

FOLLOW-UP MECHANISM FOR THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
Thirty-Fourth Meeting of the Committee of Experts
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**QUESTIONNAIRE
REGARDING FOLLOW-UP OF THE IMPLEMENTATION OF THE
RECOMMENDATIONS FORMULATED AND THE PROVISIONS REVIEWED IN THE
THIRD ROUND, AND ON THE CONVENTION PROVISIONS SELECTED FOR THE
SIXTH ROUND**

INTRODUCTION

The Report of Buenos Aires¹ and the Rules of Procedure and Other Provisions² of the Committee of Experts on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption (hereinafter, as applicable, *Report of Buenos Aires, Rules, Committee, Mechanism, and Convention*) provide that the Committee shall adopt a questionnaire on the selected provisions to be reviewed in each round.

In the framework of its Thirty-Third Meeting, held on September 9 to 12, 2019, the Committee chose, as a topic for review during the Sixth Round that relating to Article XVI of the Convention, which refers to “Bank Secrecy.” In addition, with regard to the follow-up of recommendations, at that same meeting the Committee took the same view as that expressed at the Fourth Meeting of the Conference of the MESICIC States Parties and agreed that, in the Sixth Round, the Committee would follow-up of the recommendations formulated in the Third Round, including the consideration of new and relevant information or developments that would allow the Committee to determine the continued validity of the recommendations and measures suggested in the reports from the Third Round and, with regard to those deemed still valid, to assess whether the State has given them satisfactory consideration or whether additional attention is required or, when applicable, to restate or reformulate them.

In addition, the Committee will review new developments in the States with respect to the Convention provisions selected for the Third Round, taking into account such aspects as the legal framework, technological developments, and results, and making the relevant observations and recommendations in connection therewith.

Furthermore, Article 29 of the Rules provides that each State Party shall submit information on the implementation of the recommendations in the standard format that the Committee shall provide as an annex to the Questionnaire. Article 29 also establishes that, “with respect to the implementation of recommendations, the State Party shall refer to any difficulties that may have arisen in the process,” and that, “should it deem it to be appropriate, the State Party may also identify the domestic agencies

1. The Report of Buenos Aires (document AG/RES. 1784 (XXXI-O/01)) is available at: www.oas.org/juridico/english/doc_buenos_aires_en.pdf

2. The Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC (document SG/MESICIC/doc.9/04 rev. 5, is available at: www.oas.org/juridico/english/mesicic_rules.pdf

that have participated in implementing the recommendations, as well as identify specific technical assistance or other needs connected with the implementation of the recommendations.”

In light of the above, this document contains the questions that comprise the questionnaire adopted by the Committee.

The responses given to the questionnaire shall be reviewed in accordance with the methodology adopted by the Committee.

Pursuant to Article 21 of the Rules, the State Party is to forward its responses to the Questionnaire through its Permanent Mission to the OAS, in electronic format, together with all the supporting documents, within the time period set by the Committee.

To this effect, the OAS General Secretariat’s e-mail, to which the response to the questionnaire should be sent and to which inquiries may be addressed in order to clarify any doubts that arise, is the following: LegalCooperation@oas.org

SECTION I³

FOLLOW-UP ON THE IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE THIRD ROUND AND NEW DEVELOPMENTS IN RELATION TO THE CONVENTION PROVISION SELECTED FOR REVIEW IN THE THIRD ROUND

In accordance with the terms of Article 29 of the *Rules of Procedure*, and bearing in mind the agreement reached by the Committee at its Thirty-Third Meeting, in which in relation to the follow-up of recommendations, it endorsed the criteria expressed at the Fourth Meeting of the Conference of MESICIC States Parties, as well as with the terms of the Methodology for the Sixth Round, the form contained in Annex I of this questionnaire is adopted as the standard form the countries to report on:

- a) Progress, information, and new developments in relation to the implementation of the recommendations formulated to them and the measures suggested to them by the Committee for implementation in the reports from the Third Round; and
- b) New developments in relation to the Convention provisions selected for the Third Round, in such areas as legal frameworks, technological developments, and results.

Based on the above-referenced standard form, the Technical Secretariat will send each country an individualized form which clearly identifies the recommendations and measures referred to in paragraph (a) of this section of the questionnaire and will ask about new developments in connection with the Convention provisions selected for the Third Round, at least three months prior to the date on which they are to return their responses to the questionnaire in accordance with the provisions of Section V of the Methodology adopted by the Committee for the Sixth Round.

3. Section I of this questionnaire, which deals with follow-up of the recommendations formulated in the Third Round, does not apply to those countries that had not joined the MESICIC when that round took place, or were not reviewed in it; however, under the terms of Article 28 of the *Rules of Procedure*, those countries must answer the questions set out in Section I of the questionnaire adopted by the Committee for that round. The Third Round Questionnaire is available at http://www.oas.org/en/sla/dlc/mesicic/docs/mesicic_quest_IIIround.pdf and the Technical Secretariat will complete it with questions on the topics addressed in Section XII of the Methodology for the Sixth Round and send it to those countries at least three months in advance of the date on which they are to return their responses to the questionnaire in accordance with the schedule adopted for the Sixth Round.

SECTION II

QUESTIONS ON IMPLEMENTATION OF THE CONVENTION PROVISION SELECTED FOR REVIEW IN THE SIXTH ROUND

BANK SECRECY (ARTICLE XVI OF THE CONVENTION)

“1. The Requested State shall not invoke bank secrecy as a basis for refusal to provide the assistance sought by the Requesting State. The Requested State shall apply this article in accordance with its domestic law, its procedural provisions, or bilateral or multilateral agreements with the Requesting State.

2. The Requesting State shall be obligated not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized by the Requested State.”

Regarding implementation in your country of the foregoing Convention provision, kindly respond to the following:

A) Briefly explain how bank secrecy is conceived in the legal framework of your country and identify the bank secrecy provisions and/or substantive and procedural measures envisaged in the domestic laws of your country related to bank secrecy, as well as the bilateral treaties with other States Parties to the Convention and multilateral treaties to which your country is party that have bank secrecy-related clauses, bearing in mind the purpose underlying Article XVI.1 of the *Convention*. Attach an electronic copy of those provisions, measures, and/or agreements, or else provide links to the websites where they can be consulted.

B) Indicate whether your country has adopted measures to ensure that bank secrecy is not invoked to deny the assistance sought by other States Parties, pursuant to Article XVI.1 of the *Convention*. If it has, list those measures and attach an electronic copy thereof, or else provide links to the websites where they can be consulted.

C) State whether steps have been taken by your country to ensure that, when acting as a Requesting State, it abides by the obligation not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized by the Requested State, as envisaged in Article XVI.2 of the *Convention*. If they have, list those measures and attach an electronic copy thereof, or else provide links to the websites where they can be consulted.

D) Identify the bodies, authorities, or entities in your country that are competent to act both as a State Party requesting bank secrecy-related assistance and as a State Party from which such assistance has been requested, and comment briefly on how such assistance is processed in your country, whether there are deadlines for doing so; whether there are authorities in charge of taking care to ensure compliance with the rules in force; and whether punishments are envisaged for noncompliance.

E) Briefly summarize any results achieved in your country from implementation of Article XVI of the *Convention*, and provide any pertinent information available in your country, referring to the past five years, if possible. This could include illustrative examples of implementation of this Article. It could also include if relevant, such data as:

i. The number of requests for assistance received from other States Parties that implicated information protected by bank secrecy for the purposes of Article XVI of the *Convention*, and if available, number of requests denied solely because of bank secrecy laws.

ii. The number of requests made to other States Parties that implicated information protected by bank secrecy for the purposes of Article XVI of the *Convention*, and if available, number of requests denied solely because of bank secrecy laws.

iii. The number of sanctions imposed on financial institutions for noncompliance with the rules governing the processing of assistance relating to bank secrecy for the purposes of Article XVI of the *Convention*.

F) Briefly describe any difficulties and/or weaknesses encountered with implementation of the provision of the Convention reviewed and, where applicable, identify any specific technical cooperation needs.

SECTION III

BEST PRACTICES

OPTIONAL: Report on a maximum of four best practices related to the Convention provisions selected for the Third and Sixth Rounds that your country would like to share with the other MESICIC member countries, using the standard form attached to this questionnaire for that purpose (Annex II).

SECTION IV

INFORMATION ON THE OFFICIAL RESPONSIBLE FOR COMPLETION OF THIS QUESTIONNAIRE

Please provide the following information:

(a) State Party: _____

(b) The official to be consulted regarding the responses to the questionnaire is:

Mr/ Ms: _____

Title/position: _____

Agency/office: _____

Address: _____

E-mail address: _____

Telephone number: _____

Fax number: _____

ANNEX I

STANDARD FORMAT FOR REPORTING INFORMATION ON THE IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE THIRD ROUND AND NEW

**DEVELOPMENTS IN RELATION TO THE CONVENTION PROVISIONS SELECTED
FOR REVIEW IN THAT ROUND**

**I. FOLLOW-UP ON THE IMPLEMENTATION OF THE
RECOMMENDATIONS FORMULATED IN THE THIRD ROUND**

Following the same structure as the country reports of the Third Round,⁴ the Secretariat shall transcribe each of the recommendations formulated for the country in question during the round. Then, it will ask the country to provide information in connection with the corresponding recommendation and with the corresponding measures suggested by the Committee for implementation, and, if any, with the alternative measures adopted by the country to that end, as follows:

I. RECOMMENDATION: *(the Secretariat transcribes the text of the corresponding recommendation)*

Measure: *(the Secretariat transcribes the text of the corresponding measure suggested by the Committee)*

Then it will ask the country in question to provide the following information:

A) Please briefly describe the specific actions⁵ that have been carried out to implement the above recommendation and the above measure suggested by the Committee, or the alternative measure(s) adopted by the country to that end. If deemed appropriate, please indicate the web page on which more detailed information on those actions can be obtained, clearly indicating the information of the web site in question: _____

B) Indicate the new information and developments⁶ related to the subject matter of the above recommendation and the above measure suggested by the Committee, briefly describing the new provisions and/or measures adopted in connection with the subject,⁷ or the provisions and/or measures unknown to or not taken into consideration by the Committee when that recommendation and measure were formulated,⁸ indicating whether they are deemed to have an impact on the validity of that recommendation and measure or whether they could lead to its restatement or reformulation: _____

4. Following on from this standard format, the structure applicable to the topics considered in the Third Round is described.

5. If these actions involve the adoption of provisions and/or measures, please provide copies of them or indicate the electronic link where they may be accessed.

6. In accordance with the provisions of Section V of the Methodology for the Sixth Round, information and new developments are understood as meaning new provisions and/or measures adopted in connection with the matters addressed in the recommendations and measures suggested by the Committee, or provisions and/or measures unknown to or not taken into account by the Committee in formulating those recommendations and measures, that have an impact on their currency or that could require their restatement or reformulation.

7. Please provide copies of them or indicate the electronic link through which they may be accessed.

8. Please provide copies of them or indicate the electronic link through which they may be accessed.

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- C) Please briefly indicate the possible difficulties encountered in the implementation of the foregoing recommendation and the foregoing measure suggested by the Committee. If deemed appropriate, please indicate the web page on which more detailed information on them can be obtained, clearly indicating the information of the web site in question: _____
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- D) If deemed appropriate, please indicate which internal agencies have participated in the implementation of the foregoing recommendation and the foregoing measure suggested by the Committee, and identify specific technical cooperation needs related to its implementation. In addition, if deemed relevant, please also indicate the web page dealing in greater detail with these issues, clearly indicating the information of the web site in question: _____
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NOTE: *The questions identified as A), B), C), and D) will be repeated in connection with each of the remaining recommendations and measures suggested by the Committee.*

II. NEW DEVELOPMENTS IN RELATION TO THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE THIRD ROUND

Following the thematic structure of the country reports of the Third Round,⁹ the country under review will be requested to provide information on new developments in such areas as legal frameworks, technological developments, and results, in relation to the Convention provisions that were selected for review in the Third Round.

STRUCTURE OF COUNTRY REPORTS IN THE THIRD ROUND

1. DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)
2. PREVENTION OF BRIBERY OF DOMESTIC AND FOREIGN GOVERNMENT OFFICIALS (Article III(10) OF THE CONVENTION)
3. TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION)
4. ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)
5. NOTIFICATION OF CRIMINALIZATION OF TRANSNATIONAL BRIBERY AND ILLICIT ENRICHMENT (ARTICLE X OF THE CONVENTION)

9. Following on from this standard format, the structure applicable to the topics considered in the Third Round is described.

6. EXTRADITION (ARTICLE XIII OF THE CONVENTION)

ANNEX II

STANDARD FORMAT FOR PRESENTATION OF INFORMATION ON BEST PRACTICES

1. Institution: The name of the institution that is implementing the best practice: _____

2. Title: The name of the best practice or the topic it covers:

3. Description of the best practice: Include a brief description and summary of the best practice, as well as the reason why it should be considered a best practice:

4. Reasons/Importance: Reasons for pursuing best practice should be given. A description should be made of the situation in place before the adoption of the best practice and identification of the problem or problems it is to address:

5. Approach: What was the proposed design and methodology for applying the best practice? What was considered in its design and methodology? Were other countries' experience taken into account?

6. Implementation: How is the best practice being implemented? _____

7. Challenges: What are the challenges in implementing the best practice? _____

8. Outcome: What is the end result or expected end result of implementing the best practice? Have benefits and/or success stories been identified? Have they addressed the problems originally identified as necessitating a best practice to be implemented? _____

9. Follow-up: Who or what groups will monitor the practice's implementation? How will its implementation be monitored? Will there be a Follow-up Report? _____

10. Lessons: What are some of the lessons learned in implementing the Best Practice?

11. Documentation: Where can further information be found regarding the best practice (e.g., Internet links)? _____

12. Contact: Who can be contacted for further information? _____
