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## Implementation Review Group

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### Review of implementation of the United Nations Convention against Corruption

## Regional implementation of chapter III (Criminalization and law enforcement) and chapter IV (International cooperation) of the United Nations Convention against Corruption

Report prepared by the Secretariat

### *Summary*

The present report contains supplemental information, organized by region, to the thematic report on the implementation of chapter III (Criminalization and law enforcement) and chapter IV (International cooperation) of the United Nations Convention against Corruption.

## I. Introduction, scope and structure of the report

1. In accordance with paragraphs 35 and 44 of the terms of reference of the Review Mechanism, thematic implementation reports have been prepared in order to compile the most common and relevant information on successes, good practices, challenges and observations contained in the country review reports, organized by theme, for submission to the Implementation Review Group, to serve as the basis for its analytical work.
2. The present report contains supplemental information, organized by region, to the thematic reports on the implementation of chapter III (Criminalization and law enforcement) and chapter IV (International cooperation) of the United Nations

\* CAC/COSP/IRG/2016/1.



Convention against Corruption, contained in documents CAC/COSP/IRG/2016/6, CAC/COSP/IRG/2016/7 and CAC/COSP/IRG/2016/8. The report is based on information included in the review reports of 123 States parties under review in the first cycle of the Review Mechanism whose review reports had been completed, or were close to completion, at the time of drafting.<sup>1</sup>

## **II. Implementation of selected provisions of chapter III (Criminalization and law enforcement) and chapter IV (International cooperation) of the Convention by region**

3. Two topics were selected from the thematic implementation reports for further analysis on a regional basis: protection of witnesses, experts and victims (article 32 of the Convention) and special investigative techniques (article 50 of the Convention). These are topics where regional nuances, good practices and challenges in implementation were prevalent and where comprehensive data were available from the country review reports to analyse regional trends.

### **A. Implementation of article 32 of the Convention (Protection of witnesses, experts and victims)**

4. Among the 123 States parties covered in the present report, issues related to the protection of witnesses, experts and victims were encountered in the majority (76). The implementation and effective enforcement of the relevant provisions varied by region. The majority of the African and Asia-Pacific States covered did not have comprehensive witness protection or relocation frameworks and encountered legal or practical impediments with regard to the protection of witnesses, experts and victims. The absence of such systems presented significant challenges to the effective prosecution of corruption cases. Conversely, most of the Eastern European States and Western European and other States covered had established protection frameworks, such as witness protection legislation and dedicated institutions tasked with enforcing witness protection programmes, which typically applied to victims at various stages of criminal proceedings. A need to strengthen available protection measures, to adopt or enhance, within existing means, witness protection programmes and related evidentiary measures, and to focus on effective enforcement as well as awareness-raising, was observed across regions.

#### **African States**

5. Most of the 26 African States that were covered in the thematic implementation reports encountered legal or practical impediments with regard to the protection of witnesses, experts and victims. Only six countries did not report any challenges. In most of the States parties, limited or no measures had been taken to ensure the effective protection of witnesses and experts. Several States applied only basic or minimal practical measures, such as holding closed or in camera court

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<sup>1</sup> Data used in the preparation of the present report are based on country reviews as at 15 April 2016.

sessions, granting police protection in especially severe cases or establishing fairly standard legal provisions criminalizing the obstruction of justice or pertaining to the non-disclosure of the identity of witnesses and experts. The reasons for the absence of comprehensive witness protection or relocation systems, which was noted as a major weakness in the fight against corruption in a number of countries, were the significant costs of such systems, the inadequacy of existing normative measures and limited capacity. Witnesses were not given the necessary assurances for their safety and security to enable them to testify in courts, which prevented cases from being prosecuted in practice.

6. Recommendations were issued, in several countries as a matter of priority, to adopt appropriate measures to provide effective protection against potential retaliation or intimidation of witnesses and experts. The importance of ensuring the application of such measures to relatives and other associated persons, as appropriate, was also highlighted in a number of countries. Recommended actions included adopting or strengthening relevant legislation and protection systems and enforcing such measures on the ground, including by devoting adequate resources to their implementation. In several cases recommendations went further to consider adopting or enforcing, within existing means, witness protection programmes, physical protection or anonymity and to strengthen related evidentiary measures, such as the use of technology for questioning. There were also recommendations to make officials aware of the available protection measures and to raise awareness of the relevant measures.

7. In one State party a witness protection law provided for the protection of witnesses, experts and associated persons in criminal and other proceedings. A witness protection agency had been established in that State to administer the witness protection programme and determine the applicable protection measures to ensure the safety of witnesses, including physical protection, relocation, change of identity and advisory services. The agency could also request the courts to implement evidentiary measures, such as conducting closed proceedings, redacting identifying information and using video link, pseudonyms or other measures to conceal the identity of witnesses. Similarly, another State party had established elaborate protection measures for witnesses under specific laws that gave broad definitions of persons who qualified as witnesses and of acts that constituted “occupational detriment”.

8. The special status of victims of corruption was noted as a concern in the region. A number of countries had no provisions in place to protect victims of corruption or to facilitate the presentation and consideration of their views and concerns as to how the case had affected them personally or professionally during proceedings, beyond being called as witnesses. In the majority of countries, therefore, it was recommended to ensure the effective protection of victims of corruption, including by extending the available protection measures under article 32 of the Convention to victims, and to adopt measures to facilitate victim participation in criminal proceedings so as to ensure that their concerns could be raised during trial. In one case it was specifically recommended to consider conducting regular, formal witness vulnerability assessments, building on international best practices.

9. The feasibility of relocating witnesses, experts and victims was addressed in a number of reviews in the region, and an absence of available mechanisms for this

purpose was identified. In several cases it was recommended that States consider entering into agreements and arrangements with other countries for the relocation of witnesses or experts abroad.

10. Legislation had been drafted or introduced in a number of countries for the protection of witnesses, and the reviewers recommended the swift adoption and implementation of such measures. In many countries in the region, the recommendations also covered the protection of offenders who cooperated with law enforcement authorities, in accordance with article 37, paragraph 4, of the Convention.

#### **Asia-Pacific States**

11. The majority of the 37 Asia-Pacific States covered in the present report did not have comprehensive witness protection systems. Only six countries in the region did not encounter issues pertaining to the protection of witnesses, experts and victims. In the majority of States, legal and practical challenges were identified, including limited resources for the implementation of witness protection, inadequate normative measures, specificities in their legal systems and limited capacity. A number of countries had not adopted specific legislation on the protection of witnesses and other participants in criminal proceedings.

12. Recommendations had thus been issued, in some cases as a matter of priority, to adopt relevant legislation and to adopt and implement appropriate administrative measures in order to give practical effect to such legislation. In some States, only practical measures, such as separate court rooms or police protection, could be taken, on a case-by-case basis, for special categories of persons. However, in one State party the code of criminal procedure went further, providing a set of rules on the submission of evidence that was designed to guarantee the safety of witnesses and informants, and including the possibility of using modern audiovisual media to ensure their protection. In several cases it was recommended that consideration be given to the adoption or enforcement, within existing means, of specific protection measures, such as witness protection programmes, physical protection or anonymity, and the strengthening of procedural or evidentiary measures, such as the use of videoconferencing. Many recommendations also related to the application of protection measures to relatives and other associated persons, as appropriate.

13. The protection of victims of corruption was identified as an issue in the region, because a number of countries had not regulated their protection or participation in criminal proceedings. For example, the authorities in one State party reported that the law did not afford victims in corruption cases the opportunity to testify, because victims could not usually be identified in such cases. Moreover, in several jurisdictions, the authorities stated that nothing in the domestic law prevented the participation of victims in proceedings and that it rested on the presiding judge to determine whether their views and concerns would be heard. Recommendations were issued, as appropriate, to adopt or strengthen measures for the effective protection of victims and to take steps to enhance the role of victims during criminal proceedings. One State party had a comprehensive master plan addressing all aspects of protection and support for victims of crime. The introduction of victim impact statements was also being considered to allow victims to participate in the

sentencing of offenders by explaining to the courts and offenders how the crime had affected them.

14. Issues pertaining to the relocation of witnesses, experts and victims, in particular to other countries, were encountered in a number of countries in the region. Although several States were parties to a multilateral agreement on witness protection, the Minsk Agreement on the protection of participants in criminal proceedings among States members of the Commonwealth of Independent States, which provided a general framework for the relocation of protected persons, some countries needed to consider entering into relevant relocation agreements.

15. There were also cases where existing laws that provided some forms of legal and physical protection had yet to be implemented or were not applicable to all corruption-related offences. Typically, the recommendations that were issued also covered the protection of offenders who cooperated with law enforcement authorities, in accordance with article 37, paragraph 4, of the Convention.

### **Eastern European States**

16. A number of good practices were identified among the 20 Eastern European States covered by the present report in relation to the protection of witnesses, experts and victims. Only five countries faced issues in that regard. Most States parties had established special witness protection programmes, witness protection legislation and similar laws specifying the types of protection that could be afforded, the persons who enjoyed such protection, the scope and duration of protection and the duties of the competent authorities. Such protection covered both witnesses and experts giving testimony in criminal proceedings, with some notable exceptions: in one State a recommendation was issued to strengthen protective evidence rules aimed at ensuring the safety of experts; in another State experts were not included among the persons eligible for protection under the national legislation; and in a third State a need to expand the witness protection law to ensure its applicability in corruption-related cases was noted.

17. Notwithstanding those few cases, in most States parties comprehensive protection systems had been adopted. For example, one State's witness protection law provided that, in relevant cases, witnesses or their next of kin could receive personal protection and assistance in changing their residence or employment. Moreover, in particularly justified cases, physical protection measures, such as the use of official alternative identities and permission to leave the country to receive protection abroad, could be authorized. Another State party had adopted a comprehensive legal framework and a specialized unit for witness protection in the Ministry of Interior. A wide range of protections could be provided for witnesses and their families, including relocation and change of identity. Further, such persons had the right to compensation from the national budget for damages they or their family members suffered as a result of giving testimony or appearing in court. The criminal procedure law further contained a range of evidentiary rules to ensure the safety of witnesses, including the possibility of judicial examinations being conducted with the assistance of technical devices, such as voice and image distortion.

18. In most States parties in the region, the victims of corruption offences enjoyed a variety of rights at all stages of criminal proceedings. These included not only

giving testimony when called to act as witnesses, but also filing private actions before the civil courts, presenting their views as civil plaintiffs or becoming private prosecution parties in the criminal trial. For example, in one State party the law provided that victims could participate in judicial proceedings by assuming the role of subsidiary prosecutor, bringing indictments as private prosecutors or supporting indictments with respect to privately prosecuted offences.

19. Several States in the region were parties to multilateral agreements on witness protection that provided for the relocation of protected persons within the territory of member States, such as the witness protection agreement signed by States members of the Salzburg Forum, the Convention on police cooperation in South East Europe and the Balkan Agreement on witness protection. One State party, which was the depository of an agreement on cooperation in the area of witness protection among nine countries in the region, had adopted a witness protection law that provided for the international exchange of personal data and relocation of persons. However, in another State party a need to consider entering into relevant relocation agreements was noted.

#### **Latin American and Caribbean States**

20. Of the 20 Latin American and Caribbean States covered in the present report, 14 faced obstacles in relation to the implementation of article 32 of the Convention. In several States, the witness protection measures that had been established were fragmented and not comprehensive, and there was a need to adopt or strengthen frameworks for the protection of witnesses, experts and victims and their relatives and associated persons. While challenges of a legislative nature were prevalent in several countries, in particular regarding the application of protection measures and programmes to all offences or persons covered by the Convention, there was a need to devote attention and resources to the enforcement and enhancement of operational and institutional measures. For example, in one State party it was recommended that consideration be given to assessing the operational effectiveness of the protection mechanisms for witnesses, experts and victims. Concern was raised in another State party about the limited avenues for witnesses and experts to lodge applications for protection, which had to be filed by the prosecution. In a third State party the adoption of a witness protection programme was specifically recommended.

21. In a number of countries in the region, there was a need to establish or strengthen measures for the relocation of witnesses, experts and victims, including by considering the adoption of relevant agreements with other States. In this context, several countries were parties to the Central American convention for the protection of victims, witnesses, experts and other persons involved in criminal investigations and prosecutions, particularly against drug trafficking and organized crime (not yet in force). Moreover, the existence of a regional justice protection programme to provide for the protection of witnesses, experts and victims on a regional basis was found to facilitate international cooperation in the area of witness protection.

22. Legislation on victims of crime had been established in some States in the region to provide protective measures and regulate the role of victims in criminal proceedings. Nonetheless, in several countries there was a need to adopt or enhance measures for the protection of victims of corruption and to facilitate their

participation in criminal proceedings. In one State party, the right of victims and witnesses to receive adequate protection in the course of criminal proceedings was recognized in the Constitution. Another State party afforded protection to journalists at risk because of their duties.

23. In a few countries, legislation on the protection of witnesses, experts and victims of corruption offences had been drafted or introduced, and the reviewers recommended the swift adoption and implementation of such measures.

#### **Western European and other States**

24. Most of the 20 Western European and other States covered in the present report had adopted dedicated witness protection programmes, witness protection legislation and similar laws that specified the scope of available protections, eligible persons and the role of competent authorities. However, the absence of witness protection programmes was noted as a challenge in two States. Six States parties encountered issues pertaining to witness protection, including a need to ensure the application of protection measures and programmes to all offences and persons covered by the Convention and, in two cases, a need to raise awareness of such measures. Furthermore, there was a need to strengthen measures to protect the identity of witnesses. Given the existence of dedicated legal and institutional frameworks on witness protection in most States in the region, the focus of the reviews was placed on the effective enforcement of existing measures. In one jurisdiction, for example, it was recommended that consideration be given to developing and using statistical information tools for the monitoring of witness protection policies.

25. The States parties in the regional grouping had established a variety of legislative, procedural and institutional measures to implement article 32 of the Convention. For example, in one jurisdiction extensive provisions were in place for the protection of witnesses, their relatives and cooperating offenders. Protection measures were requested by the public prosecutor, decided on by a central commission and implemented by a central protection service. Such measures could include security, relocation, provisional or definitive change of identity and testifying by videoconference. Similarly, in another State party the national witness protection programme, which was administered by the police, afforded assistance to persons providing evidence or information or otherwise participating in an inquiry, investigation or prosecution. Protection measures could include relocation within or outside the country, accommodation, change of identity, counselling and financial support to ensure the witnesses' security or enable them to be self-sufficient. In a third State party the witness protection programme included security and support domestically and abroad, if needed. Witnesses and their family members were accompanied by the witness protection authority throughout the entire criminal process to enable them to lead their lives as independently and normally as possible. In general, witness protection regimes were comprehensive and there was a wide range of measures that afforded effective protection to concerned persons. Moreover, in one State party, as part of its protection framework, the courts did not retain the names of witnesses, which ensured anonymity at all stages of proceedings.

26. In some countries, witness protection legislation had been adopted to address obligations arising from regional instruments, such as the resolution of the Council

of the European Union of 23 November 1995 on the protection of witnesses in the fight against international organized crime, recommendation No. R (97) 13 of the Council of Europe Committee of Ministers to Member States concerning intimidation of witnesses and the rights of the defence and the Council of the European Union framework decision 2001/220/JHA on the standing of victims in criminal proceedings. In one case it was recommended that the application of witness protection arrangements with neighbouring countries to corruption-related cases be ensured.

27. The victims of corruption offences enjoyed a variety of rights at all stages of criminal proceedings in the States parties in the regional grouping. For example, victim impact statements were admissible in several countries. In one State there was a need to ensure the full protection of victims who were not witnesses by extending existing protection measures. In one State party a separate law on the rights of victims of crime had been established and included the rights of victims to review the indictment, to be informed of the proceedings and to express opinions at various stages of the proceedings. Another State party had established a charter on victims of crime and an office dedicated to victims of crime.

## **B. Implementation of article 50 of the Convention (Special investigative techniques)**

28. When comparing the implementation of article 50 on special investigative techniques by the 123 States covered in the present report, some regional differences become apparent. Notably, the Eastern European States and Western European and other States had a more comprehensive legislative regime for the implementation of this article and had more practical experience in using special investigative techniques in international investigations of corruption offences compared to other regions.

29. The majority of the African States, Asia-Pacific States and Latin American and Caribbean States did not have dedicated and comprehensive legislation on special investigative techniques. Likewise, judging from the information available, for the most part the States of those regions had limited or no experience in using special investigative techniques.

30. Some of the Eastern European States and Western European and other States reported that they frequently concluded and adhered to bilateral and multilateral arrangements addressing the use of special investigative techniques. The use of various regional law enforcement networks was also frequently referenced in States in both regional groupings.

31. Only a minority of the African States, Asia-Pacific States and Latin American and Caribbean States reported a similar experience. In most cases, there were no international arrangements on the use of special investigative techniques in those regions, which is an interesting observation given that a number of regional and subregional treaties on law enforcement cooperation and a high number of regional and subregional cooperation networks had been reported in those regions in previous regional reports.

32. Legal and practical challenges remained more or less similar in all regions, with the exception of the Eastern European States and Western European and other States. Most of the challenges related to a lack of comprehensive legislation on special investigative techniques, the inability to apply special investigative techniques to corruption cases or their limitation to use in cases involving only the most serious offences (which often did not include all the offences covered by the Convention), organized crime and drug trafficking, the inability to use certain special investigative techniques in corruption cases (for example electronic surveillance and controlled delivery), the power to apply special investigative techniques not being vested in law enforcement agencies tasked with fighting corruption, the limited admissibility of evidence derived from the use of special investigative techniques and a lack of experience in the use of special investigative techniques. In addition, a lack of resources and technological capacities, a lack of awareness and problems relating to inter-agency coordination were often reported as obstacles to the successful use of special investigative techniques in the African States, Asia-Pacific States, and Latin American and Caribbean States.

33. The information provided by States was often not thorough enough to comprehend all the nuances and details of the implementation of article 50 in practice. As was the case in the previous regional reports, information was not provided to the same level of detail in all country reports. This lack of information did not necessarily mean that there was no relevant practice of implementation.

#### **African States**

34. Only 4 of the 26 African States covered in the present report had comprehensive legislative provisions on the use and admissibility of special investigative techniques. Nine States reported having provisions covering some aspects of the use of such techniques in practice. Three States had legislation only with regard to specific types of offences where the use of special investigative techniques was allowed, for example in the investigation of money-laundering offences or drug trafficking. Two States had legislation authorizing the use of special investigative techniques in the context of cooperation at the international level in their acts on mutual legal assistance.

35. Five countries reported the problem of the admissibility of the information obtained through the use of special investigative techniques as evidence in courts. In one country judges routinely used their discretionary powers not to admit such evidence.

36. One State reported that the lack of power of the national anti-corruption authority to use special investigative techniques was a challenge.

37. Most of the countries did not have any multilateral or bilateral arrangements on the use of special investigative techniques in transnational corruption investigations. Recommendations were often issued to address this gap.

38. Four States reported that they were able to use special investigative techniques domestically, on a case-by-case basis. In some cases, such use must be authorized by a judge.

39. Four States had practical experience in the use of special investigative techniques internationally, without any arrangements, on a case-by-case basis.

40. Only two States reported that they were able to use special investigative techniques internationally as part of their membership in the International Criminal Police Organization (INTERPOL), the Southern African Regional Police Chiefs Cooperation Organization, the Eastern and Southern Africa Anti-Money Laundering Group and the Asset Recovery Inter-Agency Network of Southern Africa/Camden Asset Recovery Inter-Agency Network.

41. Most countries in the region reported that the lack of technological tools and resources were obstacles to the successful employment of special investigative techniques both domestically and internationally.

#### **Asia-Pacific States**

42. Only 11 of the 37 Asia-Pacific States covered in the present report had relatively comprehensive legislation on special investigative techniques. In one State such legislation specifically applied to corruption offences.

43. Ten Asia-Pacific States reported having disconnected provisions covering only some aspects of the use of the techniques in practice. Some States had legislation only with regard to specific types of offences, which mostly related to money-laundering, the proceeds of crime and drug trafficking. Two States reported that, although specific provisions existed with regard to particular offences, there were no practical limitations for the use of such techniques in the investigation of corruption crimes.

44. Some States that did not have any legislation on special investigative techniques could still use such techniques on a case-by-case basis. This was common in particular among the States of Oceania. Most of the States of Oceania also reported that limited resources and capacity and a lack of technological tools were obstacles to the proper use of special investigative techniques.

45. One State reported that it had comprehensive legislation on special investigative techniques and had established a special department in its police force tasked with carrying out such techniques. However, there was a problem with the admissibility by the court of the evidence obtained through the use of such techniques.

46. Generally, a lack of legislation was associated with a number of legal problems, such as unclear rules of admissibility of evidence obtained through the use of special investigative techniques.

47. Two States reported that law enforcement agencies did not have the power to employ some special investigative techniques (for example phone tapping and controlled delivery) in corruption cases.

48. Two States reported that special investigative techniques could be used when authorized by the police or prosecution, without the need for specific legislation, and that there were no particular obstacles with regard to the admissibility of evidence obtained through their use.

49. One State reported that special investigative techniques could be used in corruption cases with the permission of the President.

50. Only five States referenced practical experience of using special investigative techniques in corruption cases.

51. Only three States reported bilateral arrangements on the use of special investigative techniques. Some regional multilateral instruments were also cited, such as the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 2002 (Chisinau Convention) applied by the members of the Commonwealth of Independent States. One State reported the conclusion of memorandums allowing for the use of special investigative techniques when cooperating with the police forces of neighbouring countries in the Association of Southeast Asian Nations.

52. Interestingly, three States that specifically indicated the need for bilateral arrangements in order to be able to use special investigative techniques internationally did not have any such arrangements in place.

### **Eastern European States**

53. All 20 Eastern European States covered in the present report had comprehensive legislative provisions on the use of special investigative techniques. Twelve States had relevant provisions in their codes of criminal procedure, three States had relevant provisions in their laws on the police and nine States had relevant provisions in their laws on special operative techniques and special intelligence. Five States also had specific provisions on special investigative techniques in their laws on legal assistance in criminal matters.

54. Most of the States had bilateral and/or multilateral agreements or arrangements on the use of special investigative techniques internationally, or participated in regional multilateral agreements, such as the Chisinau Convention, the Convention on police cooperation in South East Europe, the European Convention on Mutual Assistance in Criminal Matters (1959) and its Second Additional Protocol. States that were members of the European Union also made references to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and the Schengen Agreement of 1985, and to cooperation through European Police Office (Europol), Eurojust and INTERPOL channels. A recommendation was issued to one State that it expand the range of such arrangements to other States parties outside the region.

55. Four States reported that they could use special investigative techniques on a case-by-case basis. Two of those States would apply the principle of reciprocity in such cases.

56. One State reported problems with the admissibility of the evidence obtained as a result of the use of special investigative techniques, and it was recommended that it adopt changes to its legislation to address those problems.

57. One State reported that, in accordance with its existing legislation, not all available special investigative techniques could be used in corruption cases. One State reported limited experience in the use of special investigative techniques in corruption cases. Another State reported a need to improve the capacities of law enforcement bodies in charge of conducting special investigative techniques.

**Latin American and Caribbean States**

58. Of the 20 Latin American and Caribbean States covered in the present report, only one State indicated that special investigative techniques were comprehensively regulated in a self-standing legislative act.

59. Limited types of special investigative techniques were covered in the domestic legislation of three States. Some States had relevant legislation only with regard to specific types of offences, such as drug trafficking (three States) and money-laundering cases (two States). In two States special investigative techniques could be used only in relation to serious offences (which did not include all the offences under the Convention) and in four States they could be used only in relation to offences involving organized crime. In another State special investigative techniques were regulated by the anti-money-laundering law, which was also applicable to corruption offences. However, undercover agent operations could be conducted only with regard to organized crime offences and money-laundering offences.

60. One State reported that special investigative techniques could be used on a case-by-case basis without obstacles, but did not specify the legislative basis for such use. Another State indicated that special investigative techniques could be used on a case-by-case basis, based on common law principles.

61. One State reported that special investigative techniques could be used in corruption cases with the authorization of a court, without providing further information. Another State reported that special investigative techniques could be used on a case-by-case basis, with ministerial authorization and without specific legislation.

62. One State reported that no prior judicial authorization was required to employ special investigative techniques and that such techniques could be used internationally, based on the Convention. Another State reported that, despite the lack of any national legislation, special investigative techniques could be used internationally, provided that the results of such cases were not used as evidence domestically.

63. Most of the States did not cite any agreements or arrangements on the use of special investigative techniques internationally. One State reported a bilateral protocol on the use of special investigative techniques. Another State referred to the possibility of using special investigative techniques in transnational cases based on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and the Inter-American Convention on Mutual Legal Assistance in Criminal Matters of 1992. Only one State reported extensive experience of using special investigative techniques in corruption cases based on bilateral arrangements with other States.

64. Two States reported limited capacity in the use of special investigative techniques. One State reported limited awareness and inter-agency cooperation as obstacles to the successful use of special investigative techniques.

**Western European and other States**

65. All 20 Western European and other States covered in the present report had comprehensive legislation on special investigative techniques. Seven States had

relevant provisions in their codes of criminal procedure, three in their laws on police, four in their criminal codes, one in its coercive measures act, one in its security service act and one in its criminal justice surveillance act. Two States also had specific provisions on special investigative techniques in their laws on legal assistance in criminal matters. Most of the States frequently used such techniques domestically and in the context of international cooperation.

66. In two States special investigative techniques could be used only with regard to the most serious offences. One State did not have any specific regulations with regard to controlled delivery.

67. One State reported that there was a distinction under its domestic legislation between the use of surveillance techniques and the use of intercept techniques such as telephone wiretapping. In that State, intercept techniques were used for the purpose of gathering intelligence. However, intercept evidence was not admissible in criminal cases. Nevertheless, the State did not feel that the inability to use such evidence had an impact on its potential to deal with corruption crimes. Interestingly, under the domestic law of that State, foreign intercept evidence was permitted, as long as such intercepts had not been undertaken at the request of that State.

68. Ten States reported having bilateral and multilateral arrangements allowing for the use of special investigative techniques internationally. Most of the States in this group made references to a number of European Union and other regional international instruments that could be used as a basis for international cooperation, including the European Convention on Mutual Assistance in Criminal Matters (1959), its Additional Protocol (1978) and Second Additional Protocol (2001), the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990), the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000) and its Protocol (2001), the Schengen Agreement (1985), the Council of the European Union framework decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, title III of the Cooperation Agreement between the European Community and its Member States and the Swiss Confederation to combat fraud and any other illegal activity to the detriment of their financial interests (2004) and the Agreement on Mutual Legal Assistance between the European Union and the United States of America (2003). In addition to the regional instruments, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and the United Nations Convention against Transnational Organized Crime (2000) were also referenced. Cooperation using INTERPOL, Europol and Eurojust channels were also reported. Some States were also participating in the International Working Group on Police Undercover Activities and the Comprehensive Operational Strategic Planning for the Police.

69. One State has developed a system of standard protocols for the creation of joint investigation teams, inter alia, involving the use of special investigative techniques, which was considered a good practice.

70. Two States reported that the use of special investigative techniques could be carried out directly based on the Convention as a form of mutual legal assistance. Another State would require international treaties to use special investigation techniques in transnational investigations of corruption offences. One State could employ special investigative techniques internationally, case-by-case, based on a

formal agreement with another State. Another two States indicated that special investigative techniques could be used internationally without formal agreements, on a case-by-case basis. One State could use special investigative techniques internationally without any arrangements, based on the principle of reciprocity and without any specific mandatory legislative basis for corruption cases.

71. One State could employ special investigative techniques as a form of mutual legal assistance with regard to any country in the absence of any formal arrangements. It indicated extensive experience in using special investigative techniques in transnational corruption cases by referencing at least 70 cases involving the offences of bribery and corruption.

72. One State reported that controlled delivery could only be used within the European Union and a number of other European States. A corresponding recommendation to ensure that this type of special investigative assistance could be provided by that State to all States parties to the Convention was issued.