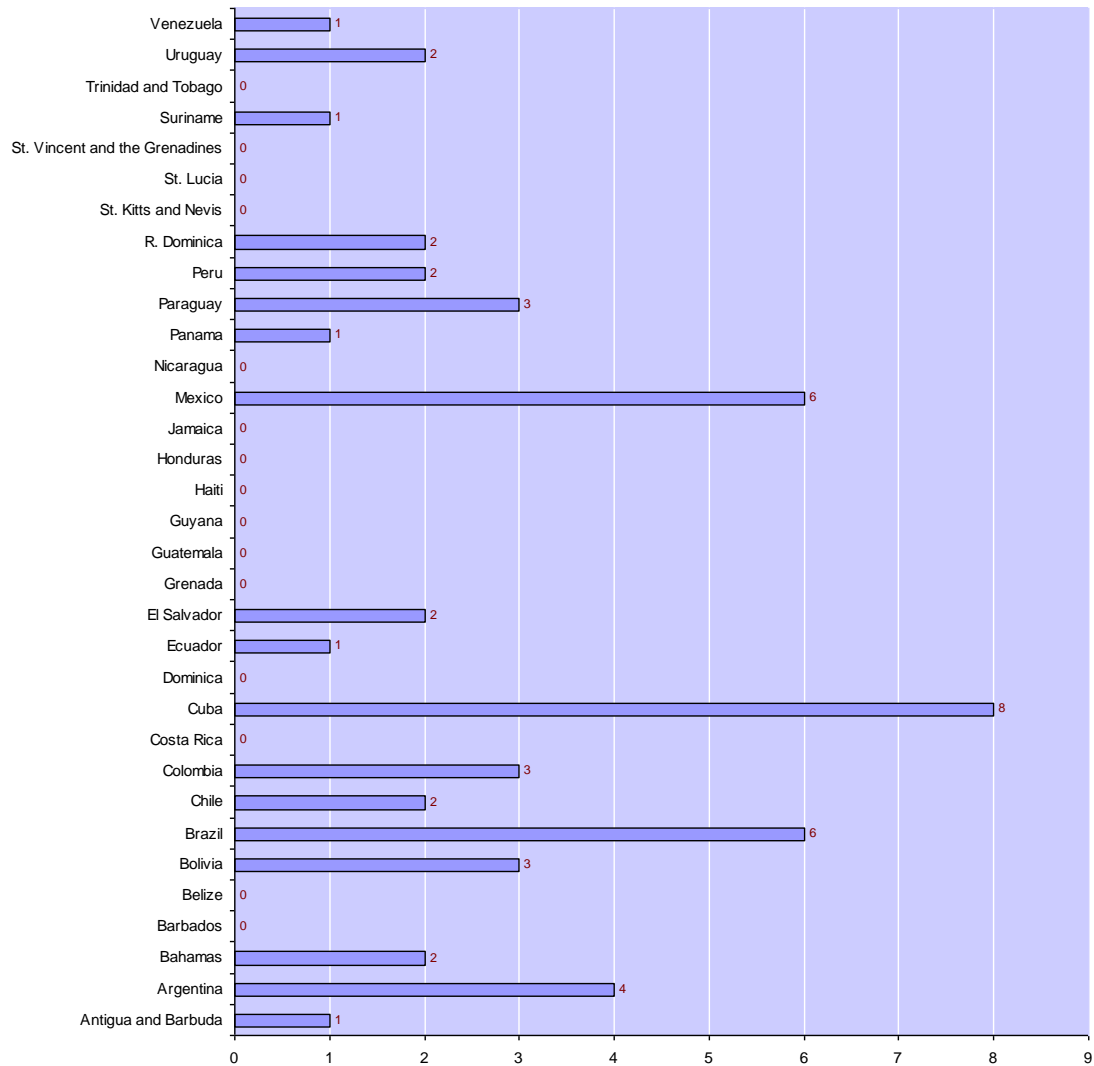
On the LAC side, Brazil (5 treaties into effect and one pending entry into force), Mexico (4 treaties into effect, one current reciprocity agreement⁴⁶ and one pending entry into force) and Argentina (4 treaties) lead the group of countries with the highest number of modern bilateral MLA agreements. Cuba represents a particular case with 8 bilateral conventions; most of them were signed with Eastern European Countries under the COMECON umbrella⁴⁷.

⁴⁵ Original title in Portuguese: *Tratado de Cooperação Jurídica em Matéria Penal entre a República Federativa do Brasil e a República Federal da Alemanha*.

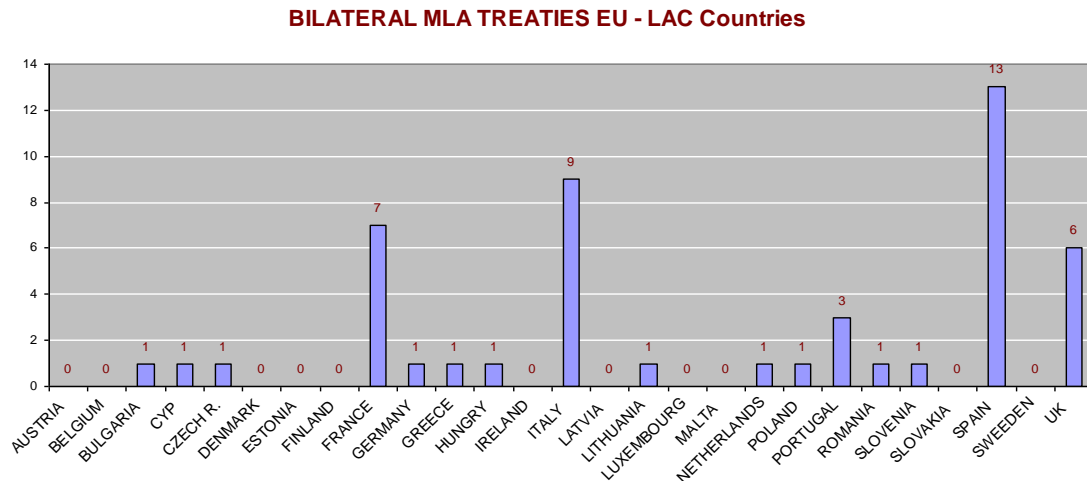
⁴⁶ This is a reciprocity convention by means of a diplomatic **Note Verbale** of 1956, 524.9/3903: “El Ministerio de Asuntos Exteriores tiene el honor de comunicar a la Embajada de México que el Gobierno Federal aprueba la declaración contenida en la Nota Verbal de 4 de octubre del año 1956, 524.9/3903, en la cual se señala que el Gobierno de los Estados Unidos Mexicanos está dispuesto a ofrecer, en todo asunto (materia) de derecho penal, asistencia legal (jurídica) de toda índole (p.ej. en materia de extradición, interrogación de testigos, proporcionamiento de datos, entrega de documentación sobre la identidad y conducta de personas), con base en la reciprocidad y observación de lineamientos básicos y obligaciones en los términos del Derecho Internacional. Por su parte, el Gobierno Federal garantiza al Gobierno de los Estados Unidos Mexicanos su colaboración respecto a la asistencia legal (jurídica) en materia penal, en la medida que lo permitan las leyes locales estatales, y que no ponga en peligro los intereses fundamentales (de índole económica o política) de la Federación, o bien, de los territorios de la República Federal de Alemania.)...”.

⁴⁷ The Council for Mutual Economic Assistance or Comencon was an organization founded in 1949 to facilitate and coordinate the economic development of Soviet-bloc countries. Its original members were the Soviet Union, Bulgaria, Czechoslovakia, Hungary, Poland, and Romania.

BILATERAL MLA TREATIES LAC-EU countries



From the EU perspective, Spain (13 treaties), Italy (9 treaties into effect and one pending entry into force), and France (7 treaties), are the European MS with the highest number of bilateral conventions.



As will be seen under section 4.4, almost all the treaties are applicable to judicial cooperation in general and to drug trafficking cases in particular. Only the 1996 Agreement between the UK and Mexico for mutual assistance expressly excludes the drug trafficking cases.

One common feature to almost all the conventions is the fact that mutual assistance can be rendered directly by competent authorities in the two States, often Justice Ministries. From a historical perspective, and on the basis of the channel of communication used to transmit the request, one can identify three generations of international legal instruments:

- Diplomatic. This represents the first generation of instruments, in which the cooperation requests were transmitted through diplomatic channels.
- Central Authority. This represents the beginnings of professionalisation of the international legal cooperation tasks through the intervention of the Ministries of Justice or such like and a *Central Authority* designated by the countries and charged with transmitting and to receiving requests.
- Direct contact. This is a further step towards the optimisation of the cooperation procedure; it implies direct contact between judicial authorities without the Central Authority's intervention. This is the regime adopted by most EU MS as regards MLA and even extradition.

In respect of LAC - EU, the conventions pertain to the first and second generation. However, in comparison with extradition agreements where diplomatic channels are predominant, the generalization of the professional channel through central authorities is one of the features of MLA which makes it an effective and efficient mechanism of cooperation⁴⁸; the direct channelling of requests without the necessity, for use of diplomatic or other channels.

⁴⁸K. PROST, op. cit.

As has been noted by UNODC⁴⁹ in relation with the benefits of central authorities, the drug and crime control conventions contain extensive and broadly similar provisions relating to mutual legal assistance. Their provisions require each Party to notify the Secretary-General of the UN of the central authority designated by it to receive, transmit or execute requests for mutual legal assistance. This is critical information for Requesting States in planning and drawing up requests. It must be accurate, up to date and widely available to those who frame or transmit mutual legal assistance requests.

Indeed this option of the use of central authorities is taken up by modern MLA international instruments such as the recent 2010 [Agreement between the European Union and Japan on mutual legal assistance in criminal matters](#), where Article 4 contains a clear provision on the designation and responsibilities of central authorities, (*"Each State shall designate the Central Authority that is the authority responsible for sending, receiving and responding to requests for assistance, the execution of such requests or their transmission to the authorities having jurisdiction to execute such requests under the laws of the State. The Central Authorities shall be the authorities listed in Annex I to this Agreement."*).

4.3. Mapping and assessing on the bilateral extradition agreements

As has been noted⁵⁰, it is a generally accepted view today within international law, that there is neither a legal nor moral duty upon States to extradite in the absence of a specific binding agreement to that effect. Because of this principle, many States, in particular those of a Common Law tradition, will not extradite in the absence of a treaty. While Civil Law countries are not generally as restricted in principle to treaty-based extradition, they too have entered into such arrangements, particularly with States whose domestic law mandated it. This could explain, at first sight, why the UK is one of the EU MS with more bilateral extradition treaties with LAC countries, (19 agreements) apart from the already mentioned multilateral London Scheme within the Commonwealth . Similarly, the United States of America has long required a treaty for extradition and thus has developed a broad network of bilateral instruments to govern extradition relations.

On the other hand, the consequence of the above is that historically and even today, the majority of countries have at least some bilateral extradition treaties and these remain the predominant and still, for many States, the exclusive basis for extradition. The outcome is that bilateral treaties still

⁴⁹UNODC 2001 Report, Informal Expert Working Group on MLA Casework Best Practice, (page 7).

⁵⁰ SHEARER, I.A., Extradition in International Law, Manchester University Press, 1971, at p. 24.

dominate extradition practice, although, considering the growing list of nations, it has led to a trend toward alternative bases for extradition; there is an increasing tendency for States to seek alternatives because of the practical and political realities, and the problems of negotiating individual instruments to govern extradition relations with an ever-expanding world community⁵¹. In this context it is easier to explain the number of multilateral and regional conventions in the matter.

In practice, it is unrealistic for any State to have a complete set of extradition instruments applicable to every nation in the world. This explains why countries are considering and adopting an alternative approach to extradition without a treaty. Most commonly, such extradition is based on domestic legislation. There are some countries, as we have noted in section 4.2, which adopt this as almost the exclusive approach to extradition, extraditing without treaty, on the basis of national legislation which imposes essentially a condition of reciprocity.

⁵¹ K. PROST. Op cit.

	A U	B E	B U	C Y	C Z	D E	E S	F I	F R	G E	G R	H U	I R	I T	L A	L I	L U	M A	N E	P O	P T	R O	S K	S L	S P	S W	U K
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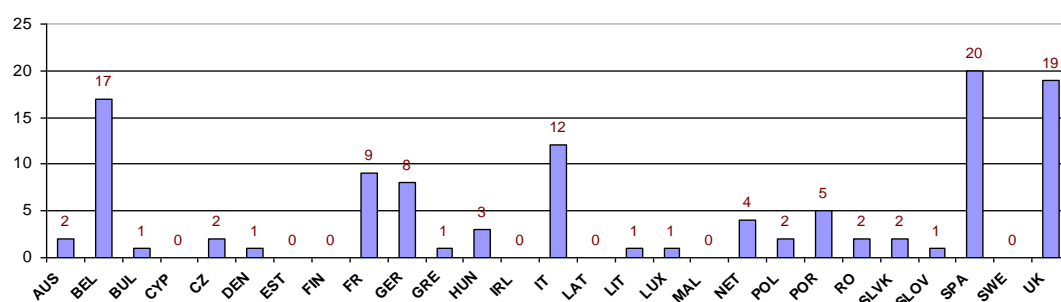
So far, the total number of bilateral extradition agreements between EU and LAC countries reaches more than 100⁵², (some of them for several countries because of the independence of former colonies). Nevertheless, if we bear in mind just the pure bilateral extradition treaties; i.e. those signed between current independent States, almost 50% of those agreements have been signed between Spain or the UK and LAC countries. In the case of Spain, where we find agreements with all the Latin American countries (even with Brazil), we can draw from the comparison with other Spanish agreements in other regions that there is a tendency arising from the traditional Spanish links with Latin American countries, (*Iberoamérica*). It is likely that the UK behaviour towards extradition treaties is driven by two factors. On the other hand, as we have noted, there is a predisposition to rely on international instruments in order to achieve extraditions, and this can explain the UK tendency to sign treaties with Latin American countries, apart from others done with Caribbean countries with important links as former British colonies where, as we have seen, there is a specific multilateral scheme for extradition, ([London Scheme](#)).

In second place excluding colonial treaties, Belgium with 17 treaties, Italy (12) and France (9) are the most relevant EU MS from a quantitative point of view. Then there are those treaties signed between the Netherlands and Argentina, Mexico and Suriname, between Portugal and Brazil and Mexico, and finally one treaty signed by Austria (with Paraguay), Greece (with Mexico), Hungary (with Paraguay) and Lithuania (a recent one with Brazil).

However as noted there are cases in which one single bilateral treaty extends its application to several States through either independence or for colonial reasons. A particular case is Germany, with only two conventions: one with Paraguay and an old one with the British Empire from 1872 extending its effects today to seven Caribbean countries, (Bahamas, Dominica, Grenada, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines and Trinidad and Tobago). Another singular case is Bahamas with no bilateral agreements signed with EU countries but which relies on the application of the former treaties signed by the British Empire with several European countries: Austria, Belgium, Czech Republic, Germany, Hungary, Luxembourg, Netherlands, Portugal, Slovakia and Slovenia.

⁵² This consideration must be understood without taking into account those treaties signed and pending to entering into force: i.e. [Treaty of Extradition between Republic of Argentina and the French Republic](#) of 2011.

BILATERAL EXTRADITION TREATIES (EU and LAC countries)



Some EU countries have not entered a bilateral extradition treaty with any LAC countries. Hence it is necessary to rely on multilateral Conventions, (Vienna and Palermo) and, eventually, on LAC domestic laws⁵³, according to the reciprocity principle in most of the cases. Indeed, the entrance into force of the UN Conventions brought a significant advancement in extradition with respect to drug trafficking and to the proceeds of drug trafficking offences.

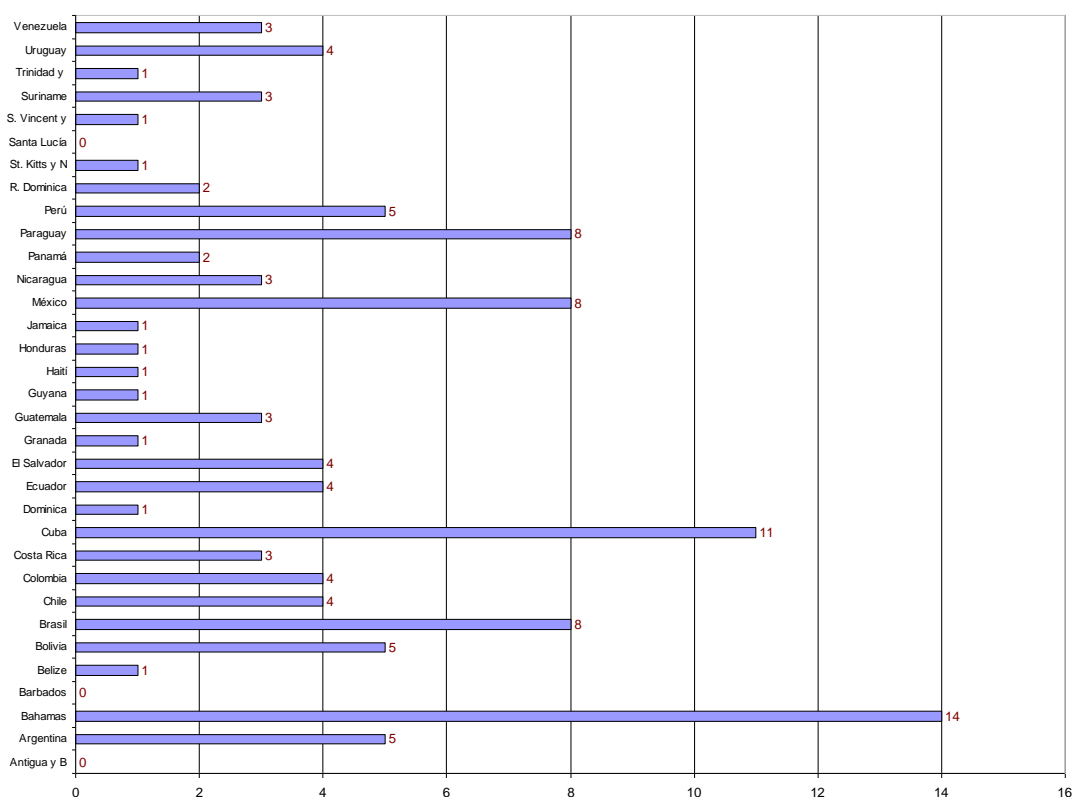
On the LA side, Mexico, Brazil, Paraguay, Bolivia, Peru and Argentina have the most bilateral extradition agreements with EU MS. In fact, all LA countries rely on at least one bilateral treaty with an EU MS, mainly with Spain. Only three Caribbean countries, (Antigua and Barbuda, Barbados and St. Lucia) lack any bilateral agreement on extradition. The rest of the Caribbean signatory countries have entered an agreement with the UK, except in the case of Netherlands with its former colony, Suriname. In the case of The Bahamas, there are no 'proper' bilateral agreements since all of them are old treaties signed by the former colonial British Empire with other European countries which maintain their effect today⁵⁴.

Again Cuba represents a particular case with 11 bilateral conventions; most of them were signed with Eastern European Countries under the COMECON umbrella.

⁵³ See Section 3.2 of this Study.

⁵⁴ The complete list of bilateral treaties can be consulted in Annexes of this study.

BILATERAL EXTRADITION TREATIES (LAC and EU countries)



Bearing in mind the historical situation and political context obtaining at the time of the signature of the agreements, there are three generations of bilateral extradition agreements:

- Those old agreements signed by former colonising States, such as the UK or the Netherlands, maintaining their legal effects after independence as international legal instrument.
- Extradition treaties between independent States before the first multilateral conventions on the matter (1936).
- Extradition treaties signed after the arising of the multilateral convention concept on both a minor scale ([Convention for the Suppression of the Illicit Traffic in Dangerous Drugs](#), 26 June 1936 and European Convention on Extradition from 1957) and on a world scale: the Vienna and Palermo Conventions.

The first group comprises those treaties that were signed between former European colonial Powers and other States. In these cases, the new independent State, such as Suriname, Guyana or Bahamas, maintain the legally binding nature of the international instrument between the former colonising state and even with the third country party in the old extradition

agreement. Among others, this is the case with the following treaties: Extradition Treaty between the Netherlands and Belgium from 1898, (applicable to Suriname, the Netherlands and Belgium), Extradition Treaty between the United States of America and Great Britain and exchanges of notes extending the applicability of the Treaty to Palestine and Trans-Jordan, London 22, December 1931 (applicable to the UK and Guyana, apart of USA) or the [Extradition Convention Italy - Great Britain](#), *Convenzione fra l'Italia e la Gran Bretagna per la reciproca estradizione dei malfattori*, Roma 1873, (applicable to Italy, the UK and The Bahamas). This is also partly the case of the Extradition Convention between Italy and Cuba, signed in 1828 when Cuba was still a part of the Spanish Kingdom, and renewed when already an independent Republic in 1930. It is also the case of the Treaty of Extradition between the Empire of Germany and Great Britain, London 1872, the current validity of which today affects the Bahamas, Dominica, Grenada, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines and Trinidad and Tobago. Finally, it is also the case of the treaties signed by the British Empire with Austria, Belgium, the Czech Republic, Germany, Hungary, Luxembourg, the Netherlands, Portugal, Slovakia and Slovenia which extend their application to the Bahamas.

All these agreements belong to a former generation of extradition treaties rooted in the XIX century, in which a closed list of extraditable offences is included (protecting human life, property, reputation of women, transports...) without specific reference to drug-trafficking crimes and including some crimes which are either not punishable or that are irrelevant nowadays. All of them must be sent by diplomatic channels and due to their scope of application by means of lists, they are difficult to apply to extradition in drug cases.

The second generation of treaties comprises those agreements signed by newly independent LAC countries with EU States before the arrival of the multilateral extradition concept. They represent the major part of extradition treaties. Indeed, it is remarkable that this group, added to the few colonial extradition treaties, represents almost 70% of all the current agreements between LAC and EU MS.

In relation with the contents and technical features of these arrangements, normally the range of treaties signed between the XIX century and the nineteen-fifties rely on a specific list of extraditable offences, normally between 23 and 30 crimes. Nevertheless, within this generation of treaties comes the first use of the “non - list approach” for the scope of application, applying the minimum punishable crime rule (normally one or two years) instead of the list. That is the particular case of the Extradition treaty signed in 1890 between [Bolivia and Italy](#)⁵⁵ (entered into force in 1901), where Article 8 lays down the criteria of the “minimum punishable rule”, therefore the

⁵⁵ See Annex 1 of this Study.

request can only be issued for acts punishable by at least two years of imprisonment.

Normally these treaties do not mention drug-trafficking offences, but some additional protocols, such as the one signed between Colombia and Belgium in 1912 makes specific reference to drugs offences for extradition purposes. Certainly in some agreements the barrier to applicability for drug-trafficking cases in some treaties is not insuperable as there are often clauses provided after the specific list which extend the scope “to other crimes” according with domestic legislation and whenever the Parties agree so⁵⁶. On the other hand, some treaties enhance the barriers to extradition adding to the specific crime list the “dual criminality rule”⁵⁷.

Finally, the last generation of extradition treaties incorporate those agreements that use the “non – list approach”, applying the criteria of a minimum punishable offence of one or two years. Many of them were negotiated with an eye on the purposes behind the Vienna Convention and other multilateral conventions. Therefore, they are comprehensive with regards to the majority of drug-trafficking crimes.

From the technical point of view this group of extradition treaties have a stronger legal architecture including references to multilateral conventions, provisions on the *aut dedere aut iudicare* principle, clauses for urgent extradition requests (such as reference to Interpol) and some of them allow the exchange of diplomatic channels for the professional Central Authority route⁵⁸.

Bilateral Extradition agreements applicable to drug trafficking cases

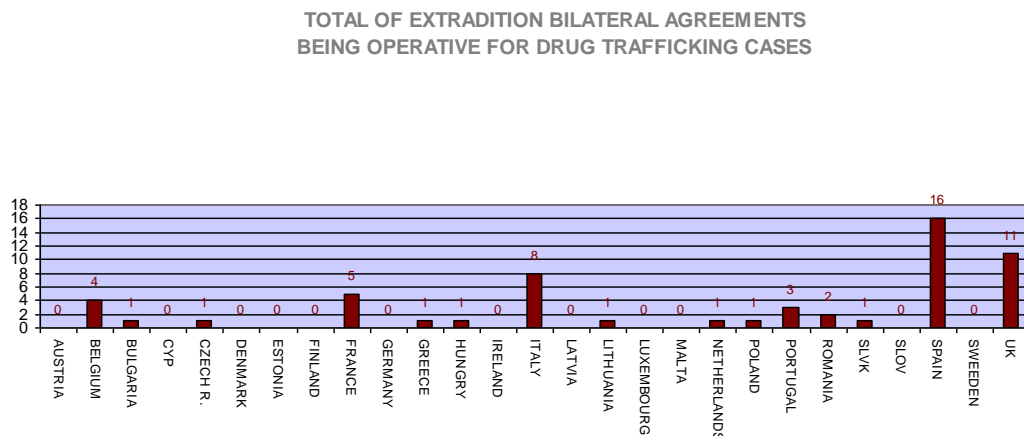
As noted, there are a large number of bilateral extradition conventions between the majority of the LAC countries and nearly twelve EU countries. But are all of them valid for extradition requests? This is a controversial issue since some practitioners interpret Article 6 (3) of Vienna Convention as the legal basis for enlarging the applicability of insufficient extradition treaties to drug related crimes. Although the focus will be placed on this topic when dealing with extraditable crimes, it has to be mentioned that from a strict legal perspective, i.e. from the juridical grounds in accordance with the text of the conventions, only some of them are appropriate for extradition purposes.

⁵⁶ For instance, this is the case of Article II *in fine* of the Extradition Treaty between Mexico and UK from 1889: “*Puede también concederse la extradición, á arbitrio del Estado á quien se pida, por cualquiera otro delito, respecto del cual se puede conceder la extracción, conforme á las leyes de ambas Partes Contratantes, vigentes en la época en que sea pedida*”.

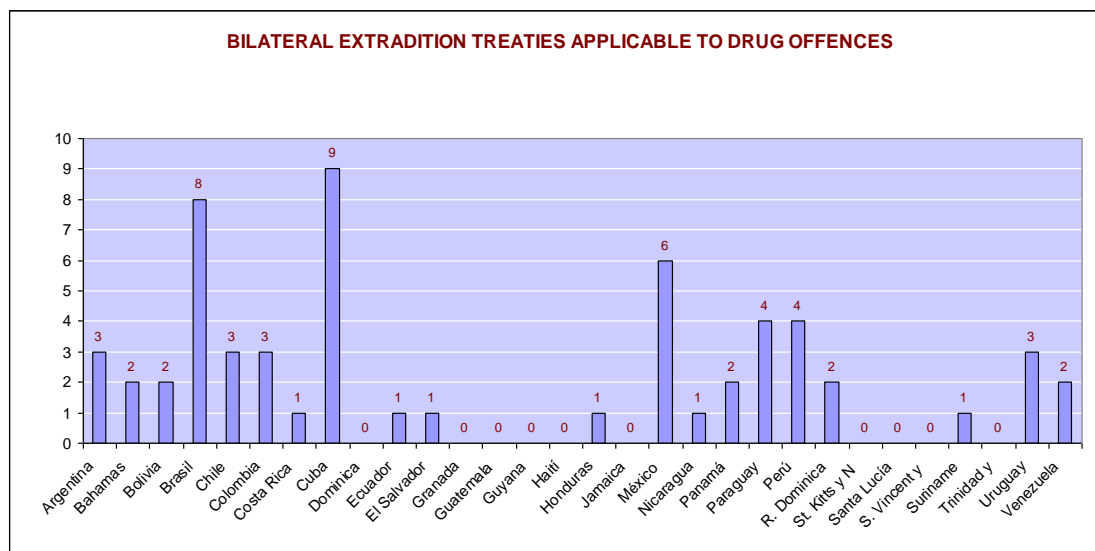
⁵⁷ That is the case of the Extradition Treaty between Venezuela and Belgium of 1885, (article 2 *in fine*: *En ningún caso la extradición podrá tener efecto si el hecho similar no es punible, según la legislación del país al cual se hace la demanda*).

⁵⁸ That is the case of the [Extradition Treaty between Venezuela and Spain](#) of 1989.

In fact, if those cases for which the same original colonial bilateral agreements which are now valid for several countries are left out, LAC-EU cooperation may be said to rely on nearly 85 conventions. However, only 56 of them are applicable to drug trafficking. Only Belgium, Bulgaria, the Czech Republic⁵⁹, France, Greece, Italy, Lithuania, the Netherlands, Poland, Portugal, Slovakia, Spain and the United Kingdom rely on agreements valid from the legal point of view of drug trafficking:



Most of the excluded treaties are old legal instruments, many of them from the XIX or beginning of the XX centuries. Again, Spain is the EU MS that relies on the highest number of international instruments on the matter (16 bilateral agreements). On the LAC side, Cuba, Brazil and Mexico are the States counting on more bilateral treaties:



⁵⁹ In fact, the Czech Republic and Slovakia rely on the same bilateral mixed agreement (Assistance in Civil and Criminal matters and some articles dedicated to extradition) between [Cuba with the former Czechoslovakia from 1981](#).

As will be seen later, some bilateral conventions lay down a closed list of extraditable offences without any reference to drug-trafficking. Therefore, the methodology followed to make this distinction has been to consider as feasible any conventions fulfilling at least one of the following criteria:

- Conventions including a specific reference to the matter, or to multilateral conventions, (only from the nineteen-fifties onwards);
- Conventions with “non – list approach” relying on minimum punishable rule for regulating the material scope;
- Conventions closing the list of extraditable crimes with an open clause, such as “...extradition is also to be granted for other crimes or offences to persons or thing, which according to the law of the ...Parties punishable”.

Bearing in mind these criteria and purely from the legal perspective of the instrument wording, the following list of conventions⁶⁰ which are non applicable to drugs can be identified:

- Extradition Treaty between Bolivia and Belgium, 1908.
- Extradition Treaty between Bolivia and Italy, 1901.
- Extradition Treaty between Bolivia and Portugal, 1879.
- Extradition Treaty between Chile and Belgium, 1899.
- Extradition Treaty between Colombia and France, 1850.
- Extradition Treaty between Costa Rica and Italy, 1873.
- Extradition Treaty between Costa Rica and Belgium, 1902.
- Extradition Treaty between Cuba and Spain, 1906, (Article 1).
- Extradition Treaty between Cuba and France, 1925, (Article 1).
- Extradition Treaty between Ecuador and Belgium, 1887, (Article 2).
- Extradition Treaty between Ecuador and France, 1937, (Article 2).
- Extradition Treaty between Ecuador and Spain, 1880.
- Extradition Treaty between El Salvador and Italy, 1871.
- Extradition Treaty between El Salvador and the UK, 1881.
- Extradition Treaty between Guatemala and Belgium, 1898.
- Extradition Treaty between Guatemala and Spain, 1897.
- Extradition Treaty between Guatemala and the UK, 1886.
- Extradition Treaty between Haiti and the UK, 1876.
- Extradition Treaty between Mexico and Belgium, 1980.
- Extradition Treaty between Mexico and the Netherlands, 1909.
- Extradition Treaty between Nicaragua and Belgium, 1934.
- Extradition Treaty between Paraguay and Germany, 1909.
- Extradition Treaty between Paraguay and Austria-Hungary, 1907.
- Extradition Treaty between Paraguay and Belgium, 1926.
- Extradition Treaty between Peru and France, 1876.
- Extradition Treaty between Peru and Belgium, 1890.
- Extradition Treaty between Uruguay and the UK, 1884.

⁶⁰ These treaties are quoted using shortening references. The official titles used by the treaties can be consulted in Annex 1 of this study.

- Extradition Treaty between Venezuela and Belgium, 1884.

Besides, we should include in this group to majority of the bilateral agreements signed by the UK applicable currently applicable to the former colonies. This would be the case of the Extradition Treaty between Germany and the UK, 1872, (applicable to the Bahamas, the Dominican Republic, Grenada, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines and Trinidad and Tobago) and the bulk of the old extradition treaties extradition signed by the UK with Austria, Belgium or the Netherlands applicable to The Bahamas and other Caribbean countries.

4.3.1. Comparative analysis of the extradition of nationals

Regarding the question of how to deal with nationals of the requested State, the reluctance of countries to admit the possibility of their extradition is evident from the earliest treaties. In fact, extradition is a very old practice within international cooperation in criminal matters. It was born in ancient societies such as the Egyptian, Chinese, Chaldean, and Assyro-Babylonian,⁶¹ out of the necessity to answer the problem of returning nationals of the requesting countries who had taken refuge in other territories. Bearing this background in mind, it is easier to understand why the sovereignty rule linked to the State *Ius Puniendi* principle of its own nationals is reflected in 99% of extradition treaties. Consequently, almost all the treaties have one provision setting up some type of barrier or prevention to the extradition of their own nationals.

There is one extraordinary exception in force among the whole range of treaties between LAC and EU countries. That is the case of the [Extradition Treaty between the Kingdom of Spain and the Oriental Republic of Uruguay](#), signed in Madrid, 26 February of 1996. In this particular treaty, Article 13 deals with the extradition of nationals and explicitly excludes refusal on grounds of nationality:

“Parties will not be able to refuse an extradition relating to the pursuit of criminal proceedings in the requesting State for the sole fact of the requested person being a national of the requested State”⁶²

Although it has not entered into force at intercontinental level, the [Agreement on Simplified Extradition system between the Republic of Argentina, the Federative Republic of Brazil, the Kingdom of Spain and the Portuguese Republic](#)⁶³ from 2010 is remarkable in that it includes the following provision on the surrender of nationals (Article 4 (1)):

*Except in the case of contrary constitutional clauses, the **nationality** of the requested person shall not be invoked to deny extradition.*

⁶¹ M. Cherif BASSIOUNI, *International Extradition*, United States Law and Practice, (quoted by K, PROST, opus cit.).

⁶² Non authentic translation of the Spanish text: “1. No se podrá denegar la extradición, a efectos de ser juzgado en el Estado requirente, por el hecho de que la persona reclamada sea nacional del Estado requerido. 2. La Parte en cuyo territorio se haya impuesto una pena privativa de libertad mediante una sentencia con fuerza de cosa juzgada contra un nacional de la otra que, al huir a su país, se haya sustraído a la ejecución de dicha pena, podrá solicitar a la otra Parte que prosiga su ejecución, si la persona evadida se encuentra en su territorio.”

⁶³ Original title in Spanish: *Acuerdo sobre simplificación de la extradición entre la República Argentina, la República Federativa del Brasil, el Reino de España y la República Portuguesa, hecho en Santiago de Compostela el 3 de noviembre de 2010*. The text has been under [parliamentary procedure](#) in Spain.

The text, based on the *Council Framework Decision [2002/584/JHA](#) of 13 June 2002 on European Arrest Warrant and the Surrender Procedures between Member States* and other regional agreements within the Southern Cone, simplifies and speeds up extradition procedures, includes the *aut dedere aut iudicare* rule and the minimum punishable rule for extraditable crimes, and replaces diplomatic channels by the Central Authorities' mechanism. The agreement was signed in Santiago de Compostela, Spain, within the framework of the Ibero-American Ministers of Justice Summit, ([COMJIB](#)⁶⁴), and it is still pending several ratifications.

All the other bilateral LAC-EU treaties in force contain some barrier. Depending on the extent of the limitation, the following categories of nationality clauses can be differentiated:

- Compulsory prohibition on extraditing nationals of the requested State without any other alternative.
- Optional limitation using provisions such as: *"Each of the High Contracting Parties reserves the right to grant or refuse the surrender of its own subjects or citizens"*⁶⁵, or *"Either Government may, in its absolute discretion, refuse to deliver up its own subjects to the other Government"*⁶⁶.
- Limitation with an alternative, that is the application of the discretionary refusal linked to the *Aut dedere aut iudicare* rule.
- Total exclusion of nationality limitation.

A) A total of 45 conventions belong to this group, most of which are first generation treaties. Some of them exclude extradition not only on the grounds of citizenship or nationality, but also of permanent residency in the requested State. The arrangements with non-closed list⁶⁷ that belong to this group are as follows:

- Extradition Treaty between Argentina and Belgium, 1887, (Article 1).
- Extradition Treaty between Argentina and the Netherlands, 1893.
- Extradition Treaty between Belgium and Cuba, 1905, (Article 1).
- Extradition Treaty between Brazil and Portugal, 1991 (Article 3.1. a).
- Extradition Treaty between Colombia and Belgium, 1912, (Article 1), amended in 1931 in order to include drug trafficking crimes.

⁶⁴ The Conference of Ministers of Justice of Ibero-American Countries or Latin American MoJ Summit (COMJIB) dates back to the signing of a document known as the "Acta de Madrid" in 1970, during a meeting of the Ministers of Justice of the region. Following a period during which the Conference acted as an informal structure of collaboration between the Ibero-American Ministers of Justice, COMJIB was finally institutionalized in 1992, by means of the adoption of the "[Tratado de Madrid](#)", under which it was granted due legal capacity.

⁶⁵ Article III of the Treaty between the United Kingdom and Peru for the Mutual Surrender of Fugitive Criminals, Signed at Lima, January 26, 1904.

⁶⁶ Article III of the [Treaty between Great Britain and the United States of Mexico for the mutual extradition of fugitive criminals](#).

⁶⁷ Here we only include those treaties without closed list of extraditable offences. For readable view, we refer to countries and year and do not use the original title of the treaties..

- Extradition Treaty between Panama and Spain, 1997, (Article 4.1.).
- B) The second group contains treaties that do not contemplate any compulsory exclusion of extradition of nationals of the requested State. Normally, these agreements defer to the States the choice between surrendering its own nationals or conditioning the decision to the reciprocity principle. Such is the case of the following treaties⁶⁸:
- Extradition Treaty between Argentina and Spain⁶⁹, 1990, (Article 7).
 - Extradition Treaty between Argentina and the UK, 1889, (Article III).
 - Extradition Treaty between Bolivia and the UK, 1892, (Article II).
 - Extradition Treaty between Brazil and Portugal (and other States pertaining to the [Community of Portuguese Language Countries](#)), 2005, (Article 4).
 - Extradition Treaty between Chile and the UK, 1897, (Article III).
 - Extradition Treaty between Colombia and the UK, 1888, (Article 3).
 - Extradition Treaty between Cuba and Italy, 1828, (Article 3).
 - Extradition Treaty between Cuba and the UK, 1904, (Article III).
 - Extradition Treaty between Cuba and Czechoslovak Socialist Republic, 1990, (Article 63.a).
 - Extradition Treaty between Costa Rica and Spain, 1997, (Article 6).
 - Extradition Treaty between Honduras and Spain, 2002, (Article 2).
 - Extradition Treaty between Mexico and Italy, 1899, (Article II)⁷⁰.
 - Extradition Treaty between Mexico and Portugal, 2000, (Article 5 refers to reciprocity principle).
 - Extradition Treaty between Mexico and the UK, 1886, (Article III).
 - Extradition Treaty between Nicaragua and the UK, 1905, (Article III).
 - Extradition Treaty between Nicaragua and Spain, 1997, (Article 6).
 - Extradition Treaty between Panama and the UK, 1906, (Article III).
 - Extradition Treaty between Paraguay and the UK, 1908, (Article 3).
 - Extradition Treaty between Peru and the UK, 1904, (Article III).
 - Extradition Treaty between Suriname and the Netherlands, 1976, (Article 1).
- C) The third group contains agreements which, in case of discretionary refusal on the grounds of nationality, foresee some sort of mitigation by introducing the obligation (commitment or possibility) to submit the case to the competent authorities in order that domestic proceedings may be taken if considered appropriate. This can be considered as a discretionary rejection taken one step further, for it includes different levels of

⁶⁸ Here we only include those treaties without closed list of extraditable offences.

⁶⁹ As we have noted, once it will entry into force the [Agreement on Simplified Extradition system between the Republic of Argentina, the Federative Republic of Brazil, the Kingdom of Spain and the Portuguese Republic](#), this provision shall not be applied.

⁷⁰ It is pending to entry into force a new treaty of 2011.

application of the *aut dedere aut iudicare* principle. The following treaties can be said to fall into this category:⁷¹:

- Extradition Treaty between Argentina and Italy, 1987, (Article 4).
 - Extradition Treaty between Bolivia and Spain, 1995, (Article 7).
 - Extradition Treaty between Brazil and the UK, 1995, (Article 3.3.).
 - Extradition Treaty between Brazil and Lithuania, 1937, (Article I).
 - Extradition Treaty between Brazil and Italy, 1989, (Article VI).
 - Extradition Treaty between Brazil and France, 1996, (Article 3.2.).
 - Extradition Treaty between Brazil and Spain, 1988, (Article 3.2).
 - Extradition Treaty between Brazil and Belgium, 1953, (Article 1.2.).
 - Extradition Treaty between Brazil and Romania, 2003, (Article 4.1).
 - Extradition Treaty between Chile and Portugal 1897, (Article 7).
 - Extradition Treaty between Chile and Spain, 1992, (Article 7.2.).
 - Extradition Treaty between Colombia and Spain, 1893, (Article 2).
 - Extradition Treaty between Cuba and Bulgaria, 1979, (Article 73).
 - Extradition Treaty between Cuba and Hungary, 1981, (Article 67).
 - Extradition Treaty between Cuba and Poland, 1982, (Article 77).
 - Extradition Treaty between Cuba and Romania, 1980, (Article 46).
 - Extradition Treaty between the Dominican Republic and the French Republic, 2000, (Article 4).
 - Extradition Treaty between Ecuador and Spain, 1989, (Article 3.2.a).
 - Extradition Treaty between Mexico and Spain, 1939, (Article 7.2).
 - Extradition Treaty between Mexico and France, 1995, (Article 6.2.).
 - Extradition Treaty between Mexico and Greece, 2004, (Article 4.2.).
 - Extradition Treaty between Paraguay and Italy, 1997, (Article 6).
 - Extradition Treaty between Paraguay and France, 1997, (Article 6.2).
 - Extradition Treaty between Paraguay and Spain, 2001, (Article 4.2.).
 - Extradition Treaty between Peru and Spain, 1989, (Article 7.2).
 - Extradition Treaty between Peru and Italy, 1994, (Article 4.1.f and 7).
 - Extradition Treaty between the Dominican Republic and Spain, 1981, (Article 7.2).
 - Extradition Treaty between Uruguay and Italy, 1879, (Article XI).
 - Extradition Treaty between Uruguay and France, 2000, (Article 6.2)
 - Extradition Treaty between Venezuela and Italy, 1930, (Article 7)
 - Extradition Treaty between Venezuela and Spain, 1990, (Article 8.1.).
- D) Finally, as noted earlier, only one treaty can be included in the fourth category, that of those legal instruments that exclude the nationality exemption for extradition purposes. It is the case of the already mentioned [Extradition Treaty between Uruguay and Spain](#) of 1996.

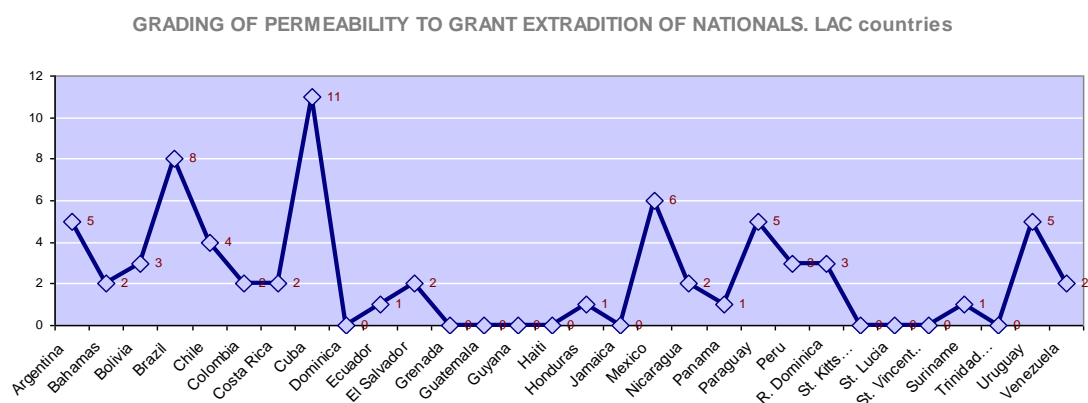
⁷¹ Here we only include those treaties without closed list of extraditable offences. These treaties are quoted using shortening references. The official titles used by the treaties can be consulted in Annex 1 of this study.

Bearing in mind this classification and in order to conduct a comparative assessment of the legal permeability of treaties as regards the extradition of national citizens, the following picture is obtained:

Indicators	Grading
Compulsory prohibition	0
Optional limitation	1
Optional limitation plus alternative <i>Aut iudicare</i>	2
Prohibition of exclusion of nationality clause	2

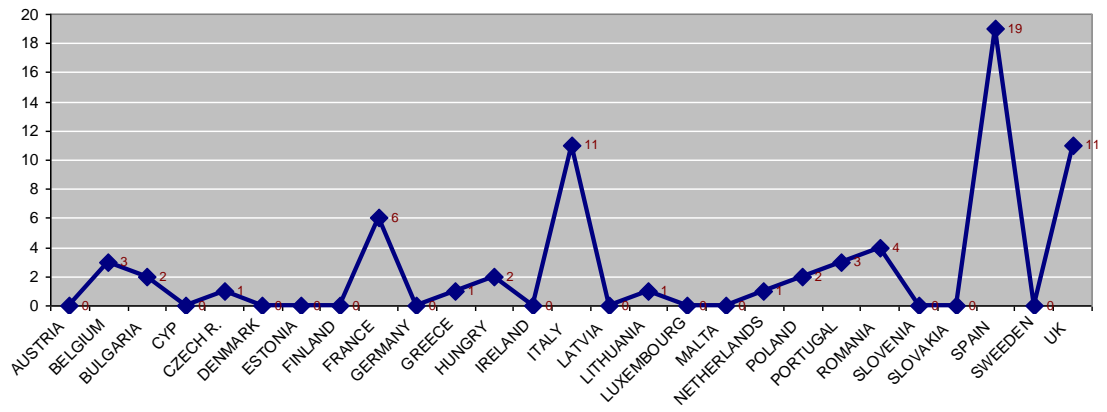
Using the previous indicators and marking all the bilateral conventions of each LAC country, the grading of accessibility to extradition can be measured against the benchmarks. It should be noted that the level of accessibility is linked with the date of the agreements and, of course, the number of conventions signed.

Consequently, a comparative analysis shows that among LAC countries, Brazil, Mexico, Uruguay and Paraguay are the States that have the greatest number of conventions with the least legal restrictions on the extradition of nationals:



On the EU side, the level of accessibility is not strictly balanced with the number of conventions, and after Spain, Italy and the UK are the EU countries with lesser legal boundaries to granting extradition on nationality grounds.

GRADING OF PERMEABILITY TO GRANT EXTRATION OF NATIONALS. EU MS



4.3.2. Delimitative approach to extraditable crimes

Next to the nationality exception, the question of the material scope of extradition agreements is a crucial one regarding international cooperation in criminal matters. As noted, not all the catalogue of extradition treaties in force are entirely applicable to drug trafficking offences, at least from the strictly legal point of view according to the instruments' wording.

Furthermore, as was seen under Paragraph 4.3 many old treaties use the closed-list approach, thus limiting the extradition to the offences listed. This normally reduces to a great extent the operative effectiveness of the agreement for drug related cases. On the other hand, although it is sometimes left to the discretion of the requested State, there are subsequent agreements that instead of closed-lists include a list of extraditable crimes to which an open clause is added in order to include other crimes or offences.

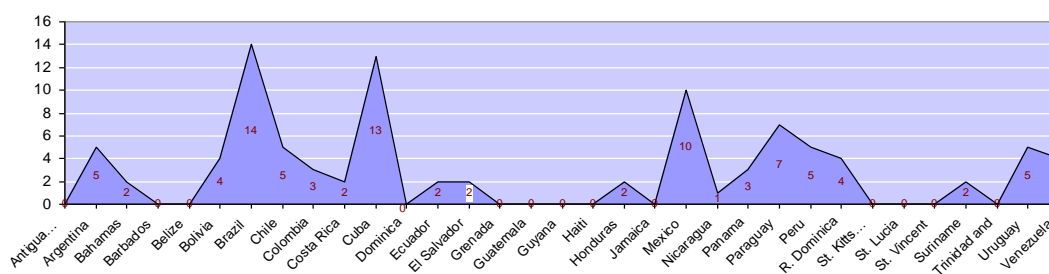
Presently, since the third generation of extradition treaties, the “non – list approach” is the method that prevails, one that limits itself to establishing a minimum punishable offence of one or two years. These are the conventions that were negotiated after the 1936 [Convention for the Suppression of the Illicit Traffic in Dangerous Drugs](#), the 1988 Convention of Vienna and other multilateral conventions.

Therefore, the “non – list approach” adopts a *seriousness threshold* criteria in order to include as “extradition crimes” those offences that are punishable by imprisonment for a minimum period. This *seriousness threshold* is usually applied to different degrees depending on whether it relates to an accusation case (normally 12 months or more) or a conviction case (normally six months or more). Consequently, this system broadly allows for extradition in the majority of drug-trafficking proceedings.

Taking into consideration the different indicators, the legal level of permeability of the treaties can be measured in respect of extraditable crimes. Thus, it is possible to evaluate the level of accessibility taking into account the following indicators and scale:

Indicators	Grading
Close List (not including drug cases)	0
Open List (even on discretionary basis)	1
Seriousness Threshold (non - List approach)	2

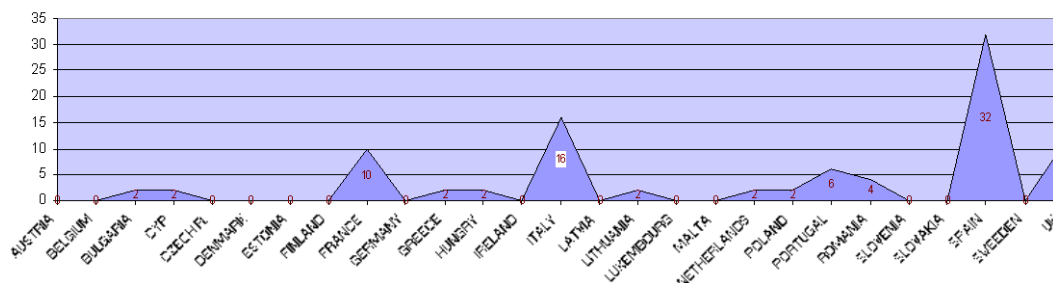
GRADING OF PERMEABILITY TO EXTRADITABLE CRIMES



As can be seen here, summing up all the indicators and conventions, Brazil, Cuba, Mexico and Paraguay are the LAC countries with the highest degree of receptiveness to granting extradition from the viewpoint of the material scope and extraditable crimes and offences.

In relation to EU MS, Spain, Italy, UK and France are the countries that most easily grant extradition on the basis of their treaties' material scope. In fact, Spain has only two old conventions that apply the closed-list of offences for extraditable crimes (Extradition Treaty between Spain and Guatemala⁷², signed 7th November 1895 and Extradition Treaty between Spain and Cuba, signed 26th October 1906).

GRADING OF PERMEABILITY TO EXTRADITABLE CRIMES (EU MS in relation to LAC)



It is worth noting that this evaluation takes into account the material scope according to the mentioned indicators, although there is some lower ranking conventions with closed lists of extraditable crimes, for instance the Extradition Treaty between Belgium and Colombia, (signed 21 August 1912), which thanks to a later amendment allows for extradition in drug trafficking cases.

Dual Criminality Rule and Extraditable crimes

The double or dual criminality rule provides that extradition must only take place in respect of conduct that is an offence both in the requesting and in the requested State. It appears that the rule of double criminality developed

⁷²Original title in Spanish: *Tratado de extradición entre España y Guatemala, firmado en Guatemala el 7 de noviembre de 1895*, (ratified 11 May 1897. Journal 161, 10 June 1897).

for two principal reasons. First, it was an aspect of the principle of reciprocity, that is, the principle of international law which denotes that when a State gives cooperation to another State, it does so on the basis that it will receive similar cooperation in return (*do ut des*). Secondly, it reflected the idea that it was undesirable for a State to assist in the enforcement of criminal laws unknown in its own domestic legislation. Sometimes, in order to determine whether the double criminality rule is satisfied, it is first necessary to consider the evidence provided by the foreign State as to its own laws and then to look at the conduct disclosed in the evidence supplied by the foreign State to decide whether that conduct amounted to an offence in the requested State's jurisdiction. An additional requirement which is to be found in some treaties and extradition arrangements is that the offence should also be extraditable under the law of both parties. As noted in section 3.2., the dual criminality rule is foreseen in many domestic laws when dealing with extraditions in absence of any bilateral or multilateral agreement.

The problem with this rule flows from the technical differences in how States define, name and prove criminal offences. As noted⁷³, the result is that extradition cases have failed because of a technical approach to dual criminality. However, the modern test for dual criminality, incorporated in many extraditions LAC – EU treaties following the example of Article 2 of the UN Model Treaty on Extradition, focuses not on technical terms or definitions but on the substantive underlying conduct. Thus, the test is whether the conduct alleged against the fugitive would constitute a criminal offence in the requested state, regardless of whether the offences in the two States carry a different name or have different elements to them. This development has greatly simplified and improved extradition practices and constitutes an excellent example of effectively bridging the differences between legal systems.

Nevertheless, from the conceptual point of view this traditional condition to extradition is in fact something quite alien to international legal cooperation since extradition does not imply purely the *ius puniendi* by the requested state, but the assistance for the exercise of criminal foreign actions by the requesting state⁷⁴.

On the other hand, the adoption of the “non – list approach” by modern bilateral LAC – EU treaties indirectly implies a lesser application of this principle, focusing more on the conduct and on the punishment rather than the crime and its legal description or classification. Many treaties integrate specific provisions in order to minimise the danger associated to the interpretation of the double criminality rule. Therefore, the [Extradition Treaty between Spain and the Republic of El Salvador](#) of 1997, provides in Article 3 that in order to determine whether a crime is punishable in both countries the

⁷³ K. PROST, opus cit.

⁷⁴ J. VOGEL, *Abolishing the Extradition?* CGPJ Law Review 2001, (Madrid, Cuadernos de Derecho Judicial, Derecho Penal Internacional VII-2001).

category or terminology for the specific crime shall be irrelevant. In the same sense, the [Extradition Treaty between Mexico and Portugal](#) of 1998, (Article 2.5 a: *"it will be irrelevant that the law of the contracting Parties classify in a different way the fundamental elements of the crime or use the same or different legal terminology"*).

Notwithstanding the referred domestic legislations, it is worth mentioning that most LAC - EU extradition treaties do not apply that rigid concept of the double criminality rule. However, it is quite common in many treaties to use this rule when providing an open clause (*"other crimes and offences..."*) after a list of extraditable crimes. That is, for instance, the case of the Article II *in fine* of the [Extradition Treaty between Great Britain and the Republic of Bolivia](#) of 1899: *"Extradition may also be granted at discretion of the State applied to in respect of any other crime for which, **according to laws of both Contracting Parties** for the time being in force, the grant can be made"*.

As a remarkable advance in order to overcome the obstacles linked to the consideration of the dual criminality rule, we should point out the case of Article 3 of the [Agreement on Simplified Extradition system between the Republic of Argentina, the Federative Republic of Brazil, the Kingdom of Spain and the Portuguese Republic](#) of 2010: *"It shall be understood to comply with **double incrimination** when the extradition is requested for any of the offences which requesting and requested States have assumed the obligation to punish according with the international instruments ratified by them, in particular those instruments mentioned in annex I of this Agreement"*⁷⁵. This annex includes most of the multilateral international conventions, among them the Vienna and Palermo conventions.

Types of offences and extraditable crimes

One common feature to almost all the mentioned bilateral LAC - EU extradition agreements is the reference to certain types of offences excluded from cooperation. This is traditionally the case of military obligations, some purely tax offences and political crimes in many LAC - EU agreements.

While extradition has long been a component of the relations between States, its role and purpose has been altered radically over time. In ancient times and in fact up until the early 1800's, extradition specifically targeted individuals suspected of religious or political offences against sovereigns⁷⁶. It was viewed as a means to protect the political order of States. However, in modern times, the first political offence exemption was codified in the Belgium Extradition

⁷⁵ Original text in Spanish: *"Se entenderá que concurre la doble incriminación si la extradición se solicita por alguna de las conductas delictivas que la Parte requirente y la Parte requerida se hayan obligado a tipificar en virtud de instrumentos internacionales ratificados por las mismas, en particular aquellos que figuran en el anexo I del presente Acuerdo"*.

⁷⁶ See C. VAN DEN WIJNGAERT, *The Political Offence Exception to Extradition*, 5 (1980).

Act 1, 1833 and was included in a treaty between France and Belgium the following year⁷⁷. So far, in the last hundred years, the focus of extradition has changed completely towards common serious crime, which in many ways has replaced political offences as a major challenge to the stability of nations. In fact, quite ironically, political offences, the original focus of extradition are now generally excluded from extradition regimes.

Dealing with LAC countries, while the military offences exemption is less and less mentioned in modern treaties, tax and political offences are being redefined in order to minimise these exemptions. This is, for instance, the case of most of the twenty Spanish extradition bilateral conventions with LAC countries, where provisions are included which include tax offences when fulfilling the double criminality test or exclude from the political exemption those offences affecting the King or Prime Minister or terrorist crimes. This is the case of the Extradition Treaty between Mexico and Spain of 1978, (Article 4.1), the 1992 Extradition Treaty between Chile and Spain of 1992⁷⁸, (Article 5.1 a) or the [Extradition and MLA Treaty between Venezuela and Italy](#) of 1930⁷⁹, (Article 5.4).

On the other hand, more and more modern treaties make reference to multilateral conventions in order to include among extraditable crimes drug trafficking offences and related conduct. Such is the case of the Extradition Treaty between Brazil and Belgium from 1953 (the Protocol of 1958 refers to the [Convention for the Suppression of the Illicit Traffic in Dangerous Drugs](#), 26 June 1936) and the [Extradition Treaty between Mexico and Spain](#) of 1978, (Article 3 expressly foresees that “*Extradition will also be granted, according with this treaty, for those crimes foreseen in the multilateral conventions to which both countries are parties*”).

Principle of Specialty and extraditable crimes

⁷⁷ M. BASSIOUNI, *International Extradition and World Public Order*, (1975).

⁷⁸ Particulary the letter b of article 5.1 exclude terrorist offences from the exemption. Original text in Spanish: *1. No se concedera la extradición por delitos considerados como políticos o conexos con delitos de esta naturaleza. La mera alegación de un fin o motivo político en la comisión de un delito no lo calificara por si como un delito de este carácter.*

A los efectos de este Tratado, en ningún caso se consideraran delitos políticos:

a) El atentado contra la vida, la integridad física o la libertad de un Jefe de Estado o de Gobierno, o de un miembro de su familia.

b) Los actos de terrorismo.

c) Los crímenes de guerra y los que se cometan contra la paz y la seguridad de la humanidad, de conformidad con el derecho internacional.

⁷⁹ Original text in Italian: *Non si considera delitto politico, né fatto connesso a tale delitto, un attentato contro la persona del capo dello stato, quando questo attentato costituisca un delitto di omicidio, anche non consumato per causa indipendente dalle volontà di chi lo compie. Qualsiasi apprezzamento sulla natura politica del delitto é riservato alle autorità dello stato richiesto.*

Another common limitation to extradition in most of the LAC – EU agreements is the principle of specialty. The principle of specialty or speciality⁸⁰ signifies that, when a person has been extradited, he will only be prosecuted or punished for the offence or offences in respect of which he was surrendered and will not be proceeded against or dealt with for any other alleged offence committed prior to his extradition, unless he is first afforded a reasonable opportunity to leave the requesting State. The [UNODC Manual](#)⁸¹ uses the expression *Principle of Specialty* as the one that ensures *that you identify all offences for which extradition will be sought, whether extraditable offences or not (this may not be possible for non-extraditable offences under domestic law). This avoids later problems with seeking a waiver of the rule of speciality from the requested State because you want to prosecute for another prior offence*. Originally, specialty protection developed out of a concern that a foreign State, having obtained the surrender of an accused person on an ordinary criminal charge might put him on trial for a political offence.

In this sense, the specialty rule may have a double standing. It is a guarantee ensuring the procedural rights of a detained or arrested person. On the other hand, from the operative point of view it can be considered as an obstacle to effective cooperation between countries that should be overcome in a framework of mutual trust. In fact, currently, the majority of the LAC – EU bilateral conventions lay down some sort of relaxation to this barrier foreseeing that the fugitive criminal can be surrendered to a foreign State if provision is made by the law of that State or by specific authorization or arrangement on a discretionary basis.

General evaluation of permeability

As we can deduce, in general terms the extradition system is developing from a rigid cooperation concept to a more open, flexible, feasible and trusting scheme. This evolution is particularly remarkable if we consider regional agreements or international instruments rather than bilateral conventions. A significant example of this progress is the 2002 [EAW](#), where the concept of States' cooperation based on the sovereignty principle has been substituted for the principle of mutual recognition of judicial decisions. This European instrument has been emulated in certain regional areas within LAC countries by means of simplified extradition warrants schemes, (2008 [CARICOM Arrest Warrant Treaty](#) or some attempts of [arrest warrant agreement](#) in 2010 within the [MERCOSUR](#) organisation).

However, at LAC – EU level, the most remarkable example is the aforementioned [Agreement on Simplified Extradition system between the Republic of Argentina, the Federative Republic of Brazil, the Kingdom of Spain and the](#)

⁸⁰ The term *speciality* is also used by some of the commentators. For example, SHEARER, *Extradition in International Law* (1971), prefers to use the word *speciality* in order to avoid confusion with other branches of the law, and in order to approximate more closely to the French and German equivalents *specialité* and *spezialität*.

⁸¹ *UNODC Manual on Mutual Legal Assistance and Extradition*, Vienna 2012 . Glossary, p.102.

[Portuguese Republic](#) of 2010, although it has not yet entered into force. This instrument adopts a quicker extradition procedure; it overcomes the obstacles arising from the double criminality and includes –as the EAW– a bilingual form request.

As noted, the current state of play on LAC – EU bilateral agreements shows a situation of pending overcoming challenges towards a scenario where mutual trust in the respective legal systems could outweigh this, allowing a greater grade of permeability to extradition. In fact, taking into account the previous analysed indicators (material scope of application, extradition of nationals, extraditable crimes, level of application of dual criminality rule or principle of specialty), and other possible obstacles to feasible cooperation or barriers arising from legal distrust, (refusal on the basis of a trial in absentia or other analysis of due process of foreign proceedings, difficulties in applying urgent routes for extradition and specific provisions on public order or other discretionary refusals), we can make a general evaluation on the grade of permeability for the granting of extradition taking into account the numbers of conventions and the interaction of those factors.

Mexico, Brazil, Cuba and Paraguay are again the LAC countries with the best ranking of feasibility as regards extradition, in most of the cases in relation to EU MS, Spain, Italy and the UK.

4.3.3. Examination of extraterritorial jurisdiction provisions

DT crime usually involves international connections with organised gangs. This ordinary circumstance implies parallel investigations, several proceedings and finally often involves conflicts of jurisdiction between the States which have pursued the organisation or the crime.

The fragmentation of investigations may provoke inefficiency and later problems when dealing with international cooperation. This is an issue which affects both extradition requests and LoRs since it can imply the rejection of cooperation based on the existence of a domestic investigation, proceeding or sentence.

Regarding the extradition issue, if we take into account just those bilateral treaties with a material scope enabling extradition for DT or related cases, there are only twelve conventions which do not permit any sort of extraterritorial application.

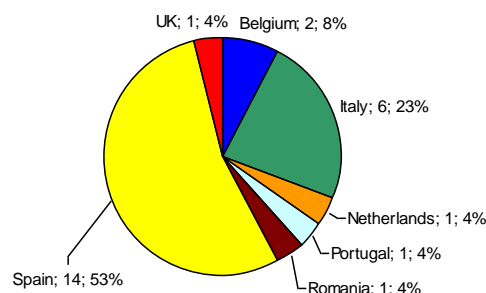
Normally the clause for excluding extraterritorial application used to be provided in the early articles with a wording similar to the following : *“the High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated ..., **committed in the territory of the one Party**, shall be found within the territory of the other Party.”* Most of those provisions belong to treaties from

the XIX Century. Albeit we may find this in some modern treaties; in fact the majority of those treaties are in relation to Italy and overall, to the UK.

A second group of treaties, albeit they do not foresee this rigid compulsory territorial application, do allow denial of requests on the own jurisdiction basis, when a criminal proceeding in the Requested State is running against the same person. Other treaties minimised this rule allowing the postponing of extradition until the national procedure or sentence is finished.

Finally, there is a third group of bilateral treaties which allow for the possibility of accepting a request for crimes committed in the territory of a third country. 54% of these treaties are bilateral conventions in relation to Spain (14 conventions with Argentina, Bolivia, Chile, Costa Rica, Ecuador, El Salvador, Honduras, Mexico, Panama, Paraguay, the Dominican Republic and Uruguay), 23% in relation to Italy (6 conventions with Argentina, Bolivia, Mexico, Paraguay, Peru and Venezuela), the 8% remainder is in relation to Belgium (2 convention with Brazil and Cuba), the Netherlands, (1 convention with Argentina), Portugal, (1 convention with Brazil), Romania, (1 convention with Romania) and the United Kingdom (1 with Brazil).

Extraterritorial provisions



Those sorts of provisions used to be included among the optional causes for refusal of an extradition. The usual clause foresees that when the crime has been committed in a third country, extradition will be accepted according to the domestic extraterritorial provisions regulating the international jurisdiction of the Requested State. This implies a sort of double international jurisdiction since extradition shall be available in respect an offence committed outside of the Requesting State but in respect of which it has jurisdiction if the Requested State would, in corresponding circumstances, have jurisdictions over such an offence. Among others, this is the case of the [Extradition Treaty between the Kingdom of Spain and the Republic of Bolivia](#) of 1990, (Article 11 b.), the [Extradition Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil](#), 1995, (Article 1.2) or the [Extradition Treaty between the Oriental Republic of Uruguay and the French Republic](#) of 1996 (Article 10).

The appearance of multiple jurisdictions strengthens the necessity of promoting alternatives to extradition whenever possible. Extradition is a costly process that should be carefully considered by competent authorities. If appropriate, taking into account the entirety of the case, the judicial authority could evaluate whether it would be advantageous to transfer the proceedings to another jurisdiction which was in a better position to prosecute, before continuing with the investigation or proceedings. When there is no legal basis for transferring the proceedings some MLA conventions allow the laying of an information in connection with proceedings in another State.

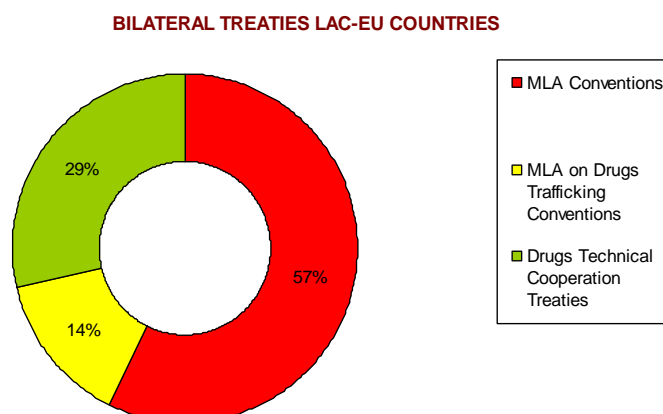
In order successfully to prosecute international organised criminal gangs it is necessary to find ways to concentrate investigations and proceedings in one sole jurisdiction. Since within the LAC Region there is no entity similar to Eurojust which could tackle the scenario of concurrence of multiple jurisdictions it is convenient to extend the application of preventive provisions such as Article 8 of the Vienna Convention or 15.5 of the Palermo Convention as much as possible in order to coordinate judicial actions.

Also, deportation is sometimes a viable option where an extradition request would not be accepted. This will depend on the legal status of the “requested person” in the state where he is located. In any event, it is recommended that channels of communication are opened up between the two states to explore the viability of a request or any alternatives.

A new legal approach to extradition should minimise grounds for refusal. But when in any case an extradition request is not successful, namely in cases where the person cannot be extradited, it is crucial to reinforce the operability of the principle *aut dedere aut iudicare* (extradite or prosecute), overcoming the problems arising from the fact that the crime was not perpetrated in the State where the suspect resides through the exchange of information and fast-track MLA.

Finally, within a broad interdependent cooperation concept as noted above, the transfer of prisoners or sentenced persons may be considered as a final alternative to extradition, once the trial process has finished.

4.4. Assessment of the LAC and EU MS participation in international conventions on drug trafficking



Compared with the number of general MLA conventions, the number of LAC – EU bilateral treaties on drug cooperation is small. In fact, there are a total of thirty-two agreements, against

the forty-four general MLA bilateral conventions examined in section 4.2.

Moreover, 29% of these agreements are cooperation treaties on the prevention and eradication of the illicit cultivation, production, distribution and improper use of narcotics and psychotropic substances.

These are conventions on technical aspects adopted within the framework of the commitments that LAC - EU countries have made as parties to multilateral UN conventions, such as the 1961 Single Convention on Narcotic Drugs, amended by its 1972 Protocol, and the 1971 Convention on Psychotropic Substances, and the recommendations contained in the 1988 Vienna Convention.

So far, there are thirty-three LAC - EU bilateral treaties on drug cooperation, and only eleven of them (33%) are MLA agreements on drug trafficking prosecution and proceedings.

Another remarkable fact is the countries' trends regarding the adoption of this kind of bilateral agreement. 100% of these 11 bilateral treaties have been signed between the UK and LAC countries. They include MLA in the broader sense, comprising confiscation and other measures concerning financial benefits from drug trafficking. All these bilateral agreements⁸² were adopted after the 1988 Vienna Convention; these are:

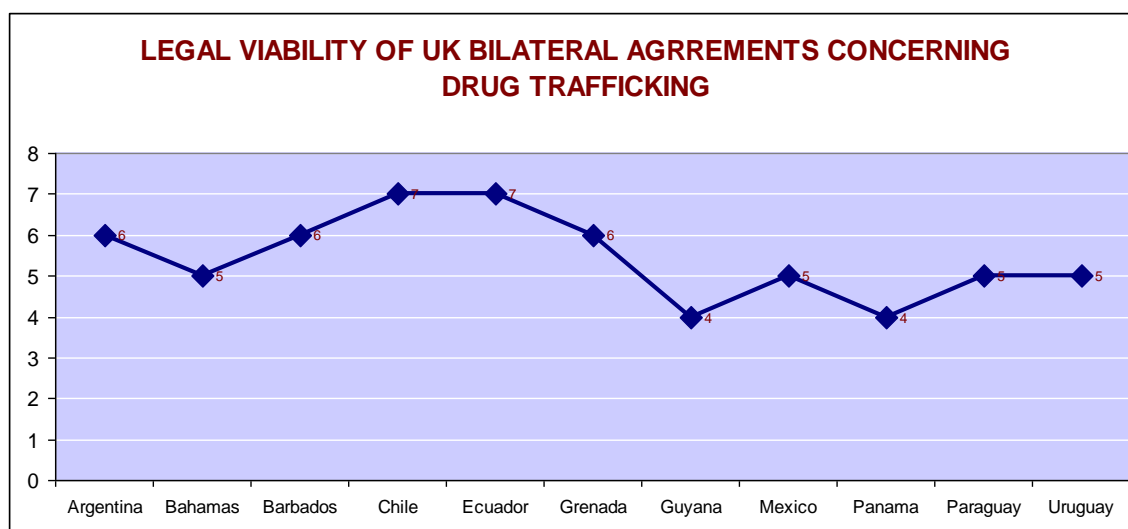
- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Argentine Republic concerning Mutual Judicial Assistance against Illicit Drug Trafficking. Buenos Aires, 27 August 1991.
- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Bahamas concerning the Investigation of Drug Trafficking and Confiscation of the Proceeds of Drug Trafficking. Nassau, 28 June 1988.
- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Barbados concerning Mutual Assistance in Relation to Drug Trafficking. Bridgetown, 19 April 1991.
- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic Chile concerning Mutual Assistance in relation to Illicit Trafficking in Narcotic Drugs and Psychotropic Substances. London, 1 November 1995.
- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Ecuador concerning Mutual Assistance in relation to Drug Trafficking, Quito, 7 May 1992.

⁸² Most of them can be consulted at <http://www.fco.gov.uk/en/publications-and-documents/treaties/lists-treaties/>.

- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Grenada concerning Mutual Assistance in relation to Drug Trafficking. St. George's, 6 February 1995.
- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Co-operative Republic of Guyana concerning Co-operation in the Investigation of Drug Trafficking Offences, the Forfeiture of Instruments Used for or in Connection with such Offences and the Deprivation of Drug Traffickers of Financial Benefits from their Criminal Activities. Georgetown, 17 July 1991.
- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United Mexican States concerning Mutual Assistance in Relation to Drug Trafficking. London, 29 January 1990.
- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Panama concerning Mutual Legal Assistance relating to Drug Trafficking. Panama City, 1 March 1993.
- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Paraguay concerning Mutual Assistance in Relation to Drug Trafficking. London, 6 July 1994.
- Agreement on Legal Assistance between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Oriental Republic of Uruguay in relation to Drug Trafficking. Montevideo, 23 January 1992.

Given that the UK is a party to all these agreements, most of them follow a similar pattern and maintain parallel legal features: similar material scope and grounds for refusal, like data protection clauses and related provisions on *lex fori* application and provisions for urgent cases. All of them incorporate a specialty principle and allow for the rectification of requests.

Hence in comparison with other MLA general agreements, UK bilateral agreements have an analogous permeability to cooperation or legal viability to grant assistance. So far, bearing in mind the mentioned legal viability benchmarks that we will use for evaluating MLA treaties in general, we see that the grading moves from 5 to 7:



All other EU countries have signed general bilateral agreements with LAC countries for MLA purposes, or else rely on reciprocity for mutual assistance. However, since almost all⁸³ general MLA treaties incorporate drug trafficking issues, the **quality benchmarks** and features of the conventions will be assessed jointly in the followings sections.

4.4.1. Dual Criminality Rule and other grounds for refusal

An effective legal basis to provide mutual legal assistance is critical to ensuring effective action. As evident from this study, LAC – EU countries have developed broad mutual legal assistance laws and treaties in order to create such a legal basis.

Since mutual legal assistance treaties create a binding obligation to cooperate with respect to a range of mechanisms, States should expand the number of States with which they have such treaty relationships wherever possible. With a view to creating a broader legal framework for cooperation, some States have considered developing regional treaties or accessing to other regional legal instruments. That is the case of Chile and the [European Convention on Mutual Assistance in Criminal Matters of 1959](#), which it signed as a non Member State of Council of Europe.

As a complete network of legal instruments is not always possible, many States chose to keep their domestic legal regime updated for providing legal assistance. In developing or reviewing treaties and State legislation, UNODC⁸⁴

⁸³ As noted in section 4.3, among all bilateral MLA agreements only one of them (Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United Mexican States concerning Mutual Assistance in the Investigation, Restraint and Confiscation of the Proceeds of Crime other than Drug, Mexico DF, 26 February, 1996) exclude drug trafficking crimes from its scope of application.

⁸⁴ UNODC 2001 Report, Op. Cit.

encourages competent authorities to ensure that domestic laws and practice provide for the greatest flexibility to enable broad and speedy assistance.

However, although States should regularly review such treaties and laws and, as needed, supplement them to ensure that they keep pace with developments in international mutual legal assistance practice; many legal practitioners frequently criticise and feel frustrated⁸⁵ about the legal operability of the conventions.

In order to achieve the maximum effectiveness, it is particularly important to be able to render assistance in the manner sought by the requesting State. Unfortunately, experience shows this is not always the outcome of a MLA request. There are several reasons for this: language barriers, cultural and legal system differences, practical capacity of central authorities, lack of communication with executing authorities, etc. But the first problems arise from the very legal instruments themselves and their legal permeability to cooperation, material scope and grounds for refusal of a request for assistance.

Among these there is the most traditional one, namely what is known as double or dual criminality, a rule that has been traditionally included in many bilateral agreements. Yet, when it comes to evaluating the degree of legal permeability or flexibility of MLA treaties so as to maximise successful outcomes, other important factors should be taken into account. Thus, we need to answer several questions when assessing the major or minor legal capacity of MLA treaties for rendering cooperation:

- a. As for their material scope:
 - A.1. Is the scope of application of the convention adequate?
 - A.2. Does the convention exclude a limited number of offences?
- b. As for grounds for refusal:
 - B.1. Does the convention exclude the *dual criminality rule*?
 - B.2. Does the convention leave out the “*ordre public*” or similar exemptions based on domestic interests?
 - B.3. Does the convention leave out the specialty principle for other related drug trafficking proceedings?
 - B.4. In cases where the execution of a request may interfere with an ongoing criminal investigation, prosecution, or proceeding in the requested State, does the convention allow postponement of execution of the request or does it refuse to execute it?
- c. As for procedural factors:

⁸⁵ “...In today's world, most prosecutors will be hard pressed not to have at least one case where they will have to obtain evidence from a foreign state, for use in a prosecution. And it is for that reason, that mutual assistance has become the fastest growing business in the criminal justice field...”, (K. PROST, Op. Cit.).

- C.1. Does the convention admit the “*lex fori*” of the requesting State?
- C.2. Does the convention allow rectification of the request instead of immediate rejection?
- C.3. Does the convention allow fast-track ways of execution or transmission?

A) Material scope

Scope of application

The material scope of a convention can be studied from two main points of view: from the perspective of the range of offences permitted and from the perspective of the purpose of the assistance requested. Contrary to extradition treaties, MLA agreements do not usually list the offences which fall within their scope of application. Of course, as noted, there are treaties that specifically focus on drug trafficking crimes.

As regards the type of assistance requested, the agreements adopt different approaches towards the purpose of the assistance sought. Since there are many possible types of assistance requests (taking evidence or statements of persons, search and seizure, provision of documents or evidential items, service of documents, temporary transfer of persons to assist an investigation or appear as a witness, enforcement of judicial orders such as tracing, seizing and confiscating the proceeds or instrumentalities of crime or even assistance for preserving computer data...), treaties may choose to include either a closed-list of assistance requests, or an open list accompanied by a final general provision covering any other type of assistance not mentioned in the list (in this case, the LAC – EU treaty usually requires that the assistance requested be not contrary to the domestic law of the requested State⁸⁶, or that it be agreed upon between the Central Authorities⁸⁷). Finally, treaties may also choose not to refer specifically to any type of assistance at all.

Given that not all the central and executing authorities show the same flexibility when it comes to interpreting international judicial cooperation instruments (what is known as “*favour commissionis* principle”⁸⁸), the approach adopted by the different legal instruments may be crucial, for it can seriously determine whether requests will be successful in many executing countries. Actually, in a quality assessment process the inclusion of provisions regulating open clauses into MLA treaties must be seen as good practice. This

⁸⁶ That is the option of the [Treaty of Legal Co-operation and Mutual Legal Assistance in Criminal matters between the Kingdom of Spain and the Federative Republic of Brazil](#), Brasilia, 22 May 2006. Article 6. j. “Any other form of mutual legal assistance not forbidden by the domestic law of the requested Party”.

⁸⁷ Article 1 (5), j. of the [Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil on Mutual Legal Assistance in Criminal Matters](#), London, 7 April 2005: “such other assistance as may be agreed between the Central Authorities”.

⁸⁸ J. PARRA, *The new scheme for MLA in criminal matters*, Madrid, *Derecho Penal Supranacional y cooperación jurídica internacional*. CENDOJ - CGPJ Law Review, XIII 2003.

would be the case, for example, of requests linked to drug-trafficking seeking the interception of telecommunications, where only a few treaties envisage a specific provision for that measure⁸⁹.

On the other hand, these sorts of open provisions can be decisive in easing the way in which the request must be implemented. A treaty may include, for example, a specific provision on the use of electronic means, such as videoconferencing or any other system of bi-directional (audio – video) communication, or video-link⁹⁰ by means of the Internet. Actually, this is the main purpose of the amendment introduced in the treaty of Spain and Colombia of 1997, i.e. the [Additional Protocol to the Treaty of Legal Co-operation in Criminal Matters between the Kingdom of Spain and the Republic of Colombia](#) of 2005, Chapter II of which, emulating the 2000 European Convention⁹¹, foresees different and modern ways of execution of requests by means of videoconference and other electronic means (Article 6).

In order to make a comparative assessment of the legal permeability to grant broad assistance, we can estimate the level of accessibility taking into account the following benchmarks and scale:

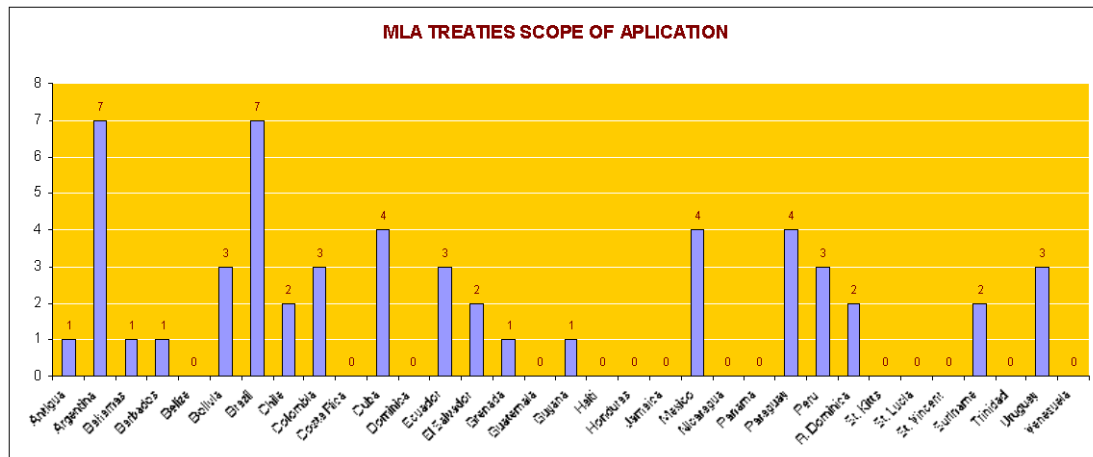
Indicators	Grading
Closed-list of assistance requests	0
No mention of type of assistance	1
Open list allowing general clause	2

⁸⁹ In this sense, Article 2 (2) of [Treaty on Mutual Legal Assistance in Criminal Matters between the Government of the Federative Republic of Brazil and the Republic of Italy](#) (Rome, 17 October 1989) is a singular case (*"Para a execução de interceptação de telecomunicações, a cooperação somente será prestada se, em relação ao crime tipificado no processo e em circunstâncias análogas, tal interceptação for admissível em procedimentos penais da Parte requerida"*). The same goes for Article II (2) of [Treaty of Mutual Legal Assistance in Criminal Matters between the Republic of Chile and the Republic of Italy](#), Rome, 27 February 2002.

⁹⁰ Indeed, this way of taking evidence abroad is more and more used. See point 3.10 of the *Proposed Best Practices with respect to the gathering of statements, documents and physical evidence, with respect to mutual legal assistance in relation to the tracing, restraint (freezing) and forfeiture (confiscation) of assets which are the proceeds or instrumentalities of crime and forms on mutual legal assistance in criminal matters*, approved in the Third Meeting of Central Authorities and Other Experts on Mutual Assistance in Criminal Matters and Extradition September 12 – 14, 2007 Bogotá, Colombia, (*in cases where live-video link is sought for the taking of the statement, from the witness, suspect or defendant, an explanation of why a statement in this form is required or preferable together with the coordinates of the appropriate technical personnel in the Requesting State for the purposes of arranging the video-link*).

⁹¹ As a remarkable good legal practice, the new Protocol foresees controlled deliveries, (article 7), joint investigations teams, (article 8) and covert investigations, (article 9).

Consequently, a comparative analysis shows that among LAC countries, Argentina, Brazil, Cuba, Mexico and Paraguay are the States with more conventions applying broader scope provisions:



Article 1 (4) of the [Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil on Mutual Legal Assistance in Criminal Matters](#) of 2005 is a unique and worthwhile case within the LAC – EU treaties: “*Mutual assistance may also be afforded in proceedings in respect of acts which are punishable under the domestic law of the requesting or the requested Party by virtue of being infringements of the rules of law, where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters*”. This provision recalls clearly the wording of Article 3 of the [Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union](#) of 2000⁹².

Offences excluded

Traditionally, military or political offences have been excluded from most bilateral and multilateral MLA agreements. Modern treaties strictly regulate this exclusion in order to limit the political offence exemption. However that is not a crucial indicator when assessing the permeability to cooperation of MLA treaties in relation to drug trafficking cases: almost all modern bilateral treaties do not go beyond that and only a few of them leave out other crimes such as tax offences, for which cooperation requests are in some cases related to drug MLA requests. This is partly the case of Article 5.1.c of [Treaty on Mutual Legal Assistance in Criminal Matters between the Eastern Republic of Uruguay and the Kingdom of Spain](#), Montevideo, 19 November 1991, in

⁹² Article 3.1 of the 2000 Convention states: “*Mutual assistance shall also be afforded in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of the requesting or the requested Member State, or both, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters*”.

which tax offences are excluded except where linked to other offences within the limits for assistance⁹³.

B) Grounds for Refusal

Double criminality rule

The “double criminality” or “dual criminality” rule is a compulsory requisite for cooperation, according to which the offence must be punishable under the domestic law of both States: the requesting State and the requested State. As noted earlier, this traditional cooperation requisite is, from a conceptual point of view, quite alien to international legal cooperation, since extradition does not solely imply the *ius puniendi* by the requested state, but the assistance for the exercise of criminal foreign actions by the requesting state⁹⁴.

Although this provision is included in many bilateral agreements, from the 1990s most treaties do not envisage this condition as a general provision⁹⁵. Usually the condition of double criminality as a general rule is excluded from international agreements, yet it is maintained for certain types of assistance, usually requests for search and seizure of evidence, restraint or confiscation of proceeds of crime. That is the case of the [Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil on Mutual Legal Assistance in Criminal Matters](#) of 2005 (entered into force in May 2011), whose Article 1 (6) establishes that: *assistance shall be provided without regard to whether the conduct that is the subject of the request would be punishable under the legislation in both Parties. Where a request is made for search and seizure of evidence, restraint or confiscation of proceeds of crime, the requested Party may, at its discretion, render the assistance, in accordance with its domestic law.*

Even treaties that fail to adopt the dual criminality rule fit in this provision, at least for confiscation matters. That is the case of the [Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Colombia concerning Mutual Assistance in Relation to Criminal Matters](#) of 1997, Article 10 (6): *Any request relating to enforcement of a confiscation order shall be executed only in accordance with*

⁹³ Indeed, later in Article 5.1 we read: “c...However, assistance shall be rendered if the offence is committed by way of a deliberately false declaration, either verbally or in writing, or a deliberate failure to declare, in order to conceal income from any other offence covered by this Treaty”).

⁹⁴ J. VOGEL, Op. Cit.

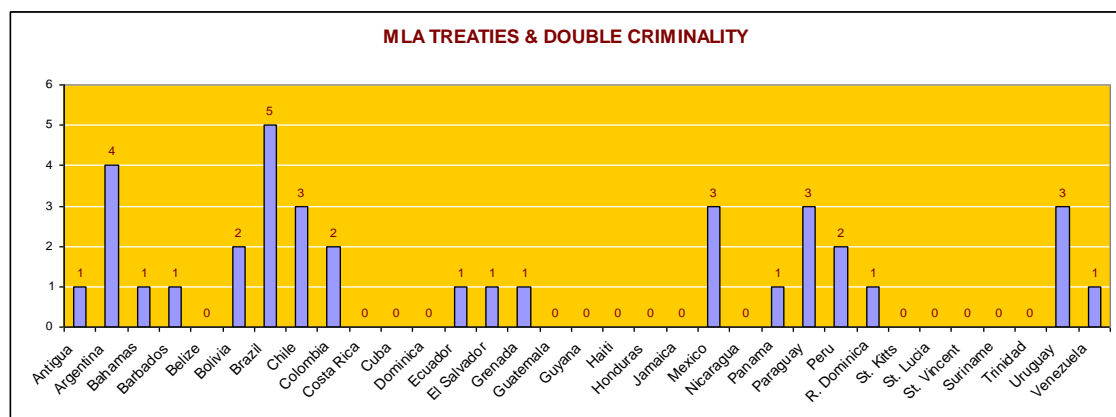
⁹⁵ Many international fora have made recommendations in this sense. For instance, the REMJA-OAS: [Recommendations – Meeting of Central Authorities and other Experts on Mutual Legal Assistance in Criminal Matters](#), Ottawa 2003 proposed »Eliminate or reduce, as appropriate, the dual criminality requirement for mutual legal in the fight against crimes, especially those related to transnational organized crime, money laundering and terrorism« (Recommendation 4-b).

*the domestic law of the Requested Party and, in particular, with regard to the rights of any individual who may be affected by its execution*⁹⁶.

Bearing in mind the legal approach to double criminality, it is possible to make a comparative study of treaties' legal permeability to grant broad assistance . Their level of accessibility can be assessed on the basis of the following benchmarks and scales:

Indicators	Grading
Dual Criminality rule included	0
Dual Criminality partially excluded	1
Dual Criminality totally excluded	2

Consequently, a comparative analysis shows that among LAC countries, Argentina and Brazil, (followed by Chile, Mexico, Paraguay and Peru) are the States with the greatest number of conventions applying more feasible provisions:



A unique example of good legal practice can be found in Article 2 of the [Treaty of Legal Co-operation and Mutual Legal Assistance in Criminal matters between the Kingdom of Spain and the Federative Republic of Brazil](#) of 2006, which includes a specific clause aimed at depriving double criminality of all sorts of exemption: *"the assistance shall be provided even if the regarded activity pursued by the requesting Party is not considered as an offence according with the domestic law of the requested Party"*⁹⁷.

⁹⁶ The general exclusion provision in the treaty is laid down in Article 6 (1) f), which permits the refusal of assistance if *"the conduct which is the subject of the request is not an offence under the laws of both Parties"*.

⁹⁷ Non official translation of the original in Spanish: *Assistance shall be rendered even when the act that motivated the assistance request of the requesting Party may not be an offence under the domestic law of the requested Party*.

“Ordre public” and other exemptions based on national essential interests

The *ordre public* or public policy is a traditional ground for refusal of assistance in most treaties. From bilateral to multilateral international instruments, it is quite common to include exemption clauses based on sovereignty reasons linked to a traditional conception of cooperation as a likely or unwanted exercise of extraterritorial jurisdiction of a foreign State (*ius puniendi*). This principle of national or public interest is a broad concept that covers a multitude of aspects that a State may wish to protect. However, it is not commonly used, it can usually be applied in cases where national security arises.

The provision is maintained in modern multilateral instruments, such as the [Vienna Convention](#), whose Articles 7 (15) b and 18 (21) b establish that: “Mutual legal assistance may be refused...if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, ordre public or other essential interests of its country”.

Although this is a common exemption, this ground for refusal is a discretionary barrier to cooperation. Thus, most modern cooperation European instruments based on mutual trust such as the [EAW](#) or the [Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union](#) of 2000 make provision for such exemption. In any case, where this exception appears, it should be interpreted in a limited way taking into account that the underlying premise of international agreements is to provide assistance to the fullest extent and only refuse a request in good faith, ([Judgment of 4 June 2008](#)⁹⁸ of the International Court of Justice).

Although no bilateral LAC – EU conventions formally exclude this traditional ground for refusal, there are two conventions on extradition and MLA that leave out *ordre public* and any other similar grounds. One of them is the old [Treaty on Extradition and Mutual Assistance in Criminal Matters between Italy and Venezuela](#)⁹⁹, signed in Caracas in 1930, which does not directly mention the exemption as such yet indirectly excludes any such grounds with a slight *contrario sensu* provision in Article 17 *in fine*¹⁰⁰.

The second is the more recent [Treaty on Extradition and Mutual Assistance in Criminal Matters between the Kingdom of Spain and the Republic of Argentina](#), Madrid 1987, whose Article 29 does not make any reference to public order or sovereignty when dealing with refusal grounds for assistance.

⁹⁸ Case of [Certain Questions of Mutual Assistance in Criminal Matters](#) (*Djibouti v. France*)

⁹⁹ However, contrary to MLA, the treaty allows the exemption for extradition requests (Article 21).

¹⁰⁰ It lays down the obligation to give assistance when there is no particular refusal ground (“...Alla richiesta sarà dato corso, quando non vi si oppongano motivi particolari”).

Specialty rule

As noted when studying the extradition instruments, the principle of “specialty” or “speciality” is one that prohibits the requesting state from using the information and evidence taken for other purposes than those included in the MLA request.

Although personal data protection has a different nature and purpose, the specialty principle is usually foreseen in treaties in relation to data protection clauses. The approach towards this exemption is different among bilateral treaties. Many of them foresee the exemption, but some introduce possible ways out, for example the authorisation of the requested state. Such is the case of Article 9 (3) of the 2005 [Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil on Mutual Legal Assistance in Criminal Matters](#): “Unless otherwise indicated by the Requested Party when executing the request, information or evidence, the contents of which have been disclosed in a public judicial or administrative hearing related to the request, may thereafter be used for any purpose”. A reference to the prior consent of the requested State is more usually found in these conventions, as is the case of Article 9.3 of the 2007 [Treaty of Legal Assistance in Criminal Matters between the Kingdom of Spain and the Government of the United Mexican States](#)¹⁰¹.

Article 9.1 and 2 of the 2006 bilateral [Treaty of Legal Co-operation and Mutual Legal Assistance in Criminal matters between the Kingdom of Spain and the Federative Republic of Brazil](#) is an exceptional example of good legal practice: “1. The information, documents and objects obtained throughout the judicial assistance may be used in investigations carried out in the requesting State and used as evidence in other criminal proceedings related to offences for which legal assistance may be requested. 2. Moreover, they may be used in other criminal proceedings in the requesting State against other persons involved in the commitment of the offence for which the assistance was requested, and for any investigation or proceedings of civil compensations related to the proceedings for which the assistance was requested.”¹⁰²

Therefore, and for the purposes of this research, the specialty principle will be considered as a limitation to feasible cooperation. Bearing in mind the legal

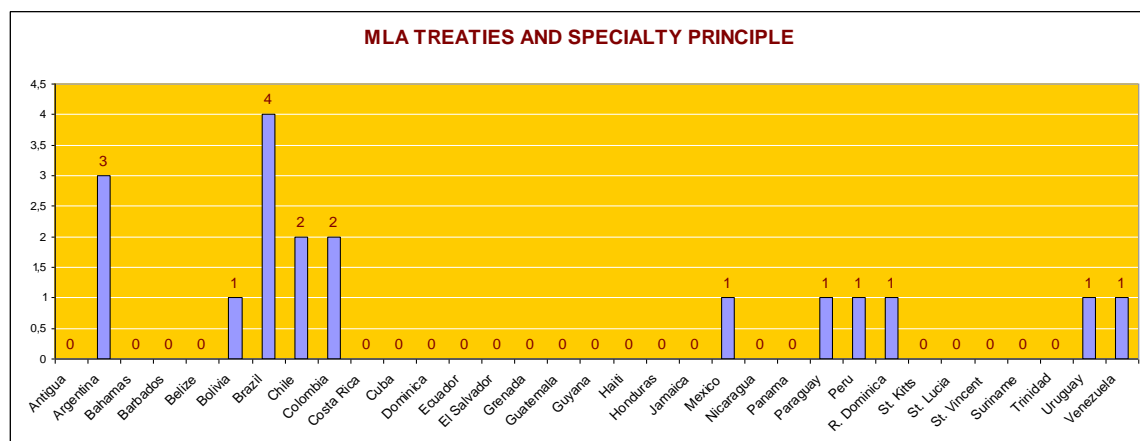
¹⁰¹ Article 9.3: “Sin el consentimiento previo de la Parte requerida, la Parte requirente no usará la información o las pruebas que se hayan obtenido de conformidad con este Tratado para otros fines que no sean los indicados en la solicitud.”

¹⁰² Non official translation of the Spanish text: 1. La información, documentos u objetos obtenidos mediante la asistencia judicial podrán ser utilizados en investigaciones en el Estado requirente, y emplearse como medios de prueba en otros procedimientos penales relativos a delitos por los cuales se pueda conceder la asistencia judicial. 2. Asimismo, se podrá utilizar para otro procedimiento penal en el Estado requirente que se refiera a otras personas que participaron en la comisión del delito por el que se solicitó la asistencia, así como para una investigación o procedimiento sobre el pago de daños o indemnizaciones relativos al procedimiento para el cual se solicitó la asistencia.

approach to the specialty principle, a comparative study of treaties' legal permeability to grant broad assistance can be made. Their level of accessibility can be assessed on the basis of the following benchmarks and scales:

Indicators	Grading
Specialty principle foreseen	0
Specialty principle partially excluded under consent	1
Limited interpretation of Specialty principle	2

A comparative analysis shows that among LAC countries, Brazil and Argentina are the States that have the greatest number of conventions that apply more feasible provisions in this matter:



On-going proceedings or investigations related to the assistance requests

Another frequent barrier to cooperation included in many treaties has to do with those cases in which the requested authority is aware of the possibility of a conflict between the request and on-going investigations or proceedings in the requested state.

As for double jeopardy, this ground for refusal of assistance may require a complex substantive analysis of a foreign proceeding or investigation in order to verify the extent of the likely conflict. In certain cases, the provision may result in refusals prejudicing the original purpose of the MLA request.

The approach towards this ground for refusal differs from one LAC – EU agreement to another. Many treaties do not regulate or even refer to this ground. Others, such as those adopted by the UK, usually include a refusal provision when the request for assistance may cause prejudice or impose an excessive burden on the resources of the requested State. This is the case of Article 6 (1) b of the 1997 [Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the](#)

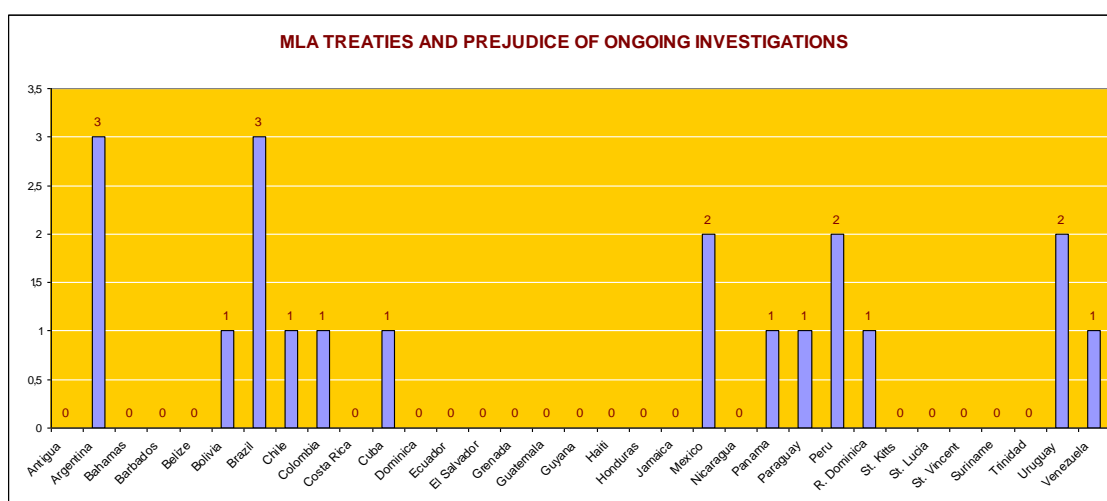
Republic of Colombia concerning Mutual Assistance in Relation to Criminal Matters¹⁰³.

Finally, nineteen other treaties foresee this situation, but instead of directly refusing assistance they propose postponement¹⁰⁴ or adjournment of the assistance. For instance, Article 6.3 the 2007 Treaty of Legal Assistance in Criminal Matters between the Kingdom of Spain and the Government of the United Mexican States lays down that the requested Party “may defer” the MLA execution when considering a likely prejudice or obstacle to an on-going investigation or judicial proceedings in its jurisdiction¹⁰⁵.

Therefore, for the purpose of this study we regard this refusal ground as a likely barrier to feasible cooperation. Bearing in mind the legal approach towards this exemption, a comparative study of treaties’ legal permeability to grant broad assistance can be made. Their level of accessibility can be assessed on the basis of the following benchmarks and scales:

Indicators	Grading
Exemption foreseen without alternative	0
Exemption foreseen with alternative / Exemption not mentioned	1
Exemption excluded	2

As can be seen below, most treaties show similarities in this area. Argentina is the LAC country that includes the greatest number of alternatives in its conventions:



¹⁰³ “Assistance may be refused if... provision of the assistance sought could prejudice an investigation or proceedings in the territory of the Requested Party, prejudice the safety of any person or impose an excessive burden on the resources of that Party;...”

¹⁰⁴ This is the general option of the 1992 Inter-American Convention on Mutual Assistance in Criminal Matters, article 11: “The requested state may postpone the execution of any request that has been made to it, with an explanation of its grounds for doing so, if it is necessary to continue an investigation or proceeding in progress in the requested state”.

¹⁰⁵ Article 6.3: “La Parte requerida podrá diferir el cumplimiento de la solicitud de asistencia jurídica cuando considere que su ejecución pueda perjudicar u obstaculizar una investigación o procedimiento judicial en curso en su territorio.”

As noted earlier, UK – LAC treaties (most of them specifically on MLA in illicit trafficking in narcotic drugs and psychotropic substances) do not expressly foresee an alternative such as seen in other treaties. However, most of them¹⁰⁶ use the expression “may” when dealing with the refusal and, as we be seen later, all of them incorporate a rectification clause such as the following: “*before refusing to grant a request for assistance, the Requested Party shall consider whether it may grant assistance subject to such conditions as it deems necessary. The Requesting Party may accept assistance subject to the conditions laid down by the Requested Party*”. Therefore, it indirectly opens a door for those situations where a conflict may occur.

C) Procedural Factors

Execution of the request and degree of application of *lex fori*

As pointed out in section 4.1, the agreement approach towards flexibility when dealing with the procedural regime applicable to the execution of the request can be crucial for the success of MLA. This provision may have important consequences on later trials and evidence for the requesting authorities prosecuting or judging drug trafficking cases.

Past treaties usually followed the traditional *locus regit actum* principle, which implies that a request shall be executed in accordance with the domestic law of the requested Authority. That was the general option chosen by the 1959 [European Convention on Mutual Assistance in Criminal Matters](#) in Article 3.1. (*The requested Party shall execute in the manner provided for **by its law** any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting Party for the purpose of procuring evidence or transmitting Articles to be produced in evidence, records or documents*). There was only a limited possibility of applying specific requirements relating to the oath given by witness or experts, (Article 3.2). However, the [Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union](#) of 2000 reverses the principle and lays down the *lex fori* as general rule¹⁰⁷ (unless particular conflict with the fundamental principles of law of the requested state). This rule has been followed by the Council of Europe second Protocol to the 1959 Convention and by some modern bilateral MLA LAC- EU treaties.

¹⁰⁶ Just as an example, see Article 6 of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic Chile concerning Mutual Assistance in relation to Illicit Trafficking in Narcotic Drugs and Psychotropic Substances. London, 1 November 1995.

¹⁰⁷ Article 4.1: “Where mutual assistance is afforded, the requested Member State shall comply with the formalities and procedures expressly indicated by the requesting Member State, unless otherwise provided in this Convention and provided that such formalities and procedures are not contrary to the fundamental principles of law in the requested Member State.”

However, most treaties foresee the *locus regit actum* principle as a general rule, complementing it with the alternative of applying the law of the requesting state to the extent not contrary to the laws of the executing state. Such is the stance followed by the 1997 [Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Antigua and Barbuda concerning the Investigation, Restraint and Confiscation of the Proceeds and Instrumentalities of Crime](#), in whose Article 5 (1) we read: “A request shall be executed to the extent permitted by and in accordance with the domestic law in force of the Requested Party and, to the extent not incompatible with such law, in accordance with any reasonable requirements specified in the request.” At regional level, this is also the option adopted by Article 10 of the 1992 [Inter-American Convention on Mutual Assistance in Criminal Matters](#): “Requests for assistance issued by the requesting state shall be made in writing and shall be executed in accordance with the domestic law of the requested state. The procedures specified in the request for assistance shall be fulfilled in the manner indicated by the requesting state insofar as the law of the requested state is not violated”.

The experience proves that the *lex fori* rule is in many cases crucial for complying with evidential requirements needed for later trials in many systems. If that principle does not govern at the operational level, mutual assistance may fail. In this regard, some LAC – EU conventions are outstanding cases of good legal practice. Such is the case of the 2003 [Treaty of Mutual Legal Assistance in Criminal Matters between the Republic of Argentina and the Portuguese Republic](#) (Article 3.1¹⁰⁸), and of the 2005 [Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil on Mutual Legal Assistance in Criminal Matters](#) (Article 6.2¹⁰⁹). In both cases, the *lex fori* principle is set out as a **general rule**. Moreover, this was also the principle followed by the 2005 [Additional Protocol to the Treaty of Legal Co-operation in Criminal Matters between the Kingdom of Spain and the Republic of Colombia](#), amending the original text of 1997 (Article 3.1)¹¹⁰.

Another important indicator associated to this principle is the legal possibility of allowing the presence of the judicial authorities of the requesting state during the execution of the assistance in the requested state. This provision

¹⁰⁸ The Spanish text is the following: “Las solicitudes de asistencia serán ejecutadas con celeridad y del modo en que fueran requeridas por el Estado requirente, siempre que no se opongan a la legislación del Estado requerido y no causen graves perjuicios a los interesados en el proceso”.

¹⁰⁹ The English text provides: “The Requested Party shall comply with the formalities and procedures expressly indicated by the Requesting Party unless otherwise provided for in this Treaty, and provided that such formalities and procedures are not contrary to the domestic law of the Requested Party.”

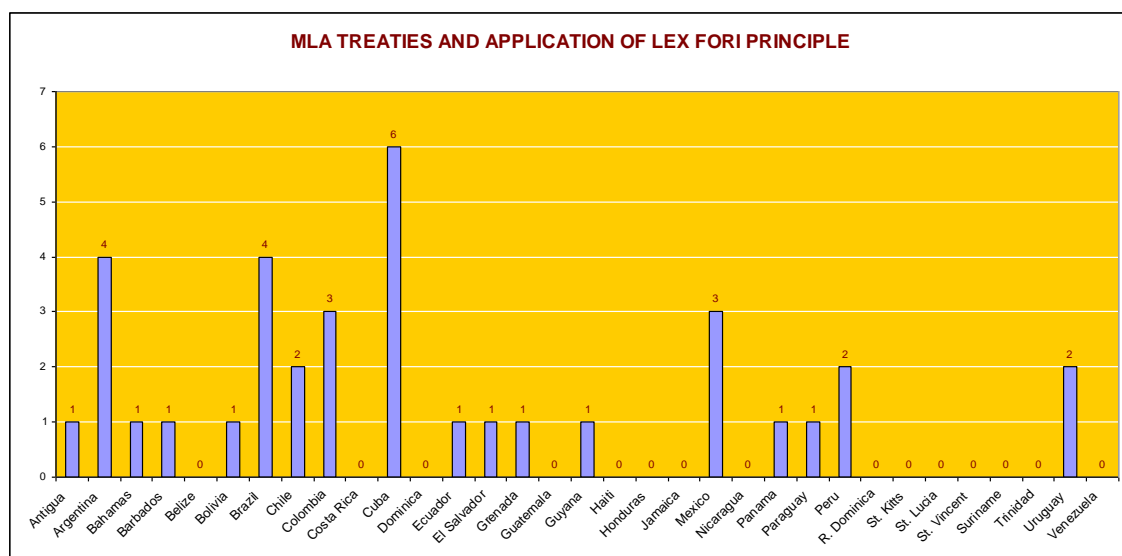
¹¹⁰ The Spanish text is the following: “En los casos en los que se conceda la asistencia judicial, la Parte requerida cumplirá la asistencia de acuerdo con las formas y requisitos especiales indicados en la solicitud, a menos que sean incompatibles con el presente Protocolo o con su ordenamiento jurídico fundamental.”

was already foreseen in Article 4 of the 1959 [European Convention on Mutual Assistance in Criminal Matters](#) (“On the express request of the requesting Party the requested Party shall state the date and place of execution of the letters rogatory. Officials and interested persons may be present if the requested Party consents”) and has been followed by many bilateral LAC – EU agreements.

Therefore, for the purpose of this study we consider this principle as a likely barrier to feasible cooperation. Bearing in mind the legal approach towards this exemption, a comparative study of treaties’ legal permeability to grant broad assistance can be made. Their level of accessibility can be assessed on the basis of the following benchmarks and scales:

Indicators	Grading
Compulsory <i>locus regit actum</i> principle	0
<i>Locus regit actum</i> principle with <i>lex fori</i> alternative	1
<i>Forum regit actum</i> principle as a general rule	2

As can be seen below, Argentina, Brazil and Mexico are the best positioned among all LAC countries to apply the requesting state laws. A singular case is Cuba relying on a large number of bilateral joint agreements (civil, extradition, MLA and other matters) signed with the former socialist Eastern European countries which envisage the *lex locus* allowing the alternative by request:



Still, some bilateral treaties maintain the rigid and closed *locus regit actum* principle. This is the case of the 1981 [Treaty of Extradition and Legal Assistance between Spain and the Dominican Republic](#): “the execution of the request for assistance shall comply with the law of the requested Party...”,

(Article 28¹¹¹). The same can be said of the [Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Paraguay concerning Mutual Assistance in Relation to Drug Trafficking](#) of 1994 in its Article 5 (1): “A request shall be executed as permitted by and in accordance with the domestic law of the Requested Party”.

Possibility of rectification of requests

As mentioned, one very important benchmark for evaluating the feasibility grade of treaties is the incorporation of a viability rule or possibility of rectification of requests when some incoherence, inconsistency or any other like obstacles or refusal grounds is identified in the request by the receiving Central or executing authority.

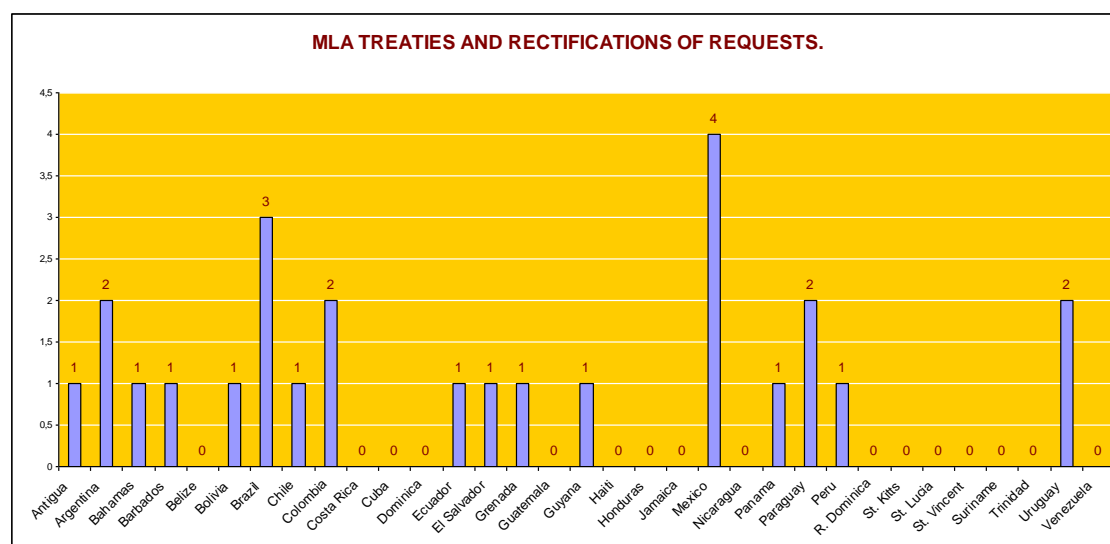
Although the possibility of rectification may be considered to be included in the general provision studied under A.1, a specific provision on the matter can be very important from a practical point of view if we consider the complexity linked to the interpretation and implementation of some requests, as those related to the interception of telecommunications, which are quite usual in drug-trafficking cases, or the implementation of requests by means of videoconference with the possible need to adjust specific timings.

Hence, for the purpose of this study we consider this provision a good legal practice to be considered in a comparative assessment of treaties’ feasibility:

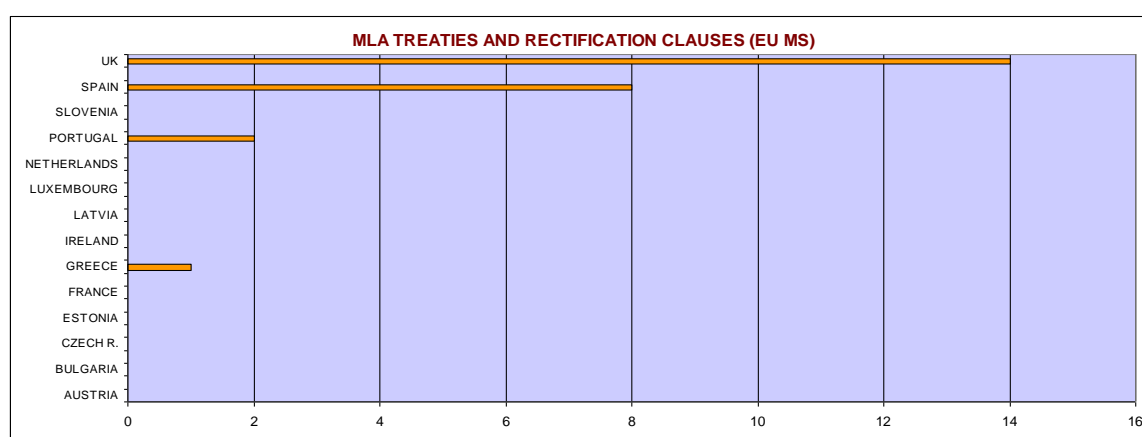
Indicators	Grading
Rectification not mentioned	0
Rectification foreseen	1

As can be seen below, Mexico and Brazil (followed by Argentina, Colombia, Paraguay and Uruguay) are the best positioned of all LAC countries taking into account this indicator:

¹¹¹ Non oficial translation of the Spanish text, Article 28: “El cumplimiento de una solicitud de asistencia se llevará a cabo conforme a la legislación de la Parte requerida ateniéndose a las diligencias solicitadas expresamente.”



On the EU side, only four EU MS have treaties with this type of clause: the UK, Spain, Portugal and Greece. It worth mentioning here that all the treaties adopted by the UK foresee the possibility of rectification. Indeed, insofar as they provide that before refusing to render the requested assistance, the requested State shall consider whether it may grant assistance subject to such conditions as it deems necessary and, on the other hand, the other State may accept assistance subject to the conditions laid down by the requested State.



Urgency provisions

Other quality indicators need to be taken into account, as for example those provisions that lay down expeditious and quick ways for more feasible cooperation in general and for urgent cases in particular.

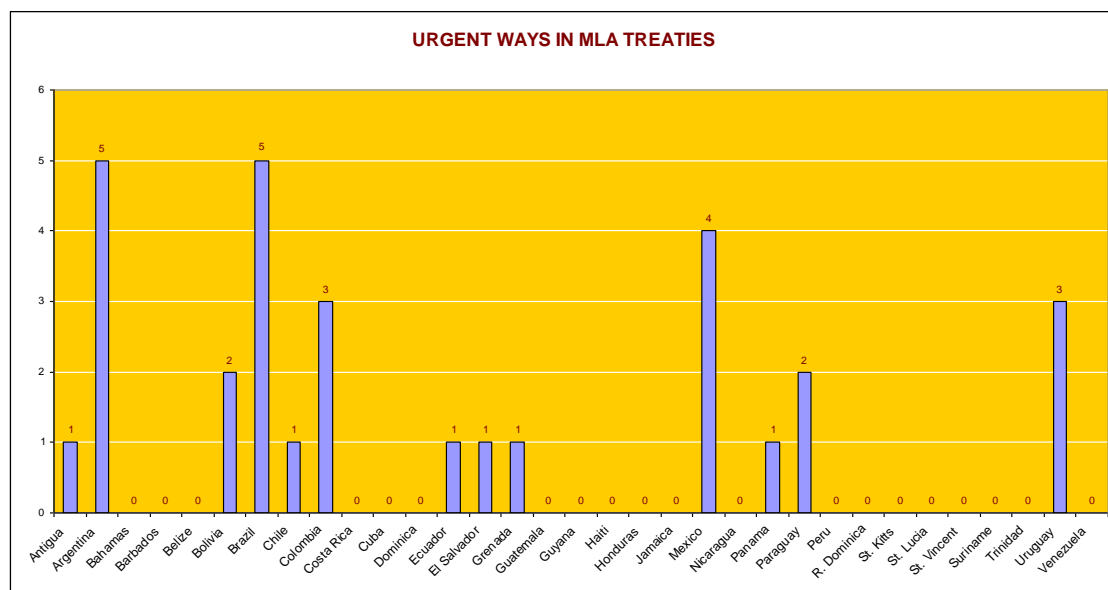
Some bilateral agreements include a reference to urgent cases; others foresee the possibility of using electronic means such as fax, telex, e-mail or similar. Such is the case of the 1988 [Treaty between the Kingdom of Spain](#)

[and the Republic of Bolivia on Legal Assistance in Criminal Matters](#), which permits direct contact between judicial issuing and executing authorities when the assistance requested is urgent. This provision¹¹² must be considered as a unique case and an extraordinary good practice among all bilateral LAC – EU treaties, where the central authorities keep a monopoly on the transmission and communication of requests.

Thus, for the purposes of this study, the inclusion of provisions promoting faster transmission and execution of the MLA request must be considered a positive indicator to be taken into account in a comparative assessment of treaties, and this according to the following scale:

Indicators	Grading
No mention of the facilities for urgent cases	0
Mention of urgent cases or electronic means	1
Mention of urgent cases, electronic means and direct contact between judicial authorities	2

As can be seen below, Argentina, Brazil and Mexico are the LAC countries that have the most provisions on the matter:



¹¹² Included in Article 22, it says as follows: “1. Letters rogatory and attendance requests shall be dealt with promptly by the Central Authorities of both Parties, and shall be returned by the same means together with the documents acompañadas de los documentos relativos a su ejecución. 2. La Autoridad Central para el Reino de España será el Ministerio de Justicia y para la República de Bolivia el Ministerio de Justicia y Derechos Humanos. **No obstante, y de forma excepcional, se podrán enviar directamente a la autoridad judicial competente las comunicaciones urgentes, anticipando la solicitud de asistencia judicial.**” The provision follows the precedent fit in article 15.2 of 1959 [European Convention on Mutual Assistance in Criminal Matters](#) . Although the article does not foresee the direct contact between **issuing and executing judicial** authorities as expressly and general as it is done in the [Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union](#) of 2000, it could be considered easily included from a teleological interpretation of the text.

Finally, although we do not include the ***Ne bis in idem*** or double jeopardy exception as a benchmark, it is necessary to mention it when considering feasibility for MLA purposes.

The exclusion of double jeopardy or the *Ne bis in idem* principle seeks to avoid the liability or punishment for an offence for whose commitment the offender has already been convicted or acquitted in accordance with the law and penal procedure of the country where it was committed. Therefore, it has a legal and humanitarian justification linked to the due process principle and the provisions of most relevant human rights international instruments¹¹³.

Notwithstanding, this ground for refusal may not be always totally justified for MLA purposes within a regional or bilateral framework of mutual trust and *bona fide*. Indeed, this ground for refusal may require a complex substantive analysis of a foreign proceeding or investigation in order to verify the facts and judgment (*causa, actionis* and *petitum*). MLA experience indicates that this provision may lead to a cumbersome process, or even worse, it could spoil the original purpose of the MLA request. Therefore, although this is a quite common exemption, there are treaties that do no longer refer to it. This is the case, for example, of the 1994 [Treaty of Mutual Legal Assistance in Criminal Matters between the Government of the United Mexican States and the Government of the French Republic](#), or the 1992 [Treaty of Extradition and Legal Assistance in Criminal Matters between the Kingdom of Spain and the Republic of Chile](#).

4.4.2. Comparative examination of data protection clauses

Bilateral treaties' approach to personal data within the sphere of international judicial cooperation in criminal matters is nascent and its use is uneven. Indeed, among EU MS, the 2000 [Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union](#) is the first instrument to introduce such rules¹¹⁴ on the protection of personal data

¹¹³ [International Covenant on Civil and Political Rights](#), adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966, which foresees in article 14.7: "No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country".

¹¹⁴ Article 23: Personal data protection

1. Personal data communicated under this Convention may be used by the Member State to which they have been transferred:

- (a) for the purpose of proceedings to which this Convention applies;
- (b) for other judicial and administrative proceedings directly related to proceedings referred to under point (a);
- (c) for preventing an immediate and serious threat to public security;
- (d) for any other purpose, only with the prior consent of the communicating Member State, unless the Member State concerned has obtained the consent of the data subject.

2. This Article shall also apply to personal data not communicated but obtained otherwise under this Convention.

exchanged between two or more MS for the purposes of international cooperation in criminal matters. These rules were at the time considered necessary for many reasons, one of them being the inclusion of certain methods of investigation, such as the joint investigation teams, which are not exclusively judicial.

40% of LAC – EU treaties do not mention this issue at all. Sometimes, they just include some safeguards in order to limit the exchange of information from judicial records to the extent permitted by the requested state laws.

Other treaties do not properly deal with data protection provisions. Instead, they contain confidentiality requirements applicable to MLA requests, evidence and information obtained. This group of legal instruments is led by the agreements signed between the UK and LAC countries, in which specific references to the **confidentiality requirements** for both parties are laid down, especially when any of the parties have any objections to disclosure. The wording is quite similar in most of these treaties: a paragraph aimed at protecting the requesting State's interest on confidentiality before the executing authorities, followed by a second paragraph laying down the requested State's obligations on confidentiality, and usually a third paragraph where the specialty principle is stated. This is the structure of Article 7 of the 1997 [Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Antigua and Barbuda concerning the Investigation, Restraint and Confiscation of the Proceeds and Instrumentalities of Crime](#), in which a quite standard provision in most UK treaties is set out:

Confidentiality and Restricting Use of Evidence and Information

(1) The Requested Party shall, to any extent requested, keep confidential a request for assistance, its contents and any supporting documents, and the fact of granting such assistance except to the extent that disclosure is necessary to execute the request. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party which shall then determine the extent to which it wishes the request to be executed.

(2) The Requesting Party shall, if so requested, keep confidential any evidence and information provided by the Requested Party, except to the extent that its disclosure is necessary for the investigation or proceeding described in the request.

3. In the circumstances of the particular case, the communicating Member State may require the Member State to which the personal data have been transferred to give information on the use made of the data.

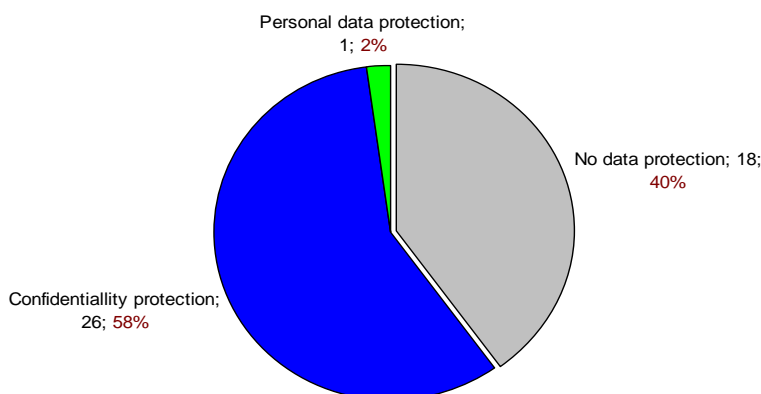
4. Where conditions on the use of personal data have been imposed pursuant to Articles 7(2), 18(5)(b), 18(6) or 20(4), these conditions shall prevail. Where no such conditions have been imposed, this Article shall apply.

5. The provisions of Article 13(10) shall take precedence over this Article regarding information obtained under Article 13.

(3) *The Requesting Party shall not use for purposes other than those stated in a request evidence or information obtained as a result of it, without the prior consent of the Requested Party.*

At the other end there are the Italian MLA treaties, which do not include any type of confidentiality protection. In relation to the other EU MS, only Spain, (8), Portugal and France (1) have adopted bilateral treaties where some reference is made to data protection.

MLA TREATIES LAC - EU AND PERSONAL DATA PROTECTION



The Spanish [Treaty on Judicial Co-operation on Criminal Matters between the Kingdom of Spain and the Republic of Paraguay](#) of 1999 contains a much more cryptic provision in Article 9 ¹¹⁵referred to the limits on the use of information: *unless with prior authorization from the requested Party, the requesting Party shall not be able to use the information or evidence taken under this Convention for the related investigation or proceeding mentioned in the request.* Actually, this is more a specialty principle than a confidentiality or personal data protection clause.

However, when it comes to pure personal data protection, there is just one LAC -EU agreement complying fully with European data protection standards: the exceptional case of Article 12¹¹⁶ of the 2005 [Additional Protocol to the](#)

¹¹⁵ The original Spanish text is: *Artículo 9. Limitaciones en el empleo de la información. Salvo autorización previa de la Parte requerida, la Parte requirente solamente podrá emplear la información o la prueba obtenida en virtud del presente convenio en la investigación o procedimiento indicado en la solicitud.*

¹¹⁶ The Spanish text reads as follows:

“1. Los datos de carácter personal comunicados con arreglo al presente Protocolo podrán ser utilizados por la Parte al que se hayan transmitido:

a) Para los procedimientos a los que se aplica el presente Protocolo.

b) Para otros procedimientos judiciales y administrativos directamente relacionados con los procedimientos a que se refiere la letra a).

c) Para prevenir una amenaza inmediata y grave para la seguridad pública.

d) Para cualquier otra finalidad, únicamente previa autorización de la Parte transmisora, a menos que la otra parte haya obtenido el consentimiento de la persona interesada.

2. El presente artículo se aplicará igualmente a los datos personales que no hayan sido comunicados pero que se hayan obtenido de otra manera con arreglo al presente Protocolo.

[Treaty of Legal Co-operation in Criminal Matters between the Kingdom of Spain and the Republic of Colombia](#), entitled “**Personal data protection**”. Following the 2000 European Convention, this Article applies “to *personal data communicated under this Protocol*”. Doubtless, the expression “personal data” has been used within the meaning of the definition of that expression in Article 2(a) of the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. Hence this Protocol applies to both data processed automatically and data processed manually.

It is beyond question that the new cooperation forms introduced by the Protocol were decisive. As with the 2000 [Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union](#), this Article covers:

- Data obtained by videoconference or telephone conference (Article 6): data derived from a statement made by a witness in one country during a videoconference, for example in a confrontation where that procedure exists, in so far as the data are used by the competent authorities of the State on whose territory the witness is present;
- Data collected by joint investigation teams (Article 8): data derived from the hearing of a witness on the territory of the country which wishes to use those data;
- Data obtained in the territory of the requesting State pursuant Article 3.1 of the original treaty (“other forms of assistance”, for instance interceptions of telecommunications on national territory by the use of service providers): data derived from the interception of the telecommunications of a subject present in the territory of the intercepting State.

Apart from this extraordinary convention and the case of Jamaica as mentioned in the Section 3.2, there are no domestic laws in the LAC area that contain norms on the treatment and protection of personal data obtained during criminal investigations and their subsequent transfer to activities of MLA or Extradition.

There appear to be no rules governing the principles of data quality, data security, the rights and protection of interested parties, or the organisation of oversight and responsibility.

The minimum aspects in this area that should be a matter of common attention should be referred, without limitation, to the cases of:

-
3. Según las circunstancias de cada caso particular, la Parte transmisora podrá exigir a la otra Parte a la que haya transmitido los datos de carácter personal, que facilite información sobre la utilización que se haya hecho de ellos.
 4. En los casos en que se hayan impuesto condiciones a la utilización de los datos personales, prevalecerán dichas condiciones.
 5. El presente artículo no se aplicará a los datos personales obtenidos por una Parte con arreglo al presente Convenio y que tengan su origen en dicha Parte.”

- Practical limitations aimed at protecting personal data and other measures;
- Limitations regarding testimony given, statements, objects, and information,
- A Statement of Confidentiality request to the Requesting State.

The above provisions are set out in the Inter-American Convention on Mutual Legal Assistance in Criminal Matters of 1992, which may facilitate the general basis for all LAC legal systems.

The European Union has set itself the objective of maintaining and developing the Union as an area of freedom, security and justice in which a high level of safety is to be provided by common action among the Member States in the fields of policing and judicial cooperation in criminal matters. When personal data obtained in police and judicial investigations is transferred from a member state to a third party state or international body, it must, in principle, benefit from an adequate level of protection.

The bolstering of domestic legislation in LAC in MLA and Extradition, in this particular aspect, is necessary and must meet minimum standards of protection in the future.

The use of information or evidence under Article 25 of the Inter-American Convention on Mutual Legal Assistance in Criminal Matters is not sufficient for these purposes. Bi-laterally, the Additional Protocol to the Colombia-Spain Judicial Cooperation Agreement of 2005 does incorporate adequate standards that can serve as a future model in signing other bilateral or multilateral agreements in this field, whereby Article 12 protects data of a personal nature in a broad sense.

4.5. Analysis of the LAC countries' participation in international agreements and the transfer of sentenced drug traffickers: bilateral and multilateral conventions. Extradition to serve sentences at home.

4.5.1. Overview

The purpose of a convention on the transfer of sentenced persons is to allow nationals to serve sentences at home. Since it is a question of national interest for most countries, treaties seek to set up simple and flexible procedures to allow the repatriation of prisoners.

Bearing in mind the nature and purpose of such conventions, it is easy to understand why international treaties on the transfer of convicted persons are normally much simpler from the legal point of view than MLA or traditional extradition conventions. In fact, governments and international organisations promote penitentiary policies to allow foreign inmates serving a sentence in a State's penitentiary to exercise the rights and benefits to which they are entitled under bilateral and multilateral treaties on the transfer of

sentenced persons. In this regard, there are several statements and good practice actions by the [REMJA](#)¹¹⁷ and [IberRED](#)¹¹⁸ on the LAC side, and from a global perspective by UNODC¹¹⁹, aimed at searching for the best way to extend the practice of serving criminal sentences in the convicted person's country of origin or habitual residence.

On the European side, the 1983 [Convention on the Transfer of Sentenced Persons](#) of the Council of Europe has been ratified by ten LAC countries, (Bahamas, Bolivia, Chile, Costa Rica, Ecuador, Honduras, Mexico, Panama, Trinidad and Tobago and Venezuela), hence considerably extending its territorial scope of application from the LAC – EU perspective. As noted, all EU MS have adopted this convention. LAC and EU countries have signed more than forty bilateral treaties on the transfer of sentenced persons. Cuba is the LAC country with the highest number of bilateral treaties in this area.

Below is the picture of the international legal instruments applicable to the transfer of sentenced persons: in royal blue colour, those countries relying on bilateral agreements, and in pale blue colour, the ten LAC countries which have adopted the 1983 Council of Europe [Convention on the Transfer of Sentenced Persons](#).

¹¹⁷ See Conclusions and Recommendations of the [Sixth Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas](#) (adopted at the fifth plenary session, held on April 26, 2006, and reviewed by the Style Committee at its meetings of July 19 and 21 and August 3, 2006).

¹¹⁸ The Latin American Judicial Network, (Red Iberoamericana de Cooperación Judicial – IberRED), has a permanent strategy of meetings, workshops and actions related to the transfer of sentenced persons from legal and practical perspectives. [Good Practices Handbook for the transfer of sentenced persons](#) was published in 2011.

¹¹⁹ [Handbook on the International Transfer of Sentenced Person](#).

	AUS	BEL	BUL	CYP	CZ	DEN	EST	FIN	FR	GER	GRE	HU N	IRL	IT	LAT	LI T	LU	MA	NE	PO	PT	RO	SLV	SLO	SP	SW	UK
Antigua ...																											
Argentina																											
Bahamas																											
Barbados																											
Belize																											
Bolivia																											
Brazil																											
Chile																											
Colombia																											
Costa R.																											
Cuba																											
Dominica																											
Ecuador																											
El Salvador																											
Grenada																											
Guatemala																											
Guyana																											
Haiti																											
Honduras																											
Jamaica																											
Mexico																											

[illegible]

This table does not take into account treaties pending entry into force, such as the ones signed by UK with several LAC countries: [Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Dominican Republic on the Transfer of Prisoners](#) of 2003 and others with Nicaragua, Santa Lucia, Guyana and Suriname. Finally, this table does not include joint bilateral treaties (Legal aid, family, civil and criminal matters), such as those signed by Cuba with former COMECON countries which foresee some provisions on TCP.

Taking into account the different international legal instruments on this issue, the following common requirements and features may be identified:

- **Offences.** Contrary to the old extradition treaties, the scope of application rarely refers to the offences included for the purposes of the convention, although a few of them leave out political or military offences. Therefore, drug trafficking cases are fully included.
- **Nationality.** As a compulsory condition, the affected person is a national of the requesting State.
- **Judgment.** The judgment or sentence is final. This is a mandatory requirement implying that the judgment is final and no other legal proceedings relating to the offence or any other offence are pending in the transferring State.
- **Minimum time remaining to be served.** At the time when the request for transfer is received, the sentenced person has a minimum period to serve. Normally it is 6 months. This period is quite common in treaties adopted by the UK. However many bilateral treaties signed by France, Italy or Spain¹²⁰ with LAC countries allow shorter periods for exceptional reasons.
- **Formal consent.** The transfer is consented to by the sentenced person or, where in view of his age or his physical or mental condition one of the two States considers it necessary, by the sentenced person's legal representative. The consent shall be established in such a way as to show that the person concerned has expressed it voluntarily and in full awareness of the consequences. Normally, the procedures for obtaining the sentenced person's consent will be governed by the law of the sentencing State, although the requested State may verify that consent has been given within the terms laid down in the agreement¹²¹.
- **Dual criminality rule.** The acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the

¹²⁰ For instance, Article 3 of the 1994 [Treaty between the Republic of Peru and the Republic of Italy on the Transfer of sentenced persons](#) or article 3.2 of the 2010 [Treaty of transfer of sentenced persons between the Kingdom of Spain and Oriental Republic of Uruguay](#), which entered recently into force.

¹²¹ See Article 6.2 of the [Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Bolivarian Republic of Venezuela on the Transfer of Sentenced Persons](#), (Caracas, 12 June 2002), which allows a consul, or other official agreed with the requested State, to verify the person's consent.

law of the requesting State or would constitute a criminal offence if committed on its territory.

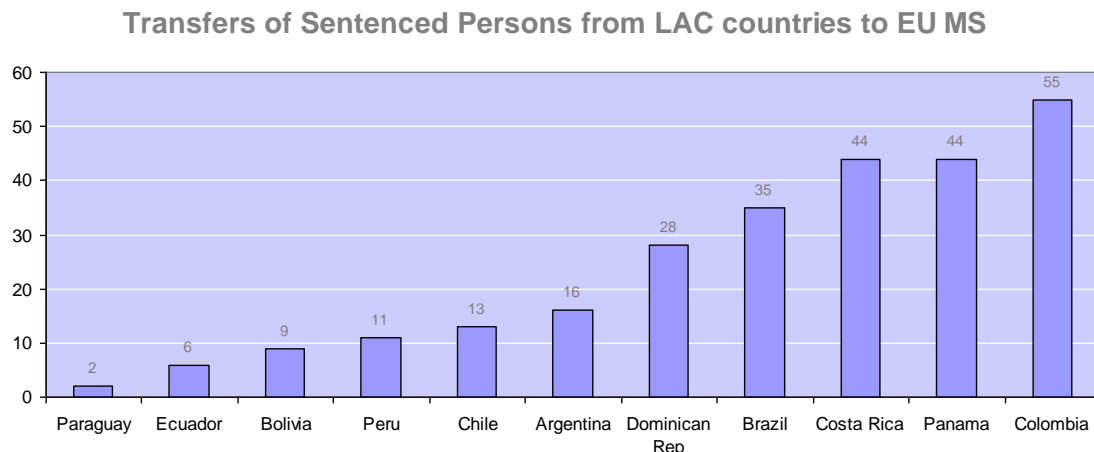
- **States' agreement.** The sentencing and administering States agree to the transfer.

Furthermore the intervention of a lawyer is not necessary, and most countries rely on specific forms to initiate the requests and formalise the consents.

4.5.2. Functioning of TCP conventions or agreements between LAC and EU countries

According to the data provided up to April 2013 there is limited usage of the transfer of sentenced persons tool, whether in multilateral conventions, bilateral agreements or on the reciprocity principle basis.

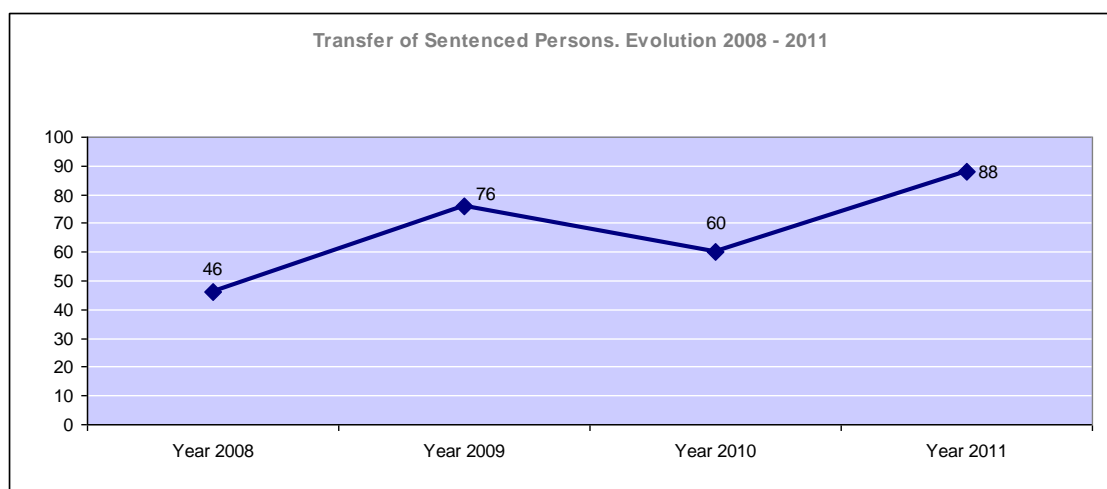
Fourteen central authorities provided data on TCP. If we focus on those LAC countries counting some figures reported by the central authorities below is a comparison of transfers during the period 2008 - 2011:



From a total of 270 during the period, as is marked in the above graphic, Colombia is the most important LAC country in terms of transferring sentenced persons to EU countries with a total of 55 accepted cases; secondly the Costa Rica and Panama with 44 each country; Brazil with 35 cases; Dominican Republic with 28 cases; Argentina with 16 cases; Chile with 13 cases, Peru with 11 cases, Bolivia with 9 cases, Ecuador with 6 cases, Paraguay with 2 cases. Jamaica, Suriname and Uruguay, as noted in following section reported no movements.

The total of 250 cases during 2008 and 2011 is related to citizens from Spain, the UK, the Netherlands, Italy, Germany, France, Sweden, the Czech Republic and the Poland. However, 83% of them were transfers to Spain. It is important to remark the fact that signatory countries of the CoE Convention of 1983, such as Costa Rica and Panama transferred much more inmates than other country with higher convicted population such as Brazil, a country which cannot rely on that multilateral convention.

In relation to evolution over the mentioned period, there is a clear increase in the number of transfers, although it should be considered a very scarce usage in comparison to the quantity of EU citizens serving sentences in LAC countries which can be seen in the following section.



4.5.3. Sentenced drug traffickers in LAC countries, and serving judgments at home

A) Argentina

As mentioned above, Argentina did not ratify the [Council of Europe Convention on the Transfer of Sentenced Persons](#). According to the information obtained during the mission to Buenos Aires, lack of ratification is linked to sovereignty reasons since the Argentinean authorities consider it as interference in its system.

However Argentina has signed bilateral agreements with Spain and Portugal. Therefore, transfers are possible with the rest of the EU countries on a reciprocity basis.

In relation to the volume of transfers, there is scarce usage of this legal possibility. So far, during the period 2008 - 2012, there have been four requests for transfers to Spain (2) and Italy (2). The bilateral agreement with Portugal of 2010 has not been applied in any case.

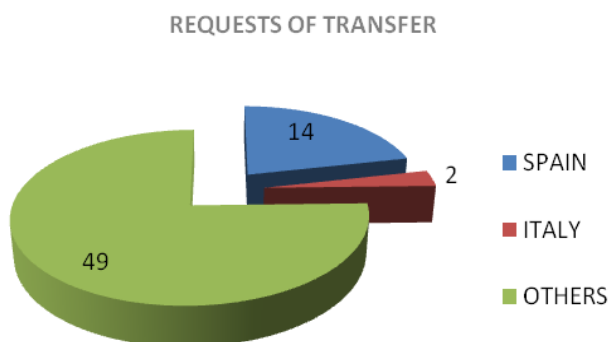
However, this scenario needs to be explained taking into account the Argentinean penal system. Besides the traditional criminal punishment, the system includes a sort of administrative sanction called "*extrañamiento*" which implies an expulsion from Argentina. This punishment does not form part of the criminal judgment since it is an administrative measure imposed by the General Directorate of Migrations of the Ministry of Interior which follows its own procedure.

Generally this penalty is executed after the performance of one half of the custodial sentence; therefore instead of serving 2/3 or 3/4 of the sentence in their country, it implies an advantage for inmates to serve only 50% of their sentence in Argentinean prisons and to then be returned to their country of origin, with a prohibition on returning to Argentina. Furthermore, the transfer procedure cannot be initiated until a final criminal judgment is obtained (a sentence against which there is no appeal). Since this judgment can be delayed for up to two years it is rare that advocates advise this option.

In relation to this, sources from the Argentinean Ministry of Justice note that the delays in dealings with Spain be up to two years; it is observed that the major part of this occurs whilst the procedure is with the Ministry of Foreign Affairs and Cooperation. Therefore, it is evaluating the possibility of implementing the good practice gained between Spain and Chile on this issue which allows direct communication between central authorities without the intermediation of chancelleries.

In any case, the number of transfers is extremely low, but this figure should be linked to the total number of requests which rose to 14 during the period.

With regard to active requests of transfer of sentenced persons, Argentina requested 16 cases, (14 to Spain and 2 to Italy)



The remainder (49) were addressed to third countries.

Since Italy is the second EU MS in terms of traffic of requests for transfer with Argentina, taking into account the inherent problems linked to the reciprocity principle, it has been studying the option of a bilateral agreement. Nevertheless, the comparison between issued and accepted requests in relation to Spain and Italy infers that even relying on a bilateral agreement the practical obstacles remain. In relation to Spain, the practical obstacles are linked to the lack of coordination, and delays. Moreover, there are legal problems associated with the Argentinean life imprisonment which is not admitted according to Spanish legislation.

Up to October 2012, and taking into account those cases serving sentence from a final judgment, there are 132 inmates who were citizens of EU MS. which represents 5% of total number of inmates. Regarding the sentences related to DT, 98% of convicted women are serving in relation to DT while 75% of the condemned men are DT cases.

According to the figures provided by the Argentinean authorities, 45% of the European convicted persons are from Spain. The second relevant group of inmates is from Italy and The Netherlands, Germany, France and The UK:

COUNTRY	CONVICTED PERSONS
SPAIN	51
ITALY	14
NETHERLANDS	11
PORTUGAL	9
GERMANY	8
FRANCE	7
UK	6
ROMANIA	5
POLAND	4
BULGARY	3
LATVIA	3
LITHUANIA	3
CROACIA	2
AUSTRIA	1
BÉLGIUM	1
DENMARK	1
SLOVAKIA	1
LUXEMBOURG	1
CZECH REPUBLIC	1
	132

B) Bolivia

Apart from the Council of Europe [Convention on the Transfer of Sentenced Persons](#) ratified by Bolivia in 2004, Bolivia has signed one unique bilateral agreement with Spain: [Treaty between the Kingdom of Spain and the Republic of Bolivia on the Transfer of Sentenced Persons](#) of 1990.

Nevertheless, in terms of transfers of sentenced persons there is a lack of correspondence between the high level of regulation (indeed with all the EU MS) and the outcomes of these conventions. During the period 2010 – 2011¹²² only eight sentenced inmates were transferred to EU countries: 4 to Spain, 4 to The Netherlands and one to the Czech Republic.

Several factors contribute to this situation; as in Argentina, the most relevant cause is linked to the delays associated with the transfer procedures. Likewise the relatively better internal conditions of Bolivian prisons are an apparent advantage for many European inmates, (the lack of resources of Bolivian penitentiary system allows certain self-management of prisons by the inmates themselves).

According to the figures provided by certain EU consulates in Bolivia, most of the European convicted persons in prison are from Spain. The second relevant group of inmates is from Czech Republic, the UK and Poland:

COUNTRY	CONVICTED PERSONS
SPAIN	78
CZECH REPUBLIC	6
UK	3
POLAND	3
IRELAND	1
AUSTRIA	0
ITALY	-
NETHERLANDS	-
PORTUGAL	-
GERMANY	-
FRANCE	-
ROMANIA	-
BULGARY	-
LATVIA	-
LITHUANIA	-
CROACIA	-
BÉLGIUM	-
DENMARK	-

¹²² The Bolivian central authority does not record any data before 2010.

SLOVAKIA	-
LUXEMBOURG	-
	91

C) Brazil¹²³

Brazil has assumed as international policy not to ratify any multilateral agreement open to third countries which has not been previously negotiated by Brazil. Therefore, it has not been ratified the CoE Convention of 1983. As mentioned and as a matter of fact, some LAC signatory countries of the CoE Convention of 1983, such as Costa Rica and Panama with less convicted inmates, transferred more inmates than Brazil to EU MS.

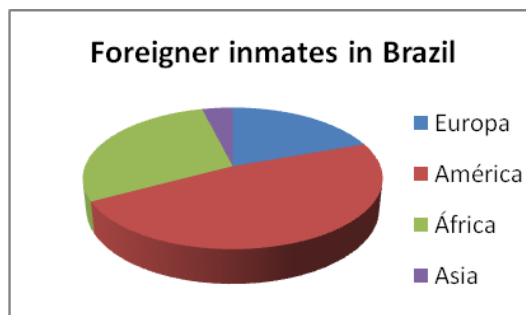
On the other hand, Brazil has focused its interest on bilateral agreements in this area. Brazil has signed three bilateral agreements with the Netherlands (2009), Portugal (2001) and Spain (1996). However, there are several pending bilateral agreements in process of negotiation or ratification with Germany, France, Poland, Austria, Denmark, Hungary, Ireland, Lithuania and Slovenia. Furthermore, another signed with UK is pending to entry into force.

The convicted person needs to initiate the transfer procedure on his own motion, personally or through a representative (lawyer, relative or the Consulate). Nevertheless, since the most frequent way is the promotion by the inmate himself, the Brazilian MoJ has put in place an information campaign by means of brochures and request templates distributed among foreign inmates. Once the request has reached the Central Authority, the legal requirements have been checked and accepted by the sentencing judge, the request is formally issued to the required State. Normally the judicial *green light* will be dependent upon an important part of the sentence having been served and the absence of dangerousness.

As a matter of fact, an important barrier to transferring is represented by the length of the procedure. If we take into account the period to be fulfilled linked to this fact we can understand why many European inmates decline to initiate the transfer procedure. Indeed, in some cases of convicted of small DT (*mules*), the length of processing can be equivalent to the duration of the entire sentence.

Dealing with the inmates, only 16% of the Brazilian convicted inmates are citizens from EU MS (576 of 3392 inmates).

¹²³ Information obtained from the mission to Brazil in February of 2013.



COUNTRY	CONVICTED PERSONS
SPAIN	162
PORTUGAL	109
ROMANIA	69
BULGARIA	45
ITALY	44
NETHERLANDS	42
GERMANY	33
FRANCE	25
UK	22
HUNGARY	11
GRECEE	9
BELGIUM	6
CZECH REPUBLIC	5
IRELAND	3
SWEEDEN	3
AUSTRIA	2
	576

D) Chile

Although Chile has signed the multilateral [Convention on the Transfer of Sentenced Persons](#) of the Council of Europe of 1983, the transfer of convicted persons between 2008 – 2011 is low. Only two EU countries, Spain and Romania maintain any sort of exchanged (active or passive). Spain and Chile exchange a total of 12 inmates and Chile and Romania just one.

The Chilean prison population is the highest in Latin America per capita and prisons are also overcrowded. Hence the Government has put in place alternative measures in order to alleviate the problem: pardons, commutations of sentences for foreigners by deportation and exploring alternative disposals of defendants. This has implied that there are just very few foreign inmates in 2013.

E) Colombia

Since Colombia has not ratified the CoE Convention of 1983, there is just one bilateral international instrument signed with [Spain](#) in 1993 for transferring of sentenced persons. However for other countries, the Colombian competent authorities are open to applying the Vienna Convention references to TCP as the legal ground in order to allow the transfer of sentenced persons.

Apart from the cost difficulties for any transfer, there are some practical difficulties revealed by the mission. For instance, some receiving countries raise problems with accepting an electronic copy of the judgment. It is worth mentioning that Colombia has been one of the first countries in the world to implement the [e-Apostille system](#) promoted by the [HCCH](#) for the transfer of public documents.

Mission verified the strong concern of the Colombian MoJ with regards to the increase of EU citizens detained in relation to DT crimes¹²⁴. Up to January 2013 this was the distribution of EU convicted in DT related cases:

COUNTRY	CONVICTED PERSONS
SPAIN	96
ITALY	13
NETHERLANDS	6
UK	5
LITHUANIA	4
FRANCE	3
ROMANIA	3
AUSTRIA	2
CZECH REPUBLIC	2
GERMANY	2
PORTUGAL	2

¹²⁴ Annexes to Colombia Mission Report includes detailed information provided by Interpol.

BULGARY	1
CYPRUS	1
ESTONIA	1
	141

F) Costa Rica

In relation to TCP matters, Costa Rica relies on two legal instruments: the multilateral Council of Europe [Convention on the Transfer of Sentenced Persons](#) of 1983 and one [bilateral treaty with Spain](#), (1997).

The competent authority for these matters in Costa Rica is the MoJ acting through the Directorate for Social Adaptation as a central authority. From 2005 to 2011 Costa Rica has repatriated 8 inmates from European countries, mainly Spain. Conversely, the flow from Costa Rica to the EU is much higher during the same period (44). The mission to Costa Rica in February 2013 revealed the positive effects of ratifying the CoE Convention, allowing the transfer of EU citizens to Spain, the Netherlands, Portugal, Germany and France, among other MS.

If we focus on those convicted related to DT, from 2008 to 2011 a total of 62 sentenced EU citizens were imprisoned, and 8 more in 2012. In March 2013 this was the situation of EU inmates in Costa Rica¹²⁵:

COUNTRY	CONVICTED PERSONS
SPAIN	13
ITALY	6
ROMANIA	6
NETHERLANDS	5
UK	4
BULGARIA	2
GERMANY	2
FRANCE	2
LITHUANIA	2
AUSTRIA	2
PORTUGAL	1

¹²⁵ Source: SIAP of Costa Rica. See Mission Report to Costa Rica in Annexes to this Study.

IRELAND	1
BELGIUM	1
	48

The mission to Costa Rica was able to establish the propriety of the treatment received by the foreign inmates in Costa Rican prisons, particularly in those centres with semi-open regimes such as the rural (overnight stays from Monday to Thursday) and urban programmes (overnight stays one or two times per week). The Costa Rican authorities assured that consular rights are enforced, however some problems do arise for those inmates belonging to EU MS without diplomatic representation.

According to the information given by [INALUD](#), Costa Rica is one of the countries of the Region with better percentage in relation to inmates remanded in custody, without sentence, (a 23% of the total inmate population).

G) Dominican Republic

In comparison to MLA and Extradition international legal instruments, the Dominican Republic relies on more conventions on TCP. Namely, the Dominican Republic has signed bilateral treaties with the following EU MS: [France](#), [Belgium](#), [Italy](#), and [Spain](#). Another one with UK is pending entering into force.

Dealing with the functioning of these bilateral instruments, only France and Spain have received national inmates coming from the Dominican Republic. The persons transferred have normally been convicted in small DT cases (*mules*). As mentioned, during the period 2008 - 2011 a total of 28 convicted persons were transferred to France (5) and to Spain (24).

The mission's report reveals that the lack of legal instruments with other EU MS forms a serious barrier to the transfer of certain inmates, particularly to the Netherlands. Although the Vienna Convention allows bilateral agreements on TCP, (Article 6 *in fine*), domestic authorities apply rigidly Article 79 of the [Law 50-88](#) on DT which lays down the impossibility of deportation or repatriation before the completion of the sentence.

In 2011 the inmate population of EU citizens was distributed as following:

COUNTRY	CONVICTED PERSONS
NETHERLANDS	58
SPAIN	35

ITALY	16
UK	16
FRANCE	15
	140

H) Ecuador

Although Ecuador has signed the multilateral Convention on the Transfer of Sentenced Persons of the Council of Europe of 1983, the transfer of convicted persons between 2008 - 2011, according to the statistics provided by the Central Authority (currently the Minister of Justice) is somewhat low. Only three EU countries, maintain any sort of exchange. Only 7 sentenced persons were transferred from Ecuador to EU territory, in concrete three to the Netherlands, two to France and one to Italy. In 2012, there are other countries with transfers: five to Spain, one to Sweden, one to the United Kingdom and one to Bulgaria. Also, transfers to the Netherlands and Italy increased (seven to the Netherlands and two to Italy). *In situ*, the Central Authority has confirmed that there are no statistics of the persons transferred from Europe to Ecuador. But its statistics show just one request from the United Kingdom, which has been refused in 2012. Currently, there are a large number of unresolved requests from a variety of EU countries.

Possible reasons for the low figures are penitentiary benefits, delays in application of appropriate treaties and fines. The problems of overcrowding in Ecuadorian prisons has prompted the authorities to think of the possible announcement of partial amnesties (only for fines) in order to facilitate the return by foreigners to their respective countries. Currently, the Minister of justice is working on 63 "partial amnesties".

I) Jamaica

Jamaica has signed both the Vienna and the Palermo UN Conventions and is also a signatory to the Harare and London Scheme. However, none of these conventions or schemes has been incorporated into the domestic legislation. This necessitates recourse to the use of the reciprocity principle, unless the requesting state is one of the above mentioned "designated" states under the Jamaican legislation.

The only foreign countries which have signed bilateral treaties on MLA or/and Extradition with Jamaica are Canada and the USA, ([Treaty Between the Government of Jamaica and the Government of Canada on Mutual Legal Assistance in Criminal Matters](#), [Treaty Between the Government of Jamaica and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters](#), [Extradition Treaty Between the Government of Jamaica and the Government of the United States of America](#)).

There are no conventions dealing with the transfer of convicted persons. Even the Commonwealth Scheme for the transfer of prisoners has not been adopted into the domestic legislation.

To date there have been no transfers from Jamaica to any EU MS.

The weak Jamaican legal system does not appear to affect **EU Member States citizens**, according to several sources, consular access for detainees is routinely granted. As at October 2012 there were 60 UK citizens in Jamaican prisons and 1 Spanish citizen, the vast majority of these prisoners were serving time for drug related offences. Germany and other EU MS have reported no national inmates in Jamaican prisons¹²⁶:

COUNTRY	CONVICTED PERSONS
UK	60
SPAIN	1
GERMANY	0
ITALY	0
AUSTRIA	-
BELGIUM	-
BULGARIA	-
CROACIA	-
CZECH REPUBLIC	-
DENMARK	-
FRANCE	-
IRELAND	-
LATVIA	-
LITHUANIA	-
LUXEMBOURG	-
NETHERLANDS	-
POLAND	-
PORTUGAL	-
ROMANIA	-
SLOVAKIA	-
	61

¹²⁶ According to the figures provided by certain EU consulates in Kingston.

J) Panama

In relation to TCP matters, Panama relies on two legal instruments: the multilateral Council of Europe [Convention on the Transfer of Sentenced Persons](#) of 1983 and one [bilateral treaty with Spain](#) (1996). The Panamanian Ministry of Foreign Affairs is the designated central authority for these matters.

SI show how the TCP ranges between 11 in 2008, 19 in 2009, 8 in 2010 and 4 in 2011; the two main receiving EU MS were Spain and the Netherlands. However, last year the transfers increased to 11 cases, and 99% of them were related to DT cases.

In March 2013 there were 105 EU citizens in Panamanian prisons with the following distribution¹²⁷:

COUNTRY	CONVICTED PERSONS
SPAIN	51
NETHERLANDS	10
ITALY	9
ROMANIA	9
UK	5
GERMANY	3
LITHUANIA	3
PORTUGAL	3
GREECE	2
BULGARY	2
LATVIA	2
POLAND	2
CZECH REPUBLIC	1
FRANCE	1
SWEDEN	1
HUNGARY	1
	105

¹²⁷ According to the information obtained during the mission to Panama, (Report can be consulted in Annexes to this Study).

K) Peru

Peru has ratified three bilateral agreements with EU countries for transferring sentenced persons: [Italy](#) ([Treaty between the Republic of Peru and the Republic of Italy on the Transfer of sentenced persons](#) of 1994), [Spain](#) ([Treaty between the Kingdom of Spain and the Republic of Peru on the Transfer of Sentenced Persons](#) 1986) and the [UK](#) ([Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Peru on the Transfer of Sentenced Persons](#) of 1999). In addition there are two treaties in the process of being signed with the Netherlands and Portugal.

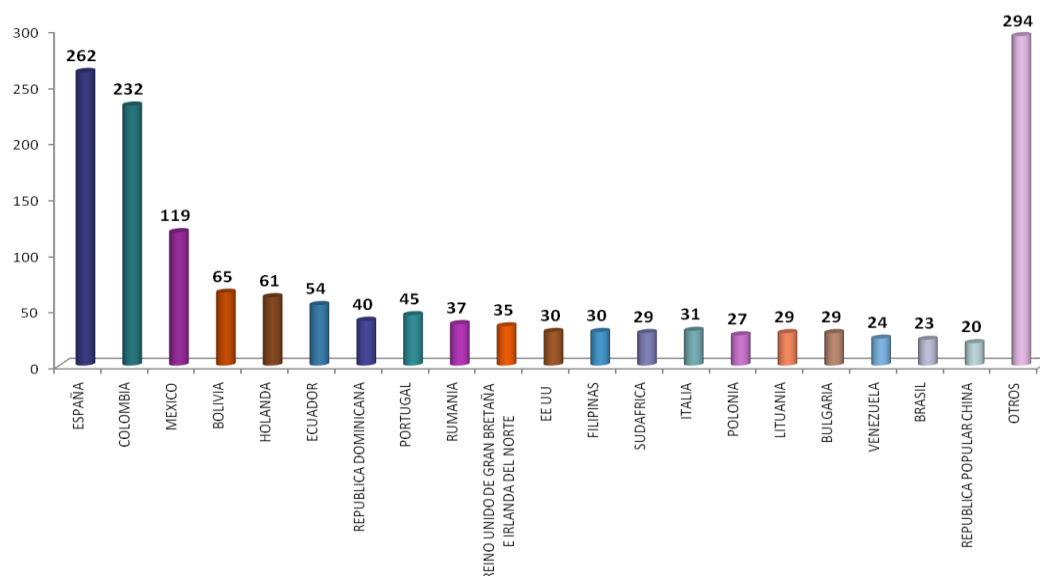
As happens in other LAC countries, there is no correspondence between the ratio of the number of transfers of sentenced persons and the existing legal framework. The conventions have scarce practical implementation. During the period 2008 – 2011 there were a total of 11 transfers to EU countries: 10 to Spain and 1 to the UK.

Several factors contribute to this situation: delays associated with transfer procedures; commutation of sentences by means of expulsion and, as in other LAC countries, the apparent advantage for many European inmates in Peruvian prisons due to the lack of resources in the Peruvian penitentiary system which allows a degree of self-management of some prisons by the inmates themselves. In order to facilitate a transfer, there is a legal requirement of the prior payment of the civil liability of the prisoner. This has minimised the number of requests to a percentage of 1% of foreign inmates. In many cases the overcrowding of prisons is provoking an amnesty, pardon or commutation of sentence for certain foreign convicted persons.

According to the figures provided by the Peruvian authorities ([INPE](#)¹²⁸), most of the European convicted persons are from Spain (262). A second group of EU inmates is from Portugal (45), Romania, (37), the UK (35), Italy (31), Lithuania (29), Bulgaria, (29) and Poland (27)¹²⁹:

¹²⁸ Peruvian National Penitentiary Centre.

¹²⁹ According to the data provided up to May 2012.



Therefore, Peru has probably the highest ratio of EU citizens sentenced in prisons with a total of 505 up to May 2012. As is reflected in the mission report, most of convictions are related to DT, the so called mules or *burriers*.

L) Suriname

Currently, the Republic of Suriname is not a party to any bilateral or multilateral agreement or convention in force in the field of transfer of sentenced persons. Suriname has already signed two bilateral conventions regarding the transfer of sentenced persons (one of them with a EU Member State), which have not yet been ratified: the Convention regarding transfer of sentenced persons between the Government of the Republic of Suriname and the Government of the Federal Republic of Brazil (SB 2006 no 51); and the agreement between the Government of the United Kingdom of Great Britain and the Government of the Republic of Suriname regarding transfer of sentenced persons (signed on June 29, 2002).

The National Assembly of Suriname has passed an Act for the approval of the accession of the Republic of Suriname to the European Convention on the transfer of sentenced persons (Act of June 7, 2007, SB 2007 no 77), that has not lead to the accession to the said Convention of the Council of Europe (CETS 112) so far. According to the information provided by the representatives of both the Ministry of Justice and Police and the Public Prosecutor's Office, Suriname has not yet acceded to the Council of Europe Convention on the transfer of sentenced persons, because the National Assembly of Suriname has not passed the amendments to the internal legislation needed for the implementation in Suriname of the said Convention, including the alternatives for the enforcement in the administering state of the sentence imposed by the sentencing state, pursuant to articles 9 to 11 of the Convention (continued enforcement vs. conversion of sentence). The representatives of the Ministry of Justice and Police expressed the view that

the ratification of the Convention of the Council of Europe by Suriname would be of key importance in order to facilitate the social rehabilitation of foreign prisoners in Suriname and of Surinamese prisoners abroad by giving both categories of foreigners convicted of a criminal offence the possibility of serving their sentences in their own countries. This stems from the fact that difficulties in communication by reason of language barriers and the absence of contact with relatives and other persons within the prisoners' environment may have detrimental effects on a person imprisoned in a foreign country. Any of the two alternatives envisaged in the Convention for the enforcement in the administering state of the sentence imposed by the sentencing state, pursuant to articles 9 to 11 of the said Convention, would be acceptable to Suriname in the view of the representatives of the Ministry of Justice and Police. In this regard, the representatives of the Ministry of Justice and Police underlined the fact that the Convention of the Council of Europe on the transfer of sentenced persons has already been ratified by a number of states outside the Council of Europe, including many LAC countries (such as, Bahamas, Bolivia, Chile, Costa Rica, Ecuador, Honduras, Mexico, Panama, Trinidad and Tobago, and Venezuela) and insisted that it would be necessary for Suriname to count on the invitation of the Committee of Ministers of the Council of Europe and on the support of the member states of the Council of Europe in order to accede to the Convention, pursuant to its article 19.1.

The fact that there are no available international instruments in force which could serve as a legal basis for the transfer of sentenced persons from or to Suriname, means that there are no actual cases of transfer of sentenced persons from Suriname to EU Member States (or from EU Member States to Suriname). The accession to the Convention of the Council of Europe on transfer of sentenced persons should, therefore, be one of the priorities in the field of legal cooperation in criminal matters for the Surinamese authorities, since it appears to be in the real interest of both Suriname and the EU Member States whose nationals are currently imprisoned in Suriname (basically the Netherlands and, to a minor extent, France). This conclusion is supported by the opinions expressed both by diplomatic representatives from the Netherlands and France and by Dutch detainees in Surinamese prisons in the context of the interviews held by the Project Short Term Experts during the study mission to Suriname. To this purpose it would be necessary for the Surinamese authorities (Government and National Assembly) to draft and adopt the relevant amendments to the internal legislation that may facilitate the accession to the Convention of the Council of Europe on transfer of sentenced persons; and for EU Member States to fully support within the Council of Europe the process of accession by Suriname to the said Convention.

COUNTRY	CONVICTED PERSONS
NETHERLANDS	37
FRANCE (French Guyane)	12

BELGIUM	1
PORTUGAL	1
UK	0
	61

M) Uruguay

Uruguay did not ratify the Council of Europe [Convention on the Transfer of Sentenced Persons](#). According to the information obtained during the mission to Montevideo, there is no intention to open this possibility. The lack of ratification is linked to reasons of prison overcrowding, since the Uruguayan authorities consider that an important number of Uruguayan sentenced abroad could come back to Uruguay.

However Uruguay has ratified a bilateral agreement with Spain ([Treaty between the Kingdom of Spain and the Oriental Republic of Uruguay on the Transfer of Sentenced Persons](#) of 2010). In addition there are two treaties in the process of being signed with Portugal and Romania.

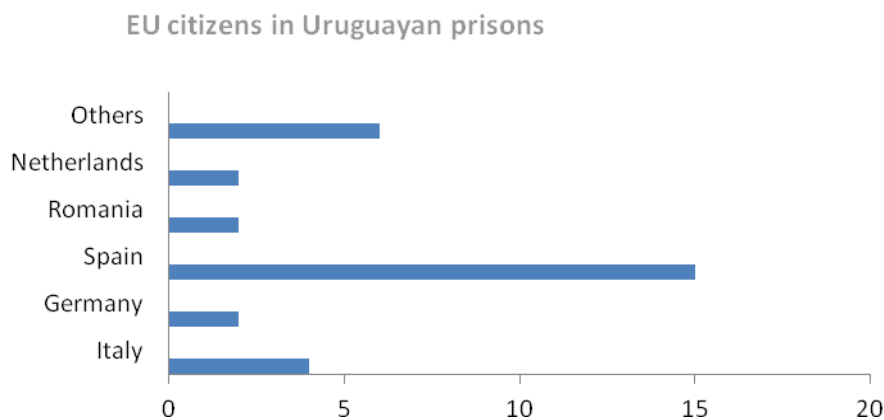
Since the new bilateral treaty with Spain only entered into force on October 31st 2012, up to now there has been no transfer of sentenced person implemented with any EU country. However transfers have been requested on the reciprocity and humanitarian basis.

In relation to EU citizens sentenced in Uruguayan prisons, from the figures provided by Uruguayan authorities¹³⁰, in November 2012 foreign inmates represent a total of 13% of the penitentiary population:



¹³⁰ [Rehabilitation National Institute](#) from the Ministry of Interior.

Of 31 EU inmates, most are Spanish citizens (15), and the rest are from Italy (4), Germany (2), the Netherlands (2), Romania (2), Bulgaria (2), Portugal (1), Ireland (1), France (1) and Greece (1).

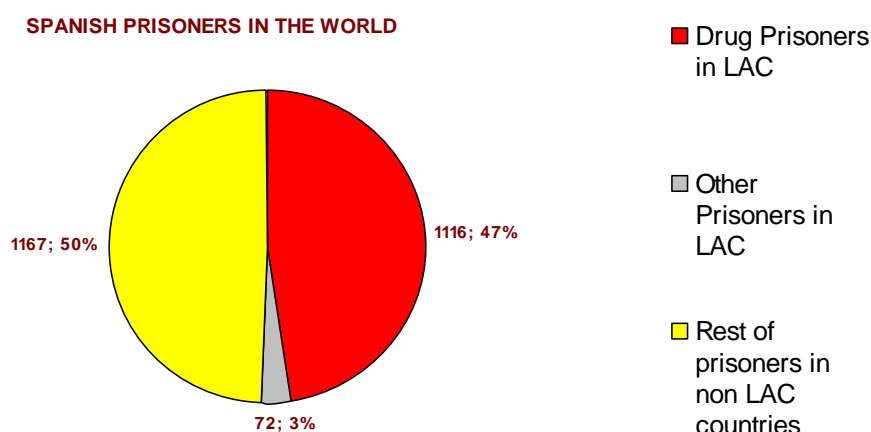


Almost 70% of those inmates are sentenced persons from DT or related crimes.

N) Some figures from Spain

As Spain represents the major part of the EU citizens sentenced in LAC countries, we include here a specific analysis of Spanish nationals convicted of crimes related to DT.

In June 2012, the Spanish [National Plan on Drugs](#) published the figures of Spanish prisoners all around the world. The official statistics of the Spanish Ministry of Foreign Affairs show that out of 2,355 Spanish inmates in the world, 50% are in LAC countries' prisons. Furthermore, almost all these prisoners have been convicted of drug trafficking.



As can be seen in the above graph, almost 80 % of Spanish prisoners sentenced in LAC countries have been convicted of drug-trafficking or of related offences.

	DRUGS cases INMATES	TOTAL INMATES
NICARAGUA	1	1
PERU	271	278
PARAGUAY	7	9
PANAMA	46	49
MEXICO	2	21
JAMAICA	1	1
BRAZIL	178	193
BOLIVIA	79	80
CHILE	19	19
ARGENTINA	122	128
GUATEMALA	1	3
GUYANA	1	1
CUBA	1	1
COSTA RICA	15	15
COLOMBIA	192	200
ECUADOR	118	119
TRINIDAD AND TOBAGO	3	3
URUGUAY	10	15
VENEZUELA	49	52

5. The functioning of international legal instruments signed between LAC countries and EU MS, and of other practical tools

The main mechanisms in support of international cooperation between criminal justice agencies are mutual legal assistance, extradition, the transfer of sentenced persons, freezing and confiscation of the proceeds of crime and a number of less formal measures. These mechanisms are based on the already mentioned bilateral and multilateral agreements or arrangements, as well as on national laws.

As seen before, some of the agreements emulate certain methods and legal practices already in place within the EU. Moreover, all of them are evolving rapidly to keep pace with new technologies. We have seen in the previous sections that their intensification over the past 10 years reflects the determination of many countries to work more closely with each other to face the growing threats of organised crime and drug trafficking. In addition to the [1988 Vienna Convention](#), two other conventions are crucial to promoting international cooperation in the fight against organized crime and corruption: the United Nations Convention against Transnational Organized Crime and the Protocols thereto; and the United Nations Convention against Corruption. As noted¹³¹, having national legislation in place fully to implement those legal instruments is of paramount importance, as is the adoption of the administrative measures necessary to support the various international cooperation measures.

However, it is well known that the legal framework alone does not suffice to ensure proper, effective and feasible cooperation. Many other factors, such as training of competent legal players, resources, IT means, the facilities of central authorities, support and backstopping from judicial networks and, moreover, the probity and attitude of competent authorities play a decisive role on LAC – EU judicial cooperation.

In fact, as evidenced by the 2011 [Report of the International Narcotics Control Board](#) when dealing with the recommendations to Governments, the UN and other relevant international and regional organizations include Recommendation 4, which reads as follows: “*Certain parties have not fully complied with their obligations under the international drug control treaties, as some of their **state and/or provincial legislative and judicial structures have implemented action contrary to the treaties***”.

Therefore, the Board calls upon the States Parties concerned to take all necessary measures to ensure that state and/or provincial policies and measures do not undermine efforts to combat drug abuse and trafficking in narcotic drugs, psychotropic substances and precursor chemicals.

¹³¹ See UNODC, [The Treat of Transnational Organized Crime](#).

An extraordinary benchmark when analysing the functioning of the legal and institutional framework on international judicial cooperation is the examination of the statistics on the use of the different bilateral and multilateral legal instruments. Additionally, the perceptions of prominent legal practitioners regarding the quality of and obstacles to cooperation are valuable in terms of evaluation. For this purpose it is necessary to study questionnaires and process MLA and extradition statistics on the use of agreements in related drug cases collected from official competent entities from both sides of the Atlantic.

5.1. Research Data sheet

This section gives an overview of functioning benchmarks, sources of verification and technical aspects referred to in the information requested, collected and processed for this project. The analysis of the functioning of international judicial cooperation instruments is dealt with by a double approach for the purpose of this Study: from the quantitative and from the qualitative point of view.

In relation to the **quantitative appraisal**, this study has resorted to statistical analysis of figures regarding extradition and mutual legal assistance on drugs related crimes. In order to seek the highest level of research's accuracy, the following **guidelines** have been applied:

- The statistical information (SI) has been requested only from official bodies, i.e. central authorities;
- In order to permit the confrontation of data, the same SI has been solicited from official entities from both sides of Atlantic; consequently the same information was sought from EU and LAC central authorities. Additionally this has allowed the verification of the information and has provided data in relation to countries which did not provide figures;
- To ensure balanced data and to obtain information of evolution over time - the requested SI refers to a period of four years: from 2008 - 2011;
- In order to evaluate the competent authorities' role in relation to judicial cooperation, within each year, the SI has been distinguished between issued (active cooperation) and received requests (passive cooperation) ;
- As a way of studying the level of efficiency, within each concept (issued and received), the SI has been distinguished between accepted requests (A), rejected request (R) and total sum of both (T);
- Different statistical templates were distributed in relation to extradition and MLA;
- In order to enlarge the range of data and to rely on wider SI, the MLA figures have been requested differentiating between LoRs in DT cases according with Vienna Convention or other bilateral convention, LoRs in related drug cases according Palermo Convention and LoRs for general MLA related to other cases different from DT. This allows a comparison to be made between DT cooperation and general criminal cooperation;

- Supplementary statistical information related to the transfers of sentenced persons towards EU MS was requested from all LAC countries¹³².

The information was requested since June 2012 to LAC central authorities. In the case of EU Member States it was requested through Eurojust. Unfortunately, Eurojust sent back information on existing international legal framework from each MS but very little statistical data¹³³ since National Members referred to the difficulty of obtaining such information from the competent bodies¹³⁴.

In order to ensure a minimum of SI, at least with those countries considered as key States for the purpose of the study, additional reminders were sent by means of several ways: direct contacts with targeted EJM contact points, general reminder through IberRED Virtual Private Network, direct contact with REMJA contact points, supplementary requests to targeted central authorities through the Spanish Central Authority from the MoJ and, finally, direct obtaining of SI by means of missions to certain LAC countries.

Outcomes.

The project obtained SI from seven European central authorities:

- Belgium,
- France,
- Finland,
- Italy,
- The Netherlands,
- Spain,
- Portugal
- Romania,
- The UK.

Within the LAC Region, the quantity of official SI since a total of fifteen countries sent data:

- Argentina,
- Bolivia,
- Brazil,
- Chile,
- Colombia,
- Costa Rica

¹³² Although this data is used to contrast the other SI, this information is mainly processed in Section 3.5 when dealing with analysis of the LAC countries' participation in international agreements and the transfer of sentenced drug traffickers.

¹³³ Except in the case of France which sent SI through the intermediation of the French Liaison Magistrate in Madrid. In addition, the Romanian National Member provided SI in reference to extradition.

¹³⁴ On the basis of the MoU with Eurojust, COMJIB sent an official communication to Eurojust informing about the Study Project and requesting the information. See in annex the original request and preliminary answer and the last information enclosing solely domestic regulations on Extradition and MLA.

- Ecuador,
- Guatemala,
- Honduras,
- Jamaica,
- Mexico,
- Panama,
- Paraguay,
- Peru,
- St. Kitts and Nevis,
- Suriname,

Remarks

Despite the above, not all the information obtained has been fully complete and only 14 countries have provided all of the requested data. There are some countries where, although missions finished, it has been impossible to access any statistical data. Sometimes the competent authority did not rely on any recording or counting system in order to maintain SI. In other cases, central authorities are counting and pending collation of information.

The **qualitative approach** tackles the operative analysis of the cooperation by means of the study's casework and questionnaires. The purpose of this appraisal is to obtain additional information by means of the evaluation of the functioning of cooperation and legal instruments from the practical and operative point of view: legal permeability to extradition and MLA, application of *aut dedere aut iudicare* principle, obstacles to cooperation, forms and measures of cooperation, type of requests, role and behavior of central authorities and other legal practitioners...

In relation to the field study, each mission to LAC countries had the commitment, among others, to access real extradition and mutual legal assistance requests (received and/or issued) related to DT. Therefore, in addition to the quality of cooperation interviews with judges, prosecutors and representatives from central authorities, the consultants have examined, when possible, cooperation procedures dealing with extradition and MLA in related DT cases between the visited country and any EU State.

During the lifetime of the project the following central authorities were visited: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Rep. Dominicana, Ecuador, Jamaica, México, Panama, Paraguay, Peru, Suriname and Uruguay.

Regarding the second qualitative methodology, perception questionnaires have been distributed among targeted legal practitioners such as specialized prosecutors in drug related crimes, judges, court secretaries and court officers, central authorities, IberRED¹³⁵ contact points, Eurojust, EJN contact

¹³⁵ The questionnaire was distributed through Iber@, the IberRED Secure communication system.

points¹³⁶, UNODC¹³⁷ and its Central American network of international cooperation focal points, Interpol officers and other relevant legal practitioners.

The perceptions questionnaire¹³⁸ was prepared and distributed applying the following **guidelines**:

- Different questionnaires were prepared and adaptations were made to tailor them to EU or LAC addressees.
- No limitations were imposed on the number of replies, and hence several answers were permitted from the same country or entity.
- Questions were divided into four sections: legal instruments used, obstacles to cooperation, forms or ways of cooperation, and overall assessment.
- Questions related to obstacles were divided into two areas: legal obstacles to cooperation (limited material scope of extraditable crimes; exceptions on grounds of nationality; principle of specialty; extraterritorial exceptions; procedural exceptions; the principle of dual criminality; exceptions based on national interest or public policy; lack of sufficient scope to include a wider range of possible assistance, investigation measures, or evidence; compulsory execution of the request in accordance with local legislation instead of the procedural law of the country making the request; refusal of the request or exceptions based on the interpretation of the *ne bis in idem* principle; refusal due to potential conflict with ongoing investigations in the country where the request was made; lack of urgent procedures regulated by the convention; bank secrecy; and others) and practical obstacles to cooperation (ignorance or problems identifying the applicable international agreement; problems identifying and locating the central authority; problems arising from translation or translation interpretations; delays in communications and executions; lack of sufficient collaboration from central authorities or enforcing authorities; lack of direct contact between issuing and enforcing judicial authorities; lack of information on legal instruments on the part of judges, prosecutors and other legal actors involved; lack of forms for requesting drafting and execution; lack of sufficient collaboration from central authorities or enforcing authorities; lack of direct contact between issuing and enforcing judicial authorities; lack of information on legal instruments on the part of judges, prosecutors and other legal actors involved; lack of forms for requesting drafting and execution; ignorance or lack of effective support in legal networks; lack of means for videoconferencing; failure to acknowledge receipt by the country of destination or loss of information on the case and request status; return of incomplete request or lack of availability to amend defective requests by the enforcing judicial authorities; and others).

¹³⁶ Project Leader Supreme Court Prosecutor Mrs. Rosa Ana Morán explained the purpose of the research and distributed the questionnaires during the EJM correspondents meeting in October 2012.

¹³⁷ Meeting in UNODC, Vienna, September 28th.

¹³⁸ The original questionnaire templates and the replies are provided in Annex 4.

- Each relevant question allowed the possibility of comments or supplementary information, and the final overall section included a request to prioritise measures to be adopted in order to optimise the cooperation in DT (new and better international conventions and legal instruments; more training for judges and other legal actors in international judicial cooperation; effective solutions to the issue of competing or conflicting jurisdictions: proposals for concentrating investigations and trials in a single country; promotion of liaison magistrates and judicial support networks; promotion of direct contact between issuing and enforcing judicial authorities; promotion of videoconferencing and other electronic methods; creation of urgent and/or priority procedures for drug trafficking cases; approved bilingual request forms, LoRs and acknowledgements; removal of the dual criminality rule; removal of the specialty principle; removal of the nationality and public policy exception).

Outcomes

The project has received more than 60 responses to questionnaires from the following countries: Argentina, Belgium, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cyprus, the Czech Republic, the Dominican Republic, Ecuador, Estonia, Finland, Germany, Guatemala, Jamaica, Luxembourg, Lithuania, Mexico, Panama, Peru, Poland, Portugal, Puerto Rico, the Slovak Republic, Spain, Sweden, Uruguay and the UK.

Some of the responses are from individual legal practitioners but the vast majority are from competent authorities, official bodies or specialised entities. Therefore, although the total number of replies is not large, it should be noted that many of the responses imply an authorised position that represents the perceptions of prominent competent authorities in LAC and EU countries.

5.2. Analysis of the use of bilateral extradition agreements

“Extradition is the formal process by which one jurisdiction asks another for the enforced return of a person who is in the requested jurisdiction and who is accused or convicted of one or more criminal offences against the law of the requesting jurisdiction. The return is sought so that the person will face trial in the requesting jurisdiction or punishment for such an offence or offences”¹³⁹.

Compared with other cooperation agreements states traditionally tend to rely on international instruments in order to execute an extradition. As noted in section 4.3, the total number of bilateral extradition agreements between EU and LAC countries adds up to almost 90 treaties, although some of these are out of date or not applicable. Almost 50% of the agreements have been signed between Spain or The UK and other LAC countries. In the case of

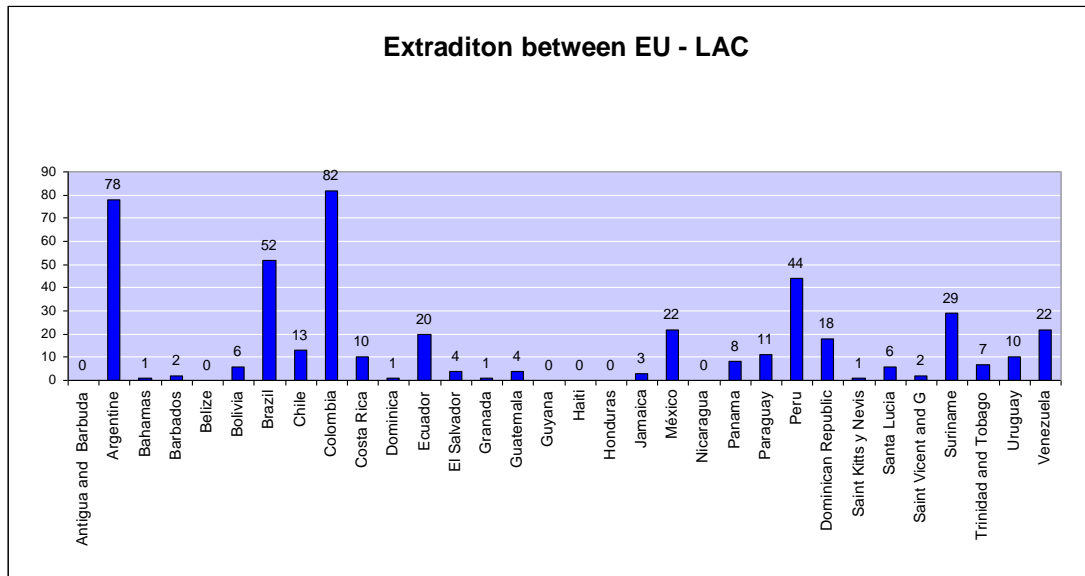
¹³⁹ UNODC *Manual on Mutual Legal Assistance and Extradition*, Vienna September 2012, p. 41.

Spain, which has signed agreements with all the Latin American countries (including Brazil), comparing this trend with other Spanish agreements in other regions we can infer that this tendency towards agreements arises from the traditional Spanish ties with Latin American countries. In numerical order next comes Belgium (13 treaties), Italy (12) and France (6), which are the EU member states that are of greatest relevance from a quantitative point of view. These are followed by the agreements signed between the Netherlands and Argentina, Mexico and Suriname, Portugal, Brazil and Mexico, and finally treaties signed between Austria and Paraguay, Greece and Mexico, Hungary and Paraguay, and recently Lithuania and Brazil. One special case is Germany, with only two conventions: one with Paraguay and a historical agreement with the British Empire dating back to 1872, whose effects today extend to seven Caribbean countries, (the Bahamas, Dominica, Grenada, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago).

However, the first finding we can observe when analysing the level of extradition between EU member states and LAC countries is the lack of correspondence between the number of agreements and their use.

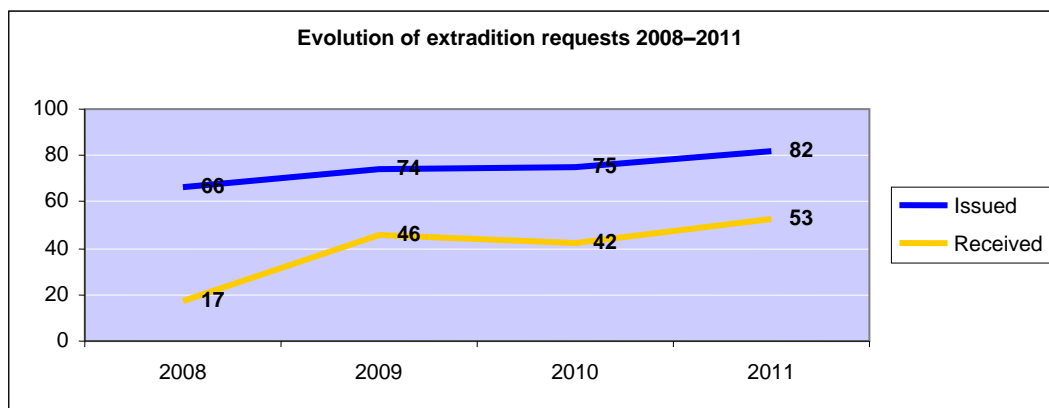
As we can see in this chart, according to the data provided by EU member states¹⁴⁰, the numbers of extradition requests during the last four years (2008–2011) are relatively low: a total of 455 extradition cases in four years. Of this total, the majority of the requests during the period are requests related to or with Colombia (18% of requests), Argentina (17%), Brazil (11%), Peru (10%), Suriname (6%), Venezuela and Mexico (5% in both cases), and Ecuador and the Dominican Republic (4% in both cases). The numbers are lower for the remaining countries and there were six LAC countries that did not record any extradition cases during the period: Antigua and Barbuda, Belize, Grenada, Guyana, Honduras and Nicaragua.

¹⁴⁰ As noted in section 4.1. it should be noted that these considerations are solely in relation to the figures provided by Belgium, France, Italy (only for Caribbean countries), the Netherlands, Romania, Spain and the UK.



Focusing on the quantity of active and passive requests during the period 2008-2011, the following observations should be noted:

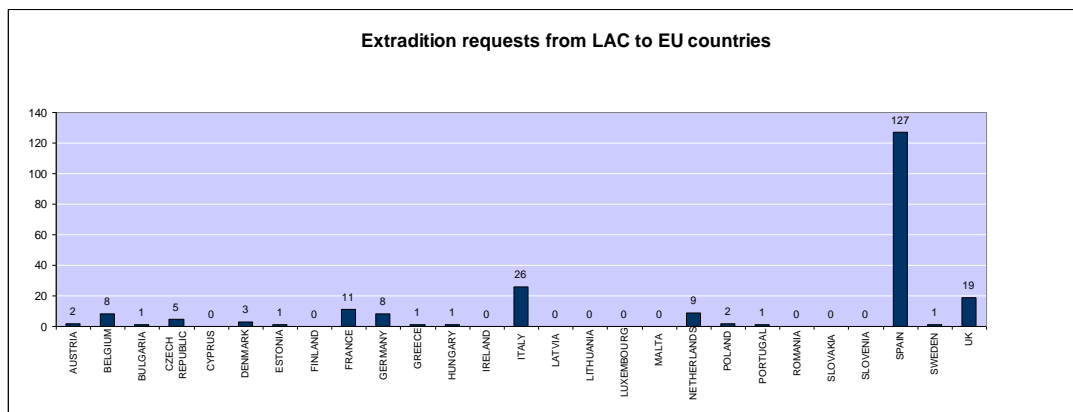
- European members states sought more offenders than LAC countries;
- There is a continuously growing level of cooperation in both directions;
- The number of requests from LAC countries to EU countries is increasing year-on-year;
- The development during the period shows a tendency to close the gap between the different number of extradition requests by European and LAC counties: requests from LAC countries to EU countries have increased by 75% from 2008 to 2011.



From the perspective of EU countries¹⁴¹, Spain is the most important European addressee for cooperation sought by LAC countries, receiving

¹⁴¹ According to the statistical information provided by Argentina, Bolivia, Chile, Costa Rica, Ecuador, Guatemala, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, and St Kitts and Nevis. In order to overcome the missing information, the data has been compared and supplemented with data provided by five EU member states (Belgium, France, the Netherlands, Spain and the UK) for received (passive) requests for the rest of the LAC countries. The missing data from Brazil and Portugal should also be noted.

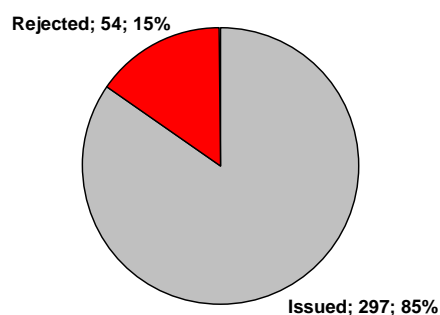
almost 60% of extradition requests. Other less important recipient states are Italy, the UK, France, the Netherlands, Belgium, Germany and the Czech Republic.



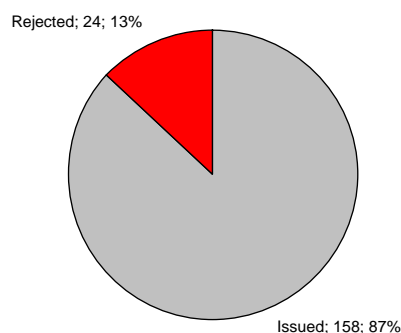
Dealing with the **flow** of requests, the outcome of analysing the data for the LAC countries is precisely the opposite than when considered from the European perspective. The figures show that LAC countries issued more requests than EU member states (62%). However, the degree of reliability of the statistics from these LAC countries should also be mentioned, since there are reservations regarding the data provided by certain countries such as Argentina, Bolivia, Chile, Costa Rica, Ecuador, Guatemala, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, and St. Kitts and Nevis. Therefore, we should limit our considerations to the information provided by EU central authorities for all LAC countries.

Another type of analysis considers the level of **rejections** of extradition requests. A total of 54 extradition requests from EU member states to LAC countries were rejected or declined during the period 2008–2011. In contrast, a total of 24 extradition requests from LAC countries to EU member states were rejected during the same four years. Although at first sight it might be thought that European central authorities are more flexible on the interpretation of international instruments, this permeability indicator should be considered for the total number of issued requests for each direction of the flow of intercontinental extraditions.

Extradition from EU countries: global comparison of requests issued and rejected 2008–2011

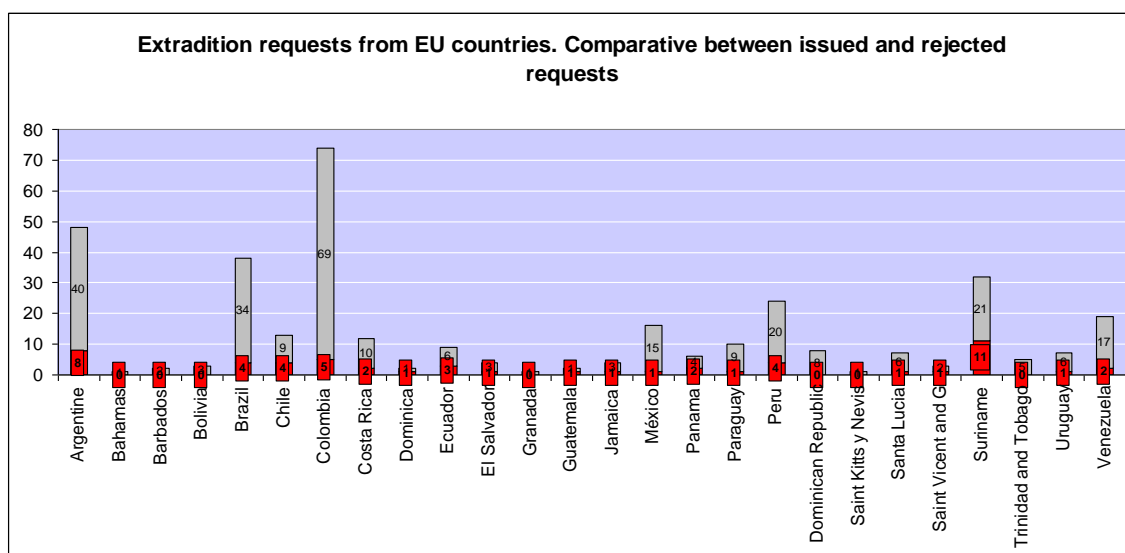


Extradition request from LAC countries: comparison of requests issued and rejected



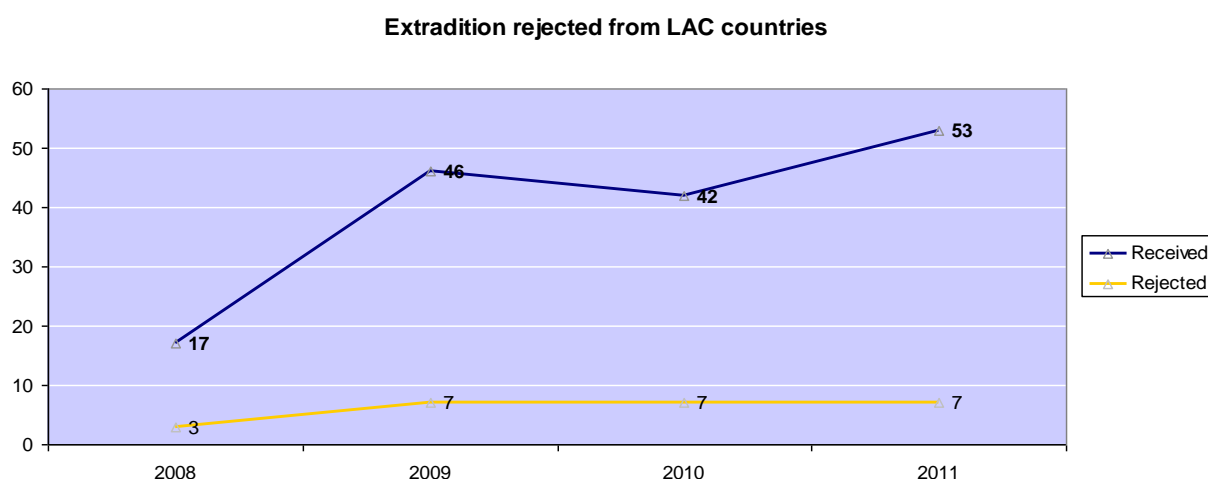
According to this comparison, the proportion of rejections is similar on both sides of the Atlantic (13% compared to 15%).

However, specific differences may arise when examining the quantity of rejections from each LAC central authority with respect to the extradition requests received from Belgium, France, the Netherlands, Spain and the UK. The following graph shows the rejected requests for each LAC country in red. The total number of requests received from the aforementioned EU member states is shown in grey for comparison. The graph does not include countries, such as the Bahamas or Barbados, where there is no record of requests issued to those countries.

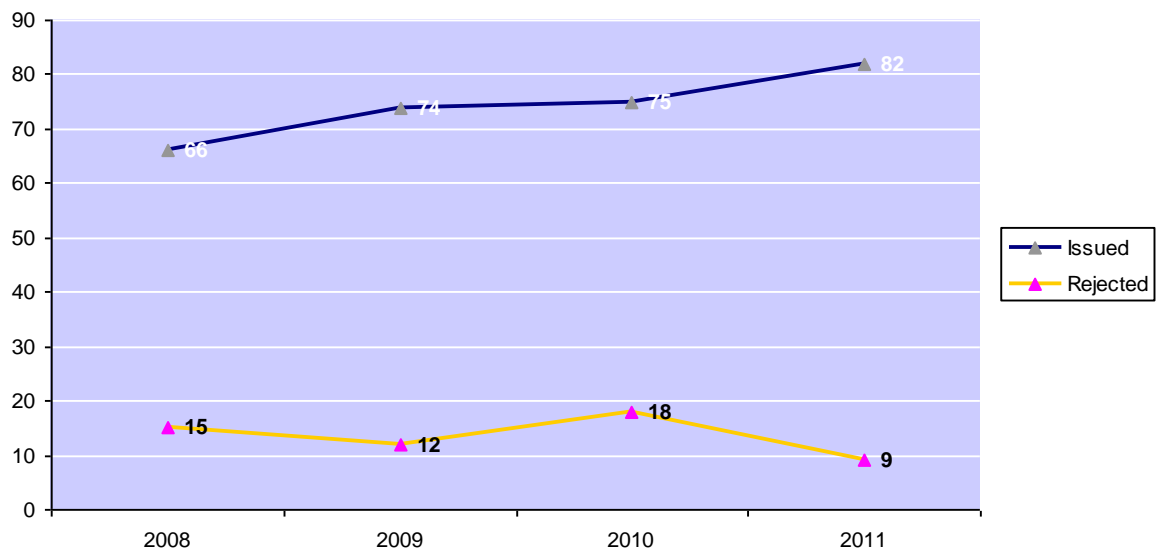


Restricting our analysis to the countries with a significant number of requests and comparing both figures (rejected and total requests received), it is clear that the LAC country with the highest degree of permeability to extradition is Colombia (with only 5 rejections, or 7% of the total). Conversely, the LAC country with the largest number of declined extradition requests is Suriname, with a rejection level of 34% (the majority in relation to the Netherlands). For the remainder of the countries with significant statistical values the rejection average varies between 11-17%.

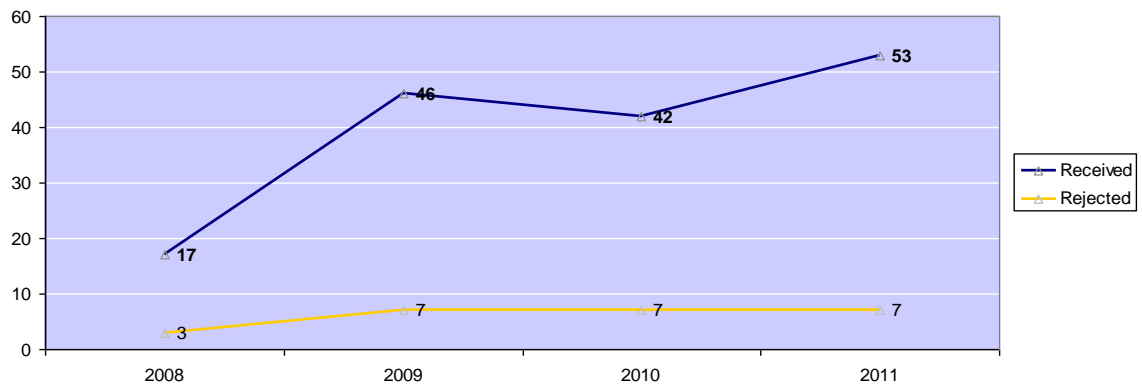
Finally, it is also possible to analyse the evolution of rejections over time for the period. As is clear in the following graphs, there is a slight tendency for the total number of rejections to fall.



Extradition rejected from EU countries



Extradition rejected from LAC countries



Preliminary summary of extradition cooperation

- 💡 From a quantitative point of view, the level of EU-LAC cooperation on extradition is relatively low.
- 💡 There is an asymmetry between the number of conventions and the use of the legal instruments implied by the lack of correspondence between the number of bilateral agreements and the frequency of the use of such legal instruments. This asymmetry is noteworthy in the case of certain extradition treaties, many of which are not used at all.
- 💡 The main recipients of requests are Spain, Colombia, Argentina, Brazil and Peru.
- 💡 In comparison with other EU member states, Spain issues the majority of European requests to LAC countries. However the distribution of requests issued is relatively balanced within the LAC region.
- 💡 Although the LAC region has traditionally received more requests than it has issued, during the last four years, there has been a tendency for the intercontinental flow of requests to become more balanced.
- 💡 There is no correspondence when it comes to the issuing and rejection of requests. Certain countries, such as Suriname, are less permeable to cooperation, whereas others, such as Colombia show a major willingness to accept extradition requests.
- 💡 There is no general correspondence between the number of signed bilateral treaties and a country's degree of permeability to extradition and the extraditions workflow. As noted in section 4.2. Mexico and Brazil were the LAC countries with the highest legal degree of flexibility for cooperation, although the functional analysis shows Colombia and Argentina to be the most receptive countries. However, in specific cases, such as Suriname and the Netherlands, the high level of rejections can be associated with the lack of stronger and updated bilateral extradition agreements.
- 💡 Organisational factors of central authorities and the quality of cooperation may have significant consequences at the level of the extradition workflow.
- 💡 When considering requests from LAC countries to EU member states, the number of rejections or declined extradition requests has remained steady during the last four years; conversely the inverse flow shows a moderate tendency for the level of rejections to decline since 2008.

5.3. Comparative analysis of the use of international legal instruments on drug-related crimes

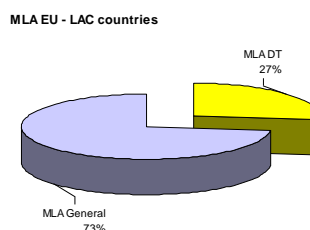
Mutual assistance or *Mutual Legal Assistance* (MLA) in criminal matters is a cooperation mechanism that permits a wide range of assistance between states for the production of evidence and other forms of judicial cooperation in a direct and efficient manner. Generally rendered on the basis of bilateral treaties or agreements or multilateral conventions, MLA provides a mechanism for one state to obtain evidence or procedural cooperation from another for use in a criminal investigation, prosecution or proceedings.

Besides the multilateral conventions, LAC countries and EU member states are bound by more than 40 general bilateral MLA agreements, most of which have been signed since the 1980s, particularly following the [United Nations Model Treaty on Mutual Assistance](#) and the signing of the Vienna Convention with its “stand alone” article on mutual legal assistance in 1988. In some states, agreements are further supplemented by domestic legislation that allows assistance to be provided on the basis of reciprocity, designation or administrative arrangement.

There are a number of modern bilateral conventions that have yet to come into force, such as the [Treaty of Cooperation in Criminal Matters between Brazil and Germany](#), signed in Berlin on December 3, 2009, or the most recent Treaty on Mutual Assistance in Criminal Matters between Mexico and Italy, signed in Rome on June 28, 2011. An important smaller group is specific treaties, amendments or protocols for providing assistance for drug-related crimes. However, almost a third of these agreements are cooperation treaties for the prevention and eradication of the illicit cultivation, production, distribution and improper use of narcotics and psychotropic substances, and only 11 are proper MLA agreements for drug trafficking prosecution and proceedings (all have been signed between the UK and LAC countries). As noted in section 4, in comparison with other general MLA agreements, English bilateral agreements have a similar permeability to cooperation or legal viability for granting assistance.

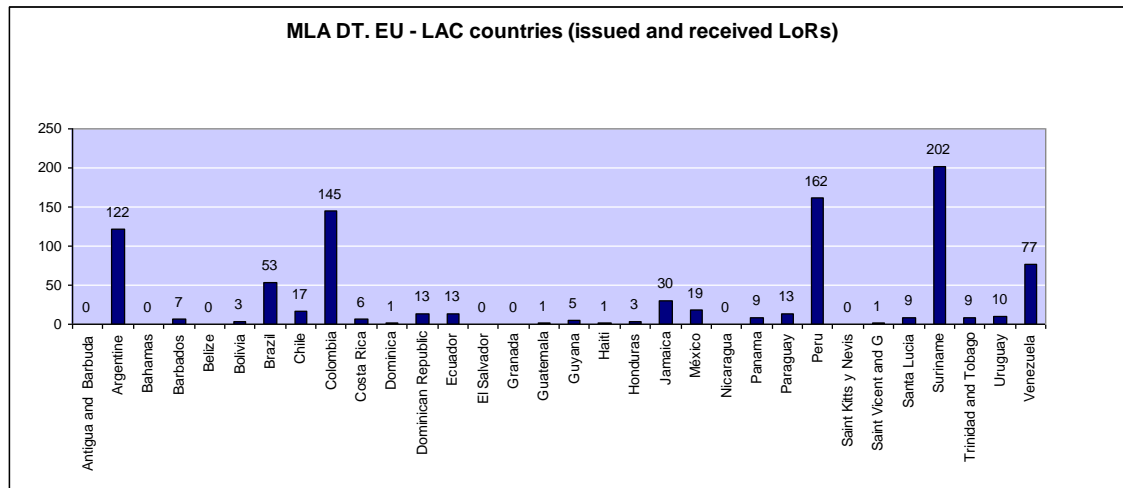
One common feature of almost all the conventions is the fact that mutual assistance can be channeled directly by competent authorities in the two states, often a central authority located in Ministry of Justice or Public Prosecutor’s Offices. In this sense, compared to the extradition agreements that are normally based on diplomatic channel of communication used to transmit the request, the MLA treaties linking EU and LAC countries pertain to a second generation of cooperation.

Therefore, the first step in analysing the use of MLA treaties is to evaluate the workflow of drug trafficking agreements with respect to other criminal MLA requests. Thus far the proportion of drug trafficking cases is significant, and indeed, considering all the statistical data provided by EU and LAC countries for the period 2008-2011, it should be noted that LoRs for drug related crimes represent 27% of total cooperation between some European states and LAC countries. This overall percentage implies a high proportion of cooperation in comparison with MLA for other regions. According to the information provided by the LAC countries, the MLA workflow contained 834 requests related to drug-related crimes, meanwhile assistance on other general criminal matters resulted in 1836 LoRs. On the other hand, if we focus on the data provided by



the five EU member states mentioned above, there were 931 drug-related requests, compared to 3015 for general criminal matters. This difference can be explained by the degree of accuracy of the statistical systems, since some central authorities pay more attention to recording or registering the issuing of requests their receipt.

Considering the figures provided by key EU countries, Suriname (202 requests), Peru (162), Colombia (145) and Argentina (122) have the highest totals of active and passive MLA requests for the period 2008–2011.

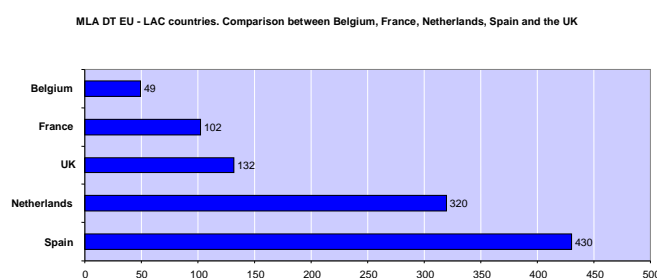


However, these initial positions change when examining MLA for criminal matters other than DT. From this perspective, Argentina is the leading country in terms of the volume of cooperation with EU member states, followed by Suriname, Colombia, Brazil and Peru. Therefore, the MLA workflow of Argentina and Brazil with respect to EU member states is higher for general criminal matters than offences related to drug trafficking (DT).

In terms of DT, a second group with less than 100 cases is formed by Venezuela, Brazil, Jamaica, Mexico, Chile, Ecuador, the Dominican Republic and Paraguay. Other countries such as Uruguay, Panama, St. Lucia, Trinidad and Tobago, Barbados, Costa Rica, Bolivia, Honduras, Guyana, Guatemala, Haiti, and St. Kitts and Nevis are less relevant in terms of MLA for DT. Finally, Nicaragua, El Salvador and the remaining Caribbean countries have not issued or received requests for Belgium, France, the Netherlands, Spain or the UK. Bearing in mind these figures, it is remarkable that there are only four LAC countries for which all these EU states have reported active and/or passive MLA DT requests: Colombia, Peru, Venezuela and, with fewer LoRs, Mexico. As mentioned, the case of Suriname should be considered separately, since out of a total of 202 requests, 197 were related to the Netherlands. According to the data obtained during the mission to Suriname¹⁴², 90% of MLA

¹⁴² However, , there is a certain asymmetry between the data provided by the Netherlands central authority and that obtained during the mission to Suriname.

cooperation is with the Netherlands, followed by France (8%), Belgium, Bulgaria, Germany and the UK.



When examining extradition workflows, a significant part of the intercontinental assistance requested or sought relates to Spain, followed by the Netherlands. Indeed, the cooperation for these two countries represents more than 72%

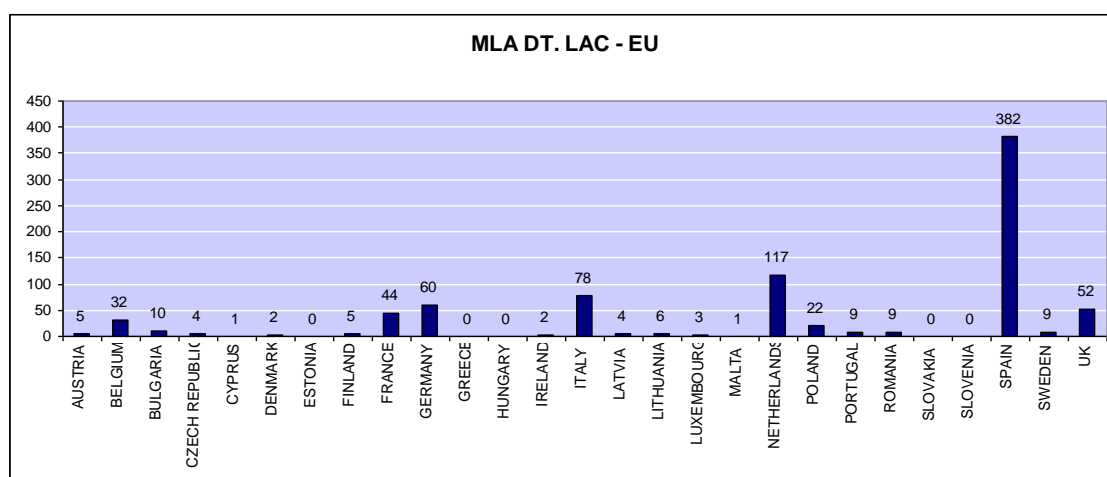
of the global EU-LAC cooperation. These two states are followed by the UK (with 13% of DT MLA), France (10%) and Belgium (5%). In the case of the Netherlands the majority of LoRs (193 out of a total of 320) are for Suriname. Conversely for Spain, DT MLA is more evenly distributed among several Latin American countries, the most relevant countries from a quantitative point of view being Peru, Argentina, Colombia, Venezuela and Brazil. The study also reveals the relevance of small-scale drug trafficking ("*mules*" or "*burriers*") in the statistics for Peru, Suriname and Colombia. Nevertheless, the relevance of Portugal in relation to Brazil in MLA matters must be taken into account. Since the data provided by Brazil did not discriminate between DT cases and MLA in general, the significance of the total figure reported by Brazil (756 active and passive cases) can not be minimised.

In spite of the legal possibilities and broader measures permitted by the Palermo Convention, when studying requests for assistance using multilateral instruments for drug-related crimes, the extremely limited use of the UNTOC Convention with respect to the Vienna Convention should be noted. Thus far, in comparison with the Vienna Convention, the Belgian, French, Dutch, Spanish and British central authorities have agreed to apply the UNTOC convention in 2% of DT MLA LoRs (issued and received).

LAC countries have reported statistics¹⁴³ showing a total of 857 DT MLA cases for the period 2008–2011. The apparent lack of correspondence between the figures reported by the LAC region (888) and the EU (1,025) can be explained by the different record-keeping methods or statistical systems¹⁴⁴. In terms of numbers, the highest volumes of cooperation are for Spain (45% of all requests), the Netherlands (14%), Italy (9%), Germany (7%), the UK (6%), France (5%) and Belgium (4%).

¹⁴³ As of May 2013.

¹⁴⁴ Furthermore, relevant central authorities from EU member states such as Germany, Portugal and Italy did not provide any statistical data.

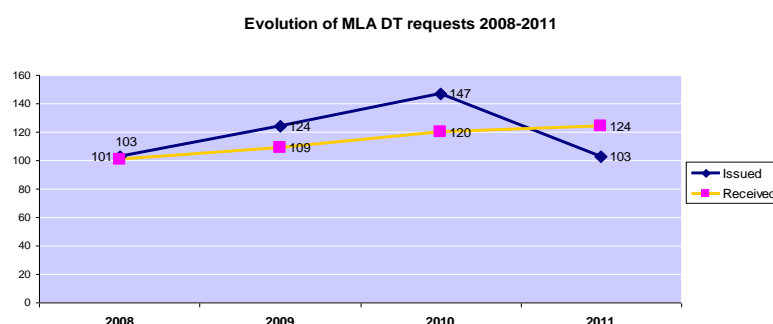


There are five EU member states without any cooperation workflow during the research period: Estonia, Greece, Hungary, Slovakia and Slovenia. Some of these countries rely on bilateral MLA conventions, such as the one in existence between Greece and Mexico, which were not invoked during the four year period. Conversely, other countries that do not rely on any bilateral MLA agreements with LAC countries exchanged several requests: Belgium (32 LoRs according to the information provided by the LAC countries and 49 according to the statistics from the Belgium central authority), Poland (22) and Bulgaria (10).

In terms of the viability of the requests for assistance upon reaching the requested country, LAC central authorities have provided data for 363 cases that were rejected or requests that were declined. However according to the data provided by the EU central authorities, the number of rejections is not significant¹⁴⁵.

In contrast to the change in the quantity of extradition requests with respect to the change in the volume of cooperation over time, this differs depending on whether consideration is given to active or passive LoRs and the source of the statistics.

According to the information provided by the EU member states:



¹⁴⁵ According to the data received from Belgium, France, the Netherlands, Spain and Portugal there were just 16 rejections of DT MLA during the period 2008-2011.

As is clear from the above graph, the EU member states were issuing increasing numbers of LoRs up to 2010. In 2011 the number of instances of DT MLA decreased to 103 LoRs, the same workflow as at the beginning of the period. However, the LAC countries have maintained a growing number of requests for the period 2008-2011.

Preliminary Summary for DT MLA

- 💡 In quantitative terms, the level of EU-LAC cooperation is much higher than the extradition workflow. The **proportion of MLA for drug related crimes** is significant, representing over a quarter (at least 27% of general MLA).
- 💡 The main **recipients** of DT MLA requests are **Spain, Colombia, Peru, Argentina** and **Venezuela**.
- 💡 In relation to the volumes of intercontinental requests for DT related cases, only four LAC countries maintain a complete workflow for all the EU member states under study. In order of relevance, these LAC countries are: **Colombia, Peru, Venezuela**, and with much fewer LoRs, **Mexico**.
- 💡 More than 60-70% of intercontinental DT MLA is for **Spain** and the **Netherlands**. Although the figures vary depending on the source of the information (EU or LAC central authorities), both sources agree that these are the two main EU member states with the highest volume of DT MLA. Although it could be distinguished between DT and MLA in general cases, **Portugal** maintains a high level of cooperation with Brazil.
- 💡 For the **Netherlands**, in second place, cooperation is focused on Suriname (193 LoRs out of a total of 320). In the case of Spain, DT MLA is more evenly distributed among several Latin American countries: Peru, Argentina, Colombia, Venezuela and Brazil.
- 💡 According to the statistics reported by LAC central authorities, **Italy** and **Germany** exchanged more LoRs with LAC countries than other key EU member states (9% and 7%, respectively), such as the UK (6%), France (5%) and Belgium (4%).
- 💡 Taking into account the statistical data and the mission reports, we can infer that the majority of the volume of MLA between certain countries (i.e. Spain-Peru and the Netherlands-Suriname) is related to small-scale drug trafficking such as in criminal cases involving “*mules*” or “*burriers*”.
- 💡 The proportion of **active and passive** MLA between the competent EU and LAC authorities is becoming progressively more balanced. Whereas the LAC Region has traditionally received more requests, over the last four years, there has been a tendency for the intercontinental flow of requests to become more balanced.
- 💡 The volume of cooperation does not remain constant. In contrast to cases of cooperation for extradition, which grew progressively during the reporting periods, in the case of DT MLA, while EU member states saw their level of MLA increase until 2010, in 2011 the volume of DT MLA decreased to 2008 levels. However, the LAC countries continue to see a growing number of requests over the period 2008-2011.
- 💡 There is no correspondence between the number of issued requests and

rejections. Some countries, such as Suriname, are less permeable to cooperation, whereas others, such as Colombia, exhibit a greater willingness to accept MLA requests.

- 💡 In comparison with the Vienna Convention, UNTOC is rarely applied by legal practitioners for DT related crimes. Contrary to the broader range of measures and modern legal structure of the UNTOC, when issuing MLA requests there is a tendency for Central Authorities and legal actors to rely on bilateral conventions and/or the Vienna Convention, instead of the Palermo Convention.
- 💡 Organisational factors of central authorities and the quality of cooperation may have significant consequences on the level of the MLA workflow.
- 💡 Many central authorities do not rely on consistent statistical data systems. In many LAC countries, the lack of quantitative measuring instruments for international legal cooperation reduces their capacity to develop strategies to improve internal organisation, whereas in others the statistical data is either unreliable or is not homogeneously compiled. Certain countries have designated different central authorities for different groups of offences or treaties and this lack of consistency implies the fragmentation of efforts and hinders statistical transparency.

5.4. Operational gaps and potential obstacles of existing tools

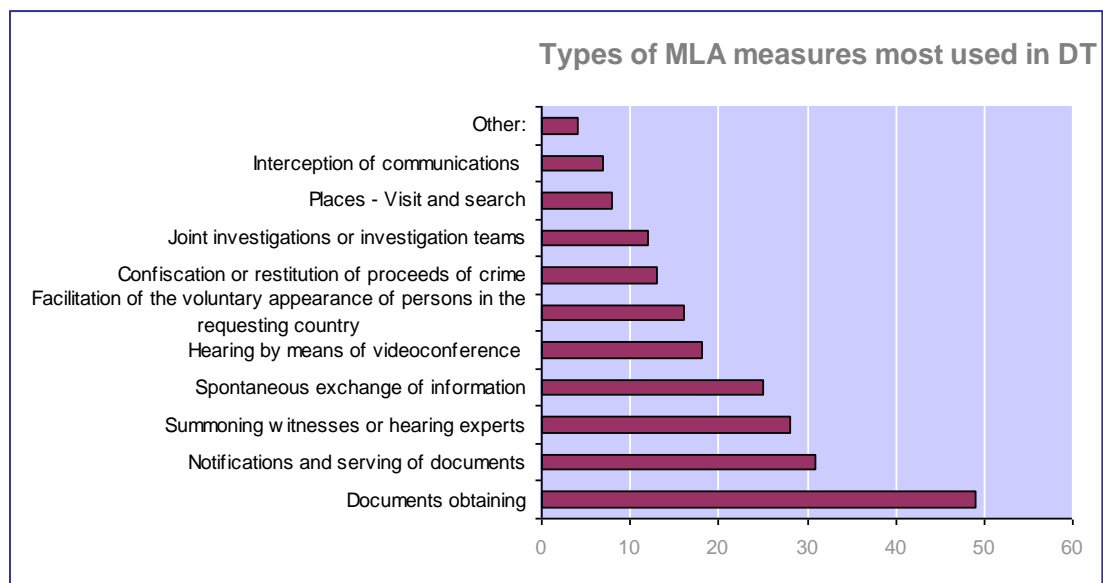
This section analyses the responses to the questionnaires mentioned in section 5.1 and the outcomes of the mission reports to LAC countries. It will evaluate the operational gaps and potential obstacles, giving separate consideration to the main forms and measures of cooperation used, obstacles and gaps to cooperation, and the main legal instruments used. Finally, it will include the main related inputs from the field study in certain key LAC countries.

A) Main forms and measures of cooperation

In order to rely on a broader range of information, the quality of cooperation has been studied using the information gathered in the questionnaires sent to targeted legal practitioners in LAC and EU countries. The questions were designed to obtain two types of information: information related to the length of the international procedures and the types of measures used.

In terms of the first indicators for the types of measures for requesting assistance in drug-related cases, the following options were included: obtaining documents; summoning witnesses or expert hearings; notifications and serving of documents; spontaneous exchange of information; hearings by means of videoconference; confiscation or restitution of the proceeds of crime; joint investigations or investigation teams; facilitating the voluntary appearance of persons in the requesting country; visiting and searching places; intercepting communications; and an open field to provide details of

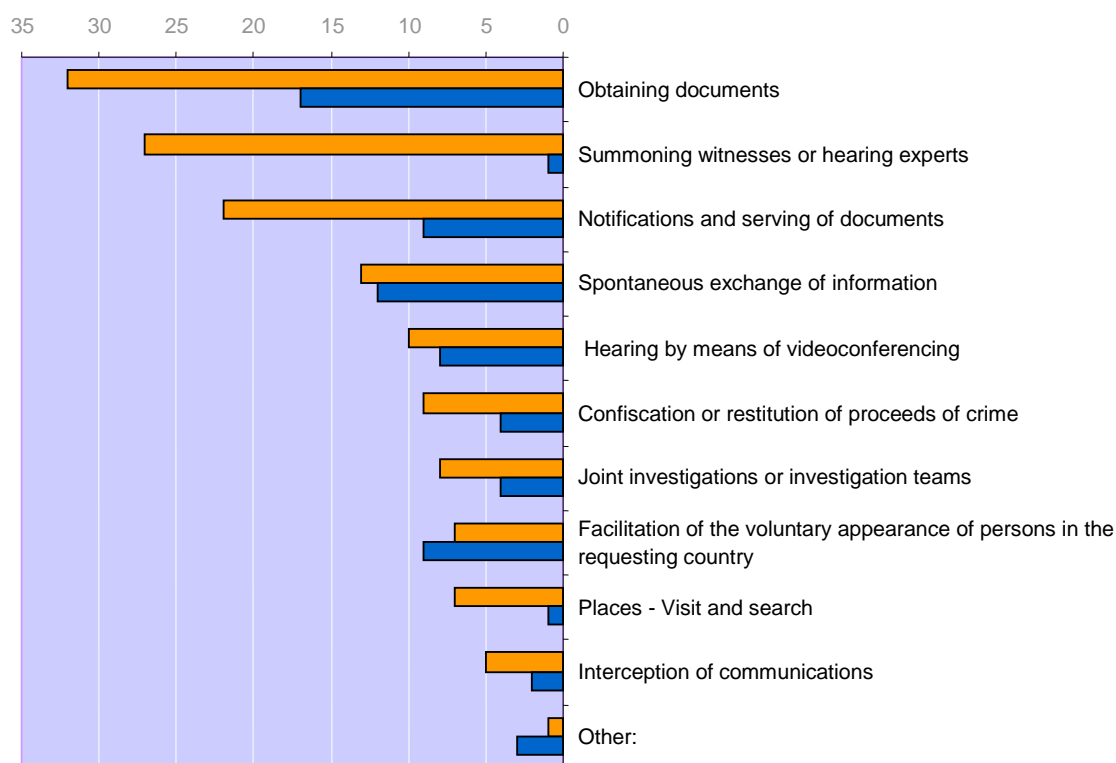
special measures. Research reveals that obtaining documents, serving documents, and witness and expert hearings are the main types of assistance requested by MLA for drug trafficking cases.



Obtaining documents is the main type of request since it frequently includes an important group of measures that is of considerable use in investigations and proceedings for drug-related cases, such as for obtaining information about bank accounts.

Perceptions of the types of requests change depending on those polled: LAC central authorities, prosecutors and other legal practitioners, or contact points, prosecutors and other legal actors from EU member states. Both share the perception, however, that from a quantitative point of view, obtaining documents represents the main form of MLA in drug trafficking and related crimes.

Types of measures requested: EU–LAC Comparison



The graph above shows the different perceptions for applying concrete measures from the LAC (orange) and EU (blue) practitioners. Differences in perceptions arise in three cases:

- While the summoning of witnesses or experts is the second most important measure among LAC responses, it is scarcely mentioned by European practitioners.
- Whilst the serving of documents is highly valued among the LAC responses, it is much less so among European experts¹⁴⁶. However missions to LAC countries have revealed the quantitative importance of requests for notifications.
- The spontaneous exchange of information is highly valued by EU legal practitioners.

Additionally, some responses referred to “other” specific measures such as controlled delivery or undercover agents. A separate analysis of the practical relevance of these measures shows limited use of these types of investigations.

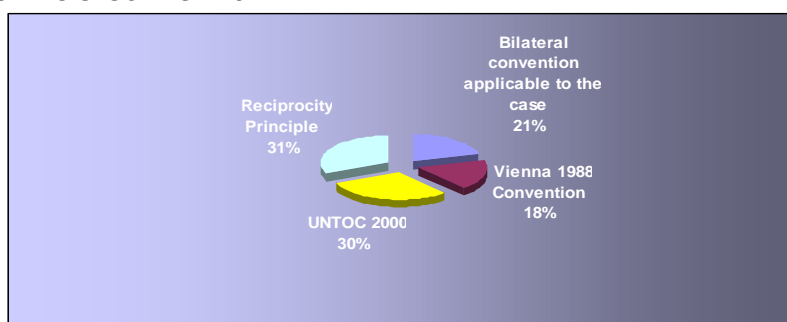
¹⁴⁶ The difference may arise from differing approaches towards the concept of MLA (i.e. whether it includes the serving of documents). Many competent authorities use ordinary mail services rather than LoRs for the purpose of notifications.

Missions and analyses of case studies confirm this perception, which implies the disproportionately scarce use of the most efficient measures for DT: joint investigation teams, the interception of communications, undercover agents, controlled deliveries, etc. The explanation for this scenario may not only be linked to statistical reasons but to operational gaps and practical obstacles, as we shall see in the following point.

B) Legal instruments used

Other indicators analysed were the practitioners' tendencies to use a specific instrument from among the range of international treaties when issuing an extradition or MLA request to or from LAC/EU countries. One important outcome is that 52% of polled legal players indicated they prefer to rely on bilateral treaties or the principle of reciprocity for DT.

Although, according to the questionnaires, there is a preference to apply the most modern UNTOC or Palermo Convention rather than the Vienna Convention, this perception must be contrasted with other data. Thus far, the statistical analyses provided in sections 5.2 and 5.3 of this study show scarce use of the UNTOC Convention.



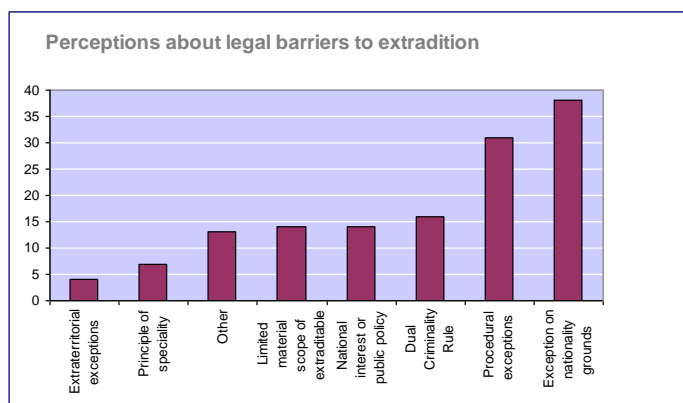
Regarding the lack of bilateral treaties, EU experts expressed the desirability of signing an agreement for the purpose of DT with the following LAC countries: Venezuela, Ecuador and Peru. The main EU member states mentioned were: Germany, and to a lesser extent, France and the Netherlands.

C) Feasibility and obstacles to cooperation

The considerations in these paragraphs are based on the perceptions questionnaire, expert interviews and the analysis of real cases of extradition and MLA accepted by central authorities.

The research deals separately with legal feasibility and practical **obstacles** to cooperation, on one hand, and obstacles and **gaps** in relation to extradition and MLA in DT, on the other.

Extradition



Perceptions regarding the viability of issuing and implementing extradition requests were tackled from legal and operational perspectives. In terms of the feasibility of the multilateral and bilateral conventions on extradition, several indicators were taken into account: the limited material scope of

extraditable crimes; exception on the grounds of nationality; the principle of speciality; extraterritorial exceptions; procedural exceptions (i.e. the impossibility of extradition due to trial *in absentia*); the dual criminality rule; exceptions based on national interest or public policy; and others.

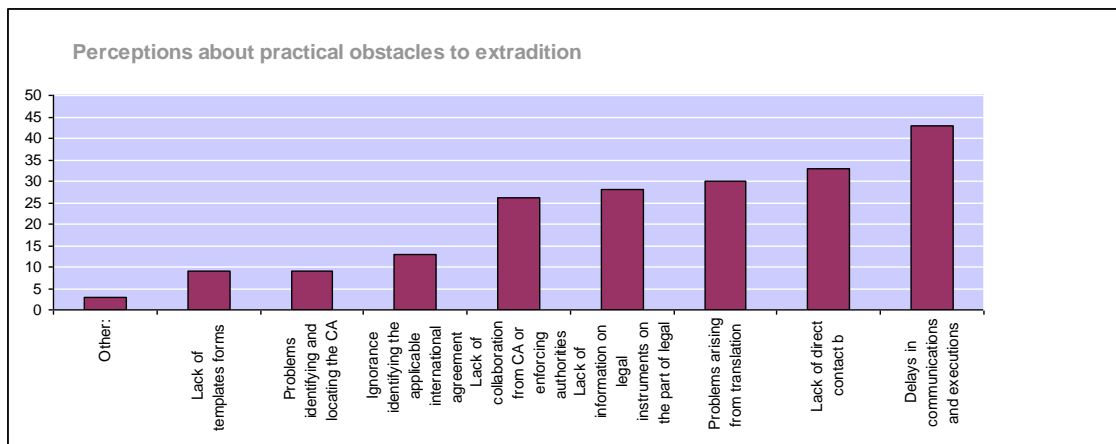
The two extreme perceptions are exceptions based on the grounds of nationality, which was the most frequently occurring, and extraterritorial exceptions, which was the legal obstacle that least concerns experts.

In fact, exceptions to extradition based on nationality and procedural reasons were the main concern when issuing international instruments by legal practitioners on both sides of the Atlantic. Among the procedural exceptions, the limitations arising from trial *in absentia* are a relevant factor. However, perceptions vary considerably on the scope of extraditable crimes, which is highly regarded in LAC countries but does not represent relevant concern for European legal actors (in the case of the latter it is possible that perceptions have been influenced by EU experience since the European Arrest Warrant).

From a practical point of view, several operational obstacles were mentioned: ignorance or problems when it comes to identifying the applicable international agreement; problems identifying and locating the central authority; problems arising from translation or translation interpretations; delays in communications and executions; lack of sufficient collaboration from central authorities or enforcing authorities; lack of direct contact between issuing and enforcing judicial authorities; lack of information on legal instruments on the part of judges, prosecutors and other legal actors involved; lack of forms to request drafting and execution; and others.

As represented in the graph, there are five main practical obstacles to cooperation: delays in communications and executions; lack of direct contacts; translation problems; lack of information on legal instruments on the part of judges, prosecutors and other legal actors involved; and lack of sufficient collaboration from central authorities or enforcing authorities. At the other end of the scale, problems associated with the identification of central

authorities or the lack of forms do not represent a significant concern for legal practitioners. This can be explained by the fact that in all the intercontinental extradition conventions, requests are channelled through central authorities.



In addition to this information, missions and cases studies have shown the importance of these practical obstacles:

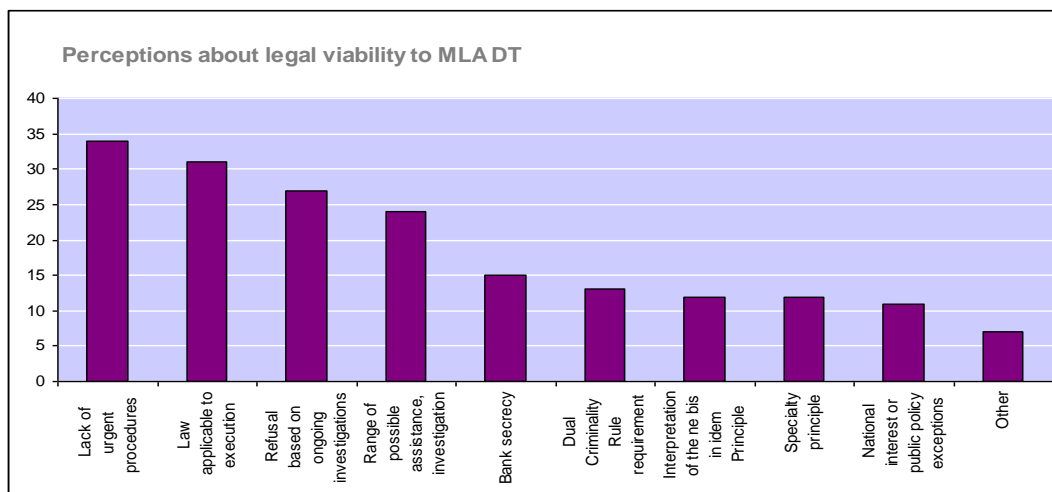
- Delays in communications and executions: in many cases the use of diplomatic channels makes the extradition workflow slower. Short time limits and delays in executions frequently cause extradition requests to fail result in the release of suspects.
- Intercontinental direct contact between central and judicial authorities may be crucial to the extradition process.
- Some LAC competent authorities have budget problems with accessing translation services. Furthermore, poor translations can cause serious problems in interpretation, which can significantly hinder cooperation.
- The lack of training and information on legal instruments on the part of judges, prosecutors and other legal actors is a confirmed problem. The support contact points network should play a more active role.
- Finally, some judicial authorities and prosecutors perceive a lack of sufficient collaboration from central authorities or enforcing authorities, which may be linked to the lack of appropriate direct contact.

MLA

Perceptions about the viability of issuing and implementing requests for MLA in drug-related crimes were considered from legal and operative perspectives. In terms of the feasibility of multilateral and bilateral MLA conventions, several indicators were taken into account when dealing with DT or related cases: scope and type of measures of the convention; compulsory execution of the request in accordance with the local legislation (*locus*) instead of the procedural law (*lex fori*) of the country issuing the request; refusal of the request or exceptions based on the interpretation of the *ne bis in idem* principle; refusal due to potential conflict with ongoing investigations in the country where the request was made; the dual criminality rule; lack of

urgent procedures regulated by the convention; limitations arising from the specialty principle regarding use of information; national interest or public policy exceptions; bank secrecy; and others.

As is clear in the chart, the main legal limitations that cause the greatest concern to legal practitioners are the lack of urgent procedures for DT cases, the provisions regarding the applicable law for the execution of requests, the possibility of the request being denied when there is an ongoing investigation in the requested country, and provisions related to the range of measures accepted by the conventions.



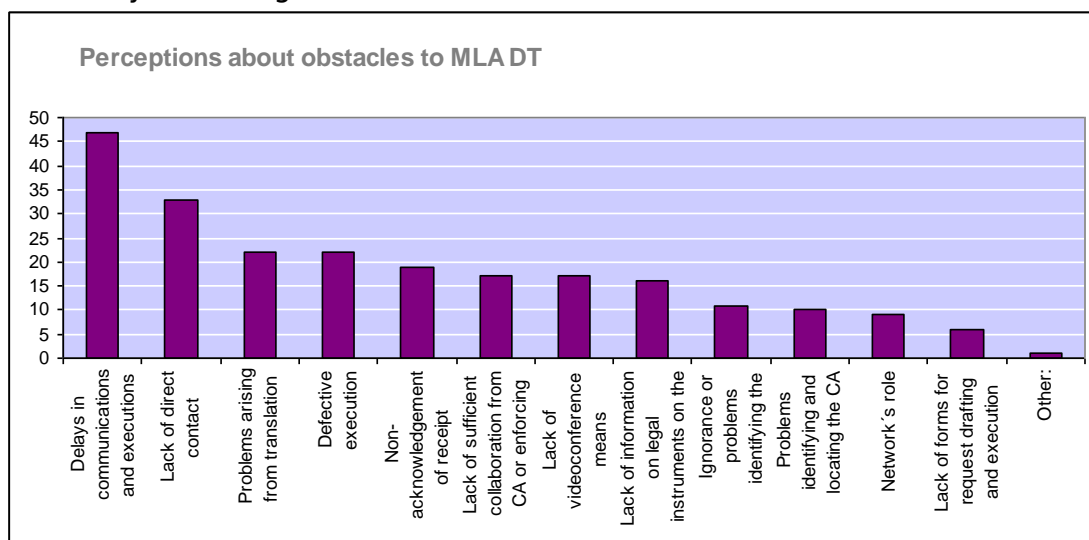
Competent authorities and legal actors from LAC and EU countries agree with these four indicators as legal provisions that may hinder DT MLA. Other factors, such as the approach to the specialty principle, vary in LAC countries (where it is perceived as a considerable legal problem) and EU member states, where it is not such a concern, (possibly experience in the EU area has had a certain influence on these perceptions). Likewise, bank secrecy provisions and the requirement of dual criminality are of greater concern to LAC legal practitioners than EU legal actors.

In fact, in terms of the lack of urgent procedures, missions have revealed the need to implement legal or organisational solutions in order to single out the channeling and treatment of serious DT requests from other general LoRs. Likewise, case studies have shown the importance of relying on the evidence obtained according to the law of the requesting country (*lex fori*) where the trial will finally take place. As noted in section 4, only a few bilateral MLA conventions provide for *forum regit actum* as a general principle applicable to the execution of the requests.

Regarding the practical obstacles to MLA, several factors were taken into account in order to analyse the main operational gaps and obstacles from a practical point of view: ignorance or problems identifying applicable international agreements; problems identifying and locating the central

authority or the existence of various central authorities; problems arising from translation or translation interpretations; delays in communications and executions; lack of sufficient collaboration from central authorities or enforcing authorities; lack of direct contact between issuing and enforcing judicial authorities; lack of information on legal instruments on the part of judges, prosecutors and other legal actors involved; lack of forms for requesting drafting and execution; ignorance or lack of effective support in legal networks ([IberRed](#) or penal [EJN](#)); lack of means for videoconferencing; non-acknowledgement of receipt by the country of destination or loss of information on the case and the request status; return of incomplete requests or lack of availability for the amendment of defective requests by the enforcing judicial authorities; and others.

As is clear in the following graph, delays and lack of direct contact are reported to be the most concerning practical problems that hamper MLA in DT and drug-related cases. A second group of obstacles is related to translation problems, faulty executions, acknowledgement of receipt, collaboration from the requested country, support for videoconferencing and the ability of the legal actors involved.



Furthermore, missions and cases studies have confirmed the importance of the following practical obstacles in day-to-day casework:

- **Delays in communications and executions.** In many cases the use of the diplomatic channels makes MLA procedures slower. Missions have confirmed that some central authorities use diplomatic channels even without it being necessary. Supplementary questions to legal actors about the length of the request showed that, according to the perception of 83% of those polled, the time lags between the receipt of requests and the transmission of responses are of a medium-long duration (between six months and two years) whereas 15% of responses reported a duration of over two years (this implies an average of over one year).

- Certain bilateral agreements include a reference to urgent cases; others provide the possibility to use electronic mechanisms such as fax, telex and email. However, the tight time scales of DT investigations and procedural delays require greater efficiency to reduce time lags between the receipt of the request and transmitting the response. It is crucial to maximize the quick turnaround of responses and where possible implement alert systems and *fast tracks* for DT.
- Intercontinental direct contact between central and judicial authorities can be crucial for the DT MLA process. As noted in section 4, very few bilateral conventions allow direct contact. The sole example of good practice is the [Treaty between the Kingdom of Spain and the Republic of Bolivia on Legal Assistance in Criminal Matters](#)¹⁴⁷ 1988, which permits direct contact between judicial issuing and executing authorities when the assistance requested is urgent. This bilateral convention follows the precedent set in article 15.2 of the [European Convention on Mutual Assistance in Criminal Matters](#) (1959). Although the provision does not expressly provide for direct contact in general terms between **issuing and executing judicial authorities**, as it the case in the [Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union](#) (2000), it could be regarded as easily included from a teleological interpretation of the text.

Although there may be a temptation to migrate EU achievements in judicial cooperation to LAC-EU cooperation, the generalisation of direct contact between competent authorities for MLA purposes cannot be regarded as a feasible goal at this stage of intercontinental criminal cooperation; on the other hand it would be desirable to improve the existing legal framework and practice in order to allow, as mentioned for extradition, direct contact once the requests are underway, at least in terms of informal contact between central or judicial authorities from the requesting country with the executing authorities. DT MLA requires this type of singling out.

- As mentioned when dealing with extradition, some LAC competent authorities have budget problems that prevent them from accessing suitable translation services. Furthermore, poor translations can cause serious interpretation problems that can significantly hinder cooperation. The use of template forms could reduce these sorts of problems.
 - Several reasons lie behind the defective implementation of requests: the poor quality of the requests received, the return of incomplete requests without executing all the contents, or the lack of a possibility for faulty requests to be amended by the enforcing judicial authorities.
- There is a requirement for training of judges, prosecutors and other MLA legal actors; in addition to this, the support of contact point networks

¹⁴⁷ Article 22 of the convention stands out as a unique case and an example of extraordinarily good practice among all bilateral LAC-EU treaties in which the central authorities hold a monopoly over the transmission and communication of requests. It reads as follows: “1. *Letters rogatory and attendance requests shall be dealt with promptly by the Central Authorities of both Parties However in exceptional circumstances, anticipating the request of the letter rogatory, it will be possible to issue urgent requests directly to the competent judicial authority.*”

should be exploited and some central authorities should play a more active role in order to ensure better quality and clarity of LoRs.

The aforementioned promotion of direct contact during implementation and the more active role to be played by contact point networks should contribute to minimising the level of returned incomplete requests.

The lack of a possibility for faulty requests to be amended by the enforcing judicial authorities represents a considerable hindrance to the assistance process. As noted in section 4, not all the bilateral conventions provide for the same approach regarding the viability of the requests, allowing the LoR to be corrected in the event of inconsistencies or any other similar obstacles or grounds for refusal in the received request by the central or executing authority. This legal circumstance contributes to certain attitudes towards apparently faulty requests. Furthermore, even with specific provisions to promote rectification, as provided in many bilateral conventions, not all the central and executing authorities show the same discretion when it comes to interpreting international judicial cooperation instruments and overcoming inter-legal system obstacles.

- Acknowledgement of receipt. Although there are proven good practices¹⁴⁸ and recommendations encouraging the use of acknowledgement of receipt¹⁴⁹ by receiving central authorities, experience shows that the practice scarcely occurs. The lack of information about the status of an issued request causes important gaps and on many occasions a loss of tracing and frustration.
- Some judicial authorities and prosecutors perceive there is a lack of sufficient collaboration from central authorities or enforcing authorities. As noted when dealing with obstacles to extradition, the situation may involve appropriate formal or informal direct contact between competent authorities. However, other internal organisational measures may make a decisive contribution to minimising this factor, such as monitoring protocols or the reminder systems implemented by the Jamaican and Peruvian central authorities. Another example of the same sort of extraordinary good practice is the “alert system” used by the Brazilian central authority that allows reminders to be issued to contact the requested state every 30, 60 or 90 days (depending on the urgency of the case) for an update on executing the request.

Finally, other types of obstacles include a lack of IT capabilities or training and information at competent authorities. This refers to the use of electronic mechanisms, such as videoconferencing or any other system of two way

¹⁴⁸ For instance, UNODC contains a number of best practices in this area, such as those followed by the Brazilian central authority, which requires acknowledgement by official letter or email to the requesting agency that the request has been forwarded to the requested state for each request received, (UNODC *Manual on Mutual Legal Assistance and Extradition*, Vienna, September 2012, p. 39). Likewise, the project mission to Peru showed how a similar practice is followed by the central authority represented by the Peruvian Prosecutor Office.

¹⁴⁹ Networks such as EJM and IberRED promote the use of cover notes including an acknowledgement for completion and return to the requesting state. Similarly, the UNODC has recommended this practice since the publication of its 2001 report *Informal Expert Working Group on Effective Extradition Casework Practice*.

(audio-video) communication. The benefit of this type of testimony is obvious. The videoconferencing option is provided for by article 18, paragraph 18 of the UNTOC Convention, which allows evidence to be gathered while avoiding what can be the prohibitively high costs and logistical challenges of obtaining a testimony in another state. However, experience shows that not all states can legally permit evidence to be taken via videoconferencing. When this obstacle arises, rather than ruling the option out, other possibilities such as Internet video links or the use of consular premises may be explored with the requested state to determine if such a mechanism is compatible with its legal system.

With respect to this issue, as with many others related to potential obstacles, the role played by existing cooperation networks should be reviewed, since responses infer the need to make more efficient use of the potential support of contact point networks.

Furthermore, as mentioned above, certain legal practitioners were questioned about the practical obstacles, gaps or problems when applying specific DT measures such as controlled delivery or undercover agents. Many of the responses mentioned a lack of legal or practical support. Indeed only a few bilateral agreements make provisions for these specific investigation techniques. Indeed, this was the main purpose of the amendment introduced in the treaty of Spain and Colombia (1997), the [Additional Protocol to the Treaty of Legal Co-operation in Criminal Matters between the Kingdom of Spain and the Republic of Colombia](#) (2005), Chapter II of which provides for controlled deliveries, (article 7), joint investigations teams, (article 8) and undercover investigations, (article 9). Regarding controlled deliveries and undercover agents in particular, some responses to questionnaires mentioned a lack of judicial-police coordination and defective procedures for the protection of undercover agents and enforcement authorities.

Overall assessment

Opinions about the main actions to be taken to improve the legal cooperation in DT and related cases. (Ranked according to the answered questionnaires, being 1 most relevant 11 less relevant)

LAC

1	More training for judges and other legal players in international judicial cooperation
2	Creation of urgent and/or priority procedures for drug trafficking cases
3	Promotion of direct contact between issuing and enforcing judicial authorities
4	Promotion of liaison magistrates and support judicial networks (i.e. IberRED, EJM...)
5	Effective solutions to competing jurisdictions or conflicting jurisdictions: proposals for concentration of the investigation and trial in a single country
6	Promotion of videoconferences and other electronic means

7	New and better international conventions and legal instruments
8	Approved bilingual request forms, letters rogatory and acknowledgement of receipt
9	Removal of the Dual Criminality Rule
10	Removal of the nationality and public policy exception
11	Removal of the Speciality principle

UE

1	Promotion of direct contact between issuing and enforcing judicial authorities
2	More training for judges and other legal players in international judicial cooperation
3	Promotion of liaison magistrates and support judicial networks (i.e. IberRED, EJM...)
4	Promotion of videoconferences and other electronic means
5	Creation of urgent and/or priority procedures for drug trafficking cases
6	Effective solutions to competing jurisdictions or conflicting jurisdictions: proposals for concentration of the investigation and trial in a single country
7	New and better international conventions and legal instruments
8	Approved bilingual request forms, letters rogatory and acknowledgement of receipt
9	Removal of the nationality and public policy exception
10	Removal of the Dual Criminality Rule
11	Removal of the Speciality principle

OVERALL UE-LAC

1	More training for judges and other legal players in international judicial cooperation
2	Promotion of direct contact between issuing and enforcing judicial authorities
3	Creation of urgent and/or priority procedures for drug trafficking cases
4	Promotion of liaison magistrates and support judicial networks (i.e. IberRED, EJM...)
5	Promotion of videoconferences and other electronic means
6	Effective solutions to competing jurisdictions or conflicting jurisdictions: proposals for concentration of the investigation and trial in a single country
7	New and better international conventions and legal instruments
8	Approved bilingual request forms, letters rogatory and acknowledgement of receipt
9	Removal of the Dual Criminality Rule
10	Removal of the nationality and public policy exception
11	Removal of the Speciality principle

It is worth remarking on the high grade of agreement on both sides of the Atlantic when it comes to the diagnoses. Operators and institutions have very similar impressions on the most important measures and share a common opinion of the importance of training and promotion of direct contact, ranking them in the top two places.

Preliminary summary of operational gaps and potential obstacles

💡 In terms of issuing requests, the main type of **MLA measures** are linked to gathering evidence during the investigation phase (obtaining documents and summoning witnesses and expert hearings), and the

implementation of procedural requirements (notifications of orders and serving of documents abroad).

- 💡 The most relevant and efficient **MLA measures in drug-related cases** are rarely applied. Although the applicable international instruments such as the Palermo Convention provide for the possibility of joint investigation teams, controlled deliveries and undercover agents, the lack of provisions at a national level, operational challenges and poor coordination mean that these special techniques are extremely rarely used.
- 💡 The practitioners' perception of the usage and legal potential of the **Palermo Convention** for DT cases is greater than the possibilities offered by the Vienna Convention. However, this perception does not conform to the limited usage shown by the statistical data collected. There is no obvious reason emerging from the study as to why there is a lack of usage in this area.
- 💡 Regarding the lack of bilateral treaties, EU experts expressed the convenience of signing an agreement for DT purposes with the following LAC countries: Venezuela, Ecuador and Peru. In terms of EU countries the main countries mentioned were: Germany, and to a lesser extent, France and the Netherlands. Contrasting these perceptions with the statistical data, it is possible to infer that **Colombia, Peru, Germany** and the **Netherlands** are four countries for which cooperation needs to be promoted.
- 💡 The exception of nationality for **extradition requests** and procedural limitations (i.e. the impossibility of extradition due to trial *in absentia*) are the legal obstacles of greatest concern to legal practitioners when dealing with extradition cooperation.
- 💡 According to the opinion of the legal actors, there are five main practical **obstacles to extradition**: delays in communication and executions, lack of direct contacts, translation problems, lack of information on legal instruments on the part of judges, prosecutors and other legal players involved, and a lack of sufficient collaboration from central authorities or enforcing authorities.
- 💡 In terms of **legal feasibility for the purposes of MLA**, the tendency of legal practitioners and judicial authorities to apply the Vienna Convention and bilateral agreements relying on an overly formal interpretation can be inferred from the research. The main legal limitations of greatest concern to legal practitioners are the lack of urgent procedures for DT cases, the provisions regarding the applicable law for the execution of requests, the possibility of the request being denied when there is an ongoing investigation in the requested country, and provisions related to the range of measures accepted by the conventions.
- 💡 Of significant relevance in this area are obstacles linked to the execution of requests, whether related to procedures provided by the **law of the Requesting State** (*lex fori, forum regit actum*) or related to the procedures of the Requested State (*lex locus, locus regit actum*). The lack of provisions or failure to comply with the procedures of the

Requesting State often make the use of the evidence impossible in proceedings in the Requesting State. Sometimes this results in delays (i.e. when the requested material has to be returned to the Requested State for certification or authentication in accordance with the request). The standard rule is that the enforcement of international requests should be carried out in accordance with the procedures of the Requested State. As noted in section 4, not all the international MLA agreements stipulate the *forum regit actum* rule and hence this affects to the admissibility of the requirements stipulated by the Requesting State.

- 💡 In terms of **practical obstacles to DT MLA**, delays and lack of direct contact are mentioned as the practical problems of greatest concern, hindering MLA in DT and drug-related cases. A second group of obstacles are linked to translation problems, faulty executions, acknowledgements of receipt, collaboration from the requested country, support for videoconferencing, and the capacity on the part of the legal actors involved.
- 💡 Intercontinental **direct contact** between central and judicial authorities can be crucial to the DT MLA process. However, the generalisation of direct contact between competent authorities for MLA purposes cannot be regarded as a feasible goal at this stage of intercontinental cooperation; it would however be desirable to improve the existing legal framework and practice in order to allow some sort of contact between central or judicial authorities from requesting countries with executing authorities.
- 💡 **Delays** in communications and executions are common gaps in extradition and DT MLA. Maximising the effectiveness of responses and reducing time lags is crucial.
- 💡 The quality of **translations** and language of the requests remain sensitive issues. Another obstacle to all types of cooperation requests is the accuracy of the language used in the request.
 - The study shows the need to improve the **training** of legal actors involved in DT cases. Many prosecutors, judges and other judicial officers are not aware of the available conventions and networks for implementing and facilitating cooperation in DT cases. This situation is most relevant within the LAC countries and is frequently responsible for requests of very poor quality which hinder execution.
- 💡 Intercontinental contact point **networks** are not sufficiently exploited. This study revealed that many central authorities do not outsource any supporting or complementary tasks to designated contact points. In general, legal actors do not know the potential role IberRED can play in facilitating judicial cooperation (i.e. seeking solutions to difficulties arising from a request for judicial cooperation or investigation in DT matters; identifying the status of lost MLA requests; facilitating the coordination of the processing of MLA requests; and supporting central authorities to ensure the smooth operation of procedures with a cross border impact).
- 💡 **Organisational factors** of central authorities and quality of

cooperation may have important consequences for the level of extradition and the MLA workflow. Some delays can be reduced with appropriate internal central authority organisation and more efficient modes of operation. The operational workings of a central authority should be improved following good organisational practices that effectively contribute to reducing delays (i.e. monitoring tracking protocols, reminder and alert systems, issuing cover notes, immediately acknowledging receipts; automating responses; and promoting IT mechanisms).

- 💡 Modern technology and **IT methods** are generally not sufficiently used in EU-LAC cooperation. Answers to questionnaires by legal practitioners on both sides of the Atlantic identify a great concern about delays in communication and execution as the major practical obstacle to cooperation in DT (MLA & extradition). In very exceptional cases, IT facilities are used to channel requests in order to speed up their transmission.

6. Study report Main Findings

This section sets out the principal findings of the Study, and also relevant problems and other considerations which have arisen from the research.

This section is closely linked with what we believe is the hardcore of the study; section 7, Conclusions. These Conclusions proceed naturally from the Main Findings of the Study. Not every main finding results in a Conclusion, but this section sets out the main areas where, in the view of the authors, there are real issues which need to be addressed to improve the situation with regards to cooperation between the EU and LAC countries.

6.1. Main Findings

This section sets out the Main Findings of the Study. These findings have come about through the processes of information gathering and research undertaken during the Study, including the interviews and questionnaires conducted during the missions, and also take into account the results of other reports, studies and publications on the subject matter. Some of the findings lead to later Conclusions and Key Conclusions, but not all of them have an immediate corollary in those sections.

The findings relate to all areas of law and cooperation with regards to DT crime, and include assessments of other indicators such as treatment of citizens in the penal system, the Rule of Law and data protection. Many of the findings relate to the current MLA and extradition situations between the EU and LAC countries, and indicate areas where the current practices and or legislative bases could be improved.

Drug trafficking in the LAC Region

01 🟡 Regional overview of the consumption, production, and cultivation of cocaine and heroin in the Latin American and Caribbean Illicit Drug Market.

In terms of consumption, the Latin American region requires an increasingly multi-disciplinary approach with regard to heroin and cocaine consumption, above and beyond that of substances derived from opiates and amphetamine stimulants.

As far as the production and cultivation of drugs is concerned, cocaine has had an overall decrease due to the substantial decline in production in Colombia from 2006 to 2010. Nevertheless, the cultivation of the coca plant and the production of coca increased simultaneously in Bolivia and Peru.

In Europe, the cocaine market has not decreased, but rather, stabilized during the aforementioned time frame.

The decrease in the number of seizures in Europe demonstrates that, regardless of the plateau in consumption, a change in traffic patterns has taken place, namely, there has been a significant increase in the use of containers to transport drugs from South America. In that five-year period, the price of cocaine in Europe did not experience a radical change.

According to UN data from 2012 the cocaine market has expanded in some South American countries, particularly for the derivative form “crack”. Since 2004 the quantity of cocaine seized in Brazil has tripled, reaching 27 tons in 2010. In Argentina there has been an eight-fold increase in seizures between 2002 and 2009 and in Chile there has also been a significant increase in the three years from 2007 to 2010.

There is a clear route for heroin in the area which is produced primarily in Colombia and passes through Mexico to the United States. Seizures over the last few years indicate that production of this drug, which also occurs in Mexico and Guatemala, is on the increase. It is estimated that this region accounts for approximately 7% of the world production of heroin.

In 2010, heroin seizures in Colombia amounted to 1.7 tons, in the same year in Mexico they rose to 374 kilos, while in Ecuador they reached 853 kilos, over five times more than in 2009.

02 💡 Regional overview of the consumption, production, and cultivation of cannabis and amphetamine-type stimulants in the Illicit Drug Market of LAC countries.

In recent years, several South American countries have seen an increase in seizures of cannabis, especially in 2009 and 2010. Colombia, Brazil, Paraguay, Venezuela and Bolivia are examples of this phenomenon. Cannabis seizures in Mexico in 2010 exceeded 2,300 tons.

According to the [UNODC World Drug Report 2012](#), it is extremely difficult to quantify the volume of production of drugs derived from amphetamines, given their prevalence and the fact that they can be produced on a very small scale. In 2010, there was an increase in seizures in Central America. In recent years, the rise in methamphetamine seizures in Mexico has been particularly worrying, reaching 13 tons in 2010.

03 💡 Additional data regarding the issue of regional drug trafficking. Economic dimension. Influence of multilateral legal instruments.

According to UNDOC, the worldwide economic dimension of the cocaine market could amount US\$85m. Globalization has accelerated the spread and homogenization of the current drug problem, spurring an increase in the use of cocaine and ecstasy in South America.

UNODC confirms that the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 was instrumental in dismantling, within five years, the majority of the drug cartels in Colombia. The general impact on health, the economy, and delinquency generated by drug trafficking has not been analysed in the [UNODC World Drug Report 2012](#) with regards to LAC.

04 💡 Changes in the transnational market for cocaine and opium in LAC.

Within the LAC region, the trafficking of these two illegal substances has resulted in a greater demand for medical treatment, an increase in the number of violent deaths related to the trafficking of these drugs, and in the financing of illegal arms trafficking and terrorist activities.

The role of new technologies has been relevant, especially the Internet, and has had a major impact on the drug trafficking business. Mobile telephones have also greatly affected this illegal trade. The rapid increase in international freight traffic has also facilitated illicit drug trafficking, especially in maritime trade. The implementation of some programmes or specific administrative controls at regional level has proved to be fruitful in this respect, as has been acknowledged in the UNODC World Drug Report 2012, for example in relation to the implementation of the *Plan Colombia* in Colombia since 2000, which has clearly resulted in a decrease of coca leaf cultivation and, simultaneously, of armed activities.

05 💡 Final considerations on the illicit drug trade in LAC.

- The greatest impact of this illegal trade is on people's health. However, the effect on crime in its various forms is also of significant concern.
- Drug trafficking is generating violence, as is clearly the case in Mexico, where violence among and between drug cartels is common, as well as against State entities or the general population.

- Ensuring peace and strengthening human rights is also a tool for combating drug trafficking and its related problems.
- As regards the importance for Europe of the phenomenon of production and drug trafficking in LAC, the January 2012 Eurojust Strategic Project on '[Enhancing the work of Eurojust in drug trafficking cases](#)' acknowledges that this region is one of the three areas involving third party States where there is a need to increase cooperation and international coordination.

Domestic legislation within the LAC region and DT

06 💡 Gaps in internal legislation on drug trafficking within LAC.

Aside from the Vienna Convention, no minimum rules relating to the constituent elements of drug trafficking offences and precursor diversion exist which would allow for a unified approach to the fight against these crimes in LAC.

All the national laws surveyed broadly address these offences in each of the distinct phases of cultivation, processing, production, trafficking, sale, and transfer to other countries. Similarly, the legislation contains, albeit with some differences, severe penalties against the illicit diversion of precursors except those for small quantities for consumption. Penalties are more severe for the commission of these crimes within the framework of organised crime. Neither the death penalty nor life imprisonment for the commission of such offences is provided for by any of these laws.

In some countries, specialised tribunals have been established to handle drug trafficking offences. These offer the offender the choice between prison or treatment, as in Jamaica for example, or as in Venezuela's broad treatment measures. In the laws surveyed, personal consumption is partially decriminalized, subject to certain requirements being met along with the obligation to undergo detoxification treatment. In Ecuador, drug "mules" have been granted a general pardon, albeit under certain conditions.

07 💡 Influences of national laws on Mutual Legal Assistance and Extradition in LAC.

Analysis of the national laws of the LAC countries covered by the Project¹⁵⁰ shows that in terms of MLA requests (as distinct from extradition) there is no country with just one Central Authority.

¹⁵⁰ National legislations of other countries where DT has a high impact, and other external surveys, such as the last REMJA Report of 31 May 2012, drafted in Asunción, Paraguay have been taken into account for this assessment.

All the national laws surveyed contemplate various types of requests, primarily testimonial and documentary.

The principle of dual criminality remains as a requirement in most national legislations, except in Argentina, Brazil and Jamaica.

Joint investigation and special investigation techniques are foreseen in most national legislations, except in Ecuador, where controlled deliveries and covert operations are not allowed. Mutual legal assistance (or MLA) is normally granted on the basis of multilateral or bilateral instruments; where no agreement exists, reciprocity applies.

As regards extradition, there is a single Central Authority in most LAC countries. Other than Uruguay and Paraguay, national laws have been enacted in LAC countries to facilitate and ensure the application of treaties. With the exception of Barbados, Colombia, and Uruguay, all LAC countries contemplate the temporary transfer of detained persons. There are still restrictions on surrendering national citizens for extradition, as in the case of Brazil, Panama, or Jamaica; this also applies in death penalty cases and, to a lesser extent, cases involving life imprisonment

08 💡 Strong tradition of focusing on international cooperation within the frameworks of REMJA, OAS, MERCOSUR, UNASUR, CAIS, CAN and CARICOM.

The majority of conventions and treaties which have entered into force in this field are either regional or sub-regional, leading to a fragmented pattern of agreements across the LAC region.

09 💡 The right of individuals including EU citizens while prosecuted in LAC countries needs to be adequately protected.

No specific provisions were identified in national MLA or extradition legislations with regard to the procedural position of foreign citizens prosecuted for drug trafficking in LAC. Within CARICOM, references do exist regarding Commonwealth citizens and the citizens of the USA.

Field research in some countries reveals that the operation of federal systems leads to additional problems with regard to the situation of the foreign prison population. On the other hand, the conviction of a European citizen within the framework of the federal penal system of an LAC country such as Argentina, for example, facilitates the convict's access to assistance from his/her Consulate, which might not be possible if the conviction had been delivered in a territory not

subject to federal law. Consular access in general in the LAC region was found to be problematic and not functioning well.

The investigation and prosecution of the most serious DT crimes fall within the competence of the Federal Justice System, i.e. Argentina and Brazil. In some countries, the detention of foreign nationals for serious drug trafficking offences can also have serious consequences in extending the term of the detention, and prison benefits might be reduced towards the end of the sentence. Some countries do not allow foreign prisoners parole, based on the fact they will be expelled from the country on completion of their sentence.

Another significant factor relating to European citizens convicted in LAC countries is the possibility of their being grouped together in the major prisons of large cities, as in Uruguay, where European convicts are grouped in the prisons in Montevideo. In some cases difficulties in obtaining a single cell in prison have been identified. Other countries' penal systems also suffer from significant overcrowding.

In some countries, there is absolutely no data on the transfer of convicted Europeans to their countries of origin.

Specifically, interviews with ex-suspects or detainees from the EU who have been detained in certain countries demonstrate the following pervasive failings with regards to due process and rule of law guarantees: police corruption apparent and operative from the first moment of detention, scant judicial review of police detention with little use of habeas corpus, corruption amongst defence lawyers, abuses of authority and extortion within the prison system.

As indicated by the EU Commission, there is a relationship between the quality of criminal judicial international cooperation and procedural and detention rights, since within the EU *"it could be difficult to develop closer judicial cooperation between Member States unless further efforts are made to improve detention conditions and to promote alternatives to custody"*¹⁵¹.

10 💡 In certain cases, when it comes to citizens rights, challenges remain as regards the translation into practice of constitutional provisions and rule of law.

Among some justice systems within the LAC region the courts are so over burdened that difficulties arise with the effective prosecution of cases. Missions revealed certain abuses of process by defence

¹⁵¹ [COM/2011/0327 final/ GREEN PAPER Strengthening mutual trust in the European judicial area](#) – A Green Paper on the application of EU criminal justice legislation in the field of detention.

lawyers which hamper the efficiency of the justice system.

In some countries, corruption is a major challenge within the legal system, a situation that hampers the effective enforcement of the existing procedural guarantees.

Some mayor issues related to the conduct of criminal proceedings have been identified, such as delays, lengthy procedures, deficient legal assistance for detainees and prison overcrowding that also affects imprisoned European citizens.

11 💡 Significant gaps in legislation regarding personal data protection.

No specific provisions for the trans-border flow of personal data applicable to MLA and extradition requests are to be found in the national data protection laws of the eight countries covered by the Study, or in Brazil, Argentina or any of the four countries visited in Central America.

Jamaica is a key country and was the subject of a field mission, and has detailed regulations on this issue. Its Law of 1997 on Legal Assistance in Criminal Matters includes concrete provisions with regard to such issues as confidentiality regarding the information obtained via a MLA request, the requesting country's position under any treaty or prior agreement provisions, and future sanctions if the terms are not complied with.

Quality and quantity of cooperation in drug related cases LAC - EU

12 💡 International legal framework and domestic legal frameworks for MLA are often unsatisfactory for use with DT cases.

Letters Rogatory and other MLA requests are normally based on general bilateral agreements which are not always as effective as specific instruments for DT MLA requests. Moreover, most of the EU - LAC multilateral and bilateral conventions lack provisions dealing with the main measures of investigations and evidence-taking used in DT cases: interception of communications, undercover agents, controlled deliveries, and joint investigation teams. Few bilateral conventions include effective provisions suited for DT cases or for urgent requests. . In fact, these types of provisions and measures (interception of communications, undercover agents, controlled deliveries and JIT's) are the most appropriate in order to assure the effectiveness of cooperation in relation to serious DT cases.

Furthermore, it is often the case that the granting of efficient and swift assistance under these conventions can be prevented both by overly strict interpretation of their provisions and by their containing specific legal impediments.

13 💡 Bilateral cooperation conventions lack a systematic and comprehensive approach towards the whole range of needs in DT cases.

Some conventions deal with extradition and mutual legal assistance in the same instrument without a suited focus on serious drug and organised crime cases. Besides, many EU – LAC countries' agreements deal specifically with MLA in relation to DT but their scope is normally limited to assistance in investigations and do not include, for example the tracing, seizing and confiscation of assets. Therefore what is lacking is a comprehensive approach such as the one adopted by the Palermo Convention which includes a wide range of cooperation measures: measures traditionally associated with MLA, confiscation, joint investigation teams, special investigative techniques, or the transfer of criminal proceedings.

The issue of drug trafficking needs to be tackled from an international legal point of view. There should be a wider understanding of judicial cooperation, which includes MLA and other forms of legal cooperation, in procedural areas, such as the service of documents; the transfer of criminal proceedings; and the temporary transfer of persons to assist an investigation or appear as a witness. This should also apply with regard to the enforcement of judicial orders such as tracing, seizing and confiscating the proceeds or instrumentalities of crime, or even assistance with preserving computer data. This wider concept of MLA also includes assistance rendered at any stage of a criminal process, from investigation to appeal, and from any judicial authority, courts, prosecutors or even other judicial agencies authorised for enforcement.

14 💡 There is an asymmetry between the number of conventions and the use of the legal instruments.

As pointed out in Section 5, there is not an exact correlation between the number of bilateral agreements and the frequency and use of these legal instruments. This asymmetry is remarkable in the case of extradition treaties, of which many of which are not applied at all.

On the other hand, the use of bilateral instruments, such as those dealing with MLA is justifiable from the signatories' point of view. This consideration about enhanced cooperation particularly fits in relation to the cooperation between certain countries and their

former colonial countries: Portugal and Spain in relation to Central and South America and the UK and the Netherlands in relation to the Caribbean area and Suriname, respectively.

15 💡 In comparison with the Vienna Convention, UNTOC is rarely applied by legal practitioners on DT related crimes.

Most of DT investigations and proceedings are linked to organised crime. However, despite the broader range of measures and the modern legal structure of the UNTOC, when issuing a MLA request, Central Authorities and legal practitioners tend to rely on bilateral conventions and/or the Vienna Convention rather than the Palermo Convention, notwithstanding the fact that the Palermo Convention has been signed by all the countries subject of the study. There is no obvious reason emerging from the Study as to why this instrument is so widely favoured. In May 2012 UNODC specifically published a manual in the hope of facilitating and assisting with mutual legal assistance requests under the Palermo Convention.

16 💡 Bilateral TCP Conventions are not sufficiently effective.

As highlighted in Section 4.5.2, the number of sentenced persons transferred to EU MS is relatively low in comparison with the total number of European citizens sentenced in LAC prisons. Practical problems such as lengthy procedures or language difficulties impose serious obstacles when dealing with this matter.

In very few countries, (such as Colombia) in the absence of bilateral or multilateral conventions on the transfer of convicted persons, the Vienna provisions on this area are applied in order to facilitate transfers to Europe. Conversely, other countries do not permit any repatriation of serving prisoners without the existence of a specific convention.

However some small countries which have signed the multilateral CoE [Convention on the Transfer of Sentenced Persons](#) (such as Costa Rica or Panama) have transferred more convicted than other non signatory countries as Brazil, a large LA country with many more EU citizens convicted in DT cases.

Cooperation routes and flows of MLA in drug related cases

17 💡 From the European side, Spain represents more than 50% of the total cooperation between EU Member States and LAC countries.

In general terms, according to the statistics provided by LAC authorities and only taking into account formal requests

(documented letters rogatory and extradition requests) the majority of cooperation is with Spain, followed by The Netherlands, Germany, Italy, the UK and Belgium.

With regard to drug-related cases, the rankings would be: Spain, the Netherlands, Italy, the UK, Germany, Belgium and Sweden.

18 💡 On the LAC side¹⁵², Suriname, Peru, Colombia and Argentina are the LAC countries with higher volumes of MLA relating to drug-related offences.

Although Argentina is the country with the highest level of judicial cooperation flow in global terms (ie for any type of offence), when focusing on just drug-related cases the highest in the rankings in terms of numbers are Suriname and Peru. However, as pointed out in main finding 12, there is a lack of effective provisions and practice to ensure proper and efficient measures in serious DT urgent cases. Therefore, the great part of this cooperation is related to small-scale DT and very few requests involve relevant DT offenders.

Suriname is a unique case since more than 95% of its cooperation flow is related to the Netherlands. On the other hand, Peru, Colombia, Argentina, Venezuela and Brazil maintain a broader share-out with EU MS.

19 💡 Ratio of cooperation between Mexico and EU MS is extremely low in comparison with other LAC countries¹⁵³.

While the total figures on MLA and extradition in general terms place Mexico in 6th position, when focusing on drug-related cases its MLA active and passive figures place it after Suriname, Peru, Colombia, Argentina, Venezuela, Brazil and Jamaica in terms of numbers.

20 💡 Flows of extradition and MLA requests are changing in respect to drug-related cases.

Records show a clear increase in MLA requests from LAC countries towards the EU, modifying the trend observed in previous years; this phenomenon is particularly outstanding in the case of Peru in relation to small-scale DT.

As for extradition requests Jamaica plays a passive role and has not issued an extradition request in the last four years. With regard to

¹⁵² Finding stated taking into account statistics provided by central authorities from Belgium, Finland, France, Netherlands, Romania, Spain and UK.

¹⁵³ Finding set out taking into account statistics provided by central authorities from Belgium, France, Netherlands, Spain and UK compared to the ones given by Mexico central authority ([Procuraduría General de la República](#)).

Peru, 80% of the requests issued towards other states are rejected due to delays in transmission, which result in the release of the requested persons. In Uruguay, a high percentage of EU extradition requests is rejected. In Argentina, a fifth of the extradition requests received from the EU are consented to by the requested person and in such cases the application of the simplified extradition procedure applies. However, it has been observed that the ordinary extradition procedure generally results in long delays and very often in failure because of defence tactics, for eg applications to prolong the procedure and render the EU's claim impractical by using multiple resources in court. Argentina continues to receive more extradition requests from the EU than it makes. In Bolivia, little data regarding active extradition requests towards the EU is available. The greatest number of requests is from Spain and Italy, although in 2011 Peru also received six requests for extradition from France, Italy, and Ireland.

Central Authorities and other operators

21 💡 There is a necessity to strengthen the legal and operational standings of central authorities.

Central authorities should be staffed with practitioners serving posts on a permanent or a continuous basis. Where central authorities are integrated by prosecutors, examining judges or acting practitioners they are in a better position to implement their functions. As mentioned in the Study, [AIAMP](#) has recommended that the function of the Central Authority should be carried out by the Public Prosecutors' Office. In any case, they should be legally trained and have developed institutional expertise in the area of MLA and extradition.

Not all the central authorities are financed sufficiently to support¹⁵⁴ their range of functions and powers and this sometimes leads to delays, (e.g. using unnecessary diplomatic channels as a courier method in order to avoid ordinary mailing expenses).

Although parties to the Vienna and Palermo Conventions should ensure that contact information contained in the UN Directory of competent authorities is kept up-to-date, many countries do not regularly maintain these provisions. Reliable details of telephone and fax numbers, along with internet contact addresses are crucial for Extradition and MLA on DT cases.

22 💡 Some delays can be reduced with appropriate internal

¹⁵⁴ This is a critical point which deserved a specific recommendation by the [REMJA in 2003](#) (recommendation 2 c).

central authority organisation and more efficient ways of operation.

The operational tasks of a central authority do not need to be established by formal legislation since an internal administrative regulation framework is enough. Field missions revealed that only a few cooperation units follow good organisational practices that effectively contribute to reducing delays: i.e. monitoring tracking protocols, reminder and alert systems, issuing cover notes, immediately acknowledging receipt, automating the responses, and replacing mailing by other technological tools (for example, e-mail), along with proper and efficient communication between the central authority and the executing authority.

Central authorities and practitioners (judges, prosecutors and other judicial authorities as court secretaries) in Iberoamérica (19 Latin American countries plus Spain, Portugal and Andorra) have access to the secure communication system Iber@ through which they can exchange information among themselves, and with Eurojust and the General Secretariat of INTERPOL in a secure environment. Iber@ can be used to improve international and national communications¹⁵⁵.

23 💡 There is a need of more consistency in the designation of central authorities for international legal cooperation.

Some countries have designated different central authorities for different groups of offences or treaties; this implies a fragmentation of efforts.

It is noticeable that where central authorities are staffed by legal practitioners or members from prosecutors' offices, the central authority is in a better position to deal with active and passive request¹⁵⁶.

24 💡 Intercontinental contact point networks are not exploited sufficiently.

Besides regional cooperation networks located on both sides of the Atlantic ([REMJA](#) and [EJN](#)), there exists an intercontinental network, the Ibero American Network of International Legal Cooperation, (*Red Iberoamericana de Cooperación Jurídica Internacional* - [IberRed](#)) which signed a [Memorandum of Understanding](#) with the EJN in 2010.

¹⁵⁵ Iber@ cannot entail exchange of operational information, including personal data.

¹⁵⁶ The Latin American Prosecutors Association -AIAMP- has repeatedly stated the necessity that all Prosecutor Offices should be designated as central authorities, (AIAMP Good Practices Guide. Fight against the drug trafficking 2012).

This MoU, as the former one signed with [Eurojust in 2009](#)¹⁵⁷ and with the General Secretariat of INTERPOL, seeks to consolidate and improve the effectiveness of international judicial co-operation between the partners in the fight against trans-national crime and the globalisation of crime.

In addition, there is another intercontinental network that is potentially operative in some of the analysed LAC – EU countries: the [Commonwealth Network of Contact Persons](#) (CNCP). The purpose of the [CNCP](#) is to facilitate international co-operation in criminal matters among Commonwealth Member States, including mutual legal assistance and extradition, and to provide legal and practical information necessary to the authorities in their own country and Commonwealth Member States wishing to request such cooperation.

However, this Study revealed that many central authorities do not outsource any supporting or complementary task to designated contact points. Legal players in general do not know the potential role that IberRed can play in facilitating international judicial cooperation with EU members states through Eurojust or EJM: i.e. seeking solutions to difficulties arising in the execution of a request for judicial cooperation or investigation in DT matters; identifying the state of play of sent MLA requests, facilitating coordination of the execution of MLA and extradition requests and supporting central authorities in order to facilitate in cases with international dimensions.

25 💡 Central authorities do not maintain consistent statistical data systems.

Many LAC countries do not maintain adequate data bases for MLA, extradition, or transfer of convicted persons requests. This in turn has a negative impact on their ability to set up effective strategies for efficient internal organisation.

In other countries the statistical data is either not reliable or is not homogeneously implemented.

Obstacles linked to the ways of operation

26 💡 Legal practitioners and judicial authorities tend to rely upon the Vienna Convention and bilateral agreements, and interpret these instruments in a restrictive fashion.

¹⁵⁷ IberRed has so far provided access to the secure telecommunications network Iber@ to the National Members of Spain and Portugal; it should nevertheless be highlighted that the MoU signed between the two parties does not allow for the exchange of personal data.

The Vienna Convention of 1988 and many other MLA agreements came from a tradition of inter-governmental requests which were conducted in a very formal manner.

Although the international scenario has changed significantly since 1988, within the framework of judicial EU - LAC cooperation (unlike within the framework of police EU - LAC cooperation) relevant obstacles still arise which stem from the formal interpretation of legal instruments. This is linked to historic distrust of far-off and unknown countries' legal systems.

Furthermore, the efficiency of police-to-police channels where formal coercive measures are not required is not always sufficiently valued.

27 💡 Delays and lack of any response are common obstacles in EU - LAC cooperation.

Delays in executing extradition and mutual legal assistance requests between LAC and EU MS in drug-related cases can provoke the failure of investigations and prosecutions.

Missions revealed that on many occasions “no answers to the requests or acknowledgment of receipts are received at all”. This situation occurs on both sides of the Atlantic.

28 💡 Lack of knowledge of the international legal framework and available tools remains current among legal players, prosecutors and judges.

The study shows that many prosecutors, judges and other judicial officers are not aware of the existing conventions and networks available to facilitate judicial cooperation in the drug trafficking arena. This situation is more of an issue within LAC countries.

This situation frequently provokes requests of very poor quality which hinder execution. In fact, during the last CELAC - EU Judicial Summit in Santiago de Chile¹⁵⁸ judicial training sessions for members and personnel of the Judiciary on international judicial cooperation and on promotion of mutual awareness of national legal systems were proposed.

No internet site is available for practitioners containing information and direct links to the relevant legal instruments applicable at bilateral, bi-regional or international level between EU and LAC countries.

¹⁵⁸ 1st [CELAC-EU Judicial Summit](#), Chile, 10th and 11th January 2013, (point 5)

29 💡 **There are significant impediments for the execution of requests in the Requested States.**

Some of the obstacles identified in the field of MLA stem from the grounds for refusal to render assistance included in the conventions and many others come from inflexible interpretations of domestic legal requirements.

Research shows that many domestic legal frameworks impose unnecessary impediments to international cooperation. In addition, formal prerequisites to cooperation often arise when the relevant laws are applied in an unduly strict way, impeding, rather than facilitating the assistance.

EJN contact points, law enforcement agencies and European central authorities identified the interpretation of the specialty principle as one of the major legal obstacles to cooperation. Other grounds for refusal to cooperate such as the dual criminality rule or the *ordre public* exception were issues of concern to competent authorities since their inclusion in many international instruments, and to a greater extent the subsequent interpretation of them, particularly hinders assistance.

Obstacles linked to the execution of requests, whether in accordance with procedures foreseen by the Requesting State's law (*lex fori, forum regit actum*) or in accordance with procedures of the Requested State (*lex locus, locus regit actum*) are of significant relevance in this area. The lack of provisions or the failure to comply with Requesting State's procedures often raises admissibility issues in the Requesting State. Sometimes this situation also causes delay (i.e. when the requested material has to be returned to the Requested State for certification or authentication, in accordance with the request as originally made). The ordinary rule is that the execution of international requests should be carried out in accordance with the Requested State's procedures. As highlighted in the research, not all the international MLA agreements lay down the *forum regit actum* rule and so it affects the admissibility of the requirements stipulated by the Requesting State.

30

Real Story nº3: wrongful use of the Letter rogatory instrument

The use of requests for the remission of documents in international letters rogatory urged by the competent judicial authorities is in many cases to the detriment of the more specific requests that should be being used from the first moment of the *notitia criminis*. This is shown in the following case between an LAC country and Spain, regarding the seizure of a large quantity of cocaine that took place in Portugal in 2007, with drugs from the LAC country, and ramifications for the criminal organisation in the LAC country and Spain. Exchanges of letters rogatory requests were not used to launch common legal proceedings, undercover operations, controlled deliveries or the interception of communications, but merely for the obtaining of documents, in this case in Spain. This was done on three occasions, in 2007, 2011 and the last time in 2013. In the last of them judicial authorities of the LAC country requested the submission of a copy of the expert report of the seizure of cocaine, to attach to their research, which was independent and autonomous from both the other processes held in Spain and Portugal.



💡 Hearing witnesses and experts and obtaining of documents are the two most frequent MLA requested measures on drug-related cases between EU - LAC.

In contrast to the expert¹⁵⁹ opinions maintaining that interception of communication and controlled deliveries are the most efficient investigation measures, the missions, interviews with central authorities and questionnaires revealed that from

the quantitative point of view summons and obtaining of documents are the most internationally requested measures.

31 💡 The most relevant and efficient MLA measures in drug-related cases are rarely applied, even in serious and organised cases.

Although the applicable international instruments such as the Vienna and Palermo Conventions (articles 9.1 c) and 19, respectively), foresee the possibility of joint investigation teams, JITs are an extremely rarely used tool.

Controlled deliveries constitute a particularly acute investigative technique in DT cases involving states such as LAC countries where cultivation, production or manufacture are located, or which are used as transit routes. However, the asymmetric regulation and definition of this measure within the region constitutes an added obstacle to its use, and make it intrinsically complex to apply from the operational point of view. The UN Secretary General report noted states met with practical difficulties when carrying out controlled

¹⁵⁹ EUROJUST Strategic Project on: "Enhancing the work of Eurojust in drug trafficking cases", January 2012 and AIAMP Good Practices Guide. Fight against the drug trafficking 2012.

deliveries, including the differences between legal provisions in different states (in particular, difficulties in cooperating with states still imposing the death penalty), difficulty in identifying the links between local criminal groups and international groups, differences in legal requirements and different authorities responsible for the execution of a controlled delivery. As EUROJUST noted, in a number of countries a judicial authorisation is needed for the execution of a controlled delivery; whereas in other countries the police authorise controlled deliveries. At the international level, this situation can create uncertainty in identifying the appropriate interlocutor.

Awareness should be raised among practitioners with regard to the high number of consignments containing drugs destined for European countries which are intercepted on a daily basis in sourcing or transit countries; action should be taken in order to assess on a case by case basis when a controlled delivery could be feasible. In all other cases, the information on the actions taken in the sourcing or transit countries should be spontaneously transmitted to the EU destination countries.

There is a need for swifter and simpler procedures, particularly when dealing with serious DT cases. Unnecessary formal requirements and strict judicial interpretation incompatible with the nature of the measure can make the use of interception of communications difficult.

Questionnaires and interviews exposed that undercover agents are an infrequent measure in international cooperation.

32 💡 Modern technologies and IT methods in general are not sufficiently applied in EU - LAC cooperation.

Answers to questionnaires by legal practitioners from both sides of the Atlantic identify great concern about delays in communication and execution as the major practical obstacle to cooperation in DT (MLA & extradition). Connected to this perception is the fact that it is only in very exceptional cases where the requests are channelled by means of IT facilities in order to expedite their transmission. On the contrary, the majority of central authorities use much slower traditional methods of transmission of requests such as by way of hard copy, sealed documents via a mail delivery system or even through diplomatic bags.

Delays and lack of speedier direct, electronic communication can lead to the expiration of procedural time limits. In many cases extraditions have failed, especially when restrictive time limits are imposed in accordance with national domestic legislation.

There are strong existing tools, such as the Iber@ secure communication system, which are necessary and which can facilitate the exchange of information and the speeding up of MLA requests and extraditions.

Finally, although videoconferencing is an increasingly better known and used tool by legal players, prosecutors and judicial authorities involved in international cooperation, the current situation is that there still remain many challenges (financial, practical and institutional) to its wide usage. The scant use of this modern mechanism hinders the efficient obtaining of evidence, much more so in those cases such as hearing experts or witness by video conference where it is particularly suitable.

33 💡 Very few bilateral conventions single out the DT requests.

The need for urgent execution and the complex nature of DT assistance, particularly in serious and organised cases, requires setting the requests apart from other types of letters rogatory.

34 💡 Confiscation, asset recovery and DT cases.

Domestic legislation exists in most LAC countries to facilitate the seizure and forfeiture of assets derived from crime. This domestic legislation also contemplates the possibility of implementing foreign orders requesting, as part of a MLA, the freezing, seizure and confiscation of assets in various forms. The possibility of confiscation of proceeds of crime without conviction or if death occurs is foreseen in most LAC domestic legislations, with the exception of Argentina, Brazil, Chile and Peru. The possibility of confiscation of proceeds of crime in cases of escape or planned absence is more limited, although it is accepted in Colombia, Jamaica, Panama and Paraguay.

The possibility of sharing the seized products with other States, as part of a request for MLA and based on the 1988 UN Convention is widely accepted, with the exception of Chile, Colombia, Nicaragua and Paraguay.

No data has been found on information exchange in this area between the Red Carin at EU level ([Camden Asset Recovery Interagency Network](#)), and IberRed. The EU Commission Communication of 20 November 2008 calls for the development of a close international cooperation in confiscation not only within the EU but also with third countries, which shall cover the LAC area.

Requests with regard to DT offences between the EU and LAC regions do not routinely contain petitions for confiscation or asset recovery. There are exceptions in both regions, where these types of

requests are more commonly made. In the LAC region, Brazil, the Dominican Republic, Ecuador, Jamaica and Peru reported such requests as among the more common. The traffic with Jamaica relates to the UK.

Given the general acceptance among organisations, both national and international, of the efficacy of confiscation and asset freezing measures in combating and disrupting the activity of organised criminal gangs in the area of DT, such measures even being seen as rivalling imprisonment in their effect, it is surprising that the measures are not more routinely requested.

Requests for investigations into assets held or owned in another jurisdiction can be slow. Further complications arise where countries have enacted domestic civil legislation for the seizure of assets, and are requesting the enforcement of such measures abroad. Some jurisdictions do not classify money-laundering as a stand-alone offence, but require proof of the concrete underlying predicate offence the assets derive from.

Following the successful experience in Colombia, other LAC countries such as Peru, Mexico, Costa Rica and Guatemala have enacted Asset Recovery Laws (Laws on 'expired ownership') aimed at depriving criminal organisations from the proceeds and instrumentalities of crime. These laws provide for the possibility of obtaining information about illicit assets based within the national jurisdictions via international cooperation: a piece of information pointing to criminal activities linked to the receiving country provided on an spontaneous basis by a foreign authority immediately triggers the initiation of a domestic financial investigation to trace, seize and confiscate the illicit proceeds. The extensive experience gained in this area between Colombia and the USA could be an example to mirror.

35 💡 Problems in multi-jurisdictional cases.

Transnational drug trafficking tends to cause conflicts of jurisdiction that lead to parallel investigations and proceedings, which partially investigate an organisation present in different states. The fragmentation of the investigations may be inefficient and cause further international cooperation problems, as the execution of requests for assistance is rejected on the basis of an existing case. The application of the principle of 'ne bis in idem' is not satisfactory, as it does not avoid double investigation or double trial, just double jeopardy. There is no LAC level body similar to Eurojust in the EU working to prevent and resolve these types of conflicts in the LAC region, much less across the EU-LAC relationship, where jurisdictions on both continents are involved. There is also no LAC-level legislation like the Framework Decision 2009/948/JAI of 30 November

2009, on the prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings. The scarce level of exchange of information between EU MS and LAC results in a low rate of identification of possible parallel investigations.

There is no evidence that the contingencies have been fully exhausted of Article 8 of the UN Convention of 1988 or Article 15.5 of the Palermo Convention on organised crime, which tends to be frequently associated with transnational drug trafficking.

The above definition of the problem also encompasses other unresolved aspects of the LAC-EU relationship: the transfer of jurisdiction to one single country, the solution to transfer proceedings, the value of evidence obtained abroad, follow-up on precautionary measures (especially personal ones), the need to solidify agile extradition in the absence of a mechanism like the EAW in the EU, and the transmission of evidence.

36 💡 Quality of translations and language of the requests remain sensitive problems.

Another common obstacle to all types of cooperation requests arises from the accuracy of the actual language of the request. Answers to questionnaires revealed that competent authorities do not always do their best to secure the services of a translator well-versed in legal terminology who can accurately translate the contents of the request into the language of the requested State.

These sorts of problems and defects in translation lead to delays, confusion and frustration.

37 💡 The number of refusals of extradition is proportionally lower than the number of requests not executed.

As noted by the UN Economic and Social Council Commission on Narcotics, the number of refusals of extradition was lower than the difference between the number of requests sent and those executed. This implies that although some requests were not executed, they were not officially refused, perhaps due to delays and procedural difficulties rather than substantive legal impediments.

The reasons for official refusal include non-extradition of nationals, lack of dual criminality, statute of limitation periods that had elapsed, political offences and procedural or formal deficiencies in the requests. Other difficulties encountered in the extradition process included lengthy procedures, which lead sometimes to the release of prisoners as a result of the limits of pre-trial detention,

differences between national legal and judicial systems (in particular, the question of the imposition of the death penalty and trial in absentia) and translation problems. Where extradition is refused, and the principle of *aut dedere, aut judicare* is applied, there are further practical and legal problems related to the transfer of the file to the requested State (ie admissibility of evidence, translation issues).

38 💡 The differences between the two major legal traditions -civil and common law- have consequences on the quality of international cooperation.

The differences between the two procedures provoke practical obstacles to MLA and extradition regarding language and terminology, the role and functions of competent authorities, the extradition of nationals, the concept of confidentiality, and the consequences of judgments in absentia.

With respect to extradition, the differences between these two systems are even more pronounced. In some civil law jurisdictions, the decision to extradite may be within the sole purview of the judiciary, with no executive involvement; conversely, in legal systems based on the common law tradition, often this is an important power given to the executive branch of the Government, where the ultimate decision to surrender the fugitive is taken.

7. Conclusions

7.1. General Conclusions

Conclusions included in this section are based on the considerations and reflections contained within the present Study, Main Findings, mission reports, statistical information, answers and remarks to questionnaires and previous scientific research, studies and official reports¹⁶⁰.

Within the LAC region there is a strong tradition of international cooperation and a legal and operational framework to ensure such cooperation is viable. There is also strong support to cooperate specifically in the area of drug trafficking, and recognition that this crime requires cross-border cooperation at all levels in order to be successfully tackled. All of the LAC countries in the study are signatories to both the Vienna and the Palermo Conventions, and besides this there has grown a network of other conventions, some bi-lateral some regional, which also permit and facilitate international cooperation in the area, and between the area and the EU for both MLA and extradition.

There is a history of successful cooperation between the LAC area and the EU, in both MLA and extradition, and a will to cooperate. This is especially true with regards to cooperation traffic between former historical colonial powers and the countries which formed part of those colonies.

Furthermore, there are international network bodies in existence which are in a position to facilitate such cooperation and to ease communications between cooperating countries.

¹⁶⁰ Among others official reports: [UNODC Manual on Mutual Legal Assistance and Extradition](#), Vienna, September 2012; EUROJUST Strategic Project on: "[Enhancing the work of Eurojust in drug trafficking cases](#)", The Hague, January 2012; AIAMP Latin American Prosecutors Association: [Good Practices Guide. Fight against the drug trafficking](#), Madrid 2012; The FATF Recommendations: [International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation](#), Paris, February 2012; [UN Economic and Social Council. Commission on Narcotic Drug: Fourth biennial report of the Executive Director on the implementation of the outcome of the twentieth special session of the General Assembly, devoted to countering the world drug problem together \(Judicial cooperation\)](#), E/CN.7/2007/2/Add.3, Vienna 2007; [UNODC REPORT Informal Expert Working Group on Effective Extradition Casework Practice](#); Vienna 2004 and UNODC [Informal Expert Working Group on Mutual Legal Assistance Case work Best Practice](#), Vienna 2001; EU Council, [Drugs Action Plan for 2009-2012](#) (2008/C 326/09) Brussels, 2008; REMJA – OAS [Proposed Best Practices with respect to the gathering of statements, documents and physical evidence, with respect to MLA in relation to the tracing, restraint \(freezing\) and forfeiture \(confiscation\) of assets which are the proceeds or instrumentalities of crime and forms on MLA in criminal matters](#), OEA/Ser.K/XXXIV /doc.19/07 rev. 1, Bogotá 2007; REMJA-OAS: [Recommendations – Meeting of Central Authorities and other Experts on Mutual Legal Assistance in Criminal Matters](#) Ser. K.XXXIVOF/doc. 1/03, Ottawa 2003 and [EU Council, Comprehensive Action Plan on Drugs, High-level meeting of cooperation on drugs between the EU, Latin America and the Caribbean on 8-9 in Panama](#). Brussels, April 1999.

However, despite the above, the Study has revealed that there are areas where it is possible to improve significantly the current situation in terms of both the legal framework and the operational framework, and it is with these improvements in mind that the Conclusions below are drafted. These Conclusions, as mentioned, arise from the Main Findings, and in some cases give rise to Key Conclusions where it is thought that the issue is particularly important.

Institutional and organizational approach

1 💡 Drug trafficking within LAC and EU countries

After due analysis, it appears that the LAC and the EU must work in a coordinated fashion, based on the principle of “shared responsibility,” as all states are part of the problem of drug trafficking and its related offences, be they as producers, transit hubs, or destinations for illicit substances in their various forms. The Eurojust Report of February 2012 also explicitly mentions this, including LAC as a preferred region for the coordination of activity, considering it one of the primary areas for drug production and transit.

The above coordination should be reflected in studying solutions for the various problems that have arisen so far in some Eurojust coordination meetings, involving third party states within LAC. Specifically, coordination must advance in the following areas: information sharing and investigation; conflicts of jurisdiction, where solutions exist based on Article 20 of the Palermo Convention; the European Convention on the Transfer of Proceedings in Criminal Matters that was proposed to third party states within Europe (yet seems far off within LAC); Letters Rogatory in their various forms; restrictions on the extradition of nationals; joint investigation teams, though in this respect, both the UN Convention of 1988 and the Palermo Convention allow for this measure to be used, the LAC having even recently followed the model of joint investigation teams approved by the EU; controlled deliveries and undercover agents, through the inclusion of ad hoc protocols, as exist in bilateral agreements between some LAC and European countries, and in the case of undercover agents, the adaptation of the model of broad collaboration between Colombia and the USA; finally, the recovery of assets, except for existing forward-thinking non-criminal proceedings in some LAC countries, such as the expiration of ownership in Colombia.

2 💡 Justice system within LAC Region

There are important and significant difficulties faced by many justice systems in the LAC region which hamper their efficient functioning. There are also issues of over-burdening and corruption which have a negative impact on the perception of the institutions involved and threaten the independence of the criminal justice systems. LAC states

should be encouraged and assisted where possible in their striving to create efficient and fair systems for the administration of justice.

There exists a history of convention and treaty entering with regards to international cooperation, but the pattern is mostly regional or sub-regional and fragmented. Whilst this pattern contains strengths based on historical colonial links, for a wider and more efficient ability successfully to prosecute organised criminal gangs operating in the DT area, there needs to be a realigning of national obligations and functioning international agreements.

3 💡 Position of EU citizens prosecuted in LAC countries

Whilst there is evidence that EU citizens prosecuted in LAC countries in some cases receive treatment that is superior to that received by the national citizens in the same position, the state of the justice systems in some LAC countries, and of the prison systems often means that fundamental rights are denied. This condition stems in some countries from corruption, but also from inherent poor conditions, including overcrowding, lack of health care and lack of basic necessities. The situation of many foreign prisoners depends on their links, family or otherwise, in the countries they are detained in. The nature of the offence of drug-trafficking is such that few have any such links.

The legal status of European citizens arrested, prosecuted, or convicted of drug trafficking crimes in LAC countries is a consequence of the inadequacies of the criminal and procedural systems analysed in this area, and of practices as those observed during field research. In particular, deficiencies in procedural rights were noted regarding investigation following arrest or detention, especially regarding the right to consular assistance, the right to a defence, the absence of minimum protection of personal data in the scope of the proceeding. The prison situation is also worrying due to the saturation of some prison centres, the dispersion and distance from major regional centres in the country or the level of corruption in the field, which negatively affects the rights of imprisoned European citizens. A separate issue deserving attention is the restriction on the transfer of sentenced European prisoners to their country of origin, owing to the inexistence of a legal bilateral instrument or to delays in the execution of formal requests.

It should be noted that there are countries which are actively attempting to improve the current conditions in their penitentiaries – amongst them are Costa Rica, the Dominican Republic and Ecuador for example.

4 💡 Personal data protection provisions in the EU - LAC legal instruments

There are no domestic laws in the LAC area, with the exception of Jamaica that contain norms on the treatment and protection of personal data obtained during criminal investigations and their subsequent transfer to activities of MLA or Extradition.

There appear to be no rules governing the principles of data quality, data security, the rights and protection of interested parties, or the organisation of data oversight and responsibility.

The minimum aspects in this area that should be a matter of common attention should be referred, without limitation, to the cases of:

- Practical limitations aimed at protecting personal data and other measures;
- Limitations regarding testimony given, statements, objects, and information,
- A Statement of Confidentiality request to the Requesting State.

The above provisions are set out in the Inter-American Convention on Mutual Legal Assistance in Criminal Matters of 1992, which may facilitate the general basis for all LAC legal systems.

5 📍 Establishing effective central authorities

5.1. Staff at central authorities

The quality of personnel constituting central authorities is a critical point for successful cooperation. Central authorities should be staffed by practitioners who are legally and procedurally trained and who have developed institutional expertise and continuity in the area of legal cooperation. The Study reveals that where Prosecutor Offices have assumed the power of central authorities there is a better structural position to face up to the responsibilities and challenges linked to MLA in DT and criminal cooperation in general.

In any case, when dealing with DT issues, fragmentation of central authorities or designation of authorities from other ministries which have important national drug control capability in other fields (i.e. health or culture ministries), should be avoided.

Staff at central authorities should be experienced lawyers, ideally prosecutors, with recent practical litigation experience in the domestic courts. They should work for the central authority on international cooperation matters and not be expected to prosecute a domestic caseload at the same time. The head of the authority should be experienced in mutual legal assistance. Considerations should be given to the posting of central authority staff on placements abroad in foreign jurisdictions.

The central authority should impose a uniform approach to mutual legal assistance and should become a centre of expertise able to advise and make recommendations to governments and other public bodies. Central authorities' staff should interact with networks' contact points, liaison magistrates, liaison officers and INTERPOL officers for more efficient communications with regards to mutual legal assistance, and for enhanced understanding of differing legal systems.

5.2. Accuracy and consistency of central authorities: the importance of communicating with the right people

The Vienna and Palermo conventions foresee obligations on each Party to notify the Secretary General of the central authority designated by it to receive, transmit or execute requests for MLA¹⁶¹. This information is uploaded on the UNODC online directory service (<http://www.unodc.org/comppauth/en/index.html>) since it is crucial for requesting authorities in planning and drawing up requests. Therefore, it must be accurate and up to date.

Additionally, fragmentation of effort and inconsistency of central authorities should be minimized and designation of different central authorities in respect to different treaties or issues avoided. Since there is a proved interdependence between the different tools or legal international instruments dealing with extradition, mutual legal assistance, transfer of prisoners, confiscation, recognition of foreign judgments, transfer of proceedings and transfer of prisoners, it is convenient to concentrate the national desk within a single central authority. This is a relevant issue since international legal provisions can provoke certain confusion: some multilateral conventions, such as the Palermo Convention, make it compulsory that each Party designate a central authority for the purposes of MLA, conversely there is no requirement for the central authority to be created for the purpose of extradition. These considerations may be compatible with the adequate specialization of personnel commended with DT issues if necessary.

5.3. Central authorities good practices

When dealing with DT cooperation, it may convenient to rely on practical guides agreed between central authorities in order to assure key factors such as:

- availability of after working hours or round-the-clock coverage so to be able to deal with urgent cases;

¹⁶¹ The importance of establishing a single central authority, in order to undertake the State's international obligations in accordance with the applicable treaties in force for the transmittal and reception of requests has been remarked in several international fora, (among others, [REMJA Recommendations of Ottawa](#), 2003).

- criteria for prioritisation of DT requests, mainly in serious cases;
- reviewing draft requests for adequacy;
- coordinating with other central authorities and providing, if necessary, information and templates for countries wishing to make requests;
- acting as a liaison to the judicial authorities who may execute request;
- monitoring case developments as requests proceed through the executing judicial and prosecutor system;

In addition, the good practices included in paragraph 19 of the operational conclusions below should be taken into account.

Within this framework aim, regular international meetings, exchange of personnel and workshops of members of central authorities competent for DT cases are highly recommended.

5.4. Promotion of virtual information and support tools

Existing Technological tools such as the intercontinental “Iber@”¹⁶² secure communication system should be disseminated and its use encouraged. The web tool implemented by EJM should also be considered from an intercontinental approach for criminal MLA.

Other existing tools such as the secure communication system (“Groove”¹⁶³) of the OAS Criminal Matters Network have been considered by some MS¹⁶⁴.

Setting up an internet site where all the relevant international instruments in criminal matters between EU and LAC countries is available for consultation by practitioners would be extremely useful. The example of existing platforms could be mirrored in this new website: IberRED (IberRED.org) in the context of the Ibero- American countries or the so called Prontuario (Prontuario.org) available for Spanish authorities. A link to this proposed site could be included in the EJM website, e-justice and IberRED website. This new platform could provide templates of letters rogatory tailored for each applicable convention

¹⁶² IberRed has a web page with a public and a private access which is a secure communication system, called Iber@ (<https://www.iberred.org/>), for points of contact and central authorities that can highlight the safety ease of use and accessibility, without therefore detrimental to the security of your communications and confidentiality. There is a central server located at the General Secretariat of the IberRED in Madrid.

¹⁶³ The Hemispheric Information Exchange Network for Mutual Legal Assistance in Criminal Matters (REMJA) maintains a web page with a public section in which can be found legislation provided by the respective countries on this topic, and a private section with restricted access and confidential information. The website is: <http://www.oas.org/juridico/mla>. Additionally as support for the implementation of the mutual legal assistance in criminal matters and extradition it has been developed a secure email program to exchange confidential information among the members of the REMJA. There is a central server located at the General Secretariat of the OAS in Washington.

¹⁶⁴ In fact, in November 2012 the MoJ of France signed a MoU with the OAS foreseeing this possibility.

available in different languages to assist the practitioners in the task of requesting mutual legal assistance and solving basic translation issues.

6 💡 Increasing capability of legal players

6.1. Training of competent authorities

Training courses and workshops for law enforcement authorities and targeted prosecutors, examining judges and other judicial authorities may contribute to a more effective implementation of MLA instruments and legislation.

Taking into account the high costs of traditional training events, it would be more useful to establish a platform, or use one of the existing virtual platforms for Iberoamerica (IberRed o CEDDET)¹⁶⁵, and prepare some on-line courses in criminal cooperation matters. These courses should provide the knowledge of the compendium of IT tools mentioned below and would allow the participants to study thoroughly real and hypothetical cases, as well as offering the possibility to use all the tools that the applicable Conventions include.

The use of virtual training is more economical and sustainable. To assure an in depth process of training we propose the use of the e-learning courses. This kind of training courses would ensure an efficient training. This type of combination techniques would allow monitored the progress of the students , Only people who have successfully passed the on line period of training would be able to attend seminars and workshops.

Furthermore, a complementary an annual programme of exchange of competent authorities could contribute to optimize the training strategy.

To assure the efficiency and success of this training it would be necessary to establish some rigorous criteria for the selections of participants. We propose to request the nomination of participants be made by the main networks of iberoamerican judicial authorities mentioned in this report: AIAMP, Iberoamerican Judicial Summit and IberRed. Even, sometimes it would be necessary to check the cv of the

¹⁶⁵ The *Fundación Centro de Educación a Distancia para el Desarrollo Económico y Tecnológico* (Economic and Technological Development Distance Learning Centre Foundation, the CEDDET Foundation) is a non-profit entity fostering cooperation, created as a joint initiative between the Spanish Ministry of Economy and Finance and the World Bank in 2001.

Its mission is to promote knowledge exchange to make a sustainable contribution to the economic and social development in the world through virtual training programmes (online courses) and virtual experts Networks.

The CEDDET Foundation is also the Spanish hub of the World Bank Global Development Learning Network (GDLN). From 2006 to 2010 the Foundation was a member of one of the four consortiums responsible for carrying out the EUROsocial programme, the European Union's main initiative for cooperation with Latin America.

person designated by this method.

Members from central authorities and networks contact points could play a relevant role here.

6.2. Use of practical guides and MLA handbooks

Lessons learnt from some EJM outcomes (particularly the [Compendium](#), but also [Fiches Belges](#) or [Atlas](#)) show us the advantages of practical guides and web tools. It would be convenient to adapt the experience for DT from an EU - LAC perspective. These guides could also be available on the proposed internet platform.

7 **A new approach towards cooperation networks and other agents**

7.1. Strengthening institutional networks and intercontinental links

As noted, there are two regional cooperation networks located on both sides of the Atlantic dealing with legal cooperation in criminal matters: [REMJA](#) (Meetings of Ministers of Justice or Other Ministers or Attorneys General of the Americas) and [EJM](#). There is also another comprehensive intercontinental network: Ibero- American Network of International Legal Cooperation, (*Red Iberoamericana de Cooperación Jurídica Internacional* - [IberRed](#)).

The use of *memoranda* of understanding between different networks and organisations can be very efficient if it is later properly implemented. In this respect it is worth mentioning the potential of the MoU signed between IberRED and EJM or IberRed and Eurojust and lately IberRed and the General Secretariat of [INTERPOL](#).

Therefore these *memoranda* should be reinforced in different directions; as regards the Eurojust-IberRed MoU, already in force since may 2009:

- A thorough assessment is needed from both sides as regards the effectiveness of the MoU in relation to the purpose established in art. 2.1 (reinforcing the fight against serious forms of trans-national crime); this assessment involves a serious quantitative and qualitative analysis of the activities conducted within the frame of the MoU and their ability to fulfil the abovementioned purpose, i.e. do these activities lead to the identification of the main obstacles, difficulties and causes of refusal in the bi-regional mutual legal cooperation? and are Eurojust's and Iber-Red's role in the solution of those problems clearly defined?, or is the framework provided by the MoU sufficient or adequate to reach that role?; this analysis could eventually lead to the conclusion that such an instrument should be amended for the improvement of its efficiency.

- More concrete action should be taken as regards the commitments and conclusions reached by Eurojust and Iber-Red in the bilateral meeting that took place in Madrid on 9 July 2012, in particular in two fields:
 - o possible actions to be carried out together in the fight against organised crime,
 - o facilitating the roles of Eurojust and Iber-Red to foster the participation of LAC countries' judicial authorities in coordination meetings.
- As regards the latter conclusion, it should be highlighted that the number of Eurojust cases involving third countries in the LAC region is extremely low and the participation of LAC countries in Eurojust coordination meetings has been practically inexistent over the years. This circumstance needs to be properly addressed particularly taking into account that drug trafficking is by nature a transnational activity and that the LAC countries are one of the main cultivation, production and transport routes (this situation is extremely relevant as regards to cocaine, only produced in the LAC region). This involvement of LAC countries in Eurojust casework should go beyond the use of the MoU since no personal data can be exchanged via the MoU, which could be used as a tool to boost closer cooperation by requesting the opening of a Eurojust case under arts. 3.2 and 26a of the Eurojust Decision.
- Fostering the use of the MoU among the National Members of Eurojust by directly liaising with Iber-Red contact points. Avoiding channelling all requests via the central contact point should be fostered without prejudice to the facilitating role of the latter as foreseen in art. 2,e of the MoU, by providing them all with access to Iber@ secure communications network.
- Knowledge and understanding of the MoU should be promoted among the Iber-Red contact points, particularly taking into account that the vast majority of requests channelled via the MoU have been received from National Members and just a very few from Iber-Red contact points.
- Detailed information should be provided with regard to the competences and tasks of the different Iber-Red contact points taking into account that those contact points belong to different Institutions (Prosecution Service, Judiciary, Ministries of Justice, Central Authorities) in order to assist National Members to identify the relevant competent contact point to be addressed.

With regard to the MoU between EJM and Iber-Red, already signed on the 21st of June 2010, both parties should be urged to proceed with the exchange of list of contact points to allow the MoU being put in practice.

The participation of the IberRed contact points in EJM meetings and vice versa (the participation of the EJM contact points in the IberRed meetings) would be a way to establish new contacts and to improve the

mutual trust between judicial authorities in both regions. This proposal intends to study the possibility to establish a regular programme that covers the cost of participation in these meetings. Now, Eurojust is participating regularly in IberRed meetings and the Secretariat of IberRed ordinary usually attends EJM meetings but this is not enough to create links between the competent authorities of the countries. The proposal tries to enlarge the mutual participation in networks' meetings of "operational" authorities.

In addition to the remarks to improve the efficiency of the MoU between Eurojust and IberRed, an open discussion should be launched as regards the need to amend the MoU to allow the exchange of operational information not involving personal data. Pursuant to art. 7.2 of the MoU the exchange of information will not include the transmission of operational information, including data relating to an identified or identifiable natural person. If Eurojust and IberRed are to co-operate and work together in the fields of their shared competences in international judicial co-operation in criminal matters as set forth in art. 3.1 of the MoU, the exclusion of the possibility of exchanging operational information is clearly hampering that purpose, since most of the requests received from both sides (National Members and IberRed contact points) entail in a way or another practical operational information related to concrete mutual legal assistance or extradition requests.

IberRed is a judicial cooperation network with a broad scope of competences due to the fact that it includes both civil and criminal matters and involves all the actors engaged in judicial cooperation: Prosecution Services, Judiciary, Ministries of Justice and central authorities (the latter could be entrusted to any of those three institutions). In addition, any other judicial or administrative authority deemed to have competences in the field of judicial cooperation can also be part of IberRed. Prosecution Services, Judiciary and Ministries of Justices of each country should designate at least three contact points. IberRed operates in two different divisions, one in charge of civil matters and the other one in charge of criminal matters.

On the other hand, [REMJA](#) represents a networking platform which includes just central authorities (except Cuba) and to establish some contact with this network will also be an interesting way to improve mutual confidence.

Finally, in relation to the Caribbean area and Cyprus, Malta and UK, [CNCP](#) may play this active role.

7.2. Checking over the role-developing by contact points

Dealing with EU – LAC countries MLA in DT cases, it is important not only

to strengthen the institutional position but also the practical and operational capability of networks and contacts points. It's important to point out the wide possibilities offered by the [Memorandum of Understanding](#) signed by [IberRED](#) and [EJN](#). Taking into account the practical aims of this MoU it is necessary to proactively the complementary task and functions that prominent contact points should play in relation to drug-trafficking offences. This could be in accordance with the considerations remarked on in the conclusions contained in point 19 of the operational approach, and when necessary promoting contact points in day to day casework.

7.3. Eurojust Liaison Magistrates in third countries

The benefits of liaison magistrates, prosecutors and police officers are proven. Experience shows that these on-site agents promote faster and more useful MLA than is usually possible using traditional at-distance dealings. Additionally they play an important role in overcoming inter-legal systems' obstacles (substantive, procedural or attitudinal).

There is a legal basis for this action since the [Eurojust Decision](#)¹⁶⁶ allows the possibility of posting liaison magistrates for the purpose of facilitating judicial cooperation with third countries from 2009 onwards.

The Eurojust Decision limits the possibility of posting Eurojust liaison magistrates to third States with which Eurojust has concluded a cooperation agreement.

In the near future, Eurojust could establish contacts aimed at exploring the possibility for future cooperation agreements with Latin American countries, in particular Brazil, Colombia and Mexico. These countries should be regarded as outstanding drug trafficking hubs, although the number of Eurojust cases involving them is very low (almost inexistent in the case of Mexico), a circumstance in need of consideration; awareness should be raised towards the fact that Mexico is one of the most important drug trafficking highways worldwide. Eurojust priorities as regards third States for 2013 include establishing contacts aimed at exploring possibilities on future cooperation agreements with Latin American countries, in particular with Mexico and Brazil. The findings of this study could provide Eurojust with new data in order for Eurojust to consider the inclusion of other countries in the list of priorities: As could be the case of Colombia, Peru or Surinam.

Eurojust has designated contact points in 29 different third States, but

¹⁶⁶ Article 2.3 and article 27a of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, amended by the [Council Decision 2009/426/JHA](#) of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime.

only two LAC countries belong to this list: Argentina and Brazil. Eurojust should take proactive action towards the designation of contact points in other relevant countries in this region, taking into account that it has opened many more cases relating to some of these countries than to a number of the third States included in the current list.

8 💡 Promoting using of IT

Long distance legal cooperation between EU – LAC countries requires adapting their competent authority organisations (legal frameworks and methods) to the Information Society of XXI century. States can no longer ignore this situation.

This is a critical issue which affects not only central authorities and the transmission of requests but all the stages of cooperation. It is a strategic point which affects the quality of cooperation from several approaches:

- Fulfilment of procedural periods and minimising delays (i.e. extending electronic communication to all stages of the request);
- Being instrumental in bringing better quality of assistance (i.e. judges and prosecutors have online access to the long distance hearings by means of internet video links);
- Assuring effectiveness and legal viability of certain types of evidence (i.e. interception of communications or monitoring communications on a real-time basis, exchange of DNA materials or electronic data);
- Use of already existing tools of secure communication systems as Iber@ that has given access not only to its members but also to Eurojust and has offered access to EJN;
- Trying to find solutions for urgent cases, such as allowing for the electronic transmission of requests via a secure communications system which provides legal validity.

The Requesting and Requested States should determine among themselves how to ensure the authenticity and security of such communications and electronic exchange of information, when possible using VPNs or a recognised electronic signature. In this sense, the last CELAC-EU Judicial Summit¹⁶⁷ in January 2013 proposed *that the competent authorities recognize the validity of electronic communications in the judiciary, especially with regards to the transmission and reception of urgent requests for international judicial assistance, also promoting the utilization of technologies to simplify and speed up such requests, without disregard to the need for adequate measures to ensure the integrity, security and reliability of said transmissions.* A remarkable good practice to be taken into account is

¹⁶⁷ 1st CELAC-EU Judicial Summit, Chile, 10th and 11th January 2013, Common Principles for Judicial Cooperation of the *Declaration of Santiago*.

that developed by the [HCCH](#) for international and secure circulation public documents under the [Apostille Convention](#) of 1961 (the e-Apostille Program).

Nevertheless, any implementation should be balanced with taking into account the proportionality and efficiency principles in order to focus on the end-result rather than on the method.

General approach

9 Enhancing effectiveness of existing international cooperation legal framework (treaties on extradition, MLA & others type of related requests)

Before considering the drafting any new legal instruments, a first conclusion in this area is the approach to be taking when tackling existing (or future) treaties: enhancing the effectiveness of the international cooperation legal framework should be seen as a combined intercontinental legal strategy. This implies the necessity of taking into account the possibility of several international legal instruments at the same time and for the same areas: bilateral treaties, worldwide multilateral such as UNTOC or the Vienna Convention, accession to existing regional international Conventions, accession to existing regional international instruments such as the [European Convention on Mutual Assistance in Criminal Matters of 1959](#) or the [Inter-American Convention on Mutual Assistance in Criminal Matters](#) of 1992¹⁶⁸, or finally the putting into place of a tailored intercontinental EU - LAC agreement.

The [Inter-American Convention on Mutual Assistance in Criminal Matters](#) of 1992 and its optional Managua Protocol of 1993 allow for the possibility of third parties who are not members of the OAS joining the Convention. The framework includes multilateral agreements in the Americas, including North, Central, and South America, and although it allows for the accession of States in these terms, it does not expressly preclude a party or signatory from having another legal form. In this sense, the European Union has signed bilateral agreements with the US and Japan in these areas as a “Contracting Party”. The new articles of the Treaties of the European Union and the Treaty on the Functioning of the EU allow the conclusion of Agreements with International Organisations, where the Treaties so provide, if permitted by a binding legal act of the Union, if necessary to achieve one of the Union’s objectives, or if likely to affect common rules or alter their scope. Such

¹⁶⁸ Both regional conventions allow the possibility of accessing for third countries. Although no EU MS has signed the [Inter-American Convention on Mutual Assistance in Criminal Matters](#), one LAC country, as mentioned with Chile, has acceded to the [European Convention on Mutual Assistance in Criminal Matters of 1959](#).

Agreements are binding upon the institutions of the Union and on its Member States. Furthermore, the EU may conclude agreements with one or more third party countries or International Organisations to establish an association involving reciprocal rights and obligations, common action and special procedure. (Articles: 216 to 221 of the Treaty on the Functioning of the European Union).

10 💡 Promoting approximation of domestic legislation

There are several areas in which the diversity of national laws hinders LAC-EU international cooperation in the fight against drug trafficking. In this regard, the most relevant issues have to do with the **approximation of legislation** with regard to the following:

- Consolidation of the central authorities. While in LAC the role of Public Prosecutors is ever growing, in the EU there is a certain disparity, there being cases in which non-judicial authorities remain competent in this area;
- Conflicts of jurisdiction, making it necessary to determine in which cases matters are subject to national, international or supranational jurisdictions (e.g. Argentina and Spain);
- Treatment of special investigative techniques, particularly the use of undercover agents, infiltrators, collaborators, and wiretapping, for which there are no common or general standards, (e.g. Brazil, Colombia, or Spain);
- Treatment of transnational evidence in drug trafficking crimes and money laundering, national legislations establishing different systems of guarantees, particularly with regards to gathering evidence, (expert analysis, warrants and searches, arrests, informants, or collaborators).
- Transnational investigations into real estate. In some LAC countries, like Colombia, non-criminal actions exist to confiscate assets in money laundering investigations. Problems exist in recognising such actions in judicial systems that require that the nature of these instruments be purely criminal.

11 💡 Tailored and comprehensive approach towards the whole range of needs in DT cooperation, particularly in serious DT

As noted, there is an interdependence between the different legal international instruments dealing with extradition, mutual legal assistance, transfer of prisoners, confiscation, recognition of foreign judgments, transfer of proceedings and transfer of prisoners that must be taken into account by policy makers. Besides, and in addition to the conclusion included in point 9, the complex nature of mutual legal assistance in drug-trafficking or organized crime related to DT, particularly when dealing with large-scale drug offenders, deserves a new and tailored legal approach instead of generic MLA and Extradition agreements. In relation to legal cooperation and assistance several

factors should be taken into consideration in this area:

- Preference or compulsory “fast-track” given to MLA and extradition requests related to serious DT cases from central authorities;
- Promoting efficiency by eliminating or minimising the use of grounds for refusal and limitations;
- Specific provisions for urgent cases, such as allowing for direct transmission of requests between competent authorities regardless of the need to send the original hard copies simultaneously. Promotion of alternatives to formal requests and spontaneous exchange of information;
- Legal solutions to conflicts of jurisdictions including provisions on the transfer of proceedings and joint investigation teams;
- Making more feasible the recovery of assets and proceeds of DT using creative solutions such as asset sharing between the Requesting and Requested countries or giving choice to the competent authority to seek confiscation within the MLA criminal requests;
- Allowing and promoting complementary direct contact between competent authorities throughout all the request process, (issuing, receiving, executing and central authorities);
- Provisions allowing expeditious interception, including where telecommunications gateways are located in the territory of the Requested State, but are accessible from the territory of the Requesting State;
- Provision of assistance in computer crime investigations, including:
 - expeditious preservation of electronic data;
 - expeditious disclosure of preserved traffic data;
 - allowing the monitoring of electronic communications on a “real-time” basis.
- Allowing the use of ‘real-time’ tracking of banking information and the use of accounts.
- Allowing the use of IT for transmitting and providing MLA, according with the availability of involved authorities.
- Allowing in a feasible way efficient measures against DT such as controlled deliveries, undercover agent or spontaneous exchange of information.

12 💡 Permeability to cooperation of existing international legal instruments

The vast majority of bilateral international legal instruments still contain important grounds for refusal and requirements which in day-to-day casework may be interpreted as boundaries to feasible judicial cooperation.

Taking into account the indicators used in this Study, the following legal obstacles can be identified as needing to be minimised in relation to MLA: dual criminality rule; public policy or specialty principle. Regarding Extradition:

- Relaxing or eliminating the principle non-extradition of nationals;
- Simplifying the dual criminality rule by introducing the punishable test;
- statute of limitations periods that have elapsed;
- political offences and procedural or formal deficiencies in the requests;
- limitation regarding trials in absentia

13 💡 Enhancing alternatives to extradition

Extradition is a costly process that should be carefully considered by competent authorities. If appropriate, taking into account the entirety of the case, the judicial authority could evaluate whether it would be advantageous to transfer the proceedings to another jurisdiction which was in a better position to prosecute, before going on with the investigation or proceeding. When there is no legal basis for transferring the proceedings some MLA conventions allow the laying of information in connection with proceedings in another State.

Deportation is sometimes a viable option where an extradition request would not be accepted. This will depend on the legal status of the “requested person” in the state where he is located. In any event, it is recommended that channels of communication are opened up between the two states to explore the viability of a request or any alternatives.

A new legal approach to extradition should minimise grounds for refusal. But when in any case an extradition request is not successful, namely in cases where the person cannot be extradited, it is crucial to reinforce the operability of the principle *aut dedere aut iudicare* (extradite or prosecute), overcoming the problems arising from the fact that the crime was not perpetrated in the State where the suspect resides through the exchange of information and fast-track MLA.

Finally, within a broad interdependent cooperation concept as noted above, the transfer of prisoners or sentenced persons may be considered as a final alternative to extradition, once the trial process has finished.

14 💡 In order to prosecute successfully international organised criminal gangs it is necessary to find ways to concentrate investigations and proceedings in one sole jurisdiction

Mechanisms to push the solution forward during the investigation are needed. There is no single solution, but rather this must be approached from different angles. In this sense, the promotion of coordination meetings between relevant authorities, with the use of International Letters Rogatory (LoR) to handle this issue with the direct sharing of

information is one possible route. Another possibility would be the transfer of proceedings, with special care in obtaining guarantees for the evidence that will be used and evaluated in a different State. Finally and in addition, the European Convention on the Transfer of Proceedings in Criminal Matters of 1972 could be offered for the accession and signature of LAC countries.

Taking advantage of the capacity and experience of Eurojust, the LAC-EU partnership should promote the establishment of a common coordination mechanism to facilitate cooperation among criminal investigation authorities and coordinate their actions, considering the following resolution criteria so as to focus the process in a single country:

- the place where the major part of the criminality occurred,
- the place where the major part of the loss was sustained,
- the location of the suspected or accused person and possibilities for securing its surrender or extradition to other jurisdictions,
- the nationality or residence of the suspected or accused person,
- significant interests of the suspected or accused person, significant interests of victims and witnesses, the admissibility of evidence or any delays that may occur.

Eurojust could play an important role in facilitating the identification of parallel investigations in the EU and LAC region as well as assisting with the communication between the judicial authorities involved. This role should also include the possibility of providing at the request of one or more of the judicial authorities involved, an opinion on which jurisdiction should eventually be chosen to lead investigations and/or to prosecute the case with respect to specific suspects.

15 💡 There needs to be a strengthening of the domestic legislation in the LAC Region with regards to data protection

The European Union has set itself the objective of maintaining and developing the Union as an area of freedom, security and justice in which a high level of safety is to be provided by common action among the Member States in the fields of police and judicial cooperation in criminal matters. When personal data obtained in police and judicial investigations is transferred from a member state to a third party state or international body, it must, in principle, benefit from an adequate level of protection.

The bolstering of domestic legislation in LAC in MLA and Extradition, in this particular aspect, is necessary and must meet minimum standards of protection in the future.

The use of information or evidence under Article 25 of the Inter-

American Convention on Mutual Legal Assistance in Criminal Matters is not sufficient for these purposes. Bilaterally, the [Additional Protocol](#) to the Colombia-Spain Judicial Cooperation Agreement of 2005 does incorporate adequate standards that can serve as a future model in signing other bilateral or multilateral agreements in this field, whereby Article 12 protects data of a personal nature in a broad sense.

16 💡 Stronger approach towards assets recovering in DT

Asset freezing, confiscation and sharing is a complex area of law in the domestic arena and especially so with regards to international cooperation. There are acute differences between jurisdictions with regards to procedure and legislation, and also there are conflicts which arise through the existence of civil procedures in certain countries and the ability or not of enforcement abroad. Approximation and harmonisation of legislation in this area would add value, as would virtual training programmes for judicial players, and enhanced communication between states and dissemination of knowledge.

Operational approach

17 💡 Preparing cooperation requests in DT

17.1. Evaluating alternatives to formal MLA

MLA is not always the most appropriate way to obtain certain information related to international investigation or procedural outcomes. When considering issuing an international MLA request in DT, prosecutors and judicial authorities from EU MS and LAC countries should be trained in and be aware of the advantages of issuing alternatives to formal MLA requests. Indeed, as has been noted, except for coercive measures and special investigative techniques requiring judicial authorisation –such as search and seizure, confiscation or obtaining of evidence from unwilling witnesses - a formal MLA request will not always be necessary to obtain assistance from other States.

Access to information related to the identity of citizens, societies, assets and enterprises is crucial for DT investigations. However, obtaining this information by formal assistance requests significantly delays the beginning of investigations and provokes failures and inefficiency. Whenever possible, information could initially be sought through police channels (police-to-police contact) or financial intelligence units, which are more flexible than the formal MLA route. Interpol or channels such as IberRed may be used to obtain evidence given voluntarily (such as statements by means of videoconference), or evidence from public records or other publicly available stored on the internet or in other repositories of public records.

Additionally, another alternative to formal MLA requests is to rely on consular communications for soft assistance measures; some countries utilise their consulates to obtain evidence, statements or information regarding particular investigations or judicial proceedings.

Also spontaneous exchange of information through liaison officers should be considered as a faster alternative, (i.e. obtaining information about previous investigations or judicial proceedings in other State). In support of the above, central authorities and IberRED contact points would give advice to requesting authorities about these possibilities.

17.2. Preparing effective requests

Preparation of a request involves consideration of a number of sensitive requirements, i.e. the convention and provisions applicable (whenever possible), domestic law, requirements of the Requested State, translations or the drafting of the request.

There are some factors which contribute to the desired end-result: completing the request using informal¹⁶⁹ or compulsory forms¹⁷⁰ of requests (lessons learnt by the EU are relevant¹⁷¹), being very specific in presentation, linking the existing investigation or proceedings to the assistance requested, specifying precisely and clearly the assistance sought and focusing on the end-result and not so much on the methodology to be followed. Additionally, if the convention allows for the *forum regit actum* principle and if it is necessary for the use of the evidence in later procedural stages, the issuing competent authority should indicate expressly and clearly the formalities and procedures to be followed by the enforcement authority, (a translation of domestic criminal law may not be sufficient). As noted¹⁷², *"In fact, the greater problem often is not differences in legal systems, but misunderstandings about those differences. In many instances, differences in systems can be overcome if both States make a concerted effort to carefully and fully explain the niceties of their laws to each other Equally important, States should make inquiries about the other country's legal systems whenever*

¹⁶⁹ In 2006, UNODC globally deployed the Mutual Legal Assistance Request Writer Tool, which assists criminal justice practitioners in drafting correct and effective mutual legal assistance requests, thereby significantly enhancing international cooperation between States. The Mutual Legal Assistance Tool can be downloaded for use from a secure UNODC website (<http://www.unodc.org/mla>).

¹⁷⁰ Legal practitioners pointed out the lack of model forms or other tools for MLA as a relevant problem to solve.

¹⁷¹ [EJN Compendium](#) web tool has been extended among European judicial authorities as good practice to create letters of assistance.

¹⁷² Source: Bernard RABATEL, "Legal challenges in mutual legal assistance", in Denying Safe Haven to the Corrupt and the Proceeds of Corruption: Enhancing Asia-Pacific Cooperation on Mutual Legal Assistance, Extradition and Return of the Proceeds of Corruption—Capacity-Building Programme, Asian Development Bank (ADB)—Organization for Economic Cooperation and Development (OECD) Anti-Corruption Initiative for Asia and the Pacific (Manila, ADB; Paris, OECD, 2006), p. 39, quoted in UNODC Manual.

there is a doubt."

At this stage it is important to evaluate in advance the legal and practical viability of applying for a video-link or videoconference. Additionally, central authorities and mainly networks contact points should play an important role proactively helping local authorities and making advance contact with their counterparts in the Requested State before sending the request. This is a proven way of smoothing the path.

18 💡 Issuing a request from Requesting State

18.1. Good practices

Prosecutors or judicial authorities should be aware of the importance of keeping a digital or scanned copy of the request.

Issuing the request with a digital or paper cover note can be extremely useful in order to provoke an immediate acknowledge of receipt from the Requested State's central authorities. Central authorities should assure that the telephone, fax and e-mail contact details of the requesting prosecution or judicial authority are included in the request.

When dealing with DT cases, central authorities should make use of modern means of communication to transmit requests for MLA such as the Internet or fax. The use of VPN's or e-mail with electronic signature is highly recommended but it should be balanced taking into account overall efficiency.

18.2. Direct contact with Requested authorities

MLA reports have stressed the importance of personal contacts for opening communication channels and for developing the familiarity and trust necessary to achieve best outcomes in MLA. Therefore, from this preliminary stage it is highly convenient in complex DT cases to confirm the practical viability of draft requests in advance by previous informal contact. This can be done by issuing central authorities with other central authorities' or relevant network contact points' details.

Where there is a particular need for speed or the complex nature of the measures required (i.e. interception of communication) dictates, issuing and central authorities should send informal copies to a contact point in the Requested State in advance.

19 💡 Executing request in the Requested State

19.1. Acknowledgement of receipt

All conventions should foresee as a compulsory issue an immediate

response from the receiving central authorities giving confirmation of receipt to the requesting central authorities, even before examining in detail the legal and practical viability of the request.

Secondly, receiving central authorities should consider the possibility of adapting their internal organisation in order to adopt a singular treatment or a 'fast track' system for serious DT related requests.

Additionally, once the formal request has been accepted and forwarded to the competent enforcement authority, the receiving central authority should send the issuing central authority information about the development of the request and contact details (telephone and e-mail) of the prosecutor or executing judicial authority. This point can be crucial in DT complex cases since it promotes direct informal contact and allows monitoring of the course of the request.

19.2. Interpreting legal impediments and limitations flexibly

A teleological interpretation of the Vienna and Palermo instruments and many bilateral conventions which foresee provisions in MLA in DT cases leads to the conclusion that States should strive to provide extensive cooperation to each other, in order to ensure that national enforcement authorities are not restricted in pursuing drug-trafficking offenders who usually seek to shield their actions by scattering evidence and proceeds of crime in different countries.

Therefore competent authorities are compelled to interpret extradition requests and letters rogatory according to the aforementioned *favor commissionis* principle, i.e. liberal interpretation in favour of cooperation and improving procedural flexibility. This implies the necessity to eliminate unnecessary formal prerequisites and to minimise legal grounds for refusal.

Future modern international legal instruments adapted to the DT cooperation should consider the whole range of permeability indicators that ensure smoother and more effective cooperation. The case of the dual criminality rule is particularly relevant as it is an important factor which hinders permeability to assistance in many conventions. New conventions-to-be should eliminate the application of the principle, in particular where it is a mandatory pre-condition. Additionally, the traditional principle which implies that evidence transmitted in response to a MLA request may not be used for purposes not described in the request unless the Requested State expressly consents to the other purposes (specialty or speciality principle), should be reviewed since if the limitation is not deemed necessary, it should not be imposed. As good legal practice, many bilateral conventions do not refer at all to this restriction, or they require the Requested State to inform the Requesting State that it wishes to impose a specific use limitation. Another modern

approach is the one chosen by later EU and [Council of Europe](#) MLA instruments ([Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union](#) of 2000 and [Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters](#)), whereby the Parties have agreed upon a broad list of uses to which the evidence may be granted without requiring the Requesting State to obtain consent in each instance.

Any limitation or ground for refusal should be invoked rarely, and only when absolutely necessary. With regards to good legal practice those provisions in many international agreements seeking the best viability of requests should be taken note of; i.e. consulting before refusing or postponing or imposing conditions on cooperation to determine if such measures are necessary. Where the central or enforcement authority considers that it is unable to execute the request or it is not possible to do it within the indicated procedural deadline, formal refusal should not be given before consulting the requesting central authority (or issuing judicial authority if possible) to see if the impediments can be overcome or the request modified to enable assistance to be given¹⁷³. In any event whenever it is not possible to overcome the problems, reasons should be given for the refusal.

19.4. Execution procedure

As mentioned in the Main Findings section, the failure to comply with the Requesting State procedures (*lex fori*) often makes it impossible to use the evidence in the proceedings in the Requesting State. Where mutual assistance is afforded, the requested State should comply with the formalities and procedures expressly indicated by the requesting authority.

Additionally, all considerations noted in the previous point (19.3) about flexibility should be taken into account by enforcement authorities in order to avoid terms of applicable laws and treaties being applied in an unduly strict way that impedes the assistance.

A good practice for urgent DT cases to be followed by prosecutors, investigators, judges and courts' officials is to maintain direct contact throughout all stages of the request. This should be promoted by contact points and central authorities among other legal practitioners.

The possibilities of Eurojust Decision, (article 27b 1), should be exploited in order to extend to DT cases the coordination of the execution of requests for judicial cooperation issued by third States where these requests are part of the same investigation and require execution in at

¹⁷³ Lessons learnt from application of the [Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union](#) are very positive (article 4.3 and 4.4).

least two Member States.

20 💡 Controlled deliveries and other measures

Controlled delivery is specific form of MLA the high potential effectiveness of which in DT cases is recognised by all legal practitioners. According to the information compiled by UN Secretary General, most of the States signatories of Vienna Convention have provided for the use of controlled delivery in their legislation (in the Americas 87% and in Europe 97% in 2007).

Conventions should foresee this measure as widely and flexibly as possible and where possible, national legislations should be harmonised with regards to the competent body for authorisation. Lessons learnt prove that practical difficulties arise even with bilateral conventions providing this specific form of MLA. Solutions to difficulties with casework should be faced up to by the promotion of direct contacts between law enforcement authorities. Additionally, applying for a previous or parallel JIT resource can provide an efficient tool for executing controlled deliveries in countries which are conducting simultaneous investigations.

Competent authorities can take into account that if a controlled delivery cannot be carried out, other measures are available, such as following the money trail instead of the drug trail, or using other forms of surveillance. EUROJUST's role by means of coordination meetings involving authorities from LAC countries is crucial for complex cases.

In terms of international cooperation between LAC countries, experience indicates that it is possible to overcome legislative differences and to pursue shared objectives in order to gain the most effective prosecution for transnational drug trafficking crimes. In this sense, the signing of protocols between Argentina-Chile; Peru-Chile; Paraguay-Chile and Spain-Chile, among others, constitute a clear example of the effectiveness and convenience of this investigative technique. The absence of domestic regulation in this special technique, as occurs in Ecuador, is exceptional.

Similarly, with regards to undercover agents, conventions should address the use of foreign undercover agents and their ability to carry out an investigation in a third party country's jurisdiction. Measures such as anonymity (use of pseudonyms) and special measures for protection at trial should also be considered – or the effectiveness of this tool in combating DT crimes is reduced significantly. The figure of the undercover agent as a special investigative technique is found in most of the legislation in LAC countries, except Ecuador, with certain particularities. An important limitation of this figure in LAC is the impossibility of own agents participating in third countries or foreign

countries on its territory, given that most legislations do not allow for it or specifically prohibit it, which can hinder investigations into drug trafficking as organised crime.

21 💡 Interception of communications

When necessary this measure should be made possible by flexible interpretation of conventions. Requesting authorities should evaluate the convenience of monitoring electronic communications on a “real-time” basis.

It is usually convenient for issuing authorities to request that interception be executed according to procedural provisions of the Requesting State (*lex fori*), indicating clearly and justifying to the enforcement authorities the procedural terms required in order to enable the use of the evidence in a later trial. In addition, any other complementary detail to assist the enforcement authority to put the measure into context will be useful in order to smooth the implementation of the measure and to ensure respect for confidentiality and due process.

Again, network contact points should play an important role proactively helping local authorities and making contact in advance, before sending the request, with their counterparts in the Requested State. They should also provide information about the relevant judicial authority’s contact details.

22 💡 Spontaneous exchange of information

As noted previously, formal requirements and prerequisites often significantly hinder overcoming the challenges of MLA in DT cases. When the assistance is needed during the investigation phase, sometimes the spontaneous exchange of information could be an easier and faster way of cooperation. Interpol and network contact points may play important roles in this issue.

Furthermore, when facing the wide lack of ratification of judicial cooperation instruments an alternative way to accomplish the same results is using the other international cooperation instruments available, such as the provisions on spontaneous exchange of information in article 18 of the Palermo Convention. Therefore, spontaneous exchange of information may also constitute a substitute function worthy of consideration by prosecutors.

Virtual Private Networks, (VPNs) such as the *Groove* or the *Iber@* can be extremely useful from an intercontinental operative approach.

23 💡 Joint Investigations Teams

As mentioned some bilateral conventions and multilaterals such as the Vienna and Palermo Conventions (articles 9.1 c) and 19, respectively), foresee the possibility of joint investigation teams. Although, JITs are a formidable tool for judicial cooperation against DT, no experience has been reported in field missions. Indeed, before setting them up it is necessary to consider the efficiency principle. A JIT should not be established without a shared commitment to its operational efficiency.

However, awareness of JITs as a positive tool and the advantages of its use must be promoted since JITs may bring particular benefits to multilateral DT cases where coordinated work over time is essential. LAC and EU States situated on significant drug trafficking routes should consider establishing joint teams of prosecutors dealing with drug trafficking and organised crime. Attitudes arising from legal and culture differences should be overcome in order to encourage their sensitive operative functions.

Discussion should take place about the creation of a JIT at an early stage of the investigation as possible. When evaluating whether to establish a JIT Eurojust's role can be crucial. Although the current Eurojust legal framework, unlike the case of Europol, does not provide for the possibility for Eurojust staff to be entitled to participate in a JIT (pursuant to art. 9f of the Eurojust Decision, only National Members, Deputies or Assistants are allowed to participate in a JIT either as a national authority or on behalf of Eurojust), the participation of a Eurojust liaison magistrate posted to a LAC country would be of paramount added value, provided an international legal instrument at bilateral or bi-regional level allows for the setting up of a JIT with a third State. Europol and Interpol may play a more relevant role in this issue.

24 💡 Using of model forms and translations

Many States have developed model forms, guides or manuals on how to make requests for both mutual legal assistance and extradition. Besides the model convention published as an annex to UN General Assembly Resolution 45/117, UNODC deployed the previously mentioned [Mutual Legal Assistance Request Writer Tool](#). This requires prior authorisation before it can be downloaded. However legal practitioners still remark on the need of model forms as one of the main obstacles to cooperation.

It is necessary to link model forms to legal instruments addressed to judicial issuing and executing authorities rather than central desks. Compulsory forms which are given consideration and form within the convention may be an efficient solution taking into account the lessons learnt from EU civil and commercial regulations.

To that end, endorsed model forms supported on websites could permit

automated translation of predetermined areas of the recognised LoRs. On the other hand, with regards to the subject matter and detail contained within the LoRs and extradition requests, every effort should be made to engage the services of a translator who is well versed in legal terminology and who can accurately translate the contents of the request into the language of the requested State.

25 💡 Cooperation in relation to asset recovery and sharing

Domestic legislation exists in most LAC countries to facilitate the seizure and forfeiture of crime-related assets. No data was available regarding information sharing in this area between CARIN (Camden Asset Recovery Interagency Network) within the EU, and the IberRed network in LAC. The EU Commission Communication of 20 November 2008 called for the development of close international cooperation on confiscation issues not only within the EU, but also with third countries, hence the LAC region.

Insufficient focus is placed on asset recovery and asset sharing as a tool to combat DT organised criminality. States should be encouraged to engage on an extensive training programme of specialist prosecutors and judges on the subject of asset recovery and asset sharing. Consideration should be given to more extensive use of Eurojust and the inclusion in coordination meetings of third states from the LAC region, as well as consideration of the spontaneous exchange of information relating to financial investigations.

This area of law is especially complex, and even more so when applied to the international arena – enhanced and continued communication between the investigators and the central authority would assist in identifying issues and speeding up requests. It is notable that the REMJA working group which met in Ottawa in September 2007 issued a document, '[Proposed Best Practices with respect to the Gathering of Statements, Documents and Physical Evidence, with respect to Mutual Legal Assistance in relation to the Tracing, Restraint \(Freezing\) and Forfeiture \(Confiscation\) of Assets which are the Proceeds or Instrumentalities of Crime and Forms on Mutual Legal Assistance in Criminal Matters](#)'. This is a set of non-binding guidelines for member states and includes forms to be used in MLA cases, and general recommendations for the drafting of MLA requests in the area of confiscation, restraint and asset sharing.

The issues related to the Asset Recovery Laws are two-fold: on the one side there is a need to raise awareness among European practitioners of the possibilities provided by these legal instruments and, on the other, there is a need to approach judicial cooperation taking into account the particularities of these laws, which do not fall within the criminal jurisdiction. A tailored approach is needed to tackle mutual legal

assistance requests issued in the context of these investigations since assistance is unlikely to be afforded within the current international legal framework.

26 💡 Reinforcement of procedures for the protection of witnesses and enforcement authorities

With regard to the investigation of drug trafficking and the laundering of money derived from drug trafficking in the LAC region, and in view of the levels of violence associated with this criminal activity, the protection of witnesses and those who cooperate with justice in its various forms (as witnesses, informants, collaborators, reformed criminal) is a very important matter, just as is the protection of public officials who engage in combating this criminal phenomenon. This is not about criminal activity directly aimed at the lives or physical or mental integrity of persons, as the aim is to protect public health and good socio-economic order, legal assets that are more diffuse and difficult to protect. However, drug trafficking generates, as has already been evidenced in the Report, intolerable levels of violence and threats to public safety, as well as to citizens in general. International relocation of witnesses and victims should be considered as an appropriate way to reinforce protection by distancing them from the potential threat.

One of the difficulties observed, as evidenced in the AIAMP Manual of Best Practices and AIAMP [Santiago Guidelines on Victim and Witness Protection](#)¹⁷⁴, is the scarce operability in some countries of specialised units responsible for protecting these types of witnesses. In addition, there is an absence of regulation on special protection measures in some legislation to be able to allocate this protection at any procedural phase or stage. Basic and general protective measures in these cases must consist of: safeguarding the identity and address, the giving of pre-trial evidence, changing the identity of and physically relocating the witness, as well as intra-prison protection, when appropriate.

On the other hand, with regards to the special protection of the competent public authorities in the fight against these criminal activities, some LAC countries have already implemented internal regulations aimed at establishing a minimum standard of protection, like El Salvador, where there is even a law called the Law of Protection of Persons Subject to Special Security that covers authorities and officials in these cases.

¹⁷⁴ AIAMP [Santiago Guidelines on Victim and Witness Protection](#), pages 27 and 28, point 5 on International Cooperation.

7.2. Key Conclusions

As an outcome from the other sections, this section includes the Key Conclusions and considerations proposed by the research team to be taken into account by competent authorities and pondered by policy makers.

The section has been divided into two – operational Conclusions and legal Conclusions. As above-mentioned in the introduction to the Conclusions, these Key Conclusions are offered in the spirit of suggestions, ideas for improving the pertaining situation, which although functional clearly exhibits areas where there is room for improvement and increased efficiency resulting in more successful prosecutions and a lessening of DT crime in both the LAC and EU areas.

A) Operational Conclusions

Central authorities should be staffed with practitioners serving the posts on a permanent or a continuous basis. Where central authorities are integrated by prosecutors, examining judges or acting practitioners they are in a better position to implement their functions. In any case, they should be legally trained and have developed institutional expertise in the area of MLA and extradition. In addition, the existing inter-American and intercontinental contact point networks are not exploited sufficiently from both sides of the Atlantic, (see Main Findings 21 – 25).

Long distance legal cooperation between EU – LAC countries requires adapting their competent authority organisations (legal frameworks and methods) to the Information Society of XXI century. States can no longer ignore the strong relationship between the promotion of IT resources and the efficiency of cooperation, (see conclusion 8).

Therefore, the following KEY CONCLUSIONS related to operational issues are proposed:

- a.** EU programme to strength institutional and legal capability of central authorities.
- b.** To evaluate a project of a register of cooperation requests allowing a more efficient statistical system for central authorities.
- c.** Creation of the figure of the “Eurojust Liaison Magistrate” to be posted in competent authorities of selected LAC countries along significant drug trafficking routes, (see conclusion 7.3).
- d.** To enhance the position of liaison officers posted in LAC countries along significant drug trafficking routes.

- e.** To strengthen and extending existing MoUs (IberRed - Eurojust and IberRed - EJN) and to study the possibilities to contact with REMJA for further exploring areas of common interest and future cooperation.
- f.** To promote the access to Iber@ by European Judicial Networks contact points and other Caribbean countries.
- g.** To study programmes for the temporary exchange of central authorities' personnel and anti-drug prosecutors between EU - LAC key countries.
- h.** To develop e-training programs for prosecutors, judges and judicial officers involved with DT cases. E-learning methods permit to combine on line courses with short -time seminars or workshops.
- i.** To elaborate a compendium of e-books, handbooks and practical guides on international judicial cooperation.
- j.** To create a Web compendium of international legal instruments on extradition, mutual legal assistance, transfer of prisoners, transfers of proceedings between LAC and EU countries, according to the existing good practice¹⁷⁵ tools.
- k.** To create a Manual of Cooperation between EU - LAC countries on DT cases including practical guides on specific measures, following UNODC good practice.

B) General framework

Whilst there is an extensive legal framework in existence in terms of both national legislation and international treaties and conventions, there is a tendency among LAC countries to favour regional or bi-lateral treaties in place of the Vienna or Palermo Conventions. It is also correct that the vast majority of bilateral international legal instruments still contain important grounds for refusal and requirements which in day-to-day casework may be interpreted as boundaries to feasible judicial cooperation.

On the other hand, multilateral instruments, such as the Vienna and Palermo conventions, foresee relevant provisions in MLA and extradition in DT related cases which represent a good base for judicial cooperation with the EU MS. They are a good base, but not sufficient for the challenges to be faced up to

¹⁷⁵ Among others, the *Guide de l'entraide* (via Intranet for competent authorities) developed by the French *Ministère de la Justice* or the Web tool PRONTUARIO or Cooperation e-handbook put in place by the Spanish competent authorities: www.prontuario.org.

in serious DT cases. Legal practitioners and judicial authorities tend frequently to apply the Vienna Convention and bilateral agreements relying on an excessive formal interpretation (see main finding 26). In addition, this study reveals the extent to which there are several areas in which the diversity of national laws hinders LAC-EU international cooperation in the fight against drug trafficking. States should strive to provide extensive cooperation to each other, in order to ensure that national enforcement authorities are not limited in pursuing drug-trafficking offenders who usually seek to shield their actions by scattering evidence and proceeds of crime in different countries, (see Main Findings 06 and 07).

Furthermore, competent authorities should be encouraged to interpret extradition requests and letters rogatory according to a more liberal interpretation in favour of cooperation and improving procedural flexibility. This implies a need to eliminate unnecessary formal prerequisites and to minimise any legal grounds for refusal.

As noted, when considering the drafting any new legal instruments, one conclusion is the approach to be taken when tackling existing (or future) treaties: enhancing the effectiveness of the international cooperation legal framework should be seen as a combined intercontinental legal strategy. This implies the necessity of taking into account the possibility of several international legal instruments at the same time and for the same areas: bilateral treaties, worldwide multilateral such as UNTOC or Vienna Convention, accession to existing regional international Conventions, accession to existing regional international instruments.

Finally the possibility of putting into place of a tailored, stronger and binding intercontinental EU - LAC agreement should not be excluded. There is an interdependence between the different legal international instruments dealing with extradition, mutual legal assistance, transfer of prisoners, confiscation, recognition of foreign judgments, transfer of proceedings and transfer of prisoners that deserve to be taken into account by policy makers. In this sense, it might be considered of advantage to draft a specific instrument which encompasses all the relevant clauses relating to the different areas of cooperation and which contemplates the most modern and expeditious modes of cooperation and communication.

Therefore, the following KEY CONCLUSIONS related to the general framework are proposed:

- I. Evaluation of the accession to existing MLA or extradition regional conventions should be considered. This is the case of the European Convention on Mutual Assistance in Criminal Matters of the [Council of Europe](#) 1959 and specially its [Second Additional Protocol](#), legal instruments already ratified by certain LAC countries: i.e. Chile. On the other hand, certain EU countries (or the EU) could study the convenience of accession as third

State to the [Inter-American Convention on Mutual Assistance in Criminal Matters](#) 1992 (see conclusion 9).

m.

Future bilateral or multilateral legal instruments could tackle the issue of how to give added value to the current intercontinental EU – LAC legal framework in relation to DT.

Tailored agreements for DT might include provisions based upon these Conclusions, particularly the paragraphs included in the “legal approach” and in the “operational approach”, (Conclusions included in points 11 to 26).

Among others, any considered convention could include binding provisions in relation to:

- Endorsing obligatory official model forms for the requesting authorities (see conclusion 24);
- Foreseeing an appropriate level data protection provisions;
- Incorporating compulsory alert systems and priority-track for serious and urgent drug-trafficking cases from central authorities;
- Including immediate response from the receiving central authorities giving confirmation of receipt to the requesting central authorities;
- Promoting efficiency by eliminating or minimising the use of grounds for refusal and limitations;
- Extending as a general principle the execution of requests in accordance with procedures foreseen by the Requesting State’s law;
- Exploring legal solutions to conflicts of jurisdictions including provisions on the transfer of proceedings and joint investigation teams;
- Making the recovery of assets and the proceeds of DT crime more feasible using creative solutions such as asset sharing between the Requesting and Requested countries or giving choice to the competent authority to seek confiscation within MLA requests;
- Providing for the possibility of affording mutual legal assistance in asset recovery proceedings and non-conviction based confiscation proceedings;

- Promoting complementary direct contact between competent authorities throughout all the request process, (issuing, receiving, executing and processing) and allowing for direct transmission of mutual legal assistance requests between competent authorities in urgent cases;
- Provisions allowing expeditious telecommunications interception, including where the telecommunication gateways are located in the territory of the Requested State, but are accessible from the territory of the Requesting State;
- Specific provisions of assistance in computer crime investigations;
- Allowing the use of 'real-time' tracking of banking information and the monitoring of accounts;
- Promoting the use of IT for transmitting and providing cooperation, in accordance with the availability of the required IT in the involved authorities;
- Allowing in a feasible way efficient measures against DT such as controlled deliveries, undercover agents, joint investigation teams, and fostering the practice of spontaneous exchanges of information, (see conclusions 20 to 22);
- Reinforcing procedures for the protection of witnesses and law enforcement authorities (see conclusion 26).

