Overcoming international co-operation challenges in corruption cases

Perspectives from the April 2016 Beijing Workshop
OVERCOMING INTERNATIONAL CO-OPERATION CHALLENGES IN CORRUPTION CASES

Perspectives from the “Beijing Workshop” of April 2016
A Workshop on Mutual Legal Assistance in International Corruption Cases took place in Beijing on 13-14 April 2016 (Beijing Workshop). It was co-hosted by the Chinese Ministry of Justice, the UK Foreign and Commonwealth Office (UK FCO) British Embassy in Beijing, and the Organisation for Economic Co-operation and Development (OECD), in co-operation with the United Nations Office on Drugs and Crime (UNODC). Over 70 practitioners in the field of anti-corruption identified contemporary challenges to seeking and providing mutual legal assistance (MLA) and other forms of international co-operation and discussed solutions based on real life practice. The participants comprised central authority officials, investigators, prosecutors and investigating magistrates from over 20 countries, including 15 G20 countries. The OECD, UNODC, World Bank, Interpol and the University of Kentucky also participated.

The paper summarises views expressed by practitioners at the Beijing Workshop with respect to contemporary challenges in international co-operation in corruption cases and possible solutions to mitigate these challenges. It has a practical orientation and is intended to contribute to ongoing dialogue at national and multilateral levels on enhancing international co-operation. Specifically, it seeks to advance the G20 Anti-Corruption Working Group’s (G20 ACWG) 2015-16 Anti-Corruption Action Plan and the G20 High-Level Principles on MLA. It also builds on the reiteration by G20 leaders in Antalya that international co-operation is an essential tool to advance the global anticorruption agenda. This paper also seeks to raise awareness of existing tools and ongoing efforts to promote effective international co-operation, including those of Interpol, the OECD and the United Nations.

In June 2016, the OECD Secretariat shared a first draft of the paper with Beijing Workshop participants, the G20 ACWG, and the OECD Working Group on Bribery in International Business Transactions. Countries were invited to complete a short survey on international co-operation. Ten countries (Australia, Brazil, Germany, Italy, Portugal, South Africa, Sweden Switzerland Turkey, and the United Kingdom), which includes seven G20 countries, responded to the survey. Annex A provides a compilation of survey responses. References to the survey data are included in the body of this paper where relevant.

The development of this paper has been led by the Anti-Corruption Division of the OECD Directorate for Financial and Enterprise Affairs with funding by the UK FCO. The paper and its methodology were not formally adopted or approved by the member countries of the G20 or the OECD Working Group on Bribery in International Business Transactions, as noted in the disclaimer below.
**Introduction and background**

Since the first G20 Anti-Corruption Action Plan in 2010, G20 countries have committed to enhancing the effectiveness of the fight against corruption by strengthening international co-operation and leading by example. In all subsequent Action Plans, G20 countries have reiterated their commitment to co-operation to investigate and prosecute wrongdoing, recover the proceeds of such offences, and deny entry and safe haven to the corrupt. An array of tools has been developed to promote better international co-operation in the particular context of international corruption cases. Among them, the 2013 G20 High-Level Principles on Mutual Legal Assistance provide political recognition of the importance of MLA and identify effective mechanisms to provide MLA (see Annex B).

Furthermore, the States Parties to the OECD Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention against Corruption (UNCAC) have made legally binding commitments with respect to international co-operation in the context of these respective instruments. The implementation of these commitments is assessed under the peer review mechanisms attached to each convention.

Although these initiatives have contributed substantially to better international co-operation, and have helped to overcome many international co-operation challenges, obstacles to international co-operation in corruption cases remain. Studies and reports by the OECD Working Group on Bribery in International Business Transactions (WGB) and the Conference of States Parties to the UNCAC, including its Working Group on Asset Recovery and expert group meetings on international co-operation, have also cited challenges in obtaining necessary information or evidence through the MLA process. Similar challenges in practice have been reported in the context of the Working Group on International Co-operation functioning within the framework of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime (UNTOC), to the extent that this Convention is applicable in corruption cases. This is not to say that the responsibility to address these challenges rests with the requested state rather than the requesting state. Indeed, requesting and requested states share mutual responsibility in the MLA process, and the requesting state must ensure its request meets the relevant legal requirements of the requested state.

This paper focuses on four areas discussed at the Beijing Workshop:

I. Networks for MLA practitioners
II. Complementary forms of international co-operation
III. Resources and capacity
IV. Institutional, legal and technological tools and innovations for overcoming international co-operation challenges

The accompanying observations are broadly framed but practically focused and sufficiently flexible to accommodate differences in countries’ institutional and legal frameworks.

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1. For example, Article 9 of the OECD Anti-Bribery Convention provides that “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.” Article 46.1 of the United Nations Convention against Corruption (UNCAC) provides that “State Parties shall afford one another the widest measure of mutual legal assistance in investigations, proceedings and judicial proceedings in relation to the offences covered by this Convention.”

I. Relying on networks to improve MLA in corruption cases

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<td>Countries could encourage and support participation of their law enforcement officials in existing networks in the anti-corruption field with a view to facilitating MLA in international corruption cases.</td>
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Principle 4 of the *G20 High-Level Principles on MLA* highlights the importance of facilitating direct contacts between law enforcement agencies to improve MLA in transnational corruption cases. Likewise, Section XIII of the *2009 OECD Anti-Bribery Recommendation* recognises the usefulness of international and regional law enforcement networks for the effective investigation and prosecution of transnational bribery. Law enforcement networks offer opportunities to foster strong relationships and direct contacts between law enforcement officials involved in the investigation and prosecution of corruption and related offences, between these officials and central authorities, and between central authorities in different countries.

The 2012 Typology on MLA in Foreign Bribery Cases identified networks as one of the possible solutions for ensuring timely and adequate responses to MLA. It relied on specific foreign bribery cases to illustrate how the OECD Working Group on Bribery Network of Law Enforcement Officials (WGB LEO) had been instrumental in facilitating exchange of information between jurisdictions.3 Practitioners at the Beijing workshop also emphasised that networks are key to improve MLA. In particular, networks:

- **Build professional contacts and trust:** identifying the right counterpart in a foreign jurisdiction can greatly facilitate the exchange of information. This is of course particularly true within the European Union which allows for direct prosecutor-to-prosecutor exchange of information. Officials within central authorities can achieve the same benefits through participation in networks and the development of strong relationships. More generally, personal relations may facilitate spontaneous sharing of information, which is vital to the prompt investigation of corruption cases. Prosecutors may also share information more willingly with peers they know, and where there is no legal barrier to such sharing. Beyond the development of bilateral relationships, law enforcement officials may be able to rely on the contacts established through the networks to reach out to third countries. For example, a European prosecutor participating in the WGB LEO may rely on a colleague in a Latin American country to facilitate contact MLA with a third country in Latin American.

- **Facilitate comprehensive and timely communication:** networks are critical in providing a foundation for smooth and speedy execution of MLA requests. Where formal MLA requests must be transmitted via central authorities, law enforcement officials may be able to reach out to their counterparts abroad before transmitting the official request to exchange advice on the procedures and substantive requirements with a view to obtaining prompt and effective MLA (pre-MLA assistance), or to identify other means by which the information may be obtained (informal co-operation). This can not only save resources in the requesting and requested country, but also ensure greater admissibility of the evidence obtained.

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• **Facilitate follow-up of MLA requests**: where permitted, contacts can also be relied on to obtain information about the status of a request when delays are encountered, and to identify solutions to overcome the causes of such delays.

• **Create opportunities to share experience**: beyond sharing of information on specific MLA requests, networks also offer opportunities for prosecutors to share effective, practical methods for investigation and prosecution of complex multijurisdictional cases, including how to formulate MLA requests in their own countries, or regarding third countries.

Reliance on networks is particularly beneficial in the context of large-scale corruption cases, which are increasingly transnational in nature, and therefore largely depend on MLA. Participants in the Beijing workshop underlined the critical need to support and strengthen existing law enforcement networks to facilitate MLA in corruption cases. Networks that focus on corruption cases are more likely to bring together law enforcement practitioners specialised in this type of offence and who are therefore more likely to interact with each other in the context of international corruption cases. Furthermore, these networks allow prosecutors to discuss practical and legal challenges particular to this type of offence and share best practices, including with respect to MLA. Emerging trends on techniques used by bribers may also be discussed, for instance in relation to specific industrial sectors.

Such networks of law enforcement officials focusing on corruption and bribery already exist and are relied on to facilitate MLA in international corruption cases. Most of these networks meet on a regular basis, thus ensuring that relationships are maintained and lines of communication remain open. Other international and regional networks that focus more broadly on international co-operation in criminal matters often assist specialised networks. Examples of such networks include:

• **The Global Focal Point Initiative** supported by INTERPOL and the StAR Initiative was launched in January 2009. Its objective is to support the investigation and prosecution of corruption and economic crime through international co-operation and informal assistance (assistance given prior and subsequent to the submission of formal requests for mutual legal assistance) for the purpose of identifying, tracing, freezing and ultimately recovering the proceeds of corruption and economic crime. Currently, 215 dedicated focal points representing 115 countries are participating in the Initiative.4

• **The WGB Network of Law Enforcement Officials** (WGB LEO) meets twice a year and brings together officials from the 41 countries of the OECD Woking Group on Bribery, as well as observers.

• A law enforcement network has also been set up since 1998 in the context of the **Anti-Corruption Network for Eastern Europe and Central Asia**, and a similar network under the auspices of the ADB-OECD **Anti-Corruption Initiative for Asia and the Pacific** since 2015. Regional studies on MLA in corruption cases are also being prepared by these two initiatives.5 In addition, the **Asia-Pacific Economic Cooperation (APEC) Network of Anti-Corruption Authorities and Law Enforcement Agencies** was first formed in Beijing in August 2014 and continues to meet on an annual basis.

• **The Global Law Enforcement Network of Practitioners against Corruption** (GLEN), which met for the first time in December 2015 in Paris, builds on these experiences. It brought together 104 participants from over 50 countries (including 11 G20 countries) representing both the “demand” and “supply” sides of bribery and corruption.

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4 [www.interpol.int/Crime-areas/Corruption/International-asset-recovery](www.interpol.int/Crime-areas/Corruption/International-asset-recovery)

Respondents to the survey reported on their participation in many different networks, some specialised in corruption and related offences, others covering co-operation in criminal matters more broadly (see Annex A). Networks that bring together financial intelligence units were also put forward as useful in facilitating MLA in relation to transnational corruption offences. In its survey responses, one country provided an example illustrating how direct contacts established through anti-corruption networks helped prepare an MLA request relating to the interview of a witness in a corruption case; as a result of these prior contacts, legal demands from both the requesting and requested country were clarified, and the interview was able to take place promptly, with positive results in the case in question. Another country explained how the StAR Initiative was able to facilitate contact between authorities in two countries, which enabled police-to-police co-operation, in turn leading to efficient outgoing and incoming MLA and added value to investigations and prosecutions in both countries.

II. Complementary forms of co-operation

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<td>Countries could develop or broaden the use of liaison officers posted in foreign jurisdictions so as to easily communicate with and seek assistance from other jurisdictions.</td>
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<td>Countries could encourage and support complementary forms of international cooperation (as defined in this section) that can facilitate formal MLA whenever possible.</td>
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<td>Countries could consult and cooperate with international organisations, including international and regional development banks, regarding information sharing and sanctioning of corruption offences in accordance with a country’s national laws and processes.</td>
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Complementary forms of co-operation generally occur when law enforcement officials seek preliminary working information or evidence from their foreign counterparts during various stages of the investigation process and court proceedings. Complementary forms of co-operation are not intended to act as a substitute for MLA, but can greatly facilitate the MLA process or even eliminate the need to make an MLA request. In such instances, the necessary arrangements are made between the relevant police officers, prosecutors, or magistrates without invoking MLA treaties or conventions, in conformity with a treaty, if applicable, or national laws.

Practitioners at the Workshop voiced that complementary forms of co-operation are the cornerstone of international anti-corruption efforts because they allow law enforcement to be dynamic. As such, Principle 4 of the G20 High-Level Principles on MLA specifically encourages “alternative forms of co-operation.” Section XIII of the 2009 Anti-Bribery Recommendation also promotes co-operation among countries including, where appropriate “through such means as the sharing of information spontaneously or upon request, provision of evidence, extradition, and the identification, freezing, seizure, confiscation and recovery of the proceeds of bribery of foreign public officials.”

The UNCAC promotes complementary forms of international co-operation by requiring countries to enhance and to establish channels of communication between their competent authorities “in order to facilitate the secure and rapid exchange of information,”6 and “to facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States

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6 UNCAC, Article 48(1)(a), See also UNTOC Article 27(1)(a)
Parties concerned, the posting of liaison officers”. Additionally, the UNCAC encourages the spontaneous sharing of information without a prior request between State Parties to the Convention.

1. Facilitating direct contacts between law enforcement agencies

The liaison officer system is significant because it allows police officers, prosecutors, or magistrates based in a foreign jurisdiction direct contact with the authorities of the host country. They can develop professional relationships, build confidence and trust, and generally facilitate co-operation between the law enforcement agencies in the countries involved. Sending law enforcement officials on a temporary mission for particular inquiries or missions is not usually regarded as an adequate substitute for liaison officers, because often the former cannot acquire sufficient information and understanding about the country in a short time. The appointment of a long term liaison officer helps mitigate some of these challenges. Furthermore, experience gained during the posting can be shared on the officer’s return.

Differences in legal systems mean that states may choose to post different types of liaison officers abroad. For example, in a system where judges, magistrates, or prosecutors play a significant role in corruption investigations, having a judge, magistrate, or prosecutor as a liaison officer may also add significant value to understanding the overall legal process. When the legal systems of the countries concerned are very different, these particular liaison officers who have formal legal training can help advise law enforcement and prosecutorial authorities, both in their own country and in the host country, on how best to formulate a request for assistance.

Moreover, the posting of liaison officers may allow for the spontaneous provision of information that one party thinks may be of interest to their foreign counterparts, such as information about the arrival of a criminal suspect in the foreign jurisdiction, the movement of funds in accordance with national laws and processes, or information on beneficial ownership.

Many respondents to the survey stated that they have liaison officers and magistrate judges posted in other jurisdictions, either at embassies or posted in international organisations such as Europol or Interpol. In the survey, countries provided useful examples of cases where liaison officers significantly facilitated the MLA process and provided additional technical support to law enforcement authorities in multiple jurisdictions. In one case, a suspect hiding in a foreign country had to be interviewed and authorities were unsure if he was in a given jurisdiction. Through the liaison officer, the investigating country was able to ascertain the suspect’s whereabouts in that jurisdiction, which allowed authorities to issue an MLA request in a more efficient manner. In another transnational corruption case, the liaison officer facilitated contact with the competent domestic public prosecutor’s office and supported the foreign prosecutors by providing advice on how to meet formal requirements when carrying out a request for MLA.

2. Co-operation with international governmental organisations

International organisations play a crucial role in detecting and investigating allegations of corruption, referring cases to national authorities for investigation and prosecution, and facilitating complementary forms of international co-operation. In this respect, Section XIII(ii) of the 2009 OECD Anti-Bribery Recommendation instructs countries to “seriously investigate credible allegations of bribery of foreign public officials referred to them by international governmental organisations, such as the international and regional development banks.”

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7 UNCAC, Article 48(1)(e). See also UNTOC Article 27(1)(d)
8 UNCAC, Articles 48 and 46.4-5.
Such co-operation takes place regularly, for instance, between the World Bank’s Integrity Vice-Presidency and national law enforcement authorities. Under the World Bank’s financing agreements as well as Memorandums of Understanding (MOUs) signed with certain countries, the Bank alerts national authorities to possible legal violations, including corruption instances occurring in Bank-financed projects. Over 400 referrals have occurred since 1999. Such complementary international co-operation has been instrumental in furthering the fight against transnational corruption.

The principle of information sharing between international organisations and national law enforcement authorities has been reinforced by a recent Canadian Supreme Court decision regarding the use of evidence shared by the World Bank in a Canadian anti-corruption case. In the case of World Bank v. Wallace, the Canadian Supreme Court, upholding the World Bank’s immunity and right to keep its underlying investigation files confidential, ruled that, “In order to tackle this global problem, worldwide co-operation is needed. When international financial organisations, such as the World Bank Group, share information gathered from informants across the world with the law enforcement agencies of member states, they help achieve what neither could do on their own.”

3. Developing mechanisms for parallel and joint investigations

Law enforcement officials in different countries can co-ordinate their investigative efforts in a variety of ways when investigating the same or related international corruption matters. This section discusses the utility of both parallel and joint investigations.

In a parallel investigation each country maintains its own investigation, but coordinates regularly with counterpart investigations, sharing investigative leads, information and, where permitted, evidence. Parallel investigations also allow for advance determinations of where particular persons will be prosecuted, or an appropriate manner for dividing prosecutions. Parallel investigations are generally based on existing law or treaties, such as the UNCAC, or can be established through either MoUs or Operational Action Plans (OAPs). These agreements can be case-specific or blanket arrangements to coordinate on a particular type of issue. It is important to note that there are significant practical concerns that must be dealt with in establishing a parallel investigation. There can be constitutionality issues, disclosure issues, data privacy issues, privileges issues, and due process issues that can arise. Indeed, the only formal mechanism that currently 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 countries of the 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 and evidence between its party countries without the need for further formal MLA requests. EU practitioners at the Workshop described the process as highly efficient. For example, participants of a successful JIT noted that the prosecutors from both 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 also travelled to each other’s countries to conduct interviews and provide additional information on each country’s legal system and requirements.

In more integrated systems such as the EU, organisations such as the European Judicial Network (EJN) or Eurojust can facilitate parallel or joint investigations. As explained by a Beijing Workshop participant, the EJN, for instance, assists in putting in contact relevant law enforcement officials in specific cases. Eurojust facilitates meetings between these officials, providing, among other services, meeting facilities and interpretation. Eurojust can further assist these law enforcement officials in

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10 Ibid., pp. 82-83.
determining whether and how JITs may be established in a specific case. These mechanisms have assisted in effective enforcement of several international corruption cases. For instance, Eurojust facilitated the first meetings between law enforcement officials of two EU countries which were investigating the bribe payers on the one hand, and the bribe recipients on the other. Eurojust assisted the two countries in setting up a JIT, and acted itself as a “third-party member” and advisor in this Team. In the context of the JIT, the two countries cooperated in organising search and seizure operations, preparing and interviewing witnesses, and requesting MLA from a third country.\textsuperscript{11}

The efforts announced by countries at the London Anticorruption Summit in May 2016 on international co-operation, including the proposal for an International Anti-Corruption Coordination Centre,\textsuperscript{12} could further contribute to facilitating complementary forms of co-operation addressed above. Similarly, the G20 ACWG’s 2017-18 Action Plan focuses on concrete and practical measures to improve co-operation between law enforcement and other relevant authorities within and between G20 members.\textsuperscript{13}

III. Providing adequate resources and building capacity

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<td>Adequate financial and human resources are of course necessary for the proper preparation of outgoing, and for the proper execution of incoming, MLA requests. Noting that it is difficult to define what is adequate in this context, this section describes general elements of an effective MLA system with respect to its resources and capacity. Countries are encouraged to review their systems against these general elements.</td>
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<td>Countries are encouraged to continue to seek and provide assistance to develop and enhance each other’s MLA capacity. The findings on the implementation of chapter IV of the UNCAC emerging from the first review cycle of the Mechanism for the Review of Implementation of the Convention provide a solid body of knowledge about technical assistance needs that should be addressed in order to enhance the capacity of States parties to better use international co-operation mechanisms, in line with the requirements of the UNCAC.</td>
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The OECD WGB, the UNCAC COP, and the UNTOC COP have found that the provision of adequate tools, expertise and capacity for responding to incoming requests is essential to improving the operation of international co-operation systems. For example, the State of Implementation of the United Nations Convention against Corruption lists limited human resources and inadequate technological and institutional capacities as notable obstacles to effective international co-operation in the area of law enforcement.\textsuperscript{14}

The G20 has also long recognised this issue. In its 2015-2016 G20 Anti-Corruption Implementation Plan, the G20 ACWG undertook to review the recommendations relating to international co-operation arising from the UNCAC Implementation Review Mechanism and other similar international review mechanisms and to discuss possible next steps for responding to implementation gaps and challenges. Specifically, Principle 2 of the High-Level Principles on MLA endorses the establishment of an


\textsuperscript{12} Anti-corruption Summit London (May 2016), Communiqué, para. 16, www.gov.uk.


\textsuperscript{14} The study on the State of Implementation of the United Nations Convention against Corruption was prepared by UNODC in 2015 based on the completed UNCAC implementation reviews. See notably page 213, www.unodc.org.
effective institutional framework for MLA by “ensuring resources for the provision and requesting of MLA are adequate and efficiently used.” Academic research also supports the call for proper resources.15

Sufficient financial and human resources are necessary for the proper preparation of outgoing requests for MLA and for the proper execution of incoming requests. Resources are also needed to overcome language differences and to perform services of a technical nature such as conducting telecommunications interception.16 In short, when resources are too scarce, MLA requests are not actionable, not executed or are executed too slowly or ineffectively. These issues are amplified in international corruption cases involving multilingual, complex financial records at multiple locations. The increasing number of requests for international communications data is also adding pressure to the limited resources of MLA practitioners, but despite this growing pressure, research suggests few central authorities have received increased resources in recent years.17 Practitioners and academics have called for training for law enforcement practitioners and central authorities on crafting narrow and legitimate requests for MLA, and ensuring adequate MLA staffing to review, track and process incoming requests and to follow-up outgoing requests.18

This discussion raises the question of how to measure “adequacy” in the MLA context. Clearly, it evades precise definition; for example, there is no one-size-fits-all training module for MLA practitioners and no mathematical formula for the optimum ratio of practitioners to incoming MLA requests. However, part of the answer can be found in the collective experiences of law enforcement and central authority officials, coupled with the growing body of studies by academics and international organisations. For example, UNODC provides guidance on effective central authorities19 and Article 46(13) of UNCAC requires the establishment of a central office to receive incoming MLA requests and manage outgoing requests. Drawing from these valuable sources, below is a non-exhaustive list of general elements that countries consider as they seek to improve the MLA process:

- One central office with authority to receive incoming MLA requests and to manage outgoing requests. Some of the technical features of an effective central authority could include:
  - Clear, up to date, and easily accessible contact information for the central authority.
  - Clear, up to date, and easily accessible information about the rules and procedures for seeking MLA from the country, such as MLA practice guides prepared by the G20 and APEC.
  - Clear internal policies applicable to internal MLA procedures defining the corresponding procedures, as well as mandates and responsibilities of relevant law enforcement agencies relevant to the execution and submission of MLA requests.
  - 24/7 accessibility, essential for managing urgent requests for assistance.
  - Adequate equipment, including computers with case tracking software to easily determine progress made on any MLA request and its current status at any given time.

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✓ Allowing for use of email and other technologies to take preparatory measures and facilitate data exchange before an MLA request is submitted, followed subsequently by a formal written request.
✓ A mechanism for prioritising requests and set internal deadlines for responses.
✓ Possibility of decentralising the task of responding to incoming requests for co-operation to foster greater expediency, where appropriate.
✓ Ability to transmit requests directly between central authorities (instead of using diplomatic channels).
✓ Designation of the same government department as central authority for almost all international treaties on co-operation in criminal matters, including the ones relating to combating corruption, as the central authority. This makes it possible to streamline the process and allows the timely identification of weaknesses in the system.

• Practitioners at the Beijing Workshop emphasised that the central authority must not act as a postal service – i.e., simply receiving and distributing MLA requests.20 It should have an active and empowered role in the MLA process and serve as an advocate for the MLA process itself. Important elements could include:
  ✓ An adequate number of staff for the volume of work, including legal expertise, criminal justice expertise (e.g., prosecutors), language capabilities and administrative support.
  ✓ Ability of the staff of the central authority to exercise their judgment in executing MLA requests independently from outside influence.
  ✓ Skills and expertise in the MLA area, rather than a particular category of offence.
  ✓ Authority to directly execute MLA requests, where possible and consistent with applicable treaty regulations and domestic legal standards, and to require appropriate domestic officials (e.g., police, prosecutors, magistrates or judges) to fully and promptly action a request, as applicable.
  ✓ Active coordination with relevant agencies involved in the execution of international co-operation requests.
  ✓ Training for staff of the central authority, law enforcement practitioners (including prosecutors), and judges on the MLA framework including on a comparative overview of pertinent legal requirements in foreign jurisdictions, the procedural requirements of their national MLA legislation and domestic criminal procedures.
  ✓ Adaptability and good will on the side of the requesting and requested state: a requesting state could consider reaching out to the requested state to explore whether there are alternatives prior to making a formal MLA request; and before a requested state refuses to grant assistance, it is encouraged to consult the requesting state to strive to find alternative solutions.
  ✓ Ability of the staff of the central authority to collect in a systematic manner statistical data on MLA requests.

The countries that responded to the survey on MLA for this paper (see Annex A) generally report high levels of implementation of the above elements. For example, all respondents have established a central agency to receive incoming MLA requests and manage outgoing requests, all provide information about rules of procedure for seeking MLA, and all consider they have a sufficient number

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20 Commenting on the earlier iteration of this paper, one country noted that a truly passive central authority is not objectionable if another entity is fully responsible for preparing and executing requests.
of staff. Most respondents (seven or eight out of nine) report having adequate equipment, a mechanism for prioritisation, internal deadlines for responding to requests, staff with wide ranging expertise and specialised skills, power to require domestic law enforcement to action an incoming request, active coordination with other relevant agencies, the ability to carry out functions independent from outside influence, relevant training for staff. Most respondents (eight out of nine) would consult the requesting country before refusing any request for assistance. Only one central authority is staffed 24/7 and two are empowered to directly execute MLA requests in certain circumstances.

As central authority and law enforcement officials noted during the Beijing Workshop, all countries share a collective responsibility to help each other achieve the necessary capacity and develop appropriate expertise on making and receiving international co-operation. Disseminating good practices and delivering training seminars are among the measures that can help. Direct assistance in particular cases can also be provided to plug resource gaps, for example by helping another country to draft its own request, covering some of the costs incurred by the country responding to the MLA request, or offering personnel to assist with certain procedures in the responding country (such as deploying police officers to perform search and seizure or information technology experts to help collect electronic evidence).

IV. Embracing institutional, legal and technological innovations

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<td>Countries and international organisations could consider undertaking further analysis on the feasibility of establishing a single, easily accessible, online platform that brings together the wide range of MLA tools developed by international organisations such as the Interpol, OECD, UN and others.</td>
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<td>Multilateral anti-corruption instruments provide a legal basis for international co-operation in transnational corruption cases. While some countries have experience in using these instruments for international co-operation, all States Parties are encouraged to utilise these instruments as appropriate.</td>
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<td>To the extent that it does not already occur, countries could consider how existing technologies can be better utilised by central authorities and law enforcement practitioners to achieve efficiencies in the MLA process, and to continue discussing how technological innovations can further improve MLA in the future.</td>
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International organisations and countries continue to develop institutional, legal and technological innovations to help practitioners navigate the MLA process and enhance its functionality. In the institutional sphere, technical assistance programmes may focus on the establishment of effective central authorities and the building of their capacity. Such programmes may include support to the creation and delineation of the work of units responsible for preparing requests, centralising all information about incoming and outgoing requests, and monitoring action taken in response. It may also involve the development of standard operating procedures and memorandums of understanding between the central authority and other relevant national authorities and institutions, or the development of guidelines for the preparation of requests.

There exists an array of guidelines, directories, manuals, handbooks and model laws produced by Europol, G20, Interpol, OECD, UN, and others. For example, the 2012 Step-by-Step Guide on Requesting MLA in Criminal Matters from G20 Countries provides information on contact points and
preconditions that must be met before MLA may be granted by G20 countries. Other international initiatives include the UNODC Manual on MLA and Extradition, UNODC Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime, publications by the Stolen Asset Recovery (StAR) Initiative of the World Bank and UNODC, the MLA Request Writer Tool of the UNODC, OECD Typology on MLA in Foreign Bribery Cases, the Judicial Cooperation Handbook of the G, and the Interpol communications channel I-24/7.

The MLA Request Writer Tool is a software application designed by the UNODC Secretariat to facilitate prompt communication and execution of MLA requests that contain all necessary information. It was designed to help avoid legal pitfalls and obstacles in both the requested and the requesting States when different legal systems and practices are involved. The MLA Tool has recently been expanded – and is currently being finalised and tested in practice – with the following new guiding elements:

- Integration of additional specific forms or means of international co-operation in criminal matters, including transfer of criminal proceedings and videoconferencing;

- Inclusion of references to joint investigations and international co-operation to conduct controlled deliveries;

- Addition of substantive text in the so called "digital evidence module" (taking into account all pertinent developments in the field of international co-operation to combat cybercrime and covering the following forms of co-operation: expedited preservation of stored computer data; ensuring access to stored computer data; and real-time collection of traffic data);

- Streamlining of the asset recovery features of the tool to avoid overlaps and repetition with the traditional MLA features.

The added value of the new version of the tool, from a technical point of view, is that it supports all major operating platforms and does not require internet connection to function. It is an HTML-based stand-alone simple application whose features can be used by the drafter in isolated or secure environments.

Interpol’s arsenal has also been bolstered with a new Silver Notice to facilitate identifying, monitoring, freezing and confiscating assets related to a person of interest in a criminal investigation. In addition, Interpol’s online I-24/7 Network is available to facilitate international co-operation, including transmission of MLA requests on a voluntary basis. The focal points of the Global Focal Point Initiative supported by INTERPOL and the StAR can exchange information and technical knowledge on corruption and asset recovery through the secure communication system I-SECOM, which is connected to the INTERPOL I-24/7 secure communication network. Officials at the Beijing Workshop voiced that these tools are valuable and suggested establishing, as a further measure, a single, consolidated, online access point to make it easier to find all relevant resources in one place. Most responses to the survey on MLA for this paper (Annex A) responded positively to this idea, but some raised possible challenges with regard to implementation.

22 www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf
Turning to legal innovations, particularly regarding an effective legal basis for providing and requesting MLA in bribery and corruption cases (Principle 1 of the G20 High-Level Principles on MLA), countries are strongly encouraged to utilise the existing multilateral treaties as a basis for international co-operation in transnational corruption cases where possible. With nearly universal ratification (180 Parties), UNCAC is the leading multilateral instrument enabling international co-operation on corruption, including for MLA. Other treaties, including the UN Convention against Transnational Organized Crime, the OECD Anti-Bribery Convention with respect to international co-operation in foreign bribery cases, as well as regional anti-corruption and mutual legal assistance instruments (e.g., OAS, ASEAN), may also provide a basis for international co-operation. While some countries have experience in using these instruments for international co-operation, it is unclear that practitioners in all countries are aware of this usage and the OECD and UNODC encourages all the States Parties to these instruments to utilise them as appropriate. Seven out of ten countries that responded to the survey on MLA for this paper (Annex A) have relied on multilateral instruments as a legal basis for seeking or providing MLA in an international corruption case.

Technical assistance activities can support the drafting and promulgation of national laws on MLA based on legal tools and international good practice. The UNODC model law on mutual assistance in criminal matters27 represents an important tool in that respect. At the treaty level, the Model Treaty on Mutual Assistance in Criminal Matters28 is also a key technical assistance tool for States seeking to conclude bilateral agreements to enhance the effectiveness of extradition or MLA.

Finally, how can technology aid the international co-operation process now and in the future? While the increased adoption of certain technologies has led to increased MLA demands (for instance cross-border electronic bank data), technology can also be an important source of innovation for overcoming MLA challenges. For example, Beijing Workshop participants recognised that technology facilitates fast communication and enables the use of teleconference and videoconference facilities as an efficient alternative to face to face meetings or courtroom appearances. Electronic systems can also be harnessed to provide effective and less costly training, to store and disseminate information, and to track and monitor requests for MLA. The Organization of American States, for example, has a Secure Electronic Communication System 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, it also provides a space for virtual meetings and the exchange of pertinent documents. Participants at the Beijing Working also discussed whether the development of cloud computing to remotely access data could facilitate the efficient storing, management and sharing of information pertaining to MLA requests, provided that data security, evidence preservation, privacy and confidentiality could be guaranteed.

“Centralising and treating information about incoming and outgoing requests (sent/received directly and through central authority) is a challenge that technology can help overcome. This would allow more reliable and accurate statistic data, as well as better treatment of information, together with other data bases related with money laundering prevention, registry of national ongoing cases and open sources, that would certainly make investigations more effective, both in a national and international level.”

Source: Response to the survey on MLA (see Annex A)

28 General Assembly resolution 45/117, annex, and resolution 53/112, annex I.
Taking the concept of electronic innovations for MLA further, participants at the Beijing Workshop also examined the idea of each country developing its own centralised, electronic portal for receiving, managing, and responding to incoming MLA requests.²⁹ It was noted that such a system may require standardisation of MLA processes among countries whereby all countries would support the secure exchange and processing of information over the internet using digital certification and would stop the use of diplomatic pouches to transmit information. Countries could also use such a system to abandon traditional, formalistic methods of transmitting MLA information, such as the use of diplomatic channels, in favour of modern, electronic methods that are faster and more efficient.³⁰

The Workshop discussion extended to whether the management of these portals would be best left for each country or entrusted to a third party, such as an international organisation. Certain practitioners noted that one such system had been piloted on a bilateral basis, but that the cost was high. It was suggested that developing a broader system on a multilateral basis could be more cost-effective.

“Making OECD, UN, Interpol and others tools available is considered to be an important resource for practitioners. Putting in place a centralised system for issuing and executing requests poses some challenges, given the fact that all public prosecutors and judges working in criminal justice are competent to issue requests, making standardisation and centralisation more difficult. For practitioners to accept issuing and receiving requests in a portal, especially in highly sensitive cases, system security would have to be guaranteed. Mutual trust is also of the utmost importance, because system security of the counterparts would also have to be ensured.”

*Source: Response to the survey on MLA (see Annex A)*

Overall, participants agreed that harmonisation of MLA processes among countries would be highly beneficial but recognised the need to balance this with a range of interests, such as security, sovereignty, confidentiality, and privacy.

**Conclusion**

The Beijing Workshop on international co-operation of April 2016 was an opportunity for law enforcement and central authority officials from over 20 countries, including 15 G20 countries, to share contemporary perspectives on international co-operation in corruption cases. In particular, the discussions focused on MLA challenges and potential solutions to these challenges under four main themes: networks for MLA practitioners; complementary forms of international co-operation; resources and capacity; and institutional, legal and technological tools and innovations.

This paper reflects the discussions held at the Beijing Workshop and country responses to a short survey on MLA practices (see Annex A). It notes various existing tools available to practitioners and ongoing work at the multinational level to ensure effective international co-operation. Most importantly, this paper highlights practical measures that law enforcement and central authority officials themselves have identified could contribute to increasing effectiveness of international co-operation. It is hoped that this paper proves useful for practitioners, countries, international organisations and academics seeking to make further progress on this important issue in the years ahead.


Annex A – Responses to Survey on Mutual Legal Assistance

The following is a survey on mutual legal assistance that was distributed in June 2016 to the OECD Working Group on Bribery, the G20 Anticorruption Working Group, and the participants of the Workshop on Mutual Legal Assistance in Beijing. Aggregated, anonymised data collected from the responses is also indicated below. In total, ten countries responded to the survey (Australia, Brazil, Germany, Italy, Portugal, South Africa, Sweden, Switzerland, Turkey, and the UK).

Most of the survey respondents indicated that they have liaison officers posted in other jurisdictions and international organisations, and described the value of participating in such networks. Most of the survey answers also responded positively to questions regarding resources and capacity, and their ability to process requests. Nearly all countries agreed that technological innovations could certainly help the MLA process. Some countries suggested the use of a secured server to transmit requests as well as online MLA request forms tailored to different countries.

Networks

Responding countries indicated that they participate in the following networks:

<table>
<thead>
<tr>
<th>Networks</th>
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<tbody>
<tr>
<td>Assets Recovery Network (RRAG) of GAFISUD</td>
<td>Asset Recovery Inter-Agency Network of South-Africa (ARINSA)</td>
<td>Camden Asset Recovery Inter-Agency Network (CARIN)</td>
</tr>
<tr>
<td>Commonwealth Network of Contact Persons</td>
<td>Community of Portuguese Speaking Countries Network</td>
<td>Council of Europe’s Committee of Experts on the Operation of European Conventions on Cooperation in Criminal Matters (PC-OC Committee)</td>
</tr>
<tr>
<td>European Judicial Network</td>
<td>Global Law Enforcement Network of Practitioners against Corruption (GLEN)</td>
<td>Iberoamerican Network of International Legal Cooperation (IberRed)</td>
</tr>
<tr>
<td>OAS Criminal Network</td>
<td>OECD WGB Network of Law Enforcement Officials</td>
<td>StAR (Stolen Asset Recovery Initiative)</td>
</tr>
<tr>
<td>Interpol</td>
<td>Europol</td>
<td>Eurojust</td>
</tr>
<tr>
<td>European Commission Asset Recovery Office</td>
<td>EPAC (European Partners Against Corruption)</td>
<td>UNODC Working Group on Asset Recovery</td>
</tr>
<tr>
<td>UNODC Expert Meeting</td>
<td>Egmont Group</td>
<td>Financial Intelligence Units</td>
</tr>
<tr>
<td>Basel Institute International Centre for Asset Recovery (ICAR)</td>
<td>International Association of Anti-Corruption Agencies (IAACA)</td>
<td>Economic Crime Agencies Network (ECAN)</td>
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Examples of circumstances demonstrating how reliance on networks has assisted in a case, notably in seeking MLA

<table>
<thead>
<tr>
<th>Country X</th>
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<tbody>
<tr>
<td>• Utilised World Bank StAR Initiative to coordinate and organise necessary case conferences between Country X investigators and prosecutors and relevant counterparts in the foreign jurisdiction. This enabled effective ‘police to police’ enquiries and co-operation leading to focussed outgoing and incoming MLA requests that could be acceded to by both Central Authorities. Material provided through these MLA requests added value to investigations and prosecutions in both jurisdictions.</td>
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<tr>
<th>Country Y</th>
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<tr>
<td>• As an example, we can illustrate a case where Country Y authorities had to send a request to Country Z for a video link to interview a witness, which would have to be presided by the Country Y magistrate in charge of the investigation, due to its many complex technical aspects. Before the request was sent, direct contacts were held, first with the competent contact point, who indicated who would be in charge of executing the request, and then with the latter. In these contacts, one was able to clarify legal demands that would have to be met, which influenced the way the request was drafted, as well as how the interview would be organised. The testing of the equipment was also scheduled this way. Because of this, the video link took place very soon after the request was sent and was very successful. Also the information and support during the preparation, transmission and execution of request fur surrender (EAW) or extradition has been very valuable and helpful.</td>
</tr>
</tbody>
</table>
Complementary forms of co-operation

Does your country have liaison officers stationed in other jurisdictions or at an international organisation (such as Interpol)? If so, where?

Seven countries stated that they have liaison officers and magistrate judges posted in other jurisdictions, either at embassies or posted in international organisations such as Europol or Interpol.

If possible, please provide anonymised examples of circumstances demonstrating how a liaison officer has assisted in a case, notably in seeking MLA.

<table>
<thead>
<tr>
<th>Country A</th>
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<tbody>
<tr>
<td>• Country A was referred an MLA request from Country B on a bribery and corruption case that had been also subject to a domestic investigation in Country A. The MLA could only be made after a period of informal co-operation - Police to Police - using the Country A liaison officer, who had strong and trusted relationships with the investigators. On preparing the request for MLA, the Criminal Justice Adviser gave the Central Authority in country X advice on the complex drafting to ensure the request would be accepted by Country A. He worked with the Liaison Officer to arrange for a meeting in Country A with Country B to execute the request. During this meeting, sensitive case issues were shared in a secure forum, and information not previously seen and understood was discussed. Following the meeting the request was amended to include a request for evidence which had been revealed to Country B at the meeting.</td>
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<table>
<thead>
<tr>
<th>Country X</th>
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<tbody>
<tr>
<td>• In corruption proceedings conducted by Country Y prosecutors against a Country X company, the Country X liaison officer facilitated contact with the competent Country X public prosecutor’s office and supported the Country Y prosecutors by providing advice on how to meet formal requirements when carrying out a request for mutual legal assistance. In addition, the Country X liaison officer assisted Country Y in making two police requests for mutual legal assistance, one of which related to the import of two military vehicles at an excessive price for the relevant Country Y ministry, and the other to the identification of potential assets of a Country Y political official in Country X.</td>
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<tr>
<th>Country Z</th>
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<tr>
<td>• Considering the very relevant role of liaison officers in establishing connections with their foreign counterparts, we had cases when information about suspects or witnesses was obtained through these officers, allowing a more effective drafting of requests by Country Z authorities. On the other hand, in cases where Country Z law enforcement officers or magistrates accompany the execution of MLA request in the requested countries, liaison officers have been helpful in coordinating such execution with local authorities. As an example of this, there was a case where there was a suspect that had to be interviewed and authorities were unsure if he was in a given jurisdiction. Through the liaison officer one was able to ascertain of his whereabouts in that jurisdiction, which allowed Country Z authorities to issue an MLA request in a more efficient manner.</td>
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</table>

Has your country cooperated with international organisations in corruption or other fraud cases? What was the nature of the co-operation? What was the legal basis for the co-operation (i.e. MoU, treaty, informal basis, etc.)?

Six countries indicated that they have cooperated with international organisations (e.g., OLAF, World Bank, UNDP, etc.) in corruption and fraud cases. The legal basis for such co-operation varies. Treaties, informal meetings, multilateral agreements, and domestic law were all cited as a basis for co-operation.
Has your country ever formed a Memorandum of Understanding, Operational Action Plan or equivalent agreement to organise parallel investigations with another jurisdiction in a corruption case? If so, can you provide an anonymised example of how this was useful in practice?

**Country X**

- Assistance was provided by authorities in two other countries under a Memorandum of Understanding in respect of a case centred on allegations that a Country X-owned company paid bribes to government officials of an African country via agents in order to secure contracts there for the supply of goods. There was active co-operation right from the start of the case, with Country X officers meeting with officials of the other two countries twice. This provided significant investigative assistance in respect of the investigation, including operational deployments and provision of key evidential material. The African country ceded to Country X primacy over a mutual suspect and assisted with the efficient and prompt processing of the application to extradite that suspect. In-country liaison officers were also a valuable resource and provided us with good support on this case.

Has your country ever formed a Joint Investigation Team in a corruption case? If so, can you provide an anonymised example of how this was useful in practice?

Five countries indicated that they formed JITs in the past or are currently in the process of forming one.

**Country A**

- It should be underlined that the practical implementation of pertaining provisions contained in the International Conventions, e.g. UNCAC and UNTOC Conventions, has so far encountered difficulties mainly due to the failure in adopting a detailed internal discipline for the operating mode on the national territory, as well as the usability of procedure of the data acquired by the teams. Up to now, these issues have been partially solved only in relation to JITs established by EU, that followed the implementation of the framework decision 2002/465/GAI of CoE dated 13th June 2002 on Joint Investigation Teams via Legislative Decree 15th February 2016 no. 34 entitled “Implementing Rules/Norms of the framework decision 2002/465/GAI of CoE of 13th June 2002 on Joint Investigation Teams published in the Gazzetta Ufficiale no. 58 of 10th March 2016 and entered into force on 25th March 2016.

**Country X**

- One JIT party held a hearing of the accused in its country and transferred the results to the other JIT-party within the same day. The next day, this party obtained an arrest warrant against the accused based on the information received.

Resources and capacity building

Has your country established a central office with authority to directly receive incoming MLA requests and to manage outgoing requests?

10/10 responding countries answered affirmatively

Which of the following are features of your central authority (or other equivalent office):

- Clear and up to date contact information about the central authority or equivalent office is available online and easily accessible.
  - ✓ 9/9 (nine countries responded to this question)
- It is staffed at all times (24/7).
  - ✓ Only one country indicated that it features a 24/7 service
- It has adequate equipment, including computers with case tracking software that enables practitioners to easily determine progress made on any MLA request and its current status at any given time. ✓ 7/9

- Clear, up to date, and easily accessible information is provided about the rules and procedures for seeking MLA from the country. ✓ 9/9

- Email or other electronic systems are used to exchange communications, requests or results. ✓ 8/8

- A mechanism is in place for prioritising requests. ✓ 8/9

- It has internal deadlines for responding to MLA requests. ✓ 8/9

- The number of staff is sufficient to ensure responses to incoming requests are provided within a reasonable period of time. ✓ 9/9

- Staff of the authority or equivalent office have wide ranging expertise, including legal expertise, criminal justice expertise (e.g. prosecutors), language capabilities, and administrative support. ✓ 8/9

- Staff have specialised skills and expertise in the area of MLA. ✓ 8/9

- It is empowered to directly execute MLA requests. If so, please briefly describe the circumstances in which this power may be exercised. ✓ 2/9

  - In complex and important cases, the [Central Authority] can execute the case directly (i.e. seizure, gathering of information and documents, handing over assets).

  - The Central Authority is able to directly execute an MLA request only when it is not necessary to submit the request to a Court and when some information is accessible in open sources, regardless of whether there is a judicial order.

- It is empowered to require domestic law enforcement practitioners (e.g. police, prosecutors, magistrates or judges, as appropriate) to fully and promptly action an incoming request. ✓ 8/9

- It actively coordinates with relevant agencies involved in the execution of international co-operation requests. ✓ 8/9
It is able to carry out its functions independent from improper outside influence. If so, please briefly describe the measures in place to protect the authority or equivalent office from improper outside influence.

✓ 8/9

Country

- MLA requests are treated in confidence. The provision of information contained in a foreign MLA is prohibited from disclosure under the [country’s relevant law], which creates penalties for disclosing the existence, content or outcome of a foreign MLA unless that disclosure is authorised by the Attorney General or is otherwise necessary in the course of the officer’s duties.

Country

- The Central Authority is placed under the Attorney General’s Office and is represented by a Public Prosecutor. The Public Prosecution has a statute of autonomy from the Ministry of Justice (and Executive Power), so the Minister of Justice can’t give any kind of instructions regarding criminal cases. This autonomy statute is guaranteed by the [Country’s] Constitution.

Country

- The relevant federal unit at the [federal level] is a federal agency which is independent from the prosecution offices and the courts of the [sub-national level]. Those are usually competent for the underlying criminal proceedings and the execution of MLA requests. In this, [federal agency] exercises the executive powers of the Federal Government to decide upon requests on the basis of [relevant law], which is distinct from the powers of the criminal prosecution authorities and the courts of the [sub-national level]. Furthermore, the Federal Office of Justice operates at arm’s length from the Federal Ministry of Justice: The latter in principle transferred the authority to decide on individual cases to the Federal Office of Justice by ministerial decree in 2007.

Staff receive relevant training, including on the procedural requirements of their national MLA legislation and domestic criminal procedures.

✓ 8/9

Before refusing any request for assistance, the central authority or equivalent office consults the requesting country and strives to find alternative solutions in problematic cases.

✓ 8/9

Would your country be interested in seeking technical assistance to help develop or enhance its capacity to seek MLA or respond to requests for MLA?

Two countries responded positively to this question.
Would an easily accessible, online platform that brings together the wide range of MLA tools developed by international organisations such as the OECD, UN, Interpol and others, be a useful resources for your central authority and law enforcement practitioners?

Nearly all countries responded affirmatively, but pointed out some possible challenges regarding implementation of any new programme.

**Country A**

- Yes. Collating existing guidance published by OECD on MLA, and material and guidance from other places such as the EJN and UNODC would be very helpful. Ensuring everything is accessible via one online platform would be more efficient and facilitate the sharing and dissemination of information more effectively. It may assist if the proposed portal contained the tools developed by each country in respect of its own requirements.

**Country X**

- Making OECD, UN, Interpol and others tools available is considered to be an important resource for practitioners. Putting in place a centralised system for issuing and executing requests poses some challenges, given the fact that all public prosecutors and judges working in criminal justice are competent to issue requests, making standardisation and centralisation more difficult. For practitioners to accept issuing and receiving requests in a portal, especially in highly sensitive cases, system security would have to be guaranteed. Mutual trust is also of the utmost importance, because system security of the counterparts would also have to be ensured.

Has your country relied on multilateral instruments, such as the UNCAC or the OECD Anti-Bribery Convention, as a legal basis for seeking or providing MLA in an international corruption case?

7/10

**Country X**

- Yes, Country X authorities relied on the UN Convention against Corruption. The case involves a prominent Minister from an overseas jurisdiction who was suspected of large scale corruption. A Letter of Request was sent to three different jurisdictions. A third jurisdiction has initiated investigations into the suspect in their country as well as an investigation taking place in the suspect’s home country. There is continued co-operation with all three jurisdictions. There have been numerous visits by Country X officials to the suspect’s home country which has resulted in full co-operation and information sharing. The case is on-going and is still at the pre charge stage. We continue to offer our support to the third country in order to help facilitate their investigations.
How could technology, in particular electronic file storage and communication tools, be better utilised by central authorities and law enforcement practitioners to achieve efficiencies in the MLA process?

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<tr>
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<tr>
<td>• Centralising and treating information about incoming and outgoing requests (sent/received directly and through central authority) is a challenge that technology can help overcome. This would allow more reliable and accurate statistic data, as well as better treatment of information, together with other data bases related with money laundering prevention, registry of national ongoing cases and open sources, that would certainly make investigations more effective, both in a national and international level.</td>
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<tr>
<td>• Masks, templates and set forms – if composed in the respective national language and made possible to write in (e.g. particular facts on a concrete case), could help to make the MLA process easier. Additional tools to search responsible authorities could be helpful (e.g EIJ-atlas).</td>
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<tr>
<th>Country Z</th>
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<tbody>
<tr>
<td>• Sending MLA requests by internet (through a secured network) and extensive use of online video conferences for interviews and hearings.</td>
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</table>
Annex B – G20 High-Level Principles on Mutual Legal Assistance

Mutual legal assistance in criminal matters is a process, generally governed by treaty or authorised by domestic law, by which countries seek and provide information that may be used as evidence in criminal cases. Regarding corruption, effective and efficient MLA is essential in the investigation and prosecution of transnational corruption cases, and the recovery of assets derived from such criminal conduct.

Article 46.1 of the United Nations Convention against Corruption (UNCAC) provides that “State Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.”

Article 9 of the OECD Anti-Bribery Convention provides that “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.”

Although not limited to corruption, the United Nations Convention against Transnational Organized Crime (UNTOC) requires, in its Article 8 that parties criminalise corruption. Pursuant to Article 18.1, States Parties are required to afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the Convention. In addition, States Parties are also obliged to reciprocally extend to one another similar assistance where the requesting State has reasonable grounds to suspect that one or some of these offences are transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State party and that they involve an organised criminal group.

The following principles build on practice developed by G20 countries and beyond regarding MLA, and identify mechanisms that have proven useful for addressing related challenges. These principles have been developed on the basis of recommendations on best practices arising from the implementation of the UNCAC and the UNTOC or agreed upon in relevant United Nations fora, as well good practices identified by the OECD Working Group on Bribery through its Typology exercise and its regular monitoring of States Parties’ implementation of the Anti-Bribery Convention.

Taking into account the diversity of legal systems among G20 countries, these principles are broadly framed and offer flexibility to enable countries to use them within their institutional and legal constraints. They are intended as guidance to enhance and complement existing anti-corruption commitments and not weaken or replace them.
Principle 1
An effective legal basis for providing and requesting MLA in bribery and corruption cases should be adopted.

Principle 2
An effective institutional framework for MLA should be established, including by:

i) designating a Central Authority and exchanging central authority contacts with other states; and

ii) ensuring resources for the provision and requesting of MLA are adequate and efficiently used.

Principle 3
Mechanisms for timely responses to MLA should be put in place, including by:

i) providing clear, accessible information regarding the procedural requirements for MLA;

ii) ensuring prompt transmission of requests by the central authority to the executing authorities;

iii) maintaining open and direct lines of communication between central authorities, and encouraging whenever possible mechanisms for informal co-operation before the submission of an MLA request; and

iv) allowing for flexibility regarding the manner and form in which MLA requests are executed in the requested State to allow for the full use of the assistance granted in the requesting States’ proceedings in accordance with countries’ legal systems.

Principle 4
Co-operation and coordination between jurisdictions should be facilitated, in accordance with countries’ legal systems, including by:

i) facilitating, where appropriate, direct contacts between law enforcement agencies;

ii) clarifying the circumstances in which alternative forms of co-operation should be preferred to formal requests for MLA;

iii) developing mechanisms for collaborative or joint investigations.

Principle 5
International exchange of information through other mechanisms, should be allowed, in accordance with countries’ legal systems, including by:

i) facilitating exchange of financial intelligence obtained by FIUs;

ii) facilitating exchange of tax information; and

iii) facilitating exchange of information with securities and other regulators.

iv) facilitating co-operation, as appropriate, with intergovernmental organisations.

Principle 6
States should continue their efforts to build and promote flexible and efficient schemes of co-operation targeting the proceeds of corruption and bribery by, inter alia:

i) developing or reviewing domestic legislation or practice to enable greater flexibility in providing assistance in asset recovery requests in line with chapter V of the UNCAC and consistent with other relevant international standards, including the Financial Action Task Force recommendations.

Source: [www.oecd.org/g20/topics/anti-corruption/High-Level-Principles-on-Mutual-Legal-Assistance.pdf](www.oecd.org/g20/topics/anti-corruption/High-Level-Principles-on-Mutual-Legal-Assistance.pdf)