



Conference of the States Parties to the United Nations Convention against Corruption

Distr.: General
16 November 2015

Original: English

Report of the fourth open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption, held in St. Petersburg, Russian Federation, on 2 and 3 November 2015

I. Introduction

1. In resolution 4/2, entitled “Convening of open-ended intergovernmental expert meetings to enhance international cooperation”, adopted by the Conference of the States Parties to the United Nations Convention against Corruption at its fourth session, held in Marrakech, Morocco, from 24 to 28 October 2011, the Conference decided to convene open-ended intergovernmental expert meetings on international cooperation to advise and assist it with respect to extradition and mutual legal assistance.

2. Pursuant to its resolution 5/1, the Conference decided that, on a provisional basis and without prejudice to their independent status and mandates, the third expert meeting should be held back to back with the meeting of the corresponding Working Group on International Cooperation under the United Nations Convention against Transnational Organized Crime, and the fourth expert meeting should be held at the sixth session of the Conference.

3. In the same resolution, the Conference directed the expert meeting, at the sixth session of the Conference, to continue studying the issue of the identification and analysis of existing obstacles to law enforcement cooperation in the detection of corruption offences in the framework of the Convention and to draw up recommendations on how those obstacles could be overcome.



II. Organization of the meeting

A. Opening of the meeting

4. The fourth meeting of experts convened to enhance international cooperation under the United Nations Convention against Corruption was held in St. Petersburg, Russian Federation, on 2 and 3 November 2015, during the sixth session of the Conference of the States Parties to the United Nations Convention against Corruption.

5. The meeting was chaired by the Vice-President of the Conference of the States Parties to the United Nations Convention against Corruption at its sixth session, Friedrich Däuble (Germany). The Chair delineated the framework for discussion and provided explanations regarding the development of the provisional agenda and organization of work.

B. Adoption of the agenda and organization of work

6. On 2 November 2015, the meeting of experts convened to enhance international cooperation under the United Nations Convention against Corruption adopted the following agenda:

1. Opening of the meeting.
2. Adoption of the agenda and organization of work.
3. Taking stock of country reviews on the implementation of chapter IV of the United Nations Convention against Corruption: findings, lessons learned and technical assistance needs.
4. International cooperation in civil and administrative proceedings for the detection of offences under the Convention, including for the identification, freezing and confiscation of assets derived from such offences.
5. International cooperation concerning ways to best identify beneficial owners of legal persons.
6. Other matters.
7. Conclusions and recommendations.
8. Adoption of the report.

C. Attendance

7. The following States parties to the Convention were represented at the meeting: Algeria, Andorra, Angola, Argentina, Austria, Bangladesh, Brazil, Bulgaria, China, Colombia, Costa Rica, Côte d'Ivoire, Ecuador, Egypt, Fiji, Finland, France, Gabon, Germany, Guatemala, Guinea, Guinea-Bissau, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Italy, Jamaica, Kenya, Kuwait, Kyrgyzstan, Latvia, Lebanon, Mexico, Morocco, Mozambique, Namibia, Nauru,

Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Russian Federation, Rwanda, Sao Tome and Principe, Saudi Arabia, Singapore, South Africa, South Sudan, Spain, Sweden, Switzerland, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Arab Emirates, United States of America, Uruguay, Uzbekistan, Vanuatu, Venezuela (Bolivarian Republic of) and Viet Nam.

8. The following States signatories to the Convention were represented by observers: Japan and New Zealand.

9. The following intergovernmental organizations were represented by observers: European Public Law Organization, International Anti-Corruption Academy, Organization for Security and Cooperation in Europe and United Nations Development Programme.

III. Taking stock of country reviews on the implementation of chapter IV of the United Nations Convention against Corruption: findings, lessons learned and technical assistance needs

10. A representative of the secretariat introduced the most prevalent trends and findings in regard to the implementation of chapter IV arising from the completed reviews of the first cycle under the Mechanism for the Review of Implementation of the Convention, on the basis of the consolidated analytical study entitled *State of Implementation of the United Nations Convention against Corruption* (see CAC/COSP/2015/5). His presentation provided an overview of priority issues in the implementation of the Convention, including with regard to reported technical assistance needs.

11. The representative of the secretariat clarified that throughout the operation of the Review Mechanism, the approach of most reviewing experts had been to encourage the provision of mutual legal assistance in criminal matters based directly on article 46 of the Convention, and the application of the dual-criminality principle in a flexible manner.

IV. International cooperation in civil and administrative proceedings for the detection of offences under the Convention, including for the identification, freezing and confiscation of assets derived from such offences

12. A representative of the secretariat provided an overview of the information received from States on civil and administrative proceedings for the detection, investigation, prosecution and sanctioning of offences under the Convention, including for the identification, freezing and confiscation of assets derived from such offences, pursuant to resolutions 5/1 and 5/3 of the Conference, as presented in document CAC/COSP/EG.1/2015/2.

13. The debate on this agenda item was facilitated by a panel discussion on practical aspects and challenges encountered in the field of international cooperation

in civil and administrative proceedings to combat corruption. Experts from Brazil, Italy and the Russian Federation shared their national experiences.

14. The panellist from Brazil underscored the importance of increasing the use of civil and administrative proceedings to combat corruption, and in particular to improve related international cooperation efforts to more effectively respond to corruption. He noted that this matter had been addressed at a variety of international forums, including the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, the Group of Twenty, the Organization of American States and the Organization for Economic Cooperation and Development, and was under consideration by the Conference in one of the draft resolutions before it. He further outlined a series of national administrative and civil proceedings in matters of corruption of public officials and liability of legal entities, and provided examples of successful and unsuccessful cooperation in such proceedings.

15. The panellist from Italy made a presentation on the comprehensive national system of confiscation, with a focus on its distinctive “preventive” non-conviction-based confiscation regime. The preventive measures under that regime could be applied, *inter alia*, to the assets of persons suspected of belonging to mafia organizations or of having committed serious crimes (including corruption offences). For those measures to be applied, the courts would inquire as to the considerable probability of guilt of the suspect, as well as to the value of the assets being out of proportion to the declared or otherwise known income of the suspects, or where there was evidence that the assets were the proceeds of unlawful activities or derived therefrom. It was mentioned that those measures had been found to be consistent with fundamental guarantees by the Italian Court of Cassation and the European Court of Human Rights.

16. The panellist from the Russian Federation emphasized the importance of cooperation in civil and administrative procedures, particularly in the context of asset recovery. He reported on a recent law that provided for civil confiscation of the assets of public officials found to be disproportionate to their official income. The panellist recounted positive and negative experiences in international cooperation related to such proceedings. He noted that the negative experiences stemmed from different classifications of similar forms of conduct in different legal systems, including divergent approaches regarding the liability of legal persons (administrative or criminal). The panellist emphasized the importance of using the Convention as a basis for cooperation in civil and administrative proceedings, and noted the usefulness of appointing national coordinators on asset recovery matters who would be capable of providing cooperation in civil and administrative proceedings.

17. In the ensuing discussion, speakers discussed the practical application of relevant mechanisms for international cooperation in civil and administrative proceedings. Several speakers advocated for a more flexible approach to international cooperation, taking advantage of the broad scope of the Convention. While some speakers reported on their countries’ non-conviction-based forfeiture regimes, others expressed hesitation with regard to applying confiscation measures outside the criminal law context. One speaker made reference to the Doha Declaration and emphasized the importance of international cooperation to facilitate the recovery of the proceeds of crime, including money and other assets that have

not been accounted for and that are found in safe havens, for the purpose of their eventual confiscation.

18. One speaker highlighted the advantages of various networks providing secure communication systems with a view to facilitating the exchange of information among law enforcement bodies in different jurisdictions.

19. Several speakers clarified that the rights of bona fide third parties were safeguarded in their domestic legal systems. An exchange ensued on the application of the reversal of the burden of proof in corruption cases. One speaker explained that in his country's system the shifting of the burden of proof was possible only when it had been clearly established that there was no legal means for a government official to obtain disproportionate assets. Another speaker emphasized that the non-conviction-based confiscation mechanism in his country included the shifting of the burden of proof to the defendant, once certain conditions had been satisfied.

20. One speaker emphasized the importance of a more flexible approach to international cooperation and encouraged the provision of requested assistance based on the conduct underlying the offence, which might be criminal, civil or administrative in different States, rather than based strictly on the type of relevant legal procedures. Another speaker pointed out the importance of clearly distinguishing between the legal nature of criminal, administrative and civil procedures, and noted that under the Convention only assistance in criminal matters was mandatory.

V. International cooperation concerning ways to best identify beneficial owners of legal persons

21. A panellist from the joint United Nations Office on Drugs and Crime/World Bank Stolen Assets Recovery (StAR) Initiative gave a presentation in which he underscored that it was crucially important for countries to ensure that accurate and up-to-date information on beneficial ownership of legal entities be available to competent authorities before considering the problem from the angle of international cooperation. Priority should therefore be given to ensuring that all countries have effective domestic systems in place to ensure timely access to beneficial ownership information. Given the diversity of mechanisms available to implement the related obligations, it was recommended that a requested country's approach to transparency of beneficial ownership be understood before international cooperation was sought, as that understanding would determine the most effective avenues for international cooperation. Where reliable public registries of beneficial owners were available, direct access to information would be an option. Where countries relied on service providers (e.g. financial institutions, trust and company service providers), international cooperation could be sought through financial intelligence units, police, mutual legal assistance requests or even tax authorities. Where countries relied on prosecutorial or law enforcement tools, sufficient intelligence or evidence could lead to targeted requests, in line with the requirements of the requested country.

22. The panellist emphasized the importance of understanding the features and characteristics of legal entities in a given national context in order to seek the relevant information from the appropriate source, and thus succeed in tracing and

identifying stolen assets hidden behind corporate veils. Finally, the panellist highlighted activities in the framework of the StAR Initiative for assessment of and technical assistance in the implementation of relevant international standards, as well as the work conducted in the context of the Arab Forum on Asset Recovery and the Group of Twenty to prepare “company ownership guides” aimed at helping countries to better understand what information on beneficial ownership was available and where to retrieve it, and thus to help practitioners to better prepare their requests for international cooperation.

VI. Other matters

23. A representative of the secretariat drew the attention of the meeting to agenda topics addressed by the Working Group on International Cooperation of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, which met on 27 and 28 October 2015, as well as to selected recommendations of that Working Group, in their unedited form, with the aim of continuing to foster the interrelationship and mutual exchange of information between the two expert bodies.

VII. Conclusions and recommendations

24. The meeting concluded that the review of implementation of chapter IV of the Convention was instrumental in the identification of good practices and challenges relating to international cooperation.

25. The experts reaffirmed the recommendations made at their third meeting, held in Vienna on 9 and 10 October 2014 (see CAC/COSP/EG.1/2014/3). Furthermore, the meeting agreed on the following recommendations:

(a) States parties should consider providing assistance, including those forms of assistance specified in article 46, paragraph 3, of the Convention, as well as direct cooperation between relevant law enforcement bodies under article 48, for investigations of and proceedings in civil and administrative matters relating to corruption, including facilitating the recovery of the proceeds of crime, such as money and other assets that have not been accounted for and that are found in safe havens, for the purpose of their eventual confiscation, where appropriate and consistent with their domestic legal systems;

(b) States parties should consider increasing their efforts to exercise flexibility in responding to requests for the enforcement of foreign orders and judgements in civil and administrative proceedings, including the direct enforcement of non-conviction-based confiscation orders, where appropriate and consistent with their domestic legal systems;

(c) States parties should consider establishing national focal points, and making relevant information available to other States, in respect of international cooperation in civil and administrative matters, as well as updating their lists of national experts on prevention and asset recovery;

(d) States parties should consider making available adequate, accurate and timely information on the beneficial ownership of legal persons, including for

purposes of international cooperation, where appropriate and consistent with their domestic legal systems;

(e) States parties are invited to include in their delegations to future expert meeting practitioners in charge of matters related to international cooperation provisions of the Convention, to encourage their active participation in such meetings;

(f) The Conference should continue to serve as a venue for practitioners to exchange expertise with anti-corruption entities, with a view to identifying good practices and gaps, maximizing synergies and avoiding duplication;

(g) The Conference may consider requesting the Secretariat to invite States parties to continue to submit specific good practices in the area of international cooperation in civil and administrative proceedings related to corruption offences, including the identification of impediments to such cooperation;

(h) The Conference may consider requesting the Secretariat to continue to compile, analyse and disseminate relevant laws and regulations, challenges and good practices in the area of asset recovery, including in the context of civil and administrative proceedings, as well as on the use of non-conviction-based confiscation.

VIII. Adoption of the report

26. On 3 November 2015, the fourth meeting of experts adopted its report.
