



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

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## Experts convened to enhance international cooperation under the United Nations Convention against Corruption

Vienna, 6 and 7 November 2017

Item 6 of the provisional agenda\*

**Tools and services of the United Nations Office on  
Drugs and Crime to promote international  
cooperation**

## Progress in implementing the mandates of the open-ended intergovernmental expert meetings to enhance international cooperation under the United Nations Convention against Corruption

Note by the Secretariat

### I. Introduction

1. In its resolution 6/4, the Conference of the States Parties to the United Nations Convention against Corruption, *inter alia*, invited Member States to continue to provide to the Secretariat information on civil and administrative proceedings relating to corruption, when feasible and on a voluntary basis, in order to identify the scope of assistance that could be provided in relation to such proceedings, as well as to provide information about good practices and tools relevant to the implementation of article 53 of the Convention, and requested the Secretariat to continue collecting and disseminating such information by, *inter alia*, reporting to the Conference and its relevant subsidiary bodies, including by providing suggestions regarding technical assistance needs and mechanisms to provide such assistance, and developing a study to identify best practices and ways to facilitate cooperation on the matter, subject to the availability of resources.

2. In the same resolution, the Conference also called upon Member States to inform the Secretariat about designated officials or institutions appointed, where appropriate, as focal points in the matter of the use of civil and administrative proceedings against corruption, including for international cooperation, and requested the Secretariat to collect and make such information available to all States parties and to report on the matter to the Conference and its relevant subsidiary bodies.

3. At the fifth open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption, held in Vienna on 17 and 18 November 2016, the expert meeting recommended that

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\* CAC/COSP/EG.1/2017/1.



States parties should continue to provide to the secretariat information on the implementation of chapter IV of the Convention, with a view to the secretariat expanding its analytical work with regard to challenges in international cooperation based on the Convention and, to the degree it was relevant, sharing the outcomes of that work with other relevant parts of the secretariat.

4. The expert meeting also recommended that States parties should continue to share with the secretariat, for further dissemination, information on electronic tools and systems used by national authorities for processing and tracking extradition and mutual legal assistance requests. It also recommended that the secretariat should explore the possibility of creating a separate section under the online directory of central authorities which would contain information on the requirements and procedures for granting extradition under article 44 of the Convention. Furthermore, it recommended that future work of the expert meeting should focus more on the implementation of article 44 of the Convention.

5. The present note has been prepared pursuant to the mandates contained in Conference resolution 6/4 and the recommendations of the expert meeting. In addition, this report contains information on technical assistance and other activities of the Secretariat in the field of international cooperation under the Convention.

6. In order to facilitate the implementation of the above-mentioned mandates, the secretariat prepared a draft questionnaire requesting information from States parties on the practical issues they encounter when requesting and providing assistance in investigations of and proceedings in civil and administrative matters relating to corruption offences, with a view to using such information as a basis for a study to identify best practices and ways to facilitate cooperation on the matter, as requested in Conference resolution 6/4. The secretariat distributed the draft questionnaire to the expert meeting held in Vienna on 17 and 18 November 2016. During the meeting, the experts provided suggestions for the further improvement of the questionnaire, which were taken into account by the secretariat in preparing the final version of the questionnaire.

7. The secretariat sent to Member States a note verbale dated 17 January 2017, as well as a reminder note verbale dated 8 May 2017, seeking information from States parties to the Convention against Corruption on the issues identified above. The notes verbales contained the finalized version of the questionnaire, as well as a form to be filled out by national focal points for international cooperation in the use of civil and administrative proceedings relating to corruption.

8. As at 21 August 2017, 37 Member States had provided responses.

9. The Secretariat summarized all the responses received containing substantive information in a note on international cooperation in civil and administrative proceedings for the detection of offences established in accordance with the United Nations Convention against Corruption ([CAC/COSP/2017/2](#)).

10. On 14 March 2017, the secretariat circulated a note verbale with a view to collecting from Member States information on the use of software programs for case management systems in the field of international cooperation. The secretariat analysed the responses submitted by Member States in detail in a conference room paper entitled “Data collection, along with the existence of effective case management systems: sharing of information with respect to existing software programmes in use domestically” ([CAC/COSP/EG.1/2017/CRP.1](#)).

11. The secretariat sent another note verbale to Member States, dated 13 June 2017, encouraging States parties to continue to update and/or provide information on authorities in the online directory of competent national authorities, including central authorities for mutual legal assistance, central authorities for extradition, prevention authorities, asset recovery focal points and focal points for international cooperation in the use of civil and administrative proceedings.

12. The secretariat also continued to expand its analytical work with regard to challenges in international cooperation based on the Convention, as well as to provide and coordinate numerous technical assistance activities in this field.

13. The main observations stemming from the analysis of the information received from Member States to the requests described above are summarized below, together with a description of other activities undertaken by the secretariat with a view to implementing the above-mentioned mandates.

## **II. International cooperation in civil and administrative proceedings for the detection of offences under the United Nations Convention against Corruption**

14. The extent of information provided on civil and administrative proceedings varied considerably. While a few States provided comprehensive information covering all the aspects specified in the notes verbales (i.e., information on civil and administrative proceedings in the context of international cooperation, information on practices and tools relevant to the implementation of article 53 of the Convention and information on focal points in the matter of the use of civil and administrative proceedings against corruption), some States provided only limited information, and some States informed the secretariat that they had no available information on civil and administrative measures relating to corruption. Whereas the above-mentioned note by the Secretariat ([CAC/COSP/2017/2](#)) contains summaries of the responses received, the following brief analysis focuses on their substance.

15. With regard to the implementation of article 53 of the Convention, States generally reported that they could participate in court proceedings whenever they had direct interests in relevant claims similar to any other participants in domestic legal proceedings.

16. This was also confirmed by the observations made in the context of the second cycle reviews completed as at 17 August 2017. Generally, foreign countries were treated as legal persons in the domestic law of States parties. States were therefore entitled to initiate civil action and sue for compensation or damages in domestic courts. However, no information on good practices related to the implementation of article 53 was provided.

17. The types of assistance generally requested included collecting evidence and statements; obtaining bank records; precautionary measures; identification, tracing, freezing, seizure and confiscation of assets; communication of procedural acts; and recognition of judgments.

18. States reported that the lack of familiarity with the domestic civil and administrative proceedings of the requesting State and refusals to accept requests through channels other than those used for coordinating cooperation in criminal matters, or refusals because there were no open criminal cases against the suspects, were the prevalent challenges in the execution of their requests for assistance relevant to civil and administrative measures. Additionally, issues related to translation and procedural delays in the execution of requests were noted. Some States reported that they had not encountered any challenges relating to the execution of both incoming and outgoing requests.

19. States suggested a number of measures aimed at facilitating cooperation in the use of civil and administrative proceedings against corruption. For example, it was suggested that States could consider designating a single central authority on all matters pertaining to the relevant international conventions, in order to make cooperation more effective. Other suggested measures included the following:

(a) Call on States to ensure confidentiality as requested or required by a requesting or requested State in order to avoid any potential negative impact on the investigation of corruption offences;

(b) Competent authorities could make efforts to implement article 43 of the Convention and broaden the possibilities for cooperation in corruption cases, and could, at the same time, optimize the focus of the implementation of Conference resolution 6/4 to make the process more effective;

(c) Develop a guide on the implementation of international cooperation requests at the level of law enforcement authorities or the judiciary. Such a guide could be annexed to the Convention in the form of a protocol;

(d) Strengthen awareness-raising and capacity-building activities by, *inter alia*, organizing tailor-made training for supervisors of competent agencies and officials responsible for international cooperation. It was further proposed that international standards could be developed for the production of evidence based on the requirements of the Convention and universally recognized human rights standards;

(e) Strengthen platforms for information-sharing and exchange among judicial bodies and promotion of dialogue among focal points to ensure the possibility of sharing urgent requests and continuous dialogue to address issues related to a lack of knowledge about legal and procedural requirements that could hinder the timely execution of requests;

(f) Transmit requests directly from one focal point to another on the basis of complementary agreements between them, rather than via diplomatic channels, to ensure efficiency.

20. The responses of Member States provided useful insights on national approaches to international cooperation in civil and administrative matters related to corruption. However, as more than half of the States parties did not provide responses, more information is needed to develop a better understanding of the use of such approaches. It is very likely that such information will be collected through the ongoing review of the implementation by States parties of the Convention, in particular as it relates to the collection of good practices in the implementation of article 53 of the Convention.

21. Most States that responded had limited experience in the use of civil and administrative measures in the context of international cooperation. Only a few States reported having extensive experience in the use of such measures, and that was typically for outgoing assistance requests. Of those States, more had experience in dealing with administrative measures than with civil measures.

22. Some of the States also reported that they had used the Convention as a legal basis for their requests.

23. Importantly, most of the States that provided information were willing to cooperate on such matters if the need arose. That was evidenced in part by their willingness to designate focal points for the purposes of international cooperation in civil and administrative measures relating to corruption, as well as the many useful suggestions they made with a view to enhancing cooperation in such matters.

### **III. Online directory of competent national authorities**

24. During the fifth open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption, the experts recommended that States parties continue to update the information on their central authorities for mutual legal assistance, as mandated by the Convention, on extradition as a good practice and on national focal points on asset recovery contained in the online directory of competent national authorities under the Convention maintained by the secretariat (see [www.unodc.org/compath\\_uncac/en/index.html](http://www.unodc.org/compath_uncac/en/index.html)). The experts further called on the secretariat to explore the possibility of creating a separate section under the online directory, which would contain information on the requirements and procedures for

granting extradition under article 44 of the Convention. In addition, States parties were encouraged to provide to the secretariat, on a voluntary basis, information about designated focal points on the use of civil and administrative proceedings against corruption.

25. Further to those recommendations, the secretariat has developed two new, separate sections under the online directory: one on central authorities on extradition, including information on the requirements and procedures for granting extradition, and one on focal points on the use of civil and administrative proceedings.

26. As noted above, the secretariat also sent to Member States a note verbale dated 13 June 2017 requesting information on the new types of authorities, i.e., central authorities on extradition and focal points for international cooperation in the use of civil and administrative proceedings, and encouraging States parties to continue to update and/or provide the information on central authorities for mutual legal assistance, prevention authorities and asset recovery focal points. Several States parties responded to the request contained in the note verbale, and all the information received was subsequently incorporated into the online directory.

27. As of August 2017, the directory contained information on the following:

- (a) Central authorities for mutual legal assistance in 128 States parties;
- (b) Prevention authorities in 108 States parties;
- (c) Asset recovery focal points in 76 States parties;
- (d) Central authorities on extradition in 15 States parties; and
- (e) Focal points for international cooperation in the use of civil and administrative proceedings in 28 States parties.

#### **IV. Information on electronic tools and systems**

28. At the fifth open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption, participants emphasized the importance of both data collection in the field of international cooperation and the existence of effective case-management systems. In that regard, the sharing of information with respect to existing software programs in use domestically was encouraged. As indicated in the report on that meeting (see [CAC/COSP/EG.1/2016/2](#), para. 38), the secretariat was requested to facilitate such sharing of information.

29. On the basis of that mandate, the secretariat circulated a note verbale dated 14 March 2017, with a view to collecting information from Member States on the use of software programs for case management systems in the field of international cooperation.

30. Details on the questionnaire used and the replies received from Member States are contained in the conference room paper entitled “Data collection, along with the existence of effective case management systems: sharing of information with respect to existing software programs in use domestically” ([CAC/COSP/EG.1/2017/CRP.1](#)).

#### **V. Technical assistance and other activities relevant to international cooperation under the United Nations Convention against Corruption**

31. UNODC continued to provide capacity-building and advisory services at the regional and national levels and to actively participate in meetings and conferences aimed at coordinating international cooperation among States parties. The details of those activities can be found in the note by the Secretariat on technical assistance in

support of the implementation of the United Nations Convention against Corruption (CAC/COSP/2017/3).

32. Furthermore, UNODC continued to provide technical assistance in relation to asset recovery, which frequently overlapped with technical needs related to international cooperation based on the Convention. A detailed description of those technical assistance activities is contained in the progress report on the implementation of the mandates of the Working Group on Asset Recovery (CAC/COSP/2017/6).

33. The Secretariat updated the study entitled *State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Cooperation*. As explained in the summary of that study submitted to the Conference (CAC/COSP/2017/10), it contains a comprehensive analysis of the implementation of chapters III (Criminalization and law enforcement) and IV (International cooperation) of the Convention by the 156 States parties reviewed at the time of drafting as part of the first cycle of the Implementation Review Mechanism. More specifically, the study: (a) identifies and describes trends and patterns in the implementation of the above-mentioned chapters, focusing on systematic or, where possible, regional commonalities and variations; (b) highlights successes and good practices on the one hand, and challenges in implementation on the other, and presents a selection of examples of implementation that are considered noteworthy or illustrative of the legislation and practice of States parties; and (c) provides an overview of the emerging understanding of the Convention and differences in the reviews, where those have been encountered.

34. The updated study mentions in particular that the implementation of chapter IV of the Convention, on international cooperation, appears to be more straightforward and solid, in part as a result of the ability of a number of countries to apply the Convention directly and in view of the self-executing character of many of its provisions. Many States also demonstrated their accumulated experience in the field of international cooperation that was a result of long-standing practice on related issues. Many countries also confirmed their compliance with a number of the Convention's provisions (such as those on consultations with other countries during mutual legal assistance procedures) through practice and ad hoc arrangements. Additionally, the reviews highlighted a tendency towards the relaxation of some legal and procedural constraints in the provision of assistance to foreign authorities. For example, the easing of evidentiary requirements in extradition proceedings was noted in a number of reviews. The interpretation of the dual criminality requirement on the basis of the underlying factual conduct is another example. Lastly, a substantial number of parties appear to be in a position to accept requests in languages other than their official one(s).

35. Some of the greatest challenges regarding chapter IV appear to be operational in nature. In that regard, a number of obstacles are linked to limited resources and/or the technical expertise available to use videoconferencing for mutual legal assistance purposes or to use special investigative techniques, either domestically or in the execution of foreign requests. The reviews also highlighted the limited use of a number of mechanisms envisaged in the Convention. For example, few States make direct use of the Convention as an autonomous legal basis in extradition, and even fewer appear to resort to the transfer of criminal proceedings as a modality for international cooperation.

## **VI. Conclusions and recommendations**

36. The lack of comprehensive information significantly limits the study of cooperation between States parties on civil and administrative measures related to corruption. Unfortunately, despite several reminders, only less than half of States parties provided relevant information. Nevertheless, certain issues were highlighted repeatedly in the responses received and the experts may wish to focus further

discussion on such issues. In particular, the protection of the confidentiality of information provided in the context of executing mutual legal assistance requests on civil and administrative measures, including through the traditional criminal law assistance channels, was highlighted by States as a topic deserving of additional consideration.

37. Given the variety of responses received from States parties on existing software programs for case management systems in the field of international cooperation, the expert meeting may wish to provide to the secretariat further guidance on which of the good practices that were reported may be deserving of further study.

38. The expert meeting may also wish to provide further suggestions to the secretariat with regard to the ongoing development of the online directory of competent national authorities.

39. Finally, given the observation contained in the updated study on the state of implementation of the Convention, the meeting may wish to discuss the reasons for the limited use of a number of mechanisms envisaged in the Convention, such as the limited direct use of the Convention as a legal basis for extradition.

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