



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

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## Open-ended Intergovernmental Working Group on Asset Recovery

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**Practical aspects of asset recovery, including trends,  
challenges and good practices**

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

Note by the Secretariat

#### **I. Introduction**

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

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

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

\* [CAC/COSP/WG.2/2021/1](#).



regard to article 46, paragraphs 4 and 5. The Group concluded that the secretariat, in consultation with the Working Group, should continue its efforts to identify best practices and develop guidelines for proactive and timely sharing of information.

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

5. In line with those mandates, the secretariat presented for consideration by the Working Group at its twelfth meeting, held on 6 and 7 June 2018, a document containing draft non-binding guidelines on the timely sharing of information in accordance with article 56 of the Convention and improving communication and coordination between various asset recovery practitioner networks.<sup>1</sup>

6. A revised version of the draft non-binding guidelines, updated on the basis of comments received from States parties, was submitted to the Working Group at its thirteenth meeting, held on 29 and 30 May 2019.<sup>2</sup>

7. In its resolution 8/9, the Conference directed the Working Group, with the assistance of the Secretariat, to sustain the process of identifying best practices and developing guidelines for proactive and timely sharing of information, in accordance with article 56 of the Convention.

8. Pursuant to the mandate contained in resolution 8/9, the secretariat, in a note verbale dispatched in December 2020, invited States parties to provide additional views on the draft non-binding guidelines.

9. As at 17 June 2021, the secretariat had received comments on the draft non-binding guidelines from 14 States parties.<sup>3</sup> On the basis of the comments received, the secretariat revised the draft non-binding guidelines to the extent possible. The revised draft is presented in the annex to the present note for further consideration.

## II. General observations

10. States parties generally supported the development of the non-binding guidelines and noted that the principles found in the draft guidelines sought a balance between respect for domestic legislation and international standards and were in line with the standards set by their domestic legislation as well as numerous existing bilateral and multilateral agreements and arrangements on information-sharing carried out in practice.

11. It was highlighted that the direct, spontaneous exchange of information among competent authorities, to the extent allowed by domestic legislation and international law, was a necessary complement to mutual legal assistance and an important tool in filling the gaps in efficiency and in the validity of the evidence gathered. It was noted that the principles and procedures outlined in the draft guidelines should not be

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<sup>1</sup> CAC/COSP/WG.2/2018/5, sect. IV.

<sup>2</sup> CAC/COSP/WG.2/2019/4.

<sup>3</sup> Australia, Brazil, Czechia, El Salvador, Mauritius, Mexico, Myanmar, Lebanon, Panama, Saudi Arabia, Senegal, Singapore, Slovakia and Yemen.

interpreted as imposing more stringent requirements than those established in existing domestic rules of States parties on spontaneous sharing of information.

12. The positive role of the Egmont Group platforms and Financial Action Task Force recommendations was also highlighted, as well as the role of the networks of practitioners, in particular asset recovery networks.

13. States parties also highlighted the importance of further enhancing cooperation in transnational asset recovery cases and of considering the more active employment of electronic means of transmitting information, and the importance of providing technical assistance to developing countries in this context.

14. Some States parties stressed that the issue of data security was of fundamental importance and that databases and communication channels used for information-sharing and arrangements for the retention and storage of data must therefore be capable of preventing unauthorized access so as to safeguard privacy, while non-compliance with such established procedures must be sanctioned.

15. Several States parties provided detailed comments on the text of the draft guidelines, which are reflected in the revised draft (see annex).

16. Some States parties provided suggestions about the language used with regard to the level of obligation stipulated in the draft guidelines. In that respect, it should be noted that the guidelines are intended to be a compilation of non-binding principles that States parties may consider taking into account, rather than requirements for mandatory implementation.

### III. Other relevant developments

17. At its special session on challenges and measures to prevent and combat corruption and strengthen international cooperation, held in New York from 2 to 4 June 2021, the General Assembly adopted a political declaration entitled “Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation”, which covers all aspects of preventing and fighting corruption and advancing an anti-corruption agenda and contains a special section on asset recovery that touches upon several areas covered by the mandate of the Working Group, including information-sharing.

18. The political declaration, *inter alia*, highlighted the commitment of Member States to strengthening reliable and timely information exchange and engaging in proactive and responsive information-sharing, in accordance with domestic legal systems, by making better use of all available instruments, as appropriate and in accordance with the Convention and domestic law, to request and provide international cooperation for the purposes of enhancing the identification, tracing, freezing, seizure, confiscation and return of the proceeds of offences established in accordance with the Convention.

19. Furthermore, on 3 June 2021, the Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE Network) was officially launched at a high-level side event on the margins of the special session. The GlobE Network aims to provide a quick, agile and efficient tool for facilitating transnational cooperation in combating corruption, including on asset recovery, strengthening communication exchange and peer learning between anti-corruption law enforcement authorities, while complementing and coordinating with existing international cooperation platforms. The GlobE Network was established under the auspices of the United Nations Office on Drugs and Crime and membership in it is open to the anti-corruption law enforcement authorities falling under article 36 of the Convention from States Members of the United Nations and States parties to the Convention against Corruption.

#### **IV. Next steps**

20. The Working Group may wish to consider and make recommendations on the further steps needed to finalize the draft guidelines and on the format in which they could be presented to the Conference of the States Parties at its ninth session, to be held in December 2021.

21. The Working Group may also wish to consider whether the draft guidelines would benefit from additional consideration under the auspices of the newly established GlobE Network.

## Annex

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

#### **Draft guideline 1**

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

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

#### **Draft guideline 2**

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

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

#### **Draft guideline 3**

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

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

#### **Draft guideline 4**

##### **Receiving States should follow up actively on the information transmitted if needed**

- 4.1. Receiving States should endeavour to follow up actively and collaboratively on the information transmitted if needed. Actions to be taken by a receiving State could include:
  - (a) Getting into contact with the transmitting jurisdiction for informal discussions on further steps, including before, during and after the transmission of mutual legal assistance request;
  - (b) Opening an investigation if this has not yet been done and if the elements are sufficient under its domestic law;
  - (c) Preparing the relevant mutual legal assistance requests to complement the information and request seizure or freezing orders.
- 4.2. Receiving States should comply with any requests for the transmitted information to remain confidential, even temporarily, or with restrictions on its use.
- 4.3. The information received may not be transmitted to third parties without prior permission of the transmitting State or used in a way incompatible with the purposes of the Convention. Receiving States should provide necessary information on the use of the information received from transmitting States if so requested.

#### **Draft guideline 5**

##### **Spontaneous information-sharing should, in general, be considered favourably in cases of administrative freezing and settlement procedures**

- 5.1. States that can administratively freeze assets should consider spontaneously sharing information on assets that have been administratively frozen with the State of origin, as permitted under their domestic legal and regulatory frameworks, and should provide, if appropriate, assistance in the ensuing mutual legal assistance procedures.
- 5.2. States that conclude settlements in cases involving the proceeds of crime should consider, at appropriate stages of their proceedings, sharing information on relevant facts of the case and, when appropriate, information on concluded settlements in corruption-related proceeds of crime cases; if needed, States could also conclude bilateral arrangements on transmitting this information.

#### **Draft guideline 6**

##### **States should aim at designating effective contact points for asset recovery practitioner networks**

- 6.1. Each contact point should be aware of relevant domestic procedures and be in a position to promptly assist with advice in line with the established practice in his or her legal system as well as the mandate of his or her institution and have relevant language skills.
- 6.2. A simple and transparent procedure for designating contact points should be established, taking into account the need for continuity in a network's meetings and other activities. Where there is turnover, new contact points should be designated promptly.
- 6.3. Developing legislative rules and internal guidelines clearly specifying the type of assistance that can be rendered by the contact points can be helpful.

**Draft guideline 7****To the extent possible States could endeavour to invest in the institutional support and resources for asset recovery practitioner networks**

- 7.1. States should examine the possibility of allocating adequate resources and identifying donors and technical assistance providers to ensure the effectiveness, sustainability and consistency of work done by practitioner networks, as well as to improve the communication and coordination between them.
  - 7.2. States could consider providing networks with adequate resources for, inter alia, supporting their secretariats and secure communication platforms, as well as for hosting annual meetings and steering group meetings and developing mechanisms for sharing good practices regarding spontaneous sharing of information.
  - 7.3. To the extent possible, members of the networks should endeavour to plan in advance and allocate sufficient time and resources to fulfil their responsibilities through effective participation in a network's meetings and coordination with other networks.
  - 7.4. Other donors and technical assistance providers should consider providing assistance to networks to carry out their activities.
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