

Breaking down Barriers: International Cooperation in Combating Foreign Bribery

(14:00 - 15:15, CC 1)

Key Facts

- A December 2015 OECD survey found 70% of anti-corruption law enforcement officials report that mutual legal assistance challenges have had a negative impact on their ability to carry out anti-corruption work.
- 13% of foreign bribery cases were brought to the attention of law enforcement authorities through the use of formal and informal mutual legal assistance between countries for related criminal investigations accounts. (OECD Foreign Bribery Report, 2014).
- Article 9 of the Anti-Bribery Convention provides that Parties should use all tools available to provide “prompt and effective legal assistance” to other Parties.
- Article 46 of the United Nations Convention against Corruption requires Parties to render to one another the “widest measure” of mutual legal assistance.

Why is international co-operation important?

International co-operation in the law enforcement and regulatory contexts can include formal mutual legal assistance (MLA), extradition, and informal exchanges of information for intelligence gathering purposes where lawfully allowed. Effective international co-operation between countries is crucial for the successful investigation, prosecution and sanction of international corruption offences.

Fast and efficient responses to requests for international co-operation can greatly increase the success of investigations and prosecutions. When the MLA and extradition system works 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. Delays are significant impediments.

MLA requests in anti-corruption cases commonly seek:

- Documents, e.g. bank or company records
- Statements and interviews
- Asset tracing
- Search and seizure
- Asset freezing, restraining, confiscating and forfeiting

What is being done at the international level to help?

The OECD is a hub for bringing together anti-corruption practitioners from around the world to share experiences, learn from each other and build stronger networks. The Working Group on Bribery has long supported biannual meetings for its law enforcement officials, to which non-members are regularly invited. This initiative could help to explain why the majority of successfully finalised foreign bribery cases involve only members of the Working Group.

In addition, in December 2015, the OECD hosted the first meeting of the Global Network of Law Enforcement Practitioners against Corruption. It brought together over 100 anti-corruption law enforcement practitioners from over 50 countries who identified good enforcement practices, discussed real-life corruption cases, and established direct professional contacts. Other similar groupings at the regional level include the OECD's Anti-Corruption Network for Eastern Europe and Central Asia, the Asian Development Bank/OECD Asia-Pacific Law Enforcement Practitioners Network, and the Network of Anti-Corruption Authorities and Law Enforcement Agencies of Asia-Pacific Economic Co-operation.

Key areas to discuss

Despite national and international efforts, obtaining effective MLA remains a significant obstacle to enforcement of corruption offences for many practitioners. Poor communication, weak law enforcement ties between countries, inadequate MLA requests, differing legal systems and criminal justice standards, and varied legal processes, are commonly cited by practitioners as major barriers to effective MLA. There are many factors underlying these problems, such as limited financial means for covering the costs of a request; limited availability of personnel; inadequate language resources; lack of technical capacity necessary to respond, for example relating to telecommunications interception; and the use of slow methods of transmitting information, such as through formal diplomatic channels.

Stronger networks among law enforcement and central authorities would lead to better communication and better understanding of legal systems and procedures. The resources, tools, expertise and capacity of central authorities and law enforcement authorities must be sufficient to provide prompt and full responses to MLA requests. For example, some countries have built effective electronic database systems to track requests at the national level. Technology could also be used expedite exchanges of MLA and to enhance access to information, such as the legal and procedural requirements that must be met for a country to provide assistance.

The five most significant systemic barriers to obtaining effective MLA

- Use of slow methods of transmitting information, e.g. through formal diplomatic channels
- Different legal systems or criminal justice standards, such as dual criminality requirements or due process
- Legal procedures, such as legal challenges or difficult processes to obtain bank records
- Poor communication or weak law enforcement ties/networks between the countries involved
- Insufficient resources, expertise or capacity for countries to respond to requests for MLA

Source: 2015 OECD Survey on Business Integrity and Corporate Governance

Discussion questions

- What tools do countries and international organisations currently have available to help streamline the MLA process? What advances can be made?
- What modern techniques are being used to overcome international co-operation obstacles?
- What are the benchmarks for adequate resources and tools for managing MLA requests? Are they being met?