TYPOLOGY ON MUTUAL LEGAL ASSISTANCE IN FOREIGN BRIBERY CASES

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For further information please contact: France Chain [Tel: +(33-1) 45 24 78 36; E-mail: france.chain@oecd.org].

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FOREWORD

The fight against bribery in international business transactions is one of the highest priorities of the Organisation for Economic Co-operation and Development (OECD). The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention) is the OECD’s chief tool to assist this fight. One of the principle mandates of the OECD’s Working Group on Bribery in International Business Transactions (‘the Working Group’) is to monitor the effective implementation of the Convention.

Article 9 of the Convention acknowledges that an important element in the battle against foreign bribery is countries’ ability to obtain information and evidence from one another through mutual legal assistance (MLA) mechanisms. Paragraph XIII of the 2009 Recommendation for Further Combating Foreign Bribery also addresses MLA and, inter alia, recommends that Parties consider ways to facilitate MLA in foreign bribery cases, both between each other and with non-Parties. For several years, different aspects of MLA have been the subject of discussions in the Working Group, including amongst prosecutors and law enforcement officials from Working Group member countries and observer countries. Their attention has focused in particular on the serious problems that hinder MLA in foreign bribery cases – to such an extent that they make effective enforcement of the Convention difficult. As a result of these problems, investigations may be halted or forced up against statute of limitations deadlines, and convictions declined due to lack of evidence. This may result in settlements in which prosecutors must negotiate at an evidentiary disadvantage or can cause law enforcement and prosecution officials to use charging statutes that do not encapsulate the entire crime that was committed.

For these reasons, the Working Group on Bribery has undertaken this typology to study some of the most common MLA challenges in foreign bribery cases. Experts from the governments of Parties to the Convention, observer countries and organisations, and other international organisations met in 2011 and 2012 and discussed their experiences with MLA in foreign bribery cases. Thereafter, additional research and further discussions within the Working Group on Bribery took place. This report is the product of this exchange and research.

The report is not merely a catalogue of MLA problems. More importantly, it offers potential solutions to specific problems and discusses some best practices that might help to avoid such problems in the future. Many of the challenges and solutions identified here are applicable to MLA generally and are not specific to foreign bribery investigations. In addition, the solutions and best practices are ones that can be employed not just by Parties to the Convention, but also by non-Parties.

Special thanks should go to those who played an instrumental role in this report, notably the chair of the typology expert meetings, Dr. Claire A. Daams (Federal Attorney, Office of the Attorney General of Switzerland). Practitioners, members of the governmental branches that process MLA requests, and members of several international organisations took part in the expert meeting that took place in December 2011 in Paris, France. Those individuals were from the following countries and organisations: Argentina, Australia, Austria, Brazil, Bulgaria, Canada, Chile, Colombia, the Czech Republic, Finland, France, Germany, Greece, Hungary, India, Indonesia, Israel, Italy, Japan, Korea, Luxembourg, Malaysia, Mexico, the Netherlands, Norway, Peru, Portugal, the Russian Federation, the Slovak Republic, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States, Eurojust, the European Anti-
Fraud Office (OLAF), the European Investment Bank, IberRed, the World Bank Group and the Financial Action Task Force. A second expert meeting, with attendance limited to law enforcement officials, was held in March 2012 in Paris, France. The practitioners who attended that meeting included individuals from Brazil, Bulgaria, Canada, Colombia, the Czech Republic, Denmark, Finland, France, Germany, Indonesia, Italy, Japan, Korea, Latvia, Luxembourg, Malaysia, Mexico, the Netherlands, New Zealand, Norway, the People’s Republic of China, the Russian Federation, the Slovak Republic, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. Support from the Secretariat was provided by Nancy E. Potts (Senior Legal Analyst, Anti-Corruption Division, Directorate for Financial and Enterprise Affairs, OECD), France Chain (Senior Legal Analyst, Anti-Corruption Division) and Melanie Reed (Legal Analyst, Anti-Corruption Division).
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INTRODUCTION

1. This study focuses on the challenges that arise in providing and obtaining mutual legal assistance (MLA) in foreign bribery cases and ways of addressing those challenges. Bribery of foreign public officials in international business transactions is a cross-border crime. Therefore, effective MLA between countries is crucial for the successful investigation, prosecution and sanction of this crime. Parties to the Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention) have identified difficulties in obtaining MLA — both between the Parties to the Convention and in relation to non Parties — as a major obstacle to the effective implementation of the Convention.

2. Beginning in 1999, the OECD Anti-Bribery Convention called upon all Parties to criminalise the bribery of foreign public officials in international business transactions (foreign bribery). Today, 39 state Parties have committed to join the fight against this crime. Recognising that country-to-country assistance is essential to combat foreign bribery, Article 9 of the Convention provides that Parties should use all tools available to provide “prompt and effective legal assistance” to other Parties for the purpose of assisting investigations of the foreign bribery offence.1 In addition, Parties are required to inform other Parties of any defects in their requests for MLA and update them on the status of their requests.

3. In 2005, the United Nations Convention Against Corruption (UNCAC) entered into force. This international instrument requires state parties to establish criminal offences to cover a wide range of acts of corruption, including bribery of foreign public officials.2 Acknowledging the importance of international cooperation in corruption investigations generally, the UNCAC requires states parties to render to one another the “widest measure” of MLA and identifies several specific forms of MLA that countries must afford one another under this instrument.3 As of 20 April 2012, 160 states have become parties to the UNCAC. The Council of Europe’s Criminal Convention on Corruption, which entered into force on 1 June 2002, requires state Parties to adopt similar legislative and other measures and focuses on the importance of providing MLA in its Article 26.

4. In 2005, the OECD Working Group on Bribery in International Business Transactions (Working Group) conducted a stock-taking review of its Phase 2 country evaluations that had been completed to date.4 This resulted in the 2006 Phase 2 Mid-Term Study, in which the Working Group

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1 Article 9.1 of the OECD Anti-Bribery Convention, 21 November 1997, at www.oecd.org/document/21/0,3746,en_2649_34859_2017813_1_1_1_1,00.html.
3 Article 46 ibid.
4 The Working Group evaluates countries’ implementation and enforcement of the Anti-Bribery Convention through a peer-review monitoring system that results in the publication of reports which
concluded that perhaps the most significant obstacle faced by Parties to the Convention in investigating and prosecuting foreign bribery cases is the difficulty in obtaining MLA from non-Parties regarding the bribery of foreign public officials that takes place in those countries.\(^5\)

5. During a meeting in Rome in November 2007 to celebrate the tenth anniversary of the Convention, government officials from Working Group member countries repeatedly discussed the importance of MLA and the need to improve it. Participants in a special meeting for law enforcement officials discussed difficulties related to the length of the MLA process and the need to accelerate MLA with countries not Party to the Convention. Another Rome panel attended by experts on international cooperation was devoted to the topic of enhancing international coordination and cooperation in foreign bribery matters, and in particular on speeding up the execution of MLA requests.\(^6\) As part of the Rome meeting, the Working Group issued a “Statement on a Shared Commitment to Fight Against Foreign Bribery”, where all Parties to the Convention committed to “[u]se all means and take all necessary actions, to effectively investigate and prosecute those who bribe foreign public officials, notably by facilitating international cooperation and MLA”.\(^7\)

6. Following up on the discussions on MLA which took place in Rome in November 2007, a group of prosecutors from Parties to the Convention held several informal annual meetings, starting in June 2008. Problems related to MLA were further identified and discussed, which, in part, led to this typology. Furthermore, the Working Group undertook in 2008 and 2009 a review of the OECD anti-bribery instruments. During that review, the Working Group concluded that improving MLA was a high-priority issue and that it should make the issue a topic for an independent study.\(^8\)

7. Once again recognising how crucial MLA is to investigating foreign bribery cases, the OECD’s 2009 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions recommends that Member countries “make full use of existing agreements and arrangements for mutual international legal assistance and where necessary, enter into new agreements or arrangements for this purpose” and “consider ways for facilitating MLA between Member countries and with non-Member countries in cases of [foreign] bribery”.\(^9\)

8. Although the Working Group has repeatedly recognised the importance of MLA in combating foreign bribery, its own ability to evaluate how effectively Parties process MLA requests has been hampered by a lack of objective and verifiable information, including statistical information. In the course of the Phase 3 reviews, the Working Group has identified as a horizontal issue the
9. Meanwhile, criminals have capitalised on technological advances, which have in turn made efficient MLA even more critical. In the area of transnational bribery, as in other economic crime cases, technology has made it possible for criminals to communicate quickly, easily create shell corporations and other intermediary entities, layer financial transactions in multiple jurisdictions and conceal assets in hidden accounts which are frequently held in yet other jurisdictions. Therefore, the need for timely MLA has increased.

10. Many practitioners share the view that more must be done to increase the effectiveness of MLA in foreign bribery cases and in criminal matters generally. The prosecutors who took part in the 2007 Rome meeting acknowledged that MLA delays are a major concern. Moreover, a chorus of experts who took part in the typology meetings in December 2011 and March 2012 stressed the need for more timely and effective MLA. The expert participants in the typology meetings were unanimous in their opinion that serious MLA problems are present when seeking MLA from some Convention Parties and non-Parties.

11. By design, this report does not seek to set forth an inventory of the legal bases for MLA in each country that is Party to the Convention or to explain how to successfully submit an MLA request to each of those countries. This is because other international organisations have undertaken projects that focus on these topics. For example, the United Nations Office on Drugs and Crime (UNODC) has developed a technical assistance tool, the MLA Request Writer Tool, to assist practitioners in drafting effective and accurate MLA requests. The European Justice Network provides a set of MLA tools, including an MLA Atlas identifying competent national authorities, and a Compendium Wizard to assist in the drafting of rogatory letters. Similarly, in 2011, the G8 published a report entitled, “Requesting Mutual Legal Assistance in Criminal Matters from G8 Countries: A Step-by-Step Guide”, which goes through the steps one must take to submit an MLA request to each G8 country. The G20 is currently in the process of developing its own step-by-step guide for each of the G20 countries, modelled on the G8 report.

12. Accordingly, rather than focusing on the practicalities and mechanics of issuing an effective MLA request, this report focuses on more system-wide issues. While the report discusses many of the MLA problems and challenges that exist inter alia in foreign bribery cases, it also offers guidance on how to overcome many of these challenges and identifies some best practices in MLA that may help to avoid obstacles in the future. This report does not purport to be exhaustive on the topic of MLA. It is entirely based on the experiences shared by law enforcement officials and experts who participated in the 2011 and 2012 experts’ meetings and on the case studies submitted by countries of the Working Group (see Annex 1). In this context, discussions focused on MLA for the purpose of obtaining evidence in the context of cases falling within the scope of the Convention. Therefore, the report does

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10 See “Mid-Term Study of Phase 2 Reports”, 407, supra.


not, for instance, address issues such as extradition, the transfer of proceedings to another jurisdiction, or the vicarious execution of criminal judgments.

13. This report begins in chapter I with a discussion of the legal framework for MLA. Chapter II focuses on common challenges to MLA, as described by participants in expert meetings dealing with this report, as well as potential solutions to these problems. In chapter III, the report discusses two different approaches to co-ordinating investigative efforts when multiple jurisdictions are investigating related offences: maintaining separate, parallel investigations with co-ordination between the various teams, and combining investigative efforts in a joint investigation team (often called a JIT). Following this, in chapter IV, it describes other relevant mechanisms for exchanging information internationally. The report is followed by three annexes. Annex 1 includes case examples provided by participants in the typology expert meetings. These case studies are drawn upon practical experience in investigating and prosecuting foreign bribery and related cases and demonstrate challenges as well as good practices, and also serve to illustrate the different chapters of the report. Annex 2 provides information regarding technical tools to assist in MLA, while Annex 3 provides a list of central authorities for MLA requests for members of the Working Group.
CHAPTER I:
THE LEGAL FRAMEWORK FOR MUTUAL LEGAL ASSISTANCE

14. This chapter aims to provide an overview of the legal bases for MLA and to serve as a backdrop to the discussion of MLA in the other chapters. These bases can include multi-lateral instruments, such as the OECD Anti-Bribery Convention and the UN Convention Against Corruption (UNCAC), bilateral treaties and letters rogatory. This chapter further discusses a number of principles and standards that guide the provision of MLA, including reciprocity, dual criminality, evidentiary standards and limitations on the use of evidence.

A. Legal bases for MLA in criminal matters

1. The traditional MLA tool – the letter rogatory

15. Historically, courts, prosecutors or other responsible authorities involved in legal proceedings provided MLA to each other through the use of a letter rogatory. A letter rogatory is a formal request from one responsible authority to another responsible authority in the foreign country where evidence or the service of documents is sought. In the absence of a treaty or other mechanism for seeking MLA, letters rogatory are still used in criminal matters today. Although the use of letters rogatory originates in the field of extradition, over time they have also been used in relation to other areas of MLA, such as obtaining evidence. A letter rogatory must comply with strict requirements regarding form and substance. For example, it generally must be legalised (that is, authenticated by way of an attestation or apostille14) and translated into the foreign language. Many countries also have specific requirements about the details that must be provided in the request.

16. In addition, a letter rogatory is customarily transmitted through the countries’ diplomatic channels. This means that, depending on the legal requirements in each country, the letter may be sent from the prosecutor who drafted it to: (i) a judge in the requesting country; (ii) the requesting country’s Ministry of Justice or Ministry of Foreign Affairs (or other appointed Central Authority); (iii) the requesting country’s Embassy in the recipient country; (iv) the recipient country’s Ministry of Justice or Ministry of Foreign Affairs (or other appointed Central Authority); (v) a judge in the recipient country; or (vi) another authority in a position to carry out the request in the recipient country. Some of these steps may be combined or simplified in certain countries. Delay is possible at each step of the process, which is why it can easily take a year or more for a letter rogatory to be answered.

2. **Bilateral treaties**

17. As the need for more certainty in international cooperation has grown, many countries have entered into bilateral MLA treaties (MLATs), in order to facilitate MLA in criminal matters with countries with whom they have or intend to develop an ongoing partnership in investigations. An MLAT can be an efficient way to facilitate MLA, not only because such an agreement is designed to meet the specific needs of the parties, but also because the consensus of only two parties is required to amend the treaty. In some cases, they may also minimise the impact of the absence of a more detailed domestic legislation on MLA.

18. Although the content of MLATs varies greatly, their general purpose is to enable law enforcement authorities to obtain evidence and other procedural measures abroad in a form that is admissible in the courts of the requesting country and to provide assistance to their counterparts in such a form. An MLAT may supplement other arrangements dealing with the exchange of information, such as multi-lateral agreements and letters rogatory. Often an MLAT will set forth the channel by which communications regarding MLA should be sent, for instance, by establishing a central authority in each country that has the power to receive and respond to MLA requests. An MLAT also generally establishes the types of offences for which MLA is available, either by setting forth a list of crimes covered, establishing the severity of offences covered (e.g. offences punishable by at least one year imprisonment) or some combination of these approaches. In addition, an MLAT may set forth the types of MLA available to the parties – such as service of process on individuals in the recipient country, locating and producing records or documents, locating witnesses, taking testimony, freezing assets, executing searches and seizures and transferring persons in custody for testimonial purposes – and limitations on use of evidence obtained through MLA. Finally, an MLAT may address potential obstacles to MLA, such as whether the dual criminality requirement must be met (see part B below).

3. **Multi-lateral legal instruments**

19. A number of multi-lateral legal instruments address the provision of MLA between their parties. Due to the amount of time and resources it takes for countries to negotiate and adopt bilateral treaties, entering into multi-lateral MLA instruments is an efficient and cost-effective way to address MLA with numerous other countries at one time.

a. **Anti-corruption instruments addressing MLA**

20. In regard to the crime of transnational bribery, the OECD Anti-Bribery Convention provides, “Each Party shall, to the fullest extent possible under its laws and relevant treaties and arrangements, provide prompt and effective legal assistance to another Party for the purpose of criminal investigations and proceedings brought by a Party concerning offences within the scope of this Convention and for non-criminal proceedings within the scope of this Convention brought by a Party against a legal person”.\(^\text{15}\) In addition, a Party that receives a request for MLA from another Party “shall inform the requesting Party, without delay, of any additional information or documents needed to support the request for assistance and, where requested, of the status and outcome of the request for assistance”.\(^\text{16}\)

\(^{15}\) Article 9.1 of the OECD Anti-Bribery Convention.

\(^{16}\) *Ibid.*
21. Similarly, the UNCAC obliges state parties to “afford one another the widest measure of MLA in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention”.17 It also sets forth details regarding the substance of an MLA request, the means of transmitting and executing such a request and permitted reasons for denying a request. For any request that is denied, the UNCAC requires the recipient country to provide reasons to the requesting party.18

22. Several regional anti-corruption instruments also address the topic of MLA among their members. For example, the Council of Europe Criminal Law Convention on Corruption obliges state parties to “afford one another the widest measure of mutual assistance by promptly processing requests from authorities that, in conformity with their domestic laws, have the power to investigate or prosecute criminal offences established in accordance with the Convention” (which includes bribery offences as defined in the Convention).19 The Organization of American States’ Inter-American Convention against Corruption (IACAC) contains a similar provision; it also requires parties to provide each other with “mutual technical cooperation on the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption”.20

23. Multi-lateral agreements can help overcome potential obstacles that may arise in the context of MLA between parties by setting forth a standard approach to such obstacles. For example, the OECD Convention sets forth an assumption that the dual criminality requirement is met for all offences that fall under the Convention, while the UNCAC sets a conduct-based approach to dual criminality (the issue of dual criminality is discussed in further detail below).21 As another example, both of these instruments prohibit declining to provide MLA on the basis of bank secrecy.22

b. General MLA instruments and other treaties

24. A number of general MLATs – not solely applicable to corruption cases – set forth principles for the exchange of MLA in foreign bribery cases. For example, the European Convention on Mutual Assistance in Criminal Matters, along with its two Additional Protocols, provides common rules for exchanges of MLA among members of the Council of Europe.23 The Inter-American Convention on

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17 Article 46.1 of the UNCAC.

18 Article 46.23 ibid.


20 Article XIV of the IACAC (1996). For other examples of MLA provisions in regional anti-corruption initiatives, see, for example, Article 18 of the African Union Convention on Combating and Preventing Corruption Article 18 (2003); Articles 25−26 of the Council of Europe Criminal Law Convention on Corruption (2002); Article 15 of the Economic Community of West African States Protocol on the Fight against Corruption (2001); Article 10 of the South African Development Community Protocol against Corruption (2001).

21 See Article 9.2 of the OECD Anti-Bribery Convention; Article 43.2 of the UNCAC.

22 See Article 9.3 of the OECD Anti-Bribery Convention; Article 46.8 of the UNCAC.

Mutual Assistance in Criminal Matters does the same for its member states in the Western Hemisphere.\textsuperscript{24}

25. Other treaties enable general cooperation in criminal matters, which can also facilitate cooperation in foreign bribery cases. For example, the Schengen Implementing Treaty permits law enforcement authorities, \textit{inter alia}, to continue surveillance of individuals even when they cross international borders within Schengen countries and could be useful in monitoring people involved in corruption cases.\textsuperscript{25} Similarly, Framework Decisions of the European Union require EU members to cooperate in executing orders to freeze or confiscate assets.\textsuperscript{26}

c. \textit{Other international standards}

26. Other international standards also relate to the provision of MLA in cases of foreign bribery. For example, the Financial Action Task Force’s 2012 International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (FATF 2012 Standards) require countries to “rapidly, constructively and effectively provide the widest possible range of MLA in relation to money laundering, associated predicate offences, and terrorist financing investigations, prosecutions, and related proceedings”.\textsuperscript{27} Foreign bribery is often a predicate offence to money laundering, so these standards would apply to exchanges of information between FATF members.\textsuperscript{28}


\textsuperscript{27} See Recommendation 37, “Mutual legal assistance”, FATF 2012 Standards (February 2012), at \url{www.fatf-gafi.org/dataoecd/49/29/49684543.pdf}; see also Recommendation 38, “Mutual legal assistance: freezing and confiscation”, at \textit{id}.

\textsuperscript{28} In fact, under Article 7 of the OECD Anti-Bribery Convention, a Party that “has made bribery of its own public official a predicate offence for the purpose of the application of its money laundering legislation shall do so on the same terms for the bribery of a foreign public official, without regard to the place where the bribery occurred”. Recommendation 3 of the FATF 2012 Standards, \textit{supra},...
4. Domestic law

27. In many countries, domestic legislation may complement the provisions for providing MLA outlined above. For example, through domestic legislation a country could set forth requirements for providing MLA to countries with which it has no treaty relations or may designate certain foreign countries as eligible for MLA. When no relevant international agreement sets forth guidelines for carrying out a particular type of MLA request, such as a search and seizure, a recipient country may look to its domestic law to determine process. Depending on their legal system, domestic legislation may need to be passed in some countries before an international MLA agreement – whether bilateral or multi-lateral – becomes effective and enforceable.

5. Coordination preceding an MLA request

28. A country’s domestic law may also enable its authorities – particularly law enforcement authorities – to participate in communications and/or exchanges of information with their international colleagues on a more informal basis before sending an MLA request. Such exchanges may take place through international networks (such as OECD Working Group meetings, the European Judicial Network, the Egmont Group, the IberRed network, the OAS Criminal Network, the Commonwealth Network of Contact Persons, CARIN, ARINSA, RRAG-GAFISUD and the StAR Initiative), but may also occur on a bilateral basis. Such preliminary contacts facilitate direct coordination among law enforcement authorities and, although it is a relatively new mechanism in combating transnational crime, its use is growing rapidly.

29. Such law enforcement cooperation is the subject of Article 48 of the UNCAC, which encourages State Parties to closely cooperate with one another, consistent with their respective domestic systems, to combat corruption, including by enhancing communication, cooperating with international inquiries, providing items for analysis, exchanging information on means and methods for gathering information, facilitating the exchange of personnel and coordinating with the purpose of early identification of offences. Parties are also to consider bilateral or multi-lateral arrangements and agreements to enhance such cooperation and to use modern technology to cooperate. Article 49 of the UNCAC encourages bilateral or multi-lateral agreements for joint investigations, and some countries have begun to use joint investigation teams (JITs), particularly within the European Union (as discussed in chapter III below).

30. Such preliminary communications or exchanges will, in most cases, need to be followed-up with a formal request for MLA in order to obtain evidence admissible in trial.

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29 MLA legislation often contains a schedule that lists the countries to which MLA can be provided without a treaty.
Domestic legislation allowing for the provision of informal MLA

Section 31 of the South African International Co-Operation in Criminal Matters Act (Act 75 of 1996) (ICCM Act) provides, “Nothing in this Act contained shall be construed so as to prevent or abrogate or derogate from any arrangement or practice for the provision or obtaining or international co-operation in criminal matters otherwise than in the manner provided for by this Act”. This provision has been used as a basis for obtaining MLA in circumstances not strictly covered by the ICCM Act.

B. Legal principles applicable to requests for MLA in criminal matters

1. Reciprocity

31. The notion of reciprocity, both as a legal matter and as a relationship issue, is perhaps one of the most important legal principles applicable to requests for MLA. Many countries will only respond to a request for MLA if they are given an assurance of reciprocity, that is, that the requesting state will provide the recipient state with legal assistance in a future similar case. This requirement is usually set forth in domestic legislation and comes into play when there is no relevant treaty or convention, since the principle of reciprocity is embodied in MLATs and multi-lateral instruments by their very nature. The concept can be interpreted in different ways. In some countries, it may be enough that a requesting country expressly notes its willingness to provide reciprocal assistance in its request for MLA. In other countries, however, a requesting country may be required to show that it has provided MLA to the recipient country at some point in the past.

32. Even if reciprocity is not a mandatory aspect of the recipient country’s legal regime, MLA undoubtedly occurs more smoothly where both countries have an ongoing relationship based on trust and regularly provide assistance to each other. When a relationship of trust and reciprocal assistance has not been developed, a country receiving a request for MLA may find other bases (such as alleged failure to comply with procedural requirements or risks to the essential interests of the State or “ordre public”) as a reason to deny assistance, even when the requesting country indicates its willingness to cooperate in the future.

2. Dual criminality

33. In the context of MLA, dual criminality refers to the principle that the criminal offence underlying the request for assistance must be a crime in both the requesting as well as the recipient state. Traditionally, dual criminality required that both the requesting and the recipient country have legislation on the same crime with the same elements. Over time, however, dual criminality requirements have loosened. Many countries nowadays take a “conduct-based” approach to dual criminality, that is, if the underlying conduct would be a crime in both countries, the requirement of dual criminality is met. The UNCAC takes a broad, conduct-based approach to dual criminality, in that all that is needed is that “the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties”. Take, for example, the case where one

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30 A number of the issues discussed in this section are also discussed in the ADB/OECD Anti-Corruption Initiative for Asia the Pacific publication, *Mutual Legal Assistance, Extradition and Recovery of Proceeds of Corruption in Asia and the Pacific*, at 39-59 (2007), at www.oecd.org/dataoecd/28/47/37900503.pdf.


32 Article 43.2 of the UNCAC.
UNCAC party is investigating a case of foreign bribery of an official of another UNCAC party. Even if the recipient country did not have a foreign bribery offence, the dual criminality requirement would be met if it had a *domestic* bribery offence that covered its official who was bribed (since the conduct would be criminal conduct under that law).

34. The OECD Anti-Bribery Convention also takes a conduct-based approach to dual criminality, by deeming it to be met “if the offence for which the assistance is sought is within the scope of [the] Convention”.\(^{33}\) This covers, for example, the “supply side” of bribery of foreign public officials (that is, offering, promising or giving a bribe, and attempts to do so, by both natural and legal persons), money laundering where the bribery of foreign public officials is the predicate offence and fraudulent accounting related to foreign bribery, including books and records, accounts and financial statements of companies. Regarding the offence of foreign bribery specifically, dual criminality exists even if the Party receiving a request for MLA has established its offence of foreign bribery in a different law or under a different formulation than the requesting Party.\(^{34}\)

35. These standards have somewhat limited applicability, as they only apply if both the requesting country and recipient country are parties to the instrument setting forth the standard. A potential gap still exists with regard to requests for evidence involving third countries. For instance, country A, a Party to the OECD Anti-Bribery Convention requests MLA from country B, which does not criminalise foreign bribery, concerning information relating to foreign bribery committed in country C. This may be the case, for example, where witnesses have removed themselves to country B following the bribery. What standard applies in such situations, since country B would probably not have jurisdiction over a foreign bribery case? Would country A be obliged to find dual criminality if country B does not have the ability to prosecute the case itself (either as domestic or as foreign bribery)?

36. If no international treaty applies, the recipient country may decide, based on its domestic legislation, whether to carry out the MLA request. In many countries, central authorities have discretion regarding whether or not to provide assistance even where dual criminality is not met. In other countries, rules for considering dual criminality are set forth in domestic laws, for example, dual criminality may be a requirement only when coercive measures are requested. Importantly, where no legal rules for considering dual criminality are set forth in domestic law, or where domestic law permits it, countries are able to exercise discretion to decide whether to provide assistance even where dual criminality is not met in particular cases.

37. In addition, some countries require “dual punishability”. This means that the conduct must still be punishable in the recipient country (that is, that the statute of limitations for the execution of a sanction in the recipient country has not expired) and may also require that the recipient country apply comparable sanctions or allow similar defences. For example, a recipient country may be unwilling to provide MLA to a requesting country that allows a punishment for the offence that the recipient country considers to be unduly harsh (e.g., the death penalty). For countries with constitutional and/or international obligations to respect human rights including a ban on the death penalty, it may be that MLA can be provided only if the requesting state provides adequate guarantees that the death penalty will not be applied in the case, or, if applied, that it will not be executed.

\(^{33}\) Article 9.2 of the OECD Anti-Bribery Convention.

\(^{34}\) For example, one Party might have the foreign bribery in a specific, separate provision of its code, while the other Party might incorporate the offence into a code section that also deals with domestic or private-to-private bribery. See Commentary to Article 9.2 of the OECD Anti-Bribery Convention.
3. **Evidentiary standards**

a. **As a basis for providing MLA**

38. In order to avoid non-specific searches for information without a basis in reasonable suspicion, a number of countries require a country requesting MLA to provide evidence of the crime alleged. This may be the case when coercive measures are being requested, for example, a search and seizure or the taking of compelled testimony. The level of proof required by a recipient state may be set forth by legislation or by treaty and may range from evidence showing probable cause (that is, reasonable grounds to suspect that the defendant committed the crime) to evidence proving the prima facie case (that is, evidence that would justify bringing the defendant to trial in the recipient state). The level of proof required may also depend on the type of MLA sought. For example, a requesting state may be required to give the recipient state stronger evidence of the likelihood of the alleged crime if the requesting state is asking for coercive measures (as opposed to asking for information or documents already in the possession of a foreign prosecutorial or law enforcement agency).

39. In addition, when the requesting country is asking the recipient country to take measures to gather evidence, such as a search and seize, the requesting country may have an additional burden of demonstrating that reasonable grounds exist to suspect that the measures will result in obtaining the evidence sought, especially if the request is sent at an early stage of the investigation. Evidence obtained through coercive measures will likely not be admissible in the requesting state if it has not been obtained pursuant to an evidentiary standard that is either the same or more onerous than the standard that applies in the requesting state.

b. **As required to prosecute a case**

40. A matter related to the evidentiary threshold for obtaining MLA is the evidentiary standard for using evidence obtained through MLA at trial. A recipient state will need to execute any MLA request received in such a way that the evidence provided to the requesting state will be useable in a criminal proceeding, including in a court trial. Therefore the recipient state will need to take into account any special formal or procedural requirements for gathering evidence which exist in the requesting state.

4. **Limitations on use**

41. Domestic law, bilateral treaties or an applicable multi-lateral treaty may state that evidence provided in response to a request for MLA can only be used for the purpose for which it was obtained, that is, in the specific investigation or prosecution for which the request was made. For this purpose, as discussed further below in chapter 2, all potential crimes that could be investigated or prosecuted based on the facts need to be included in any request for MLA. Exceptions to allow alternative or further uses for documents already provided are sometimes possible upon request to the appropriate authority in the recipient country.

5. **Procedural requirements**

42. Recipient countries may have very different standards regarding the procedural requirements that apply to requests for MLA. These standards may originate in the legal requirements of the recipient country, and, if they are not met, even a country willing to provide MLA may not be able to do so. In addition, it is important to adhere to the applicable domestic MLA laws, as this may affect the admissibility of evidence in a criminal proceeding.
43. At a minimum, a requesting country will need to provide a detailed description of facts that form the basis of the proceedings. In addition, the requesting country may need to indicate whether it has opened criminal proceedings, and that the statute of limitations for engaging in proceedings has not expired. The affected persons may also have the right to appeal any provision of MLA, particularly if it involves coercive measures; such appeals take time and can significantly delay the timeframe for obtaining MLA.

44. The issue of language is often critical in an MLA setting. Some countries will only accept requests for MLA in their official language (and, generally, providing a request in the language of the recipient country will speed up the process). With regard to translations, quality is key; the translation must be adequate to enable the recipient country to understand and execute the request.

6. Other grounds for refusal

45. A number of countries have set forth specific grounds upon which MLA may be refused. Some of these are based on countries’ differing views on issues of human rights and public interest. For example, a recipient country may deny a request for MLA if the investigation or prosecution of the affected person is based on unlawful grounds in the recipient country (for example, nationality, ethnicity, religion or political opinion). A country could also refuse MLA if the requesting country was unable to give reasonable guarantees of a fair trial or if the punishment for the crime to be prosecuted would be considered unreasonably severe in the recipient country (for example, where the requesting country would impose the death penalty if the defendant were found guilty). Other bases for denying MLA may be because the request relates to a political offence or because executing the request may prejudice the essential interests, including the national security, of the recipient country. Finally, in some countries, certain high-ranking government and military officials are immune from prosecution. Therefore, a recipient country would not provide MLA in relation to such persons.
CHAPTER II:
COMMON MLA CHALLENGES IN FOREIGN BRIBERY CASES AND POTENTIAL SOLUTIONS

46. This chapter focuses on some of the challenges that can arise in the context of MLA in foreign bribery cases. Most of these problems can arise in relation to requests for MLA in criminal matters generally, regardless of the type of crime being investigated. However, the problems discussed here were raised by participants in the expert meetings conducted as part of this typology as being among the most common or most challenging in their foreign bribery investigations. Each problem identified below is accompanied by a discussion of some of the potential solutions to address and overcome these challenges. Other solutions that involve supplementing the MLA system in some way, such as using a joint investigative team or exchanging information outside of the MLA context, are discussed in other chapters and should also be considered as potential solutions to the challenges discussed below.

A. Timeliness

1. Delays in the execution of an MLA request – a fundamental MLA problem with multiple causes

47. Fast and efficient responses to MLA requests can greatly increase the successfulness of foreign bribery investigations and prosecutions. When the MLA system works more efficiently, prosecutors and investigators have a greater chance of finding suspects, tracing and seizing proceeds, and bringing to justice those who participated in the crime. According to the consensus of the practitioners from the 40 countries who participated in the expert meetings as part of this typology, delays in the MLA system can provide significant impediments to the prosecution of foreign bribery cases. In some instances, the system for providing MLA works very well, and, because of that, investigations can be conducted in a quick and efficient manner. However, in many instances, and surprisingly often in countries with advanced legal systems and adequate resources, the system breaks down. It is not uncommon that an MLA request in a foreign bribery case remains improperly addressed or unfulfilled for several years.

48. Delays are sometimes caused by issues unique to a country’s particular MLA system. For instance, the Working Group has found that MLA requests sent to Parties to the OECD Anti-Bribery Convention have often been delayed by a lengthy appeals process or cumbersome procedures to obtain bank records. Delays are also standard in countries that have not developed modern methods of transmitting MLA requests and continue to use traditional, formalistic methods such as the use of diplomatic channels to communicate requests and transmit responses.

49. Often, a delay occurs due to unspecified reasons, and the requesting country never learns what has caused the MLA request to, by all appearances, languish. (Some of the possible reasons for such delays are discussed in the following sections of this chapter.) The requesting country also may
never learn whether deficiencies in its request could or should be corrected. Therefore the requesting
country may need to plan its investigation and prosecution strategy without a real sense of when (or if)
the outstanding MLA request will be fulfilled.

50. While the possibility of appealing court decisions are indisputably part of a fair trial, appeals
proceedings in MLA matters can also severely hinder the obtaining of evidence abroad. Complex
issues such as abuse of process and/or violation of legal privilege may, for instance, be brought up,
leading, in certain circumstances, to discussions on the merits of the (foreign) case before a court in
the recipient country. Paradoxically, this will often happen in the absence of the requesting authority
which is not always allowed to join or participate in the MLA proceedings in the recipient country.
This may seriously hinder the MLA process, since local courts may not be fully aware of the
implications of MLA issues, and/or may not be strongly motivated to decide the cases quickly, since
the foreign case itself is not seen as their own case.

51. Whatever the causes, MLA delays coupled with the lack of information about the status of
requests can be extremely harmful to investigations. MLA delays may hinder investigations from
going forward, cause statute of limitations problems and leave requesting countries with no choice but
to charge less serious offences due to the inability to prove the entire crime. In the extreme, a
country’s pattern of lengthy delays in responding to MLA requests may cause law enforcement
authorities in another jurisdiction to decline to open an investigation at the outset, due to anticipated
MLA frustrations with the country.

Delays due to unclear communications

One of the requests for MLA outlined in Case 1 (Annex 1) was delayed because of a lack of clarity regarding
procedural requirements and a communication breakdown between the two countries. Nearly three months after
the request was submitted, the recipient country responded to indicate that the requesting country had failed to
include an official seal, subscriptions and relevant supporting documents (although all of this information was
included in the original request). Nonetheless, the requesting country submitted a revised request. Three months
later, the recipient country informed the requesting country that it needed to legalise the request. Two months
after this, the recipient country asked for the request to be super-legalised. The super-legalised request was
provided eight months later. Another twenty months passed (three years after the original request was submitted)
before the recipient country informed the requesting country that the request could not be satisfied because the
persons in question had left the recipient country’s territory for an unknown place two years prior to the date the
requesting country had sent its original MLA request.

Delays due to appeals and political factors

In Case 2, the provision of MLA was delayed, and ultimately refused because of political influences over the
process, as well as appeals procedures by the defendant’s lawyers. The investigation concerned bribery by a
company of a foreign minister. Multiple requests for MLA were sent to the foreign minister’s country (nine in the
year 2010 alone). Investigators from the company’s country travelled twice to the foreign country to examine
witnesses, but were then refused access to the witnesses on legal grounds, which prevented foreign authorities
from interrogating a witness. Subsequently, following a change in government that brought to power opponents of
the foreign minister’s party, the legislation was changed, allowing such interrogations to take place. The
investigation team from the company’s country travelled back to the minister’s country, but had to stop their
interrogation after ten minutes because of an appeals procedure lodged by the defendant’s lawyers. Due to
extreme political tensions surrounding local elections, the higher court ordered the examinations to stop
immediately and to stay on hold until the outcome of the appeals decision procedure had been decided.
Investigators of the company’s country had to return home after that week without any result that they could use,
and, as of the time of this report, were still waiting for the outcome of the court’s decision (see Annex 1 for further
details on this case).
2. **Ideas for ensuring timely responses to MLA**

*a. Setting clear MLA strategies*

52. Effective domestic procedures are a first step to adding efficiency to the MLA process. Requesting countries should have a clear strategy for submitting MLA requests and dealing with follow-up issues in relation to submitted requests. Indeed, when the requesting authorities fail to receive a timely response to their request, they should not hesitate to follow-up with the recipient country to try and enquire as to the reasons for the delay, rather than simply wait for a response.

53. On the other hand, recipient countries can enable efficient responses to MLA requests by ensuring that clear procedures are in place regarding who should receive and handle different types of requests. In countries where a number of different government bodies (e.g., central authorities, judicial authorities, and prosecutors) may be authorised to receive and execute MLA requests, clear channels of communication should be established to ensure that requests are not overlooked. Recipient countries may also develop policies with a view to improving responses to MLA requests, which may notably address the maximum time allowed to respond to MLA requests (e.g., one year), that MLA proceedings abstain from going into the merits of the foreign case, and the principle of “favor rogatoriae”, according to which countries Party to a Convention assure one another of their best cooperation efforts.

### Strategy meetings at the national level

Germany, a Party to the Convention, holds regular meetings between law enforcement agencies of different provinces, in order to exchange experiences and discuss common standards regarding the handling of outgoing and incoming requests. These meetings enable responsible authorities in different parts of the country to learn from each other’s experiences and help ensure that requests are appropriately handled.

*b. Providing clear, accessible information regarding the procedural requirements for MLA*

54. One way to reduce the delays caused by a requestor’s failure to meet the procedural requirements for obtaining MLA is to explain precisely what one’s own requirements are, and to make that information easily accessible to practitioners in other countries. It is also helpful if concrete examples are provided. During the meetings and consultations that took place as part of this typology, several countries were cited as having Internet websites that effectively allow one to learn about the procedural requirements for obtaining MLA. Establishing an Internet website that clearly sets these requirements is a relatively low-cost and simple way to help requesting countries avoid MLA delays. Countries can also provide this information through networks that compile such information, such as the ones mentioned above (see Chapter I.A.5 above).

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For example, see the Internet website for the Hong Kong International Law Division, which includes a description of the responsibilities of advice that may be offered by its Mutual Legal Assistance Unit, at [www.doj.gov.hk/eng/about/ild.htm](http://www.doj.gov.hk/eng/about/ild.htm). The website also contains contact information for the MLA Unit, at [www.doj.gov.hk/eng/about/ild-chart.htm](http://www.doj.gov.hk/eng/about/ild-chart.htm). That unit can provide, on request, a “Booklet on Obtaining Assistance from Hong Kong in Criminal Cases”. Furthermore, the Internet website contains an English version text of all bilateral MLA treaties in effect, at [www.legislation.gov.hk/table3t.htm](http://www.legislation.gov.hk/table3t.htm). Another example of such website is the OAS’s Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition website: [www.oas.org/juridico/MLA/en/index.html](http://www.oas.org/juridico/MLA/en/index.html).
Publication of internet guidance on submitting an MLA request

One of the recipient countries in Case 3 (see Annex 1) dealt with the MLA request in a very professional and effective manner. The country has a specific unit established to deal only with requests for MLA, and the unit's Internet website contains useful guidance on how to submit a request. The requesting country received very quick responses to its e-mail communications to this country regarding the submission of an MLA request. The MLA unit also encouraged the requesting country to submit a draft request for MLA, so that the unit could comment on the request in order to ensure that all requirements were met before the final, formal request was submitted. All of these factors contributed to the requesting country receiving a response in a timely manner.

c. Fostering strong relationships between law enforcement agencies and central authorities

55. Effective MLA between countries is often heavily based on trust and effective communication between countries regarding how the requesting country will use the information and whether it will reciprocate in later requests. Therefore, one of the most important ways to reduce the long delays that sometimes occur in the MLA process is by building strong relationships and communication between law enforcement officials in different countries and between officials of different countries’ central authorities.

56. Strong connections between law enforcement agencies can have multiple beneficial effects on the entire MLA process. Prior to the submission of an MLA request, officials can exchange advice on the procedure and substantive requirements for MLA, as well as details regarding evidence or other information available to help narrow the scope of the request. For example, an official of a requesting country can rely on his or her contacts in a recipient country to ascertain the appropriate office for delivery of an MLA request. Where permitted, law enforcement officials can also use their contacts to obtain information about the status of a request when delays are encountered, as well as to learn how to overcome the causes of such delays, in order to obtain a successful response. Individuals in different countries’ central authorities can realise these same benefits through developing strong relationships.

57. Countries can encourage the formation of these relationships by enabling their officials to participate in events where they can network with their counterparts in other countries, for example, at the meetings of law enforcement officials that take place twice per year in connection with the OECD’s Working Group meetings, as provided for under the 2009 OECD Anti-Bribery Recommendation.36 Liaison officers based in foreign countries can also help develop such relationships. Such relationships can also be established and enhanced by participating in international, regional, and other networks that focus on issues pertaining to international cooperation in criminal matters, such as ARINSA, CARIN, the Commonwealth Network of Contact Persons, the Community of Portuguese Speaking countries Network, the Council of Europe’s Committee of Experts on the Operation of European Conventions on Cooperation in Criminal Matters (PC-OC Committee),37 the European Judicial Network, the IberRed network, the OAS Criminal Network, the Assets Recovery Network (RRAG) of GAFISUD and the Stolen Asset Recovery (StAR) Initiative of the World Bank

36 Section XIV(iv) of the 2009 Recommendation includes voluntary meetings of law enforcement officials as an item in the ongoing programme of systematic follow-up to monitor and promote the full implementation of the Convention and related instruments. The meetings are organised according to the note, “Proposal for Meetings of Prosecutors”, DAF/INV/BR(2008)26, as agreed in October 2008.

37 The Council of Europe's PC-OC is the forum in which, since 1981, experts from all member and observer states and organisations come together to elaborate ways to improve international cooperation in criminal matters and identify solutions to practical problems encountered in the application of Council of Europe Conventions in this field. See: www.coe.int/tci
and the UNODC. Such networks may facilitate the identification of counterparts abroad, as well as create an environment of open communication through which contacts of an informal nature may take place.

### Developing strong law enforcement contacts

The requesting country in **Case 3** (Annex 1) – a Party to the Convention – had a successful experience obtaining MLA from other Parties to the Convention because of the relationships law enforcement authorities of each country developed with each other in the context of OECD Working Group meetings. Because of these pre-existing relationships, the prosecutors of the requesting country were able to engage in personal contacts with prosecutors in the recipient countries prior to submitting the requests for MLA and obtained help in conducting searches and gathering evidence from the recipient countries within weeks after requests were sent.

58. In circumstances where MLA is needed from a country with which the requesting country does not have strong bilateral law enforcement, prosecution or central authority contacts, officials may be able to utilise international, regional and other networks to develop contacts that can assist with solving problems that may cause delays. They also may be able to rely on the relationships of another country that is connected to the foreign bribery investigation. For example, where a European country is working with a Central American country on a foreign bribery investigation and assistance is needed from a second Central American country, officials of the European country may find it helpful to rely on the first Central American country’s ties in the region to facilitate timely MLA from the second Central American country.

### Involvement of international organisations in coordinating investigations

Eurojust hosted a meeting between the seven countries involved in **Case 19** (Annex 1) in order to coordinate efforts in a case involving allegations that a telecommunications company and its subsidiaries in three countries had engaged in acts of bribery, money laundering and securities fraud in the process of a takeover of a number of foreign telecommunications providers. During the meeting, a participant that was not a member of Eurojust was able to explain complex facts pertaining to the case. Through the meeting, authorities from participating countries were able to establish direct contacts with the persons responsible for possible MLA requests and to discuss the facts of the case openly with them. As well, they were able to informally exchange a number of key documents.

In **Case 20**, a Party to the Convention contacted the European Anti-Fraud Office (OLAF) to inform OLAF that it appeared that it and the European Commission were financing an identical development project in a third country. To help facilitate the exchange of information, OLAF organised coordination meetings with officials from four countries. OLAF also assisted with the search of the headquarters of the company involved in the fraud. OLAF obtained hundreds of thousands of documents and copied three hard drives, for the use of the countries conducting the investigations.

d. **Allowing preliminary exchanges of information**

59. Where it is legally acceptable, law enforcement officials and central authorities may be able to exchange preliminary background information or evidence, which may advantageously impact the time it takes to receive a response to an MLA request. This may also help in securing advance opinions as to whether the requisite requirements for assistance have been met, thus allowing for adjustment of the MLA request prior to its submission. Of course, such exchanges are not intended to circumvent the formal requirements of MLA, many of which are for the purpose of safeguarding human rights and due process. The essential purpose of preliminary exchanges is to assist in clarifying
and, where appropriate, narrowing the request. Generally, such preliminary requests should only be used in relation to non-coercive measures and to seek background information, such as (i) public records, land registry documents and company registrations; (ii) voluntary witness statements (where possible); (iii) information about previous convictions; (iv) contact information for a witness or suspect; (v) information from an ongoing investigation in the recipient country, or whether such an investigation has even been opened in the recipient country; or (vi) questions of a legal nature, such as those regarding issues of dual criminality. Overseas liaison officers may be able to provide assistance in obtaining effective informal assistance. International and regional cooperation agencies may also play a role in this regard.

60. International police organisations, such as Interpol, Europol and Ameripol, also allow law enforcement officials to contact their counterparts in other jurisdictions and to securely exchange intelligence when needed.

61. Assuming the preliminary exchange confirms the usefulness of submitting a request for MLA, the requesting country would, in many cases, still need to submit a formal request for MLA to obtain admissible evidence. Where this is not required but the preliminary exchange of information suffices, significant time savings can be realised because MLA requests can be focused on the most relevant items and routed to the correct recipient. Investigators in the requesting country need not wait several months or years in order to determine whether the evidence or the individual sought are even located in the recipient country. In the recipient country, the response to the request may also be facilitated by those persons who are already aware of the requesting country’s investigation.

e. Facilitating the exchange of draft MLA requests

62. Some countries permit others to send to their prosecutors or central authority a draft MLA request, in order to obtain feedback from the recipient country on whether the request meets the formal requirements for MLA in that specific country. This accommodation will assist the requesting country in identifying and correcting fatal flaws in the request at an early stage. It will also avoid the recipient country having to process a request which it knows to be fatally flawed. A positive effect is to be expected also in relation to supplemental and future requests for MLA from the same requesting country. The exchange of feedback may be more difficult to accomplish where issues of translations arise.

63. Allowing for feedback on draft MLA requests can be helpful to ensure that requests meet the more obvious formal requirements, such as dual criminality requirements, but it can also be particularly helpful for less obvious requirements, such as the amount and type of factual disclosures that are necessary in order to get the type of assistance requested.

64. Overseas liaison officials, such as judicial and legal attachés, or, where allowed, police officers, can often assist with the drafting of MLA requests and obtaining a review of the drafts. Due to their presence in the recipient country and familiarity with the institutions involved in the MLA process (as well as sometimes with individuals at those institutions who could review a draft), they may be able to get the necessary feedback more quickly than would be possible through formal MLA channels. International and regional cooperation agencies are also regularly used to this end.

f. Ensuring that the request covers all possible contingencies

65. An unfortunate scenario occurs when an MLA request is submitted and a response is received, but further investigations in the case reveal that the information requested and received was not adequate or cannot be used in a way that later becomes required. For example, MLA can only be
used for the purposes for which it was requested. Thus, MLA requested as part of a foreign bribery
investigation cannot be used in a tax or money laundering investigation unless this is indicated in the
request. A requesting country can avoid the need to return to a recipient country to obtain
authorisation for additional uses if the initial request covers all of the crimes that may arise from the
facts, to the extent that these are known at the time of sending the request. The desire to be all-
inclusive must be balanced with a sufficient suspicion as well as facts providing reason to believe that
such a crime has been committed. This will avoid speculative searches for non-specific information
that can overburden recipient countries and are, for many countries, not even legally acceptable.

g. Working simultaneously with central authorities and law enforcement authorities

66. Where it is legally permitted, a requesting country may find it helpful to work
simultaneously with the central authority and law enforcement authorities (including prosecutors,
where applicable) in the recipient country. That is, the requesting country can send the MLA request
through the requisite channels (such as to the central authority), and at the same time send a copy of
the request to the law enforcement officials’ office where the evidence is located or which will obtain
the evidence. This would allow the law enforcement officials to begin preparations to carry out the
request, for example, by drafting necessary court documents, surveying the search location, organising
a search team or locating witnesses, so that it can execute the request expeditiously when it receives
instructions to proceed from the central authority.

h. Conducting periodic bilateral meetings to discuss the status of outstanding MLA requests

67. Another way to address the problem of unnecessary delays is to convene periodic meetings
between countries who exchange a high number of MLA requests or high priority MLA requests. This
solution recognises the fact that what a country receives through MLA can be influenced by what it
sends to others. For example, one Party to the OECD Anti-Bribery Convention meets with several
other countries to discuss outstanding MLA requests. Such meetings can be an avenue to solutions and
compromises. They can also help to clear up misunderstandings that might otherwise have remained
unresolved for a long period, to the detriment of each country’s investigations.

i. Encouraging consistency of personnel

68. In complicated matters, where several MLA requests are sent to a country in the same
investigation, or where several countries are conducting simultaneous investigations of a set of facts
and need to share information throughout the investigation, it can be extremely useful and efficient to
have the same law enforcement officials, and also personnel in the central authority, working on the
MLA requests in the matter from start to finish. At the December 2011 expert typology meeting, an
official from one Party to the OECD Anti-Bribery Convention cited consistency of personnel as a
major contributor to the quick and successful cooperation between his country and a non-Party country
during simultaneous foreign bribery investigations. Such consistency eliminates delays caused by
having to educate new personnel about the investigation. Engaging subject matter experts within law
enforcement in both countries can also facilitate consistent communication, particularly in the case of
parallel investigations (see also Chapter III below).

j. Utilising international organisations and networks

69. When bilateral communications are either not available or not sufficient to solve problems of
MLA delays, countries should also look to whether they can utilise international organisations and
networks to facilitate communications. If the international bodies can help to open the channels of
communication, it may decrease MLA delays. For example, the OECD Working Group on Bribery’s
law enforcement group maintains a list of contacts in the law enforcement authorities of the Working Group countries. The Council of Europe’s PC-OC Committee maintains two lists of contact points or officials involved in the application of the Council of Europe conventions relevant for international judicial cooperation in criminal matters. IberRed is a network of designated contact points (judges and prosecutors) and central authorities who are responsible for facilitating judicial cooperation among Iberoamerican countries in civil and criminal matters. The same can be said for the OAS Criminal Network as regards American countries. The Commonwealth Network of Contact Persons is a network of contact people from Commonwealth countries, and its purpose is to foster international cooperation in criminal matters. These types of networks could be relied on to establish additional contacts and connections in the recipient country.

70. During the OECD Working Group on Bribery meetings, to the extent they are legally able to do so, Parties have the occasion to report on their foreign bribery investigations and cases and discuss difficulties or successes in obtaining or providing MLA. In addition, in the margins of these meetings, delegates may be able to discuss the status of MLA requests with other participants in the meetings. The bi-yearly meetings of law enforcement authorities also provide an opportunity for exchanges on MLA issues.

| Improving timeliness |
|----------------------|-------------------------|
| **Case 3** (Annex 1) illustrates how preliminary exchanges can facilitate timely responses to MLA requests. This case involved MLA requests to a number of countries. In two of these countries, the prosecutors knew their counterparts through the OECD Working Group on Bribery law enforcement officials’ meetings. They were able to engage in personal contacts prior to submitting their formal MLA requests, and, consequently, received prompt and efficient responses, within weeks of sending their formal request. In certain countries where the requesting prosecutors did not benefit from such contacts, the MLA requests were routed through several authorities, both in the requesting and recipient countries, had to be repeated in certain cases, and ultimately took several months to obtain a response. |

B. Insufficient or incomplete MLA requests or responses

1. **Matching the MLA response to the MLA request**

71. Countries requesting MLA often find it difficult to obtain a response that substantively meets their needs. This may be caused by differences in legal systems and language, a breakdown in communication, a failure to anticipate the volume of material a request might generate or a combination of these and other reasons. From the requesting country’s side, the law enforcement officials investigating a foreign bribery offence will often need, for instance, to access bank information covering several years; the mere statement of accounts may prove insufficient in providing information, and supporting documents in respect of certain operations may be necessary. From the recipient country’s perspective, law enforcement officials executing requests sometimes find that they do not have sufficient information from the requesting authority. Sorting out what is relevant material and what is not is a significant task, which can be a disproportionate burden, especially for countries with limited resources. Even when a request is fully executed, follow-up may be required. For example, when a witness interview is requested and obtained as part of the MLA, it is not uncommon that law enforcement officials in the requesting country determine that additional questions should be asked on some of the topics covered in the initial interview. Compounding this problem is the fact that while an MLA request is pending, most investigations and prosecutions are continuing, and needs or priorities of the requesting country may change over time.
72. MLA responses that do not fit the needs of the requesting country can result in duplicative investments of time and money by the governments of both countries, as well as additional delays. A country that receives an incomplete MLA response must either submit another request – further delaying obtaining the complete results – or forgo obtaining necessary evidence. In the recipient country, in order to process subsequent or supplemental MLA requests, officials may be required to duplicate efforts already undertaken, such as getting court orders, locating witnesses, getting witnesses to interviews, or conducting searches. When an overly broad MLA response is received, often the recipient country must pay to have all of the documents translated including the irrelevant material, adding to the unnecessary costs.

<table>
<thead>
<tr>
<th>Incomplete information to execute a pending request</th>
</tr>
</thead>
<tbody>
<tr>
<td>In Case 4 (Annex 1), a recipient country was unable to take steps to freeze certain assets in response to an MLA request because the information provided in the request was inconsistent with information in the records of the recipient country. The recipient country tried to locate the relevant bank accounts and criminal records and asked for additional information from the requesting country, but in the end could not locate the relevant information. Similarly, in Cases 6 and 7, the recipient countries were unable to fulfil MLA requests dealing with bank records because of inconsistent or incomplete information – an incomplete account number in the first case and unverifiable information about the account in the second case.</td>
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2. Ideas for ensuring that MLA responses respond to the requesting country’s needs

a. Sending a request that is clear in substance and form

73. The substance and form of the request for MLA is one of the most important factors in ensuring that a response matches the scope of the requesting country’s needs. Importantly, the MLA request itself should be as specific as possible, particularly in cases where the information requested is complex, such as the tracing of money flows or a technologically complex search of electronic data. Wherever possible, the request should also provide guidance on what may not be relevant to the requesting country, as a major issue that countries struggle with in processing MLA requests in foreign bribery investigations is sorting through what is relevant and not when searching for requested information.

74. For example, when requesting a search of data, the requesting country should submit detailed search criteria to guide those carrying out the request. Providing detailed guidance is especially important when a request is made to search offices and other locations that may contain a large amount of material or when the request is for a search of electronic data, such as office computers or e-mail accounts. To the extent possible, the criteria should include an exhaustive list of search terms and detailed descriptions of files, corporate names and other specific criteria for those carrying out the request to follow. In some cases where banking information is solicited, the initial request could be limited to documents pertaining to the opening of the bank account and the account statements covering a pre-defined period and later requests could cover additional details about the account. Where legally permitted, it also may be helpful for the requesting country to submit a prior, informal request for MLA, in order to obtain informal feedback and begin discussions on how to focus the scope of the request. If central authorities and law enforcement officials on both sides are in direct communication, and domestic law permits it, it may also be possible to update the search criteria based on information learned during the ongoing investigation, further ensuring that the MLA response will be of the scope that is needed.

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Thorough factual description with supporting documents

**Case 5** (Annex 1) sets forth an example where the recipient country was able to provide a complete MLA response because the requesting party included a clear, thorough factual description along with copies of key documents.

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**b. Facilitating direct communications between officials in both countries**

75. Another highly effective way to ensure that an MLA response will meet the needs of the requester is to encourage direct communication between law enforcement officials in the requesting and recipient countries. Even when language differences exist and interpretation or translation is needed, the ability to engage in direct communications can have a tremendous effect on the efficiency of the overall system. If a question arises during the execution of the request, officials in the recipient country will not have to answer the question with a guess. The channels will exist for officials in the recipient country to get quick and easy answers from the individuals in the requesting country who are most knowledgeable about the matter. The central authority should be kept abreast of developments in relation to the MLA request. (See also Chapter III below on Coordination of investigative efforts between multiple jurisdictions.)

76. Several countries also reported success with the practice of having law enforcement officials from the requesting country present during the execution of MLA requests, where this is legally permitted. Overseas liaison officers can help facilitate these meetings. For example, law enforcement officials from the requesting country may sometimes be present during witness interviews and searches. While it may be expensive to have officials of the requesting country present in person in the recipient country at the time of the search or interview, a less expensive alternative is to have the requesting officials “present” via videoconference at the time of the search or interview. The legal framework may dictate how actively involved in the process the visiting officials can be. But whether they are present in person or by video call, or whether they can be active or must be more passive observers, their availability will give officials in the recipient country who are carrying out the request immediate access to those who are best positioned to make decisions about relevancy and follow-up.

77. The recipient country’s approach to an MLA request may also greatly facilitate the exchange of information between authorities. For instance, one country explained that they usually initiate a national investigation on the same facts summarised in the MLA request they receive. In respect of requests for bank information, for instance, this procedure allows the authorities in the recipient country to launch requests for supporting documentation in respect of specific operations, prior to further requests submitted by the requesting country on the basis of bank account statements previously received. When the recipient country has collected the required information, it may thus enter into informal contacts with its counterparts in the requesting country to ensure the documents obtained will meet the latter’s needs for evidence. The launch of a national investigation on the same facts moreover facilitates the imposition of seizure measures regarding funds kept in bank accounts: once the funds are seized in the scope of the national file, it becomes easier to transfer them, if required, and keep them available for the requesting country.

78. In certain instances, the recipient country may also be able to “split” the MLA execution: the recipient country will send initial information without considering the MLA request finalised. This allows the requesting country to adjust its request to the type of evidence needed via simple processes (e.g. by e-mail), without the need for formal additional MLA requests.
C. Lack of sufficient resources

1. The challenge of finding adequate resources and capacity to carry out or follow up on MLA requests

79. Under standard international practice, the country that receives a request for MLA bears the ordinary costs of executing the request.\textsuperscript{38} However, some countries have difficulties responding to MLA requests because of a lack of adequate resources. This may be an issue at the central authority level, such as the availability of personnel to deal with the request or a lack of necessary language resources to ask follow-up questions about a request before transferring it to prosecution or investigative authorities for execution. The availability of personnel and language resources could also be an issue at the prosecution/investigation level, as could access to the technology that is necessary to respond to a request or financial means for covering the costs of a request. For example, a country with an already over-stretched prosecution or investigative service may find it difficult to spare the personnel needed to assist another country with its investigations, particularly if the investigation deals with issues requiring a particular technical expertise or language ability. Even when a country has the people available to respond to a request, carrying out a request may require resources not readily available, especially if the request involves producing a large volume of documents or seizing and holding goods. Other countries, particularly in the developing world, may struggle with a lack of capacity to respond effectively to MLA requests, where, for instance they may lack the technical expertise, the institutional framework, or the human and financial resources to effectively respond to requests for assistance.

80. By way of example, foreign bribery investigations often involve complex financial records at multiple locations and in multiple languages. Although modern technology provides the means for investigators to gather, sort and search large volumes of electronic records from back-up discs, hard drives and the like, in many countries records continue to be kept in hard copy. Searching such records, duplicating them and providing the relevant documents to a requesting country can be a daunting task, particularly if the institutional framework of the country does not designate certain individuals as responsible for such work. Even where records are available electronically, the recipient country may not have the technical expertise or financial resources needed to preserve, restore, retrieve, obtain, process and produce those records.

81. On the other side, if a requesting country does not have many resources to follow up on a request, such as by making on-site visits or engaging in video conferences, this can present a challenge in obtaining MLA. Any lack of adequate resources available to deal with a request for MLA – whether on the requesting or on the receiving end – is likely to contribute to the problems discussed above caused by delays and inadequate or overbroad responses.

\textsuperscript{38} This is provided for under Article 46(28) of the UNCAC and is often a standard provision in MLA treaties.
Insufficient resources in the requesting or recipient country

In **Case 1** (Annex 1), the requesting country did not have sufficient resources to send representatives to three recipient countries where MLA requests had been sent. As a result, there were several back-and-forth exchanges regarding the MLA request with one recipient country, concerning the format of the request, and lasting three years. Ultimately, the lack of sufficient evidence resulted in the criminal investigation being closed.

In **Case 9** (Annex 1), the requesting country asked the recipient country to seize certain assets held by a defendant. The recipient country successfully executed the request for MLA and held the seized assets for more than a year and a half until the case was finalised in the requesting country’s courts. The recipient country paid all of the costs of the seizure, expecting to receive an allotment of the assets at the conclusion of the case. However, due to differing legal requirements in the requesting country, at the end of the case, the requesting country asked the recipient country to terminate the seizure and return the assets seized to the defendant, the result being that the recipient country was unable to obtain reimbursement of its costs in effectuating the seizure.

2. **Ideas for the efficient use of resources**

Communication is one key aspect to ensuring that resources are efficiently utilised in the context of MLA. Early discussions between countries regarding allocation of costs for responding to a request will prevent a potential break-down of a relationship later. The requesting country should, of course, take the steps outlined in the previous section to ensure that the recipient country understands the scope of the request, and the recipient country can be up-front with the requesting country about its available resources to respond to the request. This may include truncating the request to seek only the essential information or information regarding only the most serious charges. If it becomes clear in the course of discussions that a recipient country does not have the human resources needed to effectuate a search and seizure, the requesting country might consider providing personnel to assist with the process (assuming this is permitted by relevant law). For example, a requesting country could provide an information technology expert to provide guidance in preserving and collecting electronic documents, if the relevant expertise is not readily available in the recipient country. To provide certainty, the countries may wish to conclude an agreement that sets forth the cost allocation and requires the requesting country to bear at least some of the costs.

International networks can be a good resource for countries that are seeking and responding to requests for MLA. Officials of a country with limited resources can save travel costs by using international meetings they would already be attending – such as the Working Group meetings – as an opportunity to engage in discussions regarding outstanding MLA issues, to the extent that this is legally permissible. In addition, countries can save resources by utilising available international networks to assist in collecting and distributing documents in connection with an investigation. For example, IberRed’s secure communication system (called Iber@) facilitates the transmission of sensitive information and documents between individuals with proper authority who have access to the Internet (see Annex 2 for more information about this system). The same applies to the secure communication system of the OAS Criminal Network. Such international networks also can assist in coordinating communications between multiple countries involved in an investigation, so that multiple meetings in multiple jurisdictions are not necessary.

**Note:**

Article 46(28) of the UNCAC provides, “If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne” (emphasis added). In some countries, however, the requesting country should be aware that such consultations may be necessary regarding even the “ordinary” expenses of executing an MLA request.
Assisting another country to comply with a request

In Case 8 (Annex 1), contrary to Case 1, the requesting country, in the absence of a prompt response to an MLA request, offered to send representatives to the recipient country. This enabled law enforcement officials on both sides to discuss the facts of the case as well as the type of material needed as evidence. The recipient country was able to provide formal responses to the MLA request during this visit, as well as within a reasonable timeframe thereafter.

D. The dual criminality requirement

1. Satisfying the threshold requirement of dual criminality

84. As discussed above in chapter 1, dual criminality refers to the principle that the criminal act underlying the request for assistance must be a crime in both the country making the request and in the country receiving the request.40 Although many countries have loosened the requirement of dual criminality, it can still be the basis for a refusal to provide MLA, particularly if the recipient country does not recognise a foreign bribery offence. Dual criminality also may present an issue if the recipient country does not recognise criminal liability for a legal person, and receives an MLA request that pertains to criminal proceedings against a legal person for foreign bribery.

85. Dual criminality may not be an issue that hinders MLA between Parties to the OECD Anti-Bribery Convention, which requires that “[w]here a Party makes mutual legal assistance conditional upon the existence of dual criminality, dual criminality shall be deemed to exist if the offence for which the assistance is sought is within the scope of this Convention”.41 Nor should dual criminality be an obstacle to MLA in foreign bribery cases between Parties to the UNCAC, which takes a conduct-based approach to this requirement.42 However, as noted above in chapter I, some areas of uncertainty exist, even under these instruments. In addition, dual criminality requirements persist in many countries that are not parties to these instruments and can be a significant obstacle to foreign bribery investigations in other jurisdictions.

2. Ideas for satisfying the dual criminality requirement

86. Meeting the dual criminality requirement under circumstances where the recipient country has not criminalised foreign bribery is a major challenge, especially if the recipient country is not Party to either the OECD Anti-Bribery Convention or the UNCAC. If the MLA recipient country’s dual criminality requirement is so narrowly interpreted as to require that the offences in both countries are of the same category of offences, or that they have the same essential elements, and that country has not enacted an offence of foreign bribery, the requesting country may not be able to meet those very strict requirements. However, if the recipient country permits a more flexible approach to

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41 Article 9(2) of the OECD Anti-Bribery Convention.

42 Article 16.1 of the UNCAC requires state parties to create a foreign bribery offence. Article 43.2 of this international instrument provides that dual criminality “shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties”.

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fulfilling its dual criminality requirement, that is, one that examines whether the conduct underlying the offence in the requesting country also qualifies as a criminal offence in the recipient country, then the requesting country may have an opportunity even if the recipient country does not have a foreign bribery offence. Under these circumstances, and where the recipient country has laws prohibiting domestic bribery, some countries have reported success in meeting the dual criminality requirement when they have argued that in the country receiving the MLA request, the conduct amounts to domestic bribery. Countries also may consider relying on instruments, such as regional treaties and MLATs, to overcome dual criminality, as these instruments may allow for cooperation under less strict conditions.

87. Where dual criminality is an obstacle to MLA because the recipient country has not made legal persons criminally liable for acts of foreign bribery, dual criminality requirements might be met by focusing on the conduct of the individuals that is at the root of the foreign bribery offence. In this respect, dialogue between central authorities and law enforcement officials of the countries involved can play a crucial role. Where the central authority in the recipient country is contemplating refusing MLA on grounds of dual criminality, it should consider first contacting the central authority in the requesting country to evaluate whether a mutually beneficial solution may be found.

### Helping countries deal with dual criminality requirements

In Case 10 (Annex 1), a recipient country initially refused a request for MLA because foreign bribery is not considered a crime in that country. However, the requesting country was able to engage in discussions with the recipient country to clarify that the facts giving rise to the foreign bribery investigation in the requesting country were facts that would constitute the crime of domestic bribery in the recipient country. Because domestic bribery is a crime in the recipient country, the recipient country was able to conclude that dual criminality existed and became willing to respond to the MLA request.

### E. The risk of “tipping off” a target

#### 1. The inherent problem of accidentally notifying a suspect when using official MLA channels

88. Since requests for MLA in supply-side foreign bribery cases frequently pertain to the bribery of a public official in the recipient country, there is an inherent concern that using the formal MLA process will “tip off” the public official who will in turn tip off the target of the investigation. This can harm the outcome of the investigation by closing off the opportunity for certain kinds of investigative techniques, causing targets to flee and/or to conceal evidence and proceeds of crime. A tip off could occur for any number of reasons. While it is possible that authorities in the recipient country may leak information about a pending MLA request, it also may be that the country receiving the request is required by law to disclose certain information in the request.

89. In some countries, tipping off may arise from legal obligations in domestic law. For example, in some countries, banks have an obligation to inform a client that information has been requested concerning the client’s bank account, unless a judicial authority prevents the bank from doing so. Other countries may apply a disclosure procedure before documents gathered based on an MLA request may be sent abroad.
2. Ideas for reducing the risk of tipping off a target

90. To avoid notifying a target due to the disclosure rules in the recipient state, the requesting state should make sure it understands these rules prior to submitting an MLA request. The means of requesting MLA may also minimise the risk of tipping-off a suspect. For example, a requesting country may choose to leave particularly sensitive information out of the request for MLA (assuming the request will still comply with the recipient country’s requirements) or could include a condition in the letter of request that the MLA request should only be executed if it would not result in the disclosure of sensitive information. In any case, developing a personal relationship of trust between counterparts in other countries will help avoid concerns that tipping off may occur. To this end, the recipient country, in acknowledging receipt of an MLA request, may also inform the requesting country of its domestic disclosure requirements as a courtesy.

91. Another potential way to reduce the risk of notifying a target, where permitted under the legal framework, is to use informal exchanges as long as possible. Specifically, informal exchanges in the form of direct communications between law enforcement officials may reduce the risk that information about the investigation will be leaked to a target. As discussed above, informal exchanges between law enforcement officials should not be used as an attempt to circumvent the MLA process, but rather as a preliminary way to gather information, where investigators understand that formal MLA requests will have to be exchanged when they need admissible evidence. In this respect, it is worth noting that, in many countries, a failure to follow required procedures may lead to the evidence obtained directly being ruled inadmissible, thus jeopardising the outcome of the whole case. Accordingly, care should be taken to ensure that requisite procedures are followed.

92. In certain circumstances, if a foreign bribery allegation has been the subject of media reports, the suspect has already been “tipped-off”. In such a case, it may be more important to submit a formal request for MLA as quickly as possible – before potential evidence is destroyed or altered – rather than engaging in lengthy preliminary inquiries. On the other hand, informal exchanges may also present an increased risk of tipping off a target because there are fewer controls when using this process. The risks in each case must be weighed in light of any history of informal contacts between the central authorities and law enforcement officials involved, the identity of the official suspect, the perceived closeness of the ties between the official and the investigating and prosecuting officials in the other country, etc. Overseas liaison officers may be able to assist in evaluating the risks in a particular case.

93. Another way to avoid unintentionally notifying a target is to utilise mechanisms that allow for direct transmittal of judicial assistance requests. For example, the Convention implementing the 1990 Schengen Agreement of 14 June 1985, as well as several other international conventions, permits direct communication of MLAs, without having to go through Central Authorities. Direct transmittal reduces the number of individuals who must see information about the ongoing investigation and thereby lowers the risk of early notification to targets.

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CHAPTER III:
CO-ORDINATION OF INVESTIGATIVE EFFORTS BETWEEN MULTIPLE JURISDICTIONS

94. This chapter discusses the ways in which law enforcement officials in different countries can coordinate their investigative efforts when they are investigating the same or related foreign bribery matters. One approach is to maintain separate but parallel investigations of crimes committed in multiple jurisdictions on the basis of the same course of conduct, with varying levels of cooperation between the investigators and prosecutors in different jurisdictions. Another approach is to conduct a single multijurisdictional investigation during which evidence may be freely shared between the members of the team and the actions of the members of the team are thoroughly coordinated, that is, to form a joint investigation team (JIT). The chapter discusses the advantages and disadvantages to each approach.

95. One characteristic of both of these forms of cooperation is the value of direct law enforcement to law enforcement cooperation. Such direct cooperation and communication between law enforcement officials in multiple jurisdictions can have several beneficial effects. First, it will facilitate communication about investigation and prosecution strategies for the matter under investigation, avoiding duplicative or contradictory efforts by separate law enforcement. Second, it can also foster communication about best investigation and prosecution strategies, generally. Sharing best practices in investigation and prosecution strategies may help each country improve its overall practices. Third, especially in the early stages of the investigation, the direct communication can help countries avoid needless duplication of investigative efforts. Fourth, the use of direct communication reduces the risk that investigative information may become public prematurely, such as may happen when formal requests are made, triggering notification obligations under the laws of some states. Fifth, direct communication can provide law enforcement officials with the type of rapid-response mechanism that is necessary to combat modern transnational crimes such as foreign bribery.

96. These two approaches should not be viewed as exclusive of one another. Elements of a JIT may usefully be imported into a memorandum of understanding or an operational action plan (OAP) in the context of parallel investigations. Likewise, informal mechanisms for parallel investigations may be useful in advance of the formation of a JIT to determine whether or not a JIT is likely to be useful, or to assist in establishing the parameters for a JIT. Parties who wish to collaborate should consider the limitations to either approach within their own legal system, and look creatively for options for cooperation that take into account the obligations of each country’s law enforcement authorities, while also taking advantage of each country’s strengths in furthering the investigation and securing effective prosecution.

45 Some experts noted that, both in respect of JITs and parallel investigations, the Eurojust guidance could provide some guidance on issues to consider, see “Joint Investigative Teams”, Eurojust Internet website, at http://eurojust.europa.eu/doclibrary/Eurojust-framework/Pages/joint-investigation-teams.aspx, but experts also emphasised that it some provisions may not be universally applicable and compatible with some legal systems.
A. Cooperation and direct coordination between law enforcement authorities in different jurisdictions

97. Direct coordination between law enforcement authorities can not only be beneficial in facilitating swift responses to MLA requests through advance consultation, but can also lead to parallel investigations that promote complete resolution of a case without duplication of effort, reducing the risk of conflicts among jurisdictions and ne bis in idem issues preventing prosecution. There are a number of international networks and organisations that can facilitate direct cooperation, as discussed in Chapter I above. Such cooperation and coordination is actively encouraged by the OECD Anti-Bribery Recommendation and the UNCAC. In addition, such mechanisms facilitate cooperation and coordination with the investigative arms of the international financial institutions, such as the World Bank, which may be a source of significant investigative and intelligence information not available through traditional MLA.

98. While not every jurisdiction has the capacity to engage in such cooperation, most countries have the capacity to engage in at least one or more of the types of informal assistance as described below. Where it is available, direct cooperation between law enforcement agencies provides a variety of opportunities to combat transnational bribery on a significantly faster timeline than traditional MLA. On those occasions where there is no capacity to engage directly in informal assistance, a case-specific memorandum of understanding to facilitate such coordination may be considered, as such an instrument may take a short time to negotiate, especially once there is precedence in relying on such mechanisms.

99. As already touched upon in previous sections of this report, coordination can take many forms. Some examples include the following:

- Non-case-specific questions directed to a counterpart regarding legal issues, such as dual criminality, the standard of proof required for particular coercive measures, and anticipated processing time;
- Non-case-specific questions directed to a counterpart regarding the viability of particular techniques or suggestions for how to locate information or individuals in a particular country;
- Case-specific basic questions, such as whether or not an individual is still located in a particular jurisdiction; whether or not a particular conduct would be permitted in a country (for example, whether government officials are permitted to accept outside employment); whether a bank account exists and whether money is still in the account; whether there is public information on property ownership, etc;
- Case-specific inquiries as to whether or not a country is investigating a particular conduct; if not, the voluntary provision of information (where permitted and appropriate) to facilitate the opening of an investigation in the recipient country; and
- Parallel investigations, either on the basis of existing law or treaties (such as the UNCAC), based on prior practice, or through the negotiation of a case-specific memorandum of understanding.

100. There were discussions between expert participants in the typology as to the use of MOUs and Operational Action Plans (OAPs) in the context of parallel investigations. Certain experts considered that there should be a presumption in favour of them. Other experts argued that MOUs could in fact slow down the process, and may not be necessary in certain cases where there may be a “blanket” MOU, precluding

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46 In some countries, such as the United Kingdom and the United States, no formal treaty is needed to permit cooperation in a parallel investigation. In the United Kingdom, for example, once an internal “gateway” is established, evidence can be freely exchanged. The United States has the authority to unilaterally provide evidence to foreign law enforcement if it determines that such information sharing is in the interest of the United States.
the need for a case-specific one. For certain legal systems, OAPs may also pose the same problems that would be posed by JITs.

101. Parallel investigations, unlike JITs (discussed below), do not create a single multijurisdictional investigative team. Rather, each country maintains its own investigation, but coordinates regularly with counterpart investigations, sharing investigative leads, information and, where permitted, evidence. Where the subject of an interview agrees, interviews can be conducted jointly. Parallel investigations can be particularly useful where a legal person is under investigation in multiple jurisdictions and is cooperating with at least one jurisdiction. The company can provide the same information simultaneously to multiple law enforcement authorities, which saves the company time and money, and reduces the risk that the company will be “caught” between competing investigations. Parallel investigations also allow for advance determinations of where particular persons (legal and natural) will be prosecuted, or an appropriate manner for dividing prosecutions, obviating the need for a “race to the courthouse,” which can cause prosecutions to be instituted too early, lead to significant conflicts between countries over the proper place to prosecute, or can create _ne bis in idem_ defences. Such coordination also prevents “forum shopping,” where a potential criminal moves from jurisdiction to jurisdiction in search of the jurisdiction where they are likely to receive the most lenient sentence, and also reduces the possibility that the criminal will attempt to exploit conflicts among the jurisdictions.

102. As with any other form of coordination, where extensive cooperation and coordination is contemplated (as opposed to a simple inquiry), there should be careful consideration and discussion of issues such as disclosure and confidentiality obligations, data privacy issues, and privilege issues in advance, so that any information can be adequately sequestered prior to a conflict in laws arising. Where information exchanged ultimately becomes evidence, a formal MLA request should be submitted; one of the advantages of coordination and parallel investigations prior to the submission of a request is that such a request will likely be substantially narrower, and the information required already assembled, resulting in a much faster response.

B. Conducting a single investigation in a multijurisdictional case – The JIT experience

1. **What is a JIT and how does it work?**

103. Currently, the only formal mechanism that allows two or more countries to form a team to conduct a single criminal investigation is the Joint Investigation Team (JIT), which may be established by Member States of the European Union (EU). A JIT is made up of investigators, prosecutors and sometimes judges and other individuals from the countries party to the JIT agreement. The JIT, established by mutual agreement between the designated national central authorities, allows for the sharing of information between its party countries without the need for further formal MLA requests.

104. Recognising the importance of operational cooperation between law enforcement officials to effectively combat certain serious transnational crimes, the EU developed the concept of JITs in the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 (EU Convention on Mutual Assistance). Article 13 establishes a framework within which

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47 Issues related to division of jurisdiction and the principles governing such determinations are beyond the scope of this typology and are not discussed herein.

48 There is no limit on the number of EU Member States that may be involved in a JIT.

joint teams can operate, with a view to greater speed and efficiency in judicial cooperation. Since the EU gave form to the concept of JITs, the use of JITs has steadily increased. In 2010, based on feedback about best practices in the use of JITs, the European Union updated its model JIT agreement, which is available on the internet.\footnote{See European Union Council Resolution of 26 February 2010 on a Model Agreement for setting up a Joint Investigation Team (JIT), 2010/C 70/01, available in over 20 languages, at \url{https://www.europol.europa.eu/sites/default/files/council_rec_on_jit_agreement___march_2010.pdf}}


- The JIT is set up by way of a formal written JIT agreement, which states, in particular the purpose and duration of the JIT.
- The leader of the JIT team is a member of the law enforcement authorities in the Member State in which the team operates. If the JIT operates in multiple Member States, leadership of the JIT will change depending where the investigation is being conducted at a given time.
- All participants in a JIT are required to respect the national law of the Member State in which they are operating.
- Members of the JIT may make direct requests of another for use of investigative methods, without the need for further formal MLA, and may be present during investigative measures conducted in other JIT members’ jurisdictions.
- If the national law of each Member State permits it, members of the JIT may share information that is available in their home state and relevant to the investigation being conducted by the JIT.
- Where information or evidence is needed from a country that is not a party to the JIT, the Member State that requires it for its own criminal proceedings must seek the information or evidence through traditional avenues, such as MLA.
- If the national law of each party to the JIT permits it, “persons other than representatives of the competent [law enforcement and judicial] authorities” may participate in a JIT.
- If the national law of each country permits it, representatives from other non EU States and international organisations (such as Europol, Eurojust and OLAF) may participate in a JIT organised under Article 13.\footnote{See Explanatory Note on the EU Convention on Mutual Assistance, supra. In addition to taking part in the JIT, Europol and Eurojust may also assist in negotiating the JIT agreement and provide financial support} However, such “participants” may have more limited rights, acting primarily in supportive or advisory roles.

### 2. How to make the best use of a JIT, and challenges that may be faced

105. Compared with the traditional MLA framework, JIT agreements tend to make closer and more direct transnational cooperation and coordination between law enforcement authorities the functional norm, rather than the exception. Moreover, JIT matters are typically given higher priority and, therefore, may be given access to greater resources and handled more expediently.

106. JITs can provide law enforcement officials with the type of rapid-response mechanism that is necessary to combat modern transnational crimes such as foreign bribery. Once the framework for entering into a JIT is in place domestically, it may be possible to establish a JIT quickly and get cross-jurisdictional
cooperation promptly in effect, which increases the chances of successfully locating offenders and
evidence and tracing and seizing proceeds. Furthermore, the use of the JIT may facilitate coercive
measures because the close transnational cooperation and direct communication make it easier to satisfy
the requirements to use those measures.

107. Additionally, JIT agreements are flexible. As long as they do not contradict the laws of the
member and participant countries, the agreements may be tailored in any number of ways to meet the
needs of the members and participants and to fit the circumstances of a particular investigation. For
example, a JIT agreement can address data privacy issues, giving members and participants quicker and
easier access to certain records from one another, rather than requiring each member and participant to go
through a more time consuming process to obtain access at a later time. Because of the flexibility of JIT
agreements, they may be appropriate in both small and large matters – in large matters because countries
can gain overall efficiencies by avoiding the need to exchange multiple MLA requests, and in small
matters because of the ability to establish them rapidly, as noted above, and for whatever limited purpose is
necessary. The benefits of JITs can also extend beyond the mission of any particular JIT, by facilitating
relationships in multiple countries built on mutual trust. This may, in turn, ease future cooperation and
MLA between jurisdictions.

Best practices in JITs

- Prior to setting up the formal JIT agreement, participants should discuss key topics, including:
  - The relevant differences in each country’s legal system, including internal line management structures,
    legal procedures, rules of evidence, types of evidence admissible in court, conditions for effective use
    of evidence in court proceedings, and factual disclosures and other requirements necessary for
    coercive measures;
  - Disclosures that domestic courts may require, both with respect to information concerning the
    formation of the JIT itself, as well as information and evidence collected during the joint investigation;
  - The sharing of costs (such as travel and translation) and how any future disagreements between them
    will be decided.

- The written JIT agreement should:
  - Clearly define the roles of members and participants (including leadership structure), as well as liability
    issues, such as who is financially liable if investigative measures result in damages to third parties;
  - Be drafted with the expectation that it could be deemed discoverable in any Member State. Therefore,
    care should be exercised in defining the purposes of the JIT, so that if it were to be disclosed during
    discovery, the disclosure would not risk tipping off targets;
  - The names of the JIT team members should be put in a separate document, in order to minimise
    unnecessary disclosure of law enforcement officials’ names.

- In selecting the members of the JIT team, consideration should be given to the language or languages of
  the evidence expected to be collected, as well as the language abilities of the individual members of the
  team. The coordination of language abilities will ease communication and coordination between JIT
  participants and may help lessen the burden of translation.

108. A JIT may however not be appropriate in every transnational investigation for a number of
reasons. Countries outside of the EU cannot initiate a JIT and, in any case, may not be able to participate in
one due to their own domestic rules. In addition, a JIT agreement may be problematic for some countries
when it comes to disclosure obligations. Not only can the JIT agreement itself be considered discoverable,
but courts in one country may consider the JIT agreement as establishing a broad discovery obligation with
respect to the other JIT parties’ investigation files, in contravention of confidentiality obligations in another
country. Disclosure and confidentiality obligations should therefore be discussed in depth at the inception
of the JIT. As is the case with any large scale investigation, JITs may also pose greater risks of breach of
confidentiality or secrecy rules, including as concerns leaks to the media or to the subjects of an investigation.

109. In addition, JIT agreements do not eliminate the evidentiary issues that arise due to differences in procedural requirements in various jurisdictions. When evidence is gathered in one party to the JIT in accordance with domestic procedures, that procedure might not meet the requirements for admissibility of the evidence in another country in which proceedings are also taking place. Finally, although JITs may offer substantial cost savings, for example avoiding duplicative investigative measures, they also entail high costs for travel, accommodations, logistical and technical support and other administrative matters.

**JITs in foreign bribery cases**

*Case 11* (Annex 1) highlights the advantages of a JIT, but also its limits. In this case, the national law enforcement authorities involved in the JIT felt the continuing cooperation under the JIT help keep the investigation moving forward and even sharpened the prosecutorial decisions to be made by each national authority. However, they also had to deal with the specific challenge of sharing computer related material. To be admissible in domestic proceedings, such evidence had to be obtained through the usual judicial process, and could not simply be shared between the authorities in the context of the JIT.

*Case 12* (Annex 1) sets forth a number of characteristics of a successful JIT:
- Prior to entering the JIT agreement, the countries’ prosecutors had preliminary meetings to discuss the collection and sharing of evidence related to the case.
- At the beginning of the JIT’s investigation, prosecutors from the two countries discussed logistical and substantive issues. Throughout the JIT’s investigation, the teams continued to communicate directly with each other.
- The two countries encouraged each other to submit draft letters of request for information, so that any necessary corrections or clarifications could be made before the letters were submitted through official channels.
- The investigation teams from the two countries travelled to each other’s countries to conduct interviews and provide additional information on each country’s legal system and requirements.
- The same prosecutors and investigators worked on the case throughout the entire investigation.

In *case 13*, two Parties to the Anti-Bribery Convention set up a JIT in the context of foreign bribery investigation, with Eurojust as a third-party member and advisor, as they realised early on that a lot of information and evidence would need to be shared for the investigations in both countries to be successful. The two Parties were able to conduct search and searches, as well as interview witnesses together, and, in certain instances, share the result of MLA requests made to third parties.
CHAPTER IV:
OTHER RELEVANT MECHANISMS FOR INTERNATIONAL EXCHANGES OF INFORMATION

110. This chapter discusses several other mechanisms – outside of the MLA framework – for exchanging information and evidence pertinent to foreign bribery investigations. The inclusion of this chapter is not meant to suggest that officials investigating and prosecuting the foreign bribery offence can use the mechanisms described below as a substitute for MLA, or that those officials can or should direct tax authorities, financial intelligence units or securities regulators to serve as their conduits for gathering information. Each of these mechanisms has a primary aim of facilitating cooperation for reasons independent of assisting in general criminal investigations and prosecutions, and has many conditions limiting when each mechanism may be used. However, because of the increasing use of inter-agency cooperation and the existence of overlapping responsibilities of agencies to detect, investigate and prosecute foreign bribery and foreign bribery related offences, including law enforcement, tax, financial intelligence units, securities regulators and central authorities, those who investigate and prosecute foreign bribery cases should be familiar with the mechanisms below. Where it is possible to make use of one of these other mechanisms in a foreign bribery investigation, such use may produce quick results and may help law enforcement officials to more accurately tailor their MLA requests.

A. Exchange of tax information

111. Tax authorities have the potential to play an important role in the detection and investigation of financial crimes, including foreign bribery. When conducting audits and reviews of tax returns, they may be in a position to discover potential foreign bribery offences, for instance when a bribe payment to a foreign public official has been disguised as a deductible expense such as a social and entertainment expense, or agent’s commission. They also may be able to assist law enforcement officials investigating suspected offences by uncovering the traces of such crimes in tax filings. Because financial crimes are increasingly committed using layered transactions involving offshore entities and accounts, it is often necessary to obtain information from abroad to trace the financial trail. Tax administrations are ideally placed to play a role in uncovering the financial traces left by criminals and cooperating with law enforcement authorities involved in countering serious crimes such as corruption.

112. Nonetheless, in all countries tax secrecy rules restrict the disclosure of tax information obtained by tax authorities in the course of their work. Specific statutory exceptions allow, and may even require, the disclosure of tax information to law enforcement authorities in cases where the need to combat serious crime is believed to outweigh the right of taxpayers to confidentiality. At the international level, certain instruments provide for information to be exchanged for the administration or enforcement of the domestic tax laws of the states party to the instrument. However, in the absence of an agreement to the contrary, tax information exchanged between two countries must be kept confidential by the recipient tax authority.

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which means it may not be disclosed to law enforcement authorities (and vice versa, that is, law enforcement officials may not be able to share information obtained from a foreign authority with tax officials).

113. A number of international instruments recognise the growing need for tax information to be shared with foreign authorities for non-tax purposes, such as the investigation of the offence of foreign bribery, and now allow sharing of certain tax information with law enforcement authorities.54

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**Overcoming tax secrecy in Germany**

Because corruption and tax offences are so often related, German legislation provides that tax secrecy may be suspended under certain statutory conditions.55 First, disclosure of tax information may occur when necessary for the establishment, enforcement or defence of legal claims in connection with a criminal offence.56 Second, disclosure is allowed if there is a "compelling public interest".57 This term would generally include crimes of foreign bribery, since it is defined to include, among other things, "economic crimes that are being or are to be prosecuted, and which in view of the method of their perpetration or the extent of damage caused by them are likely to disrupt substantially the economic order or to undermine substantially general public confidence in the integrity of business dealings or the orderly functioning of authorities and public institutions".58

A special feature of German law is the mutual duty of notification between tax authorities and law enforcement authorities in relation to Germany’s requirement that “[g]rants of benefits that represent an illegal act that constitutes a criminal offence or the realisation of a law that allows punishment by a fine” may not be deducted as business expenses in order to reduce taxable profit.59 However, a precondition of this notification requirement is the ability to obtain knowledge of the suspicion of an offence. In this regard, in 2008, the Federal Finance Court of Germany held that implicit in this rule is an express command to tax authorities to provide notification to law enforcement. Through such notifications, foreign corruption, which is often camouflaged in accounts as “commissions” or premiums, is better discovered and prosecuted.

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54 If a country in possession of information concerning a suspicion of foreign bribery has an effective means of sharing information between its own tax authorities and domestic law enforcement officials, there is less of a need for other countries to first pursue a tax-to-tax exchange followed by a domestic tax-to-law enforcement exchange. This is because the country with the information could convey the information to its law enforcement, which could then share the information with foreign law enforcement pursuant to an MLA request or (where permissible) on an informal basis. See Recommendation II of the 2009 Tax Recommendation, 25 May 2009, at http://www.oecd.org/ctp/taxandcrime/43188874.pdf (providing that each Party should “establish effective legal and administrative framework ... to facilitate reporting by tax authorities of suspicions of foreign bribery arising out of the performance of their duties ...”).

55 See Die Abgabeordnung (German General Tax Code) § 30 Abs. 4.

56 See Einkommensteuergesetz (German Income Tax Act) § 4 Abs. 5 Nr. 10; German Federal Constitutional Court, file no. 2 BvR 181/07 (discussing German Code of Criminal Procedure § 474.2).

57 Die Abgabeordnung § 30 Abs. 4 Nr. 5.

58 Ibid.

59 Einkommensteuergesetz § 4 Abs. 5.
1. Legal bases for sharing tax information

a. Bilateral tax treaties

114. The traditional source of authority for the exchange of information between countries’ tax authorities is the bilateral tax treaty. The Commentary to Article 26 of the OECD Model Tax Convention on Income and on Capital (OECD Model Tax Convention) provides optional language for contracting states that may wish “to allow the sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities on certain high priority matters (e.g. to combat money laundering, corruption, terrorism financing)”. The language that may be added to Article 26 is the following:

[I]nformation received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

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115. To enhance cooperation between tax and other anti-corruption authorities, the 2009 OECD Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009 Tax Recommendation) recommended that Parties to the OECD Anti-Bribery Convention consider including this language in their bilateral tax treaties. Around thirty tax treaties now contain this language. In 2010, the Council reiterated this recommendation.

b. Tax information exchange agreements

116. A tax information exchange agreement (TIEA) is another type of bilateral agreement that promotes international co-operation and the exchange of tax information between two countries. Such agreements are generally based on the 2002 OECD Model Agreement on Exchange of Information in Tax Matters. Over 800 TIEAs have been signed so far. Under Article 8 of the Model TIEA, information obtained under the agreement may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the Party that provided the information.

c. The Convention on Mutual Administrative Assistance in Tax Matters

117. The Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention), which was developed jointly by the Council of Europe and the OECD, is a tool that facilitates international co-operation by providing for all possible forms of administrative co-operation between states in the assessment and collection of taxes, in particular, with a view to combating tax avoidance and evasion. The

60 Paragraph 12.3 of the Commentary to Article 26 of the OECD Model Tax Convention, 22 July 2010, www.oecd.org/document/37/0,3746,en_2649_33747_1913957_1_1_1_1,00.html.

61 Ibid.


64 The agreement is available at www.oecd.org/dataoecd/15/43/2082215.pdf.
Multilateral Convention addresses modes of co-operation such as exchanges of information (including spontaneous exchanges), simultaneous tax examinations, tax examinations abroad and recovery of foreign tax claims. The Multilateral Convention was amended in 2010 by way of a protocol to align it to the international standard on the exchange of information and is now open for ratification by all countries.

118. Article 22.3 of the Multilateral Convention includes language similar to the optional language of the Article 26 Commentary discussed above and provides that “information received by a Party may be used for other [non tax-related] purposes when such information may be used for such other purposes under the laws of the supplying Party and the competent authority of that Party authorises such use”. Currently 35 countries have signed this Convention. All Parties to the OECD Anti-Bribery Convention have signed the Multilateral Convention, except for Austria, Bulgaria, Chile, the Czech Republic, Estonia, Hungary, Israel, Luxembourg, New Zealand, the Slovak Republic and Switzerland.

d. EU Directive on Administrative Cooperation in the Field of Taxation

119. Article 16.2 of the Council of the European Union Directive on Administrative Cooperation in the Field of Taxation (Directive) provides that information and documents received in accordance with the Directive may be used for other purposes than for the administration and enforcement of taxes covered by the Directive if the member state providing the information grants its permission (an EU member state providing such information is obliged to grant this permission if it could use the information for similar purposes domestically). The Directive came into force on 11 March 2011. With the exception of certain requirements pertaining to automatic exchanges, EU member states are required to bring into force laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2013.

2. Best practices for sharing tax information

120. Because the exchange of tax information for non-tax purposes is largely governed by the agreement under which information is exchanged, countries can help facilitate such exchanges by negotiating provisions in their tax agreements that will enable this type of information sharing. In addition, the OECD has been working over the years to improve the legal framework for international tax cooperation as well as to provide comprehensive guidance for the practical operation of exchange of information in order to improve the efficiency and speediness of exchanges. In 2006, the OECD issued a Manual on the Implementation of Exchange of Information, which is publicly available on the Internet. This manual provides comprehensive, practical advice on various types of exchanges of tax information, including exchanges of information upon request, spontaneously, or on a routine basis; industry-wide exchanges of information; simultaneous tax examinations; tax examinations abroad; joint audits; and other topics. The advice is quite specific and pertains to each step of the process. For example, in relation to exchanges of information on request, the manual gives guidance on how to prepare and send a request (including suggestions on form and content), what steps to take upon receipt of a request (including acknowledging receipt and notifying the sender of deficiencies), how to go about gathering information to respond to a request, when and how to respond to a request (including a checklist of items to include and a

66 See at www.oecd.org/dataoecd/8/62/49521827.pdf for an up-to-date list of countries that have signed this Convention.
suggested timeframe of 90 days) and how to provide feedback to other tax authorities regarding the exchange of tax information.

B. Exchange of financial intelligence obtained by FIUs

121. The crime of money laundering goes hand in hand with financial crimes such as foreign bribery. For example, participants in the foreign bribery offence may seek to launder the bribe payment itself, and they may seek to launder the proceeds received in exchange for the bribe. To aid in detecting money laundering, many countries have established financial intelligence units (FIUs) as central agencies to receive, analyse and disseminate financial information relating to potential money laundering and related offences and to convey that information, as appropriate, to other authorities, including law enforcement authorities.

122. FIUs are in a unique position to facilitate the exchange of information internationally. They are often able to exchange information directly with their counterparts – FIUs in other countries; such direct exchanges of information can occur quickly, even within a matter of days in some cases. Through such exchanges of information, FIUs can develop financial intelligence on potential cases of foreign bribery soon after the funds involved in the crime are moved. Exchanges of information can occur quickly, even within a matter of days in some cases. Through such exchanges of information, FIUs can develop financial intelligence on potential cases of foreign bribery soon after the funds involved in the crime are moved. FIUs may be permitted to exchange information with other FIUs on the basis of domestic legislation, memorandums of understanding or other types of mutual agreement. Requests usually occur in writing, although they may occur orally as well. When necessary, FIUs are able to disseminate information spontaneously, without a prior request.

123. An FIU providing information to another FIU must provide express consent for the recipient FIU to share this information with law enforcement authorities in the recipient FIU’s country; information provided by or to law enforcement through an FIU is typically limited to use for intelligence purposes only. Generally, such consent is provided in a memorandum of understanding between the FIUs, although it could be part of a separate agreement. The recipient FIU’s ability to provide information to law enforcement authorities in its country is also almost always governed by a memorandum of understanding between the FIU and the law enforcement authority; this memorandum of understanding will address, for example, issues of privacy and data protection.

124. Exchanges of information between FIUs (and between FIUs and law enforcement authorities) have their limits, however. FIUs focus on the exchange of information about financial transactions and other information provided by financial institutions (e.g. on customer identification and account history). In many cases, the FIU has a limited investigative role and may not have access to non-financial information; thus, information conveyed may not always include an analysis of the foreign bribery aspects of a case.

1. FIUs and applicable international standards

125. Since 2003, the Financial Action Task Force (FATF) has required that its members (of which there are currently thirty-six) establish FIUs to serve as centres for receiving, analysing and disseminating suspicious transaction reports and other information about possible money laundering. Under the FATF’s 2012 International Standards on Combating Money Laundering and the Financing of Terrorism &

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Proliferation (FATF 2012 Standards) FIUs should “serve[] as a national centre for the receipt and analysis of: (a) suspicious transaction reports and (b) other information relevant to money laundering, associated predicate offences, and terrorist financing, and the dissemination of the results of that analysis”. FIUs also “should be able to obtain additional information from reporting entities and should have access on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions”. It is also a requirement under EU law that each member of the European Union establish an FIU.

FATF has set forth standards for the exchange of information between FIUs. For example, “FIUs should have an adequate legal basis for providing cooperation on money laundering, associated predicate offences and terrorist financing”. Specifically, “FIUs should have power to exchange: (a) all information required to be accessible or obtainable directly or indirectly by the FIU under the FATF Recommendations ... and (b) any other information which they have the power to obtain or access, directly or indirectly, at the domestic level, subject to the principle of reciprocity”. Such information exchanges should not be hindered by “unreasonable or unduly restrictive conditions”. When an FIU is requesting information from another FIU, it should make its “best efforts to provide complete factual, and, as appropriate, legal information, including the description of the case being analysed and the potential link to the recipient country”. Information exchanged between FIUs may only be used for the purpose for which it was sought or given, that is, it may not be transferred to another party (including for use in an investigation or prosecution) without obtaining prior consent from the FIU that provided the information. Information exchanged between FIUs is also subject to data privacy and data protection laws (although most such laws include broad exemptions for law enforcement and national security purposes). This means, at a minimum, that an FIU receiving information from a foreign FIU must protect that information to the same extent that it would protect information received from domestic sources.

Importantly, as noted above, any information shared between FIUs is protected by privacy and data protection laws, and the FATF standards require countries to “establish controls and safeguards to ensure that information exchanged ... is used only in the manner authorised”. Thus, as already noted an FIU will need express authorisation to share information received with law enforcement authorities.

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74 Paragraph 9 ibid.

75 Paragraph 2 ibid.

76 Paragraph 8 ibid.

77 Paragraph 3 ibid.

78 Paragraph 4 ibid.

79 Ibid.
2. **Resources for the exchange of information between FIUs**

128. Perhaps the most well-known resource for facilitating exchanges of information between FIUs is the Egmont Group of Financial Intelligence Units (Egmont Group), a network of FIUs that was established in 1995 and currently has over 120 members. The Egmont Group’s stated goal is “to provide a forum for FIUs around the world to improve cooperation in the fight against money laundering and financing of terrorism and to foster the implementation of domestic programs in this field”. To this end, the Egmont Group meets regularly to discuss ways to cooperate, including by facilitating the exchange of information about potential cases of money laundering information.

129. The Egmont Group also provides practical tools to its members to improve the exchange of information. For example, it has developed a model Request for Research, which it encourages its members to use when requesting information from each other. It also has a secure web-based system for exchanging information between members, called the Egmont Secure Web (ESW).

130. In addition, the Egmont Group has issued written guidance regarding best practices in the exchange of information. This guidance closely follows the FATF Recommendations. For example, the Egmont Group encourages an FIU to submit a request for information as soon as the need for assistance is identified and to seek prior consent for further use of information (for example, the transmission of such information to law enforcement authorities) at the time it makes its request, particularly in urgent cases. In terms of formatting the request, the Egmont Group recommends indicating the time by which a response is needed, providing sufficient background to enable the recipient FIU to analyze and/or investigate the request and including a statement of relevant facts known to the requesting FIU. An FIU receiving a request for assistance should assign a unique tracking number to the request and should respond within a week whenever possible. Exchanges of information should occur securely, for instance, through ESW. Importantly, “[w]hen an FIU has information that might be useful to another FIU, it should consider supplying it spontaneously as soon as the relevance of sharing this information is identified”. The Egmont Group promotes spontaneous exchanges, as well as those that occur upon request, and recommends any exchange of information “should produce any available information that may be relevant to an analysis or investigation of financial transactions and other relevant information and the persons or companies involved”.

131. The European Union has set up its own electronic tool to facilitate the exchange of information between the FIUs of EU members. This tool, FIU.NET, is a decentralised computer network that allows EU members to securely exchange information related to potential money laundering cases. One unique feature of FIU.NET is its ability to allow connected FIUs to match their data regarding financial transactions in a way that does not disclose sensitive personal data of individuals. Very simplified, the system converts financial data from an FIU into a form that does not contain the sensitive data, and then allows this data to be shared with and used by other FIUs. This allows FIUs to compare the subjects of

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80 Egmont Group Internet website, at www.egmontgroup.org.

81 See a discussion of the Egmont Group’s measures to assist FIUs in *Financial Intelligence Units: An Overview*, supra, at 67.


83 Egmont Group, “Principles for Information Exchange Between Financial Intelligence Units for Money Laundering and Terrorism Financing Cases,” *supra*.
their investigations (and to match subjects with transactions throughout the European Union) without revealing names.84

Cooperation between financial intelligence units

**Case 16** (Annex 1) illustrates how FIUs of different countries can work together to share information prior to the formal exchange of MLA. In that case, one country's FIU received information about a potential financial crime from a suspicious transaction report filed by a bank. The FIU passed the report to another country's FIU. Following the exchange of preliminary information related to the suspicious transaction, the second country submitted formal requests for MLA. The information provided in the course of communications between the FIUs and especially the freezing of assets by the Party's FIU prepared the ground for an efficient exchange of MLA.

3. **Preliminary freezing of assets by FIUs**

132. Cases involving foreign bribery very often also involve money laundering of the proceeds of the crime. Thus, a question arises regarding how to enhance the effectiveness of the seizure of funds or other assets, given the ease with which clients can withdraw and/or transfer funds in this age of electronic banking, and the time required for relevant authorities to prepare a formal MLA request. FIUs can play an important preliminary role in ensuring that the proceeds of crime do not “disappear” during the time it takes to engage in formal MLA. A number of FIUs have not only the ability to monitor and analyse suspicious transactions, but also can freeze assets (to postpone an execution of a client's order for money transfer) under certain circumstances.

133. In 2010, CARIN conducted a study on this possibility and found that 23 of its 51 member states in 2010 had an FIU with power to freeze suspicious transactions based on its own initiative (that is, without needing prior notice from a bank or other reporting institution) when facts giving rise to suspicion of a crime are present. FIUs are independent of law enforcement authorities (including judicial authorities) and cannot be forced to freeze assets. However, when law enforcement authorities have a relationship of trust with FIUs, they may be able to work together towards common goals. For example, if law enforcement authorities are legally allowed to inform the relevant FIU of suspicion of a crime, the FIU may be willing to engage in a preliminary freezing of assets. Since an FIU can often preliminarily freeze a transaction without delay (although for a limited period of time), this can create the time needed for appropriate authorities to proceed in submitting and processing a formal MLA request. The result can be a more effective seizing of the proceeds of crime.

Cooperation between FIUs and law enforcement in seizing the proceeds of crime

**Cases 17 and 18** (Annex 1) illustrate how law enforcement and FIUs can work together to ensure that the proceeds of a foreign bribery crime do not become unavailable. In **Case 17** the requesting country was able to provide information to the recipient country's law enforcement in order to effectuate the freezing of certain transactions that would have resulted in laundered funds leaving the bank accounts where they were kept. **Case 18** presented similar facts; in that case, the FIU in the recipient country was able to freeze the suspicious transaction the day that information regarding the transaction was received. In both cases, requests made to FIUs (through law enforcement or central authorities) were followed by formal MLA requests in order to freeze and/or confiscation the pertinent assets.

84 More information about this system, called Ma'tch (which stands for Autonomous Anonymous Analysis) is available at [www.fiu.net](http://www.fiu.net).
C. Exchanges through regulatory channels

134. Some countries have securities regulatory agencies with significant experience with detecting and investigating corporate conduct that may also constitute a criminal offence. Notably, some securities regulators have jurisdiction to detect, investigate and/or prosecute foreign bribery offences or foreign bribery related offences (including accounting violations) civilly, administratively and/or quasi-criminally. Therefore, information that securities regulators have in their files and may obtain from other jurisdictions in the course of their investigations may also be directly relevant to investigations of the related criminal offences.

135. Just as law enforcement officials have had a growing need for cross-border cooperation, as corporate activities have become increasingly global, securities regulators have had a greater need to exchange information about the entities that they regulate with securities regulators in other countries. The chief mechanisms they use are a multilateral instrument created by the International Organization of Securities Commissions (IOSCO) and bilateral agreements, each of which is discussed below.

1. The IOSCO Multilateral Memorandum of Understanding

136. In an effort to facilitate transnational enforcement and the exchange of information among international securities regulators, IOSCO adopted a Multilateral Memorandum of Understanding (MMOU) in 2002. The IOSCO MMOU has become the industry standard for facilitating the international cooperation that is essential to combating securities and derivatives laws violations. The MMOU strengthened information sharing between IOSCO members by requiring them to obtain statutory authority to compel and share information with foreign counterparts. Significantly, this mechanism has typically proved quicker than the traditional MLA mechanism in many instances.

137. In order for a securities regulator to make a request under the MMOU, the securities authority making the request must have an open investigation into a violation of the laws and regulations that the securities authority enforces. The MMOU specifies that information requests may be made when any of the following activities are being investigated: (i) insider dealing and market manipulation; (ii) misrepresentation of material information and other fraudulent or manipulative practices relating to securities and derivatives; (iii) solicitation and handling of investor funds and customer orders; the registration, issuance, offer or sale of securities and derivatives; (iv) activities of market intermediaries, including investment and trading advisors who are required to be licensed or registered, collective investment schemes, brokers, dealers and transfer agents; and (v) markets, exchanges and clearing and settlement entities. The ability of a securities regulator to make a request under the MMOU for foreign bribery and foreign bribery related offences, such as accounting violations, will depend on whether the securities authority has jurisdiction to detect, investigate and/or prosecute such cases under the laws and regulations that the securities authority enforces.

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85 Article 8 of the OECD Anti-Bribery Convention requires Parties to take such measures as may be necessary regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards to prohibit off-the-books accounts, off-the-books transactions, non-existent expenditures, incorrect identification of liabilities and the use of false documents.

86 This is an abbreviated list. The full list of laws and regulations that the MMOU request may be made in connection with are listed in the IOSCO MMOU at ¶ 4, at www.iosco.org/library/pubdocs/pdf/IOSCOPD126.pdf.
138. The ability of a securities regulator to provide information requested under the MMOU may depend on its ability to gather similar information in the course of performing its own investigations. The MMOU provides that its parties are to “provide each other with the fullest assistance permissible to secure compliance with the respective Laws and Regulations of the Authorities”. This means that whatever the securities regulator receiving the MMOU request could gain access to in the course of performing its own responsibilities and duties, it should be willing to gather and provide to a requesting authority. The scope of assistance that may be provided in response to an MMOU request includes, but is not limited to, information and documents in the recipient agency’s files; records to enable reconstruction of securities and derivatives transactions (including bank and brokerage account records); records that identify the beneficial owner and controller of an account; records of transaction details (such as the time, amount and price of transactions); information identifying the individuals who beneficially own and control companies; and the taking of witness statements or, where permissible, sworn testimony regarding the potential violation. The MMOU provides that a request for assistance cannot be denied because the type of conduct under investigation is not a violation of the laws and regulations of the securities regulator collecting the information.

139. The IOSCO MMOU sets out the information that must be provided in any request for assistance. It also outlines expedited procedures that may be used in urgent circumstances to communicate requests and responses by telephone or facsimile, as long as those communications are followed up with original signed documents.

140. Among the permissible uses that may be made of the information requested under the IOSCO MMOU is any “purpose within the general framework of the use stated in the request for assistance, including ... assisting in a criminal prosecution ... applicable to the violation of the provision specified in the request where such general charge pertains to a violation of the Laws and Regulations administered by the Requesting Authority”. In other words, the MMOU grants the securities authority who makes a request for information under the MMOU the ability to share the information received with domestic law enforcement officials if those officials are investigating a criminal offence that is related to the matter under investigation by the securities authority. If the securities regulator who received information via an MMOU request wishes to share that information with domestic or foreign law enforcement officials for the purpose of assisting an investigation or proceeding into a non-securities matter, the securities regulator must obtain the consent of the authority from whom it received the information.

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87 See IOSCO MMOU at ¶ 9(d).
88 Id. ¶ 7(a).
89 See ibid ¶ 7.
90 See ibid ¶ 7(c).
91 See ibid ¶ 8(b). The MMOU includes a form for drafting requests for information in Appendix C.
92 See id. ¶¶ 8(c) and 9(e).
93 See ibid ¶ 10(a)(ii).
94 See ibid ¶ 10(b), which provides, “If a Requesting Authority intends to use information furnished under this Memorandum of Understanding for any purpose other than those stated in Paragraph 10(a), it must obtain the consent of the Requested Authority.”
141. Since its creation, the IOSCO MMOU has been used with increasing frequency. In 2003, there were just 56 requests for information under the MMOU. In 2010, there were over 1600.\(^95\) This increase has corresponded with an increase in the number of signatories to the MMOU; there are currently 89 signatories.\(^96\)

### Use of the IOSCO MMOU to obtain records in another country

**Cases 14 and 15** (Annex 1) demonstrate the successful exchange of information under the IOSCO MMOU. In **Case 14**, the securities regulator of the requesting country asked for bank account records from the recipient country’s securities authority. The recipient country’s securities regulator quickly and efficiently provided bank account records to the requesting country, and the records were shared with the requesting country’s criminal authorities pursuant to the allowed uses under the IOSCO MMOU. These documents assisted the requesting country in bringing a case against the company for securities law violations.

2. **Bilateral memoranda of understanding**

142. Before the establishment of the IOSCO MMOU, securities regulators typically exchanged information through authority derived from bilateral memoranda of understanding (MOUs). These bilateral MOUs looked much like the IOSCO MMOU and are still used today. Usually if the IOSCO MMOU applies and there is an applicable bilateral MOU, the requesting authority typically cites both agreements when making a request for information. One of the reasons that the bilateral MOUs are still cited even when the IOSCO MMOU applies is that the bilateral MOUs may provide for a broader scope of assistance between the parties.\(^97\) Indeed, in light of the existence of the IOSCO MMOU, one Party’s securities authority now recommends the negotiation of bilateral MOUs only if a foreign securities authority is able to provide more expansive assistance than that required by the IOSCO MMOU, such as the ability to compel testimony, gather Internet service provider, e-mail, phone and other records beyond just bank, broker and beneficial owner information, on behalf of the requesting authority.\(^98\)

143. The scope of assistance available under bilateral MOUs depends, then, on the underlying statutory authority of the party regulators. Like the IOSCO MMOU, the bilateral MOUs also typically contain detailed provisions concerning use and the confidentiality of the information exchanged. These agreements may, or may not, permit a securities authority to share information it receives pursuant to the MOU with domestic law enforcement officials. If there is no grant of permission in the bilateral MOU and the permissible uses under the IOSCO MMOU do not apply, then the recipient authority must seek the permission of the authority providing the information to share it with law enforcement officials for the purpose of a criminal investigation or proceeding.

\(^{95}\) See “Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMoU)”, IOSCO Internet website, at www.iosco.org/library/index.cfm?section=mou_main.


\(^{97}\) See “International Enforcement Assistance” on the United States Securities and Exchange Commission (SEC) Internet website, at www.sec.gov/about/offices/oia/oia_crossborder.shtml.

3. **Ad hoc information sharing between securities regulators in different jurisdictions and between securities regulators and foreign law enforcement officials**

144. Domestic law allows some securities regulators to exchange information informally with foreign securities regulators and foreign law enforcement officials on an *ad hoc* basis, without a formal information sharing mechanism. At least one securities regulator in a Party country acknowledges such authority on its public Internet website. 99 The ability of a securities regulator to assist foreign securities regulators and foreign law enforcement officials may depend on factors set forth in domestic law, such as confidentiality or reciprocity. With this type of *ad hoc* exchange, the authority that receives the information may have to receive the express consent of the securities authority providing the information before it may share the information beyond its own agency.

4. **Informal information sharing by securities regulators**

145. A securities regulator may also be allowed to discuss cooperation and coordination of investigations on an informal basis prior to a formal request for assistance. As discussed above in chapter III, information communicated prior to submitting a formal request can be very beneficial. 100 The ability of a securities regulator to engage in discussions with foreign securities regulators and foreign law enforcement officials prior to a formal request may depend on rules of practice and established protocol for the securities regulator.

146. Section 13 of the IOSCO MMOU provides that signatories will make “all reasonable efforts to provide, without prior request” any information that may be of assistance to other securities regulators that are IOSCO signatories. This includes any information that may be of assistance to the foreign securities regulator in determining compliance with its domestic securities laws.

D. **Best practices for information exchanges and cooperation**

147. As discussed above, there are a number of agencies that may have responsibilities to detect, investigate and prosecute foreign bribery and/or foreign bribery related offences. This can lead to a number of different agencies that may hold or collect information that is relevant to investigations and prosecutions of foreign bribery, including law enforcement, tax, FIUs, securities regulators or other regulatory agencies.

148. As a practical matter, any agency that has responsibilities for detecting, investigating and prosecuting foreign bribery and/or foreign bribery related offences should have a mechanism for obtaining information from foreign authorities that is relevant to its mission. Such agency should also have the ability to reciprocate by sharing with, or collecting information on behalf of, the foreign authority. Information sharing could occur with a foreign counterpart (e.g., law enforcement to foreign law enforcement) or with a foreign non-counterpart (e.g., securities regulator to foreign law enforcement). The ability to share information with non-counterparts and approach non-counterparts directly will depend on the legal and procedural requirements of the agency’s jurisdiction.


100 Information communicated before submitting a foreign request can (i) facilitate communication about investigation and prosecution strategies; (ii) allow for sharing best investigation and prosecution strategies; (iii) help avoid duplication of investigative efforts in similar or parallel investigations; (iv) reduce the risk that investigative information may become public prematurely; and (v) provide law enforcement officials with the type of rapid-response mechanism that is necessary to combat modern transnational crimes.
Whatever the source of authority for a request for information, the agency requesting information from a non-counterpart must determine the limits of the non-counterpart’s ability and willingness to provide the information sought. This will allow the requesting authority to formulate the request in a way that will facilitate the fullest possible assistance. To learn about a non-counterpart’s ability and willingness to provide such information, the requesting agency may consider engaging in direct communications with the non-counterpart, or consider engaging in indirect communications by contacting its domestic authority, who will then reach out to the foreign counterpart (e.g., domestic law enforcement contacting the domestic financial intelligence unit, who in turn contacts the foreign FIU for assistance). Direct communication may be the best way to ascertain what may be obtained from a non-counterpart and what instrument, if any, should be cited as the authority or authorities for the request.
ANNEX 1:

CASE EXAMPLES DEMONSTRATING MLA CHALLENGES, SOLUTIONS AND BEST PRACTICES

150. The purpose of this annex is to set forth case studies that demonstrate some of the many ways in which MLA works well and does not work well. It is not meant to serve as a catalogue of all MLA challenges, solutions or best practices. The case studies were provided by countries and have been “anonymised”, that is, the names of the companies, individuals and countries involved have been deleted to conceal true identities. Some anonymised cases may contain combined elements of more than one actual case. A few cases below are not foreign bribery cases, but are included because they demonstrate a point that is relevant in the context of foreign bribery investigations.

A. Case examples regarding the timeliness of responses to MLA

Case 1: Lack of a treaty, lack of resources for extensive follow-up

151. According the report of the Independent Inquiry Committee into the United Nations Oil for Food Programme, three companies from a Party to the Convention were involved in bribery of Iraqi officials during the course of the Programme. The Party opened an investigation into these companies and gathered all accessible evidence from its own territory. As well, the Party sent requests for MLA to four countries, including one Party and three non-Parties. The Party did not have a bilateral MLA treaty or other agreement with any of the non-Parties.

152. In accordance with the request, the recipient country that was a Party quickly interrogated intermediaries operating in its territory. However, the requesting country had less success with the three requests submitted to non-Parties. Requests to two of these recipient countries were made on the basis of reciprocity. These two countries did not submit any response to the request, in spite of the requesting country’s attempts to follow up on the requests several months after they were submitted.

153. The third request was sent to a non-Party that does not have a bilateral treaty with the requesting country and thus was also made on the basis of reciprocity. Nearly three months after the request was submitted, the recipient country responded to the request to indicate that it had failed to include an official seal, subscriptions and relevant supporting documents (although all of this information was included in the original request). Following submission of a revised request, and six months after the original request, the recipient country asked for legalisation of the request. Two months later, the recipient country asked for the request to be super-legalised. Eight months later, the requesting country provided a super-legalised request. Twenty months after this (and three years after the original request was submitted), the recipient country’s general prosecution office finally informed the requesting country that the request could not be satisfied because the persons in question had left the recipient country’s territory for an unknown place two years prior to the date the requesting country had sent its original MLA request.

154. The evidence available to the requesting country (both evidence within its territory and evidence obtained from one recipient country that provided a response to the request for MLA) was insufficient to
prove that any of the companies engaged in criminal activities. The requesting country did not have sufficient resources to send representatives to the three non-Parties in order to enter into direct discussions with competent authorities regarding the requests for MLA. It also did not have political power to influence these countries in other ways. Because the requesting country was unable to obtain information from the three non-Parties concerning the activities of the companies within their territories (which may have provided further evidence regarding the bribes allegedly paid), the criminal investigation was closed.

Case 2: Political instability and appeals

155. A global trading business, registered in a Party to the OECD Anti-Bribery Convention, was suspected to have bribed a minister of a non-Convention country in 2006 in order to obtain an oil trading contract. The investigation started in the country Party to the Convention in response to a letter (October 2006) of a then-opposition leader, who became Prime Minister in 2007 in the non-Convention country.

156. Multiple requests for MLA were sent to the non-Convention country; in 2010, nine MLA requests were sent in total. At first, the political party of the bribed official was in power, and the country would not cooperate with the MLA requests made by the requesting country. Then, the opposition won the elections, and the country agreed to cooperate (on convicting one of their opponents). The MLA requests took a long time, but a start was made with the execution of the requests, leading – among other things – to two visits of officers of an investigation unit from the requesting country to interview witnesses in the recipient country. Twice this was unsuccessful on legal grounds: witnesses of the nationality of the recipient country could not be interviewed on the basis of an MLA request from the requesting country.

157. The legislation was then amended in the recipient country, making such interviews possible. In early 2010, a meeting took place between public prosecutors from both countries. The recipient country indicated that it would summon the witnesses to appear before the Supreme Court. Officers from the investigation unit and a public prosecutor from the requesting country went to the recipient country in November 2011 to interview the witnesses. Lawyers from the suspected persons in the recipient country started court procedures to prevent the interviews from happening. The first few days were spent in court, each side arguing in favour of its own interests. Finally the court allowed the delegation from the requesting country to interview the witnesses. The interviews started immediately, but, after only ten minutes, had to stop because the lawyers from the suspected persons in the recipient country appealed the court’s decision. The higher court ordered the interviews to stop immediately and to stay on hold until the appeals decision was taken. As a result, the delegation of the requesting country had to return home after that week without any result that they could use.

158. Subsequently, new elections occurred, and the political situation was so tense that the country put the MLA on hold. As of the time of this report, the requesting country was still waiting for the outcome of the elections.

Case 3: Personal communications, direct versus indirect transmittal, exchange of draft request

159. A Party to the OECD Anti-Bribery Convention was in the process of investigating a potential offence of foreign bribery by a manufacturing company. In connection with the investigation, the Party submitted requests for MLA to a number of countries. Two of the countries were Schengen countries that were also Parties to the Convention. Prosecutors from the requesting country had come to know their counterparts in these countries through OECD Working Group meetings. Because of this, the requesting country’s prosecutors were able to engage in personal contacts with prosecutors in the two recipient countries prior to submitting the requests for MLA. The requesting country received quick and efficient help in conducting searches and gathering evidence from these two countries, that is, within weeks after requests were sent.
160. The requesting country also sent requests for MLA to a number of non-Schengen countries. The handling of these requests was more time-consuming because, among other things, direct transmission was not possible. Rather, the requests were passed through several authorities (both in the requesting country and in the recipient country) before arriving at the authority in a position to execute the request. The requesting country was required to send several reminders before obtaining a response to each request for MLA, and it took several months to obtain results.

161. Nonetheless, one request for MLA submitted to a non-Party country was dealt with in a very professional and effective manner. The country has a specific unit established to deal only with requests for MLA, and the unit’s Internet website contains useful guidance on how to submit a request. The requesting country received very quick responses to its e-mail communications to this country regarding the submission of an MLA request. The MLA unit also encouraged the requesting country to submit a draft request for MLA, so that the unit could comment on the request in order to ensure that all requirements were met before the final, formal request was submitted.

**Case 4: Delay due to inconsistent factual disclosure**

162. One Party to the Convention received a request for MLA to freeze the assets of certain persons involved in crimes of corruption in the requesting state. The request was based on reciprocity and conveyed through diplomatic channels. Although the Party took all available steps to locate the relevant bank accounts and criminal records, because the information included in the request was inconsistent with records in the recipient country, the information sought could not be located. The Party reported its attempts to locate the relevant information, including the inconsistencies in information reported, to the requesting country. The requesting country did not produce any further information to assist in the request.

**B. Case examples regarding obtaining an MLA response that matches the scope of the requester’s needs**

**Case 5: Thorough factual description with supporting documents**

163. A Party to the Convention received a request for MLA in order to obtain documents and information about a suspect who had participated in a scheme that would have damaged a government agency of the requesting state. The Party fully complied with the request. This was possible because the requesting party included a very clear and thorough factual description, and no important information was missing. The aim of the request was to check the veracity of certain documents, and the requesting party provided copies of these documents, which were necessary to the review.

**Case 6: Incomplete response due to incomplete information**

164. A Party to the Convention launched a preliminary criminal investigation in response to charges of bribery in connection with an invitation to tender for extensive oil and gas exploration and extraction rights in a North African country. The Party sent requests for MLA to three countries, two of which are Parties to the Convention, in order to obtain various bank account data. The requests were transmitted to the respective authorities via Eurojust. The non-Party responded fully to the request within four months. One of the Parties responded fully to the request by way of two transmissions – one within seven months and one within ten months.

165. The other Party fully executed the request within six months, with the exception of information regarding one particular bank account. The recipient country was unable to fulfil this part of the request because the account number in question was incomplete. The requesting country made efforts to overcome this, for example, by sending scanned bank records via Eurojust. However, despite the cooperation of the authorities of the recipient country, the correct account number could not be established.
Case 7: Incomplete responses due to breakdowns in communication and flawed information

166. A Party to the Convention opened a police operation aimed at dismantling a criminal scheme to engage in procurement fraud within one of its ministries. Under the scheme, employees of the ministry informed certain lobbyists in advance about products intended for public procurements, which allowed them to organise the presentation of proposals ahead of competitors or to manoeuvre to intervene in the model and the bidding prices. Private business paid the lobbyists for the “costs” of obtaining this information and, to justify these costs, phony receipts were issued by consulting firms. In relation to its investigation of this scheme, the Party sought MLA from three other countries.

167. The first request was based upon reciprocity. In response to the MLA request, the first recipient country provided the requesting country with documents (including bank documents) and seized assets. Repatriation of these assets into the requesting country has not yet occurred because the requesting country has not yet issued a final court decision and the recipient country is not able to waive its legal requirement for such a decision.

168. The request to the second country aimed at the transmission of banking documents and the seizure of amounts held by suspects. This request was based on a bilateral treaty regarding legal cooperation in criminal matters. The recipient country partially fulfilled the request by providing banking documents within a year. However, the other part of the request has not been fulfilled. The requesting country has asked the recipient country for information about why the other part of the request has not been fulfilled, but has not received an answer. Thus, the requesting party has not been able to obtain the seizure of assets in the recipient country’s territory.

169. The third request dealt with bank records in the recipient country. This request was not fulfilled because the bank account information provided by the requesting country did not match the information in the records of the relevant bank in the recipient country. The requesting authority does not have any further information about the bank account. The inability to locate the bank account has been a serious obstacle that has impeded international cooperation.

Case 8: Visits by requesting country to assist in complying with a request

170. In a criminal proceeding in the territory of a Party to the Convention, an accused was charged with bribing foreign public officials in a non-Party in connection with the delivery of technological equipment. The Party investigating the case transmitted a request for MLA to the non-Party via its central authority, asking that documents and other information be made available. Approximately two months later, when no response was received, the requesting country sent a revised version of the request, which included an offer to send representatives to the recipient country to assist the local authorities to comply with the request. Accordingly, a prosecutor and a detective officer of the requesting country travelled to the recipient country four months later. During their visit, the officials from both countries discussed the facts of the case from their respective points of view, as well as the types of materials needed as evidence in the investigation. In the course of the visit the recipient country was able to provide formal copies of materials that had previously been provided only informally. The recipient country provided the rest of its response to the request for MLA within twelve months of its receipt of the initial request.

C. Case example regarding resource issues

Case 9: Coordination of costs

171. A Party to the Convention was asked by another country to seize certain assets held in the Party’s territory by a defendant. The recipient country successfully executed the request for MLA and held the seized assets for more than a year and a half until the case was finalised in the requesting country’s courts.
The recipient country paid all of the costs of the seizure, expecting to receive an allotment of the assets at the conclusion of the case. However, the requesting country has a value-based confiscation system that allows a sentenced defendant to provide goods of equal value to those ordered to be confiscated and trusts that defendants will voluntarily pay confiscation orders. Accordingly, following the conclusion of the case in the requesting country, the requesting country asked the recipient country to terminate the seizure and return the assets seized to the defendant. Because the seizure of assets was simply terminated (rather than confiscated and submitted to the requesting country), the recipient country was unable to obtain reimbursement of its costs in effectuating the seizure. Had the costs of the seizure been allocated differently at the outset, the recipient may have been able to avoid this loss.

D. Case example regarding dual criminality

Case 10: Inter-governmental efforts in dealing with dual criminality requirements

172. A Party to the Convention was in the process of investigating a case of foreign bribery committed by its nationals. It sent a request for MLA to the country where the bribe occurred. The recipient country initially refused the request because foreign bribery is not considered a crime in that country. The requesting country engaged in discussions with the recipient country on this issue and clarified that the facts giving rise to the foreign bribery investigation in the requesting country were the same facts that would constitute the crime of domestic bribery in the recipient country. Because domestic bribery is a crime in the recipient country, the recipient country concluded that dual criminality existed and became willing to respond to the MLA request.

E. Case examples regarding joint investigation teams and cooperation with an international financial institution

Case 11: Joint investigation team between two Parties to the Anti-Bribery Convention

173. In early 2007, authorities in a Party (State A) to the Convention received information relating to potential corruption in their country involving nationals and a company from two other Parties to the Convention. After conducting initial enquries authorities from State A contacted the authorities in the country of the bribing company (State B) with a view to cooperating. At this point it was established that the case involved payments from the company in State B to two nationals from State C working as consultants for an international organisation in connection with the winning of a contract offered by the international organisation by the company from State B. It was agreed that the cooperation could be provided by way of MLA.

174. As a result of the further enquiries conducted by way of MLA it became clear that closer cooperation was needed in order to investigate the case properly. Consequently a coordination meeting was set up with the assistance of Eurojust. At the meeting it was agreed between authorities from States A and B that a joint investigation team (JIT) would be the relevant way to go forward. Authorities from State C were invited to join, but refrained.

175. It was agreed that the JIT should cover investigation, as well as cooperation in relation to the legal proceedings in both countries. Subsequently in pursuance of the JIT, investigators and prosecutors from States A and B worked together on the case. They communicated or travelled to each other’s countries to conduct interviews, to review material or to meet on certain subjects.

176. In the view of the law enforcement authorities, the continuing cooperation helped keep the investigation forward moving and undoubtedly sharpened the prosecutorial decisions. However, one difficulty arose concerning the exchange of IT-material obtained from computer searches. Initially each country reviewed IT-material collected in its own jurisdiction and forwarded relevant documents as
evidence to each other. It later became clear that, in order to extract and use the material, each country had
to follow its own judicial process. Special consideration also had to be taken to secure access for the
defence of the involved parties to the IT-material.

177. In State A, court proceedings have yet to be finalised. In State B, the case against the company
was settled out of court in August 2011. A fine was paid and the proceeds from the illegally concluded
contract confiscated.

*Case 12: Joint investigation team between a Party and a non-Party to the Convention*

178. An executive of a re-insurance brokerage firm in the territory of a Party to the Convention
oversaw a number of corrupt payments to officials at government agencies of a non-Party. The executive
was charged with violations of the Party’s corruption laws. In connection with the prosecution, the Party’s
prosecutors had preliminary meetings with the non-Party’s prosecutors in order to discuss the collection
and sharing of evidence related to the case. Thereafter, pursuant to a request by the non-Party, the two
countries also entered into a joint investigation agreement. Both countries’ legal systems allowed for this
type of agreement – the Party’s through the principle of prosecutorial discretion and the non-Party’s
through statutory provisions.

179. The JIT was a success for several reasons. At the beginning of the investigation, prosecutors from
the two countries sat down and discussed potential issues. These included logistical issues, such as costs, as
well as substantive issues, such as disclosure issues and the evidentiary issues each team would face at
trial. Throughout the investigation, both teams continued to communicate directly with each other about
these issues. The two countries also encouraged each other to submit draft letters of request for
information, so that any necessary corrections or clarifications could be made before the letters were
submitted through official channels. Communication between the two countries was enhanced by the fact
that the same prosecutors and investigators worked on the case throughout the entire investigation. The
investigation teams from the two countries also travelled to each other’s countries to conduct interviews
and provide additional information on each country’s legal system and requirements.

180. The executive pleaded guilty to two counts of corruption and was sentenced in the Party’s court.
The non-Party is continuing to investigate the case with assistance from the Party’s prosecutors.

*Case 13: Joint investigation team and cooperation with the World Bank*

181. Investigations into foreign bribery allegations started in a Party (State A) to the Convention on
the basis of information presented by the World Bank. A company from State A is suspected of bribing
foreign officials, including an employee of the World Bank in order to win bids. This employee is a
resident of another Party to the Convention (State B), and state B is also investigating this case.

182. Law enforcement officials from States A and B met in the early stages of the investigation, with
the assistance of Eurojust, to discuss the best ways to cooperate and share information. States A and B
expected that a lot of information and investigation results would need to be shared in order for both
investigations to be successful, and that the use of regular MLA would create a lot of effort and
bureaucratic paperwork. State A and State B decided to form a Joint Investigation Team (JIT) as partners,
with Eurojust acting as a ‘third-party-member’ and advisor.

183. In the context of this JIT, State A executed warrants for house-searches at the same date and time
in both states: police officers from both countries were present at the searches and interrogations in both
countries. State A and State B further cooperated in preparing and interviewing together for a World Bank
witness in a third country, so the witness did not have to be questioned twice. State A and State B also had
to request MLA of third parties (Parties and non-Parties to the Anti-Bribery Convention). In some
circumstances, this information was able to be shared between the JIT-partners, as long as the request for MLA was clear that the investigation was being carried out by a JIT between States A and B.

F. Case examples regarding information exchanges outside of the MLA framework

Case 14: Use of an IOSCO MMOU to obtain bank account records

184. The securities regulator of a Party to the Convention requested bank account records from another Party’s securities authority through a multi-lateral information sharing agreement between securities regulators, known as the International Organization of Securities Commissions (IOSCO) Multilateral Memorandum of Understanding (MMOU). In this investigation, the recipient country’s securities regulator quickly and efficiently provided bank account records to the requesting country pursuant to the IOSCO MMOU, and the records were shared with the requesting country’s criminal authorities pursuant to the allowed uses under the IOSCO MMOU. These documents assisted the requesting country in bringing a case against the company for securities law violations.

Case 15: Use of an IOSCO MMOU to deal with other jurisdictions’ data privacy restrictions

185. A company involved in an investigation into the payment of bribes to foreign government officials to obtain or retain business wanted to provide information and documents to the securities regulator of a Party. However, the company was located in a jurisdiction with data privacy laws that prevented the company from providing information directly to the Party’s authorities. The Party requested the corporate records from a non-Party securities regulator through the IOSCO MMOU. The recipient country’s securities regulator produced the corporate records on a rolling basis pursuant to the MMOU request. The requesting country’s securities regulator used the records in its investigation and shared them with the requesting country’s criminal authorities pursuant to the allowed uses under the IOSCO MMOU.

Case 16: Cooperation between financial intelligence units

186. In the course of an investigation of bribery, money laundering, influence peddling and other crimes, a country that is not a Party to the Convention arrested a certain businessman. Following his arrest, a bank established in the territory of the Party to the Convention submitted a suspicious transaction report to the Party’s financial intelligence unit (FIU). The FIU passed the report to the FIU of the non-Party and initiated a freezing of the assets of the arrested businessman, which were held within the bank. The FIU of the non-Party requested additional financial information regarding certain transfers of funds from a bank account in the Party’s territory, which the Party’s FIU provided.

187. Following these preliminary communications, the non-Party submitted a formal request for MLA to seek (i) a detailed report on transfers involving the account in the recipient country and the origins of any funds paid and (ii) continued freezing of the bank accounts until the court proceedings against the defendant were completed by the requesting country. Although the requesting country did not have an MLA treaty with the recipient country, in its request for MLA the requesting country assured the recipient country of its willingness to provide reciprocity with regard to bilateral mutual judicial assistance in criminal matters. Four months later, the recipient country responded with the results of its investigation. The examination of documents received as part of this MLA request led to an additional MLA request submitted to the same country one month later. In this request, the requesting country asked for the interrogation of a witness and the seizure of banking documentation and the assets of two accounts at a bank other than the one referenced in the initial request. (This procedure is still in progress.)

101 Please see part C of chapter IV above for further information about the IOSCO MMOU.
188. The information provided in the course of communications between the FIUs and especially the freezing of assets by the Party’s FIU prepared the ground for an efficient exchange of MLA.

**Case 17: Cooperation between FIUs and law enforcement in seizing the proceeds of crime**

189. During a Party’s prosecution of a serious tax fraud involving damages of roughly EUR 7 million, a suspicion arose that at least a part of the assets had been transferred to another Party. Law enforcement authorities of both states engaged in initial discussions of the situation and approximately one month later, the prosecuting country received evidence that roughly EUR 2 million was transferred to the other country. It was also found that relatives of a suspected offender were travelling to that country to withdraw funds (which would have been considered proceeds of crime). Immediate action was necessary.

190. The prosecuting country provided this information in writing to a law enforcement authority in the recipient country. The recipient country’s law enforcement authority immediately informed immediately its FIU about the possibility of suspicious transactions in particular bank accounts, and the FIU froze the suspicious transactions on the same day. Later, following an MLA request from the requesting country, a prosecutor of the recipient country froze the bank accounts involved. The recipient country is waiting now for a confiscation order from the requesting country.

**Case 18: Cooperation between FIUs and law enforcement in seizing the proceeds of crime**

191. During a Party’s investigation of a serious fraud – involving approximately EUR 20 million in damages – investigators found that EUR 3.6 of the assets had been transferred to another Party to the Convention. The two countries’ central authorities discussed the case with CARIN contact persons in both states. One of the countries sent an MLA request to the other country, and the recipient country’s central authority immediately informed the country’s FIU, which froze the suspicious transaction the very same day. Following this, details of the MLA request were discussed. The recipient state asked for additional information that was provided by the requesting state within a week. A judicial authority of the recipient seized money in bank accounts and repatriated them to the requesting state to be returned to the victim.

**G. Case examples regarding utilisation of international organisations**

**Case 19: Facilitation of coordination meetings by an international organisation**

192. The central authority of a Party to the Convention submitted a request for MLA to another Party dealing with the suspicion that a telecommunications company and its subsidiaries in three countries had engaged in acts of bribery, money laundering and securities fraud in the process of a takeover of a number of foreign telecommunications providers. The illegal acts were allegedly committed through the companies’ representatives. A meeting was held at Eurojust to coordinate efforts in this matter, with representatives from seven involved countries in attendance (including five Parties). During the meeting one of the participants (not a member of Eurojust) was able to provide an explanation of the complex facts of the case. This meeting was helpful and time-saving for authorities from participating countries who were able to establish direct contacts with the persons responsible for possible MLA requests and to discuss the facts of the case openly with them. In addition, during the meeting, parties exchanged a substantial number of documents, which helped save time as well as the additional translation costs that would have been incurred if the documents had been sent through MLA channels.

**Case 20: Facilitation of coordination meetings and evidence gathering by an international organisation**

193. A Party to the Convention contacted the European Anti-Fraud Office (OLAF) to inform OLAF that it appeared that it and the European Commission were financing an identical development project in a third country. To help facilitate the exchange of information between members of the European
Commission, OLAF organised coordination meetings with officials from four countries. OLAF also assisted with the search of the headquarters of the company involved in the fraud. OLAF obtained hundreds of thousands of documents and copied three hard drives, for the use of the countries conducting the investigations. OLAF also engaged in discussions with embassies to gather evidence used in the investigation.
ANNEX 2:

PRACTICAL RESOURCES FOR MLA

This annex provides a list of technical tools available to facilitate MLA.

Camden Asset Recovery Inter-Agency Network (CARIN)

CARIN is an international network comprised of Contact Points specialised in tracing, seizing, managing and confiscating assets. There are two Contact Points in each member jurisdiction – one from a law enforcement and one from a judicial authority. The members include all EU Member States and a number of other countries, such as Australia, Canada, South Africa and the United States. The aim of the network is to increase the effectiveness of members’ efforts, on a multi-agency basis, in depriving criminals of their illicit profits. Each year, CARIN produces recommendations of practitioners for good practice in the area of asset recovery that are published in its website. This website is part of the Europol secure platform for experts and is available to law enforcement authorities (including judicial authorities) only. Law enforcement authorities who would like access to this website should send an email to FCIC@europol.europa.eu. Applications are assessed in conjunction with Europol National Units.

European Judicial Network (EJN) – Tools for mutual legal assistance

EJN has created three tools for mutual legal assistance, which are available online in English and French: (1) The MLA Atlas is a tool that allows the user to identify the competent central authority in each European Union member state to receive and execute MLA requests. (2) The Fiches Belges tool contains information regarding the availability of eight different investigative measures in EU member states. (3) The Compendium is a tool that allows the user to create letter requesting MLA in any of twenty-five different languages.102

G8 France 2011 – “Requesting Mutual Legal Assistance in Criminal Matters from G8 Countries: A Step-by-Step Guide”

This manual provides a “nuts and bolts” overview of the MLA regimes in the G8 countries, including the steps that a country should follow in submitting a request for MLA. The manual also includes a “Sample Mutual Legal Assistance Request to G8 Countries” as an example of how a successful request might look. The manual, published in 2011, is available on the Council of Europe’s website at: http://www.coe.int/t/DGHL/STANDARDSETTING/PC-OC/PCOC_documents/8_MLA%20step-by-step_CN152011_CRP.6_eV1182196.pdf.

102 For more information, visit www.ejn-crimjust.europa.eu/ejn/.
**IberRed – Iber@ Communication System**

The Iberoamerican Network of International Legal Cooperation (IberRed) is an international network comprised of Contact Points – that is, public officers (including judges, prosecutors and other judicial authorities) from Iberoamerican countries – and Liaison Officers – that is, officials appointed by central authorities of Iberoamerican countries to facilitate international cooperation (including MLA and extradition). This network has set up the Iber@ Communication System, which allows secure and direct real-time communications between Contact Points, between Liaison Officers, between Contact Points and Liaison Officers, and between Contact Points or Liaison Officers and Eurojust National Members. Contact Points and Liaison Officers can access the system from any computer equipped with Internet access, using a secret and personal password. The system also allows the secure transmission of information and documents such as letters rogatory and extradition applications. Information about IberRed is available on its Internet website at www.iberred.org.

**Organisation of American States (OAS) – Secure Electronic Communication System**

The Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition (Network) aims at increasing and improving the exchange of information among OAS member states in the area of mutual assistance in criminal matters. The Network consists of four components: (i) a public Internet website (http://www.oas.org/juridico/mla/en/index.html), (ii) a private website, (iii) a secure electronic communication system and (iv) a secure videoconference system (pilot phase). The purpose of the secure electronic communication system is to facilitate the exchange of information between central authorities who deal with issues of mutual assistance in criminal matters and extradition. This system not only provides secure instant email service to central authorities, but it also provides a space for virtual meetings and the exchange of pertinent documents.

**Stolen Asset Recovery Initiative (StAR) – Focal Points**

StAR is a partnership between the World Bank Group and the United Nations Office on Drugs and Crime that supports international efforts to prevent the laundering of the proceeds of corruption and to facilitate asset recovery. As part of its efforts, StAR has developed Focal Points, a list to assist law enforcement professionals in making contact with counterparts in other countries in order to exchange information and, ultimately, to work together on seizing and recovering assets. StAR is also a resource for advice on case strategy, including technical assistance to individual countries concerning asset recovery efforts. More information about Focal Points is available on StAR’s Internet website at http://www1.worldbank.org/finance/star_site/country.html.

**United Nations Office on Drugs and Crime (UNODC) – MLA Request Writer Tool**

The MLA Tool guides the user through the request process for MLA, using a series of web-based templates. After the templates have been completed, the tool generates a request for MLA for final editing and signature. The MLA Tool is available in English, French, Spanish, Russian, Portuguese, Bosnian, Croatian, Montenegrin and Serbian. Only judicial system practitioners may access the tool. For more information, visit http://www.unodc.org/mla/. UNODC is currently working to expand the tool with added features on asset recovery.
ANNEX 3:
CENTRAL AUTHORITIES

Article 11 of the OECD Anti-Bribery Convention provides,

For the purposes of Article 4, paragraph 3, on consultation, Article 9, on mutual legal assistance and Article 10, on extradition, each Party shall notify to the Secretary-General of the OECD an authority or authorities responsible for making and receiving requests, which shall serve as channel of communication for these matters for that Party, without prejudice to other arrangements between Parties.

This annex provides a list of central authorities for all current members of the OECD Working Group on Bribery, as designated under Article 11.

Argentina
Dirección de Asistencia Jurídica Internacional (Directorate of International Legal Assistance) Ministry of Foreign Affairs and Worship Esmeralda 1212, C1007 ABR Buenos Aires ARGENTINA Email: dajin@mrecic.gov.ar Website: www.cooperacion-penal.gov.ar/

Australia
International Crime Cooperation Central Authority Australian Attorney General’s Department 3-5 National Circuit Barton Act 2600 AUSTRALIA Email: mutualassistance@ag.gov.au Website: www.ag.gov.au

Austria
Federal Ministry of Justice Unit IV 4 – Head of Department Museumstraße 7 1070 Vienna AUSTRIA

Belgium
Service Public Fédéral Justice International Penal Cooperation Boulevard de Waterloo 115 1000 Brussels BELGIUM
Brazil
Ministry of Justice
Department of Asset Recovery and International Legal Cooperation (DRCI)
SCN Quadra 6 Bloco A 2º Andar, Ed. Venâncio 3000
70716-900, Brasília/DF
BRAZIL
Telephone: +55 61 2025 8900
Email: drci@ mj.gov.br

Bulgaria
Ministry of Justice and Legal Euro-Integration
International Legal Assistance and European Affairs Directorate
1, Slavianska str.
1040 Sofia
BULGARIA
Fax: +359 2 9809222
Website: http://www.justice.government.bg/new/

Canada
General Counsel/Director
International Assistance Group
Department of Justice
Room 2049 Justice Headquarters
284 Wellington Street, East Memorial Building
Ottawa, ON K1A 0H8
CANADA

Chile
Dirección Asuntos Jurídicos
Ministerio de Relaciones Exteriores
Teatinos 180, piso 16, Santiago
CHILE
(for purposes of Articles 9 and 10)

Unidad Relaciones Internacionales y Cooperación
Ministerio de Justicia
Morandé 107, 7º piso, Santiago
CHILE
(for purposes of Article 4.3)

Colombia
Ministerio del Interior y Justicia
Carrera 9, No. 14-10
Capital District, Bogotá
COLOMBIA

Czech Republic
Supreme Public Prosecutor’s Office
International Affairs Department
Jezuitská 4
660 55 Brno
CZECH REPUBLIC
(for purposes of Articles 4.3 and 9 before a case is brought before the court)

Ministry of Justice
International Department for Criminal Matters
Vyšehradská 16
128 10 Prague 2
CZECH REPUBLIC
(for purposes of Articles 4.3 and 9 after a case is brought before the court and Article 10 in all cases)
Denmark
Ministry of Justice
Criminal Enforcement Division
Slotsholmsgade 10
DK-1216 Copenhagen
DENMARK

Estonia
Ministry of Justice
International Judicial Co-operation Division
Tõismägi 5a
15191 Tallinn
ESTONIA

Finland
Ministry of Justice
Department of Criminal Policy
P.O. Box 25 / Mannerheimintie 4
00023 Government
FINLAND

France
Ministère de la justice et des libertés
Direction des affaires criminelles et des grâces
Bureau de l’entraide pénale internationale
13 place Vendôme
75042 Paris CEDEX 01
FRANCE

Germany
Bundesamt für Justiz
(Federal Office of Justice)
Adenauerallee 99 – 103
53113 Bonn
GERMANY

Greece
Minister of Justice, Transparency and Human Rights
MLA Department
Mesogeion 96
Athens 11527
GREECE

Hungary
Ministry of Public Administration and Justice
Pf.: 2
1357 Budapest
HUNGARY

Iceland
Director General of Public Prosecutions
Hverfisgata 6
150 Reykjavik
ICELAND
(for purposes of Article 4.3)

Ministry of Justice
Arnarhvæli
150 Reykjavik
ICELAND
(for purposes of Articles 9 and 10)
Ireland
Department of Justice, Equality and Law Reform
94 St. Stephen’s Green
Dublin 2
IRELAND

Israel
Department of International Affairs
Office of the State Attorney
(for purposes of Articles 4.3 and 9 and making requests under Article 10)
Ministry of Foreign Affairs
(for purposes of receiving requests under Article 10)

Italy
Ministero della Giustizia
(Ministry of Justice)
Direzione Generale per la Giustizia Penale
Ufficio II
Via Arenula 70
00186 Rome
ITALY

Japan
OECD Division
Economic Affairs Bureau
Ministry of Foreign Affairs
2-2-1, Kasumigaseki, Chiyoda-ku
Tokyo 100-8919
(Responsible authority, acting as a channel of communication under Article 11)
International Affairs Division
Criminal Affairs Bureau
Ministry of Justice
1-1-1, Kasumigaseki, Chiyoda-ku
Tokyo 100-8977
JAPAN
Telephone: +81 3 3592 7049
Fax: +81 3 3592 7063
Email: infojp@moj.go.jp
MLA requests from countries without a bilateral treaty with Japan should be forwarded via diplomatic routes, but the above division is readily available for consultation on the draft (in either Japanese or English).

Korea
Ministry of Justice
Building #5
Gwacheon Government Complex
Jungang-dong 1
Gwacheon-si, Kyunggi-do
REPUBLIC OF KOREA

Ministry of Foreign Affairs and Trade
60, Sajik-ro 8-gil
Jongno-gu, Seoul
REPUBLIC OF KOREA
Luxembourg
State Prosecutor General
(for purposes of Articles 4.3 and 9)
Ministère de la Justice
13, rue Erasme
L-2934 LUXEMBOURG
(for purposes of Article 10)

Mexico
Procuraduría General de la República
Dirección General de Procedimientos Internacionales
(Director General of International Procedures)
Av. Paseo de la Reforma 211-213
Col. Cuauhtémoc, C.P. 06500
México, Distrito Federal
MEXICO
Telephone: +52 55 53 46 01 13; +52 55 53 43 01 25
Fax: +52 55 53 46 09 02; +52 55 53 46 09 03
Email: dgeaj@pgr.gob.mx
Focal point:
Fernando Reséndiz Wong
Director General de Procedimientos Internacionales
Telephone: 5446-0113 y 5346-0125
Fax: 5346-0902 y 0903
Email: fresendiz@pgr.gob.mx

Netherlands
Ministry of Security & Justice
Postbus 20301
2500 EH Den Haag
NETHERLANDS
National Public Prosecutor’s Office
LIRC
PO Box 891
2700 AW Zoetermeer
The Netherlands

New Zealand
Minister of Foreign Affairs and Trade
195 Lambton Quay
Private Bag 18 901
Wellington 5045
NEW ZEALAND
(for purposes of Articles 4.3 and 10)
Crown Law Office
PO Box 2858
Wellington 6140
NEW ZEALAND
(for purposes of Article 9)
Norway
Ministry of Justice and the Police
P.O. Box 8005 Dep
Civil Department
N-0030 Oslo
NORWAY

Poland
Ministerstwo Sprawiedliwości – Ministry of Justice
International Cooperation and Human Rights Department
Al. Ujazdowskie 11
00 – 950 Warsaw
Poland
Telephone: (48) 22 39 08 70
Fax: (48) 22 32 80 949
Email: dwm@ms.gov.pl

Prokuratura Generalna - Office of the Prosecutor General
Department of International Cooperation
ul. Barska 28/30
02 – 315 Warsaw
Poland
Telephone: 48 (22) 318 94 50
Fax: 48 (22) 318 94 51
Email: pr.bopz@ms.gov.pl

Portugal
Ministry of Justice
Praça do Comércio
1149-019 Lisboa
PORTUGAL

Russian Federation
Prosecutor General's Office
Bolshaya Dmitrovka, 15a, GSP-3
Moscow, 125993
RUSSIA
(for purposes of Article 4.3, Article 9 (for criminal cases) and Article 10)

Ministry of Justice
Jitnaya, 14, GSP-1
Moscow, 119991
RUSSIA
(for purposes of Article 9 for civil cases)

Slovak Republic
Prosecutor General’s Office
(for purposes of Articles 4.3 and 9 and receipt of requests under Article 10)

Ministry of Justice
Judicial Co-operation in Criminal Matters Division
Župne namestie 13
813 11 Bratislava
SLOVAK REPUBLIC
(for purposes of submitting requests under Article 10)
Slovenia
Office of the Prosecutor General of the Republic of Slovenia
Trg OF 13
SI – 1000 Ljubljana
REPUBLIC OF SLOVENIA
Telephone: + 386 1 434 19 35
Email: dtrs@dt-rs.si
(for purposes of Article 4.3)
Ministry of Justice and Public Administration
Department for International Legal Assistance
Directorate for International Cooperation and International Legal Assistance
Župančičeva 3
SI – 1000 Ljubljana
REPUBLIC OF SLOVENIA
Telephone: + 386 1 369 53 94
Email: gp.mpju@gov.si
(for purposes of Articles 9 and 10)

South Africa
Director General
Department of Justice and Constitutional Development
Private Bag X81
Pretoria
SOUTH AFRICA

Spain
Ministerio de Justicia
Subdirección de Cooperación Jurídica Internacional
San Bernardo N° 62-28071
Madrid
SPAIN

Sweden
Ministry of Justice
Division for Criminal Cases and International Judicial Co-operation
Central Authority
SE-103 33 Stockholm
SWEDEN
Telephone: +46 8 405 10 00 (switchboard); +46 8 405 45 00 (office)
Fax: +46 8 405 46 76
Email: birs@justice.ministry.se

Ministry for Foreign Affairs
Gustav Adolfs torg 1
SE-103 39 Stockholm
SWEDEN

Switzerland
Federal Office of Justice
Dep. of international legal assistance
Bundesrain 20
CH-3003 Berne
SWITZERLAND

Turkey
Ministry of Justice
General Directorate of International Law and Foreign Relations
Mustafa Kemal Mah. 2151
Cad: No:34/A Söğütözü
TURKEY
United Kingdom Central Authority
Judicial Co-operation Unit
Home Office
5th Floor, Fry Building
2 Marsham Street
London SW1P 4DF
UNITED KINGDOM
Website: www.homeoffice.gov.uk/publications/police/operational-policing/mla-guidelines-9th-ed

United States
Department of Justice
Office of International Affairs
1301 New York Avenue, N.W.
Suite 800
Washington, DC 20005
UNITED STATES OF AMERICA
(for purposes of Articles 4.3 and 9)

Department of State
Office of the Legal Advisor, Law Enforcement and Intelligence
2201 C St. NW, Room 5419
Washington, DC 20520
UNITED STATES OF AMERICA
(for purposes of Article 10)
ANNEX 4:

GLOSSARY OF TERMS

ARINSA  Asset Recovery Inter-Agency Network of South Africa
CARIN  Camden Asset Recover Inter-Agency Network

central authority  The agency or other government body with responsibility and authority to receive requests for MLA and either execute them or convey them to another competent body for execution

EJN  European Network of International Legal Cooperation
Eurojust  European Union’s Judicial Cooperation Unit

FATF  Financial Action Task Force
FIU  Financial Intelligence Unit
IberRed  Iberoamerican Network of International Legal Cooperation

JIT  Joint Investigation Team
MLA  Mutual legal assistance, the formal provision of legal assistance way in which countries request and provide assistance in criminal cases, usually by helping to obtain evidence located in one country to assist in a criminal investigation or prosecution in another country

MLAT  Mutual legal assistance treaty
OAS  Organization of American States

OAS Criminal Network  OAS Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition

OECD  Organisation for Economic Co-operation and Development
OECD Anti-Bribery Convention or Convention  OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997)\(^\text{103}\)

OLAF  European Commission’s European Anti-Fraud Office

Party [to the Convention]  A Party to the OECD Anti-Bribery Convention
recipient country  Country receiving an MLA request
requesting country  Country requesting MLA

RRAG-GAFISUD  Financial Action Task Force of South America

StAR Initiative  Stolen Asset Recovery Initiative of the World Bank and UNODC

UNCAC  United Nations Convention against Corruption (2004)\(^\text{104}\)

UNODC  United Nations Office on Drugs and Crime, the body with oversight of the UNCAC

WGB or Working Group [on Bribery]  OECD Working Group on Bribery in International Business Transactions, the members of which are Parties to the OECD Anti-Bribery Convention
