

LEGAL ALERT

APPROVAL OF THE MEDELLÍN TREATY

ELECTRONIC TRANSMISSION OF REQUESTS FOR INTERNATIONAL LEGAL AND JUDICIAL CO-OPERATION BETWEEN CENTRAL AUTHORITIES

On 31 August 2023, the Official Journal of Portugal (*Diário da República*) published [Resolution no. 104/2023](#) of the Portuguese Parliament (*Assembleia da República*) approving the Treaty on the Electronic Transmission of Requests for International Legal and Judicial Cooperation between Central Authorities, signed in Medellín on 24 and 25 July 2019 (Treaty).

The aim of this *Legal Alert* is to set out the most important features of the legal framework established by the Treaty.

I. General Provisions

This recently approved Treaty establishes the use of the Iber@ electronic platform as a formal and preferential means of transmitting requests for international legal and judicial cooperation between Central Authorities, within the scope of the treaties in force between the Parties and which provide for direct communication between these institutions.

For this reason, the recognition of the potential of the Iber@ electronic platform as a technological tool for the transmission of requests for international legal and judicial cooperation submitted under a treaty in force between the Parties, with a system of Central Authorities and considering that the members of [IberRede](#) declared their desire to institutionalise a model that had already shown results

in speeding up the transmission of requests for cooperation greatly contributed to the signing of the Treaty.

The Treaty arises from a context of more than a decade of cooperation between Central Authorities and national Contact Points, within the Ibero-American Network for International Legal Cooperation in Criminal and Civil Matters (*IberRede*), created under the Regulation approved by the Ibero-American Judicial Summit, the Ibero-American Association of Public Prosecutors and the Conference of Ministers of Justice of Ibero-American Countries in Cartagena de Indias, Colombia, on 29 October 2004.

With respect to criminal law, one of the aims of the Treaty is to counteract phenomena such as transnational organised crime, terrorism, human trafficking, drugs and arms trafficking, money laundering, corruption and cybercrime in an increasingly effective and agile way, in real time, by speeding up and streamlining requests for international cooperation in the respective criminal proceedings, to the benefit of legal certainty and the effectiveness of judicial decisions and other related acts.

For the purpose of the Treaty, the following definitions apply:

- Requests for international legal and judicial cooperation – requests between Central Authorities whose transmission is carried out under a treaty in force in criminal, civil, commercial, labour, administrative or any other subject/area of law, as well as subsequent actions derived from them, or which are supported by the same treaty;
- Central Authorities – the institutions designated by each State for transmitting requests for legal and/or international cooperation within the framework of each treaty in force between the Parties; and
- Transmission of requests for international legal and judicial cooperation – the sending between Central Authorities, via Iber@, of all types of requests for international legal and judicial cooperation, their replies, follow-ups, or any other communication related to them and their execution, such as clarifications, extensions and suspensions, among others, including the spontaneous transmission of information in accordance with the treaties in force between the Parties.

II. Transmission of requests for international legal and judicial cooperation

In the Treaty, the Parties agree to use the Iber@ electronic platform for the transmission of requests for international legal and judicial cooperation between Central Authorities, which will be accessible at least in Spanish and Portuguese.

Iber@ is reserved for duly accredited users designated by the Parties, representing the Central Authorities.

Documents transmitted between Central Authorities via Iber@ will be considered original and/or authentic for the purposes of the treaties in force between the Parties, and do not require additional physical transmission.

The Treaty does not oblige the Parties to use Iber@ for the transmission of requests for international legal and judicial co-operation, but once the Central Authority has received the request through it, subsequent communications relating to its execution shall be sent to the issuing Central Authority by the same means, unless the nature of the request or a supervening situation makes this inadvisable, in which case the sender must be informed.

As far as the operation of Iber@ is concerned, it keeps a record of all the transmissions, so that it can certify to the sender and recipient the day and time of the transmission and any related communications.

In addition, Iber@ issues a proof of receipt of the request to both the sender and the recipient. When it is necessary to establish the date of receipt of a request for international legal and judicial cooperation pursuant to a treaty in force between the Parties, it shall be deemed to have been received on the working day following the issue by Iber@ of proof of receipt, calculated according to the working day and official time of the Central Authority of the receiving State.

Notwithstanding this, communications whose effect is the interruption or suspension of a deadline are deemed to have been validly received on the day and at the time shown on the proof of receipt issued by Iber@.

As for the regime applicable to Iber@, it is governed by the applicable legal provisions on data protection and electronic signature in force in the State where the technological service is provided and in that of the headquarters of the IberRede General Secretariat.

Requests for international legal and judicial cooperation sent through Iber@ must be formulated and executed in accordance with the provisions of the treaties in force between the Parties and applicable to the specific case.

III. Entry into force

After Spain became the third country to deposit its instrument of ratification in June 2021 (after Andorra and Cuba), the Treaty entered into force for an indefinite period.

In Portugal, the Treaty will only enter into force 60 (calendar) days after the date on which its instrument of ratification is deposited. The Treaty has been ratified on 10 August 2023 by the President of the Republic, whose [Decree no. 76/2023](#) has been published on 31 August 2023 by the Official Journal of Portugal (*Diário da República*).

Finally, it should be noted that any State that is not a member of the Conference of Ministers of Justice of Ibero-American Countries (Third-Party State) can join the Treaty.

However, accession by a Third-Party State shall only take effect in relations between the State that joined and the States Parties that have not objected to said accession within 6 months of having received notification from the Secretariat of the deposit of the respective instrument of ratification or accession.

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