

Overcoming international co-operation challenges in corruption cases

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Corporate Crime analysis: What are the latest developments in overcoming international co-operation challenges in corruption cases? Andrew Katzen, partner, and Fiona Bowen, paralegal, at Hickman and Rose explore the report of the Organisation for Economic Co-operation and Development's (OECD) Beijing workshop.

What was the Beijing workshop in April 2016 and how did this report come into being.

In April 2016 over 70 practitioners working in the field of anti-corruption attended a workshop in Beijing co-hosted by the Chinese and British governments and the OECD. The workshop was organised to identify both the challenges to the provision of mutual legal assistance (MLA) and solutions to overcome these challenges. Following the workshop, a first draft of a paper was produced that summarised the views expressed by workshop participants.

Since then what steps has the OECD undertaken to gather data before producing this report and what does this show us?

A first draft of a paper was shared with the workshop participants, the G20 Anti-Corruption Working Group and the OECD Working Group on bribery in international business transactions. The 70 workshop participants, the OECD Working Group on bribery and the G20 Anti-Corruption Working Group were then invited to complete a short survey. Only ten responded. Further countries and international organisations, such as the World Bank, then provided input into the text of the [report](#).

What principles has the OECD identified for MLA going forward?

A key principle identified as essential was the role of professional networks, particularly in the field of corruption, due to the sector specific knowledge held by MLA practitioners in different jurisdictions. The report also identified liaison officers and other complementary forms of international cooperation as vital, and spotlighted models of cooperation implemented within the EU. The report stressed the need for adequate resources on a country-level and capacity building, to ensure all countries are equipped to submit and handle MLA requests and other forms of cooperation. Legal and technological tools were identified as an area to be exploited to ensure in future cooperation becomes increasingly easier to access and uniform across countries.

What impact do you think this will have on authorities in the UK who use or give effect to MLA requests?

It is hard to see this report having a great deal of impact on UK authorities, principally because the challenges outlined are undoubtedly well-known to practitioners across UK state agencies. Specific suggestions, such as having one central office to receive and manage MLA requests, are already established in the UK.

The report does not touch on what, if any, new arrangements will be implemented for the UK authorities after Brexit. However, the report places great emphasis on the efficiency of EU-specific cooperation, such as the use of joint investigation teams (JIT). JITs are created by discrete agreements between countries to bring together investigators and prosecutors on a certain case, and are an example of particularly deep cooperation. Such cooperation is viewed in the report as highly beneficial. It is not clear if such international consensus reflected in the report will impact the priorities being considered by the UK government in advance of Brexit.

What does the report indicate about trends in the MLA and international cooperation and enforcement arena?

Unsurprisingly, the report anticipates that there will be an ever increasing need for cooperation and MLA in the future (for example, as the frequency of requiring cross-border banking information increases).

The report outlines the key challenges of ensuring that cooperation is adequately resourced and claims that countries share a collective responsibility to give effect to existing agreements. This is correct, however the report falls short of making any suggestions as to addressing varying levels of commitment to MLA and cooperation in different countries or suggesting a minimum of what countries could reasonably be expected to do. Any forecasts in the report as to the practical future of MLA, such as creating a single worldwide MLA request portal, rely heavily on individual states having the political will and necessary funding to agree to, and implement, any supranational effort to create such tools and processes.

Further, those inputting into the report data were a small number of countries (ten). Of those seven were G20 countries and over half were EU Member States. The lack of respondents to the survey and dearth of diversity in those that did reply perhaps suggests a great deal more than is contained in the report itself.

The wider impact of the political shocks of Brexit and the US election could not be effectively considered in the report. However the attitude, as presented in the report, of moving toward ever deeper integration and cooperation as an international norm is potentially not as certain as presented.

In contrast to the Beijing Workshop, a little more substantive guidance can be ascertained from the outcomes of the Anti-Corruption Summit in London in May 2016, including a number of country statements with specific commitments. These statements provide some practical information as to the changes that may impact those working in the MLA field, and are indicative of the attitudes of a greater number of governments to MLA and cooperation in this field.

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