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**SECRETARIAT OF THE FRAMEWORK CONVENTION FOR THE
PROTECTION OF NATIONAL MINORITIES**

**COMPILATION OF OPINIONS OF THE ADVISORY COMMITTEE
RELATING TO ARTICLE 7 OF THE FRAMEWORK CONVENTION**

FIRST CYCLE

“Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.”

Note: this document was produced as a working document only and does not contain footnotes. For publication purposes, please refer to the original opinions.

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1. ALBANIA

The Advisory Committee welcomes the fact that a new law (Law No 8580 dated 17 February 2000) on Political Parties has recently come into force, abrogating Law No 7502 (dated 25 July 1991), which restricted national minorities from establishing their own political parties (see also under Article 15 below).

2. ARMENIA

Based on the information currently at its disposal, the Advisory Committee considers that implementation of this article does not give rise to any specific observations.

3. AUSTRIA

Based on the information currently at its disposal, the Advisory Committee considers that implementation of this article does not give rise to any specific observations.

4. AZERBAIJAN

The Advisory Committee notes that Azerbaijani legislation largely guarantees persons belonging to national minorities the rights contained in Article 7 of the Framework Convention. However, there are general problems in Azerbaijan with respect to the implementation of these rights and these problems also affect negatively persons belonging to national minorities.

As regards freedom of expression, the Advisory Committee notes that, whereas state censorship has been abolished, there are disconcerting reports indicating that media reporting critical of the authorities has relatively frequently led to defamation or libel suits brought by officials. Such tendencies also affect persons belonging to national minorities. The Advisory Committee considers that the Government should step up its efforts to ensure that the legal provisions concerning defamation and libel or other methods are not employed by the authorities at the local, regional or central level to place excessive limits on the exercise of freedom of expression.

The Advisory Committee regrets that, despite some improvements, there remain shortcomings in the process of registration of non-governmental organisations in Azerbaijan. The process is widely considered to be overly complicated, slow and lacking in transparency. The Advisory Committee has received information, including from representatives of the Kryz minority, that these problems have caused registration difficulties also for organisations dealing with the protection of national minorities. The Advisory Committee therefore welcomes the fact that the Parliament of Azerbaijan is currently considering a draft law on state registration of legal entities. The Advisory Committee is of the opinion that increased priority should be given to this draft legislation, and that it should result in a registration process that is speedy, accessible and without undue obstacles to the organisations seeking registration. At the same time, the authorities should ensure that the pending registration requests submitted under the present regulations are processed without delay and in full compliance with the principles contained in Article 7 of the Framework Convention.

The Advisory Committee understands that freedom of peaceful assembly is guaranteed in the legislation of Azerbaijan, but it has also received reports that the authorities in some regions have approached the implementation of this right reservedly when it has concerned discussions on, and distribution of, texts containing standards on the protection of national minorities, such as the Framework Convention. While these may be isolated incidents, the Advisory Committee believes that the authorities, including at the local and regional level, should be provided with information and training to ensure that such incidents do not occur in the future. In this connection, the Advisory Committee recalls that although the rights contained in Article 7 may be subject to certain limitations pursuing a specific public interest, such limitations must not be disproportionate nor invoked to suppress legitimate activities promoting the rights of persons belonging to national minorities (see also related comments under Articles 21 and 22 below).

In respect of Article 7

The Advisory Committee *finds* that there are disconcerting reports indicating that media reporting critical of the authorities has relatively frequently led to defamation or libel suits brought by officials and that such tendencies also affect persons belonging to national minorities. It *considers* that the Government should step up its efforts to ensure that the legal provisions concerning defamation and libel or other methods are not employed by the authorities to place excessive limits on the exercise of freedom of expression.

The Advisory Committee *finds* that there remain shortcomings in the process of registration of non-governmental organisations in Azerbaijan, which have caused registration difficulties also for organisations dealing with the protection of national minorities. It *considers* that a draft law on state registration of legal entities should be given increased priority with a view to ensuring a registration process that is speedy, accessible and without undue obstacles.

The Advisory Committee *finds* that the authorities in some regions have reportedly approached the implementation of freedom of peaceful assembly reservedly when it has concerned discussions on, and distribution of, texts containing standards on the protection of national minorities. It *considers* that the authorities should be provided with information and training to ensure that such incidents do not occur in the future.

5. BOSNIA AND HERZEGOVINA

According to Article 10 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities, individuals may freely display insignia and symbols of a national minority to which they belong provided they also display the official insignia and symbols of Bosnia and Herzegovina, as well as those of Entities, Cantons and municipalities.

The wording of this provision is problematic in that it prescribes the systematic additional use of State symbols, without distinguishing between the private and the public spheres. The Advisory Committee therefore encourages the authorities to consider amending this provision with a view to restricting the compulsory use of State symbols to the public sphere only. Should limitation be introduced in the private sphere as well, they should be admissible only where there is a necessity to protect a legitimate public interest.

6. BULGARIA

The Advisory Committee notes that the Bulgarian Constitution secures the rights of freedom of peaceful assembly (Article 43.1) and citizens' freedom of association (Article 44.1). However, according to Article 11.4 of the Bulgarian Constitution, "there shall be no political parties on ethnic, racial, or religious lines, nor parties which seek the violent usurpation of state power". The Advisory Committee finds that the first part of the aforementioned provision is problematic *vis-à-vis* the Framework Convention, in that, failing more flexible legislation for its interpretation, it is liable to cause unwarranted limitations of the right to freedom of association as enshrined in Article 7 of the Framework Convention. The Advisory Committee notes that the relevant provisions (Articles 3.3, 5 and 8.2) of the Law on Political Parties (Law No. 29/1990 (amended)) do not afford the flexibility referred to above.

The Advisory Committee notes with interest the judicial decisions in which freedom of association is analysed by the Bulgarian courts with reference to Article 11.4 of the Constitution. It notes in this connection that the State Report makes reference, under Article 7 of the Framework Convention, to Constitutional Court decision No. 4 of 21 April 1992 in case 1/91. In the decision, the Court rejected the application to declare unconstitutional the Movement for Rights and Freedoms (MDL), notwithstanding that the majority of that movement at that time was Turkish. The Advisory Committee notes that decisions likewise concerning Article 11.4 of the Constitution have been adopted since the Framework Convention was ratified. The State Report quotes decision No. 1 of 29 February 2000, where the Constitutional Court declared unconstitutional the political party "OMO Ilinden-Pirin", whose activities were found to be of a separatist character constituting a threat to national security.

In its decision, the Court interpreted Article 11.4 of the Constitution to mean that "a party can be alleged to be founded on ethnic grounds when its constitution does not allow persons belonging to other ethnic groups to become its members". In this respect, the Advisory Committee notes that the wording of Article 11.4 of the Constitution may be open to interpretations that could limit the possibility for persons belonging to minorities to pursue their legitimate interests also through political parties. The Advisory Committee finds that the legal uncertainty in this matter remains, and that consequently Bulgaria does not have sufficient legal guarantees for the effective implementation of Article 7 of the Framework Convention. This situation would also potentially impair genuine participation by the persons concerned in public affairs (see observations relating to Article 15 below). The Advisory Committee is concerned by this situation and considers that the authorities should carefully ascertain the impact of this provision in order to make sure that it does not interfere with the application of the principles established by Article 7 of the Framework Convention, and make amendments if necessary.

Regarding the right to peaceful assembly, there are reports drawing attention to cases of obstruction by the authorities, particularly by the police forces, of certain demonstrations organised by persons belonging to minorities, for instance in January 2002 at Plovdiv or Rousse, during actions of protest by Roma. Though lately there have only been isolated cases, the Advisory Committee encourages the authorities to take all necessary steps to ensure that the rights of persons belonging to minorities as regards enjoyment of freedom of peaceful assembly as well as freedom of association are properly observed and that any limitations which may be placed on these rights comply with the relevant international norms.

In respect of Article 7

The Advisory Committee *finds* that Bulgaria's provisions in Article 11 paragraph 4 of the Constitution concerning political parties on ethnic, racial, or religious lines and pertinent legislative provisions raise problematic issues in the light of the Framework Convention. The Advisory Committee *considers* that the authorities should re-examine the provisions in question in order to remedy the lack of legal certainty in these matters, and should secure adequate guarantees for the practical application of Article 7 of the Framework Convention.

7. CROATIA

The Advisory Committee is aware that Croatia is in the process of extending the normative guarantees relevant for the implementation of Article 7 of the Framework Convention. It attaches particular importance to the drafting of a law on association in a manner that fully secures the right of persons belonging to national minorities to establish and operate associations.

8. CYPRUS

On the basis of the information currently at its disposal, the Advisory Committee considers that the implementation of this article does not give rise to any specific observations.

9. CZECH REPUBLIC

Based on the information currently at its disposal, the Advisory Committee considers that implementation of this article does not give rise to any specific observations.

10. DENMARK

The Advisory Committee considers that the implementation of this article, leaving aside the issue of the personal scope identified above, does not give rise to any other observations.

11. ESTONIA

The Advisory Committee considers that, although the rights contained in Article 7 are in most circumstances fully guaranteed in Estonia, the legislation pertaining to the use of the state language, including with respect to signs of private actors, could allow interpretations that would be problematic from the point of view of freedom of expression, which protects not only content but also the means of transmission or reception of information. These issues are examined in more detail below, in particular under Articles 10 and 11.

12. FINLAND

On the basis of the information currently at its disposal, the Advisory Committee considers that the implementation of this article does not give rise to any specific observations.

13. GEORGIA

Exercise of the right to freedom of association and freedom of expression

The Advisory Committee notes that Article 6 of Georgia's law on political associations, adopted on 31 October 1997, explicitly prohibits the setting up of political parties on a regional or territorial basis. The Advisory Committee observes that this provision has already been invoked as a ground for refusing to register a political association representing the interests of the Armenian minority (Virkh). It may therefore be interpreted as restricting the scope for persons belonging to national minorities to set up political parties representing their legitimate interests. Yet such parties could make it possible for the concerns and interests of persons belonging to national minorities, particularly in the regions where they live in substantial numbers, to be better represented and possibly better taken into account, in elected bodies at local and central level. While it fully understands that this law was adopted in the context of a fear of separatism, following the conflicts with Abkhazia and Ossetia in the 1990s, the Advisory Committee considers that such a provision is likely to have a negative impact on the effective participation of persons belonging to national minorities in public affairs (also see the comments on Article 15.) Therefore, it calls on the authorities to take all the necessary measures to eliminate any unjustified limitations to the creation of political parties representing the legitimate interests of national minorities. They should, in particular, avoid any restrictive interpretation of the law on political associations.

Although the situation has improved over recent years, the Advisory Committee is particularly concerned at the reports of serious problems in the exercise of the right to freedom of expression and opinion by members of non-governmental organisations, human rights defenders and independent journalists. Non-governmental sources also refer to attempts by persons in high places in governmental structures or by political representatives to influence the editorial policy and programmes of the media.

The Advisory Committee notes with concern information about persons belonging to national minorities who have been subjected to pressure, and even harassment, by representatives of State bodies when their viewpoints differed from those of the authorities. The Advisory Committee finds this situation particularly serious and in no circumstances compatible with the rights protected by Article 7 of the Framework Convention. It urges the authorities to take all necessary steps to ensure that these rights are fully respected and to prevent, investigate and punish any unjustified violation or limitation of these rights of persons belonging to national minorities.

Persons belonging to the Armenian minority, in particular, drew the attention of the Advisory Committee and other international bodies to the situation of activists defending the rights of Armenians who had been arrested and imprisoned on extremely serious charges, which they regarded as ill-founded. The Advisory Committee is of the opinion that, irrespective of the nature of the accusations and the grounds brought against these persons, the authorities should ensure that the rights of defendants and/or detained persons are fully respected. In general, the Advisory Committee wishes to point out that advocating minority rights, as protected by the Framework Convention, must in no circumstances lead to measures of sanctioning of those involved.

Concerning Article 7

The Advisory Committee *finds* that one of the provisions of the Georgian Law on Political Associations can be interpreted in a way that is likely to prevent the formation by persons belonging to national minorities of political parties representing their interests. It *considers* that the authorities should take resolute measures to remove any unjustified limitations to the creation of political parties representing the legitimate interests of national minorities.

The Advisory Committee *finds* that persons belonging to national minorities have been faced with serious problems in exercising the right to freedom of expression and opinion, and *considers* that the authorities should take all requisite measures to prevent, investigate and punish any unjustified violation or limitation of these rights committed against persons belonging to national minorities.

14. GERMANY

Based on the information currently at its disposal, the Advisory Committee considers that implementation of this article does not give rise to any specific observations.

15. HUNGARY

On the basis of the information currently at its disposal, the Advisory Committee considers that implementation of these articles does not give rise to any specific observations.

16. IRELAND

Based on the information currently at its disposal, the Advisory Committee considers that implementation of this article does not give rise to any specific observations.

17. ITALY

Based on the information currently at its disposal, the Advisory Committee considers that the implementation of this article does not give rise to any specific observations.

18. KOSOVO¹

Article 7

The Advisory Committee welcomes the fact that the Constitutional Framework provides general guarantees as regards the rights contained in Article 7 of the Framework Convention. At the same

¹ All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

time, there is a need to reform legislation in this sphere bearing in mind that certain applicable laws, including the law on public assembly that dates back to 1981, contain outdated notions and do not fully reflect the applicable human rights standards mentioned in the Constitutional Framework.

A key element in the legislative reform process is the Law on Freedom of Association, which was adopted by the Assembly of Kosovo in February 2005 and which is currently being reviewed by the SRSG. Bearing in mind that the law will be of great importance also for persons belonging to minority communities, the Advisory Committee urges the authorities to ensure that no undue obstacles are introduced in the registration process and that the grounds for denying registration of non-governmental organisations are not construed too widely. Furthermore, the Advisory Committee stresses that freedom of association should not be perceived as a right applicable only in relation to the registered associations.

Representatives of minority communities have not reported to the Advisory Committee significant formal difficulties in exercising their freedom of association or assembly. The Advisory Committee welcomes the fact that there are a large number of non-governmental organisations registered and active in Kosovo. Even though according to the currently applicable regulations, UNMIK may reject the application of an association if its statute is deemed to violate “any UNMIK regulation”, no registration has, according to the UNMIK Report, been rejected since 1999.

At the same time, the implementation of the rights under Article 7 is in practice deeply affected by the *de facto* limitations on the freedom of movement and by security problems. Continued problems affecting inter-ethnic relations and societal attitudes towards certain communities may have a freezing effect on the nature and visibility of the activities of some minority-based associations in certain areas as well as on the exercise of freedom of expression of persons belonging to minority communities (see also related comments under Article 9).

19. LATVIA

Based on the information currently at its disposal, the Advisory Committee considers that implementation of this article does not give rise to any specific observations

20. LIECHTENSTEIN

Based on the information currently at its disposal, the Advisory Committee considers that implementation of these articles does not give rise to any specific observations.

21. LITHUANIA

Based on the information currently at its disposal, the Advisory Committee considers that implementation of this article does not give rise to any specific observation.

22. MALTA

Based on the information currently at its disposal, the Advisory Committee considers that implementation of these articles does not give rise to any specific observations.

23. MOLDOVA

The Advisory Committee notes that Article 5.3 of the Law on political parties and socio-political organisations (17 September 1991) subjects the registration of a political party, *inter alia*, to its having at least 5,000 members residing in at least half the districts in the country, with at least 150 members in each of those districts. The Advisory Committee is of the opinion that this provision is likely to limit the possibilities for persons belonging to national minorities who do not fulfil this condition to organise political parties. The Advisory Committee notes that, in practice, persons belonging to national minorities are present in the Moldovan Parliament, as certain political parties include them on their lists of candidates. Nevertheless, the Advisory Committee believes that this does not imply that these persons benefit from all opportunities to participate effectively in the political life of their country and in the decision-making process. The Advisory Committee considers that the Moldovan authorities need to examine this situation in consultation with those concerned (see also related comments under Article 15).

24. MONTENEGRO

Based on the information currently at its disposal, the Advisory Committee considers that implementation of this article does not give rise to any specific observation.

25. NETHERLANDS

Based on the information currently at its disposal, the Advisory Committee considers that implementation of this article does not give rise to any specific observation.

26. NORWAY

On the basis of the information currently at its disposal, the Advisory Committee considers that the implementation of this article does not give rise to any specific observations.

27. POLAND

In a recent case involving persons seeking registration of their association called the “Union of People of Silesian Nationality” (*Związek Ludności Narodowości Śląskiej*), the European Court of Human Rights found no violation of the freedom of association by the Polish authorities. The Advisory Committee points out, however, that the Court did not express a view on whether Silesians were a national minority and refers here to its foregoing comments (see related comments in paragraph 28 above).

28. PORTUGAL

Based on the information currently at its disposal, the Advisory Committee considers that

implementation of these articles does not give rise to any specific observations.

29. ROMANIA

On the basis of the information currently at its disposal, the Advisory Committee considers that the implementation of this article does not give rise to any specific observations.

30. RUSSIAN FEDERATION

The Advisory Committee notes that whereas the rights contained in Article 7 of the Framework Convention are largely guaranteed in the federal legislation including for persons belonging to national minorities, there are still shortcomings, including in the legislation of a number of subjects of the federation (see also comments pertaining to language legislation under Article 9). Therefore, the Advisory Committee considers it important that the federal authorities continue their efforts to ensure the conformity of the legislation of the subjects of the federation with federal norms in particular as far as human rights are concerned.

As concerns practice, the Advisory Committee understands that although the rights at issue are generally respected in the Russian Federation, there remain shortcomings in this respect and a number of alleged violations have been brought before domestic and international bodies. The Advisory Committee considers that attitudes of some authorities, in particular at the regional and local level, have caused certain obstacles for persons belonging to national minorities in the exercise of these rights. For example, the Advisory Committee has received reports suggesting that the process of registration of non-governmental organisations, including those of persons belonging to national minorities, has in some cases been overly cumbersome, to the extent that it has hampered the activities of some of the organisations.

The Advisory Committee notes that both the 1996 Law on National-Cultural Autonomy and the 1995 Law on Public Associations, following the entry into force of amendments to the latter adopted by the State Duma on 15 February 2002, are generally understood as excluding political activities from the scope of the autonomies and organisations established on the basis of these laws. Bearing in mind that activities aimed at the protection of minorities may also have a political dimension, the Advisory Committee underlines that the said exclusion should not be interpreted in a manner that hinders legitimate activities of cultural autonomies or public organisations of persons belonging to national minorities.

Bearing in mind the situation described in the foregoing paragraph, it is essential that persons belonging to national minorities have a possibility to pursue their legitimate interests also through political parties. The Advisory Committee therefore regrets the wording of Article 9, paragraph 3, of the 2001 Law on Political Parties, which prohibits the establishment of political parties established “on the grounds of professional, racial, national or religious belonging” and stipulates that this phrase covers the inclusion in a charter or programme of a political party the goal of protecting professional, racial, national or religious interests and also the reflection of these goals in the designation of a political party. The Advisory Committee considers that the potential scope of the said provision is so broad that it is open to interpretations that could limit legitimate activities aimed at the protection of national minorities by political parties. Furthermore, when coupled with the limits pertaining to public associations and cultural autonomies described in the preceding paragraph, the said provision could have a negative impact on freedom of association of persons

belonging to national minorities.

With reference to the two preceding paragraphs, the Advisory Committee considers that the authorities of the Russian Federation should review the legislative framework pertaining to organisations with a view to ensuring that those legitimate activities aimed at protecting national minorities that have a political dimension are also protected, both *de jure* and *de facto*, and that they can be pursued in accordance with Articles 7 and 15 of the Framework Convention (see also related comments under Article 15).

The Advisory Committee underlines that in Chechnya and in the areas directly affected by the conflict in Chechnya, a number of limitations of the rights in question have been reported and therefore the cessation of hostilities and consolidation of a well-functioning administration that fully respects human rights is essential also for the implementation of Article 7 of the Framework Convention.

In respect of Article 7

The Advisory Committee *finds* that there are still shortcomings, including in the legislation of a number of subjects of the federation, concerning the implementation of the rights contained in Article 7 of the Framework Convention and *considers* it important that the federal authorities continue their efforts to ensure the conformity of the legislation of the subjects of the federation with federal norms, in particular as far as human rights are concerned.

The Advisory Committee *finds* that the current federal legislation places limitations on the political activities of organisations of national minorities and prohibits the establishment of political parties established “on the grounds of professional, racial, national or religious belonging”. The Advisory Committee *finds* that these limitations could have a negative impact on freedom of association of persons belonging to national minorities and it *considers* that the authorities of the Russian Federation should review the legislative framework at issue with a view to ensuring that those legitimate activities aimed at protecting national minorities that have a political dimension are protected.

The Advisory Committee *finds* that in Chechnya and in the areas directly affected by the conflict in Chechnya, a number of limitations of the rights under Article 7 have been reported and *considers* that the cessation of hostilities and consolidation of a well-functioning administration that fully respects human rights is essential for the implementation of Article 7 of the Framework Convention.

31. SAN MARINO

Based on the information currently at its disposal, the Advisory Committee considers that implementation of these articles does not give rise to any specific observations.

32. SERBIA AND MONTENEGRO

The Advisory Committee considers that the provisions contained in the Union Charter of Human Rights and Minority Rights and Civil Freedoms provide a good basis for the implementation of the rights contained in Article 7. At the same time, the Advisory Committee recalls the importance of ensuring that any undue citizenship criteria or other restrictions are eliminated from the other

pertinent constitutional and other guarantees of the constituent states of the Union (see also related comments under Article 4 above).

In respect of Article 7

The Advisory Committee *considers* it important to ensure that any undue citizenship criteria or other restrictions are eliminated from the constitutional and other guarantees of the constituent states of the Union pertaining to the implementation of Article 7 of the Framework Convention.

33. SLOVAK REPUBLIC

Although the information that the Advisory Committee has at its disposal suggests that in the current practice the freedoms enumerated in Article 7 are generally guaranteed, the Advisory Committee considers that the related legislative safeguards could be strengthened. The Advisory Committee finds that the wording of certain legislative provisions could allow interpretation that would not be in conformity with freedom of expression. These questions are addressed in more detail below under Articles 9 and 10.

In respect of Article 7

The Committee of Ministers *concludes* that the State Language Law of 1995 contains a number of provisions which could give rise to interpretations threatening freedom of expression and assembly of persons belonging to national minorities, depending on the law's applicability to minority languages (see the recommendations below in the context of Article 9 and 10).

34. SLOVENIA

On the basis of the information currently at its disposal, the Advisory Committee considers that the implementation of this article does not give rise to any specific observations.

35. SPAIN

Based on the information currently at its disposal, the Advisory Committee considers that implementation of this article does not give rise to any specific observations.

36. SWEDEN

On the basis of the information currently at its disposal, the Advisory Committee considers that the implementation of this article does not give rise to any specific observations.

37. SWITZERLAND

Based on the information currently at its disposal, the Advisory Committee considers that

implementation of this article does not give rise to any specific observations.

38. "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"

Based on the information currently at its disposal, the Advisory Committee considers that implementation of this article does not give rise to any specific observations.

39. UKRAINE

The Advisory Committee recalls that Article 26 of the Constitution provides that foreigners and stateless persons who are in Ukraine on legal grounds enjoy the same rights and freedoms and also bear the same duties as citizens of Ukraine, with the exceptions established by the Constitution, laws or international treaties ratified by Ukraine. At the same time, a number of laws pertaining to the rights and freedoms guaranteed in Article 7 of the Framework Convention, including freedom of expression, regularly refer to "citizens" as the subjects of the rights and freedoms in question.

Bearing in mind that this may have an impact on the implementation of the principles of the Framework Convention with respect to persons belonging to national minorities, the Advisory Committee considers that the use of such a formulation should be curtailed through the on-going legislative work so as to ensure that there are no undue limitations on the scope of the rights and freedoms at issue.

In respect of Article 7

The Advisory Committee *finds* that a number of laws pertaining to the rights and freedoms guaranteed in Article 7 of the Framework Convention refer to "citizens" as the subjects of the rights and freedoms in question. The Advisory Committee *considers* that the use of such a formulation should be curtailed through the on-going legislative work.

40. UNITED KINGDOM

On the basis of information currently at its disposal, the Advisory Committee considers that implementation of this Article does not give rise to any specific observations.