

**Informal Meeting on Diversion Information Exchange
Report of second meeting of 05 February 2020**

Annex: Revised Draft Elements for Terms of Reference (ToR) / Draft Cost Estimates

INTRODUCTION

1. On 05 February 2020, the co-chairs of the Working Group on Transparency and Reporting (WGTR) held the second informal meeting for States Parties and signatory States on diversion information exchange. The meeting is part of the three-tier approach to sharing information on diversion, that was developed by the WGTR and adopted at CSP4. It followed the first informal meeting that was held on 28 August 2019 during CSP5 in order to lay the groundwork for further meetings, and that led to the following recommendations:

- a. *Organize a second Informal Meeting on Diversion Information Exchange;*
- b. *Confirm the Meeting as a meeting between States Parties and signatory States only;*
- c. *Make the Meeting a standing meeting, with a dedicated Chair;*
- d. *Consider formalising the Meeting;*
- e. *Continue work on Terms of Reference for the Meeting;*
- f. *Include in the ToR a non-exhaustive list of types of information that States should share within the Meeting; and discuss with the Secretariat the feasibility of using of the information exchange platform in the restricted area of the ATT website for secure sharing of diversion-related data.*

2. In line with these recommendations and the CSP5 recognition of the first informal meeting as a solid basis for further exchanges, for the second informal meeting, the WGTR co-chairs distributed a draft annotated agenda and Draft Elements for Terms of Reference (ToR). These ToR elaborated on the “Elements that could form the basis for a memorandum on the informal meeting” that were distributed ahead of the 28 August 2019 kick-off meeting, taking into account the comments and the recommendations in the report of that meeting.

3. The main aim of the second informal meeting was to work towards a decision on the future status of what the WGTR co-chairs now have given the name “Diversion Information Exchange Forum”, in order to differentiate between the body as such and its gatherings. Simultaneously, and linked to the possible formalisation of the meeting, the co-chairs aim to work towards an agreement on ToR for that Forum.

4. In their endeavour, the co-chairs are supported by the President of the CSP6, Ambassador Carlos Foradori, who opened the second informal meeting and indicated that in line with the focus of his presidency on transparency and diversion information exchange, the establishment of this forum would be an important deliverable for the CSP6.

5. In the report below, the co-chairs highlight the concrete outcomes of the meeting and the work that the co-chairs and the ATT Secretariat will undertake in the intersessional period leading up to CSP6. For the sake of clarity, the co-chairs further included a detailed overview of the discussions per agenda item.

6. In light of the cancellation of the 15 April informal meeting due to COVID-19, some outcomes have naturally been adapted. In line with the decision to consult with ATT stakeholders remotely on the documents to be submitted to CSP6, the discussion on the future status of the Forum and its ToR will continue via e-mail and the information exchange platform in the restricted area of the ATT website, on which the WGTR co-chairs will post “announcements” for that purpose. States Parties and signatory States are therefore invited to use these channels to submit their comments on the revised ToR and on the cost estimate and impact assessment mentioned below, no later than 21 May 2020. Subsequently, informal face-to-face consultations may be held in July or August, or during CSP6, pending developments regarding COVID-19 and/or progress made during remote consultations.

CONCRETE OUTCOMES OF THE 05 FEBRUARY 2020 MEETING

7. The ATT Secretariat will prepare a cost estimate for the formalisation of the Forum and will reflect on the impact on its functioning, based on one to three meetings of the Forum per year. The Secretariat will thereby also consider options to integrate the meeting within the timeframe that is currently allocated for ATT meetings.

8. The co-chairs will prepare revised Draft Elements for ToR. These will be circulated together with this report and the cost estimate and impact assessment mentioned above.

9. The co-chairs invite States Parties and signatory States to submit their comments on these documents via e-mail or the information exchange platform, no later than 21 May 2020. Subsequently, informal face-to-face consultations may be held in July or August, or during CSP6, pending developments regarding COVID-19 and/or progress made during remote consultations.

The co-chairs will further discuss the issue of “*use of the information exchange platform for secure sharing of diversion-related data*” with the ATT Secretariat and they will address this issue in their final report on the outcome of discussions on the Diversion Information Exchange Forum.

AGENDA ITEM 1: FUTURE STATUS OF THE “DIVERSION INFORMATION EXCHANGE FORUM”

10. Under this agenda item, following the co-chairs’ presentation, a number of States Parties intervened with general comments. The initiative was broadly supported. Some participants raised a few issues that need to be dealt with.

11. One State Party acknowledged that formalisation of the forum would be required for it to be effective and to tackle the language issue, but pointed to the budget implications and indicated that it would not be desirable to commit extra funds.

12. In the same regard one other State Party indicated that the impact on the ATT Secretariat should be taken into account.

13. Following these comments, the co-chairs announced that they would request the ATT Secretariat to prepare a cost estimate for the formalisation of the forum and to reflect on the impact on its functioning, based on one to three meetings of the Forum per year. The co-chairs will thereby also ask the Secretariat to consider options to integrate the forum within the timeframe that is currently allocated for ATT meetings. Concerning the impact on the Secretariat’s functioning, the co-chairs already indicated to the proposed involvement, as included in the Draft Elements for ToR, is rather minimal and fully in line with the role of the Secretariat as described in article 18 of the Treaty.

AGENDA ITEM 2: TERMS OF REFERENCE: FORMAL ASPECTS

14. Under this agenda item, a number of States Parties intervened with specific comments on several rules in the Draft Elements for ToR.

15. One State Party suggested in regard to rule 4 that the Forum could be chaired by the facilitator of the sub-working group on Article 11. The co-chairs welcomed this suggestion and indicated that they would reflect this suggestion in the revised draft ToR.

16. A number of States Parties indicated that the ToR should not include any level of obligation that goes beyond the treaty text and referred to the use of “should” in rules 4, 8, 9, 18, 19, 20, 23 and 24. In the same respect, one State Party stressed that the voluntary nature of participation and information sharing should be very clear. The co-chairs acknowledged the voluntary nature of the Forum and indicated that where rules invoke treaty provisions and do not reflect the language of those provisions, they will amend the text accordingly, in particular by replacing “should” with “are encouraged to”.

17. One State Party indicated that rule 7 on representation should not impose a disproportional administrative burden. The co-chairs responded that they would discuss appropriate language with the ATT Secretariat.

18. A number of States Parties emphasized the importance of allowing the involvement of non-State experts into Forum meetings and indicated that the scope of the relevant rule 8 needs clarification. The co-chairs will look at simplifying the language.

19. A number of States Parties addressed rule 12 on presentations involving or affecting other States Parties and signatory States. Some States Parties asked whether this rule should also apply to States that are outside the ATT framework. The co-chairs strongly argued against this. They explained that these ToR govern the discussions and the relations between those States that participate in Forum discussions (or are eligible to do so). They do not govern relations with other States, nor should they. As to other States, it should only be up to the presenting State Party or signatory State itself to decide whether it finds it necessary or desirable to notify or discuss its presentation with the State(s) in question. The only intention of the rule is to make sure that (potential) participants in a specific Forum meeting are aware that they will be mentioned in a presentation during that meeting, so that if they would wish to do so, they could co-present the case with the presenting State, or prepare a right to reply. That is also why the rule only talks about notifying and not requesting consent (unless there is a legal requirement to do so); participants should not be able to apply censorship to other participants' presentations. In that regard also the purpose of the Forum should be very clear. That is so to prevent and address concrete cases of diversion by exchanging information; it is not a naming and shaming exercise. The co-chairs also referred to the Wassenaar Arrangement, where such information exchange is common practice.

20. A number of States Parties commented on the issue of confidentiality, suggesting that rules 15 and 16 might need to be fortified and that, in the light of rule 13, the security of the information exchange platform needs to be considered. The co-chairs will look into this, together with the ATT Secretariat.

21. **Taking into account all comments, the co-chairs will prepare revised Draft Elements for ToR for further discussion during the intersessional period.**

AGENDA ITEM 3: TERMS OF REFERENCE: LIST OF TYPES OF INFORMATION THAT STATES COULD / SHOULD SHARE

22. This agenda item concerns rules 18, 19 and 20 in the Draft Elements for ToR. Due to time constraints, this agenda item could not be addressed during the 05 February meeting. States Parties and signatory States are invited to submit their comments on these rules via e-mail or the information exchange platform, no later than 21 May 2020.

23.

AGENDA ITEM 4: USE OF THE INFORMATION EXCHANGE PLATFORM FOR SECURE SHARING OF DIVERSION-RELATED DATA

24. Due to time constraints, this agenda item could not be addressed during the 05 February meeting. **The co-chairs will further discuss this issue with the ATT Secretariat, and they will address this issue in their final report on the outcome of discussions on the Diversion Information Exchange Forum.**
