

Annex to CU 2023/187/DTA/CEB/CSS

To facilitate the provision of information on good practices and challenges with respect to the use of information and communication technologies for the purpose of international cooperation and asset recovery in the framework of the implementation of the United Nations Convention against Corruption, the Secretariat has prepared the following questionnaire as a guide that States parties may wish to use.

The Secretariat also wishes to draw the attention of the Government to the notes entitled “The use of information and communications technologies for the implementation of the United Nations Convention against Corruption” contained in documents CAC/COSP/WG.4/2016/2 and CAC/COSP/WG.4/2022/2¹ and the conference room paper entitled “Responses received from States with regard to existing software programmes for case management systems in the field of international cooperation contained in document CAC/COSP/EG.1/2017/CRP.1² that could be used as background material for the completion of the questionnaire.³

I. General information on the use of information and communication technologies:

1. Has the Government used information and communication technologies (ICTs) **in the context of international cooperation** for the implementation of the Convention? **Yes** /**No**

a. If yes, which ICTs has the Government used in the context of international cooperation? Please choose one or more of the options below:

- Email/messaging technologies
- Videoconference platforms/services
- Word processing technologies (e.g Microsoft Word, Google Docs, Open Office, etc.)
- Publicly available websites
- Artificial intelligence
- Case management systems
- Custom-made software for management and execution of requests
- Databases (Corporation registries, Register for beneficial ownership)
- Secure data storage platforms/facilities

¹ CAC /COSP/WG.4/2016/2

(<https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2016-August-22-24/V1603242e.pdf>); CAC/COSP/WG.4/2022/2

(https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2022-June-13-17/CAC-COSP-WG.4-2022-2_E.pdf)

² CAC/COSP/EG.1/2017/CRP.1

(<https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/EMInternationalCooperation/6-7November2017/V1707498e.pdf>)

³ Please refer to resolution 6/7 entitled “Promoting the use of information and communications technologies for the implementation of the United Nations Convention against Corruption”

(<https://www.unodc.org/unodc/en/corruption/COSP/session6-resolutions.html>)

Secure information exchange/communication platforms (GlobE Threema, INTERPOL I 24/7, EUROPOL SIENA)

Translation software

Other, please specify:

2. Please provide additional details of any ICTs that are particularly useful for international cooperation based on your experience, including any websites, resources or tools that you frequently use and find most useful.

Among most useful ICTs for the Federal Prosecution Service's international cooperation procedures are:

(1) the recent *E-evidence Portal*;

The website presents guide information on how security authorities collect digital evidence for civil and criminal cases, assembles data concerning internet service providers/contacts and even provides petition models for prosecutors (<https://www.mpf.mp.br/atuacao-tematica/sci/noticias/noticias-1-1/e-evidence-portal-de-provas-eletronicas-sera-lancado-na-sexta-feira-7>).

(2) the *Banking Transactions Investigation System* (Simba, in its Portuguese acronym)

Created in 2007 for receiving and processing data originated from the lifting of one's financial secrecy (<https://asspaweb.pgr.mpf.mp.br/site/index.php/projeto-simba/normas-e-comunicados>). In cases of passive cooperation requests along with banking information provisioning, Brazilian prosecutors comply with the demand according to national legislation, using Simba to lift and cross information from banking transactions. The system was developed by the Federal Prosecution Service, but has been incorporated by the Brazilian Central Bank, as means of the National Strategy Against Corruption and Money Laundry (ENCLA, in its Portuguese acronym), which forced the policy to be regulated by the central authority and pursued by all Brazilian financial institutions.

(3) the *Telephone and Telematics Records Investigation System* (Sittel, in its Portuguese acronym)

The system works in the same way as Simba, but for telephone and telematics records. It is currently being updated.

(4) the *SPPEA Radar*

A research tool that allows consultation about natural and legal persons, if they own cars, companies, real state, if they have criminal records, where they live. The system contains information gathered in several databases available to the Federal Prosecution Service to help with the investigations carried out by our institution.

(5) the *SPPEA Geo-referencing Platform*

The platform is responsible for cross-linking 400 databases in order to reproduce 3D visualization as in environmental offenses or indigenous peoples' violations, for instance (<https://www.youtube.com/watch?v=KzobmJz6sU4>).

It is noteworthy to mention that all these tools can be applied in transnational cooperation occurrences as well as in local cases.

3. If you are using software or have developed or use custom-made software in the context of international cooperation (e.g. case management for incoming and outgoing requests), please provide information on the main features of such software and how it could be useful. Additionally, would you consider making your custom-made software available to other States parties to the Convention?

The Federal Prosecution Service's UNICO System contains the main information about all the proceedings in which the Federal Prosecution Service intervenes. This information is also related to international cooperation. In this system there is data about the requesting or requested country, the assistance requested, the crimes involved, the treaty indicated as legal basis for the letter of request and if the measures were fulfilled or not. The features related to international cooperation were custom-made at the request of the International Cooperation Unit to enable extracting data about the cases.

II. Evaluation and good practices

4. Have you evaluated the effectiveness of using ICTs for international cooperation in the fight against corruption? Yes / No
 - a. If yes, what indicators did you use for your evaluation? What was the outcome of the evaluation?
 - b. If the outcome of the evaluation was positive, how did the use of ICT facilitate international cooperation? Has the use of ICTs improved the quality of incoming and outgoing requests or their timely follow-up and reporting on international cooperation?
5. Please provide information (policies, measures, examples, case studies) of good practices in connection with your country's use of ICTs for international cooperation and asset recovery.

The Federal Prosecution Service's 2nd Revision and Coordination Chamber (responsible for criminal matters) has both Working Groups on Cyber Criminality and Cryptocurrency, composed of 10 and 6 members respectively, which work in coordination with the International Cooperation Unit (SCI, in its Portuguese Acronym).

III. Challenges

6. Have you experienced any challenges or limitations in using ICTs in the context of international cooperation related to anti-corruption efforts? Yes / No

On one hand, according to article 11 of the Brazilian Civil Rights Framework for the Internet (Law 12.965/2014), Brazil has enforcement jurisdiction if a) at least one of data processing phases, from assembling to managing and even sharing, or b) the provision of services offered by a foreign company legally occurs in national territory. However, the access to electronic information as means of proof has been denied in some criminal cases when there is no company representative in Brazil, under the allegations of being the data storage in another country's Internet basis, which could

justify the application of a foreign rule to the evidence protection, instead of the Brazilian law.

On the other hand, Mutual Legal Assistance (MLA) has been used by the Brazilian law enforcement officials as a traditional international cooperation mechanism. Despite the fact that Mutual Legal Assistance usually has a fast response, if compared to the oldest legal procedures, still is it far from reaching virtual data processing speed, so quick it can be calculated in nanoseconds. Thus, the international prosecution networks that the Brazilian Federal Prosecution Service is part of, have been discussing better methods of acquiring transnational information. Yet are the traditional MLA mechanisms most used by the State in this kind of situation nowadays, like in the case below.

As you may already know, Lava-jato's investigations made public the biggest corruption scheme known throughout the country's history. The taskforce acquired enough evidence to denounce illegal payments to high-level employees, such as former directors, of the state-owned company PETRÓLEO BRASILEIRO S/A, in exchange of facilitations and preferences, regarding private company contracts established with this enterprise.

It has been judicially demonstrated that Trafigura corporation staff, with the accordance and support of its business founder, offered bribe to seven PETROBRAS' civil servants to obtain illicit benefits for the trading business in the purchases of fuel oil from the Brazilian company. It should be highlighted that those employees were responsible for Brazilian and Switzerland Trafigura's offices, at the time; they are also still being investigated for the involvement in other criminal practices.

According to the Federal Prosecution Service, at least US\$ 6 million were illicitly given as bribery payments from Trafigura representatives to PETROBRAS workers, in between July 2009 and September 2014. As a result, more than 80 fuel buying or selling operations were illicitly expedited or somehow facilitated by the Brazilian state-owned corporation in benefit of this trading company. As a matter of comparison, it should be noted that Trafigura has started around 969 commercial procedures with PETROBRAS, during the period of 2004 and 2015, profiting about US\$ 8.7 billion from that partnership.

The criminal case was presented to the federal jurisdiction of *Paraná* state, in the south of Brazil, and was fully accepted by the judge's procedural analysis. During diligences' phase, some corporative e-mail accounts were required from Trafigura's lawyers, in the search for proof and evidence, which was denied by the trading company, in January 2019, due to the alleged fact that the information requested was hosted in a UK server, being the direct provision of those accounts to Brazilian authorities forbidden by the European Union's General Data Regulation (GDPR).

In contrast to the allegations officially declared, though, it is known that the corporation emails have been utilized by committing the crime with the Brazilian agents. Besides that, Trafigura's international headquarters is located in Geneva, Switzerland, owing the property of, and also hosting, worldwide data from all the company e-mail servers. Furthermore, this institution's technology service is responsible for the globally shared content services. That explained, it is worthwhile to say that the defendants not only made use of Brazilian and Britain Internet realms to communicate with each other about the bribery payments, but also of further European cyber domains, such as Swiss ones

Based on this legal scenario, the Federal Prosecution Service sent an active request of Mutual Legal Assistance in Criminal Scope (FTLJ 218/2019) for the Swiss Federal Office of Justice, under the international conventions of Palermo and Merida,

directly requesting relevant data required for investigations, which the Swiss Confederation answered in the beginning of 2020, providing the information requested by Brazilian authorities.

If yes, please indicate which of the following options are applicable:

- Lack of capacity or training
- Lack of resources
- Legal obstacles to the use of ICTs for the international cooperation
- Reluctance from foreign counterparts to use ICTs
- Security and confidentiality of sensitive information (personal data protection)
- Technical obstacles (connectivity, access to stable internet connection, use of outdated technologies, etc.)
- Other, please specify:

7. Please elaborate on the responses provided to question 6. If possible, please provide examples of the obstacles mentioned and describe the measures taken to overcome them.
- a. What kind of ICTs would help improve your ability to cooperate with other States on the fight against corruption?

In terms of agility concerning international cooperation assistance, the improvement of direct contact between Prosecution Services would be a safe and efficient way to grant evidence exchange validation among countries, to enhance international authorities' networks and to benefit asset recovery groups with further prosecutors' interactions.

IV. Online one-stop hub of the Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE Network)

8. Are any law enforcement anti-corruption authorities from your country members of the Globe Network?⁴ Yes / No
- a. What online ICT services or functionality would be the most useful to your practitioners on the GlobE one stop hub, as a resource for international cooperation?
- b. Has(ve) your GlobE member authority(ies) registered as GlobE Threema⁵ user(s)? Yes / No
- If yes, does the GlobE Threema address their needs for a secure communication platform? Yes / No

⁴ The list of GlobE Members and Observers can be found in the following website:

<https://globenetwork.unodc.org/globenetwork/en/membership.html>

⁵ Information brochure on GlobE Threema:

https://globenetwork.unodc.org/globenetwork/uploads/documents/GlobE_Threema_Brochure_-_A4_version.pdf

- What GlobE Threema functionality do they find the most useful for international cooperation?
- Are there other features that your member authority(ies) require from a secure communication platform?

Please elaborate as necessary.

It is worth mentioning that the Brazilian Federal Prosecution Service, in its position of network coordinator, has already requested for the Ibero-American Association for Public Ministries' (AIAMP) Anti-Corruption Network to become a member of GlobE grid; nevertheless, the group has not yet been accepted by the organization.

V. Other

9. Please provide any other information you consider relevant to your country's legal framework and practices in connection with establishing an effective use of ICTs in the international cooperation system that was not highlighted in the questions above.

In 2020, Brazil has approved its General Data Protection Law ([LGPD] Law 13.709/2018), which is founded on the 2018 European Union's General Regulation on Data Protection ([GDPR] EU 2016/679). Moreover, it should also be highlighted that Brazil has already acceded the Budapest Convention, being the resolution's penal and procedural international law standards ready to be applied in national territory. Lastly, the Brazilian Federal Prosecution Service is part of the national delegation as means of discussing both ICTs and cybercrimes at the UN's *ad hoc* committees.