

Summary

This paper accompanies the scoping paper prepared by the OECD in collaboration with UNODC and the World Bank, and the FATF Secretariat on International Cooperation in relation to Economic Crime, Offenders and Recovery of Stolen Assets and proposes a framework for future G20 action, following up on G20 Leaders' calls in 2018 and 2019.

The Anti-Corruption Working Group has undertaken considerable work on the interface of corruption and economic crime in the past and has a clear mandate for future work.

Individual G20 countries

The paper includes actions to:

- Ensure appropriate standards and frameworks are in place
- Make better use of existing mechanisms for international cooperation
- Promote exchange of information between relevant law enforcement authorities and facilitate informal assistance; and
- Support the provision of technical assistance and capacity-building.

Countries could be asked to update on progress in taking forward these actions under future accountability reporting processes.

G20/ACWG Actions

The paper constitutes a framework for future ACWG work to feed into the 2022-24 Action Plan:

Step 1: Report on progress on past commitments

The 2020 Accountability report is focusing on asset recovery, mutual legal assistance, denial of safe haven, and cooperation on persons sought for corruption and asset recovery. Once this is complete and complements the scoping gap analysis, the ACWG could agree upon priority follow up activity.

Step 2: Strengthen international cooperation

The scoping study identified challenges in implementation of the existing legal frameworks governing international cooperation. The ACWG will provide “thought leadership” on these issues by bringing together leading technical thinking on the challenges and the potential solutions, and by encouraging G20 countries to share their experiences. This work can also inform the 2022-24 Action Plan that will be agreed under the Italian Presidency. This work is expected to focus on:

- Support informal cooperation between law enforcement practitioners;
- Strengthening information sharing processes;
- Strengthening cooperation on recovery of assets;
- Exploring the use of technology to prevent and detect corruption; and
- Strengthening cooperation on return of persons sought for corruption and other economic crimes, including by increasing communication between competent authorities.

On agreement of these areas, Cochairs will commission five 'think pieces' summarising leading international thinking and proposing opportunities for G20 engagement. These will be considered by the ACWG in 2021.

Step 3: Explore the nexus of corruption and economic crimes with Organised Crime

The scoping study and the COVID-19 emergency have both highlighted the importance of exploring the nexus of corruption and economic crimes with organised crime. The G20 could address this issue by examining ways to tackle it. This will be a core focus of the 2021 Italian Presidency.

1. Background

Corruption offences, as defined under UNCAC, are often committed alongside a range of other crimes that aim at obtaining an economic or financial advantage, such as tax crimes, illicit trade, including in the form of organised crime, whose proceeds are concealed through money-laundering. Additionally, in many cases, corruption and other economic crimes are transnational. Funds generated through criminal activities are moved across borders and hidden in foreign jurisdictions, highlighting the importance of multilateral policy responses and cross-border cooperation in addressing these threats.

Understanding the crimes committed alongside corruption offences will help to: (i) make use of, and where appropriate, broaden the toolkit available to prevent, detect, investigate and prosecute corruption and related offences and to recover stolen assets, (ii) involve a broader range of authorities, nationally and internationally, in anti-corruption initiatives, and (iii) identify and dismantle the networks that facilitate corruption and economic crime.

This paper builds on a scoping paper¹ on current efforts to leverage linkages between corruption and other economic crimes and gaps in related international cooperation and proposes clear next steps on this agenda for G20 Leaders to consider. Both papers respond to the G20 commitments made in the Anti-Corruption Action Plan 2019-2021 and the 2018 call of the G20 Leaders to “*explore links between corruption and other economic crimes and ways to tackle them, including through co-operation on the return of persons sought for such offences and stolen assets.*” This call was further renewed in the recent 2019 G20 Osaka Declaration, in which the Leaders committed to “*continue practical co-operation to fight corruption and reaffirm [our] commitment to deny safe haven to persons sought for corruption and their proceeds of corruption consistent with our G20 and international commitments and our domestic legal systems and [will] work more closely on asset recovery co-operation.*”

The G20 Leaders had requested “ways to tackle corruption and other economic crimes.” This paper puts forward a set of actions from the ACWG for G20 Leaders. There will be continued discussion next year on further substantiated actions to include in the 2022-24 Action Plan.

2. G20 and Anti-Corruption Working Group Mandate

The Anti-Corruption Working Group has undertaken considerable work on the interface of corruption and economic crime. Relevant outputs over the last decade include:

- 2011 Nine Key Principles for Asset Recovery;
- 2012 Asset Tracing Country Profiles;
- 2012 Common Principles for Denial of Safe Haven;
- 2012 Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries: A Step-by-Step Guide;
- 2013 Guiding Principles on Enforcement of Foreign Bribery Offence
- 2013 Guiding Principles to Combat Solicitation

¹ ‘International Co-operation dealing with Economic Crime, Offenders and Recovery of Stolen Assets – A scoping paper’

- 2013 High Level Principles on Mutual Legal Assistance;
- 2013 Benchmarking Survey on the 9 Key Principles;
- 2014 Step by Step Guides on Asset Recovery;
- 2014 High Level Principles on Beneficial Ownership Transparency;
- 2015 High Level Principles on Private Sector Transparency and Integrity;
- 2015 Anti-Corruption Open Data Principles, and Principles for Promoting Integrity in Public Procurement;
- 2015 National Implementation Plans on Beneficial Ownership Principles;
- 2016 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery;
- 2017 High Level Principles on the Liability of Legal Persons for Corruption;
- 2017 High Level Principles on Countering Corruption in Customs;
- 2017 G20 Guide on Requesting International Cooperation in Civil and Administrative Proceedings Relating to Corruption;
- 2017 Updated Asset Tracing Country Profiles;
- 2017 Denial of Entry: Compilation of Legislation in Member States; Denial of Entry Experts Meeting;
- 2020- G20 High-Level Principles for Promoting Integrity in Privatization and Public-Private Partnerships.

The ACWG Action Plan 2019-21 also defines a mandate for further work on this area, most notably through the Targeted Action to “tackle financial crime related to corruption, including tackling money laundering & recovering stolen assets, and strengthen international cooperation.”

The ACWG can add most value through leading by example, spotlighting key issues, sharing challenges and good practices so that individual countries can progress and by providing thought leadership internationally.

It does this through its written products, by sharing good practices and challenges in its meetings, and by giving profile to the work of standard setting and technical bodies. The Co-chairs might generate ‘thought leadership’ on specific issues, to influence international approaches. The ACWG might do this by creating issue-specific focus groups involving International Organisations, volunteer G20 countries and academics. G20 Co-chairs will also look to showcase ACWG activity in international fora, such as the 2021 UN General Assembly Special Session.

Section 3 presents opportunities for leadership by individual G20 countries and section 4 sets out issues for collective G20 leadership.

3. Individual actions by G20 countries

This paper highlights existing frameworks and instruments that support and facilitate international cooperation to address corruption and economic crimes at the global level. However, there is scope for G20 countries to ensure their adherence to these instruments,

their effective implementation and that they make the best use of these tools. G20 countries could take further action to address this gap.

In order to have appropriate standards and frameworks in place, countries could:

- **Ensure it has a national law in force to criminalize bribery, including bribery of foreign public officials and to bolster efforts to effectively prevent, detect, investigate, prosecute and sanction domestic and foreign bribery;** and, in line with the 2020 commitments of Anti-Corruption Ministers, demonstrate concrete efforts by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with Article 16 of the UNCAC, and with a view to possible adherence by all G20 countries to the OECD Anti-Bribery Convention.
- **Effectively implement the requirements of UNCAC to offences established in accordance with the Convention, in particular, chapter V of UNCAC, as well as the good practices related to asset recovery identified by States parties, and develop a domestic legal framework consistent with FATF Recommendations 4 and 38,² as well as Immediate outcome 8,** to enhance domestic action on asset recovery, and contribute to FATF's ongoing work to identify key challenges in international cooperation for asset recovery and the identification, freezing, seizure, and confiscation of criminal proceeds.
- **Voluntarily commit to timely completion and publication of UNCAC implementation reviews, and to the standing G20 commitment of transparency and inclusivity of the UNCAC Implementation Review Mechanism** by continuing to make use, on a voluntary basis, of the options in its terms of reference, including hosting country visits, involving the private sector, academia and civil society, and publishing the full country review reports and self-assessment checklists, as appropriate. Further, implement the gaps identified in UNCAC country reviews, in particular with regard to criminalization, law enforcement, and international cooperation and asset recovery.
- **Effectively implement the AML/CFT standards set by the FATF Recommendations** which are important tools to combat proceeds-generating crimes, terrorist financing, and to fight against corruption because they support the detection, tracing, confiscation and return, where appropriate, of corruption proceeds, such that countries have a comprehensive and effective AML/CFT regime and a strong basis to combat illicit finance.
- **Take an active role at the FATF** and participate, as appropriate, as members or observers in the FATF-style regional bodies (FSRBs), including by providing experts to participate in mutual evaluations and follow-up processes.
- **Strengthen the collection, sharing, and use of beneficial ownership information,** taking into account FATF's recent guidance on Best Practices on Beneficial Ownership for Legal Persons and in line with relevant documents adopted within the framework of the UNCAC process, such as the Saint Petersburg statement on promoting public-private partnership in the prevention of and fight against corruption and the G20 High-Level Principles for Promoting Integrity in Privatization and Public-Private Partnerships.

² FATF Recommendation 4 relates to confiscation and provisional measures and 38 to mutual legal assistance in asset recovery

- **Update existing or prepare new national anti-corruption strategies**, taking into account the G20 High Level Principles for Developing and Implementing National Anti-Corruption Strategies.
- While ensuring full respect of the relevant UN Conventions and FATF Recommendations 4 and 38, and where consistent with fundamental principles of domestic law, consider adopting measures that **allow proceeds of crime or instrumentalities to be confiscated without requiring a criminal conviction** (non-conviction based confiscation), or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation.
- **Consider responding to requests for cooperation on the basis of non-conviction based confiscation proceedings** and related provisional measures, where consistent with fundamental principles of domestic law, in line with the circumstances set out in UNCAC and the FATF Recommendations.
- **In accordance with 2012 Common Principles for Denial of Safe Haven and 2016 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery, explore options for expeditious extradition** as provided in Article 44.9 of the UNCAC and, subject to domestic law, raising awareness of the evidentiary requirements relating thereto in respect to any offence to which that article applies while fully respecting the rights and fundamental freedoms of the person sought for corruption.

Countries could also agree on making better use of existing international cooperation mechanisms by:

- **Participating in various networks and agreements** and making full use of these opportunities to raise, where appropriate, cases of corruption or other economic crimes of transnational nature. This can include promoting engagement in direct cooperation networks between counterpart authorities, including CARIN and regional ARIN networks, the Egmont Group, and the Global Operational Network of Anti-Corruption Law Enforcement Authorities to be established according to the Riyadh Initiative.
- **Proactively cooperating in matters related to extradition**, using UNCAC, other relevant conventions and/or treaties, including bilateral treaties, as a legal basis and responding to relevant requests promptly, subject to the requirements of their domestic legal systems, and coordinating through law enforcement channels in advance of sending an extradition request.
- **Reinforcing informal channels of cooperation, especially between law enforcement agencies**, by strengthening and actively using efficient and effective communication channels and frameworks or networks for information exchange, in accordance with their domestic legal systems.
- **In line with Article 43 paragraph 2 of UNCAC, and with domestic legal systems, satisfying dual criminality requirements** by focusing on the underlying conduct, not the category of offence, in order to provide the widest scope of assistance possible.
- **Strengthening the sharing of information across financial intelligence units and enforcement agencies in charge of tax crimes and serious economic crimes**, including by ensuring effective implementation of the OECD Convention on Mutual

Administrative Assistance in Tax Matters and the Recommendation to Facilitate Cooperation between Tax and Other Law Enforcement Authorities to Combat Serious Crimes. This may also involve proactive sharing of information on typologies and emerging trends, taking advantage of existing cooperation networks or multilateral or regional fora.

- **Considering spontaneous transmission of information, without prior request, relating to criminal matters to a competent authority in another State** where it is believed that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request, in line with article 46 paragraphs 4 and 5 and article 56 of UNCAC.
- **Increasing participation in existing fora where interagency cooperation is promoted**, including the Conference of the States Parties to the United Nations Convention against Corruption (CoSP) and its subsidiary bodies, the OECD Oslo Dialogue, the OECD Forum on Tax and Crime, the Egmont Group of Financial Intelligence Units, the FATF working groups, and the Global Forum on Transparency and Exchange of Information for Tax Purposes.
- **Considering creating Joint Investigations Teams or related investigations in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States**, as stated in article 49 of UNCAC.
- **As appropriate, enhance the awareness of the experience and conclusions based on lessons learned regarding the implementation of chapters III and IV of UNCAC**,³ adopted by the Conference of the States Parties to UNCAC, the conclusions and practical guidance drawn from the review phases of the **Anti-Bribery Convention**, and **closely engaging with and contributing to the FATF**, all of which represent comprehensive references containing practical options for policymakers and practitioners for strengthening international cooperation frameworks.

Countries could actively support the provision of technical assistance and capacity-building:

- **in the area of international cooperation and asset recovery**, including by supporting the implementation of the requirements embodied in UNCAC, FATF Standards and other relevant international instruments, and facilitating the organization of training courses and expert meetings to that effect, to create further platforms for information and knowledge exchange and national capacity-building while emphasizing coordination and avoiding duplication.
- **supporting capacity building programmes conducted by International Organizations including UNODC and FATF**, including providing experts to give and receive training on international standards and related issues.
- **supporting the training programmes conducted by the OECD International Academy for Tax Crime Investigation, and its regional academies**, with a whole-of-government approach to tax crimes, corruption, money laundering, asset recovery and other economic crimes.

Countries could be asked to update on progress in taking forward these actions under future accountability reporting processes.

³ Chapter III relates to criminalization and law enforcement and IV to international cooperation. https://www.unodc.org/documents/corruption/Publications/2020/20-00843_Ebook.pdf

4. Collective actions by the G20

In addition to the actions individual G20 countries can take in international cooperation against corruption and other economic crimes, the G20 can take further steps collectively. The ACWG is well placed to take many of these steps forward. The finance track will also be consulted where relevant.

Step 1: Report on progress on past commitments

The significant work already undertaken by the ACWG over the last decade is described above. Work to review its relevance and impact is in train through the 2020 Accountability Report and should continue in future years. This focuses on the implementation of commitments on asset recovery, mutual legal assistance, denial of safe haven, and cooperation on persons sought for corruption and asset recovery. Once the Accountability report is complete, the ACWG will review findings in the first meeting of the Italian Presidency and agree if follow up action is merited. Future analysis will also support countries' implementation of other G20 principles and standards relevant to preventing and combating economic crimes.

Step 2: Further strengthen international cooperation on information sharing and return of persons sought for corruption and stolen assets

The scoping study concluded that despite the existence of strong legal frameworks the cooperation in the areas of mutual legal assistance, recovery of assets and extradition requires improvement. Mechanisms to facilitate more timely cross-border access to electronic evidential data would also support the effective investigation and prosecution of criminal matters and the recovery of stolen assets. Further work is needed to understand the challenges, opportunities and how best the G20 can progress this.

Despite a strong international architecture and commendable work in G20 and other fora, there continue to be challenges related to the processes of extradition and asset recovery. This is in part due to a lack in human resources and expertise, the increasing complexity of many matters, the insufficiency of requests for assistance, and the need to respect judicial processes and the rule of law. The challenge today is not the absence of standards but rather the effective implementation of those standards and, in certain cases, their broad and framework nature which leaves room for diverse interpretations and, as a result, to their ineffective implementation. The FATF mutual evaluations show that overall only a small percentage of criminal proceeds are identified and recovered.⁴ While the UN and FATF have put in place strong standards to pursue economic crime, G20 members can work to implement those measures to the fullest.

The ACWG will provide “thought leadership” on these issues by bringing together leading technical thinking on the challenges and the potential solutions, and by encouraging G20 countries to share their experiences. This work can also inform the 2022-24 Action Plan that will be agreed under the Italian Presidency. Any activity would continue to have regard to

⁴ Despite strong technical compliance, the assessment of countries' effectiveness in asset recovery by FATF Immediate Outcome 8 shows that around 60% of FATF members and almost 90% of FATF-Style Regional Bodies members are rated as achieving a low or moderate level of effectiveness.

due process and consistency with the fundamental principles of domestic law, including protecting the rights of bona fide third parties.

Synergies with other G20 working groups and in particular, the finance track would promote a holistic approach and inter-agency cooperation in information, with a view to increasing the effectiveness of international asset recovery.

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, non-binding 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

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.

The Saudi Arabian G20 Presidency will commission short 'think pieces' setting 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.

Step 3: Explore the nexus of corruption and economic crimes with Organised Crime

The scoping study and the reporting from the COVID-19 emergency have both highlighted the importance of linkages between corruption and organised crime. This will be a core focus of the Italian Presidency in 2021 and will also be developed through a policy document.

The G20 could address the link between issues raised by this work to date and organised crime. The group could consider how to tackle these, including through capacity and institutional development, effective law enforcement, anti-money-laundering and asset recovery, and domestic establishment of independent bodies, the promotion of good governance, effective implementation of codes of conduct for public officials and the judiciary, the monitoring of corporate compliance programmes and the promotion of business integrity, and media campaigns to raise public awareness of the ominous effects of corruption and economic crime linked to organised criminal networks. G20 members are encouraged to share their experiences with such links or the lack thereof and also, if applicable, present cases of corruption linked to other economic crimes where fraud, money laundering and corruption are intertwined such as bank fraud and siphoning of

money through layering and camouflaging with a purpose to hide the criminal source of funds and challenges associated with this.