



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

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Open-ended Intergovernmental Working Group on Asset Recovery

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**Forum for advancing practical aspects of asset
recovery, including challenges and good practices**

Draft non-binding guidelines on the timely sharing of information in accordance with article 56 of the Convention and improving communication and coordination between various asset recovery practitioner networks

Note by the Secretariat

I. Introduction

1. The Conference of the States parties to the United Nations Convention against Corruption has repeatedly placed great emphasis on article 56 of the Convention (see resolution 3/3, para. 2; resolution 4/4, para. 3; and resolution 5/3, eleventh preambular para. and paras. 8, 15, 17, 26 and 27). In its resolution 6/2, adopted in November 2015, the Conference directed the Open-ended Intergovernmental Working Group on Asset Recovery to initiate the process of identifying best practices and developing guidelines for proactive and timely sharing of information to enable States parties to take appropriate action, in accordance with article 56 of the Convention.

2. The General Assembly, in its resolution 71/208, adopted in December 2016, encouraged States parties to the Convention to use and promote informal channels of communication and the possibility of spontaneous exchange of information, as permitted by domestic law, in particular prior to making formal requests for mutual legal assistance, by, inter alia, designating officials or institutions, as appropriate, with technical expertise in international cooperation in asset recovery to assist their counterparts in effectively meeting requirements for mutual legal assistance (para. 17).

3. The Open-ended Intergovernmental Working Group, at its eleventh meeting, held in August 2017, conducted a thematic discussion on proactive and timely sharing of information, in accordance with article 56 of the Convention. The secretariat had prepared a document ([CAC/COSP/WG.2/2017/2](#)) containing background information based on both the replies of 10 States parties¹ to a note verbale containing a request for information on the issue and the finalized country reviews of 156 States parties with regard to article 46, paragraphs 4 and 5. The Group concluded that the secretariat,

* [CAC/COSP/WG.2/2019/1](#).

¹ Armenia, Czechia, Germany, Mongolia, Peru, Russian Federation, Switzerland, Ukraine, United States of America and Venezuela (Bolivarian Republic of).



in consultation with the Working Group, should continue its efforts to identify best practices and develop guidelines for proactive and timely sharing of information.

4. In its resolution 7/1, the Conference urged States parties, without prejudice to domestic legal and administrative systems and procedures, to endeavour to take measures to permit them to forward information on proceeds of crime in order to facilitate recovery of assets through criminal, civil or administrative proceedings in accordance with article 56 and chapter IV of the Convention. It further decided that the Working Group should continue its work by, inter alia, continuing to collect data on best practices, with a view to developing non-binding guidelines concerning the timely sharing of information to enable States parties to take appropriate action, in accordance with article 56 of the Convention, and conducting an analysis of how communication and coordination between various asset recovery practitioner networks could be improved, with a view to developing guidelines for the proactive and timely sharing of information.

5. In line with those mandates, the secretariat presented for consideration by the Working Group at its twelfth meeting, held on 6 and 7 June 2018, a document containing draft non-binding guidelines on the timely sharing of information in accordance with article 56 of the Convention and improving communication and coordination between various asset recovery practitioner networks.²

6. The Working Group took note of that document and expressed support for the further study and consideration of and discussions on the non-binding guidelines and requested the secretariat to submit them to States parties for comments.

7. Accordingly, the secretariat invited States parties to provide comments on the draft non-binding guidelines in two notes verbales, in December 2018 and January 2019.

8. As at 7 March 2019, the secretariat had received comments on the draft non-binding guidelines from 21 States parties.³ On the basis of the comments received, the secretariat revised the draft non-binding guidelines, which are presented in the annex to the present document for further consideration.

II. General observations

9. The secretariat received from States parties general observations, as summarized in paragraphs 10 to 13 below, in addition to specific suggestions with regard to the proposed text of the draft non-binding guidelines, which are reflected in the revised draft non-binding guidelines in the annex.

10. States parties generally supported the development of the non-binding guidelines and noted that the principles found in the guidelines had already been reflected in many existing bilateral and multilateral agreements and arrangements. It was stressed by several States that the development of the guidelines should take into consideration existing domestic rules of States parties on spontaneous sharing of information. Furthermore, some States indicated that the guidelines should not affect the domestic law, given their non-binding nature, while one State proposed that the guidelines could be made binding on States parties to overcome various challenges in international cooperation and in the work of asset recovery practitioner networks.

11. States parties highlighted the importance and effectiveness of using information exchange frameworks and practitioner networks in asset recovery cases. The work of the Egmont Group of Financial Intelligence Units, the Camden Asset Recovery Inter-Agency Network and the Financial Action Task Force of Latin America were mentioned in particular. It was emphasized that States should endeavour to join the

² CAC/COSP/WG.2/2018/5, section IV.

³ Algeria, Argentina, Armenia, Belarus, Chile, China, Colombia, Guatemala, Hungary, Iraq, Ireland, Japan, North Macedonia, Morocco, Mexico, Peru, Poland, Russian Federation, Saudi Arabia, Switzerland and United States of America.

existing international arrangements enabling spontaneous exchange of information and, only if those are deemed inadequate, consider establishing new arrangements.

12. Several States parties provided detailed comments on the text of the guidelines, which are reflected in the revised draft non-binding guidelines in the annex to the present document. Some States proposed specific language in order to properly acknowledge differences in approaches regarding the implementation of article 56. In this regard, it should be noted that the guidelines are intended to be non-binding and sufficiently flexible to accommodate diverse approaches to spontaneous sharing of information.

13. Additionally, several changes to the draft document were made to further clarify the guidelines and ensure consistency in the use of specific terminology. Notably, a guideline on the need for States parties to adopt procedures for the sharing of information that is available to the general public under the domestic law of States parties has been added to draft guideline 2. This is aimed at encouraging States parties to spontaneously share publicly available information that States parties are under an obligation to provide upon request, pursuant to paragraph 29 (a) of article 46 of the Convention. Further, spontaneous sharing of such information should not prejudice investigations, prosecutions or judicial proceedings in a transmitting State and should not give rise to potential privacy or confidentiality concerns associated with transmitting other types of information to another jurisdiction.

14. In this context, the Group may also wish to consider and make recommendations on the further steps needed for finalization of the non-binding guidelines and the format in which they could be presented to the Conference of the States Parties at its eighth session, to be held in December 2019.

Annex

Revised draft non-binding guidelines on the timely sharing of information in accordance with article 56 of the Convention and improving communication and coordination between various asset recovery practitioner networks

Draft guideline 1

States should be able to spontaneously transmit information on the basis of general information-sharing arrangements, through networks or on a case-by-case basis

- 1.1 States should be able to transmit information spontaneously in the absence of a treaty, as permitted under their domestic legal and regulatory frameworks, and, if possible, without the need for an assurance of reciprocity.
- 1.2 States should be able to share information based, for example, on existing general information-sharing arrangements or networks, or on a case-by-case basis. In cases where States can apply the Convention directly, it should also be possible to spontaneously share information based on article 56 of the Convention.
- 1.3 If necessary, States should consider including spontaneous sharing of information in new bilateral and regional treaties on mutual legal assistance or to conclude new information-sharing arrangements.

Draft guideline 2

States should establish clear domestic rules, policies or guidelines about the conditions, avenues and types of information that can be shared

- 2.1 Such rules, policies or guidelines may include the designation of the authority or authorities that are allowed to share information and provide authorizations for responsible officials to disclose the respective types of information when the conditions are met.
- 2.2 They may further include procedures for the sharing of information that under domestic law is available to the general public.
- 2.3 Unless otherwise required by States' domestic legal and regulatory frameworks, it is not considered necessary to include these rules, policies or guidelines in legislation.

Draft guideline 3

Rules, policies or guidelines should be conducive to the sharing of information

- 3.1 In line with article 56 of the Convention, States parties should enact rules, policies or guidelines that are conducive to the sharing of information and allow for a swift reaction when relevant information is received.
- 3.2 To the extent possible, States parties should avoid requirements that are stricter than those applied to regular mutual legal assistance procedures, as prescribed in their domestic law.
- 3.3 Restrictive procedural rules should be avoided, as permitted under States' domestic legal and regulatory frameworks.

Draft guideline 4**Receiving States should follow up actively on the information transmitted if needed**

4.1 Receiving States should endeavour to follow up actively and collaboratively on the information transmitted if needed. Actions to be taken by a receiving State could include:

(a) Getting into contact with the transmitting jurisdiction for informal discussions on further steps;

(b) Opening an investigation if this has not yet been done and if the elements are sufficient under its domestic law;

(c) Preparing the relevant mutual legal assistance requests to complement the information and request seizure or freezing orders.

4.2 Receiving States should comply with any requests for the transmitted information to remain confidential, even temporarily, or with restrictions on its use.

Draft guideline 5**Spontaneous information-sharing should in general be considered favourably in cases of administrative freezing and settlement procedures**

5.1 States that can administratively freeze assets should consider spontaneously sharing information on assets that have been administratively frozen with the State of origin, as permitted under their domestic legal and regulatory frameworks, and should provide, if appropriate, assistance in the ensuing mutual legal assistance procedures.

5.2 States that conclude settlements in cases involving the proceeds of crime should consider, at appropriate stages of their proceedings, transmitting information on relevant facts of the case and, when appropriate, information on concluded settlements in corruption-related proceeds of crime cases; if needed, States could also conclude bilateral arrangements on transmitting this information.

Draft guideline 6**States should aim at designating effective contact points for asset recovery practitioner networks**

6.1 Each contact point should be aware of relevant domestic procedures and be in a position to promptly assist with advice in line with the established practice in his or her legal system, as well as the mandate of his or her institution, and have relevant language skills.

6.2 A simple and transparent procedure for designating contact points should be established, taking into account the need for continuity in a network's meetings and other activities. Where there is turnover, new contact points should be designated promptly.

6.3 Developing internal guidelines describing the type of assistance that can be rendered by the contact points can be helpful.

Draft guideline 7**States should endeavour to invest in the institutional support and resources for asset recovery practitioner networks**

7.1 States should endeavour to allocate adequate resources to ensure the effectiveness, sustainability and consistency of work done by practitioner networks, as well as to improve the communication and coordination between them.

7.2 States should consider providing networks with adequate resources for, inter alia, supporting their secretariats and secure communication platforms, as well as for hosting annual meetings and steering group meetings.

7.3 Members of the networks should endeavour to plan in advance and allocate sufficient time and resources to fulfil their responsibilities through participation in a network's meetings and coordination with other networks.

7.4 Other donors and technical assistance providers should consider providing assistance to networks to carry out their activities.
