

[Guideline 9: Draft MLA](#) [1][Guideline 7: Communication](#) [2]

Guideline 8: Parallel investigation

Requested jurisdictions should consider initiating a parallel investigation into the assets and the facts surrounding these, in order to establish any wrongdoing in their jurisdiction.

Conducting parallel, joint or otherwise contemporaneous investigations means investigating facts, which constitute criminal offences in the involved jurisdictions at the same time. Thus, in complex cases spanning into two or more jurisdictions, having contemporaneous investigations enables combining the investigative expertise from the involved jurisdictions to complement the efforts of one another. This is particularly useful in cases of complex financial crimes, e.g., money laundering and its predicate offences such as corruption-related crime, that affect all the involved jurisdictions due to the transnational nature of the offence.

A jurisdiction that is conducting an investigation and identifies information that may be pertinent to another jurisdiction should strive to share such information proactively and spontaneously (see [Guideline 4 Step 1 Consider sending spontaneous transmittal of information](#) [3]). Both the requested and requesting jurisdictions should consider opening parallel criminal investigations into the criminal offences related to the facts, with a view to establishing wrongdoing in the involved jurisdictions. (see [Guideline 4 Step 3 Consider opening parallel investigations](#) [3]) Moreover, when an involved jurisdiction conducting an investigation requests information from another jurisdiction, it should inform the requested jurisdiction of an offence that may have occurred within its borders.

Requesting and requested jurisdictions should fully support one another's proceedings by furnishing additional information spontaneously whenever possible and promptly processing valid requests for MLA.

Due to the transnational nature of many criminal offences, law enforcement authorities in one jurisdiction will often acquire intelligence that relates to criminal investigations in other jurisdictions. Spontaneous transmission of information is a proactive manner of disclosing information to an involved jurisdiction, so that it is aware of an on-going investigation or that existing evidence could be of interest (see [Guideline 4](#) [3]). It does not refer to the sharing of material to be used for evidentiary purposes during court proceedings, as the sharing of intelligence can only be used to advance investigations. Furnishing additional information spontaneously should also be done with a view to ultimately receiving a request from MLA from the jurisdiction that was a recipient to such spontaneous information.

This spontaneous information could be of importance to the requested jurisdiction and enables it to either initiate or to further its own criminal proceedings. This information should be shared to the greatest extent possible with the involved jurisdictions, to enable them to take the necessary investigative steps quickly.

Spontaneously transmitting information through informal 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. (See [Annex 1](#) [4] of Guideline 6)

Promptly processing MLA requests is necessary to ensure the efficient conveyance of material that can be used for both investigative and evidentiary purposes (see [Guideline 9](#) [1] and [Guideline 10](#) [5]). The speedy furnishing of material requested through MLA will allow requesting enforcement authorities to continue pursuing lines of investigation (e.g. by revealing further links in an asset trail), and will greatly improve the chance of locating assets, acquiring freezing orders, and preparing cases for court

Requesting and requested jurisdictions should assess their potential right of participating in legal proceedings underway in one another's jurisdiction.

In some jurisdictions, the rules on criminal procedure allow a party claiming harm from an offence to apply to participate in the criminal case as civil party ("partie civile"), after demonstrating that actions under investigation have caused the concerned jurisdiction harm. If such an application is successful, an involved jurisdiction may gain access to the case file and related evidence, with a view to supporting that investigation and prosecution.

Prior to considering becoming a civil party, the requesting jurisdiction should discuss this avenue and its consequences with the requested jurisdictions, including the possibility of the use of evidence obtained through participation as civil party (see [Guideline 5](#) [6]). While participating as a civil party does not, and should not, preclude mechanisms for MLA between the involved jurisdictions, becoming a civil party in many instances has proven to be an invaluable avenue for information sharing among the involved jurisdictions.

The concerned jurisdiction should also verify how to retain MLA in parallel to the civil party mechanism, to ensure that it is able to take its domestic proceeding forward and in parallel to the civil party mechanism.

Requesting and requested jurisdictions should determine whether to maintain parallel investigations and consider initiating joint investigations.

Where there are common objectives in the investigative strategy, involved jurisdictions should consider establishing joint investigation teams comprising the relevant authorities of each involved jurisdiction. Where permitted, these joint investigation teams should avoid the duplication of efforts in the involved jurisdictions and provide a forum for exchanging information and creating a common strategy. Joint investigations also allow for more efficient co-operation among the involved jurisdictions.

Practitioners from involved jurisdictions should first verify the existence of legal frameworks that enable the establishment of joint investigations. For example, while in the United States joint investigations may not be feasible due challenges related to admissibility of evidence, in the context of the European Union, such investigations are regulated by the Council of the European Union Framework Decision of 13 June 2002 on joint investigation teams (2002/465/JHA).

Step 1 Encourage early and regular coordination of actions

Encourage early and regular coordination of actions to avoid e.g. double jeopardy problems, flight of targets and dissipation of assets.

Explanation of step 1

Involved jurisdictions should strive to co-ordinate their investigative and legal strategies with one another, (see [Guideline 7](#) [7]) 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).

Early and regular co-ordination is also essential in order to observe the principle of "ne bis in idem" and thus avoid a situation of double jeopardy (see [Guideline 3](#) [8], [Guideline 5](#) [6] and [Guideline 6](#) [9]). Furthermore, lack of co-ordination and consultation among authorities in involved jurisdictions can tip off the perpetrators of the crime under parallel investigation and lead to the flight of targets and dissipation of assets. Authorities in involved jurisdictions should therefore co-ordinate their actions and consult on their investigative and legal strategies.(see [Guideline 3](#) [8] and [Guideline 5](#) [6])

Step 2 Discuss in advance all major investigative and other necessary steps to collect evidence

Discuss in advance all major investigative and other necessary steps to collect evidence (e.g. searches) in order to avoid actions negatively impacting on the on-going parallel investigations in other jurisdictions.

Explanation of step 2

As indicated above co-ordination shall continue on a regular basis and include discussions of major investigative and other necessary steps to collect evidence to ensure that decisions of one authority will not jeopardize the investigative strategy of another authority and to avoid authorities of relevant jurisdictions working at cross-purpose (see [Guideline 7](#) [2]). To that end it is essential to conduct consultations on timing of investigative actions.

Step 3 Take into account disclosure obligations and other evidentiary rules

Take into account disclosure obligations and other evidentiary rules when considering engaging in a parallel investigation or joint investigations.

Explanation of step 3

Involved jurisdictions should also consider the legal and practical implications of the choice between parallel or joint investigations (see [Guideline 4](#) [3]), including for instance, disclosure obligations and other evidentiary rules.

Furthermore, if they choose to conduct joint investigations, the involved jurisdictions should agree in advance on the common purpose, goal and objective of the joint investigation team (e.g., via a Memorandum of Understanding). Any major action under joint investigations shall be taken in co-ordination with involved jurisdictions. Many considerations related to parallel investigations also apply to joint investigations, which require regular communications between involved jurisdictions.

Finally, the involved jurisdictions need also to confirm that sufficient resources, proper training, security measures for operational information, and an environment of trust and commitment are present prior to establishing the joint investigation team.

Further reading

- UNCAC, Articles, 42(5), 46(4), 49, 56.
- Resolution 3/3 of the 3rd Session of the Conference of States Parties of the United Nations Convention Against Corruption (COSP/WG.2/2009/3).
- FATF. Operational Issues – Financial Investigations Guidance (particularly subsection on ‘parallel investigations’). Available at:
http://www.fatf-gafi.org/media/fatf/documents/reports/Operational%20Issues_Financial%20investigations%20Guidance.pdf [10].
- Council of the European Union Framework Decision of 13 June 2002 on joint investigation teams (2002/465/JHA). Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002F0465&from=EN> [11]
- Section 7.3.5: Spontaneous Disclosures and International Cooperation in Asset Recovery. In: Brun, J.-P. et al. 2011. Asset Recovery Handbook: a Guide for Practitioners. The World Bank. Available at: <http://star.worldbank.org/star/publication/asset-recovery-handbook> [12].
- Barrier 5: Too Many Cooks in the Kitchen – Lack of Effective Coordination. In: Stephenson, K.M. et al. 2011. Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action, available at: <https://star.worldbank.org/star/publication/barriers-asset-recovery> [13].
- Monteith, C. (2013). Case and Investigation Strategy. In: Fenner Zinkernagel, G. et al. (eds.). 2013. Emerging Trends in Asset Recovery. Peter Lang.
- Schnebli, M. (2013). Lessons learned from the past: Today’s response from requested countries. In: Fenner Zinkernagel, G. et al. (eds.). 2013. Emerging Trends in Asset Recovery. Peter Lang. Oduor, J. A. et al (2013). Left Out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery. The World Bank. Available at: <http://star.worldbank.org/star/publication/left-out-bargain->

[settlements-foreign-bribery-cases-and-implications-asset-recovery](#) [14].

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[10] <http://www.fatf->

[gafi.org/media/fatf/documents/reports/Operational%20Issues_Financial%20investigations%20Guidance.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/Operational%20Issues_Financial%20investigations%20Guidance.pdf)

[11] <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002F0465&from=EN>

[12] <http://star.worldbank.org/star/publication/asset-recovery-handbook>

[13] <https://star.worldbank.org/star/publication/barriers-asset-recovery>

[14] <http://star.worldbank.org/star/publication/left-out-bargain-settlements-foreign-bribery-cases-and-implications-asset-recovery>