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Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

Argentina

1. Introduction: Overview of the legal and institutional framework of Argentina in the context of implementation of the United Nations Convention against Corruption

The Argentine Republic is territorially organized under a federal scheme, in which the provinces that make up the Republic reserve the powers not expressly delegated to the national Government (article 121 of the Constitution). The National Congress has the faculty of establishing criminal offences and sanctions, and their application is reserved, through the codes of procedure, to the provincial authorities (article 75 (12) of the Constitution); each province must establish the way in which prosecution and trial for the offences established in accordance with chapter III of the Convention will be implemented.

At the federal level, the offences covered in the Convention are tried and prosecuted by judges and prosecutors for federal criminal and correctional matters, who are based in the City of Buenos Aires but are also distributed throughout the country. The investigation of the offences begins with a charge made either by a public organ or a private individual, in which case the Public Prosecutor must initiate an action, as the holder of the public right of action in respect of the offence; without this request from the Public Prosecutor, it is not possible for the judge to begin proceedings for corruption offences. Criminal proceedings may also be initiated by preventive activities on the part of the security forces, but this is not usual in the case of corruption offences.

The federal procedural system establishes that the examining judge must direct the proceedings, and it is this judge who may take any measures deemed pertinent for the discovery of the truth (raids, phone tapping, requests for information, etc.). The judge may, at his or her own discretion, delegate to the prosecutors the investigation of these crimes, and may resume the investigation whenever he or she deems convenient. In cases of administrative corruption, there is an entity within the Public Prosecution Service, the National Prosecutor's Office for Administrative Investigations, which also carries out investigations related to acts of corruption and may intervene on a subsidiary basis in any proceeding where the responsible prosecutor considers that there are no grounds to continue the investigation.

The procedural system allows the individual affected by the offence to become a plaintiff in the proceedings, and to suggest measures or appeal any decision that is not favourable to him or her; this role may be assumed either by the public entity affected by the particular case of corruption or by the Anti-Corruption Office, an entity specialized in corruption cases which operates under the Ministry of Justice and Human Rights.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Article 15: The Argentine Criminal Code criminalizes the active bribery of national public officials in articles 258 and 259 (under Law 25,188). The difference between articles 258 and 259 is that, in the former, the person who gives or offers the money, gifts or other promises expects the public official to perform, delay or refrain from performing an act related to his or her duties. In the latter, gifts or considerations are being offered that exceed simple courtesy, considering the function or position of the public agent, but there need be no expectation of a concrete action or omission. The interpretation of the concept of "promise" needs to be clarified. In general, doctrine and case law liken the concept of "offering" — one of the typical actions in the offence of bribery under article 258 — to the action of "promising". It should be noted that an amendment of the concepts of "public official" and "public functions" under article 77 of the Criminal Code is being considered within the framework of a comprehensive reform of the Criminal Code, with the objective of broadening their scope.

The Argentine Criminal Code establishes the taking of bribes ("passive bribery") by national public officials as an offence in articles 256, 257, 259 and 266-268. The difference between article 259 and articles 256 and 257 is that the latter two require that the public official or the magistrate make a corrupt commitment to perform, delay or refrain from performing an act relating to their duties. For the offence to exist it is not necessary that the commitment or agreement be fulfilled — the mere acceptance of the promise or the mere receipt of the money or the gifts suffices. On the other hand, article 259 does not require any action in exchange for the gift, which is only being offered due to the position of the public official.

It is considered that the Argentine Criminal Code covers the offences described in this article.

Article 16 (a): The Argentine Criminal Code criminalizes the active bribery of foreign public officials and officials of public international organizations in article 258 bis. It must be noted that the offence of transnational bribery is drafted following the recommendations of the Working Group on Transnational Bribery of Foreign Public Officials in International Business Transactions (approved by Law 25,319), which operates within the framework of the Organization for Economic Cooperation and Development (OECD). There is no legislative definition of the concept of foreign public official. However, in order to meet the obligations stemming from the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the OECD, on 10 May 2010 the executive branch submitted to Congress a draft law for the amendment of article 77 of the Criminal Code. It is considered that the internal legal system of Argentina complies with this paragraph of article 16.

Article 16 (b): Argentina has no legislation covering the conduct described in article 16, paragraph 2. Nonetheless, it is considered that the concept is covered domestically by the offence of passive bribery provided for in article 256 and related articles of the Criminal Code, and additionally covered by the domestic legislation of countries that punish corruption on the part of their own officials.

Article 18: The Argentine Criminal Code criminalizes active trading in influence in articles 258 and 256 bis, first paragraph, and the passive form in article 256 bis of the Criminal Code. Argentina is in line with the Convention, given that its internal legal system, despite the absence of an obligation under the Convention, criminalizes both active and passive trading in influence.

Article 21: Argentina does not regulate bribery in the private sector as a specific offence. Such conduct may be dealt with on the basis of the criminal offence fraud (articles 172-174 of the Criminal Code). In the cases provided for in article 174, paragraphs 4-6, the convicted person, if a public official or employee, will, in addition to the general sanction, be subject to special perpetual disqualification. In addition, it is noted that article 312 of the Criminal Code, added through Law 26,733 of 28 December 2011, penalizes passive bribery occurring in financial institutions.

Money-laundering, concealment (arts. 23 and 24)

Articles 23 and 24: The information initially provided by Argentina indicated that article 278 of the Criminal Code criminalized any operation in which money or other assets constituting proceeds of an offence in which the person was not involved was converted, transferred, managed, sold, encumbered or otherwise applied, with the possible consequence of giving the original or substituted assets the appearance of being of legal origin, whenever their value exceeded the amount of fifty thousand pesos ($50,000), whether in a single operation or through various interrelated operations. After the adoption of Law 26,683 of 21 June 2011, Argentina provided relevant updated information related to the implementation of article 23. In particular, attention is drawn to article 303 of the Criminal Code, which replaces article 278, repealed by the same Law. Article 303 of the Argentine Criminal Code criminalizes any operation in which a person converts, transfers, manages, sells, encumbers, disguises or otherwise brings into market circulation any assets obtained from criminal activity, with the possible consequence of giving the origin of the original or substituted assets the appearance of a legal origin, whenever their value exceeds the amount of three hundred thousand pesos ($300,000), whether in a single operation or through various interrelated operations. It is worth noting that article 303 of the Criminal Code is drafted in such a manner that the purpose for which the “conversion” or “transfer” takes place is irrelevant. For an offence to exist, it is only necessary for the relevant act to be carried out “with the possible consequence” that the property acquires a legal appearance; in addition, this article introduced by Law 26,683 provides for the criminalization of “self-laundering”.

It should be noted also that article 304 of the Criminal Code provides for the criminal liability of legal persons in the laundering of the proceeds of crime.

The offence of concealment established in article 277 of the Criminal Code covers the second element of the “conversion or transfer” (to evade investigations or legal consequences of acts). That figure also corresponds to the offence of “concealment or disguising” (article 23.1 (a) (ii)).

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Article 17: The Argentine Criminal Code provides for the offence of embezzlement in articles 260-262 and 263. Other forms of diversion of property by a public official are criminalized in articles 172-174. Regarding the benefit for other persons or entities, and in order to avoid evidentiary problems and to achieve greater safeguarding of the legally protected interest, Argentine law ignores the subsequent use that may be given to the embezzled property, and article 261 of the Criminal Code penalizes the mere separation, severance and extraction of the said property from the custody of the public official.

Article 19: Argentine law includes provisions on the abuse of functions in various articles of the Criminal Code concerning negotiations incompatible with the exercise of public functions (article 265), scams and fraudulent administration (articles 172-174), illegal exactions (articles 266-268), abuse of authority and violation of the duties of public officials (articles 248-251), as well as in articles 1 and 2 of the Law on Ethics in the Public Service. This law sets forth the obligations of any person who permanently or temporarily performs a public function at any level or rank, whether chosen by popular election, directly appointed or selected through competition or by any other legal means, and its application is extended to all State magistrates, or officials and employees.

Article 20: Article 268 (2) of the Criminal Code establishes the offence of illicit enrichment. The possibility of prosecution for this offence is not limited to those persons exercising a public function but extends to any other person who, having ceased to exercise such a function, has recently manifested his or her wealth during up to two years of having left the public service (see article 268 (2) of the Criminal Code).

Article 22: Embezzlement in the private sector is established as an offence in articles 173 (7) (Unfaithful Administration), 301 (Fraud in Commerce and Industry) and, after the adoption of Law 26,733, articles 307 to 311 (Offences against the Economic and Financial Order) of the Criminal Code.

Obstruction of justice (art. 25)

Several regulations of the Argentine Criminal Code have the effect of complying with this provision by making it an offence to use intimidation or force against a public official or to use threats, including an aggravation of such criminal conduct when the purpose of the threats is to obtain any concession from the public authorities. Likewise, the regulation of bribery provides for the criminalization of false testimony obtained by bribery. The relevant articles in the Criminal Code of Argentina are 237, 238, 149 bis, 275, 276 and 80, 89, 91 and 92.

Liability of legal persons (art. 26)

The Argentine Criminal Code does not provide for the criminal liability of legal persons in the “General Part” of its articles. This being so, there are no criminal sanctions for legal persons for participation in the offences established in accordance with the Convention, except with regard to article 23, following the adoption of Law 26,683. Criminal liability of legal persons is foreseen in relation to special offences such as laundering of assets of criminal origin (articles 303 and 304 of the Criminal Code, in accordance with Law 26,683), and also to the offences of

misuse of privileged information or securities manipulation in the negotiation, pricing, purchase, sale or liquidation of securities (articles 307-313 of the Criminal Code, Law 26,733). In particular, article 304 of the Criminal Code provides for punishment of the legal person by a fine of two (2) to ten (10) times the value of the property that is the subject of the offence, as well as partial or total suspension of activities and publication of an extract from the sentence at the expense of the legal person, among other things.

Currently there are also various specific regulations governing actions of companies in various fields of economic activity, which provide for the possibility that they may be subject to sanctions of a penal-administrative type (for example in the Customs Code, the Law on Protection of Competition, the Penal Regulations concerning Foreign Exchange, etc.).

The Ministry of Justice and Human Rights has prepared draft legislation which foresees the possibility of incriminating legal persons, and which is being considered by the Criminal Legislation Committee of the National Congress. The draft establishes clearly that the responsibility of the entity is independent of the individuals involved and that sanctions for legal persons may apply even where those who have acted on their behalf or in their representation, interest or benefit are not convicted, provided that the offence itself is proven. The proposed amendment establishes a catalogue of sanctions corresponding to the nature of the entities to which they are to be applied, ranging from a fine which may not exceed 33 per cent of the net assets of the entity to suspension of activities for up to three years, the cancellation of legal personality or the suspension of State benefits, among other sanctions.

Participation and attempt (art. 27)

Article 45 of the Argentine Criminal Code criminalizes the different forms of participation in an offence, while attempting to commit an offence is covered by articles 42 and 44 of the Code. Preparatory actions are not punishable under the legal system of Argentina.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Article 30: Crimes committed against the public administration, which include corruption offences, are sanctioned with maximum penalties, for the most frequent offences, of up to six years' imprisonment. Within the penal scales foreseen for each offence, the Criminal Code determines the applicable guidelines in order for the courts to establish the penalty for each concrete case at the time of issuing a conviction.

Enacted in the year 2000, Law 25,320 eliminates the main obstacle to the investigation or trial of legislators, public officials and magistrates, without prejudice to the rules of the Constitution that prescribe certain immunities for different officials.

The Code of Criminal Procedure does not contain discretionary rules or any principle of opportunity which judges or the officers of the Public Prosecution Service, as holders of the public right of action, can apply in criminal proceedings

once the investigation of any offence under the Criminal Code or any complementary laws has begun.

According to article 3 of Law 25,188 on Ethics in the Public Service, if officials do not, as a prerequisite for remaining in their positions, conduct themselves in accordance with public ethics in the performance of their duties, they are to be punished or removed through the procedures established in the regulations applicable to their function. In addition, the Regulations for Administrative Investigations regulated by Decree No. 467/99 envisage as preventive measures transfer, suspension for a fixed period or suspension for an indefinite period or until a criminal investigation is resolved.

For corruption offences, in addition to imprisonment and/or a fine, provision is made also for penalties of special disqualification, whether perpetual or for a fixed term; or perpetual general disqualification for the offence of illicit enrichment (articles 5 and 19 to 20 ter of the Criminal Code and articles 5 and 6 of the National Public Employment Act (Law, 25.164)). Articles 19 to 20 ter of the Criminal Code refer to "deprivation of public office". The National Treasury Oversight Office has issued a number of opinions regarding the inclusion, within the concept of a public servant, employees and executives of companies with State participation.

Article 37: Argentina has legislation relating to the implementation of article 37, and the matter is currently being considered in the context of a comprehensive reform of the Criminal Code. There is no law or norm that allows for the mitigation of the sentence in line with article 37 (2), due to a fundamental legal principle of the nation which prohibits concessions with respect to the judgement and/or immunity from prosecution. However, the summary proceedings provided for in article 431 bis of the Code of Criminal Procedure can be used to negotiate a lesser sentence.

Protection of witnesses and reporting persons (arts. 32 and 33)

Articles 32 and 33: Argentine legislation has norms (not structured in a single normative corpus) which allow for the provision of protection to witnesses, reporting persons and persons charged with acts of corruption. While the national programme for the protection of witnesses and accused persons (Law 25,764) contains a restrictive list of criminal offences in respect of which protection may be granted and it does not explicitly include corruption offences, article 1 (2) offers de facto protection in cases that are not expressly provided for by the law.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Article 31: Article 23 of the Criminal Code establishes that confiscation entails the definitive expropriation of the property in question, which must be executed in an auction, and the proceeds of the auction are to be given to the affected parties in order to repair the damage caused by the crime; confiscation is also intended to ensure that the proceeds or product of crimes, whatever form these assets may assume, do not benefit those who have committed the crime or facilitated its legitimation. The introduction of the offence of laundering of assets has reinforced the general principle established in article 23 of the Criminal Code. Regarding the lifting of bank secrecy, article 39 of Law 21,526, or the Law on Financial Entities, allows that, as long as a criminal proceeding is ongoing, the judges may order the

remission or seizure of documents, and bank secrecy may not be used to oppose their request. It must be noted that, if the order of the judge is not complied with, those involved will be committing the offence of non-compliance with a judicial obligation.

Article 40: According to the provisions of articles 39 and 40 of the Law on Financial Entities (Law 21,525), the Argentine legal system preserves bank secrecy in respect of passive financial operations, in which the bank receives or collects money from individuals, commonly through bank deposits. As can be noticed in a reading of article 39 of Law 21,526, a request for information protected by bank secrecy which is issued by a judge during the investigation of a corruption offence is not subject to any evidentiary requirement. In addition, the Financial Information Unit may collect information that may be covered by bank secrecy, since the same Law 26,087, through article 1, has added to article 14 (1) of Law 25,246 the following paragraph: "Within the context of the investigation of a report of a suspicious operation, the individuals referred to in article 20 may not use the argument of banking, stock-exchange or professional secrecy against the Financial Information Unit, nor any legal or contractual commitments related to confidentiality."

Statute of limitations; criminal record (arts. 29 and 41)

Article 29: The Argentine Criminal Code, in article 59, establishes that the right of criminal action is extinguished by the statute of limitations (prescription). Articles 62 and 63 establish the periods for the extinction of the right of criminal action (between one and fifteen years, depending on the corresponding sanction) and the rules for the calculation of the start of the prescription, respectively. Likewise, articles 65 and 66 of the Criminal Code establish the terms of the prescription of penalties (between two and twenty years, according to the sentence) and the rules for the calculation of the start of the prescription, also respectively. The causes for suspension and interruption of the prescription are described in article 67. In a corruption case involving several people, one of whom is a public official, while the official remains in the public function the prescription period does not start to operate — or, in other words, the calculation only starts once the individual has left the position.

Article 41: Argentina complies with this provision of the Convention through article 79 of Law 24,767, Law 22,117 and article 51 of the Criminal Code. The latter establishes that no data shall be disclosed in relation to dismissed proceedings or proceedings which have resulted in acquittal, and also regulates everything related to the regime of expiration of conviction records.

Jurisdiction (art. 42)

Article 42: Argentina may prosecute its nationals when an extradition request from another country is rejected (article 12 of the Law on International Cooperation in Criminal Matters). If the treaty establishes that nationality is irrelevant, and the person does not have the option of being prosecuted in Argentina, he or she must be extradited. Recent trends show that extraditions of nationals are granted. If no extradition treaty exists, the person has the option of being prosecuted in Argentina by the same court that would have the power to reject the extradition. In this case, any existing evidence will be requested from the requesting State.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Article 34: The Law on Ethics in the Public Service (No. 25,188) provides for the nullity of administrative acts issued in a situation of conflict of interests. In that regard, article 17 establishes that: "Whenever the acts committed by the subjects of article 1 are covered by the provisions of articles 13, 14 and 15, they will be void ab initio, without prejudice to the rights of bona fide third parties. In the case of the issuance of an administrative act, it will be void ab initio under the terms of article 14 of Law 19,549." Other possible consequences of an act of corruption are: liability for damages; returning things to the state that they were in before commission of the crime (article 29 of the Criminal Code); and the inadmissibility of tenders.

Article 35: The legal framework of Argentina considers, as parties that may be affected by acts of corruption, not only the State but also any natural or legal person who may have suffered any consequence of the acts. No instances of practical application have been presented.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Article 36: The enforcement of the law in cases of corruption offences is the competence of judges and prosecutors for federal criminal and correctional matters. The Office of Coordination for Crimes against the Public Administration (OCDAP), which was created with the goal of cooperating with the prosecutors working on corruption cases, has been replaced by the Office of the Prosecutor for Economic Crime and Money-laundering (PROCELAC), created by resolution No. 914/12, of 20 December 2012, of the office of the Attorney General. This new organizational structure is composed of a team of specialized prosecutors and officials who coordinate various areas of operations. Argentina also has a Prosecutor's Office for Administrative Investigations, a body specialized in the investigation of acts of corruption and administrative irregularities committed by agents of the National Administration, as well as an Anti-Corruption Office, created by Law 25,233 of 10 December 1999, which is an agency under the Ministry of Justice and Human Rights, and which aims to develop and coordinate programmes to combat corruption. Other relevant institutions are the office of the Comptroller General of the Nation (SIGEN) and the Auditor General's Office. The appointment of the Attorney General takes place through a transparent competitive recruitment procedure.

Article 38: Under the legal framework of Argentina, all officials have a specific obligation to report any crimes of which they become aware. Under article 177.1 of the Code of Criminal Procedure, public officials and public employees are obliged to report offences that are prosecutable ex officio of which they gain knowledge during the exercise of their functions. According to article 1 of Decree-Law 1162/00, the said public officials and employees fulfil their legal duty by informing the Anti-Corruption Office of the facts and/or evidence in support of the presumption of the commission of an offence that is prosecutable ex officio committed in the ambit of the National Public Administration or any public or private entity with State participation. According to article 2 of the Decree-Law, presumed offences that are not investigated by the Anti-Corruption Office are to be reported to a judge, a prosecutor or the police by such officials and employees.

Article 39: Argentina has an exemplary regulatory and institutional framework that allows the application of this provision. However, it has been considered pertinent to highlight the scope of article 14 (1) of Law 25,246, which provides that: "Within the context of the investigation of a report of a suspicious operation, the individuals referred to in article 20 may not use the argument of banking, stock-exchange or professional secrecy against the Financial Information Unit, nor any legal or contractual commitments related to confidentiality."

2.2. Successes and good practices

Article 15: It is considered a positive development that article 77 of the Criminal Code with regard to the concept of a public official is being revised in the framework of a comprehensive reform of the Criminal Code.

Article 29: As a good practice, it is noted that, in the case of an interruption of the statute of limitations period with relation to a public official, the same calculation is to apply to the other participants.

Article 33: It is considered a good practice that protection is provided to reporting persons, with the possibility of submitting reports anonymously or with undisclosed identity to various agencies, and of submitting reports via web, e-mail or by telephone.

Article 36: Considered a good practice is the recognition of the right of the Anti-Corruption Office to appear as plaintiff, independently of the criminal action that is the responsibility of the Public Prosecution Service.

2.3. Challenges in implementation

Article 15: It is recommended that the necessary legislative reforms of the Argentine Criminal Code be started, should case law relating to the interpretation of the concept of "gift" evolve in a different direction.

Article 16 (b): It is recommended to clarify the concept of passive bribery on the part of foreign public officials and officials of public international organizations in domestic legislation.

Article 26: The efforts that are being made by the Republic of Argentina to incorporate into domestic law the criminal liability of legal persons that commit any of the offences contained in the Convention are welcomed, and it would be recommended that Argentina should continue to make provision for such liability for all offences in addition to those referred to in article 23 of the Convention.

Article 32: It is considered that Argentina has legislation that protects witnesses, experts and victims; however, the inclusion of corruption offences is not automatic, so that it is recommended that Argentina should consider taking this into account in a possible legislative reform, with the extension of the witness protection programme, directly including corruption offences and harm done to the public administration.

Article 39: It is recommended that information or statistics should be kept on the success of these legal provisions and on the guarantees and protections afforded to top executives who report presumed offences.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Article 44: Law 24,767 regulates international cooperation in criminal matters, according to which Argentina is to provide the fullest assistance in criminal matters to any State that requests it. Where an extradition treaty exists, its norms regulate the procedure for the assistance; in the absence of a treaty, such assistance is subject to the existence or offer of reciprocity. The passive extradition of nationals is permitted, but the individual who is the subject of the extradition request may always choose to be tried by Argentine courts. Where a treaty provides for the extradition of nationals and extradition is found to be possible, the executive branch must resolve whether or not to grant the existing option in the final decision phase.

Argentina requires dual criminality; without prejudice to this, the possibility of providing assistance even in the absence of dual criminality exists. If a State requests an extradition for several offences, it is sufficient that at least one of the offences should be punishable under Argentine law for extradition to be granted for the others. It is noted that the use of the Convention as the normative basis for an extradition request is compatible with domestic laws, even if there are no specific legal rules contemplating it.

Extradition may not be granted for political offences, for offences only foreseen under military law, if there is doubt whether individual rights will be upheld, when there exist special reasons related to national sovereignty, security or public order, if prosecution is time-barred under the law of the requesting State, if the person sought has already been tried for the same crime, if the individual cannot be held liable under Argentinian law by reason of age, or when the penalty has been imposed in absentia, among the main reasons. The extradition request and any subsequent documentation must be sent via diplomatic channels. When the Ministry of Foreign Affairs and Worship has decided to proceed with the consideration of the extradition request, legal proceedings are initiated by the Public Prosecution Service. If the Ministry finds that a certain condition has not been met, the executive branch will resolve the issue. The Public Prosecution Service will represent the extradition request in the legal proceeding; without prejudice to this, the requesting State may intervene as a party in the legal proceeding through representatives.

Article 45: The transfer of sentenced persons to their country of origin is based on humanitarian considerations. Argentina has entered into several treaties on the matter. The competence regarding the transfer of sentenced persons belongs to the Ministry of Justice and Human Rights.

Article 47: Argentine law precludes the cession of jurisdiction based on criteria of opportunity or convenience. The remission of criminal records may only take place when the Argentine justice system declares itself incompetent to investigate an offence.

Mutual legal assistance (art. 46)

Argentina has designated the Ministry of Foreign Affairs and Worship as the central authority for the purposes of chapter IV of the Convention. The Convention may be

used as the basis in requests for mutual legal assistance in criminal matters, although Law 24,767 guarantees assistance without the need for a specific treaty on the matter.

The intervening authorities will act as quickly as possible in regard to requests for mutual legal assistance, so that the case is handled in an expeditious manner, without initiating the assistance (article 1 of Law No. 24,767). Argentina provides assistance in investigations involving legal persons.

Under the provisions of paragraph 2 of article 68 of the Law on International Cooperation in Criminal Matters, Argentina requires that the act that gives rise to the request for assistance should constitute an offence only for certain assistance measures, since the rule is not to require dual criminality. It is not an indispensable requirement that the person being investigated should be susceptible of punishment under Argentine law, but only that the conduct should also constitute an offence in Argentina.

The law does not list the assistance measures that may be requested; however, some procedures applicable in relation to certain measures are described (summoning of accused persons, witnesses or experts; testifying in Argentina; transfer of sentenced persons; provision of documents).

Argentina, through the authorities in charge of criminal investigations, forms part of a series of networks through which there is a permanent exchange of information with other authorities in various countries. Central authorities and diplomatic missions also participate in the networks.

Under the provisions of article 39 of the Law on Financial Entities (No. 21,526, mentioned above), under title V, “Secrecy”, financial entities may not disclose data on passive operations. However, one of the exceptions foreseen by the same law with regard to this impediment relates to requests from judges as part of a case.

In the case of the transfer of a person to Argentina, the obligation of immediate return is foreseen after the proceedings for which the transfer was requested are completed.

The grounds for refusal of mutual legal assistance are provided for in Law 24,767. In this regard, refusing an extradition may only be based on articles 8-10 of the aforementioned Law, and the fact that fiscal matters are involved is not a reason for refusing assistance.

Argentina has an active policy regarding the signature of agreements on assistance in criminal matters that will contribute to improved cooperation in the fight against crime.

Argentina does not possess specific norms relating to paragraph 19 of this article; however, it has demonstrated that the paragraph’s objectives may be attained even in the absence of such norms.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Article 48: On the regional level, Argentina participates in various mechanisms for international cooperation in criminal matters covering the measures requested in subparagraphs (a) to (f) of paragraph 1 of this article. The Ministry of Foreign

Affairs and Worship, as the central authority with regard to international cooperation in criminal matters, uses e-mail regularly to communicate with other central authorities and other stakeholders in international cooperation. In order to expedite the tasks of cooperation, the Ministry has assigned a specific mailbox to this purpose, and these same communications take place through the Organization of American States network.

Article 49: In the framework of the Southern Common Market (MERCOSUR), the text of a Framework Agreement for Cooperation among the State Parties of MERCOSUR and the Associated States for the Establishment of Joint Investigation Teams has been adopted. This reflects in normative form practices that have been evolving over recent years. The preamble of the Agreement expressly mentions the United Nations Convention against Corruption as a source.

Article 50: Argentina is a signatory of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (of December 1988), approved by Law 24,072, of which article 11 expressly provides for what is called “controlled delivery”, and it has approved the Inter-American Convention on Mutual Legal Assistance in Criminal Matters (adopted in Nassau, Bahamas, on 23 May 1992), by Law 26,139. In addition, the Argentine legal system includes the concept of an undercover agent.

3.2. Successes and good practices

Article 44: The fact that Argentina grants extraditions even in the absence of an extradition treaty is considered an example of a good practice.

3.3. Challenges in implementation

- The need is stressed for continuing to implement an active prison reform policy and, to the extent possible, allocating the necessary budget resources to this.
- Regarding requests for extradition and mutual legal assistance, it is recommended that the competent authorities should continue to make efforts to ensure the completion of the relevant proceedings in the shortest time possible.
- It is recommended that the information system currently in place should continue to be developed, with the goal of compiling information in a systematic manner on extradition and mutual legal assistance cases, with a view to facilitating the monitoring of such cases and more efficiently assessing the effectiveness of implementation of international cooperation arrangements.
- It is recommended to continue exploring opportunities for active participation in bilateral and/or multilateral agreements with the aim of enhancing the effectiveness of the different forms of international cooperation.