

# OVERVIEW OF EXISTING INTERNATIONAL INSTITUTIONAL AND LEGAL FRAMEWORKS RELATED TO FINANCIAL ACCOUNTABILITY, TRANSPARENCY AND INTEGRITY

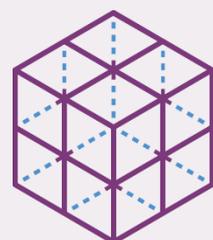
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06 APRIL 2020

FACTI PANEL BACKGROUND PAPER

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**FINANCIAL  
ACCOUNTABILITY  
TRANSPARENCY &  
INTEGRITY**

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# 1. INTRODUCTION

Mobilizing sufficient financing for implementing the 2030 Agenda for Sustainable Development remains a major challenge. This challenge will be exacerbated by the expected economic downturn and financial turmoil due to the COVID-19 pandemic. The economic and financial side of the crisis will create serious difficulties for Member States in achieving the Sustainable Development Goals (SDGs). Preliminary modelling by the United Nations finds that in a highly likely scenario, the world economy could contract by 0.9 per cent in 2020. Foreign direct investment flows could decline by between 30 per cent and 40 per cent during 2020-2021. While this paper does not cover these details, they are a reminder of why multilateral cooperation is important. They also help stress the importance of strong, resilient domestic financial systems, which are stable, facilitate inclusive economies, and provide for public goods such as universal health systems. Effective public revenue generation is of critical importance to financing the kind of systems that are better able to weather COVID-19 and similar shocks.

In the 2030 Agenda for Sustainable Development<sup>1</sup> and the Addis Ababa Action Agenda<sup>2</sup>, Member States pledge to enhance revenue administration; improve transparency; promote good governance; identify, assess and act on money-laundering risks; significantly reduce illicit financial flows; and deter, detect, prevent and counter corruption and bribery. However, insufficient progress has been made on these commitments. Insufficient financial accountability, transparency and integrity still erodes the ability of States to raise revenue and continues to directly undermine the efforts of the global community to successfully achieve the SDGs.

In the terms of reference for the Panel, the President of the United Nations General Assembly and the President of the Economic and Social Council have stated that hidden, secret, fraudulent and misleading transactions prevent States from enforcing the law and collecting their fair share of taxes. They also noted that insufficient accountability, transparency and integrity create uneven playing fields that harm small- and medium-sized businesses and undermine equity and inclusiveness in our economies. The weaknesses also impact the effectiveness of macroeconomic policies, and facilitate criminals being able to hide the proceeds of their crimes.

Against this background, they have requested the Panel to explore what further action is needed by governments and financial institutions in the following areas: financial and beneficial ownership transparency, tax matters, bribery and corruption, money-laundering, confiscation and disposal of the proceeds of crime and the recovery and return of stolen assets.

This background paper has been developed to provide an initial review of some challenges and trends related to financial accountability, transparency and integrity in these areas. It reviews existing international institutional and legal frameworks, with a view to begin to identify any gaps, impediments and vulnerabilities in their design and/or implementation, including with regard to their comprehensiveness, effectiveness and universality.

The paper builds on inputs from the UN System agencies, material already provided by UN and non-UN bodies to the Inter-agency Task Force on Financing for Development.<sup>3</sup> It attempts to build on past analytical and policy work, such as the AU-ECA Report of the High Level Panel on Illicit Financial Flows from Africa. Section 2 provides an issue-based overview drawn from the mandate in the terms of reference of the Panel (see Annex 3). For each topic, there is a brief introduction, an identification of relevant international institutions, legal frameworks or

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<sup>1</sup> General Assembly resolution 70/1, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1)

<sup>2</sup> General Assembly resolution 69/313, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/69/313](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/69/313)

<sup>3</sup> Some material is drawn from the *Financing for Sustainable Development Reports*, which are produced by the 60 institutional members of the Inter-agency Task Force on Financing for Development. However, different institutions have different views on many of the matters in the paper, and it does not represent a consensus view.



instruments, and a short introduction of some of the existing proposals for strengthening work in these areas. Section 3 introduces some cross-cutting analysis, explaining issues that are similar or relevant for many different topics or institutions. Finally, Section 4 provides a summary of the paper and some proposed areas for further investigation by the Panel. Detailed information about existing instruments, frameworks and institutions is available in the Annex, as is a selected bibliography.

## 2. Review of policy areas identified in the FACTI Panel Terms of Reference

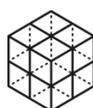
### 2.1. Financial and beneficial ownership transparency

To discourage hiding of income and wealth, countries are implementing stronger rules on the disclosure and exchange of beneficial ownership information. Beneficial ownership information is not the same as basic ownership information. Basic information on companies is obtained and recorded by a company registry and is generally made available publicly. A beneficial owner of an entity is the natural person that ultimately controls or profits from that entity. The beneficial owner might exert control through direct ownership, through ownership or positions in a different legal entity which has ownership, or through other means such as personal connections to persons in position of influence or power, contractual relationships or even by participating in the financing of the entity.

The Financial Action Task Force (FATF) first agreed on a standard on beneficial ownership in 2003, which requires that competent authorities have timely access to beneficial ownership information. All members of FATF and the FATF style regional bodies (FSRBs) are committed to this standard and undergo peer review (see Annex 1).

The FATF Recommendations 24 and 25 require that countries take measures to prevent the misuse of legal persons and arrangements for money-laundering and terrorist financing (ML/TF) and that they ensure that “adequate, accurate, and timely information” on the beneficial owner of legal persons and arrangement is available to competent authorities in a timely fashion. In 2014, the FATF issued specific guidance on transparency and beneficial ownership, which provided a definition of the beneficial owner and included guidance to countries on enhancing transparency. This was updated in 2019. In addition, FATF Recommendation 10 requires that banks, financial institutions, and a range of types of businesses and professions must identify and verify the identity of their customers and take similar measures for any beneficial owners.

Under the FATF Standards, countries have choices on how to obtain and/or manage beneficial ownership information within the stated objectives. Generally, countries have a single registrar for all types of legal persons, which maintains only basic information on legal ownership. Some jurisdictions maintain separate arrangements for different types of legal entities (corporation, trust, partnership, foundations, etc.). Additionally, while jurisdictions can choose to have a centralized register for beneficial ownership information, most countries do not yet do this (though the number is increasing), and instead allow professional services providers (such as incorporation agents, lawyers, accountants, corporate service providers, or financial institutions (e.g., banks) to maintain beneficial ownership information or allow the companies themselves to maintain the information. Competent authorities, which should be able to access information in a timely fashion, often have difficulties in accessing beneficial ownership information from these professional services providers or directly from the companies. These difficulties give space for illicit activities to occur, yet some countries have made political decisions to not create



a centralized register. The threshold for defining a controlling ownership interest also differs by jurisdiction.

Although recommended, most registries themselves do not ensure the information they hold (either basic information on legal ownership or beneficial ownership information) is adequate, accurate and up-to-date. First, false or fraudulent information may be given at the time of registration of an entity, unless there are controls (e.g. a requirement to verify documents establishing ownership). Second, information about the ownership of an entity may change over time.<sup>4</sup> Thus, registries should be updated regularly as the information on the beneficial owner changes. At either stage there are questions about the information provided and effectiveness of the due diligence done.

FATF has a process of mutual evaluation to assess compliance with the Recommendations (see Annex 1). The Global Forum on Transparency and Exchange of Information for Tax Purposes adopted the FATF Standard on beneficial ownership information and since 2016, all Global Forum members are being assessed to evaluate the implementation of this requirement (see Section 2.2 for a description of these reviews). Further, the Global Forum peer reviews of the automatic exchange of information (AEOI) also evaluate whether financial institutions could identify “controlling persons”. Many international agencies have developed toolkits, guidance and other products to assist in the implementation of these standards.

The maintenance of beneficial ownership information is an area with comparatively low compliance with the international standards, even among the jurisdictions that have signed up to global standards. In 2018 the FATF and the Egmont Group of Financial Intelligence Units published a report on the ways that legal persons and arrangements are being misused. Civil society organizations have produced some studies criticizing the implementation of the new principles.<sup>5</sup> At its most recent plenary meeting in October 2019, the FATF complemented its 2014 guidance with a new publication on “Best Practices on Beneficial Ownership of Legal Persons”.<sup>6</sup> Based on experience from countries’ mutual evaluations, the guidelines recommend that countries employ a multi-pronged approach to ensuring access to beneficial ownership (BO) information, as using a single approach has shown to be less effective than combining a number of different approaches.

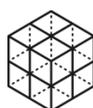
A critical gap is international access to beneficial ownership information. On top of the difficulties in accessing information domestically that were mentioned above, law enforcement authorities often encounter difficulties in tracing beneficial ownership of legal persons incorporated overseas. The European Union has reformed its anti-money-laundering rules to advance the collection and sharing of beneficial ownership in that region. Tax authorities may access beneficial ownership information through an international exchange of information between tax authorities where such agreements are possible, however, the permissible use of such information is limited to tax purposes, unless other uses are specifically allowed by the jurisdiction providing the information. Other countries or law enforcement authorities often have greater difficulty getting access to beneficial ownership information in/from other jurisdictions. There are mechanisms for bilateral mutual legal assistance (see Section 3.7 below), but countries do not always respond in a timely fashion to the requests. Automated

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<sup>4</sup> The situation is potentially different for publicly traded companies, where ownership is generally so dispersed that the risks of misuse are less, and securities law combined with the listing rules of stock exchanges mean that beneficial ownership information is available through other mechanisms.

<sup>5</sup> See for example [http://www.transparency.org/whatwedo/publication/just\\_for\\_show\\_g20\\_promises](http://www.transparency.org/whatwedo/publication/just_for_show_g20_promises)

<sup>6</sup> <http://www.fatf-gafi.org/publications/methodsandtrends/documents/best-practices-beneficial-ownership-legal-persons.html>



access to such information is lacking. This leaves opportunities for illicit activities through the use of shell companies, trusts and other opaque financial structures.

There has been growing momentum towards going beyond the basic international standard with the establishment of public beneficial ownership registries, especially in Europe. The 5th EU Anti-Money Laundering Directive requires EU countries to establish by January 2020 a publicly accessible beneficial ownership register for legal entities and a register of beneficial ownership of trusts accessible to those that can demonstrate a “legitimate interest”. The United Kingdom was the first large developed country to develop a public beneficial ownership register for companies, and in 2018 passed a law that requires UK overseas territories to implement such registers by 2020, though the implementation deadline has since been delayed. Public interest in this topic has been enhanced by investigative journalists and their publication of leaked information on beneficial ownership.<sup>7</sup>

## Proposals

A number of proposals have been made to strengthen beneficial ownership information and access to it. The proposals include making the “recommendation” for a centralized registry for beneficial ownership information into a requirement; harmonizing the legal structures so that all types of legal entities (including trusts and private foundations) have equally high levels of transparency and accuracy of information; and creating a requirement that all beneficial ownership information be made publicly accessible.

There have also been recommendations about enhancing the due diligence done on beneficial ownership information. Such proposals include requirements for automated checks on the accuracy and reasonableness of information as well as identity verification. Some such verification and due diligence is already required by other registration processes used for legal entities in the financial sector, as is required under FATF Recommendation 10, and through the Legal Entity Identifier (LEI), which is a set-up and running system with due diligence checks.<sup>8</sup> FATF Standards also require that any relevant entity maintaining such information must monitor the accuracy of the information, with sanctions for failure to do so. Further proposals have been made to strengthen the criminal sanctions.

Recommendations have also been made regarding enhancing cross-border verification of beneficial ownership information.<sup>9</sup> These include putting limits on registration of entities for which foreign legal entities are listed as the owner and the other country does not have sufficiently robust beneficial ownership rules, requiring re-approval by domestic national authorities based on detailed investigation of the relevant legal entities, implementing automated cross-border information matching requirements, or requiring re-registration with domestic beneficial ownership.

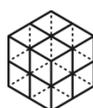
Additional proposals have been made to strengthen requirements on adopting a uniform data standard for beneficial ownership information – an open data standard has been developed by OpenOwnership, but its use is voluntary. Another idea, that has been backed by the Independent Commission for the Reform of International Corporate Taxation (ICRICT), is the creation of a

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<sup>7</sup> International Consortium of Investigative Journalists have published four major databases containing the names and addresses of ultimate beneficial owners/shareholders of companies: Offshore Leaks (2013), Panama Papers (2016), Bahamas Leaks (2016) and Paradise Papers (2017). See <https://offshoreleaks.icij.org/>.

<sup>8</sup> The Legal Entity Identifier (LEI) is a 20-character, alpha-numeric code that connects to key reference information that enables clear and unique identification of legal entities participating in financial transactions. It was developed to help clarify financial risk exposure in the context of complex securities and derivatives transactions and is now required for all financial institutions in G20 countries.

<sup>9</sup> <http://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf>



global asset registry, this would be a combined, global beneficial ownership registry that takes into account not just entity ownership, but also ownership of land, financial assets and financial accounts, and other items of value.<sup>10</sup>

The FATF has recently established a project group to examine these issues and make recommendations for amendments to strengthen the international standards on beneficial ownership transparency, based on a horizontal review of the findings of recent FATF Mutual Evaluations. This project group will consider many of the ideas noted above, as well as the findings of evaluations, and is expected to report in early 2021.

## 2.2. Tax matters

The Addis Ababa Action Agenda emphasized the importance of international tax cooperation, which should “be universal in approach and scope and should fully take into account the different needs and capacities of all countries”. The institutional architecture to address tax evasion and tax avoidance lacks an international convention such as the United Nations Convention against Corruption and United Nations Convention against Transnational Organized Crime, which have near universal coverage. The institutional environment of international tax cooperation is instead dominated by voluntary forums, bilateral tax treaties and more recently multilateral instruments.

The United Nations and the Organisation for Economic Co-operation and Development (OECD) remain the two main venues for the development or promotion of international tax norms, particularly through the maintenance of model conventions and commentaries as well as codes of conduct and guidance related to treaty practice. The UN Model Tax Convention is maintained and updated by the United Nations Committee of Experts on International Cooperation in Tax Matters (UN Tax Committee). The OECD Model Tax Convention is maintained by the OECD's Committee on Fiscal Affairs. There are also specific mechanisms that are agreed elsewhere on related topics, such as the Financial Action Task Force on beneficial ownership information and tax crime (see Section 2.1) and the OECD-housed Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) and the Inclusive Framework on BEPS (see below). The OECD also hosts the Convention on Mutual Administrative Assistance in Tax Matters, jointly developed by the OECD and the Council of Europe, which provided for administrative cooperation between States in the assessment and collection of taxes.

So far, the UN provides guidance on tax cooperation and has a de facto role in norm development and promotion rather than promoting binding legal (de jure) norms. The UN Tax Committee remains an expert body rather than an intergovernmental body. In response to the commitment made in the Addis Ababa Agenda, the UN Tax Committee continues to strengthen its operational capacity to meet the requirements and priorities of developing countries. The Committee is currently working on handbooks, manuals and guidelines alongside the next update of the UN Model Double Taxation Convention between Developed and Developing Countries. It also has subcommittees on dispute resolution, environmental taxation, tax challenges related to the digitalization of the economy, and tax treatment of ODA projects, among others.

The Inclusive Framework on BEPS and the Global Forum have worked extensively to provide tax authorities with modalities to address tax evasion and tax avoidance. The Global Forum has developed a number of policy and legal instruments related to transparency and exchange of information for tax purposes. The OECD and G20 launched a base erosion and profit shifting (BEPS) project in 2013 to address tax avoidance strategies that exploit gaps and mismatches in

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<sup>10</sup> <https://www.icrict.com/icrict-documents/a-roadmap-for-global-asset-registry>



tax rules to artificially shift profits to low- or no-tax locations. It concluded the BEPS Action Plan in 2015 and launched in 2016 the Inclusive Framework on BEPS to promote implementation and follow-up (below and Annex 1).

The Global Forum aims to assist tax authorities to exchange information on ownership, accounting, bank and other types of information necessary for tackling cross-border tax evasion and avoidance. Along with exchange of information on request (EOIR), it promotes automatic exchange of information (AEOI), which provides for cross-border exchange of information on the financial accounts of non-residents with their home countries. AEOI operates based on the “Standard for Automatic Exchange of Financial Account Information in Tax Matters”, which is often called the Common Reporting Standard (CRS). The Global Forum undertakes monitoring, peer reviews and technical assistance.<sup>11</sup> The Global Forum peer review also seeks to ensure that accurate and up-to-date beneficial ownership information is available for all relevant entities (see Section 2.1).

In 2016, the OECD and G20 established the Inclusive Framework on BEPS that aims to reduce the misalignment of profits with real economic activity. The Framework allows its members to participate in monitoring and implementation of the BEPS Action Plan, as well as in the development of further standards on BEPS-related issues. One of its main instruments is the introduction in 2018 of the Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the Multilateral Instrument (MLI)), which allows jurisdictions to integrate results from the BEPS project into their existing networks of bilateral double tax agreements.

One of the most discussed elements of the BEPS Action Plan is related to the basis for taxation of the profits of multinational corporations (MNC). Currently, MNC profits are allocated to different jurisdictions using the arm’s length standard, which seeks to price internal MNC transaction according to the same prices that would prevail in external transactions between non-related companies. To allow better enforcement of this standard, the BEPS Action Plan includes a requirement for country-by-country reporting (CBCR) by MNCs. The OECD developed guidance on CBCR production, filing and sharing among tax authorities.<sup>12</sup> The reports are collated or aggregated centrally in the home countries of MNCs and then shared with the countries that host operations of the MNCs if they have in place an agreement for the exchange of CBCR. A set of agreements have been created to allow the exchange of CBCR. Host countries can also pass laws to mandate local filing of a CBCR.

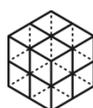
The above OECD-led reforms from the past ten years represent a major change in international tax cooperation. However, there are some concerns that developing countries, especially those with weaker capacity might be overwhelmed by the demands of these initiatives. International organizations, including the-OECD-housed bodies, have also increased capacity-building to developing countries, across BEPS, EOI, tax policy and tax crime investigation. Further, some commentators expect tax disputes to increase because of the increased complexity, the need for subjective judgement to implement the new rules, and the likelihood that countries selectively enforce the rules which they consider favourable to them.<sup>13</sup> Claims arising from tax related issues are increasingly adjudicated by international arbitral tribunals as a matter of state

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<sup>11</sup> OECD (2019). The 2019 AEOI Implementation Report. The Global Forum on Transparency and Exchange of Information for Tax Purposes. OECD.

<sup>12</sup> See <https://www.oecd.org/tax/beeps/guidance-on-country-by-country-reporting-beeps-action-13.htm>

<sup>13</sup> BEPS Monitoring Group (2015) “Comments on BEPS Action 14: Make Dispute Resolution Mechanisms More Effective”, January, <https://www.bepsmonitoringgroup.org/s/ap-14-dispute-resolution.pdf>.



obligations toward foreign investors, even in cases where international investment agreements contain unambiguous tax carve-out provisions.<sup>14</sup>

Beyond mere tax efficiency considerations, an increasing attention to the issue of tax and sustainable development is emerging within the leading international organizations, including through the Platform for Collaboration on Tax (comprising the IMF, the OECD, the UN and the World Bank). In this context, the issue of inequities in international tax rules has been emphasized. The leading estimates for the tax losses to both corporate and individual tax abuse show that these account for a higher share of GDP and therefore a much higher share of current tax revenues in lower-income countries.<sup>15</sup> Also gaining prominence is the importance of trust and the social contract, with the understand that enhancing trust in government can lead to voluntary tax compliance, which when combined with effective public service deliver can further enhance trust. These concepts can be applied to international tax cooperation as well.

## Proposals

A major current proposal by the Inclusive Framework focuses on a systematic response to tax avoidance by addressing the allocation of taxing rights between countries and a possible minimum tax rate. These proposals were developed in the context of discussions on taxation in an era of digitalized economic activity (see Section 3.10 below). The Inclusive Framework issued a Public Consultation Document in 2019 inviting input from external stakeholders on the specific proposals examined under two pillars. The members of the Inclusive Framework committed to reach an agreement on a consensus-based solution by the end of 2020. The programme promises a major reshaping of the existing international norms but this will depend on what sort of consensus the Inclusive Framework members manage to achieve. On profit allocation, countries are considering fixed profit allocations for some activities and the use of fixed formulas (instead of arm's length pricing) for other activities/some share of profits. They are also considering whether the reforms will be confined to the digital economy, consumer-facing businesses or will have a general application. The second pillar is a proposal for a sort of minimum tax rate, which would allow countries to “tax back” profit allocated to another jurisdiction if the authorities in the jurisdiction are not sufficiently exercising their taxing rights. The impact of these proposals is highly uncertain.<sup>16</sup>

Proposals in the tax field are numerous. At the level of institutions, some developing countries have long called for upgrading the UN Tax Committee from an expert body to an intergovernmental body. Other proposals are for the creation of a universal tax body under the auspices of the United Nations. There are also proposals for stronger regional tax cooperation bodies, including strengthening existing regional tax organisations<sup>17</sup> and forming new ones under UN regional commissions in regions where the bodies do not already exist. Others suggest building on the increasing capacity development done by UN regional commissions to provide them more resources and more closely integrate them within existing mechanisms.

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<sup>14</sup> Uribe, D and Montes, M. F (2019). Building a Mirage: the Effectiveness of Tax Carve-out Provisions in International Investment Agreements. South Centre Investment Policy Brief, number 14, March 2019. [https://www.southcentre.int/wp-content/uploads/2019/03/IPB14\\_Building-a-Mirage-The-Effectiveness-of-Tax-Carve-out-Provisions-in-International-Investment-Agreements\\_EN.pdf](https://www.southcentre.int/wp-content/uploads/2019/03/IPB14_Building-a-Mirage-The-Effectiveness-of-Tax-Carve-out-Provisions-in-International-Investment-Agreements_EN.pdf)

<sup>15</sup> IMF (2019). Corporate taxation in the global economy. Policy Paper No. 19/007. International Monetary Fund; Cobham, A and Jansky (2020). Estimating Illicit Financial Flows: A Critical Guide to the Data, Methodologies, and Findings. Oxford University Press

<sup>16</sup> See IMF (2019). Corporate taxation in the global economy. Policy Paper No. 19/007. International Monetary Fund; Clavey, Colin Johnat al. (2019). *International Tax Reform, Digitalization, and Developing Economies* (English). MTI discussion paper. No. 16. Washington, D.C. World Bank Group.

<sup>17</sup> AU-ECA (2015). Illicit Financial Flows: Report of the High Level Panel on Illicit Financial Flows from Africa. Commissioned by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development



On a policy level, there are proposals for shifting MNC taxation to the unitary principal with all profits allocated according to formulas, which have been backed by ICRICT and many civil society groups. In addition, campaigners have called for CBCR to uniformly be made public so that there is greater accountability to citizens and tax authorities to all have access to relevant information. There are many proposals related to ensuring that developing countries can better participate and benefit from the plethora of new norms agreed in the last ten years, though most of these norms were not set with their participation. In particular, there is interest in global AEOI. Next, information that has been shared may also be subject to restrictions on its further sharing even within country authorities (e.g., the tax authority cannot share information received from another country with their colleagues in a financial intelligence unit or customs authority). It has been proposed to remove the restrictions on the sharing of such information among competent national authorities, which can promote a whole-of-government approach.

There is also the possibility of a universal instrument for mutual administrative assistance in tax matters going beyond the current Convention on Mutual Administrative Assistance in Tax Matters. While the OECD-housed initiatives have expanded their membership, tax matters are not subject to a near-universal convention like UNCAC or UNTOC. Many of the above proposals could, if desired, all be integrated within the proposal for the creation of a UN convention on financial transparency, which might more easily achieve universality and complement UNCAC and UNTOC. To deal with the risk of increasing tax disputes, another proposal, made in the context of the digitalized economy discussions, is the creation of mandatory binding arbitration, though there are many concerns and risks, such as a lack of transparency, about these proposals.

At a practical implementation level, proposals have been made for standards for the timeliness of responses to international requests for assistance on tax matters. Other ideas include the standardized advanced technology tools to promote law enforcement and the detection of suspicious activity, standardization of tax collection mechanisms, and standardized procedures for international assistance in tax collection.

### 2.3. Bribery and corruption

Corruption is a complex social, political and economic phenomenon that affects all countries. The United Nations Convention against Corruption (UNCAC) lists offences such as bribery, embezzlement, abuse of functions and trading in influence as types of corruption. Obstruction of justice and money-laundering are considered by UNCAC as corruption-related crimes. Bribery and embezzlement in the private sector are also included, as corruption often involves both public officials and private sector actors. Other international organizations have adopted a narrower definition of corruption that encompasses the abuse of public office for private gain. However, this narrow definition neglects the international dimension of corruption and the role of both domestic and foreign private firms that engage in undue influence to shape State policies, laws and regulations for their own benefit.<sup>18</sup>

Corruption often involves entrenched power structures, systems of societal relations, and social norms which together form a system of incentives that bind a network of actors into a governance arrangement that does not involve impersonal application of neutral rules.<sup>19</sup> Corruption undermines trust in Governments and legislatures, results in potential loss of resources and undermines the social contract. It reinforces low public resource mobilization and ineffective service delivery by Governments.

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<sup>18</sup> ECA (2016). *African Governance Report*, Addis Ababa.

<sup>19</sup> World Bank (2017). *World Development Report 2017: Governance and the Law* (Washington, D.C., World Bank Group).



UNCAC is the only legally binding universal anti-corruption instrument. The Convention's far-reaching approach and the mandatory character of many of its provisions make it a unique tool. The Convention covers the four main pillars of anti-corruption: preventive measures; criminalization of corruption and law enforcement; international cooperation; and asset recovery. UNODC's Corruption and Economic Crime Branch (CEB) serves as the Secretariat to the Conference of the States Parties (COSP) to UNCAC. UNCAC includes a mandatory Implementation Review Mechanism (IRM), a peer review process that assesses States' compliance with the Convention (see Annex).

Other international forums conducting significant work on anti-corruption include, inter alia, the OECD and its Working Group on Bribery, the Organization of American States and its MESICIC, the Council of Europe's Group of States against Corruption (GRECO), the G20 Anti-Corruption Working Group, the Asia-Pacific Economic Cooperation (APEC) Anti-Corruption Working Group and the International Monetary Fund (IMF) (through Article IV consultations). Aside from UNCAC, relevant legal frameworks and instruments include: the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Council of Europe Criminal Law Convention on Corruption and Civil Law Convention on Corruption, the Inter-American Convention against Corruption of the Organization of American States, the African Union Convention on Preventing and Combating Corruption, and the Arab Anti-Corruption Convention. Anti-corruption is also included in other normative documents at the United Nations, such as the UN Global Compact principles and the Principles for Responsible Investment (PRI).

Bribery is one of the core corruption offences included within UNCAC, which calls for the criminalization of both the giving of an undue advantage to any public official and the acceptance of an undue advantage by a public official. Anti-bribery enforcement has become a specialized area of work within corruption. First, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and later UNCAC require the criminalization of active bribery of foreign public officials. In several developed countries, some cases of foreign bribery and related offences that have been investigated and prosecuted, are not resolved with a full trial. Instead, these cases are often resolved using settlements, where the accused entity (usually a multinational corporation and/or its officers) pay a fine and may or may not admit wrongdoing. The fines levied as part of these settlements can be monetarily large. Recently, the largest settlement ever was reached between the aircraft manufacturer Airbus and a consortium of country authorities, whereby the company agreed to pay combined penalties of more than \$3.9 billion to resolve foreign bribery charges. A significant gap remains between the amounts realized through settlements and other alternative mechanisms and those returned to the countries whose public officials were allegedly bribed, as well as a lack of information on the use of settlements.<sup>20</sup>

In 2021, the UN General Assembly will for the first time ever hold a UN General Assembly Special Session (UNGASS) against corruption, based on the decision in resolution 73/191. This UNGASS will examine challenges and measures to prevent and combat corruption and strengthen international cooperation. The UNGASS will adopt a concise and action-oriented

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<sup>20</sup> See the COSP working group paper on "Settlements and other alternative mechanisms in transnational bribery cases and their implications for the recovery and return of stolen assets", CAC/COSP/WG.2/2016/2, available at <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604599e.pdf>; and Oduor, Jacinta Anyango, et al. (2013). *Left out of the bargain: settlements in foreign bribery cases and implications for asset recovery*. Stolen Asset Recovery (StAR) initiative. Washington DC ; World Bank Group. <http://documents.worldbank.org/curated/en/762191468326714948/Left-out-of-the-bargain-settlements-in-foreign-bribery-cases-and-implications-for-asset-recovery>.



political declaration, agreed upon in advance by consensus through intergovernmental negotiations under the auspices of the UNCAC COSP.<sup>21</sup>

In addition, the UN Secretary-General has created a UN system-wide Global Task Force on Corruption, which is co-led by UNODC, UNDP and UNDP, and is open to all interested UN entities. Its purpose, inter alia, is to develop a UN Common Position to assist Member States in their preparations for UNGASS and to mobilize and synergize UN efforts to address national anti-corruption needs in response to the 2030 Agenda. The Common Position will also focus on current challenges and possible means to address them.

To prevent corruption, there are many relevant frameworks and good practices. For example, the G20 Good Practices Guide for Preventing and Managing Conflicts of Interest, and the G20 High-Level Principles for the Effective Protection of Whistleblowers, were agreed with support from international organizations including the OECD, UNODC, and the World Bank. Other voluntary standards and initiatives include the Infrastructure Transparency Initiative (CoST), the Extractive Industries Transparency Initiative (EITI), and the Open Government Partnership. Financial reporting and corporate governance standards can also play a role in prevention of irregularities

## Proposals

A number of proposals have been made by various stakeholders for the UNGASS Political Declaration with a view to strengthen anti-corruption efforts. To tackle impunity for grand corruption, where powerful corrupt political figures prevent effective investigation and enforcement against corruption, some have suggested the creation of an international anti-corruption court.<sup>22</sup> It would have jurisdiction over grand corruption cases where countries themselves are unable or unwilling to pursue them. Additional related ideas include regional anti-corruption courts, and/or the creation of international or regional agencies for investigation, prosecution or enforcement. Others have suggested that the mandate/jurisdiction of the International Criminal Court could be extended (rather than creating a new court).<sup>23</sup>

There have also been proposals for strengthening the uniformity of legal treatment of corruption prosecutions. For example, there have been proposals for common standards for settlements in cross-border corruption cases.<sup>24</sup> This extends to common standards for the allocation of asset recovery in cross-border cases<sup>25</sup> and/or standards for reparations for the victims of corruption.<sup>26</sup> In particular, an array of recommendations have been made in relation to bribery settlements, including in relation to asset recovery and reparations, information sharing, cross-border legal assistance, joint investigations, and debarments.<sup>27</sup> Resolutions 6/2 and 8/9 of the Conference of the States Parties to UNCAC also address this.<sup>28</sup>

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<sup>21</sup> UN General Assembly resolution 73/191

<sup>22</sup> *An International Anti-Corruption Court? A synopsis of the debate* (U4 Brief 2019:5; By Matthew C. Stephenson and Sofie Arjon Schütte): <https://www.u4.no/publications/an-international-anti-corruption-court-a-synopsis-of-the-debate>

<sup>23</sup> See for example, <https://voices.transparency.org/addressing-impunity-for-grand-corruption-what-are-the-options-e6bdc546e6ba>

<sup>24</sup> Structured Settlements for Corruption Offences: Towards Global Standards? IBA Anti-Corruption Committee: Structured Criminal Settlements Subcommittee: <https://www.oecd.org/corruption/anti-bribery/IBA-Structured-Settlements-Report-2018.pdf>

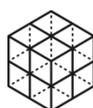
<sup>25</sup> <https://globalanticorruptionblog.com/2019/06/12/who-owns-a-bribe-and-why-it-matters/>

<sup>26</sup> <https://globalanticorruptionblog.com/2019/05/13/providing-reparations-to-the-victims-of-foreign-bribery-what-criteria-are-appropriate/>; <https://uncaccoalition.org/reparations-for-corruption-how-corruption-enforcement-ignores-victims-rights>

<sup>27</sup> Oduor, Jacinta Anyango, et al (2013). *Left Out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery*. The World Bank.

<sup>28</sup> <https://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session6-resolutions.html>

[https://staging.unodc.org/documents/treaties/UNCAC/COSP/session8/Advance\\_unedited\\_resolutions\\_final.pdf](https://staging.unodc.org/documents/treaties/UNCAC/COSP/session8/Advance_unedited_resolutions_final.pdf)



There have also been calls to address corruption risks related to “golden visas” and citizenship-by-investment schemes. There is currently no international instrument related to such schemes, but critics have said that they allow impunity for corruption by allowing corrupt individuals to flee with their assets.<sup>29</sup>

Civil society organizations have also made many proposals for strengthening UNCAC provisions, for example by turning recommendations into mandatory actions.<sup>30</sup> Suggestions include mandatory access to information regimes, open procurement and open contracting approaches, political financing transparency, conflicts of interest frameworks, and an international norm for minimum whistleblower protections. Proposals have also been made to strengthen the UNCAC review process which could include mandatory publication of country review reports, more frequent reviews, accountability for following up on recommendations made in reviews, civil society participation in reviews, and more funding to conduct reviews.

## 2.4. Money-laundering

Money-laundering is the processing of the proceeds of crime to disguise their illegal origin. It cuts across all crimes that generate proceeds. It is the method through which criminal actors profit from their crimes, including corruption. The transportation of cash across a border in excess of regulated limits is the most basic form of money laundering<sup>31</sup>, though much more complex techniques are used.

The 1988 United Nations (Vienna) Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances is the first international instrument that called for the criminalization of money-laundering. The UN Convention on Transnational Organized Crime (UNTOC) (article 6 and 7) and the UN Convention against Corruption (UNCAC) (article 23) both call for States parties to apply criminal and other measures against money-laundering and related activities.

Under the FATF Recommendations, there are broad range of preventative measures that are required, particularly of financial institutions, including customer due diligence, record keeping, and suspicious transaction reporting. The FATF Recommendations also call for the criminalization of money-laundering on the basis of the Vienna and Palermo Conventions. The crime of money-laundering should cover the widest range of predicate offences. At a minimum, there are 21 designated categories of offences listed in the glossary of the FATF Recommendations. In 2003, the FATF included legal professionals into the scope of the FATF Recommendations, though a few countries, including some major financial centres, are repeatedly found not in compliance with this requirement in their Mutual Evaluation Reports. FATF and FSRB working groups focus on identifying trends and risks and on improving policy and implementation. In addition, the FATF Recommendations themselves are regularly revised via strategic reviews, which take place between each round of mutual evaluations (see Annex 1).

The International normative framework relating to money-laundering also includes Security Council, General Assembly, Commission and other UN Resolutions – related to the implementation of the Conventions above and FATF Recommendations, the mandating of UN Secretariat work, and on evolving risks.

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<sup>29</sup> See in particular: EUROPEAN GETAWAY: INSIDE THE MURKY WORLD OF GOLDEN VISAS (2018; By TI-EU and Global Witness) <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/european-getaway/>. See also work of OECD regarding risks of tax evasion posed by golden visas and citizenship by investment: <https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment/>

<sup>30</sup> See UNCAC Coalition Contribution to the Consultation Process in Preparation of the UN General Assembly Special Session against Corruption 2021: <https://uncaccoalition.org/wp-content/uploads/UNCAC-Coalition-%E2%80%93-UNGASS-Consultation-%E2%80%93-Submission-1.pdf>

<sup>31</sup> FATF and MENAFATF (2015), *Money Laundering through the Physical Transportation of Cash*, Paris, France and, Manama, Bahrain, <http://www.fatf-gafi.org/publications/methodsandtrends/documents/ml-through-physical-transportation-of-cash.html>.



While the FATF leads international efforts to combat money-laundering, policy, guidance and substantive discussions on combatting money-laundering take place in numerous policy forums, including: the FATF-style regional bodies (FSRBs), the United Nations Commission on Narcotic Drugs, the United Nations Commission on Crime Prevention and Criminal Justice, the Conference of the States Parties to UNCAC, the Financial Stability Board, the IMF and the World Bank, the Egmont Group of Financial Intelligence Units, INTERPOL, and the OECD Tax Crimes Forum, amongst many others. There are also private sector groups devoted to this discussion, such as the Wolfsberg Group, which is an association of thirteen global banks devoted to developing frameworks and guidance for the management of financial crime risks.

There are numerous regional and national aspects to the framework of AML measures and instruments – including at the level of the European Union's 5<sup>th</sup> anti-money-laundering directive (as well as prior ones) and regulations. There are also multi-national frameworks and networks of relevant institutions – such as the asset recovery networks (see below) and Egmont Group of Financial Intelligence Units, the body that provides a platform for the exchange of information and experience between FIUs.

Some of the impacts of the global framework for combatting money laundering, in particular areas of weak implementation, have contributed to unintended consequences, such as de-risking and pressures on correspondent banking. These issues are being actively addressed by the FATF, the G20, the FSB correspondent banking coordination group, the IMF and the Wolfsberg Group. They have focused on clarifying regulatory expectations and increasing the effectiveness of public-private information sharing, as well as enhancing international cooperation. The *2019 Financing for Development Report* brings together the work of the international institutions and calls for the adoption of well managed technological solutions to address the cost and risks of operating correspondent banking relationships.<sup>32</sup>

Efforts are also being made to ensure that revenue authorities and AML/CFT competent authorities are able to communicate and share information, especially in low income countries (see Section 2.2). Work is ongoing to address data protection and private barriers to effective AML/CFT measures, including to allow for public-private partnerships, and sharing of information within the private sector (e.g., through the use of know-your-customer utilities).

Combatting money-laundering requires AML/CFT implementation in all countries. To do this, combatting money-laundering and corruption cannot be addressed through siloed efforts. 17 percent of jurisdictions assessed in the study of supervision and enforcement of beneficial ownership obligations do not impose any AML/CFT obligations on Designated Non-Financial Businesses and Professions (DNFBPs), thus creating unregulated “back doors” into the global financial system that carry substantial risk of abuse by actors seeking to evade AML controls. In addition, strengthening of anti-money-laundering rules may also cause criminals to shift their mechanisms of transferring resources, for example moving financial resources by converting them into goods which are smuggled across borders.

Since 2016, UNODC's strategy to assist Member States to combat money-laundering involves ensuring that AML/CFT policy is fully mainstreamed into overall sustainable development policy, beginning first with a development dialogue and including issues of peace and security. In 2015, the IMF introduced guidance on the inclusion of AML/CFT issues in surveillance and financial stability assessments. The World Bank integrates anti-money-laundering capacity-building programmes into financial sector strengthening financial inclusion programmes.

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<sup>32</sup> United Nations (2019). *2019 Financing for Sustainable Development Report*, New York, <https://developmentfinance.un.org/fsdr2019>.



## Proposals

Proposals include further mainstreaming of anti-money-laundering policies into sustainable peace and development policy. This would entail increasing the integration of UNODC work, and that of other bodies providing capacity-building on AML policy, into UN development assistance frameworks and country-owned integrated national financing frameworks (INFFs) related to their sustainable development plans. There are also proposals for more States to adopt legal frameworks that apply criminal liability to companies that are involved in money laundering offences, including for failure to prevent the crime.<sup>33</sup>

## 2.5. Confiscation and disposal of the proceeds of crime

Member States have adopted the principle that people should not benefit from any criminal activity, and thus that the proceeds of crime must be confiscated. The term confiscation describes the process of depriving criminals of the proceeds of their crimes or depriving them of property of an equivalent value. This also prevents any perception that “crime pays”. Aside from criminal type confiscation, States also use civil and administrative types. In most jurisdictions, confiscation is not a penalty, or a fine, but a removal of the proceeds of crime.

Both UNCAC and UNTOC provide important frameworks for the confiscation and disposal of criminal proceeds. UNTOC calls for countries measures to enable competent authorities to freeze or seize and confiscate the proceeds of crime. Detailed provisions on confiscation can be found in UNTOC articles 12-14, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (art. 5, Security Council resolution 1373 (2001) and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of the Council of Europe. FATF Recommendation 3 also includes measures to enable competent authorities to confiscate property laundered or the proceeds from money-laundering.

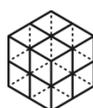
Articles 31, 46, 54, 55 and 57 of UNCAC cover domestic and international aspects of identifying, freezing, seizing, confiscating and, very importantly, recovering the proceeds and instrumentalities of corrupt conduct. While confiscation and asset recovery and return are often part of the same process, we separate them in this paper only to align with the language in the Panel’s terms of reference. A deeper discussion of the international aspects of confiscation is under Section 2.6 below, while this Section will mainly focus on confiscation of those assets that were the result of criminal activities domestically.

Various regional bodies have frameworks for confiscation and disposal. The European Union has issued several framework decisions and directives. Article 1 of EU Framework Decision 2007/845/JHA concerns cooperation between Asset Recovery Offices in the field of tracing and identification of proceeds of crime. The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism includes measures on freezing, seizure, and confiscation of instrumentalities and proceeds of relevant crimes and international cooperation in this regard. The Organization of American States has model regulations which deal with the disposition of forfeited property. Various regional anti-corruption conventions also include relevant provisions.

There are several pertinent issues for improving the effectiveness of confiscation. First is the timeliness of the legal process. Confiscation and disposal can involve complex legal proceedings and potentially many levels of judicial review and appeals process, which can take many years to complete.

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<sup>33</sup> See for example <https://publications.parliament.uk/pa/cm201719/cmselect/cmtreasy/2010/2010.pdf>.



Additionally, confiscation can occur on either a conviction or non-conviction basis. Non-conviction-based confiscation is intended to deny alleged criminals the enjoyment of the proceeds of their activities when it is not feasible to convict them or before they are convicted. It also has a role in ensuring accountability in complex cross-border cases that present difficulties in investigation, destruction of evidence, or other impediments to pursuing effective convictions. Freezing orders can also be used against a third parties, which have possession or influence over the assets related to the crimes in question.

A further issue is the management of assets that are confiscated and the taking of a decision for disposal. The issues are particularly relevant for moveable assets and assets that might lose value over time, and for the administration of assets such as ongoing businesses. The G8 issued a guide on Best Practices for the Administration of Seized Assets (2005) which identified overarching principles to be observed in the administration process, particularly during the seizure phase when a final confiscation determination is still pending. FATF guidance has suggested the use of competent authorities, contractors, a court-appointed manager or the person who holds the property (subject to appropriate restrictions on use and sale) being given the right to manage confiscated property until disposal. A study carried out by the Organization of American States (OAS)<sup>34</sup> analyses the systems for the management of seized and confiscated assets in the region.

## Proposals

Proposals for improved confiscation include the wider use of non-conviction-based confiscation for a wide range of crimes.<sup>35</sup> Other suggestions include establishing accurate and reliable central databases of confiscated assets, which involves identifying the repositories of the information required, such as custodians of court orders and investigators or investigating magistrates or other bodies with physical custody of seized and confiscated property. At a basic level, more countries need to implement UNCAC review process recommendations, such as taking a value-based approach to confiscations.<sup>36</sup>

## 2.6. Recovery and return of stolen assets

As discussed in Section 2.5, criminals should not enjoy the proceeds of their crimes. This section covers the challenging nature of cross-border elements to asset recovery. Most commonly, asset recovery is understood as the entire process of tracing, freezing or seizing, confiscating, and returning or disposing of property, including of proceeds of crime.

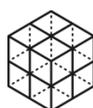
Importantly, the approach to the disposal of confiscated assets envisioned in UNTOC predates the principles contained in UNCAC. While UNTOC stipulates that the disposal of confiscated assets is to be carried out in accordance with domestic law and requests States *to give priority consideration* to the return of confiscated States, UNCAC establishes asset return as its fundamental principle (UNCAC arts. 51, 57). Additionally, while UNTOC encourages concluding arrangements on sharing of proceeds, UNCAC deliberately avoids references to sharing of assets, as the main principle enshrined in it is the return of corruption proceeds rather than

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<sup>34</sup> OAS, Asset Management Systems in Latin America and Best Practices Document on Management of Seized and Forfeited Assets, 2011:  
[http://www.cicad.oas.org/lavado\\_activos/grupoExpertos/Decomiso%20y%20ED/Manual%20Bienes%20Decomisados%20-%20BIDAL.pdf](http://www.cicad.oas.org/lavado_activos/grupoExpertos/Decomiso%20y%20ED/Manual%20Bienes%20Decomisados%20-%20BIDAL.pdf)

<sup>35</sup> Non-conviction based confiscation is relevant for all types of crime, as described in UNCAC COSP resolutions 8/9 and 7/1. Recently this procedure has been increasingly emphasised in relation to tax crimes, see for example OECD (2017), Fighting Tax Crime: The Ten Global Principles.

<sup>36</sup> See, for example, observations from: a set of non-binding recommendations and conclusions based on lessons learned regarding the implementation of chapters III and IV of the United Nations Convention against Corruption, CAC/COSP/2019/3, available at [https://www.unodc.org/documents/treaties/UNCAC/COSP/session8/CAC\\_COSP\\_2019\\_3\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/COSP/session8/CAC_COSP_2019_3_E.pdf)



their sharing. UNCAC generally prefers the return of confiscated proceeds to the requesting State party, in accordance with the fundamental principle of its article 51.

The recovery and return of stolen assets has also been referenced in United Nations Financing for Development outcomes since the Monterrey Consensus and has been identified in the Addis Ababa Action Agenda as a crucial element towards the financing of the 2030 Agenda for Sustainable Development. Nevertheless, the return of stolen assets is different from and cannot substitute for other types of financial flows needed to finance sustainable development.

UNCAC article 57, paragraph 3, specifies in greater detail the disposal of confiscated corruption-related assets, allows for the compensation for damage to requesting States parties or other victims of corruption offences and recognizes claims of other prior legitimate owners. Paragraphs 4 and 5 of article 57 provide for the coverage of expenses of the confiscating State party and ad hoc agreements on asset disposal between concerned States parties.

In 2006, the G8 endorsed the Principles and Options for Disposition and Transfer of Confiscated Proceeds of Grand Corruption. The principles govern, subject to national law, how transfers could be accomplished consistent with UNCAC, including, where appropriate, pursuant to voluntary agreements executed in accordance with paragraph 5 of article 57.

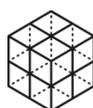
The Stolen Asset Recovery (StAR) Initiative is a partnership between UNODC and the World Bank that supports international efforts to end safe havens for the proceeds of corruption. StAR works with developing countries and financial centres to prevent the laundering of the proceeds of corruption and to facilitate a more systematic and timely return of stolen assets. StAR assists countries in developing legal frameworks, institutional expertise, and the skills necessary to trace and return stolen assets. It also provides platforms for dialogue and collaboration and facilitates contact among different jurisdictions involved in asset recovery. Importantly, StAR is currently conducting a data collection on asset recovery through a detailed questionnaire submitted to the States parties to UNCAC.

Asset recovery interagency networks provide practitioners in the field of asset confiscation and recovery an opportunity to address challenges in international cooperation, are important sources of peer learning and exchange of good practices. UNODC has been instrumental in assisting Member States to establish networks globally. The Camden Asset Recovery Inter-Agency Network (CARIN) was the first of these networks, and others were established later (e.g., the Asset Recovery Interagency Network for Southern Africa (ARINSA), the Asset Recovery Interagency Network for West Africa (ARINWA)). In 2009, the INTERPOL/StAR Global Focal Point Network on Asset Recovery (GFPN) was established to assist practitioners to overcome operational barriers including by providing a secure information exchange platform for criminal asset recovery.<sup>37</sup>

Ad hoc asset recovery forums, such as the Global Forum on Asset Recovery (GFAR), the Arab Forums on Asset Recovery (AFAR) and the Ukraine Forum on Asset Recovery (UFAR) supported by the StAR Initiative, brought together policymakers with investigators and prosecutors, as well as high-level political officials. Other relevant initiatives include the Lausanne process, sponsored by Switzerland, which issued “Guidelines for the Efficient Recovery of Stolen Assets” in 2014, the G20 Anti-Corruption Working Group, which adopted “Nine Key Principles of Effective Asset Recovery” in 2011, and the International Centre for Asset Recovery (ICAR) of the

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<sup>37</sup> StAR, World Bank, UNODC (2018), Directory of Asset Recovery Networks, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2018-June-6-7/V1803851e.pdf>



Basel Institute on Governance which conducts training and provides assistance and capacity-building. In February 2020, African countries adopted the AU Common African Position on Asset Recovery (CAPAR).<sup>38</sup>

The second cycle of peer reviews under the UNCAC Implementation Review Mechanism is focusing on the implementation of UNCAC Chapter V on asset recovery.<sup>39</sup> While capacity can be a challenge for a requesting State, it is also a challenge in requested States (i.e., the jurisdictions where the assets are finally found). Requested States with large financial centres may receive many more requests for assistance or information than they can process quickly, given their own limits on the levels of human resources dedicated to providing assistance. This may result in lengthy delays in response, which can slow investigations and the recovery of assets.

Beyond the legal process for identification, seizure and confiscation of assets described above, asset return has more steps involved. Requesting States must prove an interest in the asset, potentially argue against other competing interests, and finally proceed through the asset return phase. This can add further time to the already lengthy process of confiscation and disposal. This has led to complaints about the slowness of the legal systems in both the requesting and the requested States, which are generally obligated to follow due process in their court systems. In addition, most requesting States have limited experience and expertise in navigating these processes, pointing to the need for greater capacity building. The AU-ECA Report on Illicit Financial Flows from Africa encouraged countries to establish escrow accounts managed by regional development banks to serve as custodians of frozen assets.

There are four possible measures that can be adopted to manage funds once they are returned: (1) country systems such as the public financial management system; (2) enhanced country systems, building on the ordinary system, but with adjustments to make the more agile and transparent; (3) autonomous funds that are designated for specific programmes with clear public reporting and accountability requirements; and (4) assignment of the management to non-governmental organizations (NGOs).<sup>40</sup>

An additional issue is the formation of ad hoc agreements on asset disposal between concerned States parties. UNCAC provides an option for the conclusion of case-specific agreements or arrangements on asset disposal under paragraph 7 of article 57 but does not require such arrangements. However, many States have signed such agreements, which can generate greater trust between the requested and requesting States, and some speculate that the lack of trust is a key barrier to international cooperation in asset recovery.<sup>41</sup> These ad hoc agreements often detail what the returned assets may be used for, and at times have been used to agree to monitoring on the use of the returned asset by a third party, for example by the World Bank.

Avenues for asset recovery also exist under existing tax frameworks, including the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, in which more than 130 jurisdictions participate. Work is underway in the OECD to identify the legal, policy and operational challenges and opportunities to make increased use of this instrument.

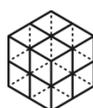
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<sup>38</sup> See African Union decision Assembly/AU/Dec.774(XXXIII), available at: [https://au.int/sites/default/files/decisions/38180-assembly\\_au\\_dec\\_749-795\\_xxxiii\\_e.pdf](https://au.int/sites/default/files/decisions/38180-assembly_au_dec_749-795_xxxiii_e.pdf).

<sup>39</sup> For more information, please see: Implementation of chapter V (Asset recovery) of the United Nations Convention against Corruption/Thematic report prepared by the Secretariat <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/27-29May2019/V1901601e.pdf>

<sup>40</sup> StAR Initiative (UNODC — World Bank), Management of Returned Assets: Policy Considerations, 2009.

<sup>41</sup> Brun, Jean Pierre et al. (2011). *Barriers to asset recovery : an analysis of the key barriers and recommendations for action*. Stolen Asset Recovery (StAR) initiative. Washington, DC: World Bank Group. <http://documents.worldbank.org/curated/en/204221468338390474/Barriers-to-asset-recovery-an-analysis-of-the-key-barriers-and-recommendations-for-action>.



## Proposals

Existing proposals for strengthening asset recovery and return often focus on the legal assistance provided by the requested States. As a first step, countries should implement the existing UNCAC provisions, but not all of them have done so. For example, many States lack dedicated asset recovery legislative acts and frameworks. At the investigation stage, some states are currently precluded from sharing information based on their domestic legal systems. While countries can enhance information sharing in practice, one proposal is that UNCAC be amended to have a mandatory provision for all countries to legalize information sharing with potential requesting states when they are investigating suspicious transactions. There are also proposals for more use of non-conviction-based confiscation, which can speed up the legal process. As discussed in Section 3.7 below, there is a proposal for a multilateral legal instrument to regulate reciprocal rights related to asset return.<sup>42</sup> This could be a method to try to prevent politically motivated slowdowns in asset recovery cases.

There are particular shortcomings on data collection and in asset recovery and return (see Section 3.11) and proposals include systematic, regular and frequent global data collection and dissemination. Finally, there are calls for a more victim-oriented approach and reparations to be paid to the victims of corruption using asset recovery (as described above in Section 2.3)

## 3. Cross-cutting issues

As may be clear from the above analysis, across different topics and institutions, there are recurring themes. This Section provides some cross-cutting analysis, explaining issues that are similar or relevant for many different topics or institutions. The purpose is to provide a more thematic understanding of the challenges and proposals in the field of financial accountability, transparency and integrity. The below introductions are not meant to be comprehensive, but instead to point to areas where the FACTI Panel may wish to explore deeper thinking.

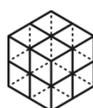
### 3.1. Measurement issues

Measuring and tracking illicit flows, including all the topics discussed in Section 2, is extremely challenging, since by their very nature illicit flows are not transparently or systematically recorded. Currently, no single tool or process can effectively establish a comprehensive measure of illicit financial flows (IFFs) at the global or country level. Nonetheless, there are a few methods that are currently used to attempt to estimate the scope of the problem. These tend to concentrate on selected elements and thus do not give a global picture of the size or nature of illicit finance. For example, one methodology starts with errors and omissions in official balance of payments statistics as a proxy for illicit flows, though this method is no longer widely used. An alternative measure starts from estimates on the proceeds of crime<sup>43</sup>. Another focusses on discrepancies in the aggregate flow of funds. Others seek to use bilateral or multilateral mismatches in recorded trade flows to measure trade mis-invoicing. However, the data sources are generally not robust in measuring changes or determining trends across years and interpretation of the estimates is difficult. More attention has been recently given to addressing errors in data production and collection.

Quantifying offshore financial wealth is also by its very nature very challenging. Recently, Gabriel Zucman and others have used data from the Central Bank of Switzerland (SNB) and the Bank for International Settlements (BIS) to determine the total quantum of offshore wealth as

<sup>42</sup> See <https://russiaun.ru/en/news/fd2609>.

<sup>43</sup> There is also some work, which estimates cash smuggling based on banknote repatriation volumes, and narcotics use based on measuring their metabolic products in waste water.



well as country wise.<sup>44</sup> While providing useful orders of magnitude estimates, these figures are not precise.

Similarly, popular corruption measures do not seek to accurately measure corruption but rather rely on surveys and perceptions of corruption. Data on bribery, while also survey based, can be more accurate for some types of bribery, but will be biased towards the types of bribes demanded of survey respondents rather than the high value bribery among businesses and higher-level public officials.

In 2017, the United Nations Office on Drugs and Crime (UNODC) and UNCTAD—the joint custodian agencies of SDG indicator 16.4.1, which covers illicit financial flows (IFFs)—developed a programme of coordinated actions to develop, review and test a statistical methodology to estimate the volume of IFFs. In early 2019, they established a Task Force on the Statistical Measurement of Illicit Financial Flows, composed of representatives of official statistics, tax and customs authorities of several countries in Europe, Africa and Latin America, as well as international institutions, including Eurostat, the IMF, the OECD and the United Nations Economic Commission for Africa.

A conceptual statistical framework for IFFs, including a concise definition and typology to define the scope of measurement was submitted to the Inter-agency and Expert Group on SDG indicators (IAEG-SDG), which develops the global indicator framework for the SDGs. In October 2019, the IAEG-SDGs endorsed a reclassification of the indicator to Tier II, signifying that it is conceptually clear, has an internationally established methodology and standards, but that data is not yet regularly produced by countries, though work on a Draft Conceptual Framework is ongoing to clarify the subcategories of IFFs that will be included in the definition and how they can be measured at a disaggregated level. This framework provides a statistical definition of IFFs as “financial flows that are illicit in origin, transfer or use; that reflect an exchange of value instead of purely financial transactions; and that cross country borders.” Four main categories of IFFs are identified in this conceptual statistical framework, according to the activity generating them: tax and commercial practices, illegal markets, theft and terrorism financing, and corruption.

The next steps include the development of statistical methodologies to underpin estimations at country level. The custodians will be running pilot studies in different developing countries, predominantly in Latin America and in Africa, to test and refine the methodologies.

## 3.2. Secrecy vs. transparency

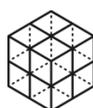
At the heart of many of the topics in Section 2 is the level of secrecy accorded to financial and legal arrangements and financial transactions of all types. Proponents of secrecy argue that people have a right to privacy for their own affairs, meanwhile the proponents of greater transparency argue that financial conduct has externalities, meaning impacts on others, particularly on public revenue and law and order. The tension between the right to privacy and the public right to information is an area of constant negotiation as technologies change the type and scale of information storage. The digital era with a great expansion of online activity has challenged traditional notions of the right to privacy.<sup>45</sup> It also provides new tools to allow researchers to study administrative information without compromising on privacy.<sup>46</sup>

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<sup>44</sup> Alstadsæter, Annette, Niels Johannesen, and Gabriel Zucman. "Who owns the wealth in tax havens? Macro evidence and implications for global inequality." *Journal of Public Economics* 162 (2018): 89-100.

<sup>45</sup> Cannataci, Joseph A., et al. *Privacy, free expression and transparency: redefining their new boundaries in the digital age*. UNESCO Publishing, 2016.

<sup>46</sup> See for example OPAL project, [www.opalproject.org](http://www.opalproject.org).



Different countries and societies have different norms that are accepted by their citizens as regards to the level of financial transparency. For example, Nordic countries have systems where all income and tax information of taxpayers is available publicly. The UK has led in making all beneficial ownership information of companies available to the public. However, in most other countries, the tax, financial and ownership information is only partially or not at all public, and in some cases not even regularly maintained by country authorities. Similarly, different countries have different arrangements for asset ownership transparency. Many countries have publicly accessible land ownership records (though often with a small fee for lookup), but transparency for other types of assets varies widely.

The type of entity also impacts the level of secrecy afforded. There are currently differing arrangements for natural persons (humans) and legal persons (e.g., private companies, public companies, firms, partnerships, trusts, organizations). Many proponents have argued for different, and more transparent regimes for legal entities than there are for individuals. For example, there are proposals for publication of country-by-country reports of multinational corporations, as discussed above. There have long been calls for more transparency on all aspects of fiscal policy and budgeting, not least tax incentives and tax administration performance.

Moving from secrecy to transparency can improve accountability, but there are many factors for improved transparency to lead to higher accountability and improved integrity. The mechanisms of information transparency are important. Also important are the ability of authorities and citizens to understand and interpret any information which is now transparent. Finally, the ability of authorities and citizens to act upon the information is crucial. Mediators in these steps are important, for example law enforcement authorities, judiciaries, media and journalists, as well as policymakers and elected leaders. Social norms and political settlements are also important factors, as they impact both on the likelihood of a move from secrecy to transparency<sup>47</sup>, as well as the likelihood that authorities will act upon the now transparency information and create the conditions for accountability.

### 3.3. Information exchange requirements

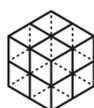
In the context of cross-border activity, exchanging or sharing of information is crucial to effective enforcement of laws, rules, and regulations of all types. This information exchange can occur among different national authorities (for example a financial intelligence unit and a tax authority) or between authorities of different countries. In each case there will be pre-requisites for the sharing of information. The strength of these requirements will impact on the ability of some authorities or countries to receive information, potentially curtailing their ability to enforce laws and regulations.

A common requirement is a written information exchange agreement. These can be concluded nationally between different agencies, internationally between two governments, or in a multilateral fashion (see Section 3.7). The need for written agreements will limit the amount of information that can be shared, as negotiating and concluding such agreements can be time consuming.

A further requirement is the production of information to interoperable standards so that both sides of an exchange can understand and process the information. This is greatly facilitated by the existence of agreed international standards which can be applied in all jurisdictions.

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<sup>47</sup> For example, some regard the right to privacy as a basic human right, and in most countries there is a balancing of that right against other rights or public goods, and having transparency on certain issues may fall into that category. Overall this is a complex issue where appropriate rights need to be balanced.



Authorities must then adjust their systems to be able to produce the administrative information they hold in the agreed standards.

Related to Section 3.2, a critical factor for exchange of information is the ability of relevant authorities to meet the confidentiality requirements of the partner with which they are exchanging information. For public information, produced to an international data standard, this becomes irrelevant. On the other hand, where authorities have determined that the information should not be public, there will be requirements that any partner receiving the information must also respect this determination. Such requirements will often be written into any information exchange agreement and limit the receiving party from passing the information on to third parties and limit the actions that can be taken with the information exchanged.

There are several implications. First, countries and authorities must have sufficiently robust data control procedures in place to prevent unauthorized use or disclosure of confidential information. This can create obstacles to receiving information as authorities may not have sufficient technical capacity to do this. Second, this can limit the ability of authorities to act upon information received from other countries. For example, information received by a customs authority from another country's customs authority may not be able to be shared with a tax authority for the purposes of tax enforcement.

### 3.4. Strengthening peer review

Strengthening peer reviews as mutual accountability framework is an important component of multilateral cooperation initiatives. There are several peer review mechanisms relevant to financial accountability, transparency and integrity, such as the Implementation Review Mechanism (IRM) to the UNCAC, the peer reviews by the Global Forum and the FATF Mutual Evaluation processes. The main aim of these review mechanisms is to ensure countries are implementing agreed standards, to promote coherence and coordinated action. Peer reviews can be used as tools to assess gaps and vulnerabilities nationally. They can assist member countries to prioritize interventions and allocate resources efficiently.

The Implementation Review Mechanism (IRM) of UNCAC provides a technical entry point for discussions with 185 governments. Through the multi-year review process, strong working relationships have been established with the responsible authorities in the Member States, such as the relevant ministries, anti-corruption authorities, audit institutions or financial intelligence unit. Through the IRM, with the first cycle being almost complete and the second cycle very advanced, UNODC has compiled a global, comprehensive and detailed gap analysis of what challenges countries and regions face, which currently compiles almost 7,000 challenges across 170 countries. At the same time, a large database of over 1,000 good practices has been composed.

The knowledge database of implementation gaps and good practices allows UNODC and its network of regional anti-corruption advisers to provide tailor-made technical assistance at the country, regional or global level through a wide variety of specialized expertise, particularly in the development and implementation of comprehensive national anti-corruption strategies; strengthened effectiveness in the detection, investigation and prosecution of corruption; streamlined international cooperation, including for asset recovery, and the implementation of measures to prevent corruption and increase the transparent, fair and efficient delivery of public services.

The Global Forum conducts peer reviews of its member jurisdictions' ability to co-operate with other tax administrations in accordance with the internationally agreed standard, which provides for exchange of information on request. The Global Forum started a first round of



reviews in 2010 and a second round of review was launched in 2016, with the first reports published in 2017, according to revised Terms of reference and Methodology. In the second round, all reviews are carried out in a combined manner in accordance with the revised peer review Methodology. The Terms of Reference have also been strengthened to take into account new developments in relations to beneficial ownership

FATF and FSRBs conduct peer reviews of all members and associate members (now over 200) against the FATF Recommendations, under a detailed and specific methodology and according to a schedule, with evaluations so far conducted approximately every 8-10 years, and then followed up. FATF is currently in its fourth round of mutual evaluations. Mutual Evaluations are undertaken by multinational and multi-disciplinary assessment teams and follow a standard procedure, including a review of technical compliance with the FATF Standards through a country's laws and regulations, and a review of the country's effectiveness in combating money laundering and terrorist financing. The effectiveness component of the Mutual Evaluation is emphasized, and seeks to ensure countries have the institutions, capacity, and will to combat money laundering and terrorist financing, as well as the appropriate laws. Once a Mutual Evaluation is completed, the report is reviewed and discussed and adopted at Plenary meetings. Following adoption and depending on the findings of the assessment team and Plenary, FATF has rules which determine how and when the assessed country responds to deficiencies identified in its assessment, and which processes are used to follow up on the assessment. All assessments contain recommendations to address deficiencies, with timelines for countries to remedy the areas of weakness. However, for countries with particularly weak AML/CFT systems, the FATF will agree a targeted action plan and deadlines with the country so as to address key risks and deficiencies. A commitment to completing the action plan should be made at the highest political level by the assessed country as these measures are intended to respond to systems, which do not adequately address national and global AML/CFT risks.

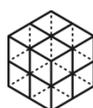
As of February 2020, the FATF has reviewed over 100 countries and jurisdictions and publicly identified 80 of them. Of these 80, 60 have since made the necessary reforms to address their AML/CFT weaknesses and have been removed from the process.

Peer reviews have significant benefits in providing a framework for complying with norms and standards, particularly as concerns follow-up recommendations. All peer reviews, however, are challenged by (i) capacity (how frequently can countries be assessed given that all countries are either making progress or not at any given time) and (ii) consistency (how to improve consistency within and between review bodies). All review processes have mechanisms in place to address these issues, for example, in the context of FATF mutual evaluations, there is a built-in quality and consistency review process, as well as an overall strategic review of the standard and the process at the end of each cycle or round of evaluations. This serves to ensure that the data and information from the review is used to improve the process itself and its impact.

### 3.5. Role of external stakeholders

In all of the topics presented in this paper, there are questions about the role of external stakeholders and at which point they have the power to intervene or act. External stakeholders can include individuals, civil society organizations (such as NGOs or trade unions), religious or faith-based groups, private businesses, and sometimes subnational authorities and officially created quasi-autonomous non-governmental organizations (QUANGO).

UNODC considers the private sector's engagement as essential to the fight against corruption and encourages States to promote corporate compliance, to provide incentives for the private sector to cooperate with law enforcement in corruption cases, and to strengthen auditing and



accounting standards in companies to increase transparency and accountability. The FATF has a Private Sector Consultative Forum (PSCF), which provides a regular platform for the FATF to learn more about the private sector's views and concerns on AML/CFT issues.<sup>48</sup> Private sector representatives sit as observers in many tax norm-setting meetings. The private sector often lobbies policymakers to influence laws, rules, and regulations.

There are many questions about the role of civil society organizations related to financial transparency, accountability and integrity. States frequently broadly consult the public in many aspects of fighting corruption, though these consultations are diverse in nature and formality. More and more States are including civil society in their UNCAC review process, though this is not mandatory. There are also questions about the role of civil society in international norm setting. CSOs can often sit as observers, for example in some UNCAC-related meetings, UN Tax Committee Meetings, and meetings of other bodies. The Inclusive Framework on BEPS carries out public consultations, like on the current work on addressing the tax challenges arising from the digitalisation of the economy. But more frequently, CSOs are excluded from meetings entirely. Even in meetings they can attend, they are not necessarily afforded the opportunity to make interventions. Finally, civil society can use the judicial systems in some countries to seek redress or file public interest lawsuits. They can often file amicus briefs in court cases, especially in common law jurisdictions. Many international adjudicatory bodies, such as the International Court of Justice and the European Court of Human Rights, allow third parties such as CSOs to submit interventions.

Supreme audit institutions (SAIs), which are public bodies but usually not part of the Government, are also important actors in financial integrity matters. Apart from auditing government revenues, expenditure and performance (both financial and governance), SAIs can also assess the progress of countries towards the SDGs. In some jurisdictions, SAIs also oversee state-owned enterprises. Thus there are questions about their role, independence and strength, and how they fit into international legal frameworks.

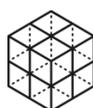
### 3.6. Mechanism to address non-compliance by states

In each topic described in Section 2, different practices have developed to encourage adoption of international norms, strengthened implementation and international cooperation. Mechanisms to address non-compliance typically extend from inducement or encouragements (positive reinforcement) for better compliance, to sanctions and penalties for non-compliance (negative reinforcement). In many cases, Member States have not yet agreed on binding international standards. Where this is the case good practice documents, high level principles, and guidance notes are often developed. They may even help move countries toward common norms and standards.

Inducement can be moral, in the sense of recognizing national accomplishments or progress in international forums, to monetary assistance, for example larger allocations of concessional resources from pooled funds when governance improves (as is the case with IDA disbursements). In a situation of negative reinforcement, non-compliance that creates risks that impact other countries can lead to sanctions being applied or messages that signal broad risks to the international community and financial institutions. Agreements on sanctions can occur in a variety of different settings, from the United Nations Security Council to agreements among groups or clubs of countries, to national decisions on the implementation of sanctions. National

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<sup>48</sup> FATF also includes civil society observers and involves civil society at PSCFs and in the review of standards which affect NPOs, for example.



or small-group-agreed sanctions may not be effective deterrents, as the impact may be limited based on the economic size and power of the State or States implementing them.

Sanctions agreed in multilateral settings need to be implemented, which has sometimes been difficult. There is a broad regime devoted to ensuring that targeted financial sanctions related to designated persons or entities and violations of standards, norms or principles (pursuant to UN Security Council Resolutions) are implemented by States and financial institutions.

The type of mechanisms and signalling employed varies across the different instruments. The FATF, for example, continually identifies and reviews jurisdictions with strategic AML/CFT deficiencies that present a risk to the international financial system and closely monitors their progress. The FATF's International Co-operation Review Group (ICRG) oversees the process. (grey list). At the end of each plenary meeting, the FATF publishes two statements which reflect the different levels of risk posed at any given time by the deficiencies in the jurisdictions under review. Jurisdictions under increased monitoring are actively working with the FATF to address these strategic deficiencies in their regimes to counter money-laundering, terrorist financing and proliferation financing. When the FATF places a jurisdiction under increased monitoring, it means the country has committed to resolve swiftly the identified strategic deficiencies within agreed timeframes and is subject to increased monitoring. This list is often externally referred to as the "grey list". For all countries identified as high-risk, the FATF calls on all members and urges all jurisdictions to apply enhanced due diligence, and in the most serious cases, countries are called upon to apply counter-measures to protect the international financial system from the ongoing money-laundering, terrorist financing, and proliferation financing (ML/TF/PF) risks emanating from the country. This list is often externally referred to as the "black list".

In tax matters, some individual and groups of countries have developed lists. For example, the OECD Committee on Fiscal Affairs maintained a "List of Unco-operative Tax Havens" for failure to implement transparency and effective exchange of information for tax purposes, most recently updated at the request of the G20.<sup>49</sup> The European Council, since 2017, also prepares a "list of non-cooperative jurisdictions for tax purposes", and jurisdictions on the list are subject to defensive measures from EU countries, which can include reduced access to EU funding, and more stringent tax withholding rules and higher tax audit risks for taxpayers from these jurisdictions.<sup>50</sup>

On the opposite side, failure of States to implement UNTOC and UNCAC requirements carries no formal sanction beyond the potential international reputational damage that can be suffered. This has led to complaints from some States parties to UNCAC, who emphasize the need for compliance with UNCAC provisions, but have no mechanism to enforce this.

Non-compliance or non-implementation in relation to international cooperation provisions of international instruments can also be selective. As discussed in Section 3.7 below, States may extend cooperation to some partner States but slow down cooperation or refuse cooperation to other partner States. In this case, the mandated legal and institutional frameworks may be in place at national level, but there may be selective implementation of them. For example, requests for legal assistance on investigations may be ignored or rejected. As another example, requests for establishing automatic exchange of information for tax purposes may not be actioned because of a lack of interest from the partner country. In all such cases, there is no recourse for States that feel that partner States are not implementing their commitments faithfully. In cases where international legal instruments are based at the United Nations, the

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<sup>49</sup> OECD (2020), OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors (Riyadh, Saudi Arabia) – February 2020, OECD, Paris. [www.oecd.org/tax/oecd-secretary-general-tax-report-g20-finance-ministers-riyadh-saudi-arabia-february-2020.pdf](http://www.oecd.org/tax/oecd-secretary-general-tax-report-g20-finance-ministers-riyadh-saudi-arabia-february-2020.pdf), see Annex B.

<sup>50</sup> <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/>



only possible option is to file a case before the International Court of Justice (ICJ). Its role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies. The ICJ rarely considers cases in the field, usually fielding cases on sovereignty over land or portions of the sea. Regardless the ICJ has no powers of enforcement.

### 3.7. Bilateral vs. multilateral cooperation in enforcement

There are different ways that States can cooperate internationally. Mutual Legal Assistance (MLA) is a formal process by which jurisdictions multilaterally and bilaterally seek and provide assistance in gathering information, intelligence, and evidence for investigations; in implementing provisional measures; and in enforcing foreign orders and judgments, including in relation to asset recovery. Mutual administrative assistance is the analogous process for tax matters.

Bilateral assistance has been formalized in various bilateral mutual legal assistance treaties and bilateral treaties on cooperation in tax matters. Multilateral instruments also include requirements to provide bilateral assistance. For example, MLA is extensively addressed in article 46 of UNCAC and article 18 of UNTOC; while mutual administrative assistance is the subject of the Convention on Mutual Administrative Assistance in Tax Matters.

In addition, there is informal assistance, such as law enforcement cooperation (e.g., article 48 of UNCAC), which typically consists of any official support rendered outside the context of MLA requests. Although “informal” in comparison to an MLA request, the concept is often still authorized in MLA legislation and involves formal authorities. The importance of informal assistance has also been emphasized in numerous international agreements and practitioner meetings.

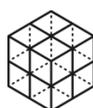
Although multilateral conventions provide an excellent bases for cooperation, certain legal frameworks envisaged in them remained hardly used, especially in relation to corruption-related offences, as shown in the course of the UNCAC implementation reviews. Therefore, the use of those important frameworks needs to be further enhanced.

Direct government-to-government is not the only mechanism for cooperation on financial integrity matters. In the tax sphere, there has been a recent move from bilateral treaties to a more multilateral approach towards international cooperation, including a stronger role for international institutions serving as mechanisms of information exchange and managing connections between countries. The MLI for implementing the BEPS Action Plan also provided mechanisms for countries to sign up for only certain aspects of the treaty’s provisions.

As discussed in Section 2, there are proposals for more robust multilateral instruments which do not use direct bilateral engagement, notably the proposal for a multilateral legal mechanism under the auspices of the UN to recover criminal assets. This mechanism would regulate the reciprocal rights and obligations of states to find and recover assets. Similarly, in the tax sphere, there are proposals to move international tax disputes from being handled bilaterally (through Mutual Agreement Procedures) to being handled by international arbitration. Such instruments require countries to cede sovereignty and have been controversial in the trade and investment field where disputes are settled by international arbitration or, until recently, by the WTO Dispute Settlement Mechanism. As noted above, there are risks from such a move.

### 3.8. Inter-agency cooperation

Inter-agency cooperation is key to the implementation of measures designed to prevent illicit financial flows. However, policy coherence remains weak in many countries due to the



involvement of a large number of government authorities with different priorities (Ministry of Finance, Customs, Central Banks, Justice, Police, regulatory bodies, etc). Some countries opt for a lead agency consulting with other agencies. Other countries have several different ministers with joint responsibilities for illicit financial flows or specific types of the flows. However, regardless of the type of governance architecture adopted, country experiences show that effective interagency collaboration is essentially dependent on a policy framework that is coherent and built on a common understanding of risks and tradeoffs, is consultative and has transparent mechanisms for information exchange and dialogue across sectors and effective systems to address implementation challenges. Cooperation must also involve the private sector and other non-state actors to address the lack of understanding of regulatory expectations and lack of policy coherence.<sup>51</sup>

The lack of policy coherence and effective cooperation is noted in countries of all income levels and this is borne out in findings from both FATF Mutual Evaluations and the UNCAC peer reviews, however, it is especially prevalent in low income countries with low levels of institutional capacity. Many such jurisdictions exhibit a common pattern of having relatively strong financial intelligence units and weaknesses in other relevant competent authorities – such as the supervision or, more often, investigation and prosecution services. Much of the work of international donors and technical assistance providers is focused on assisting countries to harmonize procedures and institutional frameworks to ensure an appropriate level of communication.

New areas of money-laundering and economic crime risks become more prevalent, for instance third parties and their regulators, or, for example, regulators for different types of financial intermediation – for example in cash intensive economies, the extent of interagency cooperation necessary for effective systems will increase and this will likely remain a policy focus for improving financial integrity, and a focus of peer reviews.

The Global Forum on Transparency and Exchange of Information for Tax Purposes conducts peer reviews of all its member jurisdictions for compliance with international standards for transparency and exchange of information for tax purposes. This includes both exchange of information on request, which includes banking, ownership, financial accounting and other types of information and automatic exchange of information on financial accounts of non-residents. The Global Forum has incorporated into its standard a requirement to ensure the availability of beneficial ownership information for all legal entities and arrangements. This creates a synergy between the FATF and the Global Forum processes and enables extensive peer review of countries performance on beneficial ownership information. It also highlights the need to improve cooperation between tax and anti-money-laundering authorities.

Coherent collaboration could also be strengthened through regional interagency collaboration, which is currently underdeveloped. This will enable regional factors to be considered in the implementation of global measures. For example, the Eastern and Southern Africa Anti-Money Laundering Group aims to combat money-laundering by implementing the FATF Recommendations and Standards and to engage in enhancing capacities of Member States and coordination of technical assistance. There are also a number of asset recovery interagency networks in Asia and the Pacific, Southern Africa, Eastern Africa, West Africa and South

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<sup>51</sup> See further research, for example, OECD (2017), *Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes - Third Edition*, OECD Publishing, Paris. <http://www.oecd.org/tax/crime/effective-inter-agency-co-operation-in-fighting-tax-crimes-and-other-financial-crimes.htm>; and *Improving Co-operation between Tax Authorities and Anti-Corruption Authorities in Combating Tax Crime and Corruption*. Paris: Organisation for Economic Co-operation and Development, and The World Bank; 2018. Licence: CC BY-NC-SA 3.0 IGO, <https://www.oecd.org/tax/crime/improving-co-operation-between-tax-authorities-and-anti-corruption-authorities-in-combating-tax-crime-and-corruption.htm>



America. The Egmont Group, which is an informal network of financial intelligence units, has 156 members globally. The report by the High Level Panel on IFFs from Africa calls for the creation of escrow accounts managed by regional development banks that will serve as custodians of the assets determined to be of illicit origin. Regional integration arrangements in developing countries could also be used to introduce standards governing tax incentives so as to prevent harmful tax competition.<sup>52</sup>

### 3.9. Implementation capacity at national level, costs & capacity building

Political will at both national and international levels is key to the implementation of all the proposals discussed in Section 2 of this paper. Political will essentially drives and shapes the many structural determinants of implementation capacity at the national level, such as commitment to international normative frameworks, strong and independent institutions, appropriate coherent policy, enforcement and dissuasive sanctions. These determinants of implementation capacity apply to countries of all income levels. However, in low income countries, capacity can be limited by the scarcity of resources in general, as well as human capacity constraints. In many countries with high corruption, tax evasion and money-laundering risks, capacity across competent authorities is uneven and shallow. Lack of necessary knowledge, skills and capacities is a major impediment and there is a large need for technical assistance.

Across the different topics and instruments, there are tools available to assess capacity and vulnerabilities. Many types of peer reviews, which assess implementation of standards, can also provide guidance about the area needed for capacity-building, such as: UNCAC reviews and other anti-corruption peer reviews, FATF and FSRB mutual evaluations, and Global Forum peer reviews. There are other relevant diagnostic tools promoted by international institutions and partnerships, such as IMF/World Bank financial sector assessment programme (FSAP) and Reports on Observance of Standards and Codes (ROSC), IMF's Tax Administration Diagnostic Assessment Tool (TADAT), World Bank Tax Diamond and money-laundering Risk Assessment Tool, and many others.

Financial integrity and stronger enforcement is expensive and complicated for all governments and applies to all the issues covered in Section 2. The nature of financial crime and illicit transactions, and the vast range of sectors in which they are conducted, means that governments have to implement a broad range of policies, both to be effective and to comply with international norms and standards. Stronger or additional standards will necessitate upgrading capacities in all countries. While the cost to do so might be minimal for countries with high capacities (both human and technological), the cost of compliance might be prohibitive for the poorest countries and those with the lowest existing capacities. For example, given that physical checks are common in many developing countries, excise taxes and customs are common areas for corrupt practises, yet collection capacity in customs is often insufficient to address smuggling and other forms of customs fraud.

Thus, effective implementation will necessitate additional international public financing for the upgrading of these capacities, including direct financing of governments that need assistance as well as provision of resources for international agencies and institutions that will assist in capacity-building. The UN System, World Bank, IMF and many other international institutions already conduct much capacity building. In addition, there are both specialised

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<sup>52</sup> For a deeper discussion, please see <https://www.un.org/esa/ffd/publications/design-and-assessment-of-tax-incentives-in-developing-countries.html>.



intergovernmental bodies, such as the International Anti-Corruption Academy, and non-governmental bodies, such as the Basel Institute on Governance, that assist countries in building capacity.

Efficiencies – even those that are very simple – can supplement capacity, and most of these can be found in the area of interagency cooperation, international cooperation, the sharing of information and public-private partnerships. This is a current area of policy focus and a cross-cutting issue for the international community (including TA providers), for governments and for the private sector.

There are also important consideration about the capacity for participation in international cooperation and international negotiations on legal instruments. The capacity constraints of developing countries have been an issue, for example in the discussion in the Inclusive Framework on BEPSs. Capacity to work on international investigations have also been raised in the context of bribery settlements and asset recovery cases. There are open questions about whether using domestic resources to develop these capacities should be a priority for developing countries given their large investment needs.

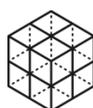
### 3.10. Impact of digitalization

New technologies and innovation are altering the landscape for financial integrity. Relatively closed financial systems of previous generations, which frequently involved currency exchange and capital account restrictions, made large-scale transfers of resources easier to track. The more open systems of the past three to four decades – which include liberalized foreign exchange regimes, liberalized capital accounts, and liberalized goods and services trading – are enabling hidden and secret transactions on a greater scale.

However, even as liberalization has slowed and reversed in some places, new technologies have continued to develop in a fashion that raise concerns. For example, the anonymity and cross-border reach of crypto-assets raise concerns around financial integrity. Transactions recorded in the public ledger of a crypto-asset cannot always authoritatively be traced back to real-world identities, owing to user anonymity and anonymizing service providers. This means that crypto-assets can be used to conceal or disguise the illicit origin, use or transfer of funds. These vulnerabilities are not purely theoretical but have been exploited in practice. For example, crypto-assets have facilitated the retail trade in illicit drugs through anonymous marketplaces. There has been a high frequency of fraudulent activity related to initial coin offerings as well as concerns of market manipulation on crypto-asset exchanges.

More broadly, the growth of e-commerce and digital business models can disrupt different fiscal systems, including indirect and direct taxation. The increased supply of goods or services across borders has introduced challenges to collecting Value Added Tax (VAT) and goods and services taxes (GST). In relation to the taxation of multinational corporate profits, digitalization makes it easier to operate in a market without triggering tax residency rules. In relation to VAT, new guidelines on effective collection have been agreed at the OECD's Global Forum on VAT. With regard to corporate taxation, the Inclusive Framework on BEPS and the UN Tax Committee are working on new proposals for allocation of taxation rights in an era of digitalized economic activity.

At the same time, technology can also enable better enforcement. Concerted enforcement efforts need to be paired with constant vigilance of the financial system and adjustment of rules and regulations so as to match the innovations in the market. For example, in 2018, the FATF updated its standards to include their application to “virtual asset service providers” and their transactions relating to “virtual assets”, such as bitcoin and other crypto-assets.



As the regulatory environment catches up to the innovations, digital technologies allow rapid processing of large data sets, which can assist in identifying and pursuing illicit transactions. New technology, such as artificial intelligence, can enable better identification of suspicious activity - for example, by matching tax filing data to other data sets, such as customs declarations, financial account information, or real estate transaction registers. Governments can implement technology solutions such as machine learning and data analytics to minimize the risks of money laundering. The G20 recently agreed High Level Principles for Promoting Public Sector Integrity Through the Use of Information and Communications Technologies.

### 3.11. Provision of data and statistics

Collecting and publishing data on aspects of the financial accountability, transparency, and integrity agenda will be important to taking forward policymaking and ensuring faithful implementation of international commitments. However, as discussed in Section 3.1, there are significant unresolved issues in measurement that may hinder data collection.

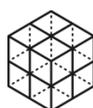
Collecting data on the volume of illicit financial flows as well as the assets seized, confiscated and returned or disposed of is complex from both a statistical and a policy point of view. Member States' statistical systems do not necessarily produce internationally comparable data over time. Weaknesses in national statistics systems were frequently identified as challenges in country reviews in the first cycle of the UNCAC Implementation Review Mechanism.

The matter of data collection and statistics was also a cross-cutting issue in many UNCAC reviews, as an important factor to assess the effectiveness of international cooperation. States parties were encouraged to systematize the collection, processing and availability of statistics (e.g., indicating the time required to execute extradition and MLA requests, the reasons for postponement or refusal, etc.). In this regard, the lack of adequate resources was often cited as a reason for poor statistical records.

In the tax area, it is important to continue to publish data on implementation of measures to counter both tax avoidance and tax evasion, including implementation of measures to counter BEPS behavior as well as implementation of tax transparency measures. In terms of measuring actual data on tax avoidance and outcomes, the collection and publishing of aggregate data on many new aspects of tax norms is still work in progress. Because of the confidentiality of tax data in most countries, it is only possible to prepare aggregate data, however, even aggregation may not be sufficient to preserve privacy according to current standards in cases of bilateral data between countries without strong economic ties. If only two companies from country A are operating in country B, aggregating the information from Country-by-Country Reports may still reveal details that the companies feel are commercially sensitive. Forthcoming statistics on Country-by-Country Reporting published by the Inclusive Framework on BEPS will shed some light on how these statistics can be used to address IFFs. While these data are important, a wide variety of other data sources should continue to be strengthened, including cross-border FDI statistics, cross-border banking statistics, data on trade in services, and data on the activities of multinational enterprises.

In the tax evasion space, the Global Forum has begun making available information on international cooperation (for example through its annual reports and the UN's *Financing for Sustainable Development Report*) but there are not yet robust and uniformly applied data standards or real-time access to data for country authorities or the public.

In the field of AML/CFT, collection of data and information is built into the standard, including record keeping functions, and in the requirement for countries to demonstrate effectiveness. However, data collected is rarely consistent or evenly available across evaluations. For national



governments in low capacity countries, the systematic collection of data (especially on processes) is difficult and resource intensive.

## 4. Summary and possible future work

There has been a significant array of recent efforts to address some of the dilemmas, vulnerabilities and gaps in financial accountability, transparency and integrity. These efforts gained new impetus after the 2008 financial crisis, which instigated public pressure on Governments to improve the fairness and integrity of revenue systems after bailouts of banks and increasing public debt. The adoption of the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda in 2015 reinforced the need for domestic public resources and provided a new impulse for reforms. This brief background paper cannot do justice to the myriad of analyses, initiatives, innovations and proposals.

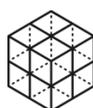
In general, most of the institutional efforts have focused on the evolution of the existing systems, while some Member States have been placing more urgency on reforming systems that some of them feel are not working as designed. Proposals for significantly modifying the current institutional and legal architecture have not found favour, though they continue to be promoted, often by civil society groups. The task of the FACTI Panel is not to duplicate the past efforts but to be informed by them, understand their rationales and aims as well as why they were not politically acceptable. Then, with an understanding of their strengths and limitations, the Panel can build on them to propose alternatives. It can consider new ideas and perhaps more far-reaching solutions to move the world closer to financial accountability, transparency and integrity, keeping in mind its ultimate aim of helping countries implement the 2030 Agenda and achieve the Sustainable Development Goals.

As discussed in Section 3, there are a number of challenges the Panel could address. Any framework must consider the incentives to ensure effective implementation, and whether aligning the incentives can best be achieved through peer review positive reinforcement, or punitive enforcement mechanisms. Given the substantial lure of illicit enrichment, for both private actors and public officials, there is a need to think through systems that can create incentives for relevant actors to act with integrity. There are important interdependencies and spillover effects among legal and institutional frameworks for tax, money-laundering, corruption, and crime. Weaknesses in national and global institutional and legal mechanisms in each of these areas have impacts on the others. Ultimately, successful national and international approaches need to be holistic, implementing whole-of-government and cross-silo measures.

Capacity for implementation of ever more complex systems of control is also a critical question, as is how to finance capacity and institution building in jurisdictions with limited resources. The Panel should also grapple with the overarching questions about the tension between privacy and transparency. While there is no single global standard for what the right balance between these concepts might be, the Panel can help find where there will be acceptance among the community of nations.

This paper points to dozens of potential avenues for the Panel to consider commissioning deeper assessments of challenges, trends, and proposals for remedying gaps and vulnerabilities in the current systems. Based on the potential impact of the topic on sustainable development progress overall, the Secretariat suggests that the Panel might choose amongst the following nine topics for investigation through deep dive papers commissioned from experts in the field:

1. **Promoting accountability in contexts where it is currently lacking:** Despite the provisions of existing international agreements, in some jurisdictions, accountability is



lacking, due to ineffective implementation of commitments, or obstruction by the politically powerful. A deeper dive could look at the extent of this problem and assess the various options for addressing impunity.

2. **Fostering universal participation in international legal instruments on tax matters:** Tax matters are the only topic addressed here that is not subject to a universal convention. The first ever modern multilateral agreement on tax matters was pioneered in the last five years but was based on negotiations held within the G20/OECD on Base Erosion and Profit Shifting (BEPS). While participation in the OECD-based instruments has grown substantially beyond the OECD membership, growth in participation has slowed, leaving gaps in the international system and the potential for arbitrage. A deeper dive could look at the costs to the global community of not having universal systems, assess the various ways and institutional set ups that could help achieve universality, and suggest models for how instruments and institutions could respond to countries in different situations.
3. **Better aligning taxation with the location of real economic activity:** In the context of cross-border economic activity, and increasing digitalization of this activity, there is widespread discussion on the potential misalignment of taxation with the location of this activity. At a time when international tax norms are already in flux, now may be a time when a more sustainable, equitable and effective approach can be devised. A deeper dive can assess the extent of the misalignment, potential mechanisms to address it, and where and how inclusive political consensus on reforms could be achieved.
4. **Improving tracking of asset ownership and use of this information:** anonymous wealth and income streams currently dominate parts of the global economy, and while beneficial ownership transparency has improved, best practices are not implemented in terms of all legal vehicles or all jurisdictions. It also frequently remains subject to ineffective or no verification. A further analysis could provide a clearer summary of the extent of existing implementation, the potential uses of better information (e.g., for taxation and asset recovery) and the potential benefits and costs of augmenting the information base, strengthening verification, and introducing publication or automated sharing mechanisms.
5. **Preparing consistent and reliable global data on taxation:** a number of recent research studies highlight that losses to both corporate profit shifting and hidden offshore wealth disproportionately affect lower per capita incomes and therefore the global distribution of taxing rights is systematically skewed against lower-income countries. Yet, there is no one source with the responsibility of publishing consistent and reliable data on taxation for the entire world. Such publication, from a neutral and authoritative source, could assist in monitoring progress, guiding enforcement efforts, and incentivizing better policies. More work is needed to strengthen data standards and publications; discuss the benefits and costs of data production; and provide options for financing and implementing a stronger data collection and publication regime.
6. **Improving international cooperation on asset recovery and return:** the current system – relying on sometimes inadequate information, uncoordinated requests for legal assistance, discretion in provision of assistance, and non-uniform national systems for identification, seizure or freezing, confiscation, disposal and return of assets – leaves countries struggling for years to recover assets. A deeper dive could look at ways to improve existing asset recovery procedures and think through the potential implications and operationalization options for multilateral mechanisms for asset recovery and return.



7. **Improving cooperation and standardization on bribery investigation and prosecution:** Most countries have, at least to a certain degree, criminalized domestic and foreign bribery, as required by UNCAC. Yet, often investigation and prosecution of foreign bribery take place in the country where the bribe payer is located. Countries where the bribe occurred may be left out of the process when settlements are reached, and investigators in the bribe payer's country may not share information to help in the prosecution of the bribe recipient. There are no uniform standards on the size or process of agreeing on settlements or assessing penalties. A deeper dive could explore the scale of the problem, options for better information sharing, more cooperative investigations, and assessment and distribution of fines.
8. **Examining options to strengthen peer review processes:** a cross-cutting look at the best practices for peer reviews and the international legal basis for consequences for failure on peer reviews could assist the Panel in making proposals in many areas. Such a deep dive could provide comparative information and lessons from regimes even beyond those discussed in this paper and try to grapple with the complex issues of sovereignty in a time of global interdependence. It can also provide specific, operational proposals for improving the practices for the instruments mentioned in this paper.
9. **Exploring options to improve capacity:** a deeper analysis could explore mechanisms to finance the strengthening of capacity in developing countries so that they can improve existing regimes and implementation of potential future new norms. It could also look at how to ensure countries have sufficient capacity and legal frameworks to have effective domestic inter-agency cooperation. It could look at lessons from existing capacity-building initiatives and from capacity-building in other areas, as well as flesh out the options (both traditional and innovative) for financing a significant upgrading of capacities to meet the challenges that countries face.



# ANNEX 1: Descriptions of existing instruments and institutions

## 1. Financial Action Task Force standards

The Financial Action Task Force (FATF) is the global inter-governmental body that sets international standards that aim to prevent money-laundering and terrorist financing, and combat other threats to the integrity of the global financial system. As a policymaking body, the FATF works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

With more than 200 countries and jurisdictions committed to implementing them, the FATF has developed the FATF Recommendations, or FATF Standards, which ensure a coordinated global response to prevent organized crime, corruption and terrorism. They help authorities go after the money of criminals dealing in illegal drugs, human trafficking and other crimes.

The FATF reviews money-laundering and terrorist financing techniques and continuously strengthens its standards to address new risks, such as the regulation of virtual assets, which have spread as virtual-assets gain popularity. The FATF monitors countries to ensure they implement the FATF Standards fully and effectively and holds countries to account that do not comply.

### Membership

The FATF currently has 39 members, but with the inclusion of FATF Associate Members, membership is effectively universal. FATF Associate Members are those that are members of FATF-style regional bodies (FSRBs): Asia Pacific Group on Money Laundering, Caribbean Financial Action Task Force, Council of Europe Committee of Experts on the Evaluation of Anti Money Laundering Measures and the Financing of Terrorism, Eurasian Group, Eastern and Southern Africa Anti-Money Laundering Group, Financial Action Task Force of Latin America (GAFILAT), Inter Governmental Action Group against Money Laundering in West Africa, Middle East and North Africa Financial Action Task Force and Task Force on Money Laundering in Central Africa.

### Standards

The FATF Recommendations set out a comprehensive and consistent framework of measures which countries should implement to combat money-laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction. Countries have diverse legal, administrative and operational frameworks and different financial systems, and so cannot all take identical measures to counter these threats.

The FATF Recommendations, therefore, set an international standard, which countries should implement through measures adapted to their particular circumstances. The FATF Standards

#### ***FATF & FATF Recommendations***

*First agreed: 1990*

*Entry into force: 1990*

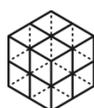
*Venue of negotiations: FATF*

*Initial members: 16*

*Current members: 39*

*Committed to implementation (incl through FSRBs): 205*

*Frequency of implementation review: 8-10 years (with regular follow-up)*



comprise the Recommendations themselves and their Interpretive Notes, together with the applicable definitions in the glossary.

The FATF Recommendations themselves are regularly revised via strategic reviews which take place between each 'round' of national implementation evaluations – the last review introduced the current methodology for assessing effectiveness. The FATF is presently approximately two thirds of the way through the present round of reviews and has started to draw conclusions from the present round to feed into the priorities of the current strategic review – which will consist of a stock take, followed by technical work to review the evaluation process and further align the standards to risk.

### **Methodology for Mutual Evaluation**

The FATF's Methodology for assessing technical compliance with the FATF Recommendations and the Effectiveness of AML/CFT systems sets out how the FATF will determine whether a country is sufficiently compliant with the 2012 FATF Standards and whether its AML/CFT system is working effectively.

The Methodology comprises two inter-linked components: The technical compliance assessment will address the specific requirements of each of the FATF Recommendations, principally as they relate to the relevant legal and institutional framework of the country, and the powers and procedures of competent authorities. These represent the fundamental building blocks of an AML/CFT system. The level of compliance with each Recommendation will be indicated with one of the following ratings: compliant, largely compliant, partially compliant or non-compliant.

The effectiveness assessment will assess the extent to which a country achieves a defined set of outcomes that are central to a robust AML/CFT system and will analyse the extent to which a country's legal and institutional framework is producing the expected results.

How effectively each of the Immediate Outcomes in the Methodology is achieved by a country will be set out in the evaluation report and will include one of the following ratings: high-level of effectiveness, substantial level of effectiveness, moderate level of effectiveness and low level of effectiveness.

The Methodology is used by the FATF, the FSRBs and other assessment bodies such as the IMF and the World Bank.

The FATF Recommendations and guidance on the implementation of the Methodology are updated regularly to improve policy coherence and to ensure the recommendations are universal and appropriate to countries of all income levels and include developing risks to financial integrity, financial stability and financial inclusion.

The Financial Action Task Force (FATF)

<https://www.fatf-gafi.org/>

International Standards on Combatting Money Laundering and the Financing of Terrorism and Proliferation: The FATF Recommendations 2012 (updated June 2019)

<http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>

Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems: The FATF Methodology 2013 (updated October 2019)

<http://www.fatf-gafi.org/publications/mutualevaluations/documents/fatf-methodology.html>



The Egmont Group of Financial Intelligence Units  
<https://egmontgroup.org/>

The FATF-style regional bodies (FSRBs)  
<https://www.fatf-gafi.org/about/membersandobservers/>

## 2. Model Double Taxation Agreements (bilateral treaties) – UN and OECD

The United Nations Model Convention and the Organisation for Economic Co-operation and Development Model Tax Convention on Income and on Capital (the OECD Model Convention) are the two most widely used models. They are the source for most of the more than 3,000 tax treaties currently in force, thus providing a profound influence on international tax treaty practice. They are similar in many respects, although the UN Model in some cases reserves more taxing rights to the “source country” such as the place of investment.

### **Model Double Taxation Agreements**

*Agreed: 1980*

*Venue of negotiations: United Nations & OECD*

*Usage: Approximately 3,000 double taxation conventions*

*Frequency of UN model treaty review: 4 years*

The UN Model Convention is a non-binding instrument which aims to provide guidance to countries in designing double tax treaties, as well as in applying and interpreting them. It is developed and updated by the UN Committee of Experts on International Cooperation in Tax Matters, a subsidiary body of the Economic and Social Council, composed by 25 members from developed and developing countries acting in their personal capacity. The United Nations Model Convention applies to persons who are “residents of one or both of the Contracting States”.

The United Nations Model Double Taxation Convention between Developed and Developing Countries (the United Nations Model Convention) forms part of the continuing international efforts aimed at eliminating double taxation. These efforts were begun by the League of Nations and pursued in the OECD and in regional forums, as well as in the United Nations. The United Nations Secretary-General set up the Ad Hoc Group of Experts on Tax Treaties between Developed and Developing Countries in 1968. In 1980, the United Nations published, as a result of the Ad Hoc Group of Experts’ deliberations, the United Nations Model Double Taxation Convention between Developed and Developing Countries, which was preceded in 1979 by the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries.

The latest version of the two model treaties are available at:

[https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT\\_2017.pdf](https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf)

<https://www.oecd.org/tax/treaties/model-tax-convention-on-income-and-on-capital-condensed-version-20745419.htm>



### 3. Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Exchange of information on request)

The Convention on Mutual Administrative Assistance in Tax Matters ("the Convention") was developed jointly by the OECD and the European Council in 1988 and amended by Protocol in 2010. It provides for all possible forms of administrative co-operation between states in the assessment and collection of taxes. This cooperation ranges from exchange of information, including automatic exchanges, to the recovery of foreign tax claims. 136

jurisdictions currently participate in the Convention, including 17 jurisdictions covered by territorial extension. This represents a wide range of countries including all G20 countries, all BRICS, all OECD countries, major financial centers and an increasing number of developing countries.

In accordance with article 24(3) and (4) of the Convention, a Co-ordinating Body is responsible for monitoring the implementation and development of the Convention, including: acting as a forum to increase international cooperation in tax matters; recommending revisions or amendments to the Convention; furnishing opinions on the interpretation of provisions of the Convention; serving as the body through which decisions are taken to invite States to become Parties to the Convention; and coordinating the implementation of Multilateral Competent Authority Agreements.

The Co-ordinating Body is composed of representatives of the competent authorities of the Parties to the Convention and includes the competent authorities of territories to which the Convention applies. The Co-ordinating Body is led by the Chair and three Vice-Chairs.

<http://www.oecd.org/tax/exchange-of-tax-information/ENG-Amended-Convention.pdf>

#### **Multilateral Convention on Mutual Administrative Assistance in Tax Matters**

*Agreed: 1988*

*Entry into force: 1995*

*Venue of negotiations: OECD*

*Initial signatories: 27*

*Current signatories: 136*

*Frequency of implementation review: 5 years*

### 4. Multilateral Competent Authority Agreement (Automatic Exchange of Information under Common Reporting Standard)

The Multilateral Competent Authority Agreement ("the MCAA") is a multilateral framework agreement that provides a standardized and efficient mechanism to facilitate the automatic exchange of information in accordance with the Standard for Automatic Exchange of Financial Information in Tax Matters ("the Standard"). It avoids the need for several bilateral agreements to be concluded. Since the Berlin signing ceremony on 29 October 2014, a total of 61 jurisdictions have signed a multilateral competent authority agreement to automatically exchange information based on article 6 of the Multilateral Convention.

All signatories to the Agreement will share equally, on an annual basis, the costs for the administration of the Agreement by the Co-ordinating Body Secretariat. Qualifying countries

#### **MCAA CRS/AEOI**

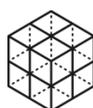
*Agreed: 2016*

*Entry into force: 2017*

*Venue of negotiations: OECD/G20*

*Initial signatories: 39*

*Current signatories: 105*



will be exempt from sharing the costs in accordance with Article X of the Rules of Procedure of the Co-ordinating Body of the Convention.

## 5. Multilateral Competent Authority Agreement on the Exchange of Country-By-Country Reports (CBCR MCAA)

The Multilateral Competent Authority Agreement on the Exchange of Country-By-Country Reports (CBCR MCAA) was developed based on the article 6 of the Convention on Mutual Administrative Assistance in Tax Matters (Convention).

The jurisdictions of the signatories to the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (the “Agreement”) are Parties of, or territories covered by, the Convention on Mutual Administrative Assistance in Tax Matters or the Convention on Mutual Administrative Assistance in Tax Matters as amended by the Protocol. As of December 2019, 84 jurisdictions have signed the CbC MCAA.

### **CBCR MCAA**

*Agreed: 2016*

*Entry into force: 2018*

*Venue of negotiations: OECD/G20*

*Initial signatories: 27*

*Current signatories: 84*

*Frequency of implementation review: 5 years*

Under OECD BEPS Action 13, all large multinational enterprises (MNEs) are required to prepare a country-by-country (CbC) report with aggregate data on the global allocation of income, profit, taxes paid and economic activity among tax jurisdictions in which it operates. This CbC report is shared with tax administrations in these jurisdictions, for use in high level transfer pricing and BEPS risk assessments. The OECD BEPS Action 13 report also included a requirement that a review of the CbC reporting minimum standard be completed by the end of 2020 (the 2020 review).

As the section 4 of CbC MCAA indicates, “Competent Authority will notify the other Competent Authority when the first-mentioned Competent Authority has reason to believe, with respect to a Reporting Entity that is resident for tax purposes in the jurisdiction of the other Competent Authority, that an error may have led to incorrect or incomplete information reporting or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC Report. The notified Competent Authority will take appropriate measures available under its domestic law to address the errors or non-compliance described in the notice.”

The agreement is available for download at: <https://www.oecd.org/tax/exchange-of-tax-information/cbc-mcaa.pdf>



## 6. Global Forum on Transparency and Exchange of Information for Tax Purposes

The Global Forum on Transparency and Exchange of Information for Tax Purposes was founded in 2000 and restructured in September 2009. It consists of OECD member countries as well as other jurisdictions that have agreed to implement tax related transparency and information exchange. In November 2019, it had 158 members and 19 observers. The Forum works under the auspices of the OECD and G20. Its mission is to "implement the international standard through

two phases of peer review process". It addresses tax evasion, tax havens, offshore financial centers, tax information exchange agreements, double taxation and money-laundering. The Forum promotes the implementation of two internationally agreed standards on exchange of information for tax purposes: the standard on Exchange of Information on Request (EOIR) and the standard on Automatic Exchange of Information (AEOI).

The Forum ensures compliance with EOIR through an intense peer review process, the Forum's main activity since 2009, which is carried out by its Peer Review Group composed of 30 members representative of the diversity of the Forum, and is currently chaired by Singapore.

In 2014, the Global Forum adopted the Standard for Automatic Exchange of Financial Account Information in Tax Matters (the AEOI Standard), developed by the OECD working with G20 countries. The AEOI Standard requires financial institutions to automatically disclose information on financial accounts they maintain for non-residents to their tax authorities under the globally agreed Common Reporting Standard (CRS), which in turn exchange this information with the tax authorities of the account holders' country of residence.

To be able to exchange information under the AEOI Standard, jurisdictions are asked to: introduce domestic rules requiring their financial institutions to collect and report the data to be exchanged; put in place international agreements with each of their partners to deliver the widespread networks necessary for automatic exchange; put in place the technical solutions to link into the Common Transmission System (CTS) that was put in place by the OECD's Forum on Tax Administration and managed by the Global Forum.

The Forum reviews compliance of its member tax jurisdictions separately for the two standards, the more limited exchange of information on request and the more comprehensive automated exchange of information. The Global Forum's peer review process examines both the legal and regulatory aspects of exchange and the exchange of information in practice. The peer reviews cover only the limited exchange of information on request.

### ***Global Forum on Transparency and Exchange of Information for Tax Purposes***

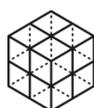
*Formed: 2000*

*Venue of negotiations: OECD*

*Initial members: 32*

*Current members: 161*

*Frequency of implementation review: 6 years*



## 7. Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI)

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, sometimes referred to as the “BEPS multilateral instrument” or the “MLI”, is a multilateral convention of the OECD to combat tax avoidance by multinational enterprises (MNEs) through prevention of Base Erosion and Profit Shifting (BEPS). The MLI was negotiated within the framework of the OECD-G20 BEPS project and enables participating countries and jurisdictions to swiftly modify their bilateral tax treaties to implement some of the measures agreed.

### **MLI on BEPS**

*Agreed: 2016*

*Entry into force: 2018*

*Venue of negotiations: OECD / G20*

*Initial signatories: 67*

*Current signatories: 94*

The text of the MLI and its Explanatory Statement were developed through a negotiation involving more than 100 countries and jurisdictions and adopted on 24 November 2016, under a mandate delivered by G20 Finance Ministers and Central Bank Governors at their February 2015 meeting.

The MLI covers over 90 jurisdictions and entered into force on 1 July 2018. Signatories include jurisdictions from all continents and all levels of development and other jurisdictions are also actively working towards signature. As of 28 February 2020, the signatories include 94 jurisdictions.

The OECD Secretariat has a Toolkit for Application of the Multilateral Instrument for BEPS Tax Treaty Related Measures (“MLI Toolkit”) that includes innovative tools to facilitate the application of the Multilateral Instrument to existing tax treaties.

The Convention is available for download at: <https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf>

MLI toolkit: <https://www.oecd.org/tax/treaties/application-toolkit-multilateral-instrument-for-beps-tax-treaty-measures.htm>

## 8. Inclusive Framework on BEPS

Working together within the OECD/G20 Inclusive Framework on BEPS, countries and jurisdictions are collaborating on the implementation of 15 measures to tackle tax avoidance, improve the coherence of international tax rules and ensure a more transparent tax environment.

At its inaugural meeting in Kyoto, Japan in July 2016, there were 82 members of the OECD/G20 Inclusive Framework on BEPS. There are over 137 members and 14 observer organizations.

Countries and jurisdictions of relevance are identified by the Inclusive Framework as part of its mentoring process and reviewed. Countries and jurisdictions of relevance are those whose adherence to the minimum standards is necessary to ensure that a level playing field is

### **Inclusive Framework on BEPS**

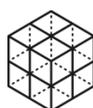
*Formed: 2016*

*Venue of negotiations: OECD / G20*

*Initial members: 82*

*Current members: 137*

*Frequency of implementation review: annual*



achieved. Jurisdictions of relevance are informed about the minimum standards and invited to commit to the BEPS package and participate in the review process.

International organizations can act as observers within the Inclusive Framework. This is intended to allow for more coordinated and targeted capacity-building in the implementation of the BEPS outcomes.

During its 29-30 January 2020 meeting, the Inclusive Framework decided to move ahead with a two-pillar approach as the basis for current negotiations, including: under the first pillar, solutions for determining the existence and allocation of taxing rights ("nexus and profit allocation"); under the second pillar, the design of a system to ensure that MNEs pay a minimum level of tax on profits. This is intended to address remaining issues identified by the OECD/G20 BEPS Project.

## 9. United Nations Convention against Transnational Organized Crime & its COP and review mechanism

The United Nations Convention against Transnational Organized Crime (UNTOC) was adopted by resolution A/RES/55/25 of 15 November 2000 and entered into force on 29 September 2003. It currently has 190 parties.

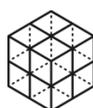
The Convention is supplemented by three protocols: the Protocol against the Smuggling of Migrants by Land, Air, and Sea, the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.

UNTOC recognizes that organized criminal groups behind various forms and manifestations of crime should be the target of criminal justice systems. Efforts should be geared towards the dismantling of those groups and protecting victims as well as witnesses. In relation to criminalization, the Convention focuses on the offence of participation in an organized criminal group and the enablers of organized criminality, namely money-laundering, corruption and obstruction of justice. The great adaptability and flexibility of the Convention stems from the expansion of the scope of application to all serious crime, including new and emerging forms of crime. The broad scope of application of the Convention enables States to afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings. The Convention further reinforces mechanisms of confiscation with the aim, inter alia, of depriving criminal groups of assets that can further criminal activities. Finally, the Convention recognizes the importance of prevention.

The Conference of the Parties (COP) to UNTOC adopted at its ninth session in 2018, resolution 9/1 entitled Establishment of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto. In this resolution, the COP adopted the Procedures and Rules for the Functioning of the Mechanism for the Review of the Implementation of UNTOC and its Protocols.

The Open-ended Intergovernmental Expert Group (IEG) of the Conference of the Parties, established in accordance with resolution 9/1 finalized the guidelines for conducting the

<p><b>UNTOC</b> <i>A.K.A: Palermo Convention</i> <i>Agreed: 2000</i> <i>Entry into force: 2003</i> <i>Venue of negotiations: United Nations</i> <i>Initial signatories: 147</i> <i>Current parties: 190</i> <i>Frequency of implementation review: 12 years</i></p>
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country reviews and blueprints for the lists of observations and the summaries as well as the self-assessment questionnaire for the United Nations Convention against Transnational Organized Crime, pending the harmonization of the questionnaires for UNTOC and its Protocols. Both documents will be submitted to the Conference of the Parties to UNTOC for its consideration at its tenth session (12-16 October 2020).

United Nations Convention against Transnational Organized Crime and the Protocols Thereto  
<https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>

## 10. Mutual Legal Assistance Treaties/ Mutual Legal Assistance Agreements (MLATs/MLAAs – bilateral treaties)

The following model treaties exist:

Model Treaty on Extradition (General Assembly resolution 45/116, as amended by General Assembly resolution 52/88)

Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, as amended by General Assembly resolution 53/112)

### **MLATs/MLAAs**

*Model first agreed: 1990*

*Venue of negotiations: United Nations*

*Usage: At least several hundred in UN*

*Treaty database*

*Frequency of review: 7 years*

Both treaties, and a manual, are available for download at:

<https://www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html>

In addition, UNODC has developed model legislation on extradition and on mutual assistance in criminal matters to assist Member States in giving effect to the provisions of the model treaties approved by the General Assembly, in order to enhance effective international cooperation. The model laws take into consideration the developments occurred after the adoption of the model treaties, in particular the adoption of the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption. The reports of past expert working groups on extradition and mutual legal assistance casework also contain guidelines, from a practitioner's perspective, that may be useful for legislative drafting in this area, as well as to national central authorities established to promote international cooperation in criminal matters.

The model legislation is available for download at: <https://www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html>

## 11. United Nations Convention against Corruption & its COSP and IRM

Since the adoption of the UN Convention against Corruption (UNCAC) by the General Assembly on 31 October 2003, 187 parties, including the European Union, have ratified or acceded to the Convention.

UNCAC is the only legally binding global instrument on all forms of corrupt behaviour. The Convention covers five thematic areas: preventive measures, criminalization and law enforcement, international cooperation, and

### **UNCAC**

*A.K.A: Merida Convention*

*Agreed: 2003*

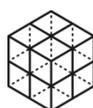
*Entry into force: 2005*

*Venue of negotiations: United Nations*

*Initial signatories: 140*

*Current parties: 187*

*Frequency of implementation review: 5 years*



asset recovery. In addition, it contains a chapter on technical assistance and information exchange.

The UNCAC Implementation Review Mechanism (IRM) was established in 2009 to assist the Conference of the States Parties to UNCAC in overseeing the implementation of the Convention. This peer review process aims to strengthen the effective implementation of the Convention by providing the means for countries to assess progress made, determine overall compliance, identify potential gaps and develop action plans to strengthen legal, institutional and operational arrangements in line with the requirements of the Convention.

The first review cycle, which started in 2010, covers chapters III (Criminalization and Law Enforcement) and IV (International Cooperation) of the Convention. The second review cycle started in 2016 and covers chapters II (Preventive Measures) and V (Asset Recovery) of the Convention. As of March 2020, 170 executive summaries of the country review reports for the first cycle have been completed. The executive summaries have been posted on the UNODC website in all official UN languages. 85 full country review reports for the first cycle have been published on the UNODC website at the request of the respective States parties. For the second cycle of the IRM, 35 executive summaries have been completed and thirteen country review reports have been published.

The country reviews have triggered legislative and institutional amendments in many States, with a view to fully implement the Convention and address the implementation gaps identified in the course of the reviews. Such gaps and deviations were more obvious with regard to the implementation of chapter III of the Convention. The Convention has had wide-ranging implementation effects, with significant results in terms of both criminalization and law enforcement. However, given that in these areas the Convention requires a particularly wide and multifaceted range of measures on the part of States parties, challenges were detected in varying degrees in respect of all relevant provisions.

UNODC has produced thematic reports and a flagship study entitled “State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Cooperation”<sup>53</sup> that analyses the main challenges and good practices in the areas of criminalization and law enforcement as well as international cooperation.

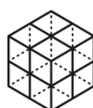
The Conference of the States Parties (COSP) is the main policymaking body of the United Nations Convention against Corruption. It supports States parties and signatories in their implementation of the Convention and gives policy guidance to UNODC to develop and implement anti-corruption activities. All States that have ratified the Convention are part of the Conference, while signatories are entitled to participate as observers in the Conference. Non-signatories, inter-governmental and non-governmental organizations can apply for observer status at its sessions. The Conference has created subsidiary bodies, operating under its mandate, to assist in carrying out its work. They are meant to advise the Conference and make recommendations to help deliver its mandate. Besides the Implementation Review Group, which oversees the Implementation Review Mechanism, a Working Group on Asset Recovery, a Working Group on Prevention and an Expert Meeting on International Cooperation serve to exchange information, challenges and good practices among States parties.

United Nations Convention against Corruption

<https://www.unodc.org/unodc/en/treaties/CAC/index.html>

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<sup>53</sup> State of Implementation of UNCAC, [https://www.unodc.org/unodc/en/corruption/tools\\_and\\_publications/state\\_of\\_uncac\\_implementation.html](https://www.unodc.org/unodc/en/corruption/tools_and_publications/state_of_uncac_implementation.html)



Eighth session of the Conference of the States Parties to the United Nations Convention against Corruption

<https://www.unodc.org/unodc/en/corruption/COSP/session8.html>

The World Bank and the United Nations Office on Drugs and Crime Stolen Asset Recovery (StAR) Initiative

<https://star.worldbank.org/>

## 12. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

The OECD Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention) is an international instrument to focus primarily on the prohibition of bribery of foreign public officials in international business transactions. It came into force in February 1999 and has been adopted by the 36 OECD countries and by eight non-OECD members (Argentina, Brazil, Bulgaria, Colombia, Costa Rica, Peru, Russia and South Africa).

### **OECD Anti-Bribery Convention**

*Agreed: 1997*

*Entry into force: 1999*

*Venue of negotiations: OECD*

*Initial signatories: 34*

*Current signatories: 44*

*Frequency of implementation review: flexible*

The Parties to the OECD Anti-Bribery Convention must make the supply of bribes (offering, promising or giving) to foreign public officials in international business a criminal offence, subject to effective, proportionate and dissuasive sanctions, including imprisonment for natural persons, and monetary sanctions and confiscation for enterprises. In addition to the core criminal obligations, Parties must also provide effective international legal assistance to Parties, including extradition. Furthermore, Parties must make bribes non-tax deductible, and consider including language in their bilateral tax treaties for allowing the sharing of tax information by tax authorities with law enforcement and judicial authorities in a “contracting state” to combat corruption.

The systematic monitoring process of the OECD Working Group on Bribery (WGB) is its main tool for ensuring that Parties effectively implement the requirements in the Convention. The WGB aims to conduct a holistic and objective assessment of each Party’s implementation of the Convention, including practice in providing mutual legal assistance and extradition in foreign bribery cases. Evaluation cycles are open and adapted as needed to country circumstance.

OECD Anti-Bribery Convention

<http://www.oecd.org/corruption/oecdantibriberyconvention.htm>

## 13. African Union Convention on Preventing and Combating Corruption

The African Union Convention on Preventing and Combating Corruption (AUCPCC) was adopted in Maputo on 11 July 2003 to fight rampant political corruption on the African continent. It represents regional consensus on what African states should do in the areas of prevention, criminalization, international cooperation and asset recovery.

### **AUCPCC**

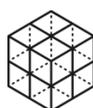
*Agreed: 2003*

*Entry into force: 2006*

*Venue of negotiations: African Union*

*Initial signatories: 35*

*Current signatories: 49*



Going beyond other similar conventions, the AUCPCC calls for the eradication of corruption in the private and public sector. The Convention covers a wide range of offences including bribery (domestic or foreign), diversion of property by public officials, trading in influence, illicit enrichment, money-laundering and concealment of property and primarily consists of mandatory provisions. It also obliges the signatories to introduce open and converted investigations against corruption. As of 1 January 2020, the treaty was ratified by 43 States and signed by 49.

The convention is available for download at: <https://au.int/sites/default/files/treaties/36382-treaty-0028 - african union convention on preventing and combating corruption e.pdf>

## 14. Inter-American Convention Against Corruption (IACAC)

The Inter-American Convention Against Corruption (IACAC) was adopted by the member countries of the Organization of American States on 29 March 1996 in Caracas, Venezuela; it came into force on 6 March 1997. It was the first international convention to address the question of corruption.

### ***IACAC***

*Agreed: 1996*

*Entry into force: 1997*

*Venue of negotiations: Organization of American States*

*Initial signatories: 23*

*Current signatories: 34*

This Convention establishes a set of preventive measures; provides for the criminalization of certain acts of corruption, including transnational bribery and illicit enrichment; and contains a series of provisions to strengthen the cooperation between its States Parties in areas such as mutual legal assistance and technical cooperation, extradition and identification, tracing, freezing, seizure and forfeiture of property or proceeds obtained, derived from or used in the commission of acts of corruption, among others.

The convention is available for download at:

[http://www.oas.org/en/sla/dil/docs/inter\\_american\\_treaties\\_B-58\\_against\\_Corruption.pdf](http://www.oas.org/en/sla/dil/docs/inter_american_treaties_B-58_against_Corruption.pdf)

## 15. Civil Law Convention on Corruption of the Council of Europe

This convention was adopted in November 1999 and entered into force in November 2003. It requires Contracting Parties to provide in their domestic law "for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and

### ***Civil Law Convention on Corruption***

*Agreed: 1999*

*Entry into force: 2003*

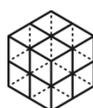
*Venue of negotiations: Council of Europe*

*Initial signatories: 33*

*Current signatories: 42 (35 ratifications)*

interests, including the possibility of obtaining compensation for damage". The Convention is divided into three chapters, they cover: measures to be taken at national level, international co-operation and monitoring of implementation) and final clauses. In ratifying the Convention, the States undertake to incorporate its principles and rules into their domestic law, taking into account their own particular circumstances.

The Convention is open to "non-member states which took part in drawing it up; other non-member states by invitation; and the European Community." As of 26 March 2020, 42 countries have signed the Convention.



The Convention is available for download at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f6>

## 16. Criminal Law Convention on Corruption of the Council of Europe

This convention was adopted in January 1999 and entered into force in July 2002. The convention aims at the coordinated criminalization of a large number of corrupt practices. It also provides for complementary criminal law measures and for improved international co-operation in the prosecution of corruption offences.

States are required to provide for effective and dissuasive sanctions and measures, including deprivation of liberty that can lead to extradition. Legal entities will also be liable for offences committed to benefit them and will be subject to effective criminal or non-criminal sanctions, including monetary sanctions.

The Convention also incorporates provisions concerning aiding and abetting, immunity, criteria for determining the jurisdiction of States, liability of legal persons, the setting up of specialised anti-corruption bodies, protection of persons collaborating with investigating or prosecuting authorities, gathering of evidence and confiscation of proceeds. It provides for enhanced international co-operation (mutual assistance, extradition and the provision of information) in the investigation and prosecution of corruption offences.

The Convention is open to the accession of non-member States. Its implementation will be monitored by the "Group of States against Corruption - GRECO", which started functioning in May 1999. As they ratify it, States which do not already belong to GRECO will automatically become members. As of 26 March 2020, 50 countries have signed the Convention.

### ***Criminal Law Convention on Corruption***

*Agreed: 1999*

*Entry into force: 2002*

*Venue of negotiations: Council of Europe*

*Initial signatories: 45*

*Current signatories: 50*

## 17. The Arabic Convention for Combating Corruption

The Arab Anti-Corruption Convention is the latest addition to the regional instruments on combating corruption. It was signed by 21 Arab countries on 21 December 2010. This convention aims at strengthening measures to prevent, combat and detect corruption in all its forms, in addition to all related crimes and prosecute its perpetrators, as well as promoting Arab cooperation in the prevention, combating and detection of corruption, assets recovery, promotion of integrity and transparency, accountability and law enforcement, as well as encouraging individuals and civil society institutions to participate effectively in preventing and combating corruption.

The third session of the Conference of the States Parties to the Arab Convention against Corruption was concluded on 8 January 2020 in Rabat, Morocco.

The Convention is available for download at: <https://star.worldbank.org/sites/star/files/Arab-Convention-Against-Corruption.pdf>

### ***The Arabic Convention for Combating Corruption***

*Agreed: 2010*

*Entry into force: 2012*

*Venue of negotiations: The League of Arab States*

*Initial signatories: 21*

*Current signatories: 22*



## 18. International Convention on the Simplification and Harmonization of Customs Procedures (revised Kyoto Convention)

The International Convention on the Simplification and Harmonization of Customs Procedures was originally adopted in 1973 and entered into force on 25 September 1974 which sought to create an international instrument to simplify and harmonize its signatories' customs procedures and thus to facilitate international trade. The Revised Kyoto Convention (RKC) amends the Convention and has

***International Convention on the Simplification and Harmonization of Customs Procedures***

*A.K.A: Revised Kyoto Convention*

*Agreed: 1999*

*Entry into force: 2006*

*Venue of negotiations: World Customs Organization*

*Initial signatories: 49*

*Current signatories: 121*

*Frequency of implementation review: --*

become the basis for effective, predictable and efficient customs procedures. Any member of the World Customs Organization (WCO), of the United Nations or of its specialized agencies, or of any customs or economic union may become a party to the RKC. By means of Decision 2003/231/EC, the EU acceded to the RKC on 17 March 2003. The RKC entered into force on 3 February 2006.

The RKC comprises a body, a general annex and specific annexes. The general annex contains the core procedures and practices and it is obligatory for accession and implementation by contracting parties. It also consists of standards and transitional standards. Specific annexes deal with different customs procedures and consist of standards and recommended practices. Contracting parties may accede to specific annexes and/or chapters at their discretion. Annexes are accompanied by guidelines of an informative and non-binding nature, developed to ensure the uniform interpretation of the RKC rules, as well as to provide examples of national practices.

The Revised Kyoto Convention provides for a management committee to administer, review and update the Convention at regular intervals. It oversees the implementation of the convention; secures uniformity in its interpretation and application; proposes amendments; reviews and updates practices and guidelines and recommends new ones; is composed of contracting parties, including the EU; meets at least once a year and elects its own chairperson and vice-chairperson; takes decisions by consensus and, if consensus cannot be reached, decides by a vote among the contracting parties present.

## 19. Other possibly relevant frameworks

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988

[https://www.unodc.org/documents/commissions/CND/Int\\_Drug\\_Control\\_Conventions/Ebook/The\\_International\\_Drug\\_Control\\_Conventions\\_E.pdf](https://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The_International_Drug_Control_Conventions_E.pdf)

International Convention for the Suppression of the Financing of Terrorism

<https://www.un.org/law/cod/finterr.htm>



# ANNEX 2: Selected bibliography and introductory reading list

## 1. Anti-money-laundering and countering the financing of terrorism

Designated categories of offences, designated non-financial businesses and professions – FATF Recommendations glossary

<http://www.fatf-gafi.org/glossary/d-i/>

Immediate outcomes and objectives of an effective system to combat money-laundering and terrorist financing:

<http://www.fatf-gafi.org/publications/mutualevaluations/documents/effectiveness.html>

Risk-Based Approach Guidance for Legal Professionals

<http://www.fatf-gafi.org/publications/fatfrecommendations/documents/rba-legal-professionals.html>

## 2. Asset recovery and return

Asset Recovery Handbook (2011)

[https://star.worldbank.org/sites/star/files/asset\\_recovery\\_handbook\\_0.pdf](https://star.worldbank.org/sites/star/files/asset_recovery_handbook_0.pdf)

Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action

<https://star.worldbank.org/sites/star/files/Barriers%20to%20Asset%20Recovery.pdf>

Digest of Asset Recovery Cases, UNODC (2015)

[https://www.unodc.org/documents/corruption/Publications/2015/15-05350\\_Ebook.pdf](https://www.unodc.org/documents/corruption/Publications/2015/15-05350_Ebook.pdf)

Effective Management and Disposal of Seized and Confiscated Assets, UNODC (2017)

[https://www.unodc.org/documents/corruption/Publications/2017/17-07000\\_ebook\\_sr.pdf](https://www.unodc.org/documents/corruption/Publications/2017/17-07000_ebook_sr.pdf)

FATF Best Practices on Confiscation and a Framework for Ongoing Work on Asset Recovery

<http://www.fatf-gafi.org/publications/fatfrecommendations/documents/bestpracticesonconfiscationrecommendations4and38andframeworkforongoingworkonassetrecovery.html>

Few and Far: The Hard Facts on Stolen Asset Recovery (2014)

<https://star.worldbank.org/publication/few-and-far-hard-facts-stolen-asset-recovery-0>

Guidelines on Efficient Recovery of Stolen Assets, Lausanne Process (2017)

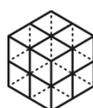
<https://guidelines.assetrecovery.org/>

Conference of the States Parties to UNCAC - Report of the International Expert Meeting on the return of stolen assets – ADDIS II

<https://www.unodc.org/documents/treaties/UNCAC/COSP/session8/V1910298e.pdf>

Public Wrongs, Private Actions: Civil Lawsuits to Recover Stolen Assets, StAR (2015)

[https://star.worldbank.org/sites/star/files/9781464803703\\_0.pdf](https://star.worldbank.org/sites/star/files/9781464803703_0.pdf)



### 3. Corruption

Oslo Statement on Corruption involving Vast Quantities of Assets, UNODC

[https://www.unodc.org/documents/corruption/meetings/OsloEGM2019/Oslo\\_Outcome\\_Statement\\_on\\_Corruption\\_involving\\_Vast\\_Quantities\\_of\\_Assets\\_-\\_FINAL\\_VERSION.pdf](https://www.unodc.org/documents/corruption/meetings/OsloEGM2019/Oslo_Outcome_Statement_on_Corruption_involving_Vast_Quantities_of_Assets_-_FINAL_VERSION.pdf)

Curbing Corruption, IMF 2019 Fiscal Monitor, Chapter 2

<https://www.imf.org/en/Publications/FM/Issues/2019/03/18/fiscal-monitor-april-2019#Chapter%202>

Illicit enrichment, ICAR, Quick Guide (2019)

[https://www.baselgovernance.org/sites/default/files/2019-12/191023-quickguides\\_prod-11\\_g05.pdf](https://www.baselgovernance.org/sites/default/files/2019-12/191023-quickguides_prod-11_g05.pdf)

Preventing and combating corruption involving vast quantities of assets: Note by the Secretariat, Conference of the States Parties to UNCAC

[https://www.unodc.org/documents/treaties/UNCAC/COSP/session8/CAC\\_COSP\\_2019\\_13\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/COSP/session8/CAC_COSP_2019_13_E.pdf)

### 4. Beneficial ownership

Best Practices on Beneficial Ownership for Legal Persons

<http://www.fatf-gafi.org/publications/methodsandtrends/documents/best-practices-beneficial-ownership-legal-persons.html>

Concealment of Beneficial Ownership

<http://www.fatf-gafi.org/publications/methodsandtrends/documents/concealment-beneficial-ownership.html>

### 5. Correspondent banking relationships

Financial inclusion and customer due diligence

<http://www.fatf-gafi.org/publications/fatfgeneral/documents/financial-inclusion-cdd-2017.html>

FSB action plan to assess and address the decline in correspondent banking: Progress report

<https://www.fsb.org/2019/05/fsb-action-plan-to-assess-and-address-the-decline-in-correspondent-banking-progress-report/>

### 6. Illicit financial flows

Report of the High Level Panel on Illicit Financial Flows from Africa (Mbeki Panel report)

<https://repository.uneca.org/bitstream/handle/10855/22695/b11524868.pdf?sequence=3&isAllowed=y>

### 7. Taxation policies and practices

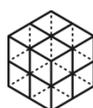
A Roadmap to Improve Rules for Taxing Multinationals, ICRICT

<https://www.icrict.com/icrict-documents-a-fairer-future-for-global-taxation>

IMF Policy Paper: Corporate Taxation in the Global Economy

<https://www.imf.org/~media/Files/Publications/PP/2019/PPEA2019007.ashx>

The Role of Taxation and Domestic Resource Mobilization in the Implementation of the Sustainable Development Goals, Paper for UN Tax Committee, (E/C.18/2018/CRP.19)



<https://www.un.org/esa/ffd/wp-content/uploads/2018/08/CRP19-The-Role-of-Taxation-and-Domestic-Resource-Mobilization-in-the-Implementation-of-the-Sustainable-Development-Goals.pdf>

United Nations Practical Manual on Transfer Pricing for Developing Countries

<https://www.un.org/esa/ffd/publications/united-nations-practical-manual-on-transfer-pricing-for-developing-countries-2017.html>

The United Nations Handbook on Selected Issues for Taxation of the Extractive Industries by Developing Countries

<https://www.un.org/esa/ffd/publications/the-united-nations-handbook-on-selected-issues-for-taxation-of-the-extractive-industries-by-developing-countries.html>

## 8. Other topics & cross-cutting issues

Financing for Sustainable Development Reports, Inter-agency Task Force on Financing for Development

<https://developmentfinance.un.org/report>

Documents, Publications and Tools on International Cooperation, UNODC

<https://www.unodc.org/unodc/en/corruption/publications.html#InternationalCooperation>

Ten global principles for fighting tax crime

<http://www.oecd.org/tax/crime/fighting-tax-crime-the-ten-global-principles.pdf>



# ANNEX 3: Terms of reference

## High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda

### *An initiative of the President of the General Assembly and the President of the Economic and Social Council*

#### Introduction

The 2030 Agenda for Sustainable Development is a plan of action for people, planet and prosperity. It recognizes that eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development. It seeks to shift the world on to a sustainable and resilient path and, in it, Member States pledge that no one will be left behind.

Mobilizing sufficient financing for implementing the 2030 Agenda remains a major challenge. Additional annual investment needed to achieve just a few of the goals is estimated at over USD 2.5 trillion by 2030. The Addis Ababa Action Agenda on Financing for Development emphasises the complementary nature of public and private finance, and domestic and international finance, but highlights that domestic public finance is essential to providing public goods and services. Yet public goods and services, such as education and health care are underfunded. Without more public investment, achieving the 2030 Agenda will be impossible.

In these two global Agendas, Member States pledge to enhance revenue administration; improve transparency; promote good governance; identify, assess and act on money laundering risks; significantly reduce illicit financial flows; and deter, detect, prevent and counter corruption and bribery. Yet, many are concerned that insufficiency in financial accountability, transparency and integrity erodes the ability of States to raise revenue and directly undermines the efforts of the global community to successfully achieve the Sustainable Development Goals (SDGs). Hidden, secret, fraudulent and misleading transactions prevent States from enforcing the law and collecting their fair share of taxes. Trillions of dollars are estimated to be held in off-shore undeclared financial holdings. Insufficient accountability, transparency and integrity create uneven playing fields that harm small- and medium-sized businesses and undermine equity and inclusiveness in our economies. It also impacts on the effectiveness of macroeconomic policies, and facilitates criminals being able to hide the proceeds of their crimes.

Tax evasion, money laundering and corruption, as well as tax avoidance, especially in an era of digital economic activity, demonstrate that the world needs to put more effort into preventing financial crimes, creating level playing fields, ending financial opacity, and mobilising resources equitably. The international community needs multilateral action to tackle these challenges if we are to reach our global goals.

Countries are taking action nationally to reach SDG 16 and its targets by strengthening existing institutions and enhancing the effectiveness of law enforcement. This is evidenced by a number of high-profile prosecutions related to tax evasion, bribery and corruption. Nonetheless, as noted in the Addis Agenda, in a world of cross-border trade, investment and finance, there are



limits to the ability to raise resources and enforce financial accountability, transparency and integrity through domestic action alone.

There are existing mechanisms of international cooperation, both within the United Nations and outside of it, including the United Nations Convention against Corruption and the United Nations Convention on Transnational Organized Crime, which provide important frameworks for Member States to take action together. A number of international institutions are stepping up their work on financial accountability, transparency and integrity. The United Nations Inter-agency Task Force on Financing for Development, which includes 60 UN and non-UN institutions, agencies and programmes, continuously analyses financial accountability, transparency and integrity challenges, surveys the various estimates of the challenges and also reviews policy advancements. Work is ongoing to improve estimation of the volume of illicit transactions, both through the SDG indicator process and in separate research and analytical work. [See Annex 2 for a full list of relevant bodies]

Yet, in the view of many Member States and other stakeholders, there is room for improvements in the implementation, inclusiveness, and/or design of the international institutional architecture and related commitments. To promote financial accountability, transparency and integrity further action may be needed in the following areas: financial and beneficial ownership transparency, tax matters, bribery and corruption, confiscation and disposal of the proceeds of crime, money laundering and the recovery and return of stolen assets. Ensuring the effective implementation of comprehensive international frameworks related to financial accountability, transparency and integrity is critical to financing the SDGs. This is a global problem that requires global cooperation.

The Addis Agenda acknowledges the need to address these aspects and advance international cooperation through fair, inclusive and universal platforms. Recognising the delicate balance on key issues contained in intergovernmental documents, all voices need to be heard and engaged when making decisions in these areas. General Assembly Resolution 74/206 includes an invitation to the President of the General Assembly, the President of Economic and Social Council to give appropriate consideration to the importance of combating illicit financial flows and strengthening good practices on asset return to foster sustainable development.

The President of the General Assembly and the President of the Economic and Social Council welcome this call. On this background, they are convening a high-level panel on international financial accountability, transparency and integrity for achieving the 2030 Agenda.

## Objectives

The high-level panel is expected to contribute to the overall efforts undertaken by Member States to implement the ambitious and transformational vision of the 2030 Agenda. Our common goal, as set out in SDG 16, is to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

In pursuing its work autonomously, the panel is expected to:

- Review current challenges and trends related to financial accountability, transparency and integrity;
- Review existing international institutional and legal frameworks related to financial accountability, transparency and integrity, with a view to identify any gaps,



impediments and vulnerabilities in their design and/or implementation, including with regard to their comprehensiveness, effectiveness and universality;

- Make evidence-based recommendations, building on the successes and ongoing work of existing mechanisms, on:
  - How to make the systems for financial accountability, transparency and integrity more comprehensive, robust, effective, and universal in approach;
  - Ways to address identified gaps, impediments and vulnerabilities, including by:
    - (i) strengthening the implementation of existing mechanisms, standards and commitments; (ii) improving existing international frameworks related to financial accountability, transparency and integrity, where possible; (iii) exploring the need for, and feasibility of, establishing additional international instruments or frameworks, where warranted; and (iv) governance arrangements to match the challenges; and
  - Ways to strengthen international cooperation, including through existing bodies, that will enhance capacity to implement the recommendations.

## Composition

The Presidents will appoint fifteen members to the panel, including two co-chairs. They will be drawn from policymakers, academia, civil society, the public and private sectors, with due consideration to geographic and gender balance. The panel will include members: (i) with an understanding of the complex and interrelated aspects of financial accountability, transparency and integrity; (ii) who have a grasp of the strengths and weaknesses of existing institutions; (iii) with experience in designing and implementing policies in relevant domains; and (iv) with knowledge of the challenges faced by countries from different regions of the world and at different levels of economic and social development.

## Role of Panel Members

The panel members will serve in their individual capacities and will have four roles:

- *Analytical role:* the panel members will contribute their knowledge, experiences and ideas to the group. They should jointly agree on the panel's analysis and recommendations;
- *Topic leadership role:* the co-chairs may request some panel members to lead aspects of the panel's work based on their expertise. This may include participation in events and conferences, consultations, meetings with officials, and other engagements;
- *Engagement role:* throughout the term of the panel's work, the panel members will engage with Member States to understand their circumstances, practices and needs; with relevant international institutions and bodies to understand the effectiveness and limitations of existing mechanisms and their implementation; as well as civil society, the private sector, academia and other stakeholders; and
- *Outreach role:* the panel members may wish to support the dissemination of the panel's report and recommendations after the conclusion of the panel's work.

Panel members should plan to attend all four meetings of the panel and the final report presentation.



## Expected Outcome

July 2020	The panel will produce an interim report setting out its analysis of the situation.
February 2021	The panel will produce its final report providing recommendations.

## Panel Secretariat and Funding

The panel will be supported by an independent secretariat, hosted by the United Nations Department of Economic and Social Affairs/Financing for Sustainable Development Office. The secretariat will be responsible for producing and editing background papers and the panel's interim and final reports, supporting the panel's communications and outreach, coordinating the engagement of the Panel with all stakeholders, and organizing the panel's meeting and other events. A core group of UN agencies will assist the secretariat in its work [see Annex 2].

The funding for the panel's work and the independent secretariat will be provided through voluntary contributions to the Trust Fund to Support Activities for the Follow-up to the International Conference on Financing for Development. All contributions are managed and audited in accordance with the UN Financial Regulations and Rules. Information about the secretariat's funding and staffing will be posted on the website of the panel ([www.factipanel.org](http://www.factipanel.org)).

## Process and Consultations

The panel will hold at least four meetings of up to three days each. It will solicit comments and suggestions from interested stakeholders including policymakers and government officials, representatives of international agencies, academics, the private sector and members of civil society, both at its formal meetings and between them. International bodies, including UN System agencies and non-UN institutions, are invited to work with the panel. Together, these deliberations and inputs will feed into an interim report of findings to be presented in July 2020 at the time of the High Level Segment of ECOSOC.

On the basis of the interim report, panel members will participate in regional consultations and discussions with Member States and interested stakeholders to seek input and get feedback on their analysis. The panel will seek close coordination with existing international bodies. These consultations will inform the final report and recommendations, including the analysis that motivated the recommendations. The panel will conclude its work by publishing its final report, expected in February 2021. Updates on the progress of the panel will be provided to all stakeholders periodically throughout the process.

See Annex 1 on the tentative timeline for the work of the panel.

The panel will post all relevant information on its webpage ([www.factipanel.org](http://www.factipanel.org)) to be launched early March 2020.

