Guidelines for the Exchange of Information between GlobE Members

Updated on 17 November 2022

1. Aim

The purpose of these guidelines is to provide a non-exhaustive list of types of information that can be informally exchanged via GlobE Threema, or other communication channels agreed upon between GlobE members, with a view to facilitate informal cooperation.

2. Background

The GlobE Charter outlines the main objectives of the GlobE Network, inter alia:

- Facilitation of direct and informal cooperation;
- Facilitation of consultations between authorities to promote mutual legal assistance (MLA); and
- Facilitation of parallel and/or joint investigations (upon request).

The establishment of a secure communication channel is also foreseen as one of the objectives of the Network. To achieve that objective, the second GlobE Plenary adopted GlobE Threema as an interim secure communication solution.

3. Scope of Information to be Shared

Operational anti-corruption law enforcement authorities are well aware of the existing channels for formal cooperation, but these may be time and resource consuming. At the same time, informal cooperation remains underutilised. In this regard, establishing contact with the counterpart is the first and foremost significant step in establishing grounds for informal cooperation.

GlobE Threema is a secure channel for the exchange of information between GlobE members to support timely and efficient cooperation including prior to resorting to the formal MLA process.

Consistent with the objectives of the Network, its members may consider sharing, the following types of information via GlobE Threema, inter alia:

i. Guidance for obtaining help on the possible options for a country’s investigation/prosecution and procedures on a transnational corruption case;
ii. Information obtained via informal cooperation, e.g. gathered via non-coercive measures or information that is publicly available such as through public registries;

iii. Information that provides direction/lead and determines the scope of investigation that shall not be treated as admissible evidence for trial/court purposes if such information is not admissible in a particular jurisdiction;

iv. Information before and in support of formal MLA, (i) to identify and establish direct contact between central authorities of the requested and requesting states and (ii) to establish uniform procedures to identify a legal basis for MLA or the procedural rules, including evidentiary requirements for admissibility of evidence at trial or other criminal proceedings (iii) to prepare the requested state in advance and expediate the execution of MLA once the formal request is sent, (iv) to request for emergency provisional measures, subject to domestic laws and internal procedures, to secure evidence prior to issuing a formal MLA request;

v. Information to facilitate parallel and/or joint investigations.

vi. Other information referenced in paragraph 3 in the Annex.

The nature and scope of the exchange of information via GlobE Threema shall be determined by the relevant domestic laws and internal procedures, therefore members are encouraged to indicate any specific parameters for information-sharing during the initial contact with their counterparts. It is recommended to clearly identify the type of information sought from the counterparts. Such clarification will enable the counterpart to provide the right information by defining what is possible and not possible to obtain through the request (e.g. general information; locating and tracing, asset recovery etc).

An overview of the relevant provisions of UNCAC (as multilateral legal basis for such cooperation) is provided in the Annex.

4. References

GlobE Charter
Second Plenary Outcome Report
Compendium (to be regularly updated)
Annex

Analysis of some of the provisions of the United Nations Convention against Corruption (UNCAC) giving rise to international cooperation

1. Article 48 of UNCAC requires that States parties cooperate closely with one another in their law enforcement activities, in pursuit of the common goal of effectively combating corruption and related offences, including the laundering of proceeds of corruption. Relevant measures specified under article 48 include the establishment or enhancement of adequate channels of communication, cooperation in conducting inquiries, rapid exchange of information concerning the means and methods used by offenders, facilitating effective coordination for direct cooperation between competent law enforcement authorities in conducting inquiries with respect to corruption offences. The same article further provides that States parties shall endeavour to cooperate within their means to respond to corruption offences committed through the use of modern technology, while considering the UNCAC as the legal basis for law enforcement cooperation in relation to corruption offences.

2. Informal communication channels, such as the secure communication solution provided by the GlobE Network, GlobE Threema, can be used by member authorities of the Network to share information proactively and spontaneously without a prior request, as emphasized in article 56 of UNCAC on “Special cooperation”. Practitioners of the GlobE Network are provided with the opportunity to seek informal assistance from their international counterparts and share information rapidly and spontaneously on a case-by-case basis prior to resorting to formal MLA requests. Informal assistance, inter alia, can lead to a more rapid identification of criminals and assets, confirm the assistance needed, and provide the proper foundation for an MLA request.

3. Types of inquiries and information exchange via GlobE Threema for the purpose of anti-corruption law enforcement cooperation, based on the provisions of Articles 48 and 56 of UNCAC and subject to domestic laws and internal procedures, may include, inter alia:
   a. Identification of relevant bi- and multilateral instruments or relevant domestic legislation prior to initiating MLA requests.
   b. Consultation on evidentiary requirements to ensure admissibility in the requesting State and the feasibility to legally follow such procedures in the requested State prior to initiating MLA requests.
   c. Consultation on the grounds for possible refusal of MLA requests as stated in relevant treaties or domestic legislation.
   d. Establishing common interest to conduct parallel and/or joint investigations.
   e. Identifying, tracing and locating persons suspected of committing or involving in corruption offenses.
f. Movement of proceeds of corruption or property derived from the commission of corruption offences.

g. Movement of property, equipment or other instrumentalities used or intended for use in the commission of corruption offences.

h. Exchange of information related to specific means and methods used to commit corruption offences, including the use of false identities, forged, altered or false documents and other means of concealing activities.

i. Administrative and other measures taken as appropriate for the purpose of early identification of corruption offences.

j. Exchange, without prejudice to the State or member authority’s own investigations, prosecutions or judicial proceedings, of information on proceeds of corruption offences without prior request, when the member authority considers that the disclosure of such information might assist the receiving counterpart in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to initiating an MLA request.