

**G20 Anti-Corruption Working Group  
International Cooperation Think Pieces**

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## **Introduction**

In 2020 the G20 Anti-Corruption Working Group (ACWG), under the Saudi Presidency, published a Scoping Paper on International Co-operation dealing with Economic Crime, Offenders and Recovery of Stolen Assets. As a follow up action it was agreed in October 2020 that the G20 Presidency would commission a series of short “think pieces” in order to generate thinking and debate of both the key challenges and the options that might be considered to make international progress. These papers were completed in March 2021 by UNODC, the World Bank, the OECD, the Financial Action Taskforce and the UNODC/World Bank Stolen Asset Recovery Initiative and presented at the first meeting of the Italian Presidency. They were not negotiated or agreed by the group. Rather they were used to inform the development of the ACWG’s Action Plan 2022-4. They are referenced as anchor documents in the Action Plan.

## I Law Enforcement Cooperation

**Summary:** *This note is an outcome of the Scoping Paper on International Co-operation dealing with Economic Crime, Offenders and Recovery of Stolen Assets and the G20 Action on International Cooperation on Corruption and Economic Crimes, Offenders and Recovery of Stolen Assets finalized by the G20 Anti-corruption Working Group in 2020. The note proposes actions to enhance the effectiveness of measures in the area of law enforcement cooperation.*

### **Background**

1. Countries need to closely cooperate with one another in their law enforcement activities, in pursuit of the common goal of effectively countering corruption and related offences. However, considerable challenges remain in this area. The conclusion of bilateral or multilateral cooperation agreements or arrangements does not guarantee their application in practice. Various practical challenges to effective informal cooperation or law enforcement cooperation were reported in the Scoping Paper on International Co-operation dealing with Economic Crime, Offenders and Recovery of Stolen Assets and the G20 Anti-Corruption Working Group (ACWG) 2020 Accountability Report.

2. By drawing from information available from UNCAC implementation reviews, observations and findings contained in the Scoping Paper and the 2020 Accountability Report as well feedback from the ACWG members, this think piece provides a summary of the core issues and challenges relevant to law enforcement cooperation and offers possible suggestions on how progress in addressing these could be enhanced.

3. Informal or law enforcement cooperation involves or is naturally linked to information-sharing, formal or “official” mutual legal assistance, including on asset recovery, denial of safe haven/entry, etc. These topics are specifically addressed in other ACWG think pieces, but all of them need to be considered in their entirety as integral parts of the complex structure of international cooperation in transnational corruption cases.

4. The focus of this paper is the further strengthening of practitioners’ networks as a main driver in the process of improving law enforcement cooperation in line with the G20 Action on International Cooperation on Corruption and Economic Crimes, Offenders and Recovery of Stolen Assets. A number of important practitioners’ networks exist that need to be used to their full potential in practice, while the new Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE), introduced through the Riyadh Initiative, could further complement them.

### **Existing frameworks and relevant challenges**

5. Article 48 of the United Nations Convention against Corruption (UNCAC) requires States parties to cooperate closely with one another in their law enforcement activities, in pursuit of the common goal of effectively combating corruption and related offences, including the laundering of proceeds of corruption. Similar provisions can be found in other international or regional instruments such as the OECD Anti-Bribery Convention, the Inter-American Convention against Corruption, the African Union Convention on Preventing and Combating Corruption, the Council of Europe’s Criminal Law Convention on Corruption and the Arab Convention Against Corruption.

6. The UNCAC Implementation Review Mechanism reveals that important gaps remain in this area. A number of difficulties appeared to be of an operational nature. Despite the fact that many countries had a wide array of normative and practical tools in place to meet the law enforcement cooperation requirements pursuant to article 48 of the Convention, as well as the broad experience in the use of those tools, considerable challenges were faced by States parties where weaknesses in the national police were identified. Effectiveness in law enforcement cooperation is often hampered by issues of inter-agency coordination, limited human resources, inadequate technological and institutional capacities or language barriers. Another notable challenge in informal cooperation is the reluctance to cooperate and share information with foreign counterparts due to a lack of trust.

7. In the context of the UNCAC working groups, many countries have described the process of formal mutual legal assistance to be lengthy and burdensome. Similarly, the 2020 Accountability Report further observed that countries tend to be overly reliant on formal communication channels, with formal cooperation often taking significant amounts of time (months or even years), without fully exploring the potential of informal and direct law enforcement cooperation.

8. While a number of networks of law enforcement practitioners (e.g. the INTERPOL/StAR Global Focal Point Network on Asset Recovery (GFPN), the OECD Working Group on Bribery Law Enforcement Networks, the Camden Asset Recovery Inter-agency Network (CARIN) and other regional asset recovery networks, the Egmont Group of Financial Intelligence Units, etc.) exist that could be useful in addressing the reporting challenges, not all countries are fully aware of and proactively participate in them. In addition, anti-corruption agencies in some countries, in particular developing countries, have few or rather no channels to connect and receive practical guidance and assistance in undertaking their law enforcement functions.

9. The Accountability Report highlighted the following barriers to effective law enforcement cooperation and the use of networks:

- Unfamiliarity with cooperation channels by some departments
- Regulations on data sharing and subsequent use of such data
- Lack of secure informal transmission channels for sensitive data
- Limitations to the use of certain networks due to a particular geographic focus or focus on particular corruption offences or specific issues
- Difficulties in domestic coordination between relevant entities (such as FIUs, law enforcement and police forces) as access to certain networks is limited to specific entities
- Lack of political will or operational priority on international corruption cases

10. Additional practical barriers were reported during exchanges with the ACWG members:

- Difficulty in understanding which channel can be used and what agency should be contacted for a particular line of inquiry;
- Lack of understanding of legal requirements of requested countries
- Unclear application of the principle of reciprocity to assistance requests

- Lack of trust, including on the way confidential materials/information could be handled in other jurisdictions, political control/interferences and risks of leaking information to politically exposed persons (PEPs) being investigated, and wrong perceptions about the unwillingness of counterparts to cooperate
- Application of the death penalty to some underlying offences that may prevent cooperation and information-sharing

### ***Proposed Initiatives***

11. This note proposes for the ACWG's consideration the following measures to address the above concerns.

#### ***(1) Strengthened legislative action and adoption of domestic guidelines and by-laws***

12. The adoption of comprehensive legislative acts on law enforcement cooperation and joint investigations, as well as internal protocols and guidelines on modalities of engagement in informal cross-border law enforcement cooperation will ensure the implementation of UNCAC articles 48 and 49 (joint investigations) and relevant commitments by the ACWG and will enhance the effectiveness of cooperation.

13. The development of domestic internal guidelines on the importance of using practitioners' networks, developing trust with foreign counterparts, spontaneous information-sharing and conducting informal consultations before submitting formal MLA requests are particularly encouraged.

#### ***(2) Enhanced resources allocation and capacity-building***

14. Measures should be taken to dedicate adequate resources and enhance capacity-building in the area of informal/law enforcement cooperation in transnational corruption cases by G20 members domestically.

#### ***(3) Enhanced domestic coordination***

15. In line with UNCAC requirements (articles 36 (specialized authorities) and 39 (cooperation between national authorities)), States should step up action on enhancing domestic coordination between various authorities involved in informal cooperation, in particular dedicated anti-corruption agencies, police and other law enforcement bodies involved in international cooperation, FIUs, etc.

16. Domestic agencies should be aware of each other mandates. In particular, many advantages of using FIU channels in cross border cooperation and information exchanges should be known to domestic practitioners from law enforcement agencies.

#### ***(4) Sharing of good practices and discussing practical solutions for existing problems***

17. G20 members should continue to analyse, exchange and present to the ACWG good practices with regard to practical measures taken to enhance cross-border law enforcement cooperation, such as

proactive information-sharing, the posting of police and or prosecutorial liaison officers, the posting of specialized personnel in embassies abroad, conducting joint training or capacity-building activities, or conducting joint or parallel investigations or creating bodies in this regard.

18. Advanced practices on the formation and operation of joint investigative bodies gathered by the EU should be shared with other ACWG members and considered as a possible model for replication in other regions.

19. Objective and technical discussions between practitioners should be promoted to seek for solutions to existing practical problems This exercise should also address the importance of overcoming practical challenges such as issues related to the application of the principle of reciprocity, application of the death penalty as an obstacle to sharing of information, etc.

#### ***(5) Providing technical assistance***

20. G20 members should continue to provide technical assistance to one another and other countries with regard to legislative, institutional and operative measures to enhance cross-border law enforcement cooperation and addressing practical obstacles and problems in cooperation highlighted above.

21. Developing countries will particularly benefit from this kind of assistance.

#### ***(6) New technological solutions***

22. The ACWG may consider paying special attention to suggesting innovative solutions addressing some of the recurring challenges in law enforcement cooperation.

23. These challenges are often but not always related to overcoming language barriers, secure information-sharing and using special investigative techniques, etc.

24. The ACWG may consider organizing dedicated events on those issues as well as supporting the creation of focused task forces under the umbrella of GlobE to address them.

#### ***(7) Support networks of anti-corruption law enforcement practitioners***

25. Networks of relevant anti-corruption practitioners should be used by the ACWG as an additional vehicle for the implementation of the measures suggested above. Networks provide opportunities for experts to meet in-person to be able to build trust, speed things up, and designate a single point of contact. The ACWG could consider dedicating a special G20 side event to the use of networks for enhancing law enforcement cooperation. The ACWG could further explore how existing networks could complement each other in the best possible way and provide them with an opportunity to present their work to the Group. The International Anti-Corruption Coordination Centre (IACCC) could serve as a model example and useful good practices of practitioner-to-practitioner cooperation in transnational corruption cases.

26. Using of networks is crucial in understanding counterparts' legal requirements and mechanisms and building trust. Expert discussions on how various practical and legal obstacles could be resolved (e.g. unclear application of the principle of reciprocity to assistance requests, risk of leaking confidential materials/information, avoidance of political control/interferences, addressing wrong perceptions about the unwillingness of counterparts to cooperate, possible solutions in cases where the application of the death penalty may serve as an obstacle to cooperation and information-sharing, etc.) shall be enhanced and more actively conducted via platforms offered by the various networks.

27. GlobE can be a coordination vehicle for the G20 to organize these important discussions and share good practices more widely. In this respect, G20 members are encouraged to coordinate their capacity-building efforts under component 3 of GlobE by sharing their good practices with other countries and suggesting and sponsoring new knowledge products in the area of law enforcement cooperation. That component may particularly focus on sharing case studies that highlight good practices and challenges and typologies related to the fight against corruption and countering the laundering of the related proceeds, addressing practical obstacles to cooperation listed above, and on the establishment and operation of joint investigation teams in transnational corruption cases.

***(8) G20 leading by example***

28. G20 members should use the trust developed over many years of working together in the ACWG and lead by example in inspiring other countries to use networks more actively.

29. For law enforcement cooperation to be successful, the sharing of information and criminal intelligence on anti-corruption cases is crucial. G20 countries should create a database which contains information on the laws governing international law enforcement cooperation; the different actors involved in such cooperation and their different means for cooperation and legal powers. Moreover, the database could contain criminal intelligence on corruption cases, subject to the requirements of the domestic laws of the ACWG members.

30. G20 members need to explore how to overcome legal and cultural barriers to share this type of information more easily and work towards equivalent criminalization of acts of corruption, compatibilities of procedural law, and information of different legal standing.

31. A section of GlobE could be dedicated to this information and could also serve as a platform for the work towards the harmonization of the criminalization of corruption offences, compatibilities in procedural law, evidentiary rules and applicable legal standings.

## II Denial of Safe Haven/Entry

**Summary:** *This note is an outcome of the Scoping Paper on International Co-operation dealing with Economic Crime, Offenders and Recovery of Stolen Assets and the G20 Action on International Cooperation on Corruption and Economic Crimes, Offenders and Recovery of Stolen Assets finalized by the G20 Anti-Corruption Working Group in 2020. The note proposes actions to enhance the effectiveness of measures in the area of denial of safe haven/entry for the corrupt.*

### **Background**

1. As the corrupt continue to cross borders to escape justice, it is important to enhance international efforts to ensure that no jurisdiction can become a safe haven for them and their associates.

2. Denial of safe haven/entry for the corrupt has been a notable item on the agenda of the work of the G20 Anti-Corruption Working Group. Importantly, the “G20 Common Principles for Action: Denial of Safe Haven” and the “G20 High-Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery” were adopted in 2012 and 2016 respectively.

3. While there are some international standards regarding the denial of safe haven contained in international instruments such as the United Nations Convention against Corruption (UNCAC), particularly, its article 44 on extradition, issues related to the denial of entry mostly remain subject to domestic national frameworks. The INTERPOL Red Notice (request to law enforcement worldwide to locate and provisionally arrest a person pending extradition, surrender, or similar legal action), the European arrest warrant (a simplified cross-border judicial surrender procedure – for the purpose of prosecution or executing a custodial sentence or detention order among the EU Members), as well as visa black listing for participation in criminal offences and simplified removal procedures for violations of immigration rules applied by some countries may be viewed as useful tools in this area. Importantly, however, these measures should be applied with due consideration of fundamental rights of persons affected by them. The denial of safe haven and denial of entry would, therefore, both benefit from enhanced action.

4. By drawing on information available from UNCAC implementation reviews, and observations and findings contained in the Scoping Paper on International Co-operation dealing with Economic Crime, Offenders and Recovery of Stolen Assets and the G20 Anti-Corruption Working Group 2020 Accountability Report, this think piece will provide a summary of the core issues and challenges relevant to these topics, and make suggestions on how progress in addressing them could be enhanced.

### **Existing frameworks and relevant challenges**

5. As perpetrators of corruption offences may flee a jurisdiction to avoid prosecution or incarceration, extradition proceedings are necessary to bring them to justice in the prosecuting or sentencing country. Extradition is a formal process leading to the return or delivery of fugitives to the jurisdiction in which they are wanted for prosecution or for enforcing a sentence that would be the main means to ensure that corrupt fugitives are denied safe havens. Diverse national definitions of offences as well as deficiencies in the protection of human rights can give rise to serious impediments to extradition

efforts and effective international cooperation. Modern extradition treaties are based on respecting the principles laid down in the relevant international human rights treaties. Many of them are also based on the principle of dual criminality, which applies when the same conduct is criminalized in both the requesting and requested countries and the penalties provided for it are above a defined threshold, for example, one year of deprivation of liberty.

6. UNCAC article 44 sets basic standards for extradition for corruption offences and also encourages the adoption of a variety of mechanisms designed to streamline the extradition process.

7. UNCAC implementation reviews revealed that most States parties (including G20 members) regulate extradition in their domestic legal systems, usually in codes of criminal procedure or in special extradition acts and laws on international cooperation with wide variations in terms of the detail.

8. Even though many countries do not formally require a treaty as a basis for extradition, in practice most of them use to a great extent treaty-based processes, in implicit acknowledgement of the formal character of the extradition procedure. Besides UNCAC, other international instruments that were reported to be used as a legal basis for extradition in transnational corruption cases include the OECD Anti-Bribery Convention, multilateral arrangements and wide-ranging regional instruments, such as the Inter-American, the European and the Economic Community of West African States Conventions on Extradition, the Southern African Development Community Protocol on Extradition and the London Scheme for Extradition within the Commonwealth.

9. Main legal and practical obstacles in the area of extradition, as observed during UNCAC reviews, include:

- Different approaches to the criminalization of corruption offences, which may result in the absence of dual criminality and thus refusal to extradite;
- Burdensome evidentiary requirements and lack of expedited extradition proceedings;
- Lack of familiarity with UNCAC, especially the opportunity to use it as a legal basis for extradition;
- Inadequate consultations between requesting and requested States;
- Lack of human and technical resources and capacities in authorities in charge of extradition proceedings.

10. Unlike in the area of denial of safe haven, there are no international instruments comprehensively addressing denial of entry, and the matter is largely left to sovereign jurisdictions to regulate, especially in the absence of consolidated lists of corrupt persons.

11. According to the 2020 Accountability Report, although many G20 countries adopted general rules on denial of entry that may cover corruption, such rules lack clarity and in most of the cases lack references to corruption-related offences. Furthermore, few countries may deny entry absent a prior conviction where there is sufficient other information to make a determination.

12. Out of the G20 countries only one has the measures in place that would allow denying entry to family members or close associates who are considered to have derived personal benefit from corrupt behaviour of the principal target.

13. It was reported that entry bans may be rendered more effective through the ongoing changes to large-scale IT systems such as in the EU in the field of justice and interior, and the interoperability among them.

14. While some G20 countries indicated that they periodically review their immigration programmes to prevent general abuse by criminals, no corruption-specific assessments were reported.

15. It was also observed that successful denial of entry procedures require not only international cooperation, but strong domestic coordination between anti-corruption, immigration and law enforcement authorities.

16. Main legal and practical obstacles observed in the area of denial of entry include:

- Lack of clarity on what kind of corrupt conduct may trigger denial of entry;
- Potential conflicts between preventive intelligence-based denial of entry with fundamental rights;
- Lack of regulatory action on entry ban for close associates of corrupt individuals;
- Challenges in transnational information-sharing due to confidentiality requirements and slow process;
- Inadequate domestic inter-agency coordination;
- Inadequate information-sharing and consultations between requesting and requested countries;
- Lack of human and technical resources and capacities in authorities in charge of extradition proceedings.

### ***Proposed Initiatives***

17. This note proposes for the ACWG's consideration the following measures to address the above concerns.

#### ***(8) Continue criminalization of UNCAC offences in line with the requirements of the Convention and development of relevant by-laws and internal guidelines***

18. Enhanced UNCAC implementation, specifically in relation to clear criminalization of corruption offences, will provide clarity and minimize challenges related to dual criminality in extradition. G20 members may also consider providing more clarity in the domestic legislative frameworks, in line with the fundamental principles of their national law, on specificities of corrupt conduct that may trigger denial of entry by making references to UNCAC offences, producing guidelines on preventive denial of entry vis-à-vis domestic fundamental rights protections, and introducing rules on possibilities to deny entry to family members and close associates of corrupt individuals.

**(9) Raising awareness of the requirements of UNCAC**

19. Further activities on awareness-raising of the Convention's standards in the area of extradition and its requirements among practitioners would also increase the likelihood of using it as a legal basis for extradition. Such dedicated action could be also conducted under the umbrella of the ACWG.

**(10) Enhanced domestic coordination**

20. In line with UNCAC requirements and the observations highlighted in the 2020 Accountability Report, countries could also step up action on enhancing domestic coordination between their anti-corruption, immigration and law enforcement authorities. In that regard, the ACWG members could also share their good practices and examples of effective coordination domestically (e.g. creation of national coordination groups, task forces, working group involving relevant authorities, etc.).

**(11) Consider introducing enhanced immigration/visa controls, particularly in relation to PEPs**

21. It may be worth examining whether approaches such as due diligence controls, that are applied to money-laundering risks in the financial sector vis-à-vis politically exposed persons (PEPs) and their family members and associates, could be also replicated in immigration and visa regulations of G20 members, subject to the requirements of domestic law, in relation to the denial of entry of the corrupt.

22. For example, a question in immigration forms could be added in relation to involvement in money-laundering or corruption, which could trigger an easier deportation system if evidence of a person's involvement in such offences surfaces later.

23. Furthermore, in the context of good practice sharing, it may be considered whether some measures on entry ban and border controls applied in the context of counter-terrorism (e.g. on biometrics and international migration) could be also replicated vis-a-vis corrupt fugitives and their associates.

**(12) Consider introducing new principles governing residency/citizenship-by-investment schemes**

24. As existing residency/citizenship-by-investment schemes may be abused by the corrupt to escape justice, the ACWG could consider introducing new principles specifying measures that should be applied to minimize such risks. It is worth mentioning that since UNODC will conduct an expert group meeting this year to discuss the issues of the existence and the extent of corruption and the transfer of proceeds of crime in the context of international investments, it could also be synergized with the activities of the ACWG in this area.

**(13) Promote expedited extradition proceedings and simplification of relevant evidentiary requirements**

25. UNCAC implementation reviews demonstrate that most countries lack the mechanisms for expedited extradition proceedings in transnational corruption cases, unless specifically regulated by

additional multilateral arrangements such as between EU Member States or the members of the London Scheme on Extradition. Measures could be taken in this area by sharing good practices among G20 members. In particular, it may be worth considering focusing on setting up strict time limits relevant to each stage of extradition proceedings.

26. Additionally, ways to simplify evidentiary requirements relevant to extradition proceedings could be considered.

**(14) *Examining the practical application of the “aut dedere aut judicare” principle***

27. It was reported in the 2020 Accountability Report that while the principle of “aut dedere aut judicare” (either extradite or prosecute) was widely applied, a few countries had reported that they could extradite their own nationals in certain cases. Discussions in the expert meetings to enhance international cooperation under UNCAC noted the lack of practical examples of the application of this principle in transnational corruption cases.

28. It may, therefore, be suggested to further examine how this principle could be applied in practice to reduce safe havens for the corrupt. In this context, G20 members should seek to more actively initiate their domestic money-laundering investigations or prosecutions where, for various reasons, the request to extradite a person sought for the alleged commission of corruption offences cannot be entertained.

**(15) *Examining the notion of “political offence” and its implications***

29. While UNCAC and many other multilateral and bilateral treaties specify that offences covered by them cannot be considered political for the purposes of extradition, domestically, there is a lack of clarity regarding what exactly is a political offence. The ACWG may, therefore, encourage G20 members to agree on common approaches to this issue by introducing more clarity on the concept of “political offence”.

**(16) *Enhancing exchange of information, consultations and good practice sharing***

30. As these measures need to be further enhanced, the existing practitioners’ networks together with the new Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE), introduced through the Riyadh Initiative, may provide convenient platforms to facilitate information exchange through the most appropriate communication channels.

31. In particular, measures to enhance spontaneous information exchange among law enforcement practitioners for timely action on denial of entry could be further considered.

**(17) *Introducing a database of focal points dealing with denial of entry and re-invigorating the ACWG Denial of Entry Experts Group***

32. The ACWG may consider continuing the activities of its Denial of Entry Experts Group and introduce a database of focal points on denial of safe entry, containing contact details of specific authorities dealing specifically with the cases of denial of entry.

33. The ACWG may further discuss how existing networks and GlobE could complement each other in this particular area.

**(18)        *Enhancing capacity-building and increasing resources allocation***

34. G20 members may want to continue enhancing capacity-building activities and developing relevant knowledge products for and allocate more resources to their agencies and practitioners dealing with denial of safe haven and entry for corrupt individuals.

### **III Asset Recovery**

#### **Practical Enhancements for Mutual Legal Assistance**

***Summary:** This note is an outcome of the Scoping Paper on International Co-operation dealing with Economic Crime, Offenders and Recovery of Stolen Assets and G20 Action on International Cooperation on Corruption and Economic Crimes, Offenders and Recovery of Stolen Assets finalized by G20 Anti-corruption Working Group in 2020. The note proposes several practical enhancements for mutual legal assistance to strengthen cooperation in asset recovery.*

1. As criminals and the proceeds of crime cross borders, anti-corruption efforts depend on assistance from foreign jurisdictions, a process that is impeded by differences in legal traditions, laws and procedures, resources, and capacities. Mutual legal assistance (MLA) in criminal matters is the process by which countries seek assistance from foreign law enforcement and prosecution authorities to gather information and evidence, as well as to restrain and confiscate the proceeds of crime. In cases of grand corruption, asset recovery is unlikely in the absence of effective MLA.

2. Under UNCAC Article 46, countries should provide the widest range of MLA in relation to corruption investigations, prosecutions and related proceedings. However, the realities of existing MLA processes often reduce these provisions to aspirational statements. The lack of timely provision of MLA was the greatest barrier to formal cooperation highlighted by G20 countries in the G20 Anti-Corruption Working Group (ACWG) 2020 Accountability Report (the Report).

3. The Report identifies several positive steps taken by G20 countries to improve MLA, including, the adoption of legal measures to enable greater flexibility in the execution of MLA requests, the development of tools which allow for the rapid locating and freezing of assets, the establishment of focal points for formal and informal cooperation, the participation in platforms and networks for informal international cooperation, and the increased level of technical assistance provided to developing countries. Among other initiatives, the G20 adopted High Level Principles on Mutual Legal Assistance in Corruption Cases (an outcome of the 2013 Russian G20 Presidency), and a Step-By-Step Guide to Requesting Mutual Legal Assistance from G20 Countries (an outcome of the 2012 Mexican G20 Presidency), and welcomed the Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE)(an outcome proposed by the 2020 Saudi G20 Presidency).

4. To sustain the relevance of previous work by the G20 and other fora, this note proposes measures to improve the performance of both requesting and requested countries in the execution of MLA requests. Given the diversity of legal systems among G20 countries, the proposals are broadly framed as potentially non-binding approaches and offer flexibility to enable countries to use or adapt the proposals as appropriate within their institutional and legal contexts.

#### **Reasons underlying the lack of timely provision of MLA**

5. Reasons underlying the delay in the timely provision of MLA vary, but generally fall in two categories: (i) the quantity of MLA requests exceeds available resources and capacities; and/or (ii) the MLA process is misunderstood or perceived by many jurisdictions to be too complicated.

### *Globalization leads to an increase in MLA requests*

6. With increasing cross-border criminal activity, an increase in MLA requests is to be expected and welcomed as an indicator of international cooperation among law enforcement and prosecutors. Globalized communications have also led to significant electronic and personal data held in other jurisdictions. For example, evidence from servers of a social media company in one country may be relevant in the prosecution of an otherwise wholly domestic crime in another country. Consistent with the international imperatives for countries to provide the widest range of MLA, there is a need to identify areas for improvements to manage the increase in MLA requests.

### *Quality concerns with many MLA requests*

7. Exacerbating the increase in quantity, is continued concern with the poor quality of many MLA requests. Some requested jurisdictions assert that many MLA requests do not comply with (i) treaty requirements, (ii) threshold procedural, form or language requirements, or (iii) requirements that are in place to ensure formal law enforcement cooperation complies with domestic legal and regulatory criteria, including due process. Requests may also fail to consider important distinctions between legal systems (*e.g.*, civil vs. common law traditions) which may be especially relevant in requests for the use of coercive powers. Poorly written or insufficient MLA requests may lead to delays in execution due to a lack of clarity or omission of required information. If requests do not contain the required information and/or are not clearly drafted, they cannot be executed in a timely manner, or at all. Attempts to cure defects in the requests if possible, contribute to the delay in the execution of other valid MLA requests and require resources, including staffing with expertise in MLA and criminal law and procedure.

8. The ACWG and other fora have sought to address these quality concerns through the publication of MLA guides (*e.g.*, the G20 MLA Guide and beneficial ownership guides (an outcome of the 2016 Chinese G20 Presidency), 2014 Arab Forum on Asset Recovery and the 2017 Global Forum on Asset Recovery)(*available on the StAR website*), and the provision of technical assistance and other tools such as UNODC's Mutual Legal Assistance Writer Tool. Given the continued quality concerns with many MLA requests, continued technical assistance by G20 members and wider promulgation of these resources is needed.

### *Underutilization of open source information and informal networks*

9. Many MLA requests are submitted prior to the full utilization of information available through open sources or through informal cooperation networks (*e.g.*, EGMONT Group, CARIN and other Asset Recovery Interagency Networks). Often these sources could be used to obtain information during the investigative stages in lieu of MLA, or to confirm that the requested information is not available within a requested jurisdiction. These sources also provide the foundation to ensure that any eventual MLA request includes essential information and provides specificity in the requested assistance. Thus, it is more likely that such MLA requests can be executed efficiently, and by foreign counterparts with a better understanding of the case.

10. "Open Government" and other transparency/accountability initiatives, as well as technological advances, have increased the quantity of public records available online. Property records, asset registries, company registries, tax and, increasingly, beneficial ownership information may be available through open source databases or informal cooperation networks. However, the availability of this

information online may not translate into a reduction in MLA requests due to a lack of awareness of relevant databases by foreign practitioners. Further, even though publicly available or as information exchanged through informal cooperation networks, foreign public records (or copies thereof) must be authenticated to be admitted as evidence in domestic courts. The authentication requirements vary among jurisdictions but may necessitate MLA requests from the perspective of requesting jurisdictions.

*Differing MLA avenues have developed over time resulting in a lack of standardization*

11. Delays in execution also arise from the diversity and complexity of MLA processes developed over time. The original form of MLA, letters rogatory, are still used in the absence of other bases for assistance. Bilateral MLA treaties were first negotiated in the 1970s to facilitate drug enforcement. Although the treaties may use similar templates, or even the Model Treaty on Mutual Assistance in Criminal Matters, promulgated by UNODC, the treaties are individually negotiated, with differences among process, form or content requirements for MLA requests. The availability of MLA has been expanded through several international or regional conventions (UNCAC (2005), UNTOC (2003), OECD Anti-Bribery Convention (1999), *inter alia*). Despite the availability of such conventions, bilateral MLA treaties are needed to address, among other things, MLA for offenses not covered by multilateral conventions and requirements of domestic laws that can only be overcome by a bilateral treaty. Finally, the relevant obligations under bilateral and multilateral treaties must be incorporated into domestic legislation in each jurisdiction. Domestic legislation may impose additional procedures, leading to misunderstandings between jurisdictions.

12. These differing MLA avenues and requirements of domestic laws show the need to establish and/or strengthen central authorities with technical expertise, resources, and authority to make decisions on MLA, in order to: (1) provide a point of contact for direct communication to resolve issues; (2) agree on uniformity of procedures; and (3) authenticate requests. Properly resourced central authorities can also make decisions to update MLA practices to keep up with technological advancements. Criminals often use state-of-the-art technology to move assets across borders within seconds, while many countries still require paper originals transmitted through diplomatic channels, with properly notarized stamps or seals. The COVID-19 pandemic has shown that MLA cooperation among countries able to transmit MLA requests and receive responsive materials electronically, from central authority to central authority, has been virtually seamless and has overcome the inefficiency of paper originals. Modern technology has also proven to be especially reliable with digital signatures that cannot be forged.

*Additional MLA procedural concerns*

13. The Report and other studies have identified additional MLA concerns, including inter-agency delays within a jurisdiction (*e.g.*, delays between the central authority and the executing authority); poor case management systems to monitor the status of MLA requests and maintain statistics; an absence of a prioritization system of requests; and unclear timeframes for the execution of MLA requests. These concerns may lead to distrust between requesting and requested jurisdictions, and difficulties in managing expectations for timely MLA responses to meet critical court-mandated deadlines. The lack of timely provision of MLA may allow restraint orders on assets to be removed, and assets lost to recovery.

## II. Proposed Initiatives

14. This note proposes for the ACWG's consideration seven measures to address the above concerns through prioritization, simplification, standardization and coordination of MLA requests.

### ***(1) Prioritize MLA Requests for Expedited Response (including "Red Alert MLA Request")***

15. While all MLA requests are important, they are not all equally important. The Report, FATF Recommendation 37, and several MLA good practice guides recommend that jurisdictions prioritize MLA requests. However, specific guidance on prioritization of MLA has not been discussed. As a reform measure, the ACWG could identify criteria that would allow designation of an MLA request as a priority for expedited response – perhaps, a 'red alert' MLA request. Such criteria could include MLA requests pertaining to cases of national importance, involved assets exceeding a certain threshold, or likely dissipation of significant assets without timely action. Requests would state clearly As a non-binding commitment, G20 members could decide to seek to prioritize responses to such designated MLA requests, including acknowledging receipt of the priority MLA request within specified time period, providing a contact person for follow-up throughout the MLA process (a "MLA concierge"), and assisting to cure any defects, if possible.

16. General guidance on other good practices in prioritization for both requested and requesting jurisdictions could be shared by the ACWG. A better understanding of prioritization policies may help manage expectations for timely MLA responses.

### ***(2) Consider standardization and greater use of mutual recognition ("MLA Fast Lanes")***

17. While all MLA requests are different, they are not all uniquely different. The ACWG may consider whether certain common and relatively simple MLA requests (*e.g.*, service of documents, authentication of public records, or formal provision of bank account statements previously reviewed through financial intelligence) could be expedited through the use of a standard simplified MLA request template with checklist, as well as sharing of good practices by central authorities on management of these requests.

18. Expedition of certain MLA requests could also be enhanced through wider use of mutual recognition agreements between two or more countries to recognize a specific process or procedure of the other country. Under mutual recognition, an issuing authority may order the execution of an investigative measure in another jurisdiction, unless the executing authorities in that jurisdiction invoke one of the expressly indicated grounds for refusal. In the EU, mutual legal assistance mechanisms are progressively being replaced by mutual recognition instruments. As an example of good practice noted in the Report, the EU obligations on mutual enforcement of freezing and confiscation orders allow for such measures to be taken by countries within the EU without any procedural obstacles or delays. The ACWG could consider the possibility of the wider use of mutual recognition among G20 members, or on a bilateral basis, for certain processes (*e.g.*, enforcement of freezing and confiscation orders, authentication of public records, service of documents). If the wider use of mutual recognition is not feasible at this time, the ACWG may consider whether alternative avenues for streamlining are available for certain processes.

### ***(3) Identify good practices for operational information systems to facilitate MLA***

19. The lack of robust information systems or case management systems for managing MLA requests is a continuing challenge. The ACWG could consider identifying good practices for operational information systems that allow for managing requests for MLA and gathering comprehensive statistics.

### ***(4) Expand awareness and admissibility of open source information***

20. Requested jurisdictions that frequently receive MLA requests for open source information or public records available through informal information exchange networks may consider promoting awareness of the availability of such information through an update of their MLA guides. Links to publicly available databases could be provided through central authority websites or the Stolen Asset Recovery Initiative (StAR) website (a repository of MLA/beneficial guides for G20 members and many other jurisdictions).

21. A review of current rules and practices on the admissibility of public records as evidence could be undertaken as well to identify good practices. The ACWG could consider the support of the preparation of model rules on evidence or criminal procedure pertaining to the admissibility of evidence obtained from public official databases (foreign or domestic) or other open source information.

### ***(5) Convene Expert Meeting among G20 Central Authorities***

22. The ACWG may consider recommending an inaugural expert meeting among G20 central authorities, with potential outcomes such as the (i) identification of opportunities for streamlining MLA; (ii) identification of opportunities for the standardization of certain MLA processes, such as electronic transmission of requests and responsive materials; (iii) an understanding on benchmarking statistics; and (iv) the establishment of regular communications among central authorities. The expert meeting could consider reviewing and further promulgating the good practice guide for central authorities issued by the International Institute for Justice and the Rule of Law. If a live or virtual meeting is not possible, the ACWG could consider supporting a report from G20 central authorities addressing these topics.

### ***(6) Update model laws and templates***

23. The Model Treaty on Mutual Assistance in Criminal Matters (Model Treaty) was adopted by the UN General Assembly in 1990; with update by UNODC in 2007. A review of the Model Treaty could be undertaken to identify opportunities for expedition of MLA. As part of the review, the feasibility of creating a universal MLA template, or templates for certain types of MLA, could be explored.

### ***(7) Ensure continued relevance of prior ACWG Actions***

24. To ensure the sustained relevance of previous work, the ACWG should consider reviewing and updating previously provided information on domestic requirements for international cooperation, such as, inter alia, the MLA, asset recovery and beneficial ownership guides, and ensure their availability, including on the StAR website. Subject to the agreement of other members, the UK intend to propose this as part of the UK Presidency of the G7 this year. The ACWG could also consider recommending additional information for inclusion such as prioritization measures, indicative timelines for response of categories

of MLA requests, open sources, and informal channels for cooperation. Practitioners in requesting jurisdictions may also find sample or redacted MLA requests instructive as well as checklists for completion of MLA requests

## IV Technology and Data

**Summary:** *This note is an outcome of the Scoping Paper on International Co-operation dealing with Economic Crime, Offenders and Recovery of Stolen Assets and G20 Action on International Cooperation on Corruption and Economic Crimes, Offenders and Recovery of Stolen Assets finalized by G20 Anti-corruption Working Group in 2020. The note focuses on the need for international cooperation in harnessing technology as a tool for combatting corruption.*

1. The G20 Action on International Cooperation on Corruption and Economic Crimes, Offenders and Recovery of Stolen Assets finalized by G20 Anti-corruption Working Group in 2020 identified challenges in implementation of the existing legal frameworks governing international cooperation. The ACWG endeavors to bring together leading technical thinking on challenges and the potential solutions, and by encouraging G20 countries to share their experiences, over several issues including exploring the use of technology to prevent and detect corruption. This work will also inform the 2022-24 Action Plan that will be agreed under the Italian Presidency.

2. Advancements in technology, and the increasing wealth of available data, hold great promise for controlling corruption. The G20 High Level Principles for Promoting Public Sector Integrity Through the Use of Information and Communications Technologies (ICT) set out three core pillars: A. Effective and transparent public administration and digital public services; B. ICT in public engagement on anticorruption; C. ICT in the detection, reporting and investigation of corruption. These HLPs drew on existing international standards such as the Introductory Note to the G20 Anti-Corruption Open Data Principles and G20 Principles for Promoting Integrity in Public Procurement.

3. Many countries have made advances in the introduction of digital tools to strengthen transparency, accountability, and to help control corruption. Efforts to track progress and systematize approaches are also evolving. The United Nations e-Government Survey assesses the digital government development of the 193 United Nations Member States in identifying their strengths, challenges, and opportunities, as well as informing policies and strategies.<sup>1</sup> The World Bank's GovTech Maturity Index (GTMI) measures the state of four GovTech foundational blocks: enhancing service delivery, supporting core government systems, mainstreaming citizen engagement and GovTech enablers, based on the World Bank's definition of GovTech<sup>2</sup>, and assists practitioners in the design of new digital government transformation projects. Published for the first time in 2019, the OECD Digital Government Index assesses digital government maturity across OECD country members and partners in line with six core dimensions, including openness by default, and the purse of data- and user-driven approaches for service design and delivery, policymaking, and good governance.<sup>3</sup>

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<sup>1</sup> For more information, see <https://publicadministration.un.org/egovkb/en-us/Reports/UN-E-Government-Survey-2020>.

<sup>2</sup> **GovTech** is "a whole-of-government approach to public sector modernization that promotes simple, accessible, and efficient government. It aims to promote the use of technology to transform the public sector, improve service delivery to citizens and businesses, and increase efficiency, transparency and accountability."

<sup>3</sup> For more information see: <http://www.oecd.org/gov/digital-government-index-4de9f5bb-en.htm>

### ***Core Issues to be Resolved***

4. The Scoping Paper frames technological challenges in two main areas, addressing both the potential and the risks posed by technology.

5. First, the Scoping Paper highlights the potential role of technology to enhance law enforcement cooperation, noting that the UNCAC “offers a strong framework for States to engage in meaningful international cooperation at both the pre-MLA and post-MLA stages in corruption cases and can also be used as a basis for cooperation.” UNODC has included among the most prevalent challenges identified in the UNCAC country reviews in the context of international cooperation “to take steps to enhance law enforcement cooperation, including where possible using modern technology, and concluding agreements or arrangements to allow the competent authorities responsible for the investigation of corruption offences (including prosecutors and judicial authorities, if appropriate) to establish joint investigative teams with law enforcement agencies in other jurisdictions.”

6. Although the Scoping Paper highlights the potential of technology for law enforcement, it should be noted that law enforcement relies on data from many areas of public and financial sector activity beyond law enforcement. For example, the rapid expansion of e-procurement applications in many countries opens the possibility for wider data access and sharing, or even fully public data (open data), and common standards make accessing, analyzing, and using such information across borders easier. In this line, OECD instruments such as the draft OECD Recommendation on Enhancing the Access to and Sharing of Data (expected H2 2021) highlight the relevance of deploying the needed data governance arrangements as a precondition for success.

7. Second, the Scoping Paper highlights the concern that criminal organizations use technological innovation to ease the concealment of illicit proceeds. “In some cases, through complex corporate schemes, organized criminal groups take advantage of as many financial transactions as possible, having their legal entity counterparts that run ICT platforms convert legal tender currency into virtual currency or crypto-assets, among other schemes. These instruments are now perceived as a sort of ‘safe-haven asset’ with respect to possible criminal asset recovery measures, often as an alternative to investing in traditional off-shore financial activities.”

8. While the Scoping Paper thus emphasizes the use of digital platforms for both positive and negative purposes, it should be noted that these digital platforms do not arise independently, but rest on a broader set of institutions, termed “analogue complements” in the [World Development Report 2016: Digital Dividends](#). These include the institutions supporting company registration, beneficial ownership transparency, regulations on crypto-currencies, etc. These analogue complements can support the positive use of digital technologies, while constraining the negative uses. An important element of the discussion about creating more trusted environments is the development and application of digital identity and good data management practices.<sup>4</sup>

9. This discussion of the use of digital technologies is taking place in the context of a broader movement toward a global consensus on the access, sharing, and use of data, including personal data and personally sensitive data. [World Development Report 2021: Data for Better Lives](#) calls for a global consensus that would give stakeholders, including individuals and enterprises, confidence that data relevant to them carry protections and obligations no matter where and by whom they are collected or used. “The consensus would constitute an integrated set of data values, principles, and standards that

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<sup>4</sup> This has been identified as a priority in the Digital Government workstream of the G20 DETF for 2020.

define the elements of responsible and ethical handling and sharing of data and that unite national governments, public institutions, the private sector, civil society organizations, and academia. A global mechanism is needed to provide incentives for applying these principles and overseeing their consistent application across different communities.” These global dialogues on the use of data should include integrity and anticorruption considerations. OECD guidance such as the Good Practice Principles for Data Ethics in the Public Sector, which highlight the need to connect data ethical practices with broader policy areas such as public sector integrity, open government and audit, could serve as a basis to promote further discussion and move towards the joint implementation of good practices.

10. As the Scoping Paper points out, the challenges of using digital tools for mutual sharing of information can draw on the experience of other applications, such as the exchange of tax information. “[T]he 2018 OECD/World Bank study found that ‘despite success stories, anecdotal evidence provided by many jurisdictions [...] suggests that reporting and information sharing between authorities often occurs on ad-hoc basis rather than systematically’. These studies show that in many cases, the fundamental legal gateways for domestic and international co-operation are in place but could be strengthened (for example to allow a wider range of forms of information sharing or with a wider range of authorities); but in particular, what remains to be done is ensuring those opportunities are regularly, systematically and effectively used in practice.”

11. The experience with the sharing of tax information also highlights the importance of analogue complements. Legal restrictions may prohibit “sharing of information received by tax authorities with other law enforcement agencies dealing with serious economic crimes such as corruption, money laundering, terror financing and drug related offences.” These challenges are further addressed in the think-piece on Access to Information.

### ***Issues for Discussion and a Possible Way Forward for the G20 ACWG***

12. Technology is advancing at a rapid pace, and G20 countries have tremendous opportunities to work towards common data governance arrangements that can help in the application of technology for anticorruption and serve as a basis to collaborate and work towards a common purpose.<sup>5</sup>

13. The core issues described above suggest a work program covering the following topics.

- *Data Standards.* Considerable progress has already been made in the adoption of several data standards that support publication of data, increasing transparency, and facilitating data analytics and oversight. The Open Contracting Data Standard is one example as it enables disclosure of data and documents at all stages of the contracting process by defining a common data model. Similarly, Open Corporates has a data standard that facilitates incorporation into a unified database. The Legal Entity Identifier, based on a standard developed by the International Organization for Standardization (ISO), enables clear and unique identification of legal entities participating in financial transactions. And the Common Reporting Standard (CRS) calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis.<sup>6</sup> As the world increasingly moves toward beneficial ownership transparency, including models that make information available to law enforcement only, a common standard across countries would facilitate the use of this data for the purpose of controlling

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<sup>5</sup> For the OECD work on data governance see OECD (2019), [The Path to Becoming a Data-Driven Public Sector](#); and [Enhancing Access to and Sharing of Data: Reconciling Risks and Benefits for Data Re-use across Societies](#).

<sup>6</sup> The [Common Reporting Standard](#) was developed in response to a G20 request.

corruption.<sup>7</sup> Other standards may also be required for specific law enforcement databases. Indeed, other considerations, such as evidentiary standards for whether data and digitally-generated evidence can be used in court proceedings whether civil, criminal or administrative courts, may apply. This work stream would explore existing standards and the need for improved data standards focused on making control of corruption more effective and efficient.

- *Legal Institutions for Data Sharing.* As noted in the Scoping Paper, experience in other fields suggest that national laws may prohibit the sharing through technological tools of certain information and data. Taking stock of the variety and scope of legal approaches to sharing information and data, both digitally and more generally, would be the first step to identifying the path forward for international cooperation in removing these legal barriers, achieving regulatory interoperability, and finding practical and granular approaches that achieve the anticorruption objectives. This way forward would need to also adhere and respect the public interest, the rights and legitimate interests of stakeholders such as individuals and companies, and the ethical values and objectives underlying those legal prohibitions.
- *Protocols for Real-Time Information Sharing.* To make systems work, protocols would need to be developed to ensure that information is shared systematically rather than on an ad hoc basis. Digital tools make this possible in a way that is efficient and routine. Indeed, the lack of a common and robust information and data interoperability infrastructure (e.g., massive data lakes) is frequently cited as a challenge for executing MLA requests. The ACWG could consider enhancing the quality, efficiency and effectiveness of national frameworks on international cooperation, including by putting in place and rendering fully operational information and data systems that allow for managing requests for MLA, with a view to facilitating the monitoring of such requests, assessing the effectiveness of the implementation of international cooperation arrangements and gathering comprehensive statistics. The G20 ACWG could usefully review the existence of these protocols, drawing on the parallel work on MLA, but focusing specifically on digital tools for information and data sharing. This work would benefit from the experience of the financial sector, notably central bank and AML/CFT authorities, in international cooperation over the use of digital tools to track illicit financial flows.
- *Preventive Measures Against the Use of Technology for Corrupt Purposes.* Although many such preventive measures already exist, for example in AML/CFT, the rapid development of technology means that risks stretch beyond national frameworks for AML/CFT and also rely on legal institutions covering issues such as company formation, beneficial ownership regimes, regulation of industries and professions, regulation of crypto-currencies, etc. The parallel work streams on related topics could be drawn upon for their application to the specific challenges of digital technologies.
- *Technical Cooperation.* The uneven progress in the adoption of digital technologies across countries means that some could be left behind in the application of digital tools for combatting corruption including those requiring international cooperation. Since the value

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<sup>7</sup> On beneficial ownership transparency, see chapter 0 “Beneficial Ownership Transparency” in World Bank (2020), [Enhancing Government Effectiveness and Transparency in the Fight Against Corruption](#). See also OECD (2018), [Open Government Data Report: Enhancing Policy Maturity for Sustainable Impact](#); and [G20/OECD Compendium of good practices on the use of open data for Anti-corruption](#).

of networking and knowledge-sharing increases with the number of countries participating, working to support universal adoption of data standards, protocols, supporting legislation even in countries in need of technical assistance could be supported by the G20 ACWG agenda. This includes facilitating the use of new technologies for law enforcement, including by ensuring that law enforcement authorities are adequately equipped and trained in digital investigations, including for evidence-gathering capacities, is key to the effective detection and investigation of corruption and bribery offences. Technical assistance in this respect could help at the international level and could be supported by the G20 ACWG agenda.

## V Strengthening information sharing processes

*Summary: Think piece on enhancing information sharing to prevent and detect corruption and crimes linked to corruption, prepared by the OECD for the G20 Anti-Corruption Working Group.*

1. With the globalisation of the economy, the prevention, investigation and prosecution of serious economic crimes, including corruption frequently has an international dimension. Since competent authorities, unlike criminals, have powers that are limited to jurisdictional boundaries, cross border co-operation amongst the relevant agencies is crucial for investigating corruption and crimes linked to corruption, prosecuting the offenders and recovering stolen assets and the proceeds of those crimes. An important element of effective international cooperation is the exchange of information. Effectiveness concerns not only the relevance and completeness of exchanged information but also its timeliness given the ability of criminals to quickly transfer assets and destroy evidence.
2. There is a broad range of information that is relevant to investigations of corruption and crimes linked to corruption. It can include information related to the misuse of complex corporate structures, legal and beneficial ownership information, financial transactions and records, and tax and accounting information. To facilitate cross-border exchanges of information, competent authorities must frequently make use of appropriate legal agreements, which set out the legal basis, terms and procedural requirements for the requests. Such agreements include multilateral administrative assistance agreements, bilateral treaties, multilateral treaties such as the United Nations Convention against Corruption (UNCAC) and the United Nations Convention against Transnational Organised Crime (UNTOC), and competent authority agreements and other agreements. In practice, criminal investigators mostly rely on Mutual Legal Assistance Treaties (MLATs) for cross-border information requests (OECD, 2017, p. 68<sup>[1]</sup>).
3. In many cases, the use of these legal instruments by law enforcement remains focused on the exchange of information on request<sup>8</sup>, whereas on the tax side there is an increasing use of automatic as well as spontaneous exchanges of information. For example, under the OECD/G20 Common Reporting Standard information is exchanged annually between more than 100 jurisdictions on financial accounts held outside of the jurisdiction of the account holder.
4. In addition, although the legal gateways for exchange of information on request in criminal investigations are in place in many cases, practical obstacles can impede the effective international sharing of information. These include delays caused by a lack of clear communication channels, confusion about the organisational structure in the counterpart (and thus delays in identifying the correct agency to which to address the request), and practical communication difficulties including language, or lack of clarity in the presentation of the facts of the request. Results from OECD surveys also show that jurisdictions may not keep detailed data to monitor the use of international co-operation tools, which may contribute to a lack of awareness of these tools (OECD, 2017, p. 69<sup>[1]</sup>). The establishment by the UNODC of the Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE), which was conceived under the “Riyadh Initiative” during the Saudi G20 Presidency, should help in addressing these challenges.
5. By following the directives set forth in the G20 Action on International Cooperation on Corruption and Economic Crimes, Offenders, and Recovery of Stolen Assets (G20 Anti-Corruption Working Group, 2020<sup>[2]</sup>), this note develops ideas for streamlining exchange of information between agencies involved in

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<sup>8</sup> This is without prejudice to articles 46(4) and 56 of UNCAC and the Egmont principles of exchange of information, which provide for spontaneous transmission of information related to criminal proceedings. In this regard, informal co-operation is happening with increasing frequency.

the fight against corruption and crimes linked to corruption, in different jurisdictions. It is based on the understanding that better sharing of information is key to successful criminal investigations and prosecutions. This includes expanding the use of exchanged tax information for other criminal investigation purposes, interlinking beneficial ownership registries to allow for real-time searches, and exploring ways to reduce delays in the provision of mutual legal assistance.

### ***Using exchanged tax information for investigating corruption and other serious crimes***

6. Tax administrations have an important role to play in combatting corruption and other crimes linked to corruption. In the course of their activities tax auditors and examiners are in a very strong position to identify indicators of possible corruption, and the information stored in tax administrations can be of relevance for investigators and competent authorities involved in the fight against corruption.

7. The G20 ACWG has noted that information sharing in criminal investigations may draw from the previous G20/OECD experience in cross-border exchanges of information for tax purposes (G20 Anti-Corruption Working Group, 2020, p. 6<sub>[2]</sub>). The previous decade has seen the effective implementation of international standards for enabling secure international exchanges of information for tax purposes between tax administrations across the globe, upon request and on an automated basis, monitored and evaluated by the Global Forum on Transparency and Exchange of Information for Tax Purposes. Following the introduction of the OECD/G20 Common Reporting Standard (CRS) in 2014, information is now automatically exchanged on an annual basis between almost 100 jurisdictions on financial accounts held outside of the jurisdiction of the account holder. Today, all G20 members take part in automatic exchange of tax information, through the CRS, FATCA or both. The actual exchange of information between tax authorities takes place through secure mechanisms, including the Common Transmission System developed by the OECD Forum on Tax Administration.

8. The international legal framework for the CRS lies in the multilateral OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (MAC), which has 141 participant jurisdictions, including all G20 and OECD members, major financial centres and an increasing number of developing countries.

9. While the MAC provides for administrative assistance in tax matters, including exchange of information and assistance in recovery, article 22(4) provides that exchanged tax information may also be shared with other law enforcement agencies, subject to authorisation by the transmitting country and provided that domestic law in both jurisdictions permits it<sup>9</sup> (OECD/Council of Europe, 2011<sub>[3]</sub>). The OECD 2009 Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions also encourages countries to include in their bilateral tax treaties language allowing the sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities on certain high priority matters such as combating serious financial crimes. Ensuring that criminal investigators can make use of this provision would amplify their possibilities to uncover and combat serious crimes. This is due to the fact that tax examiners and tax auditors often hold information that can assist in criminal investigations of other illegal activities, such as the identification of unexplained funds or sources of income and suspicious activities (OECD/The World Bank, 2018<sub>[4]</sub>).

10. If most jurisdictions already allow domestic sharing of information between tax and anti-corruption authorities (OECD, 2017, p. 72<sub>[5]</sub>) (OECD/The World Bank, 2018, p. 55<sub>[4]</sub>), it seems natural that

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<sup>9</sup> A similar provision can be found in article 26(2) of the OECD Model Tax Convention on Income and on Capital. See also, the *2010 OECD Recommendation of Council to Facilitate Co-operation between Tax and Other Law Enforcement Authorities to Combat Serious Crimes*, which encourages countries to incorporate this provision in their bilateral treaties. <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0384>.

allowing the sharing of tax information received under international exchange programmes such as the CRS would be a beneficial next step in the fight against corruption and crimes linked to corruption.<sup>10</sup>

11. In concrete terms, in addition to a political call by the G20 for all jurisdictions to consider sharing CRS information with criminal investigators to combat serious crimes such as corruption, work would need to be carried out on the legal and operational framework to support such exchanges. This could include fostering a culture of information-sharing by making the most of existing law enforcement informal networks<sup>11</sup>, and assisting jurisdictions that may need to upgrade their domestic frameworks for allowing effective use of these tools, and for implementing international information sharing.

12. At present, law enforcement agencies in some G20 member countries still face legal and operational challenges at the domestic level for sharing information with anti-corruption agencies, tax administrations and other law enforcement authorities. The Anti-Corruption Working Group would need to consider how to address this. A workshop for discussing how to overcome these challenges, under the auspices of the G20 and the OECD Oslo Dialogue, could represent a positive step in that direction.

13. In parallel, this initiative could also entail the training of officials in charge of collecting information (such as tax auditors) on detecting relevant pieces of information which could be the subject of spontaneous sharing with domestic and foreign criminal investigators, and on the steps to follow after such discovery. These capacity building initiatives would draw from existing efforts such as the 2010 OECD Council Recommendation to Facilitate Co-operation between Tax and Other Law Enforcement Authorities to Combat Serious Crimes, and the G20 ACWG-supported OECD International Academies for Tax and Financial Crime Investigation (G20 Anti-Corruption Working Group, 2020, p. 7<sub>[2]</sub>), as well as from existing law enforcement informal co-operation networks.

#### ***Access to beneficial ownership information***

14. Corporate vehicles such as companies and other types of legal arrangements may be misused for illicit purposes, including corruption and crimes linked to corruption. The opacity of these structures, which are often used in complex and opaque chains across jurisdictions, can make it difficult to conduct timely investigations through exchange of information on request, and are chosen by criminals for these reasons. In particular, the delays involved when complex structures are used across jurisdictions can frustrate effective investigations allowing criminals time to cover their tracks. The situation could be substantially improved if cross-jurisdictional information regarding legal and beneficial ownership<sup>12</sup> was readily available to the authorities (FATF, 2019<sub>[6]</sub>).

15. A big step in transparency is the effective implementation of FATF Recommendation 24, which requires that jurisdictions ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons, and that it can be obtained or accessed in a timely fashion by competent authorities, and of article 12(2)(c) of UNCAC, which requires States parties to take measures to promote transparency among private entities, including, where appropriate, measures

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<sup>10</sup> In this regard, G20 members Argentina and Brazil, together with other Latin American jurisdictions, are committed to maximising the effective use of exchanged tax information to tackle tax evasion, corruption and other financial crimes (at the time of preparing this piece, they were working on the first action plan on the matter, with support from the OECD). G20 member Mexico has also joined the initiative as an observer (OECD, 2018<sub>[8]</sub>)

<sup>11</sup> Informal co-operation would be envisaged where it does not violate any national confidentiality framework (e.g. tax secrecy).

<sup>12</sup> *The Glossary of the Financial Action Task Force Recommendations* defines “beneficial owner” as “the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement”.

regarding the identity of legal and natural persons involved in the establishment and management of corporate entities. This would greatly boost the work of agencies involved in the fight against corruption when tracing the beneficial owners of the corporate vehicle within their jurisdiction.

16. In the international sphere, and to further enhance transparency and help investigators in pursuing cross-border cases of corruption and other serious crimes, G20 members could consider calling for the interconnection of national legal and beneficial ownership registries in a searchable form, allowing authorised investigators to obtain information across jurisdictions in real-time or close to real-time. This would not only improve timeliness but also make it easier for investigators to trace the links between complex cross-border structures.

17. G20 members may wish to explore the issues involved in setting up a common platform for interlinking national registries that safeguards confidentiality and only allows authorised access. The main benefits of a common, searchable IT-structure for capturing beneficial ownership information include improved speed and investigative capabilities, analytical and risk-mitigation capabilities, international co-operation, and quality of data for both investigators and potentially for financial institutions, if those have been granted access to the registries<sup>13</sup>. As the CRS XML Schema already reflects a number of FATF Recommendations, it would be a logical departure point for developing a format that could more broadly accommodate legal and beneficial ownership information that could also be accessed by criminal investigators, and potentially other relevant entities and stakeholders.

#### ***Improving the timeliness and format of mutual legal assistance requests***

18. As mentioned before, criminal investigators can be faced with operational obstacles when requesting information from foreign jurisdictions. For these and other reasons, the requested jurisdiction may deem that the request was incomplete or defective, or have a strict interpretation of dual criminality requirements which may hamper the provision of assistance. These barriers represent challenges to successful investigations (OECD, 2012<sup>[7]</sup>). It would be helpful to overcome them through, for instance, the implementation of article 46(9)(b) of UNCAC, which requires requested States parties, in the absence of dual criminality and where consistent with the basic concepts of their legal system, to render assistance that does not involve coercive action or, through more creative, simple mechanisms. This is particularly true in the context of asset recovery MLA and is further elaborated on in the related think-piece on asset recovery.

19. The streamlining process could start by ensuring that existing open-access online databases are updated and well-known to investigators and other competent authorities. These would display the contact details of investigators' counterparts in other jurisdictions for sending/receiving requests. They would reduce the work of investigators in trying to understand who their counterpart is in another jurisdiction. Further, it would allow them to engage informally, either directly or through law enforcement networks, with the counterpart on the information contained in the request, as well as the appropriate format for the request, before submitting it.

20. Furthermore, the online database could contain templates agreed by jurisdictions for legal assistance requests, to assist investigators in completing them. This is something that has been developed in the tax space for exchange of information requests, and that international organisations such as UNODC have developed in the criminal sphere. Such templates would ideally be available in several

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<sup>13</sup> If beneficial ownership information in domestic registers is captured in accordance with a common IT-structure, such information could then also be used by financial institutions when performing their AML/KYC obligations under the FATF Standards. While the cross-checking of the information available to financial institutions from domestic beneficial ownership registries would not discharge them from performing their AML/KYC obligations, it may provide a useful tool for assessing potential risk or quality issues when collecting beneficial ownership information from customers.

languages and could form part of an automated electronic system in due course. They should also have the functionality to allow jurisdictions to add any other specific information they deem appropriate for investigators, particularly pertaining to potential limitations to assistance based on domestic regulations.

In the medium term, as they look at similar options in the law enforcement sphere, the G20 ACWG might wish to take into account the lessons learnt from the successful development and implementation of the OECD Common Transmission System (CTS) for the secure exchange of confidential tax information and requests. The CTS has already been used for the exchange of vast amounts of information on financial accounts under the OECD Common Reporting Standard and its most recent version allows for a wider range of tax relevant information and communications to be sent between tax administrations. The development of such a tool for use by the wider law enforcement community could significantly reduce time and operational constraints for investigators, prosecutors and competent authorities intrinsic to existing MLA mechanisms, and would ensure that the information is sent and received in a secure manner.

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[4]

## Terms of Reference

### ACWG International Cooperation Think Pieces

#### Background

This is the outcome of the Scoping Paper on International Co-operation dealing with Economic Crime, Offenders and Recovery of Stolen Assets and G20 Action on International Cooperation on Corruption and Economic Crimes, Offenders and Recovery of Stolen Assets finalized by G 20 ACWG in 2020. It was agreed in October 2020 that the G20 Presidency will commission short ‘think pieces’ that will take forward a new track on international cooperation.

The relevant section of the *International Cooperation paper* which defines the broad scope of the five think pieces is set out in the Annex.

The paper noted that these think pieces will set out preliminary analysis of each issues, summarising leading international thinking and proposing opportunities for the G20. These will then be presented to the ACWG during the Italian Presidency in 2021.

#### Purpose

The think pieces will stimulate thinking and discussion on the five agreed topics. They will inform G20 decisions on any appropriate follow up activity, including through the next ACWG Action Plan.

#### Outputs

The output will be a short (3-5 page) document setting out:

- the core issue or problem to be addressed and setting out the main dimensions of this;
- any G20 experience of addressing this issue (for example on asset recovery and denial of safe haven this will draw on findings from the 2020 accountability report);
- best practices and innovative new ideas;
- issues for discussion; and
- Options for G20 action to progress this work.

It is expected that all think pieces will be completed in time for the first ACWG meeting of the Italian Presidency.

The papers will not be agreed or negotiated by the full ACWG. Their purpose is to build awareness of the core issue, to provoke new thinking – ideally linking to wider processes already in train.

Asset recovery (STAR lead)	STAR, UNODC, FATF, OECD
Law enforcement cooperation (UNODC lead)	UNODC, OECD
Information sharing (OECD lead)	OECD
Technology (World Bank lead)	OECD, World Bank
Denial of Safe Haven/entry (UNODC lead)	UNODC

## **Annex: Excerpt from the 2020 International Cooperation paper.**

The main themes for the ACWG to explore are:

- a. **Support informal cooperation between law enforcement practitioners.** This would include engaging with and supporting existing law enforcement networks in the field of corruption and serious economic crime. Building on the launch of the Riyadh Initiative in 2020, the ACWG can explore how G20 countries might strengthen its effectiveness. This could include dedicating a special G20 session during the meetings planned under the Initiative. The ACWG may also invite representatives from existing information sharing networks, such as the OECD Working Group on Bribery Law Enforcement Networks, ARIN-AP, CARIN and Egmont, to present to the group, and attend the meetings more frequently as necessary. G20 countries might commit to sending actual practitioners to participate in the UNCAC Working Groups on Asset Recovery and Expert Meeting on International Cooperation.
- b. **Strengthen information sharing processes.** Better sharing of information strengthens prevention and detection of corruption. This is important domestically and internationally, between governments (and especially law enforcement agencies), but also between government and the private sector (especially with the financial sector). This covers a broad range of information, including that related to the misuse of complex corporate structures (eg beneficial ownership information), financial/tax information and MLA. Technology could provide new opportunities for detecting corruption offences more effectively, but can also pose risks for misuse and for infringements of fundamental freedoms including privacy rights. Therefore, appropriate safeguards are required including domestic privacy laws. This strand would support G20 countries to learn from one another through sharing good practices and challenges, whilst exploring options to strengthen domestic and international information sharing. It builds on the commitment to respecting human rights and rule of law as laid out in the 2016 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery as well as on these High Level Principles' objective of achieving 'Zero barriers'. For streamlining the implementation of the existing standards in the area of international cooperation on sharing of information, ACWG may explore new, nonbinding approaches to show and improve the performance of both requesting and requested countries (subject to their domestic legal procedures) in sharing of information. Selected countries and International Organisations may be asked to present on their experiences in strengthening information sharing.
- c. **Strengthen cooperation on recovery of assets.** The ACWG and G20 countries can engage with FATF's ongoing work to identify issues with international cooperation on conviction and non-conviction based asset recovery. The ACWG and G20 countries could actively develop and support this work which will be delivered G20 Action on International Cooperation on Corruption and Economic Crimes, Offenders and Recovery of Stolen Assets between October 2020 and February 2021. The ACWG will consider practical measures, taking into account the key areas for potential future work identified in Chapter C1 of the Accountability Report, including exploring new, non-binding approaches to assist the performance of both requesting and requested

countries in the execution of MLA requests for various processes involved in recovery of assets subject to domestic legal procedures.

- d. **Explore the impact and potential of technology for the prevention and detection of corruption.** This theme complements those on access to information and law enforcement cooperation. Building on relevant G20 High Level Principles, it can support international/cross-agency information sharing, as well as revolutionising data analysis (to identify risks and prevent corruption). We are starting to see the opportunities (and threats) that technology presents, for example in digitisation, artificial intelligence and block-chain. Further consideration is needed to define the scope of activity and areas of potential G20 value addition.
- e. **Consider how to take stronger action against persons sought for corruption, including denial of entry/safe haven and, in line with Article 44 of UNCAC, their extradition.** Building on G20 High Level Principles, 2019 commitment to deny safe haven to persons sought for corruption and the Accountability Report 2020, the ACWG can explore how G20 countries can work towards denial of entry and safe havens to persons wanted for corruption and return of persons sought for corruption and economic crimes by expediting the procedures and simplifying the evidentiary requirements. This could include considering re-invigorating the ACWG Denial of Entry Experts Group, or support for new principles governing investment visa/golden passport schemes.