

Judicial Cooperation in Criminal Matters in Europe

Module V - Bilateral and multilateral instruments of judicial cooperation in
criminal matters

Topic 17:

Bilateral and European Union Conventions with Third Countries. Special
Reference to the EU-USA Convention

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1. On a political level, which of the following have been concluded between the European Union and the International Criminal Court?¹:

- a) Joint Actions.
- b) Common Positions.
- c) Preparatory work.
- d) Conventions.

2. The Council adopted two Decisions to strengthen cooperation with the Court²:

- a) That of 13 June 2002, a Spanish initiative, in relation to the creation of a European web of contact points.
- b) That of 13 June 2002, a Dutch initiative, in relation to the creation of a European web of contact points.
- c) That of 13 June 2002, a German initiative, in relation to the creation of a European web of contact points.
- d) The two decisions date from 2007, Danish initiatives, aimed at extending the jurisdiction of the International Criminal Court.

3. The Agreement on Cooperation and Assistance with the International Criminal Court...³:

- a) Binds all the Member States of the European Union.
- b) Is not binding on either the European Union or the Member States.
- c) Binds the European Union.
- d) Does not establish obligations, but mere recommendations for the Member States.

4. The Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the implementation of certain provisions of the Convention on judicial assistance in criminal matters between the Member States of the European Union...⁴:

- a) Replaces the European Convention on mutual assistance in criminal matters of 20 April 1959.

- b) The Republic of Iceland and the Kingdom of Norway were not parties to the European Convention on mutual assistance in criminal matters of 20 April 1959, meaning that said Agreement is applicable in full.
- c) The Agreement replaces the European Convention on judicial assistance in criminal matters of 29 May 2000.
- d) The provisions of the European Convention on mutual assistance in criminal matters of 20 April 1959 and the other Conventions in force still apply to all matters not contemplated in the Agreement.

5. The Agreements signed between the European Union and the United States of America are...:⁵

- a) An Agreement on Extradition and Legal Assistance in criminal matters.
- b) An Agreement on the transfer of sentenced persons.
- c) An Agreement on Extradition and the transfer of sentenced persons.
- d) No Agreements have been signed between the EU and the USA.

6. The Agreements signed between the EU and the USA:⁶

- a) Are directly applicable, rendering the existing bilateral convention between the EU Member State and the USA null and void.
- b) If a bilateral convention between an EU Member State and the USA exists, the former always applies.
- c) The Agreements signed between the European Union and the USA supplement the bilateral agreements.
- d) Have only been signed with those Member States who have not signed a bilateral agreement.

7. Does the Agreement of Mutual Legal Assistance in criminal matters establish any restrictions in relation to the protection of personal data?⁷

- a) The Agreement contains no restrictions on the use of personal data.
- b) Restrictions only exist for administrative actions related to judicial and actions.
- c) Restrictions only exist in the case of non-criminal actions.

d) The data can be used for criminal and administrative actions.

8. Which of the following is required in order to extradite a person between an EU Member State and the USA?:⁸

- a) Dual criminality.
- b) A minimum sentence consisting of deprivation of liberty with a maximum limit of two years.
- c) Dual criminality and a minimum sentence.
- d) There are no limits.

9. The bilateral treaty on cooperation between Spain and the United States of America...⁹:

- a) Envisages direct cooperation between the jurisdictional bodies of one state and the police of another without the need for the latter to have already initiated criminal proceedings.
- b) Does not envisage direct cooperation between the jurisdictional bodies of one state and the police of another.
- c) Envisages direct cooperation between the jurisdictional bodies of one state and the police of another provided that latter have already initiated the criminal proceedings.
- d) Only envisages direct cooperation between jurisdictional bodies.

10.- The application of Article 6 of the Agreement¹⁰:

- a) Is valid for the testimony of both witnesses and experts and accused persons.
- b) Is only valid for the testimony of witnesses and experts and not for accused persons.
- c) Is not valid either for the testimony of witnesses and experts or for the accused persons.
- d) Is not valid for the testimony of witnesses and experts but it is valid for that of the accused persons.

¹ The correct answer is b), because it is necessary to distinguish between joint actions and common positions. Joint Actions are defined in Article 14 of the EU Treaty, and refer to specific situations in which an operational action of the EU is considered necessary and the positions they adopt are binding for the Member States with regard to the positions they adopt; meanwhile, common positions, as set out in Article 15 of the EU Treaty, will define the approach of the EU to a specific matter with a defined geographic or thematic scope and the Member States will ensure their national policies are in line with the common positions.

² The correct answer is b), it was the first Decision that the Council adopted on 13 June 2002, following a Dutch initiative, in relation to the creation of a European web of contact points and the second was the Decision of 8 May 2003, following a Danish initiative, with a view to strengthening cooperation in relation to the investigation and prosecution of crimes within the jurisdiction of the Court.

³ The correct answer is c), said Agreement contains the clauses on cooperation and assistance between the International Criminal Court and the European Union. It was not possible to negotiate an agreement between the European Union and the International Criminal Court as a whole, instead it was necessary to use small agreements between the bodies of each institution. In this way, the Agreement is not binding on the Member States but on the EU as a whole. In this regard, the direct participation of the Member States would be necessary.

⁴ The correct answer is d), the Republic of Iceland and the Kingdom of Norway do form part of the European Convention on mutual assistance in criminal matters of 20 April 1959, but the Agreement of 29 May 2000, does not replace the Convention; instead it supplements it.

⁵ The correct answer is a), on 25 June 2003, two Agreements were signed in Washington between the European Union and the United States of America on Extradition and Mutual Legal Assistance in criminal matters pursuant to Articles 24 and 38 of the Treaty on European Union. On 26 April 2002, the Council of the European Union decided to authorise the Presidency, assisted by the Commission, to open negotiations with the USA, and the Presidency negotiated two Agreements on International Cooperation in criminal matters, one on Legal Assistance and the other on Extradition. The Agreements were signed on behalf of the EU, notwithstanding their subsequent execution. Thus, Article 3.2 of both Agreements envisages the exchange of written instruments between the USA and the Member States of the EU on the implementation of the bilateral treaties.

⁶ The correct answer is c), the singular feature of the Agreements signed by the EU and the USA is that of not introducing independent normative texts and instead guaranteeing a sufficiently homogenous and strengthened regulations by means of the consequent reform of the treaties existing between each of the Member States of the EU and the USA. These Agreements are not immediately applicable, instead they are to be taken into account when applying the existing bilateral extradition and mutual legal assistance treaties between each of the Member States of the EU and the USA. Essentially, these two Agreements establish a generic framework with some improved minimums affecting the most important aspects of international judicial cooperation in criminal matters. These minimums are to act as a starting point for the updating of the different treaties already in force between the Member States of the EU and the USA. All in all, the agreements supplement the bilateral agreements between the USA and the Member States of the EU and represent added value in relation to said bilateral agreements. The agreements establish the necessary safeguards for the protection of human rights and fundamental freedoms and respect the constitutional principles of the Member States.

⁷ The correct answer is d), as envisaged in Article 9 of the Agreement on Mutual Legal Assistance in criminal matters, in relation to Article 8.

⁸ The correct answer is c), as the Extradition Agreement between the USA and the EU includes the classical principles of dual criminality and minimum sentence (the deprivation of liberty must be at least one year).

⁹ The correct answer is a), as by virtue of Article 8 of the Agreement, it envisages the direct cooperation between the jurisdictional bodies of one state and the police of another without the need for the latter to have already initiated criminal proceedings, provided the investigation is aimed at being able to initiate proceedings at some stage.

¹⁰ The correct answer is b), as this is set out in Article 6 of the Agreement. This represents a substantial difference as the regulation contained in the Convention between the Member States of the EU states that the testimony of both witnesses and experts as well as that of the accused persons in the criminal proceedings will be valid (Article 12).