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## Guideline 4: Timing

### Consider – and discuss with the jurisdiction to be requested – the timing of various types of requests for MLA

Requesting and requested jurisdictions should consider the timing of various types of requests for MLA, before their submission, as the timing of the submission of a formal request may impact the proceedings in a range of manners that may or may not be conducive to the efficient recovery of stolen assets. In general, other assistance channels, such as the Egmont Group, CARIN, Interpol or other intelligence sharing networks, should be exhausted among involved jurisdictions prior to submission of formal request for MLA (see [Guideline 6](#) [3]).

Why is the timing of requests for MLA crucial?

Information provided to a requested jurisdiction — informally or through a request for MLA — may result in the requested jurisdiction initiating its own domestic investigation. Subsequently, the requested state may be unable to provide MLA as there are "on-going proceedings" in the requested jurisdiction.

It is essential that requesting jurisdictions understand the consequences of request for MLA as some jurisdictions require authorities to provide notice to the targets of a request for MLA and grant these targets the right to appeal a decision to provide the assistance sought through a request for MLA. As a result, premature request for MLA may alert targets of the investigation and thus allow the movement or dissipation of assets by the target to other jurisdictions, or the destruction of evidence. Appeals by targets may lead to delays which impact other aspects of international cooperation. Requesting jurisdictions are advised to discuss the timing of any request for MLA with the designated focal contact point of the requested jurisdiction (see [Guideline 7](#) [4]).

Once a request for MLA has been filed, some jurisdictions impose limitations on the further exchange of financial or law enforcement intelligence (see [Guideline 6](#) [3]). Thus, requesting and requested jurisdictions should always consider together whether the request for MLA is necessary or if the information sought may be made available through other channels first.

Where there are likely to be multiple requests for MLA to obtain information, evidence, provisional measures, or confiscation orders, requesting and requested jurisdictions should, also as a trust-building measure, discuss sequencing of the requests in the most expeditious manner to ensure, inter alia, that evidentiary requirements are met and unnecessary delays avoided. Such sequencing of requests should take into account existing rules in the requesting and requested jurisdictions.

### Step 1 Consider sending spontaneous transmittal of information

to enable involved jurisdiction(s) to open or support a criminal investigation. Upon receipt of spontaneous transmittals, the receiving jurisdiction(s) should undertake diligent review and verification of the information prior to responding to the spontaneous transmittal with a request for MLA. Following such review, the receiving jurisdiction should provide a substantive response upon review of the information to the sending jurisdiction.

#### Explanation of step 1

Spontaneous<sub>1</sub> transmission of information is a proactive manner of disclosing information to an involved jurisdiction (see [Guideline 3](#) [2]), to alert that jurisdiction about potentially relevant evidence. This spontaneous information is intended to enable a foreign jurisdiction to either initiate or to further its own criminal proceedings. Spontaneous transmission of information does not provide a jurisdiction with evidence. It requires the recipient jurisdiction (of the spontaneous transmission) to issue requests for MLA in order to obtain evidence. Such requests for MLA should contain additional information which the recipient jurisdiction has obtained in the course of its investigation, and should not merely replicate the information provided in the spontaneous transmittal of information. Spontaneously

transmitting information through channels such as Egmont or other practitioner networks is an excellent way to communicate information to relevant authorities, consequently leading to a fertile dynamic within the MLA process.

- This is a good practice that has been taken out of Guideline 8. Spontaneous transmission of information had initially been discussed there in the context of the practical guidelines

## **Step 2 Less formal avenues**

Requesting jurisdictions should seek to use other less formal avenues prior to sending a request for MLA (see [Guideline 1](#) [5]). Where possible, requested jurisdictions should provide guidance or assistance to requesting jurisdiction(s) regarding less formal avenues to obtain requested information.

### **Explanation of step 2**

Requesting and requested jurisdictions should discuss requests for MLA prior to their submission to determine whether a request for MLA is necessary, or whether the information or material sought is publicly available, could be made available on an intelligence basis or needs not be obtained in a specific form to be admissible in court. Consideration should first be given as to whether other channels (e.g., intelligence sharing networks, Egmont Group) have been exhausted between the jurisdictions.

## **Step 3 Consider opening parallel investigations**

In complex or grand cross-border cases prior and/or in addition to sending a request for MLA (see [Guideline 8](#) [6]).

### **Explanation of step 3**

A jurisdiction that is conducting an investigation and which identifies that information may be pertinent to another jurisdiction should strive to share such information proactively and spontaneously (see [Guideline 3](#) [2] and steps for action "Consider sending spontaneous transmittal of information). Moreover, the involved jurisdictions should strive to co-ordinate their investigative and legal strategies with one another (see [Guideline 6](#) [3] and [7](#) [4]), with a view to allowing contemporaneous investigations into the facts which constitute criminal offences in the involved jurisdictions (e.g., the predicate and money laundering offences).

## **Step 4 Understand impact of the timing of request for MLA on the process**

Taking into account possible limitations on the exchange of financial or law enforcement intelligence subsequent to the request for MLA.

### **Explanation of step 4**

Requesting and requested jurisdictions should discuss the timing of various types of requests for MLA, with the understanding of how requests for MLA may impact the exchange of financial or law enforcement intelligence.

## **Step 5 Understand any potential impact on the investigation resulting from sending a request for MLA**

Including but not limited to, confidentiality requirements, disclosure obligations, limits on the use of information, statute of limitation concerns, and the expected length of time required to execute the request for MLA.

### **Explanation of step 5**

Requesting and requested jurisdictions should discuss and understand any confidentiality requirements, limits on

use of information or disclosure obligations to the target or third parties that may result from the request for MLA or its response.

## Step 6 Prioritise requests for MLA

Based on seriousness of the offence, value of assets, the risk of dissipation of assets, length of time elapsed since time of misconduct, etc. Requesting jurisdictions should consider communicating through direct contact with the requested jurisdiction any compelling reasons for prioritisation of the execution of the request for MLA.

### Explanation of step 6

Requesting jurisdictions should prioritise their requests for MLA based on the seriousness of the offence, the value of the assets involved, the stage of the investigation or legal proceedings, and degree of public interest in the case. In some instances, it may be more effective to separate multi-faceted requests for MLA into several separate requests.

### Further reading

- UNCAC, Articles 48, 54, 55, and 56
- Stolen Asset Recovery Initiative (StAR), [Asset Recovery Handbook: A Guide for Practitioners](#) [7] (see Section 7: International Cooperation in Asset Recovery) available at: <https://star.worldbank.org/publication/asset-recovery-handbook> [7]
- StAR, [Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action](#) [8] (see Barriers 6 (Quick Trigger on Formal MLA Submission) and 28 (Identifying Foreign Bank Accounts)), available at: <https://star.worldbank.org/publication/barriers-asset-recovery> [8]
- StAR, Barriers to Asset Recovery (see Barrier 6: Quick Trigger on Formal MLA Submission; Barrier 7: Differences in Legal Traditions; and Barrier 8: Inability to Provide MLA).

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