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**Thematic discussions: proactive and timely
sharing of information, in accordance with article 56
of the Convention**

Proactive and timely sharing of information, in accordance with article 56 of the Convention

Note by the Secretariat

I. Introduction

1. In its resolution 6/2 the Conference directed the Working Group to initiate the process of identifying best practices and developing guidelines for proactive and timely sharing of information to enable States parties to take appropriate action, in accordance with article 56 of the Convention.

2. The Conference of the States Parties to the Convention has repeatedly placed great emphasis on article 56. It urged States parties “to take a proactive approach to international cooperation in asset recovery by making full use of the mechanisms provided in chapter V of the Convention, including by ... making spontaneous disclosures of information on proceeds of offences to other States parties”.¹ On various occasions, the Conference has recognized the difficulties that States face in identifying and tracing corruption proceeds² and the importance of article 56.³ The Conference has also encouraged States parties “to give urgent consideration to the implementation of article 46, paragraph 4, and article 56 of the Convention”⁴ and “to support the development of and to utilize existing secure information-sharing tools, with a view to enhancing early and spontaneous information exchange within the international law enforcement community”.⁵ Finally, the Conference has urged States parties “that are using settlements and other alternative legal mechanisms to resolve corruption-related cases to proactively share information without prior request so as to engage all the States parties concerned early in the process, in

* [CAC/COSP/WG.2/2017/1](#).

¹ Resolutions 3/3 paragraph 2, 4/4 paragraph 3, 5/3 paragraph 8, see also 5/3 paragraph 15.

² Resolutions 4/4 preambular paragraph 8, 5/3 preambular paragraph 21, 6/3 preambular paragraph 7.

³ Resolutions 5/3 preambular paragraph 11 and 6/2 preambular paragraphs 7 and 8.

⁴ Resolution 5/3 paragraph 26 and 27.

⁵ Resolution 5/3 paragraph 17.



accordance with article 46, paragraph 4, article 48, paragraph 1 (f), and article 56 of the Convention”.⁶

3. The Open-ended International Working Group on Asset Recovery held a thematic discussion on, inter alia, article 56 (Special cooperation), at its seventh meeting, held in Vienna on 29 and 30 August 2013.⁷ The Working Group concluded that States parties should give urgent consideration to the implementation of article 46, paragraph 4, and article 56 of the Convention on the disclosure of information without prior request (Report of the Working Group paragraph 54). The Working Group further considered the early communication and sharing of information before starting formal mutual legal assistance procedures to be a crucial element of successful asset recovery procedures.⁸

4. For the upcoming discussion of the Working Group, and with a view to initiating the process of identifying best practices and developing guidelines for proactive and timely sharing of information, the Secretariat sent out a note verbale to States parties on 2 May 2017, requesting relevant information on the topic. The Secretariat has received replies from 10 States parties (Armenia, Czechia, Germany, Mongolia, Peru, Russian Federation, Switzerland, Ukraine, United States of America and Venezuela (Bolivarian Republic of)).

5. Apart from the replies to the note verbale, the present document builds on a number of publications of the StAR Initiative,⁹ and on the Discussion Guide prepared for the thematic discussion held in 2013.¹⁰ Further, the executive summaries and country reports from finalized country reviews of 156 States parties with regard to article 46, paragraph 4, were used. The study “The State of Implementation of the United Nations Convention against Corruption” is also currently being updated to reflect all reviews finalized to date and will be presented at the seventh session of the Conference of the States Parties, to be held from 6-10 November 2017.¹¹ Very little information on the implementation of article 56 is available yet through the country reviews, given the early state of the second cycle.¹² Therefore, the implementation of article 46, paragraph 4, is an approximation that allows for projections on the implementation of article 56. However, some important differences between the two articles make it necessary to keep in mind that results may change when more information on the implementation of article 56 becomes available.

6. The present document aims at providing a basis for the deliberations of the Group with regards to the development of best practices and guidelines for proactive and timely sharing of information. To this end, it presents an overview of the current international legal framework and a reflection of the state of knowledge on the relevant national legislation and country practice, as well as some case examples.

⁶ Resolution 6/2 paragraph 10.

⁷ A Discussion Guide in preparation of this discussion is contained in document [CAC/COSP/WG.2/2013/2](#).

⁸ Report on the meeting of the Open-ended Intergovernmental Working Group on Asset Recovery held in Vienna on 29 and 30 August 2013, [CAC/COSP/WG.2/2013/4](#) paragraphs 54 and 56.

⁹ Few and Far: The Hard Facts on Stolen Asset Recovery (2014); Left out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery (2013); Asset Recovery Handbook: A Guide for Practitioners (2011); Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action (2011).

¹⁰ [CAC/COSP/WG.2/2013/2](#).

¹¹ The State of Implementation of the United Nations Convention against Corruption, under article 46 (“spontaneous disclosure”), forthcoming.

¹² The information currently available is published here: <http://www.unodc.org/unodc/en/treaties/CAC/country-profile/index.html>.

II. Legal and practical aspects of the proactive and timely sharing of information

1. Article 56

7. The Convention states in its article 56 that “without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention”.

8. Article 56 constitutes an important step forward in the area of international cooperation that has been based traditionally on the principle of providing information or assistance only at the request of another State Party.¹³ The practice as such is not new but exists in various areas of international law, including in tax matters.¹⁴ In general, spontaneous provision of information, spontaneous cooperation or spontaneous disclosure is understood as the provision of information to another jurisdiction that is likely to be relevant to that other jurisdiction but has not been previously requested, no matter through which institution or in which form.¹⁵

9. The Nine Key principles of Effective Asset Recovery Adopted by the Group of Twenty Anticorruption Working Group in Cannes (2011) highlight spontaneous disclosure under Principle 7: “7. Actively participate into international cooperation networks. e) Encourage spontaneous disclosures by domestic authorities, a proactive form of assistance which alerts a foreign jurisdiction to an ongoing investigation in the disclosing jurisdiction and indicates that existing evidence could be of interest”.¹⁶

10. Also the draft Lausanne Guidelines (Practical Guidelines for the Efficient Recovery of Stolen Assets), developed by 30 States parties in close collaboration with the International Centre for Asset Recovery and with support of the StAR Initiative, and referenced by the Conference of the States parties in its resolutions 6/2 and 6/3, contain the recommendation that “requesting and requested jurisdictions should fully support one another’s proceedings by furnishing additional information spontaneously whenever possible and promptly processing valid requests for MLA”.¹⁷

2. Context of article 56 in the Convention

11. Article 56 operates in close context with other articles of the Convention:¹⁸

¹³ Technical Guide page 201.

¹⁴ For example in articles 7 (a) to (e) of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, developed jointly by OECD and the Council of Europe in 1988 and amended by Protocol in 2010.

¹⁵ See also [CAC/COSP/WG.2/2013/2](#).

¹⁶ Few and Far (Footnote 9) Appendix B, page 68, see also “G20 Anti-Corruption Working Group, Nine Key Principles of Asset Recovery. Benchmarking Survey”.
https://star.worldbank.org/star/sites/star/files/asset_recovery_country_profiles.pdf.

¹⁷ The text of the draft guidelines is contained in document [CAC/COSP/WG.2/2014/CRP.4](#).

¹⁸ During the negotiations of the Convention, the draft of article 56 was contained in a draft article on “special cooperation provisions” and included in the second part of the rolling text in document [A/AC.261/3](#) (Part IV), which contained a consolidation of the proposals submitted by Peru ([A/AC.261/IPM/11](#)) and the United States ([A/AC.261/IPM/10](#)) during the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption held in Buenos Aires on 4-7 December 2001. The draft text was placed together with a provision on expediting the recognition of judicial sentences with a view to facilitating the recovery of assets, which was eventually not approved as part of the Convention, and a provision on the obligation of a State party to notify financial institutions subject to its jurisdiction of the identity of current and former PEPs to whose accounts those institutions would be expected to

(a) Article 46, paragraph 4, contains mostly identical text compared to article 56, with a few differences:

- While article 46, paragraph 4, is fully non-mandatory (“may transmit”), article 56 contains an obligation to endeavour (“shall endeavour to take measures to permit it to forward”)
- Article 46, paragraph 4, refers to the transmission of information by the competent authorities, while article 56 is aimed at measures to be taken to permit such transmission
- The object of the transmission is in article 46, paragraph 4, generally “information relating to criminal matters”, while it is specifically “information on proceeds” of corruption offences in article 56
- The focus of the provision in the asset recovery chapter is on “initiating or carrying out” proceedings, while in the mutual legal assistance provision it is on “undertaking or successfully concluding” such proceedings
- Article 46, paragraph 4, is complemented by the following paragraph 5, which addresses the obligation of the receiving State party to keep the information received confidential, with the exception of exculpatory information. Article 56 does not contain this obligation explicitly. However, any disclosure made in accordance with the measures taken on the basis of article 56 must also legally be regarded as a disclosure in line with article 46, paragraph 4, so that paragraph 5 would also be applicable. The rationale behind this is that the State transmitting the information owns the information and shares it in a spirit of cooperation. It must therefore remain free to make conditions on its use. These conditions must operate within the limits of due process rights, so that exculpatory information is to be shared with the accused person.

(b) Article 48, paragraph 1, on law enforcement cooperation is closely interconnected with article 56. Frequently, law enforcement cooperation provides the practical avenues through which the spontaneous transmission of information is realized. This refers especially to the exchange of information between direct counterparts such as police forces and Financial Intelligence Units, as well as the transmission of information through relevant asset recovery or law enforcement networks. However, there are also significant differences: Article 46, paragraph 4, stands in the context of mutual legal assistance and the possibility that the sharing of information “could result in a request” by the receiving State party. In this sense, some States parties require that their prerequisites for mutual legal assistance be fulfilled before they can spontaneously submit information, for example, minimum penalty thresholds.¹⁹ Such requirements are not applicable to the exchange of information under article 48. The language of article 56 contains the same purpose (“may lead to a request”) but it remains to be seen during the second cycle if countries interpret it in the same way, given that it is not part of the article on mutual legal assistance;

apply enhanced scrutiny, which was eventually adopted in a revised version as article 52, paragraph 2 (b). The initial draft text suffered only few changes during the course of the negotiations. During the informal consultations, several delegations indicated that they could not accept a mandatory form of this article, noting that a non-mandatory form appeared in paragraph 4 of article 53 of the rolling text (later paragraph 4 of article 46 of the Convention). Several other delegations indicated that they would prefer a mandatory form. A number of delegations supported a compromise, which would consist of inserting the words “without prejudice to its domestic law”. In the approved text, the clause “without prejudice to its domestic law”, appears as well as an obligation to endeavour, which is neither of mandatory nor of fully non-mandatory character (“shall endeavour to take” instead of “shall adopt”). Further, the article uses generally applied language with regard to proceeds of corruption, referring to “proceeds of offences established in accordance with this Convention” (the initial draft read “information on illicitly acquired assets”). Travaux Préparatoires of the negotiation for the elaboration of the United Nations Convention against Corruption, pages 493-497.

¹⁹ See below section number 5.

(c) Article 53 (a): This article requires States parties to provide legal standing to other States parties to claim, as legitimate owner in a confiscation procedure, ownership over assets acquired through the commission of a Convention offence. In order to avail themselves of this right, the other States have to be aware of such proceedings. Therefore, States parties may consider notifying other concerned States parties of their right to take a role in the proceedings;

(d) Article 52, paragraph 1 and 2: Suspicious transaction reports are often the starting point of a domestic investigation. In case they bring up information relevant to another jurisdiction, they are important material for spontaneous disclosure;

(e) Article 58: The responsibility of the Financial Intelligence Units, according to article 58, is receiving, analysing and disseminating suspicious transaction reports in order to further cooperation in the fight against corruption and for asset recovery. Financial Intelligence Units are therefore well placed to spontaneously disclose information they receive during the course of their operations.

3. Spontaneous transmission of information in other legal instruments

12. Apart from the Convention, spontaneous transmission of information is addressed in a number of global, regional and bilateral treaties as well as agreements and arrangements on information exchange.

13. Article 18, paragraph 4 and 5, of the United Nations Convention against Transnational Organized Crime (2000) contains the identical provision to article 46, paragraph 4 and 5.

14. A number of regional treaties regulate spontaneous disclosure:

(a) The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (2001) contains in its article 11 a regulation that is very similar to article 46, paragraph 4 and 5. It further contains the provision that “any contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to be bound by the conditions imposed by the providing Party..., unless it receives prior notice of the nature of the information to be provided and agrees to its transmission”;

(b) The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005) contains in its article 20 a provision on spontaneous information sharing on “instrumentalities and proceeds”;

(c) The Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (2000) foresees that “in specific cases, each Contracting Party may, in compliance with its national law and without being so requested, send the Contracting Party concerned any information which may be important in helping it combat future crime and prevent offences against or threats to public policy and public security”;

(d) Article 29 of the Arab Convention against Corruption contains a relevant article similar to article 46, paragraph 4;

(e) Article 4.A.2 of the Agreement on Cooperation among Member States of the Commonwealth of Independent States in Combating Crime foresees that spontaneous disclosure is possible if there are reasons to believe that the information is of interest for the other State party;

(f) The Convention of the Portuguese-Speaking Community on Mutual Legal Assistance contains a relevant provision in its article 8.

15. In the context of the review of the implementation of article 46, paragraph 4, many countries referred to these regional treaties, and some countries mentioned even that they spontaneously disclose information on the basis of other regional treaties, despite the fact that they do not contain a specific provision, because the regional treaty gives a general framework for mutual legal assistance.

16. A number of States parties also presented bilateral treaties that contained provisions on spontaneous disclosure. Further, a number of States had agreements, arrangements or Memoranda of Understandings on the exchange of information, in particular with their neighbouring countries. One country, for example, mentioned an arrangement with another party, reportedly activated on several occasions, which resulted in the spontaneous transmission of information on bank accounts in the context of pending criminal proceedings.

17. However, spontaneous disclosure does generally not require a treaty base. As in other mutual legal assistance matters, nearly all countries can spontaneously disclose information in the absence of a treaty. In mutual legal assistance matters in general, the legal basis most used in the absence of a treaty was the principle of reciprocity, and it was also referred to by a number of countries with regard to spontaneous disclosure. Other countries can spontaneously transmit information on the basis of case by case arrangements. However, there are a few countries that require a treaty base, although with exceptions, or foresee that the spontaneous transmission of information without a treaty base has specific authorization requirements.

18. A number of States indicated that they could use the Convention as a legal basis for spontaneous disclosure.

19. Although treaties and arrangements are not necessary for most countries, they can facilitate and promote the spontaneous disclosure of information by providing legal clarity about the permissibility and legitimacy of such information-sharing. Ideally, they set out the terms and avenues for such cooperation. The study on “Barriers to Asset Recovery” therefore recommends the conclusion of memoranda of understanding: “Because such spontaneous sharing is an effective way to develop trust between two jurisdictions with little or no experience working together, jurisdictions should enact specific provisions, such as memoranda of understanding, allowing such sharing and should further consider making such sharing mandatory.”²⁰

4. Legislation

20. Approximately 20 per cent of the countries²¹ that have finalized their reviews on article 46, paragraph 4, enacted specific legislation on spontaneous disclosure. All of these regulations follow roughly three models:

21. The majority of countries introduced these provisions into their general laws, such as Mutual Legal Assistance Laws and Criminal Procedure Codes. Such legislation can for example be found in Albania, Austria, Belgium, Bosnia and Herzegovina, Croatia, Estonia, Germany, Ghana, Kenya, Liechtenstein, Republic of Moldova, Romania, Serbia, Slovenia and Switzerland. As can be seen, this has been implemented in a number of countries from the Western European and Others Group as well as from the Group of Eastern Europe, but also by two African States. These provisions are general in nature and applicable to all offences for which mutual legal assistance is available. They often generally enable the judicial authorities to transmit information (for more detail see below No. 7 on institutions). Liechtenstein and Switzerland have detailed regulations on the requirements and possibilities of spontaneous disclosure. Belgium has in article 2, paragraph 7, of its Mutual Legal Assistance Law a provision focused on implementing the above-mentioned

²⁰ Barriers to Asset Recovery (footnote 9), page 22.

²¹ 156 States parties at the time of reporting.

Schengen Agreement through police cooperation. Kenya has enacted in its article 48 MLA Act a provision specifically aimed at proceeds of crime.

22. On the other hand, two countries from the African Group (Algeria, Burkina Faso) have included the provisions on spontaneous disclosure of information in their anti-corruption laws. Both laws are nearly identical and very close to the wording of the Convention, authorizing competent national authorities in general to spontaneously disclose information under the conditions listed in the Convention.

23. Finally, some countries included the provisions on spontaneous disclosure of information in the laws against money-laundering, in the course of reforms aimed at implementing international anti-money-laundering standards. Recommendation 40 of the Recommendations of the Financial Action Task Force (FATF) reads: “Countries should ensure that their competent authorities can rapidly, constructively and effectively provide the widest range of international cooperation in relation to money-laundering, associated predicate offences and terrorist financing. Countries should do so both spontaneously and upon request, and there should be a lawful basis for providing cooperation. Countries should authorise their competent authorities to use the most efficient means to cooperate.” Countries that regulated spontaneous disclosure in their laws against money-laundering include Afghanistan, Armenia, the Central African Republic, Estonia (Estonia also has a provision in its general legislation), Peru, Senegal, Seychelles, Yemen and the State of Palestine. These laws normally focus on the role of the Financial Intelligence Units and authorize them to receive and exchange information through the appropriate channels, spontaneously or upon request. Some of the laws also contain a general provision that allows spontaneous disclosure by all competent authorities.

24. Apart from these three categories, the great majority of countries does not have legislation on spontaneous disclosure. However, this was only considered an obstacle for spontaneous disclosure in one country, which was in the process of addressing this issue in draft legislation.

25. A number of countries considered that, even if not explicitly allowed, spontaneous transmission was possible to the extent that it was not prohibited. In this sense some countries quoted legislation which stated that nothing in the mutual legal assistance legislation should prevent new or informal forms of cooperation. Further, a number of countries had general laws on law enforcement cooperation, for example in their police laws or in their laws establishing their Financial Intelligence Units. Only few countries did not at all allow spontaneous exchange of information.

26. Although legislation was in most countries not considered a requirement for spontaneous disclosure, a number of country reports contain recommendations to enact such legislation. Apparently a certain formalization of procedures through national rules is considered positive for the practice of spontaneous disclosure. In some countries, legislation was also considered necessary for granting authority to certain institutions to share information and overcome confidentiality requirements.

27. Therefore, some policy documents have also recommended to enact specific legislation. For instance, the study on “Barriers to Asset Recovery” concludes that a key recommendation to overcome Barrier 1 (“Lack of Trust”) is to “adopt policies and operational procedures to cultivate mutual trust and improve communication”, and to this end, enact “legislation allowing for the spontaneous sharing of information with another jurisdiction”.²²

²² Barriers to Asset Recovery (footnote 9), page 6.

5. Requirements for spontaneous information-sharing

28. Those countries that have legislation in place foresee different requirements and conditions for the spontaneous sharing of information:

(a) A number of countries set out the speciality principle by stating that the information may not be used for other purposes than the one giving rise to the submission or the law governing the submission;

(b) Many countries also spell out the condition already set in the Convention that the country shares information only “without prejudice to its own investigations, prosecutions or judicial proceedings”;

(c) Many countries regulate requirements of confidentiality with regard to the disclosed information. Either they require an assurance that confidentiality conditions are being complied with, or that generally the same level of confidentiality is applicable as in the receiving country, or an equivalent level to the one in the sending country;

(d) Some countries have data protection and deletion requirements that go beyond confidentiality requirements. They require, for example, that the receiving country respects certain time limits for data deletion and for review of data deletion, or that data must be deleted if they turn out wrong, unlawfully collected or no longer needed;

(e) Some countries also require that general requirements of information-sharing are being met at the national level, meaning that the same information could be shared between national authorities without a court order;

(f) Some countries need a treaty base;

(g) Others require an assurance of reciprocity;

(h) A few countries have minimum penalty requirements (up to 5 years of imprisonment) or require that the information relates to offences of a certain gravity, for example, those qualifying for extradition;

(i) One country provides an exception for cases in which it is evident that the interests of the person affected outweigh the receiving State’s interest in receiving the information;

(j) One country indicated that spontaneous disclosure was provided without legislation at an informal basis, but required the decision of the Minister.

6. Information on proceeds

29. There are several typical situations in which information would be transmitted spontaneously to another jurisdiction.

30. A suspicious transaction report that triggers a national investigation and points to an international element of the case is one of these typical situations. Further, reports on suspicious activities of foreign politically exposed persons (PEPs) to which enhanced scrutiny is applied can contain information relevant to other jurisdictions.²³ Spontaneous disclosures are often made when an investigation of money-laundering is opened in the disclosing jurisdiction and the predicate offence took place in another jurisdiction which may not be aware of it.²⁴ If during a mutual legal assistance case investigations reveal that a person against whom an investigation is in course has interests in additional assets to those initially identified, spontaneous sharing of information can help to enable the requesting jurisdiction amend its mutual legal assistance request.²⁵

²³ Technical Guide page 210.

²⁴ Asset Recovery Handbook (footnote 9), page 136.

²⁵ Barriers to Asset Recovery (footnote 9), page 57.

31. The type of information that can be provided depends on the nature of the case and the type of data generated. According to article 46, paragraph 4, any kind of information “relating to criminal matters” can be shared, and according to article 56 any kind of information on proceeds of corruption. Most treaties and national laws do not further specify the kind of information that can be shared.

32. However, some jurisdictions have set out relevant regulations or practices. According to one country, a spontaneous disclosure may include information on the investigation, including the name of the accused and a summary of the facts and the offenses; a description of the evidence that might be of interest, including the name of the bank and the account holder, account number, amount of funds frozen, and relevant transactions; reasons for transmission; an invitation to present a mutual legal assistance request, and a request that the information not be used for any other purposes.²⁶ In another country, facts can be disclosed globally that warrant the assumption that the transmission is *necessary* to prepare a mutual legal assistance request; while regionally such information can be shared already when it is *useful* to prepare a request. Some countries also allow the sharing of information that can be used to prevent the commission of offences.

7. Institutions

33. With regard to the transmitting institution, generally States parties permit that the competent authorities from which the information originates spontaneously transmit it abroad (see above No. 4 on legislation). However, a few countries have designated one specific authority that is authorized to transmit the information generated by all competent authorities. Often times the information originates in Financial Intelligence Units, but it can also originate in any law enforcement or judicial authority that is involved in the investigation or adjudication of corruption cases.

34. With regard to the receiving institution, some of the legislation referred to above explicitly provides that transmissions can only be made to public or international authorities. Authorities are generally authorized to share the information with their direct counterparts in the receiving country. A few countries also allow for diagonal transmission, i.e. the transmission to an authority that is not the direct counterpart of the issuing institution.

35. The spontaneous transmission of information requires a high level of trust and confidence in the counterparts. Therefore, law enforcement networks and secure platforms play an essential role.

36. In particular, the EGMONT Group as the global network of Financial Intelligence Units plays an outstanding role in this context, as well as the Camden Assets Recovery Interagency Network (CARIN) and CARIN-style networks, the Hemispheric Network of the Organization of American States, Ibero-American Network for International Legal Cooperation (IberRed), the Pacific Transnational Crime Network and the Regional Judicial Platform of the Sahel countries. Further, international police organizations and networks such as ASEANAPOL (Association of Southeast Asian Nations (ASEAN) Chiefs of Police), the European Police Office (EUROPOL), the European Union’s Judicial Cooperation Unit (Eurojust), the Global Focal Point Initiative supported by StAR and Interpol, the International Criminal Police Organization (INTERPOL), the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) and the West African Police Chiefs Committee Organization (WAPCCO) are of importance. Informal channels of communication, such as officials posted in overseas missions and appointed liaison officers, as ad hoc arrangements are also used widely.

37. For some of these networks, secure information-sharing platforms such as the Egmont Secure Web (ESW), the I-SECOM (INTERPOL Secure Communications Platform for Asset Recovery) or the GROOVE protect data from loss or leakage.

²⁶ Asset Recovery Handbook (footnote 9), page 137.

One country reported in its country review that out of lack of information technology infrastructure, spontaneous disclosure was not possible at the informal level and requests were sent through diplomatic channels.

8. The role of receiving jurisdictions

38. Active follow-up by the receiving jurisdictions is an important requirement for the eventual success of the spontaneous disclosure.

39. The legislation of the receiving country must enable it to assure that it will keep the confidentiality requirements set by the submitting country. In the country reviews, most countries have confirmed that their general confidentiality laws would be sufficient in this regard.

40. In order to allow for a successful follow-up to the information received, it has been recommended that recipients of spontaneous disclosures should contact the authority of origin to find out about the foreign case, ensure that assets will remain frozen and discuss the next steps to be taken.²⁷ After this informal contact, and depending on the specific nature of the case, the information will need to be complemented and formalized. Generally, information submitted spontaneously will not be suitable as evidence, but serve as intelligence that is used to advance an investigation. It is therefore important that the receiving country opens an investigation if it has not yet done so. Then it will regularly prepare the relevant mutual legal assistance request in order to formalize the transmission of information and complement the information received. In many cases, a request for (continued) freezing or seizure of assets will also be in order.

41. The study “Few and Far” sets out recommendations for the cooperation of both sides in asset recovery cases between OECD members and developing countries: “OECD members need to ensure that they are able to proactively identify and freeze the assets of allegedly corrupt officials and establish incentives for domestic practitioners to initiate cases. Such domestic actions should be followed by international cooperation with the relevant foreign jurisdiction, including spontaneous disclosures and actions to build capacity and trust. Developing countries need to be initiating their own investigations and communicating and cooperating with foreign counterparts.”²⁸

9. Spontaneous disclosure in administrative freezing proceedings:

42. Spontaneous disclosures with regard to administrative freezes are a specifically important case. These measures were for the first time adopted and implemented widely in the context of the Arab spring. Canada, the European Union, Switzerland, and the United States took measures to administratively freeze assets between 2010 and June 2012. Administrative freezing orders are not meant to replace or circumvent mutual legal assistance, but exclusively to avoid assets from being dissipated.

43. One of the barriers that have hindered progress in these asset recovery cases was that requesting jurisdictions indicated they were unaware of the frozen assets. Therefore, the jurisdictions that had administratively frozen assets have used spontaneous disclosures to provide information on such assets. Others have gone even further and have provided capacity-building to practitioners in the foreign jurisdictions for the follow-up on such measures, for example, through the placement of regional advisors.²⁹

10. Spontaneous disclosure in settlement cases:

44. Another important special case is the spontaneous disclosure of information on ongoing or concluded settlements.

²⁷ Asset Recovery Handbook (footnote 9), page 137.

²⁸ Few and Far (footnote 9), page 3.

²⁹ Few and Far (footnote 9), page 42.

45. In the last decade, there has been a steep increase of the use of settlements — defined as any procedure short of a full trial — to resolve foreign bribery cases. A recent study by the StAR Initiative showed that only as little as 3.3 per cent of the monetary sanctions collected by the countries of enforcement has been returned to the countries whose officials have been — or are alleged to have been — bribed. These countries are generally not involved in and often not aware of the settlements.

46. The study made a number of recommendations: Jurisdictions negotiating settlements should spontaneously inform affected jurisdictions that a negotiation toward a settlement is taking place, and should proactively share information on concluded settlements with other potentially affected countries. Countries whose officials were allegedly bribed should step up their own efforts to mount effective investigations and prosecutions against bribe-givers and -takers.

47. An update to the study was presented at the tenth session of the ARWG in August 2016³⁰ based on the mandate received in resolution 6/2 of the Conference. The additional data gathered on settlements showed that the number of settlements was steady or decreasing, but that the value amounts were higher and that compared to the previous period only 0.18 per cent had been returned. No significant developments or practice in the implementation of the recommendations of the study were noted.

III. Case examples

48. A number of countries reported in their country reviews that information is spontaneously transmitted as a matter of routine, or at least, as a common practice. In four country reports, the spontaneous transmission of information has been identified as a good practice. Other countries specifically stated that, although spontaneous disclosure was possible or even regulated in law, there was no practice in this regard. A number of recommendations was given in country reports to strengthen the practice.

49. The following case examples are presented to illustrate the importance and positive effects of spontaneous disclosure. They were selected as they are well-known cases that are in the public domain. However, this should not lead to the assumption that spontaneous disclosure is a practice mainly relating to grand corruption cases. On the contrary, based on the high numbers of spontaneous disclosures mentioned by some countries during their country reviews, the practice is used successfully in a great variety of cases, including relating to small amounts.

50. In October 2000, Swiss banks informed the Federal Office for Police Matters pursuant to their obligations under the Money Laundering Act of the accounts of former Peruvian security service official and presidential advisor Vladimiro Montesinos and former Peruvian general Nicolás de Bari Hermoza Ríos. The Police Money Laundering Reporting Office forwarded the information to the Examining Magistrate's Office, which blocked the funds and initiated a criminal investigation. Results of that investigation were provided by the Federal Office for Justice to the Peruvian judicial authorities, who in turn conducted inquiries and submitted a corresponding request for mutual legal assistance to Switzerland, leading to return of the funds. A release of the Federal Office of Justice of the Swiss Federation (20 August 2002) announced the transfer of US\$ 77.5 million to the Banco de la Nación del Perú. Panama banks also reported Montesinos-related accounts to Panamanian authorities, which informed Peru. The funds had largely been transferred out of Panama, but the reports permitted their tracing to other jurisdictions.³¹

³⁰ CAC/COSP/WG.2/2016/2.

³¹ Press release of Switzerland, "Montesinos case: Switzerland transfers 77 million dollars to Peru", 20 August 2002: https://www.ejpd.admin.ch/ejpd/en/home/aktuell/news/2002/ref_2002-08-20.html. Cf. also UNODC Digest of Asset Recovery Cases, page 37.

51. In March 2000 a trust company submitted a suspicious activity report to the Liechtenstein Financial Intelligence Unit in accordance with the Due Diligence Act. Several reports were filed by banks and another trust company in the following months. On the basis of these reports, the Liechtenstein Office of the Public Prosecutor launched domestic proceedings. Numerous searches were conducted, documents were seized by the Court and assets of more than 350 million DM (German Marks) were frozen. Subsequently, Liechtenstein authorities invited Nigerian officials to an informal meeting, during which they transmitted relevant information to the Nigerian counterparts. In June 2000, Nigeria submitted a request for mutual legal assistance concerning Sani Abacha and his entourage. Further requests for legal assistance followed. Most of the already blocked assets in the domestic proceedings were also frozen in legal assistance proceedings for the benefit of Nigeria. Although the accused persons were not convicted in the domestic procedures in Nigeria, Liechtenstein confiscated the assets through non-conviction based forfeiture and returned them to Nigeria.³²

52. In the Odebrecht and Lava Jato cases, the Attorney-Generals of Argentina, Brazil, Chile, Colombia, the Dominican Republic, Ecuador, Mexico, Panama, Peru, Portugal and Venezuela (Bolivarian Republic of) signed the Brasilia Declaration on 16 February 2017. In the context of the two mentioned cases but aimed at future investigations, this declaration creates a roadmap for enhanced cooperation in the investigation and sentencing of grand corruption cases and therefore makes reference to the Convention. In its paragraph 4, the Brasilia Declaration foresees that the institutions “reinforce the importance of using other mechanisms for international legal cooperation, especially the transmission of spontaneous communications and information”.

IV. Points for discussion by the Group

53. The Working Group may wish to make recommendations on the methodology that should be adopted for developing best practices and guidelines for proactive and timely sharing of information with a view to reporting its findings to the Conference of the States parties at its seventh session, to be held from 6-10 November 2017.

54. In this regard, the Group may wish to initiate discussion on the identification of best practices:

(a) With regard to the treaty base of spontaneous information-sharing, the Group may wish to consider whether it is a good practice:

- To spontaneously transmit information without the need for a treaty base
- To spontaneously transmit information without the need for an assurance of reciprocity, for example on the basis of existing general information-sharing arrangements or networks, or on a case-by-case basis
- To include spontaneous sharing of information in new bilateral and regional treaties on mutual legal assistance
- To conclude new information-sharing arrangements.

(b) On legislation, it could consider whether it is a good practice:

- To enact legislation on spontaneous disclosure
- To enact it in the general laws or in which type of other laws

³² StAR Press release: Repatriation of “Abacha assets”: http://star.worldbank.org/corruption-cases/sites/corruption-cases/files/Abacha_Liechtenstein_Repatriation_Assets_PR_Jun_18_2014.pdf. More information on the Sani Abacha (Liechtenstein) case: <http://star.worldbank.org/corruption-cases/node/20315>.

- To specify specific conditions, avenues and types of information, and to which level of detail such topics should be regulated
- It could be further discussed which requirements should, as a best practice, be avoided in such legislation in order to ensure a swift flow of information.

(c) The types of institutions which should be ideally granted the right to make spontaneous disclosures could be a further area the Group may wish to provide guidance on. Especially it could consider if the designation of a specific authorized authority is a good practice, or rather the authorization of all relevant institutions that generate relevant information;

(d) Good practices to be discussed for the receiving country could include:

- To get into contact with the transmitting jurisdiction for informal discussions on further steps
- To open an investigation if it has not yet done so and if the elements are sufficient under its domestic law
- To prepare the relevant mutual legal assistance requests to complement the information and request (continued) seizure or freezing orders.

(e) With regard to administrative freezing, the Group may wish to consider whether the following are good practices:

- To spontaneously share information on assets that were administratively frozen with the country of origin as soon as the political situation permits it
- And to provide, if appropriate, assistance in the ensuing mutual legal assistance procedures.

(f) In settlement cases, the Group may wish to provide guidance on whether to include the following as good practices:

- For countries pursuing settlements, to spontaneously transmit information to other affected countries on the basic facts of the case
- To proactively share information on concluded settlements with other potentially affected countries.