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Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198)

Thematic Monitoring Review of the Conference of the Parties to CETS No.198 on Article 11 ("Previous Decisions")[1]

[1] Examined and adopted by the Conference of the Parties to CETS 198 at their 10th meeting, Strasbourg, 30-31 October 2018. Amended following the ratification of the Convention by Monaco (2020), Lithuania (2021) and Estonia (2023), selected follow up procedure in respect of Bulgaria (2020) and the Russian Federation (2021).

Contents

Introduction **4**
Scope of Article 11 ..... **4**
Methodology **5**
Summary **6**
Recommendations and follow-up **7**
Country review **9**
Albania 9
Armenia 9
Austria 10
Azerbaijan 10
Belgium 11
Bosnia & Herzegovina 11
Bulgaria 12
Croatia 12
Cyprus 13
Denmark 14
France 15
Georgia 16
Germany 16
Greece 17
Hungary 17
Italy 18
Latvia 18
Lithuania 19
Malta 19
Monaco 20
Montenegro 21
Netherlands 21
Poland 22
Portugal 22
Republic of Moldova 23
Romania 23
Russian Federation 24
San Marino 24

Serbia 25
Slovak Republic 25
Slovenia 26
Spain 26
Sweden 27
“The former Yugoslav Republic of Macedonia” 27
Türkiye ..... **Error! Bookmark not defined.**
Ukraine 28
United Kingdom 28
Annex I – Table with States Parties’ responses 30
Annex II – the Questionnaire in English 33
Annex III – Rules of Procedure: 19*bis* 35
Annex IV – State submissions ..... Error! Bookmark not defined.

Introduction

1. The Conference of the Parties (hereinafter: "the COP"), at its 9th meeting held in Strasbourg from 21 to 22 November 2017, decided to initiate the application of a horizontal thematic monitoring mechanism for an initial period of two years. Such review would look at the manner in which all States Parties implement selected provisions of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS no. 198, hereinafter: "the Convention"). To that effect, the COP adopted a new Rule 19*bis* of the Rules of Procedures. The COP Plenary decided that the first thematic monitoring report should deal with Article 11 as well as with Article 25(2) and 25(3) of the Convention.

2. Subsequently, in January 2018, a questionnaire (which can be found in Annex II to this document) was circulated to which the States Parties replied by the end of March 2018. The responses were subsequently analysed by the Rapporteur team (Ms Ana Boskovic and Mr Azer Abbasov), together with the Secretariat. The COP scientific expert supported the process within the merits of his role, as embedded in the COP Rules of Procedure. A final draft analysis was circulated amongst the States Parties to provide comments and further information. The main findings drawn from these responses are set out in the summary section of this report.

3. This report seeks to establish the extent to which international recidivism is taken into account by COP States Parties. Most notably, the answers to the Questionnaire differed in the content provided. It therefore remains somewhat difficult to draw a conclusion applicable for all COP States Parties, but several general remarks and recommendations can be made.

4. This report commences with laying out the scope of Article 11 of the Convention ("Previous decisions", hereinafter: "Article 11") and the methodology applied for the review. It then draws conclusions on legislative provisions and their effective implementation and proposes recommendations. States Parties' submissions are individually analysed and individual state recommendations are made for each State Party. The submissions are annexed to this report, together with a tabular overview with all States Parties' responses, as well as a relevant excerpt of the Rules of Procedure as amended in 2017.

Scope of Article 11

5. Money laundering and terrorist financing are often carried out by transnationally acting groups or criminals who may have been previously tried and convicted in one (or more) other jurisdiction. At domestic level, many legal systems provide for a harsher penalty where someone has previous convictions within these systems.

6. Article 11 is a provision dealing with international recidivism, i.e. repeated criminal behavior in at least two different jurisdictions. The article provides for the obligation upon States Parties to take additional measures on international recidivism related to offences established in accordance with the Convention. The text of the provision is as follows:

"*Each Party shall adopt such legislative and other measures as may be necessary to provide for the possibility of taking into account, when determining the penalty, final decisions against a natural or legal person taken in another Party in relation to offences established in accordance with this Convention."*

7. It should be noted that there is neither a harmonised notion of recidivism at international level, nor have all Council of Europe Member States adopted measures on such recidivism in their criminal legislation. A common practical obstacle for recognising foreign decisions is constituted by the fact that foreign judgments are not necessarily or automatically brought to the attention of judges.

8. States Parties have several possibilities of complying with the provision laid down in Article 11. Firstly, States Parties may decide to provide in their law for a harsher sanction in case of previous convictions by both domestic and foreign courts. Secondly, they may also provide that courts and prosecutors shall take previous convictions into account, based on the courts' general powers to assess the offender's past circumstances when setting a sentence.[2] With regard to the latter approach, it should be noted that the interpretative notes which the COP adopted in November 2017 with regard to selected provisions of the Convention (which include Article 11), recommend that the provision to implement Article 11 in this regard should not be too ambiguous in its wording and should avoid too broad an interpretation. For example, a formulation such as "the way of life of the perpetrator prior to the commission of the offence" would be too vague for a judge to establish whether or not he/she should take into account final decisions taken in another States Party.

9. It should also be emphasised that Article 11 does not enforce a positive obligation on courts or prosecution services to inquire whether persons being prosecuted have received final convictions from the courts of another States Party. In the absence of such a positive obligation, the present report does not primarily assess the effective implementation of Article 11 but restricts itself to whether or not the national law of the country provides for the possibility to take foreign previous decisions into account. In other words, the legal framework (either through a legal provision or jurisprudence) has to be in place, allowing the competent authorities (judges) to take into account in any manner (as an aggravating or other circumstance) final decisions taken by the criminal courts of another States Party.

10. Through Article 11, the Convention provides added value to the global anti-money laundering and counter-terrorist financing system (AML/CFT). While the principle of international recidivism is established in a number of international legal instruments (see the explanatory report to the Convention, para. 111), Article 11 establishes this principle to all offences established in accordance with the Convention and for the first time in the specific AML/CFT context. This is a binding obligation for States Parties.

Methodology

11. The COP questionnaire for the "Transversal Monitoring of States Parties' Implementation of Article 11 and Article 25(2) and 25(3) of the CETS no. 198" contained the following question with regard to Article 11:

    What legislative and other measures in your jurisdiction provide for the possibility of taking

[2] In this regard, it should be noted that the explanatory report to the Convention elaborates that Article 11 requires States Parties to provide for the possibility to take into account final decisions taken by another Party in assessing a sentence. Parties may provide that previous final decisions result in a harsher penalty or aggravating circumstances, or they may provide that courts should take previous convictions into account under their general powers to assess the individual's circumstances in setting the sentence (see explanatory report, paragraph 112).

into account, when determining the penalty, final decisions against natural or legal persons taken in another Party in relation to offences established in accordance with the CETS no. 198?

12. Delegations were asked to provide provisions of their domestic legislation dealing with the issue, e.g. from their criminal code, criminal procedure code or other laws. In addition, they were asked to support their responses with case studies, examples of measures regulating the information exchange with other States Parties on criminal records, or any other information on the manner in which judges are informed of previous decisions by the criminal courts of another State Party.

13. This horizontal review includes information on all 38 COP States Parties.[3] Ten countries have already undergone a COP individual country assessment[4]. With regard to those countries, both the data stemming from their country assessment or subsequent follow-up report as well as their responses to the questionnaire have been used for the purposes of this report.

Summary

14. From the assessment on the implementation and application of Article 11, several general findings can be drawn. Pursuant to the relevant domestic provisions as well as additional information provided on statistics, regular state practice or examples, these findings are aimed at contributing to an enhanced understanding of Article 11. Country-specific conclusions can be found in the respective analysis of each State Party.

15. The provision of Article 11, which requires that States Parties shall adopt such legislative and other measures as may be necessary to provide for the possibility of taking into account final decisions taken in the jurisdiction of another Party, has been implemented by the domestic legislation of 30 out of 38 States Parties. These Parties indicated that their authorities have the express power to take into account previous foreign decisions. However, in four such States (Belgium, Cyprus, France and Poland) domestic legislation only covers previous decisions by the domestic courts of other EU Member States. Seven other States Parties (i.e. 20% of all States Parties) included in their legislation measures relating to their courts' obligation to assess all the circumstances affecting the severity of punishment, which includes the 'perpetrator's prior life'. In the table annexed to this analysis, such measures are indicated as 'indirect measures', as it can be subtracted from the content of the law. However, as indicated above, such wording is considered ambiguous and might lead to too broad an interpretation or confusion about the application of the article.

16. Bulgaria provides only for the recognition of a foreign judgment in case an international agreement has been signed with the State whose court has issued the ruling.

17. For the successful consideration of previous foreign decisions, the States Parties which implemented domestic legislation with regard to Article 11 generally have a strong framework for data exchange and mutual legal assistance in place, through their accession to the Convention (CETS no. 198) or other international instruments, such as the European Convention on Mutual Assistance in Criminal Matters (CETS no. 30) or the European Criminal

[3] Monaco, Lithuania and Estonia ratified the Warsaw Convention after the present thematic monitoring procedures had been initiated. The implementation of Article 11 by Monaco was therefore analysed in 2020, by Lithuania in 2021 and by Estonia in 2023.
[4] The countries which have undergone the COP country assessment are: Albania, Armenia, Belgium, Bosnia and Herzegovina, Croatia, Malta, Montenegro, Poland, Republic of Moldova and Romania.

Records Information System (ECRIS) of the European Union.

18. Only two States Parties (Azerbaijan and the United Kingdom) have not adopted any legislative or other measures to grant powers to their authorities to take previous foreign decisions into account.

19. Since the explanatory report of the Convention on Article 11 suggests that recidivism accounts for aggravating circumstances or a harsher penalty, 24 States (i.e. 67% of all States Parties) have directly adopted such measures. In 17 of these States (Armenia, Bosnia & Herzegovina, Denmark, Greece, Hungary, Latvia, Lithuania, Republic of Moldova, the Netherlands, Romania, San Marino, Serbia, Slovak Republic, Spain, "the former Yugoslav Republic of Macedonia", Ukraine and the United Kingdom), repetition accounts for aggravating circumstances; in the eight other States (Albania, Bulgaria, Malta, Monaco, Poland, Portugal, Sweden and Türkiye), repetition of a criminal offence leads to a harsher penalty. In 10 States Parties (i.e. 27% of all States Parties), recidivism does not necessarily account for aggravating circumstances or a harsher penalty, but the fact of repetition is taken into account when determining the penalty. This situation is indicated by using the term 'not necessarily' in the annexed table. Three responses to the questionnaire were not conclusive on whether repetition of an offence, either conducted abroad or domestically, accounts for aggravating circumstances or a harsher penalty. States Parties concerned clarified this during the discussion of the report by the COP.

20. Finally, it is difficult to conclude whether the provision of Article 11 has been applied in practice by the States Parties, as many respondents do not maintain statistics on the matter or have not included cases in their response to the questionnaire. However, twelve States Parties (Bosnia and Herzegovina, Italy, Malta, Montenegro, Poland, Republic of Moldova, Romania, Serbia, Slovenia, "the former Yugoslav Republic of Macedonia", Türkiye and Ukraine) were able to demonstrate that they have applied measures with regard to the effective implementation of the provision. These States have supported their responses with either the number of data exchanges (e.g. Türkiye), the number of bilateral agreements for the exchange of criminal records (e.g. Serbia) or specific cases in which mutual legal assistance was requested (e.g. Montenegro). Italy provided the numbers of proceedings initiated for the recognition of foreign criminal judgments for the purposes of international recidivism. Slovenia provided a case in which the court's power to recognise foreign decisions was acknowledged by the Slovenian Supreme Court.

Recommendations and follow-up

21. A number of general recommendations can be derived from the summary findings above. While country-specific recommendations are included in the individual country-analyses below, both the general and the country-specific recommendations should be considered when adopting legislative and other measures to further implement the provisions of this Convention. States Parties should be invited to inform the COP at future Plenaries, as decided by the COP, of any developments and measures taken regarding the issues addressed in this review.

22. With the aim to promote a harmonised notion of recidivism at the international level, States Parties are recommended, if they have not yet done so, with regard to Article 11, to:

    - Amend their laws with an express reference made to the concept of international recidivism, handing the competence to their criminal courts and prosecutor's offices to

take into account previous decisions handed down by another States Party[5] for all offences listed in the Appendix to the Convention;
- Extend the possibility of taking into account the decisions by criminal courts to all States Parties, as required by Article 11[6];

23. For the purposes of more effective results of the use of Article 11, States Parties are invited to consider, with regard to Article 11, to:

    - If appropriate and practicable, maintain statistics on the application of Article 11 by judges and prosecution services[77].

    States Parties, in particular those which did not provide case examples on the practical implementation of Article 11, are recommended to continue to familiarise judges, prosecution services and other competent authorities with the concept of international recidivism and the related domestic provisions.

24. States Parties are strongly encouraged to consider implementing both the above-mentioned general recommendations and the country-specific recommendations. Respective legislative measures could be implemented by amending either the criminal code or the code of criminal procedure; non-legislative measures may focus on awareness-raising or trainings for legal authorities on the possibility to take into account foreign judgments when deciding on the sentence of a re-offender. States Parties may also enhance their legal data by including a reference to international recidivism so as to distinguish between the concrete application of Article 11 and other international legal co-operation (e.g. mutual legal assistance).

25. The Conference of the Parties recognises that some practical problems may arise with regard to international recidivism which cannot be resolved at the domestic level and which would require a response at the international level. The Conference of the Parties reserves to look at these issues at a later stage, also in possible cooperation with other relevant Council of Europe bodies.

26. Concern has previously been raised regarding the risk of discrimination that might arise when some prosecutors within a States Party consider previous foreign decisions, whereas their colleagues do not. Whilst this concern and risk is acknowledged, all States Parties should encourage a harmonised and coherent approach towards consideration of international recidivism among their prosecutors and judges in order to avoid an unequal application of Article 11 in domestic cases.

27. A follow-up mechanism on the recommendations following from this analysis has been initiated, upon decision by the COP Plenary.

[5] This is particularly relevant for States which currently consider this aspect only in a wider context under the general powers to assess the individual circumstances of a perpetrator when determining the sentence, e.g. by looking at a perpetrator's past.

[6] This recommendation is particularly relevant for States which have measures in place to consider foreign judgments handed down only in EU Member States or in States with which respective (bilateral or multilateral) agreements exist. However, this would not mean that the same conditions granted to other EU Member States would have to be applied to States Parties which are not EU Member States, or that specific conditions under another agreement would have to be applied to all States Parties.

[7] Maintaining statistics on the practical application of Article 11 will increase the understanding of how this provision is used effectively in practice.

Country review

Albania

1. Albania has undergone the COP assessment in 2011. The rapporteurs then considered that international recidivism was appropriately included in Albanian legislation. According to Article 50 of the Criminal Code, "final decisions against natural persons rendered by a court of another Party can be taken into account when determining the penalty if they are recognised by an Albanian court". Moreover, Article 21 of the Law on Criminal Liability of Legal Persons provides for a harsher penalty in case of repetition of a criminal offence committed by a legal person. However, to the rapporteurs it also appeared that the practice of recognising final decisions had not yet taken place. Therefore, the rapporteurs recommended that steps should be taken to ensure that prosecutors would become familiarised with the procedures to bring a foreign conviction before the domestic court if such information is available.

2. In the response to the questionnaire, the Albanian authorities reiterated the abovementioned articles on international recidivism. However, no further information was provided on the practical implementation of the provision. It remains uncertain whether Albania has put into practice the taking into account of previous (international) convictions to determinate the penalty for offences established in accordance with the CETS no. 198.

Conclusion/Recommendation

3. The Albanian authorities are in a position to take into account final decisions taken in another Party in relation to offences established in accordance with the CETS no. 198. However, it appears not to have occurred in practice yet.

Armenia

1. In 2016, the Republic of Armenia has undergone the COP assessment. The rapporteurs found that the Armenian legislation complied with Article 11 of the Convention. This is repeated by the authorities in their response to the questionnaire. Particularly Article 17 of the Armenian Criminal Code is regarded as relevant, as it provides for the court's capability to take into account whether a citizen of Armenia, a foreign citizen or a stateless person was convicted for a crime committed outside Armenia and committed a repeated crime in Armenia. The same article provides that recidivism, un-served punishment or other legal consequences of a foreign court ruling are taken into account when qualifying the new crime, assigning punishment, and exempting from criminal liability or punishment.

2. As far as recognition of foreign court's judgments is concerned, Article 499 of the Criminal Procedure Code further specifies the recognition of foreign judgments in Armenia; the terms of recognition and grounds for refusal; and the legal consequences of the recognition of a foreign judgment. It is envisaged that a foreign court's judgment generates the same legal consequences as a national court's final judgment. Article 63 of the Criminal Code thereby specifies that "[circumstances aggravating the liability and punishment are as follows: 1) recidivism of a crime […]".
3. With regard to international co-operation and mutual legal assistance, Armenia is bound by several international, regional and bilateral treaties which provide terms for recognition of judgments. For example, the 2002 Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters and the 1993 Minsk Convention on Legal Assistance

and Legal Relations in Civil, Family and Criminal Matters provide regulations for recognition of judgments by the State Parties.

4. There is only one case in which a foreign court's decision was recognised by the Armenian authorities in the course of a foreign seizure procedure related to money laundering, but a MLA request instead of the occurrence of recidivism triggered the recognition of a foreign court's decision.

Conclusion/Recommendation

5. The Armenian legislation, on the information provided, is in compliance with Article 11 of the Convention.

Austria

1. The Austrian Criminal Code (§ 71) provides for the possibility to take into account foreign previous decisions equally to domestic convictions "if the offender was convicted for an offence which is punishable by a criminal court also under Austrian law, and if the judgment was rendered as a result of proceedings which were in conformity with the principles set forth in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Fed. Gaz. No. 210/1958". However, it is not clear whether all offences established in accordance with the CETS no. 198 are covered.

2. Within the EU sphere, exchange of criminal data occurs through European Criminal Record Information System (ECRIS). Another important instrument to exchange such information is Article 13 of European Convention on Mutual Assistance in Criminal Matters (ETS No. 030). However, no case studies or measures were provided on information exchange with other States Parties on criminal records and how judgements were affected.

Conclusions/Recommendations

3. Austrian authorities have the possibility to take into account final decisions taken in another State Party. It remains unclear whether this provision is applicable to all the offences established in Annex to the CETS no. 198. In case there is a limitation vis-à-vis any of the offences listed in the Annex, the country is recommended to rectify this deficiency.

Azerbaijan

1. In Azerbaijan, there are currently no legislative or other measures in place to provide for the possibility of taking into account previous foreign decisions in relation to offences established in accordance with the CETS no. 198. Yet, the authorities noted that the issue is expected to be addressed in 2019, in the framework of the implementation of the National Action Plan on combating legalisation of criminally obtained funds or other property and financing of terrorism for 2017-2019 (adopted November 2016), especially under point 2.6 "Taking measures to improve legislation on forfeiture and recovery of criminally obtained funds or other property".

Conclusion/Recommendation

2. Given that there is no explicit legal provision or existing jurisprudence granting the possibility for the courts to take into account international recidivism as required under the Convention, it is recommended to Azerbaijan to introduce the principle of international

recidivism in domestic legislation or by means of jurisprudence.

Belgium

1. Belgium has undergone in 2016 the COP assessment. The assessors noted that previous convictions handed down by a court in another EU Member State must be taken into consideration in exactly the same manner as Belgian courts' decisions. Recidivism is taken into account when passing sentence, but only on the basis of previous Belgian or foreign EU Member States courts' judgments. The report recommended to Belgium to enable its courts and prosecutors to take account of previous judgment, irrespective of the State Party in which they were handed down.

2. The Belgian authorities indicated in their questionnaire's response that it has transposed the Council Framework Decision 2008/675/JHA into domestic legislation, which therefore provides that previous decisions made in another EU Member State are taken into account under the same conditions as Belgian criminal convictions. Such previous decisions also realise the same judicial effects and consequences. However, no information is provided whether this legal provision can be extended to the scope under which COP States Parties which are not EU Member States would fall. Belgium concluded that Article 11 is 'partially applied', hence it follows that the provision does not apply for non-EU Member States.

3. There is no information provided with regard to the application of Article 11 in cases of recidivism and offences under CETS no. 198.

Conclusion/Recommendation

4. Belgium has enacted measures to enable its courts and prosecution services to take into consideration judgments handed down in another EU Member States. However, restricting this measure to EU Member States only is not compliant with the Convention. The Belgian authorities are therefore recommended to take the necessary steps to enable courts and prosecutors to take account of previous judgments, irrespective of the COP State Party in which they were handed down. They are also recommended to amend the law to apply an aggravating circumstance or harsher penalty for (international) recidivism.

Bosnia & Herzegovina

1. The Criminal Code of Bosnia and Herzegovina, in Article 48, provides that the court should take into account the past conduct of the perpetrator. When deciding on the punishment for the criminal offence in recidivism, the court should give *special consideration whether the most recent offence is of the same type as the previous one, whether both acts were perpetrated from the same motive, and it will also consider the period of time which has elapsed since the pronunciation of the previous conviction, or since the punishment has been served or pardoned* (paragraph 2 of Article 48). The authorities argued that Article 48 was practically applied the by courts with regard to the criminal offences established in accordance with the Convention. The authorities also advised that similar provisions were included in the Criminal Codes of the Entities – notably in the Article 49 of the Criminal Code of the Federation of Bosnia and Herzegovina; in the Article 37 of the Criminal Code of the Republic of Srpska; and in the Article 49. of the Criminal Code of the Brcko Districht. In addition, case management system was recently established to facilitate statistics and record keeping of all decisions rendered by the courts.

Conclusion/Recommendation

2. Bosnia and Herzegovina is compliant with the requirements of Article 11.

Bulgaria

1. The Bulgarian authorities in their response to the questionnaire indicated that Article 11 of the Convention is covered by Article 8 of the Bulgarian Criminal Code (CC), which stipulates that “any sentence of a foreign court for a crime to which the Bulgarian Criminal Code is applicable shall be taken into consideration in the cases specified in an international agreement to which the Republic of Bulgaria is a party”. Such applies also for binding convictions decreed in another EU Member State, particularly in criminal proceedings against the same person conducted in the Republic of Bulgaria.

2. The authorities advised that Article 8 of the CC is applied accordingly by the Bulgarian Courts - the phrase "*take into account*" in Article 8 of the CC means that the sentence of a foreign Court produces the same legal effects as a sentence given by a national Court, including in the case of recidivism. The rules regarding the punishment in case of multiple crimes or recidivism, either national or international, are provided for in Section IV “Multiple Crimes”, Chapter Two “Crime” of the General Part of the Bulgarian Criminal Code (Article 29 and others).

Conclusion/Recommendation

3. The Bulgarian legislation provides for considering international recidivism insofar States are concerned with which Bulgaria has concluded an international agreement.

Croatia

1. In the 2013 COP assessment, rapporteurs noted that the Croatian Criminal Code did not address explicitly the issue of international recidivism. However, Article 47 of the Criminal Code required the courts, when determining the type and measure of punishment, to assess all the circumstances affecting the severity of punishment. Moreover, the verification of the existence of previous criminal records and convictions, whether in Croatia or abroad, formed an integral part of the criminal proceedings both at the level of the prosecution and of the judges upon finalisation of their decision. In the follow-up report of 2016, the COP recommended to consider taking additional steps as might be required to ensure the familiarity of prosecutors with the procedures to bring forward foreign convictions in national proceedings for offences established in accordance with CETS no. 198. It was also recommended to consider incorporating measures implementing the international recidivism standard into Croatian legislation.

2. As a response to the questionnaire, the authorities stipulated that through Article 47 of the Criminal Code, the courts shall assess, *inter alia*, the perpetrator’s prior life when determining the type and measure of punishments. This includes an analysis of data on criminal records, which are directly accessible by the courts and State Attorney’s offices. Data is held on Croatian citizens sentenced for criminal offences in Croatia, as well as for nationals who have been legally convicted outside Croatia if this data was transmitted to the Croatian authorities.

3. Croatia also makes note of its use of the European Union system on exchange of criminal data. During the 2013 assessment, Croatia had not yet become member of the European Union, but could make use of the European Criminal Records Information System (ECRIS) to request and receive data from criminal records for the citizens of EU Member States, convicted in one of such states. In response to the questionnaire, the Croatian authorities indicated their continuous use of the ECRIS system, now as an EU Member State. As regards non-EU Member States, bilateral agreements enable the submission and exchange of data. Croatian courts do not distinguish between final decisions by domestic courts or courts of another Party when determining the sentence.

4. With regard to mutual legal assistance, the Croatian Act on International Legal Assistance in Criminal Matters (2004), Article 20(3) regulates that the Ministry of Justice notifies the foreign competent authority of all criminal convictions and measures in respect of nationals of that foreign state. The domestic court or other competent judicial authority can make requests for mutual legal assistance according to the provisions of multilateral conventions (e.g. the Council of Europe Convention on Mutual Assistance in Criminal Matters, 1959) and bilateral agreements.

5. Although the initial assessment conducted by COP took place in 2013, both in 2016 for the follow-up report and in 2018 for the questionnaire the Croatian authorities have not provided further information with regard to the recommendation to take steps to ensure that prosecutors are familiar with the procedures to bring foreign convictions forward in national criminal procedures.

6. No information has been provided with regard to the practical implementation of Article 11 CETS no. 198.

Conclusion/Recommendation

7. The Croatian legislation complies with Article 11 insofar as the courts are required to assess the perpetrator's prior life to the offence; however, it is recommended to consider adopting legislative or other measures to implement the specific international recidivism standard into Croatian legislation.

Cyprus

1. The Cypriot authorities provided that its authorities have the capability to take into account previous convictions issued by criminal courts of EU Member States against the accused for offences constituting offences also according to the Cypriot laws. No specific reference is made to third countries, e.g. COP States Parties' courts. However, the authorities indicate that even with the legislative absence of reference to such countries, if the prosecution has received information about criminal convictions in third countries and presented it to court, the court may take such information into account for deciding on the sentence.

2. The Cypriot authorities indicate that previous convictions issued by criminal courts of EU Member States counts as an aggravating circumstance, leading to a harsher penalty. This is established by court practice and not enshrined in law.

3. No information has been provided with regard to the practical implementation of Article 11 CETS no. 198.

Conclusion/Recommendation

4. Cyprus has enacted measures to enable its courts and prosecution services to take into consideration judgments handed down in another EU Member States. However, the Cypriot authorities are recommended to take the necessary steps to enable courts and prosecutors to take account of previous judgments of non-EU COP States Parties. The Cypriot authorities are also recommended to consider including in their domestic law that (international) recidivism accounts for an aggravating circumstance and/or a harsher penalty.

Denmark

1. Denmark provided that, under section 84(2) of the Criminal Code, the Danish court may refer equally to judgments delivered outside the Danish state and judgments delivered in Denmark when imposing an increased penalty in case of repetitive offending. Repetition of the offence accounts for an aggravating circumstance.

2. No information has been provided with regard to the practical implementation of Article 11 CETS no. 198.

Conclusion/Recommendation

3. On the information provided, the Danish legislation is in compliance with Article 11 of the Convention.

Estonia

1. The Estonian legislation provides, albeit only indirectly, for taking into account of foreign previous decisions. The Penal Code foresees aggravating circumstances in relation to the ML offence, which include repeated offences ("at least twice", Article 394 of the Penal Code). Nonetheless, it is not certain whether this includes the possibility to take into account, when determining the penalty, final decisions against natural or legal persons taken in another Party, nor whether they cover all the offences listed in the Appendix to the CETS no.198.

2. On the other hand, it is important to note that data is stored on persons who have committed criminal offences or misdemeanors, until the deletion of the information (Article 5(1) of the Criminal Records Database Act). If information on a conviction rendered by another Party is received, it is entered into this database (Point 7§ 6 of the aforementioned Act). Investigative bodies in charge for pre-trial proceedings in criminal matters and prosecutors access to the Criminal Record Database (§ 20 subsection (1) points 3) and 7)) and may use this data for purposes of conducting criminal proceedings and planning surveillance activities.

3. In addition, the Centre of Registers and Information Systems has the right to submit a query to a central authority of another EU member state concerning the information entered in the criminal records, if the information is requested by a court for the purposes of hearing a matter subject to proceedings or by an investigative body relating to a criminal matter subject to proceedings (§ 30 of the Criminal Records Database).

4. Therefore both domestic decisions as well as decisions made by other Parties which have

been entered into the Database can be taken into account when determining the penalty before the Estonian courts.

5. As regards information exchange with the EU Member States, the criminal records and information about convictions are being shared by using the ECRIS information system or based on the European Convention on Mutual Assistance in Criminal Matters.

Conclusion/ Recommendation

6. The Estonian legislation largely complies with Article 11 insofar as recidivism is an aggravating circumstance and the Criminal Records Database to whom competent authorities have access also contains data on decisions of other Parties, or upon a direct inquiry with another State Party. It remains unclear whether the circumstances have enabled to apply this principle in the ML convictions that have been achieved so far, as no information was made available as to what is the actual practice.

7. Estonia should consider taking additional steps as may be required to ensure that prosecutors are familiar with the procedures to bring foreign convictions against both natural and legal persons taken in another Party in relation to offences established in accordance with CETS No. 198. Additionally, the authorities may consider incorporating measures implementing the "international recidivism" standard into Estonian legislation.

France

8. The French Criminal Code provides for the possibility to take into account foreign previous decisions made in EU Member States. But such consideration does not exist for non-EU Member States. Thus not all COP States Parties are covered in domestic legislation for the purpose of Article 11.

9. Data on convictions handed down abroad are kept and updated on a regular basis in the French '*Casier judicaire national*' (national criminal data records), by application of international conventions or agreements. Moreover, within the EU sphere, exchange of criminal data occurs through ECRIS (European Criminal Record Information System). Magistrates and judges can access the data.

10. Like in domestic legislation, previous decisions are taken into account and can thus account for recidivism. The authorities indicated that, under the general principles of law, the judge enjoys a certain space of interpretation, providing that a judge may take into account previous convictions when deciding on a judgment, No further information was provided with regard to the specific legislative provision or demonstration of the practical implementation through case law.

Conclusion/Recommendation

11. France has enacted measures to enable its courts and prosecution services to take into consideration judgments handed down in another EU Member States. However, restricting this measure to EU Member States only is not compliant with the Convention. The French authorities are therefore recommended to take the necessary steps to enable courts and prosecutors to take account previous judgments, irrespective of the State Party in which they were handed down. Moreover, they are invited to consider including an aggravating circumstance or harsher penalty in domestic law for (international) recidivism.

Georgia

1. Georgia provided, in its response to the questionnaire, that the issue of judgments delivered by a foreign competent court is covered by the Law of Georgia on International Cooperation in Criminal Matters. According to Article 56 of this law, the domestic authority conducting the proceedings shall take into account a judgment delivered against the person for another crime in a foreign state if it envisaged by a relevant international agreement (including an ad-hoc agreement). Moreover, the authorities indicated that the Georgian signature to the CETS no. 198 encompasses the direct working of its provisions in Georgian law, hence that decisions against natural or legal persons taken in another Party in relation to offences established in accordance with the provisions of the Convention may be taken into account on proceedings conducted in Georgia.

2. Further information is neither provided to whether recidivism accounts for aggravating circumstances or a harsher penalty, nor on practical cases or examples from which the effective implementation of the provision is illustrated.

Conclusion/Recommendation

3. The Georgian legislation grants power to the judicial authorities to take into account previous judgments handed down abroad, on the basis of the Convention. If not already provided for, the authorities are recommended to consider including in their domestic law that (international) recidivism accounts for an aggravating circumstance and/or a harsher penalty.

Germany

1. The German courts are required to take previous final and binding convictions into account, which has become a 'general rule' following German case law. Moreover, in the German legislation it is included that the court is to take foreign convictions into account due to the requirement to conduct a comprehensive examination of all circumstances – including the offender's prior history, when deciding the sentence to be imposed. The law does not include a provision outlining a harsher sanctioning regime or an aggravating circumstance for repetition of an offence.

2. In calculating monetary fines against legal entities and partnerships, it is likewise provided that a comprehensive examination of all circumstances must take place; this also specifically includes rule violations in the past.

3. There exist, however, no case studies that would demonstrate the consideration of previous, foreign and final and binding criminal convictions or monetary fines in calculating criminal penalties or monetary fines in domestic criminal or monetary fine proceedings.

Conclusion/Recommendation

4. Given that there is existing case law in which courts took previous final and binding convictions into account, Germany complies with Article 11. Yet it is recommended to consider including in domestic law that (international) recidivism accounts for an aggravating circumstance and/or a harsher penalty.

Greece

1. The Greek AML/TF Law and Penal Code enable the courts trying money laundering and/or terrorist financing cases, to take into account final convictions issued by courts of other States Parties to the CETS no. 198. The domestic recidivism provisions as stipulated in the Penal Code thereby function as underlying base. The relevant articles in the AML/FT Law and the Penal Code have been amended as such by Law 4478/2017, which ratified CETS no. 198. The Penal Code provides for an aggravating circumstance in case of recidivism.

2. The Greek authorities are guided by MLA requests, international agreements and EU Framework Decisions on data exchange regarding previous foreign convictions. The authorities could not yet demonstrate practical application.

Conclusion/Recommendation

3. The Greek legislation is in compliance with Article 11 CETS no. 198. However, the application of the Article has not been further demonstrated, in view of the recent enactment of the relevant provisions.

Hungary

1. The Hungarian authorities (Ministry of Justice, National Office for the Judiciary and the Prosecutor General's Office) provided the Hungarian legal framework for recognising and considering foreign judgments. Foreign decisions can be handled in three different ways. First, a sentence of an EU Member State court can be directly taken into consideration in a domestic case. Second, where a foreign (EU Member State) ruling provides factual basis to apply a more severe or detrimental punishment or measure upon the defendant of the domestic case, the foreign court's judgment should be transposed to Hungarian laws through a legal process. Third, if a foreign court of a non- EU Member State handed down a judgment relevant for the domestic procedures, this judgment shall be recognised by a Hungarian court in a formal procedure before it can take any effect in Hungary.

2. Particularly with regard to EU Member States' courts, the Hungarian framework provides for recognition of previous foreign decisions. Moreover, Hungarian courts become aware of the existence and data of foreign judgments via the European Criminal Records Information System (ECRIS) between EU Member States. With regard to the countries outside of the European Union, the Ministry of Justice (as the central authority in this regard) yearly receives and exchanges data on criminal offences. But this data is considered to be incomplete and fragmented compared to the ECRIS. Besides the regular exchange, the competent authorities are obliged to obtain data on criminal records when, during the investigation, they are informed or data has arisen on the previous conviction of the perpetrator.

3. Upon recognition of the foreign judgment by the Hungarian court, the data concerning the previous conviction shall be included in the criminal records system.

4. A judgment of a foreign court has the same effects as a judgment of a Hungarian court, upon recognition of the foreign decision by a Hungarian court. Simple re-offending may then be regarded as aggravating circumstance, and for *special*[8], multiple or violent multiple

[8] The notion of 'special recidivism' in Hungarian law is not further explained in the authorities' response.

recidivists the punishment may be more severe.

5. No information has been provided with regard to the practical implementation of Article 11 CETS no. 198.

Conclusion/Recommendation

6. The Hungarian legislation provides for the possibility to consider foreign decisions.

Italy

1. The Italian authorities provided that Article 12 of the Italian Criminal Code stipulates the recognition of foreign criminal judgments for domestic purposes, including, in particular, recidivism or another criminal effect resulting from conviction. Articles 730-735bis and 740 of the Code of Criminal Procedure describe the procedures and prerequisites. After recognition of the judgment by the Italian Court of Appeal, for which a procedure was started by the Minister of Justice and the relevant Prosecution service, the data is published into the criminal records which are available to all Italian judicial authorities. A recognised foreign decision may have the same effect provided for in the Criminal Code for domestic offences.

2. The authorities recalled the existence of the ECRIS on data exchange with EU Member States, but where non-EU Member States are concerned data is shared under international conventions in force.

3. Data has been provided regarding the proceedings initiated for the recognition of foreign criminal judgments in the view of recidivism (or another criminal effect resulting from the conviction). In 2016, 128 such proceedings were started; in 2017 there were 55 proceedings started and in 2018 19 proceedings were started.

4. Further cases of recognition have taken place in the framework of proceedings for execution purposes, of which the authorities note that this framework is “different but possibly connected” to the provisions of CETS no. 198. No precise statistical data is published on this latter type of recognition and are thus not included in the numbers mentioned above.

Conclusion/Recommendation

5. The Italian authorities are in a position to take into account final decisions taken in another Party in relation to offences established in accordance with the CETS no. 198 after such decisions have been recognised under domestic legal procedures. This has been demonstrated by statistical data provided on the actual practice of recognising foreign criminal judgments.

Latvia

1. From the response to the questionnaire, it becomes clear that the Latvian legal framework indirectly provides for taking into account foreign previous decisions. The Criminal Law stipulates that “in determining the type of punishment, the personality of the offender shall be taken into account, which includes also his or her criminal record”. There is, however, no specific legislative or other measure which would provide for the possibility of taking into account, when determining the penalty, final decisions against

legal persons taken in another Party in relation to offences established in accordance with CETS no. 198.

2. Data is stored and registered on persons who have committed criminal offences and administrative violations if it is provided by the central authority of an EU Member States, the European Economic Area or the Swiss Federation. Also, information provided by a third country in accordance with international agreements with regard to the conviction of natural and legal persons relevant for the domestic procedures are shared.

3. The Latvian authorities made note of the Latvian Criminal Law, which stipulates that "if the criminal offence constitutes recidivism of criminal offences it is recognised as an aggravating circumstance". The practical implementation has not been further demonstrated as no such specific data is stored in the information systems of courts which contain information on judgments.

Conclusion/Recommendation

4. The Latvian legislation complies with Article 11 insofar as the courts are required to assess the perpetrator's prior life to the offence; however, it is recommended to consider adopting legislative or other measures to implement a specific "international recidivism" standard into Latvian legislation.

Lithuania

1. Lithuanian legislation is compliant with the requirements of the Article 11 of the CETS no 198. More precisely, Article 54 of the Criminal Code stipulates that court shall, when imposing the penalty, take into consideration mitigating and aggravating circumstances. Furthermore, aggravated circumstances are defined in Article 60 of the CC and encompass the act that has been committed by a repeat offender. Repeated offence refers to a situation when a perpetrator has already been convicted for intentional crime(s) (Art. 27 of the CC).

2. In their responses to the questionnaire, the authorities indicated that previous conviction is defined as conviction brought by domestic court or court of other EU Member State. The persons convicted for committing a crime in a non-EU Member State, provided that a notice of the coming into effect of that judgment is received by Lithuanian authorities (and such notification is made in line with the relevant provision of international conventions), shall then be considered as a person having previous conviction. The court shall take previous conviction into consideration when imposing a penalty for the commission of a new criminal act (Art. 97 of the CC).

3. No information has been provided with regard to the practical implementation of Article 11 CETS no. 198.

Conclusion/Recommendation

4. Lithuanian legislation is compliant with the provision of Article 11 of the CETS no.198.

Malta

1. The 2014 COP Assessment report on Malta concluded that the Maltese judicial authorities were in a position to take into account final decisions taken by another Party in relation to

offenses established in accordance with CETS no. 198. Although there was no information available concerning the actual practice, the report emphasised that Malta has certain experience as an EU Member State in exchanging the information extracted from the criminal records within the framework of EU legal instruments.

2. In the response to the questionnaire, Maltese authorities reiterated that the Maltese legislation provides for courts to take into account a judgment delivered by a foreign court when determining the *quantum* of punishment, when the said judgment has become final and absolute. Such is determined in the Criminal Code, Article 49(1). This same provision outlines the principle of recidivism. It is stipulated that a recidivist is considered to be any person who "after being sentenced for any offence by a judgment, even when delivered by a foreign court, which has become res judicata, he commits another offence". Articles 50 – 54 of the Criminal Code regulate the effects of recidivism on punishment. These provisions make no distinction on the basis of whether the previous conviction was handed down by a Maltese or a foreign court. The Maltese authorities therefore consider that international recidivism has to be taken into account when applying these provisions, which can result in a harsher penalty. However, this happens not automatically but depends on the discretion of the court. There are at present two cases *sub iudice* in which evidence of a foreign conviction has been presented in the course of the proceedings.

3. Foreign judgments can be transmitted to Malta if it is authenticated by the sending state. It therefore appears that the Maltese authorities are open to receive criminal data from non-EU, but CoE Member States also. With regard to the EU, the authorities noted that the EU Directive 2014/14/EU is transposed into Maltese domestic law, which facilitates the cross-border execution of specific investigative measures so as to obtain evidence for use in proceedings which are criminal or may themselves give rise to criminal proceedings. Under this Directive, a European Investigation Order may be availed, which can also be intended to obtain evidence that is already in the possession of the competent authorities of the executing State. Hence, it can include information on the past criminal conduct of the person being investigated or prosecuted.

Conclusion/Recommendation

4. Malta is able to take into account international recidivism as required under Article 11.

Monaco

1. There is no general provision in the Monegasque Criminal Code or Criminal Procedure Code, establishing the concept of international recidivism. However, the international recidivism constitutes an aggravating circumstance for several serious crimes. Article 218-2 of the Criminal Code states that *"there is an aggravating circumstance when the offender has been convicted by a foreign court for a money laundering offense".* In the event of an aggravating circumstance, the penalty incurred will be from ten to twenty years of imprisonment, instead of five to ten years, whilst the maximum amount of the fine may be multiplied by twenty. In the area of counterfeit money, article 83-4 of the Criminal Code provides that "*when a person commits criminal responsibility for one of the offenses provided for in articles 77 to 83-2, recidivism is established if the person has already been sentenced, by a criminal court of a member state of the Council of Europe, for a crime or an offense having the same constituent elements*".

2. In addition, the authorities advised that, in accordance with the obligations under article

22 of the European Convention on Mutual Assistance in Criminal Matters, the Principality of Monaco spontaneously transmits, to the signatory states of this Convention, notices of convictions on their nationals who have been charged before the Monegasque courts. The Principality also receives from the signatory states of the Convention of April 20, 1959, convictions concerning its nationals. In view of this, the authorities advised that the courts apply international recidivism, taking into account the sentences pronounced by foreign jurisdictions against their nationals.

Conclusion/Recommendation

3. The Monegasque authorities are in position to apply the international recidivism, but the list of offences for which the international recidivism is applicable (as per the Criminal Code) do not include all the offences covered by the Appendix to the Convention. In view of that, the authorities are invited to consider extending the list of offences in their Criminal Code for which the international recidivism should be applied.

Montenegro

1. According to the COP Assessment of 2014 on Montenegro, the Montenegrin Criminal Code does not explicitly address international recidivism. However, Article 42 of the CC requires courts to take into consideration the offender's behaviour and whether it was a re-offense. Such is also included in the Law on Criminal Liability for Criminal Acts of Legal Entities and in the Criminal Procedure Code.

2. In their response to the questionnaire, the authorities reiterated Article 42 of the CC, arguing that the obligation for the court to take into account any mitigating or aggravating circumstance when determining the sentence of the offender also includes any previous decision relating to the same offender; hence recidivism was included in Montenegrin legislation. Also the previously mentioned Law and CPC cited to demonstrate that the 'accused person's previous convictions' shall be taken into account, both when such convictions were handed down by domestic and international courts. The issue thus has not been amended or changed since the 2014 assessment. The authorities demonstrated the application of Article 11 with an example of a case in which a Montenegrin citizen was previously convicted by a Serbian court, which constituted an aggravating circumstance.

Conclusion/Recommendation

3. Although the Montenegrin legislation provides that the perpetrator's prior life to the offence shall be assessed, it is recommended to introduce a specific notion of international recidivism into domestic legislation. The Montenegrin authorities are further recommended to consider adopting legislative or other measures which provide that recidivism accounts for an aggravating circumstance and/or harsher penalty.

Netherlands

1. The Dutch authorities stated in their response to the questionnaire that "as a general principle of criminal procedural law, in the Dutch system of statutory penalty maximums, there is room to take account of previous convictions within these maximum penalties". These may also include relevant foreign convictions. Recidivism, it is indicated, is therefore seen as a general aggravating circumstance. No further information was provided with regard to the specific legislative provision or demonstration of the practical implementation through case law.

Conclusion/Recommendation

2. On the basis of the information provided, the Dutch legislation is in compliance with Article 11. Yet it is recommended to adopt legislative or other measures to ensure that consideration of previous decisions handed down abroad is concretely introduced into legislation.

Poland

1. Poland has undergone the COP assessment in 2013. Two subsequent follow-up reports were published in 2015 and 2017. In the initial report, rapporteurs concluded that Polish legislation allowed, to some extent, for the possibility of foreign decisions being taken into account when determining a penalty. This is reiterated in the follow-up reports and Poland's response to the questionnaire. Article 114a of the Polish Penal Code indicates that courts are required to take into account final judgments rendered by a court of another EU Member State – unless the act is not a crime, the perpetrator is not subject to punishment or the imposed punishment is unknown to the Polish criminal law.

2. As regards non-EU countries, Article 53(2) of the Penal Code enables Polish courts to take into account "the characteristics and personal conditions of a perpetrator, the way of life of the perpetrator prior to the commission of the offence". Accordingly, this provision is regarded as a duty to check criminal records before determining a penalty.

3. The possibility of taking into account final decisions made by a court of another Party is reflected in the Polish courts' practices. Also, Article 53 CC and 213 CPC indicate a positive obligation on courts and prosecution service to take steps to find out whether persons being prosecuted have received final sentences from another Party's courts.

4. The Polish Criminal Code outlines that the court may impose the penalty of imprisonment for a repetitive offence, up to one and a half times the maximum statutory limit.

Conclusion/Recommendation

5. Although the Polish legislation complies with Article 11 insofar as the criminal's past shall be assessed, the specific international recidivism standard as adopted in domestic legislation applies only for EU Member States. It is therefore recommended to Polish authorities to adopt legislative or other measures to ensure that the notion of recidivism, beyond the scope of the 'perpetrator's prior life', covers all COP States Parties.

Portugal

1. The Portuguese legal framework both directly and indirectly fulfils the requirements of Article 11 of CETS no. 198. Article 75(3) of the Criminal Code provides that "[t]he convictions of a person in foreign courts shall be considered and count for recidivism […] provided that the act constitutes a crime under Portuguese law". Article 71(1) of the Criminal Code also establishes that "[w]hen determining the concrete penalty to be applicable, the court shall attend to all circumstances, which, not forming part of the crime, shall be taken into consideration in favour or against the offender, considering in particular its behavior prior to and after the commission of the crime, especially when it is designed to repair the consequences of the crime." The provision extends to all states worldwide.

2. The Portuguese law does provide for a harsher penalty in case of (international) recidivism: the minimum limit of the sentence applicable to the criminal offence is aggravated by one third while the maximum limit remains unaltered (Article 76(1) CC).

3. The Portuguese authorities indicated that there is no application of Article 75(3) of the Criminal Code in criminal court cases related to money laundering. Previous foreign decisions have been considered only for other offences which are not (necessarily) related to CETS no. 198.

Conclusion/Recommendation

4. Portugal has implemented the provisions laid down in Article 11.

Republic of Moldova

1. The 2014 COP assessment on the Republic of Moldova indicated that Moldova has adopted measures to enable its courts and prosecution services to take into account final decisions against persons taken in another Party in relation to offences established in accordance with CETS no. 198.

2. The Moldovan authorities in their response to the questionnaire declared that the notion of recidivism was included in the legislation, specifically in Article 34 of the Criminal Code. It is stipulated that "the final conviction and sentences issued abroad and recognised by the court of the Republic of Moldova shall be considered". Moreover, Article 11(7) of the CC indicates that the punishments and the criminal records for crimes committed outside of the territory of Moldova shall be taken into account hereunder the process of individualisation of the punishment for a new committed crime by the same person on the territory of Moldova. Due consideration shall be attributed to the prejudicial nature and degree of the crime committed, the personality of the criminal, and the circumstances of the case that mitigate or aggravate criminal liability (Article 7 CC).

3. However, before such determination of recidivism, final convictions issued abroad must be acknowledged by the national court according to a procedure described in the Criminal Code of Procedure (CCP). In case a previous decision is not acknowledged, the previous offences can be taken into account only as aggravating circumstances. Yet, Article 78(3) of the CCP adds that "in the case of aggravating circumstances, the maximum punishment set in the corresponding article of the offence committed may be applied".

4. The Moldovan Ministry of Justice confirmed the existence of judicial cases related to Article 11.

Conclusion/Recommendation

5. The Moldovan legislation is in compliance with Article 11 of the Convention.

Romania

1. The COP assessment of 2012 on Romania indicated that the Romanian courts and prosecution services are in a position to take into account final decisions rendered in another Party. This is established in Article 37(3) CC, which reads as "the conviction decision by a foreign country regarding a deed provided also by the Romanian law will be taken into account". This has become regular court practice. Moreover, specific

arrangements in the EU context and bilateral agreements with third countries ensure the effectiveness of Article 37(3).

2. A new Criminal Code has entered into force on 1 February 2014. It regulates similar provisions as the previous Code regarding final decisions rendered in another Party. Article 41(3) of the Criminal Code lays down that "to establish the existence of a repeat offense, consideration shall also be given to a conviction judgment returned in another country, for a violation that is also included in Romanian criminal law, if that conviction has been recognised under the law". This applies if the decision has been recognised domestically by a Romanian court. Committing a crime after a definitive decision of court or after executing a penalty constitutes an aggravating circumstance under Romanian criminal law. If a conviction in another State is not accounted for as recidivism, it may be taken into account while deciding upon the severity of a sentence.

Conclusion/Recommendation

3. The Romanian authorities are in a position to take into account final decisions taken in another Party in relation to offences established in accordance with the Convention.

Russian Federation

1. The Russian Criminal Code does not contain any provisions that would obligate the court to take into account a person's previous conviction in a foreign state and to consider this circumstance in determining whether the offence is a repeated one. However, according to Article 60(3) of the Criminal Code, when imposing a punishment, the "personality of the convict" shall be considered alongside with the nature and degree of public danger of the crime. Hereunder, the fact of a person being convicted abroad can be taken into account by a court when passing the sentence.

2. By virtue of the provisions of the Minsk Convention (22 January 1993) of the Member States of the Commonwealth of Independent States, as signed by the Russian Federation, the judges may take into account the guilty person's previous conviction as an aggravating circumstance. Such is however not directly included in legislation.

3. No case examples concerning the matter have been provided.

Conclusion/Recommendation

4. Although the Russian legislation provides that the perpetrator's prior life to the offence shall be assessed, it is recommended to consider introducing a specific notion of international recidivism into domestic legislation. The Russian authorities are further recommended to consider adopting legislative or other measures which provide that recidivism accounts for an aggravating circumstance and/or harsher penalty.

San Marino

1. The legal system of San Marino grants the possibility for courts to take into account international recidivism (Art.18 CC). Moreover, "repeated infringement" is considered as an aggravating circumstance for the application of a penalty in the context of criminal proceedings. However, under the domestic legal system in force, this term does not cover criminal offences previously perpetrated by the offender on a territory that does not fall

under the jurisdiction of the Criminal Code of San Marino. No cases of application of the provision could be provided.

Conclusion/Recommendation

2. The Sammarinese authorities have transposed the provisions of Article 11 in domestic law.

Serbia

1. The Serbian Criminal Code establishes the notion of recidivism, as Article 55 allows the competent authorities to give special consideration to the repetition of a certain offence. Moreover, the public prosecutor is obliged to obtain data about a suspect, including data about prior convictions, before concluding an investigation (Article 309 Criminal Procedure Code).

2. The Serbian authorities indicate that Article 55 of the CC has such a general wording, that it can be implemented regardless of the criminal offence and the jurisdiction that issued the final sentence for that offence.

3. Moreover, Serbia is contracting party to 52 bilateral agreements governing all or some forms of judicial co-operation in criminal matters with 31 countries. Direct judicial co-operation is established with four countries (Slovenia, Montenegro, Bosnia & Herzegovina and "the former Yugoslav Republic of Macedonia"). Although no specific cases were provided in the Serbian response, the Montenegrin authorities had illustrated their response with a case example of data exchange and MLA with the Serbian authorities. Considering this example, as well as the bilateral agreements in place, it appears that Serbia has practically implemented the provisions of Article 11.

Conclusion/Recommendation

4. The Serbian legislation complies with Article 11 insofar as the courts are required to assess the perpetrator's prior life to the offence; however it is recommended to consider adopting legislative or other measures to implement the specific international recidivism standard into Serbian legislation, as well as to lay down an aggravating circumstance or harsher penalty in such case of (international) recidivism.

Slovak Republic

1. The Slovak legislation enables Slovak courts to take into account final foreign judgments, under the circumstances stipulated in Articles 515 and 516(2) of the Code of Criminal Procedure. Besides, the Slovak Republic has transposed the relevant EU Decisions, such as Council Decision 2009/316/JHA on ECRIS and Framework Decision 2009/315/JHA, which require that the Slovak Prosecutor's Office informs the competent authorities of other EU Member States about all final judgments issued against nationals of other Member States of the EU or legal persons which have a seat in other Member States of the EU.

2. A final judgment handed down abroad carries similar weight as a domestic judgment, if recognised by a Slovak court or if processed through ECRIS. Previous decisions would constitute an aggravating circumstance for recidivism.

3. No case examples are available with regard to the practical application of Article 11 in the Slovak Republic.

Conclusion/Recommendation

4. The Slovak authorities have transposed the provisions of Article 11 in domestic law.

Slovenia

1. The Slovenian authorities provided the relevant provision in the Criminal Code, which is stipulating that the court "shall consider all circumstances, which have an influence on the grading of the sentence (mitigating and aggravating circumstances), in particular: […] the perpetrator's past behaviour" (Art. 49(2) CC). Moreover, the court shall pay particular attention to, *inter alia*, whether the earlier offence is of the same type as the new one in case of recidivism. Besides, established jurisprudence provides judicial authorities the legal powers to consider and recognise, during the process of sentencing, previous foreign judgments. No further information was provided regarding aggravating circumstances or a harsher penalty for cases of recidivism.

2. Statistics of court decisions do not cover the data on previous foreign decisions. However, Slovenia referred to one judgment of the Supreme Court (Cf. judgment I Ips 4532/2012-238) in which is stated that "[it is] established jurisprudence that previous judgments issued in another Party are taken into account when [a] Slovene court determines the penalty".

Conclusion/Recommendation

3. Given that the Slovenian legislation indirectly provides for considering previous judgments through the requirement for courts to assess the perpetrator's past behaviour, but also that court practice was established in this regard, the authorities are recommended to consider adopting legislative measures concretely allocating the judicial authorities the power to consider and recognise previous judgments handed down abroad for offences established in accordance with CETS no. 198, as well as to consider introducing an aggravating circumstance or harsher penalty for such cases of (international) recidivism in domestic legislation.

Spain

1. Spanish law provides for the possibility to consider previous decisions handed down in other EU Member States. Concerning other COP States Parties, the court may consider final decisions against natural or legal persons adopted in third countries when handing down a sentence, although the judge is not obliged to do so.

2. The Spanish Criminal Code also includes recidivism as an aggravating circumstance, although it does not become clear whether this provision applies extends to all COP States Parties.

3. However, recidivism as an aggravating circumstance only applies to final decisions against natural or legal persons, adopted in Spain or in an EU Member State.

4. No information has been provided with regard to the practical implementation of Article 11

CETS no. 198.

5. The Spanish Council of the Judiciary offers specific training regarding criminal judicial co-operation, including economic crimes. Judges are provided with information on international instruments and tools they can apply in order to improve the investigation and prosecution of such crimes.

Conclusion/Recommendation

6. The Spanish authorities have incorporated the provisions of Article 11 in domestic law. Still, they are recommended to ensure that final decisions handed down in any COP State Party may be considered as aggravating circumstances in domestic cases.

Sweden

1. The Swedish authorities indicated that there is no mandatory requirement for domestic courts to inquire about foreign convictions. Such inquiries may, however, be made by the prosecutor or the court. The Swedish authorities were unable to provide any examples demonstrating the application of Article 11.

2. Concerning international recidivism, it is stipulated that "the fact that the defendant has a prior conviction, Swedish or foreign, may affect sentencing according to the Penal Code". This may constitute a circumstance which increases the seriousness of the offence at hand or result in an increase of the maximum penalty for the offence (Penal Code, Chapter 26(3) and Chapter 29(4)). To this regard a foreign judgment may be given the same effect as a Swedish judgment.

Conclusion/Recommendation

3. Swedish legislation complies with Article 11.

"The former Yugoslav Republic of Macedonia"

1. The response submitted to the questionnaire indicated that "the former Yugoslav Republic of Macedonia" does not presume collection of evidence from other states, but, if there is evidence of previous criminal records of conviction of the same person in another state, this counts as evidence of his criminal background and thus constitutes an aggravating circumstance that affects the determination of the sentence (Articles 39-46 Criminal Code). There are cases in the Prosecutor's Office where the competent court considered convictions handed down abroad as an aggravating circumstance when determining the sentence, but no actual data was provided.

Conclusion/Recommendation

2. The legislation complies with Article 11 of the Convention.

Türkiye

1. The Türkiye authorities provided the procedural and legal framework for transposition of Article 11 into domestic law. When a judgment finalised abroad is registered in the Türkiye central criminal record registry system, judicial organs become aware of the judgment of convictions. Such criminal convictions and criminal records issued by foreign courts are

recorded in the Türkiye data system once they are notified to the Türkiye state. The sharing of criminal records with foreign entities takes place under CETS No. 30 (CoE European Convention on Mutual Assistance in Criminal Matters) and CETS no. 198 on crimes falling within either scope. A total of 97.434 foreign criminal records, most of which are from CoE Member States, were notified to Türkiye between 2013 and 2017.

2. Moreover, (international) recidivism is regulated through Article 58 of the Türkiye Criminal Code. Repetition of a criminal offence can affect the conditions under which the sentence is executed. Hence, it is not directly related to determining the penalty to be imposed, but the period of time a repeat offender spends in prison is longer than that of a non-repeat offender. A certain measure indicating harsher penalties is therefore enforced. Although the same article clearly states that the judgments of foreign courts shall not be subject to recidivism, some predicate offences of money laundering (in particular, looting, fraud, production and trade of narcotics or psychotropic substances, and counterfeiting money or valuable stamps) can be subject to recidivism and are thus an exception to the Türkiye recidivist principle.

Conclusion/Recommendation

3. Türkiye legislation is in line with the provision of Article 11 of the Convention, although it is recommended to ensure that all predicate offences of money laundering in foreign courts' judgments can be subject to recidivism.

Ukraine

1. In the response to the questionnaire, Ukraine cited Article 9 of the Ukrainian Criminal Code, which states that "a judgment passed by a foreign court may be taken into account where a citizen of Ukraine, a foreign national, or a stateless person have been convicted of a criminal offence committed outside Ukraine and have committed another criminal offence on the territory of Ukraine". As supplementary information the authorities indicated that "the sentence of a foreign state court, the recidivism of crimes, the unexpired penalty or other legal consequences of a sentence of a foreign state court in Ukraine are taken into account during the qualification of a new crime and the sentencing under the general rules of the criminal process». Recidivism accounts for aggravating circumstances, although a harsher penalty is provided for in the law under certain circumstances. The response to the questionnaire on Article 11 is also further supported by one practical case in which international recidivism led to aggravating circumstances when the court decided on the sentence.

Conclusion/Recommendation

2. The Ukrainian legislation is in compliance with Article 11.

United Kingdom

1. The authorities of the United Kingdom indicated that there are no specific references in UK legislation to a possibility of taking into account the decision of a court in another Party when determining a penalty. However, the Rules of Court allow previous non-UK convictions to be taken into account. Any action would need to be taken in accordance with the Rules and would be a matter for the Court to decide. International recidivism accounts for aggravating circumstances rather than a separate penalty when a court determines a penalty for an offence.

Conclusion/Recommendation

2. Given that there is no explicit legal provision or jurisprudence granting the possibility for the courts to take into account the international recidivism as required under the Convention, it is recommended to the United Kingdom to introduce within the national legal framework the principle of international recidivism.

Annex I – Table with States Parties' responses

Country	Submitted response	Previous decisions abroad are considered	Aggravating circumstance[9]	Practical implementation[10]
Albania	Yes, 02/04/2018	Yes	Yes, harsher penalty	No information provided
Armenia	Yes, 03/04/2018	Yes	Yes, aggravating circumstance	No
Azerbaijan	Yes, 30/04/2018	No	No information provided	No information provided
Belgium	Yes, 18/04/2018	Yes, but only from EU Member States	Not necessarily[11]	No information provided
Bosnia & Herzegovina	yes, 26/03/2018	yes	Yes, aggravating circumstance	Yes, court practice
Bulgaria	Yes, 04/04/2018	Yes, but only upon international agreement	Yes, aggravating circumstance	No information provided
Croatia	Yes, 29/03/2018	Indirectly[12]	Not necessarily	No information provided
Cyprus	Yes, 30/03/2018	Yes, but only from EU Member States	No information provided	No information provided
Denmark	Yes, 01/05/2018	Yes	Yes, aggravating circumstance	No information provided
Estonia	Yes, 17/05/2023	Yes	Not necessarily	No information provided
France	Yes, 17/04/2018	Yes, but only from EU Member States	Not necessarily	No information provided
Georgia	Yes, 28/03/2018	Yes	No information provided	No information provided
Germany	Yes, 16/04/2018	Yes	Not necessarily	No
Greece	Yes, 30/05/2018	Yes	Yes, aggravating circumstance	No information provided
Hungary	Yes, 28/03/2018	Yes	Yes, aggravating	No information provided

[9] Is it provided in the law that recidivism accounts for an aggravating circumstance or a harsher penalty?

[10] The effective implementation of Article 11 shall not be assessed, but authorities are invited to demonstrate application of the provision through provision of exemplifying cases. Such supporting information can illustrate good practice.

[11] Recidivism does not necessarily account for aggravating circumstances or a harsher penalty, but is taken into account in determining the penalty.

[12] The court shall assess all the circumstances affecting the severity of punishment, including the 'perpetrator's prior life'

			circumstance	
Italy	Yes, 11/04/2018	Yes	Not necessarily	Yes
Latvia	Yes, 21/03/2018	Indirectly	Yes, aggravating circumstance	No information provided
Lithuania	Yes, 12/04/2021	Yes	Yes, aggravating circumstances	No information provided
Malta	Yes, 12/04/2018	Yes	Yes, harsher penalty	Yes, court practice
Monaco	Yes, 04/05/2020	Yes	Yes, harsher penalty	No
Montenegro	Yes, 26/03/2018	Indirectly	Not necessarily	Yes, Serbian example
Netherlands	Yes, 18/04/2018	Yes	Yes, aggravating circumstance	No information provided
Poland	Yes, 22/03/2018	Indirectly, and only from EU Member States	Yes, harsher penalty	Yes, court practice
Portugal	Yes, 28/03/2018	Yes	Yes, harsher penalty	No
Republic of Moldova	Yes, 30/03/2018	Yes	Yes, aggravating circumstance	Yes, court practice
Romania	Yes, 15/03/2018	Yes	Yes, aggravating circumstance	Yes, court practice
Russian Federation	Yes, 10/07/2018	Indirectly	Not necessarily	No information provided
San Marino	Yes, 09/04/2018	Yes	Yes, aggravating circumstance	No
Serbia	Yes, 02/04/2018	Indirectly	Yes, aggravating circumstance	Yes, 52 bilateral agreements with 31 countries
Slovak Republic	Yes, 12/07/2018	Yes	Yes, aggravating circumstance	No
Slovenia	Yes, 13/04/2018	Indirectly and court practice	Not necessarily	Yes, court practice
Spain	Yes, 16/04/2018	Yes	Yes, aggravating circumstance (for EU only)	No information provided
Sweden	Yes, 03/04/2018	Yes	Yes, harsher penalty	No
“The former Yugoslav Republic of Macedonia”	Yes, 22/02/2018	Yes	Yes, aggravating circumstance	Yes, court practice
Türkiye	Yes, 30/03/2018	Yes	Yes, harsher penalty	Yes, extensive data exchange

Ukraine	Yes, 30/03/2018	Yes	Yes, aggravating circumstance	Yes, court practice
United Kingdom	Yes, 13/04/2018	No	Yes, aggravating circumstance	No

Annex II – the Questionnaire in English

Introduction

At its 9th meeting, held in Strasbourg from 21 to 22 November 2017, the Conference of the Parties to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS no. 198) decided to initiate the application of a horizontal thematic monitoring mechanism, for the initial period of two years. Such review would look at the manner in which all States Parties implement selected provisions of the Convention. It would be documented in a thematic monitoring report, to be adopted by the Conference of the Parties at its next Plenary meeting. To that effect, the Conference of the Parties adopted a new Rule 19*bis* of the Rules of Procedures (which is attached for information to the mail with which this questionnaire was distributed). The Conference of the Parties decided that the first thematic monitoring report should deal with Article 11 as well as with Article 25(2) and 25(3) of the Convention.

Parties are therefore invited to submit information on the implementation of these provisions on the basis of the questionnaire provided below.

Information submission and deadline

The questions below reflect the relevant parts of the questionnaire adopted by the Conference of Parties at its 2nd meeting (Strasbourg, 15-16 April 2010). The questionnaire enables Parties to structure the information they provide in view of gathering the necessary information and data on the implementation of the Convention's provisions. Parties are kindly asked to keep their replies as concise and brief as possible.

While filling in the questionnaire, Parties may find the Explanatory Report of the CETS no. 198 helpful in order to structure their replies.13 Parties are further invited to consider the Interpretative Notes on the implementation of Articles 11 and 25(2), which was adopted by the Conference of Parties at its 9th meeting (Strasbourg 21-22 November 2017).14

The examples that Parties wish to provide may cover both cases of successful and/or unsuccessful cooperation with other Parties. The reference period to take into account for data collection should be the period starting from January 2015.

Replies to this questionnaire will be treated as confidential. Should Parties provide cases/examples, details (e.g. name(s) of the accused, some other details which may reveal the identity of the accused or even the victim) can be 33uthorized if they prefer so.

Parties are invited to send replies to the Secretariat, no later than 30 April 2018, to: DGI-COP198@coe.int.

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[13] The document can be found on the Council of Europe website under: https://rm.coe.int/16800d3813.

[14] The document can be found on the COP website under: https://rm.coe.int/interpretative-notes-cop198-9th-meeting/168076ce79. A copy of this document is also attached for information to the mail with which this questionnaire was distributed.

Contact persons

Please indicate the name and contact numbers of the person(s) within your country who can be contacted in relation to the reply to the questionnaire.

Name	
Job title	
Institution	
e-mail:	

QUESTIONNAIRE

Article 11 – Previous decisions

What legislative and other measures in your jurisdiction provide for the possibility of taking into account, when determining the penalty, final decisions against natural or legal persons taken in another Party in relation to offences established in accordance with the CETS no. 198?

Answer

Information to support the answer

Article 11 is a new standard dealing with international recidivism. It authorized that money laundering and financing of terrorism are often carried out transnationally by criminal organisations whose members may have been tried and convicted in more than one country. Article 11 provides for a mandatory requirement for the Party to take certain measures but does not place any positive obligation on courts or prosecution services to take steps to find out about the existence of final convictions pronounced in another State Party. Its wording is as follows:

"Each Party shall adopt such legislative and other measures as may be necessary to provide for the possibility of taking into account, when determining the penalty, final decisions against a natural or legal person taken in another Party in relation to offences established in accordance with this Convention."

Parties are expected, at a minimum, to provide the relevant **articles of the domestic legislation** dealing with this issue, e.g. from their criminal code, criminal procedures code, or other legislation. In addition, Parties may also support their response with case studies, any measure regulating the information exchange with other State Parties on criminal records, or any information on how judges are informed of previous decisions in another Party in practice.

Annex III – Rules of Procedure: 19*bis*

Rule 19[2] - Procedure for monitoring the implementation of the Convention

In respect of its function under Article 48 paragraph 1a of the Convention, the Conference of the Parties will apply the following procedures:

Questionnaire

1. The Conference of the Parties shall prepare, within six months from its first meeting, a Questionnaire for its use in the monitoring of the proper implementation of the Convention (hereinafter "the Questionnaire").

2. The Questionnaire will seek information on the implementation of provisions in the Convention which are not covered by other relevant international standards on which mutual evaluations are carried out by FATF, MONEYVAL and other equivalent AML/CFT assessment bodies (the FATF style regional bodies, the International Monetary Fund and the World Bank).

[2] At its 9th Plenary the COP decided to suspend the procedure under Rule 19 and to apply a transversal thematic monitoring in line with the newly adopted Rule 19bis for an initial period of two years with a further stocktaking discussion on the matter at its 11th Plenary in 2019. The follow up process under Rule 19 will continue at least until further discussion in 2018.

Annex IV – State submissions

Albania	According to Article 50 of the Criminal Code, the repetition of the crime constitutes an aggravating circumstance. Final decisions against natural persons rendered by a court of another Party can be taken into account when determining the penalty if they are authorized by an Albanian court. As regards legal persons, according to Article 21 of the Law "on Criminal Liability of Legal Persons", if a legal person has committed a criminal offence and within a 5 year- period afterwards if the latter commits a new offence or contravention a new fine or penalty is applied – the amount of the fine and the duration of the penalty in these cases is doubled or tripled. The CETS N° 198 establishes a mandatory requirement to take into account final decisions against a natural or legal person rendered in another Party in relation to offences established in accordance with the Convention. The Criminal Procedure Code of Albania establishes the recognition of the final decisions as a precondition for taking them into account when determining the penalty.
Armenia	Article 17 of the Criminal Code of the Republic of Armenia envisages that a court's judgment in a foreign country can be taken into account, provided a citizen of the Republic of Armenia, foreign citizen or a stateless person was convicted for a crime committed outside the Republic of Armenia, and committed a repeated crime in the Republic of Armenia. The same Article provides that recidivism, unserved punishment or other legal consequences of a foreign court ruling are taken into account when qualifying the new crime, assigning punishment, and exempting from criminal liability or punishment. In terms of the recognition of a foreign State's court judgment, the Criminal Procedure Code of the Republic of Armenia comes into play, where Chapter 54^3 provides for the recognition of foreign and international courts' judgments in the Republic of Armenia and its legal consequences. In particular, Article 499^8 envisages the recognition of foreign judgments in Armenia, Article 499^9 provides for the terms of the recognition of judgments and the grounds for refusal, and Article 499^{11} provides the legal consequences of the recognition of a foreign judgment, which envisages that the recognition of a foreign court's judgment generates the same legal consequences that a domestic court's final judgment would generate. Moreover, Article 5 of the Constitution of the Republic of Armenia authorized the special role of the International Treaties in the Armenian legal system and envisages that in case of inconsistencies between the norms of the domestic legislation with the RA international treaties, the norms provided by the RA international treaties prevail. It is vital to note that some treaties that the Republic of Armenia is a party to provide terms for recognition of judgments. For example, the 2002 Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters provides regulations for recognition of judgments by the Convention parties. Further, Article 51 of the 1993 Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters states that judgments rendered by a competent judicial authority of the Contracting Parties in regard to civil and family matters including amicable settlements which have the effect of *res judicata* and notary's acts in respect to financial obligations shall be enforced on territory of other Contracting Parties. The judgments rendered in criminal cases concerning reimbursement of damage are also to be enforced. The procedure for enforcement of judgments is regulated by the law of the Contracting Party

	in which territory the judgment is to be enforced. In response to your request on statistics or case examples related to the recognition of foreign court decisions, please be informed that there has been only one case related to ML, where there was an issue of recognition. Namely, a mutual legal assistance request was received from another country stating that criminal case was initiated against a person residing in Armenia with a court decision issued on seizure of the property. In that specific case the foreign court's decision was recognized by the Armenian authorities based on the respective provisions of the Criminal Procedure Code and seizure of property was initiated. Meanwhile, Armenian authorities were informed by the respective authorities of the requesting state that criminal proceedings against that person had been terminated; thus Armenian LEAs stopped the seizure procedure. There have also been cases unrelated to ML, where a foreign court verdict was recognized by Armenian courts for accumulating the punishments. Should that be of interest, we can further provide case examples as appropriate. While we do not have any comments for Article 25, there is some data to be included in the analysis of Article 11. In particular, it is recommended for the country "to include in domestic law that (international) recidivism accounts for an aggravating or harsher penalty". Nonetheless, we do have this provision under Armenian legislation. Namely, Article 63 of the Criminal Code of RA provides for the aggravating circumstances for a crime. The article stipulates as follows: "1. *Circumstances aggravating the liability and punishment are as follows:* 1) *Recidivism of a crime; committing crime as a trade, occupation*…"
Azerbaijan	Currently there are no legislative or other measures in your jurisdiction provide for the possibility of taking into account, when determining the penalty, final decisions against natural or legal persons taken in another Party in relation to offences established in accordance with the CETS no. 198. This matter is expected to be addressed by 2019 in the framework of implementation of item 2.6 "Taking measures to improve legislation on forfeiture and recovery of criminally obtained funds or other property" of the "National Action Plan on combating legalization of criminally obtained funds or other property and financing of terrorism for 2017-2019" adopted in November 2016.
Belgium	La récidive internationale est prévue dans l'article 57bis juncto 99bis du Code pénal suite à la transposition de la décision cadre 2008/675/JAI du Conseil du 24 juillet 2008 relative à la prise en compte des décisions de condamnation entre les États membres de l'Union européenne à l'occasion d'une nouvelle procédure pénale – voir titre 8 (article 621) de la loi du 25 avril 2014 portant des dispositions diverses en matière de Justice. L'article 99bis code pénal inséré par la Loi du 25 avril 2014 prévoit : *« Les condamnations prononcées par les juridictions pénales d'un autre Etat membre de l'Union européenne sont prises en compte dans les mêmes conditions que les condamnations prononcées par les juridictions pénales belges, et elles produiront les mêmes effets juridiques que ces condamnations.* *La règle mentionnée à l'alinéa 1er n'est pas applicable à l'hypothèse visée à l'article 65, alinéa 2. »* Au niveau de l'Union européenne, les condamnations (finales) à l'encontre de personnes physiques ou morales par une autre Partie, pour autant que cette Partie et

	un Etat membre de L'Union européenne sont donc tenu en compte en vertu du code pénal belge. L'article 11 de la Convention CETS 198 est donc actuellement partiellement appliqué.
Bosnia & Herzegovina	Article 48. of CC BiH provides that the court shall impose the punishment on the perpetrator of the criminal offence within the limits provided by law for that particular offence, having in mind the purpose of punishment and taking into account all the circumstances bearing on the magnitude of punishment (extenuating and aggravating circumstances), and, in particular: the degree of guilt, the motives for perpetrating the offence, the degree of danger or injury to the protected object, the circumstances in which the offence was perpetrated, *the past conduct of the perpetrator*, his personal situation and his conduct after the perpetration of the criminal offence, as well as other circumstances related to the personality of the perpetrator. Furthermore, paragraph 2 of the same Article specifies that in ruling on the punishment for the criminal offence in recidivism, the court shall take into special consideration whether the most recent offence is of the same type as the previous one, whether both acts were perpetrated from the same motive, and it will also consider the period of time which has elapsed since the pronunciation of the previous conviction, or since the punishment has been served or pardoned. Article 48. CC BiH is applied by the courts in practice and international recidivism is considered when deciding a penalty. Similar provisions are included in all three non-state level Criminal Codes art.49. of CCFBiH, art. 37. CC RS, art. 49.CCBDBiH). The authorities emphasized that the Assessment Report of the Conference of the Parties to CETS no°198 for Bosnia and Herzegovina stated that Article 11 was properly implemented. Further to this response the authorities sent the following documents: • Examples of international legal assistance for criminal offenses of money laundering and terrorist financing • Bilateral agreements for the execution of foreign court decisions in criminal matters • Transfer and the execution of verdicts • Criminal Code
Bulgaria	Criminal Code: Chapter One „Objective and scope of application of the Criminal Code", Section II „Scope of application of the Criminal Code" „Article 8 *(Previous text of Article 8, SG No. 33/2011, effective 27.05.2011)* *(1) Any sentence of a foreign court for a crime to which the Bulgarian Criminal Code is applicable shall be taken into consideration in the cases specified in an international agreement to which the Republic of Bulgaria is a party.* *(2) (New, SG No. 33/2011, effective 27.05.2011) Any binding conviction decreed in another EU Member State for an act which constitutes a crime according the Bulgarian Criminal Code shall be taken into consideration in every criminal proceedings against the same person conducted in the Republic of Bulgaria."* Convention CETS 198 falls into the scope of Art. 8, para. 1 of the Criminal Code, as it is *„an international agreement to which the Republic of Bulgaria is a party"* under the meaning of the Law on the International Treaties of the Republic of Bulgaria.

Croatia	According to the article 47. Of Croatian Criminal Code when determining the type and measure of punishment, the court shall, starting from the degree of guilt and the purpose of punishment, assess all the circumstances affecting the severity of punishment by type and measure of punishment (mitigating and aggravating circumstances), and especially the degree of threat to or violation of a legally protected good, motive for having committed the criminal offence, degree to which the perpetrator's duties have been violated, manner of commission and the consequences arising from the commission of the criminal offence, perpetrator's prior life, his/her personal and pecuniary circumstances and his/her conduct following the commission of the criminal offence, relationship to the victim and efforts to repair the damage. The severity of punishment shall not exceed the degree of guilt. Perpetrators prior life includes criminal records data. Criminal records are kept in the Ministry of Justice of Croatia in such a manner as to enable the courts and the State Attorney's offices to have direct access to data in real time (Criminal procedure Act, article 185.). Criminal records are kept for natural and legal persons who have been sentenced for criminal offenses in the Republic of Croatia. Criminal records are also kept for nationals of the Republic of Croatia and for legal persons with headquarters in the Republic of Croatia who for criminal offenses are legally convicted outside the Republic of Croatia if these data are submitted to the Ministry (Law on Legal Consequences of Judgment, Criminal Records and Rehabilitation). Regarding the EU Member States, data is transmitted through the ECRIS system, and regarding other countries data is submitted on the basis of bilateral agreements (typically every 6 months). Once data is inscribed in criminal records, for courts there is no difference between final decisions brought by domestic courts or those brought by courts of another Party, when determining the sentence. Consequently, it means that there is not only possibility but obligation to take into account final decisions against natural or legal persons taken in another Party when determining the penalty (including penalties in relation to offences established in accordance with the CETS no. 198.). With regard to the mutual legal assistance regulations, Croatian Act on international legal assistance in criminal matters proscribes that the Ministry of Justice shall at least once a year inform the competent foreign authority about all penal decisions and measures included in criminal records with relation to the citizens of the foreign state in question, unless provided otherwise in an international treaty. Also, when needed in specific criminal proceedings, the court or other competent judicial authority can seek another state an extract from criminal record with request for mutual legal assistance, in accordance with the provisions of multilateral conventions (for example CoE European Convention on Mutual Assistance in Criminal Matters signed in 1959) or existing bilateral agreements (for example bilateral Treaty on Mutual legal assistance with Bosnia and Herzegovina signed in 1996). According to Criminal Procedure Act (article 418.), data from criminal records as well as other data on convictions for punishable offences may be read only as the last evidence before proceeding to the interrogation of the accused at the close of evidentiary proceedings, unless the panel is to decide on measures for securing the presence of the accused or other measures of caution.

	"Article 11 The Republic of Croatia does not have the required statistics. It should be noted that in every criminal proceeding state attorney and court require data from criminal records, as it was explained in previous answers. As a case example, attached you may find one example of extract from criminal records that contains both domestic and foreign courts verdicts. Name of convicted person has been changed and other personal date has been deleted.
Cyprus	With the amendment of the Criminal Procedure Law, Cap. 154, amending Law 111(I)/2011 (Article 80(a)), the Court has the power, when determining the sentence or at any other stage of the criminal proceedings, to take into account previous convictions issued by Criminal Courts of EU member states against the accused for offences constituting offences also according to the laws of the Republic, in the same manner and extent which could have taken into account previous convictions issued by the Courts in the Republic. The Court, for the purposes of taking into account previous convictions, should have adequate information relating, among others, to the identity of the accused, the contents of the conviction and the sentence.
	Such statistics are not kept. The Criminal Procedure Law covers only E.U. Member-States. (Copy of the relevant section is attached in Greek). However, the International Conventions have, upon ratification, superior force compared to domestic Laws, and their provisions are directly applicable. Even with the lack of specific reference to third countries, if the prosecution has information about criminal convictions in third countries they are presented to the Court and may be taken into account for sentencing. As a first comment for both Articles as a linguistic correction the reference to "Cypriote" should be replaced to "Cypriot". Regarding Article 11, it is noted that even though the domestic legislation does not mention that previous convictions issued by criminal courts of EU Member States accounts for a harsher penalty, nevertheless this is a matter which is always taken into account by the Court when imposing the penalty against the accused as an aggravating factor leading to a harsher penalty.
Denmark	Under section 84 (2) of the Criminal Code, the court may refer equally to judgments delivered outside the Danish state and judgments delivered in Denmark when imposing an increased penalty in case of repetitive offending. In accordance with the section 81 (1) of the Criminal Code, it is considered as an aggravating circumstance if it is a case of repetitive offending.
Estonia	Previous convictions/decisions can be taken into account while qualifying the offence pursuant to the Penal Code as well as during determining the type and severity of the sentence. § 394 of the Penal Code is as follows: "(1) Money laundering is punishable by a pecuniary punishment or up to five years' imprisonment. (2) The same act: 1) by a group; 2) at least twice; 3) on a large-scale basis; or 4) if committed in the course of the economic or professional activities of the obligated person, is punishable by two to ten years' imprisonment."

	The point 2 of the subsection (2) means that repeated offence is an aggravative circumstance. Pursuant to the Criminal Records Database Act Article 5(1), the information concerning punishments of persons entered in the database has legal effect for ascertaining the punishment record of the person and recurrence of criminal offences or misdemeanours committed by the person until deletion of the information. Based on CoE instruments, Parties can send information on convictions to others. In case information about the conviction by other Party is received, the necessary information would be entered to the Database. According to the point 7) § 6 of the Criminal Records database: "Information concerning punishments of persons shall be entered in the database on the basis of the following court decisions and decisions of the following officials: a foreign conviction in a criminal matter against an Estonian citizen or an alien who holds a residence permit or right of residence in Estonia which has entered into force, if information concerning his or her punishment has been communicated by a foreign state or if an Estonian court has recognised the judgment of conviction.". According to the § 20 subsection (1) point 3) an investigative body for conducting pre-trial proceedings in a criminal matter and point 7) a prosecutor's office for the purpose of conducting criminal proceedings and planning of surveillance activities can have access to the Criminal Records Database. In addition § 30 of the Criminal Records Database states that The Centre of Registers and Information Systems has the right to submit a query to a central authority of another member state concerning the information entered in the criminal records, if the information is requested: by a court for the purposes of hearing a matter subject to proceedings or by an investigative body relating to a criminal matter subject to proceedings. Therefore both domestic decisions as well as decisions made by other Parties which have been entered into the Database can be taken account. As regards information exchange with the EU Member States, the criminal records and information about convictions are being shared by using the ECRIS information system. In Europe relevant mechanism can also be European Convention on Mutual Assistance in Criminal Matters.
France	S'agissant des décisions prises par un Etat membre de l'Union européenne : L'article 132-23-1 du code pénal dispose que « pour l'application du présent code [pénal] et du code de procédure pénale, les condamnations prononcées par les juridictions pénales d'un Etat membre de l'Union européenne sont prises en compte dans les mêmes conditions que les condamnations prononcées par les juridictions pénales françaises et produisent les mêmes effets juridiques que ces condamnations ». Cet article prévoit, en particulier, la prise en compte des condamnations pénales étrangères dans la détermination de l'état de récidive légale. L'article 132-23-2 du même code ajoute que « pour l'appréciation des effets juridiques des condamnations prononcées par les juridictions pénales d'un Etat membre de l'Union européenne, la qualification des faits est déterminée par rapport aux incriminations définies par la loi française et sont prises en compte les peines équivalentes aux peines prévues par la loi française ». En outre, les qualifications pénales des jugements étrangers sont déterminées par rapport aux incriminations définies par la loi française et prennent en compte les peines équivalentes aux peines prévues par celle-ci. De telles dispositions n'existent pas pour les Etats non-membres de l'UE. D'une manière générale, les condamnations prononcées contre les ressortissants français par des juridictions étrangères (prononcées par un Etat membre de l'UE ou non) sont enregistrées dans les données du Casier judiciaire national, si elles font l'objet d'un avis aux autorités françaises ou si elles ont été exécutées en Portugal (notamment dans

	le cadre d'une procédure de transfèrement fin de peine, s'agissant des condamnations hors UE), en application d'une convention ou d'un accord internationaux (art. 768 8° du code de procédure pénale). Les autorités judiciaires françaises disposent donc de cette information lorsqu'elles sollicitent le casier judiciaire d'une personne mise en cause. S'agissant des condamnations définitives prononcées contre nos nationaux par les juridictions des Etats-membres de l'Union européenne, leur transmission au Casier judiciaire national se fait, depuis l'Etat de condamnation et de manière automatisée, par ECRIS (European criminal record information system ou système européen d'information des casiers judiciaires), conformément à l'article 4 de la directive du Conseil 2009/351 du 26 février 2009 et à la décision-cadre du Conseil 2009/316/JAI du 6 avril 2009. Ces textes imposent à l'Etat de nationalité de conserver l'intégralité des avis de condamnations prononcées par les juridictions des Etats-membres contre leurs nationaux. Les autorités judiciaires françaises peuvent donc obtenir, dans un délai de dix jours maximum, les informations sur la totalité des antécédents judiciaires contenus dans les casiers judiciaires de 26 pays de l'Union européennPortugalFrance n'étant pas connectée avec Portugal le Portugal). Pour les magistrats, l'accès à ces informations passe par l'enregistrement des éléments d'identité de la personne sur le site intranet WEB B1. En outre, conformément au principe de reconnaissance mutuelle des effets des condamnations pénales au sein de l'Union européenne (décision-cadre n°2008/675/JAI du 24 juillet 2008), les condamnations prononcées par les juridictions pénales des Etats-membres de l'Union européenne doivent être prises en compte dans les mêmes conditions que les condamnations prononcées par les juridictions pénales françaises (art. 132-23-1 du code pénal), ce qui permet ainsi à une juridiction pénale française de retenir l'état de récidive en utilisant comme premier terme une condamnation prononcée à l'encontre de ce ressortissant par une juridiction d'un autre Etat-membre de l'Union européenne. On peut aussi ajouter qu'une telle condamnation a des conséquences immédiates sur les délais nécessaires pour obtenir la réhabilitation d'une condamnation pénale française (art. 133-16-1 du code pénal). S'agissant de l'article 11 relatif à la prise en compte des condamnations antérieures prononcées dans d'autres Etats "Each Party shall adopt such legislative and other measures as may be necessary to provide for the possibility of taking into account, when determining the penalty, final decisions against a natural or legal person taken in another Party in relation to offences established in accordance with this Convention." Sur ce point, si l'on veut contourner la difficulté relevée par le rapport, il me semble qu'il est possible d'adopter une lecture plus souple de la stipulation que celle exposée par nos autorités, laquelle se concentre exclusivement sur le mécanisme très encadré de la récidive légale. En effet, le texte n'impose pas que ces condamnations antérieures entraînent une aggravation des sanctions mais uniquement qu'elles puissent être prises en compte. Ainsi, sans revenir sur les éléments exposés sur ce point, il pourrait être opportun d'élargir l'analyse de la même manière que les Pays-Bas ont pu le faire en insistant sur la liberté pour le juge de déterminer la peine adaptée dans le cadre du maximum légal prévu, permettant ainsi de prendre en compte des éléments de personnalité très divers ("as a general principle of criminal procedural law, in the Dutch system of statutory penalty maximums, there is room to take account of previous convictions within these maximum penalties". These may also include relevant foreign convictions. Recidivism, it is indicated, is therefore seen as a general aggravating circumstance. No further information was provided with regard to the specific legislative provision or demonstrating the practical implementation through case law or statistics.")

Georgia	Law of Georgia on International Cooperation in Criminal Matters stipulated rules about effect of judgements delivered by foreign competent courts on proceedings conducted in Georgia, According to the Article 56 of this Law, during proceedings conducted in Georgia against a person, the authority conducting the proceedings shall take into account the judgement delivered against the person for another crime in a foreign state if it is envisaged by a relevant international agreement (including an ad hoc agreement). Considering that Georgia is a party to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism and to the European Convention on the International Validity of Criminal Judgments, decisions against natural or legal persons taken in another Party in relation to offences established in accordance with the CETS no. 198 may be taken into account on proceedings conducted in Georgia. Following our communication in relation to articles 11 and 25 of the convention of 16th May 2005 year and further to your letter of 20th April 2018 year, we would like to inform you, that the provision of Article 11 of the above-mentioned Convention has entrusted to States Parties to adopt legislative measures which allows them to take into consideration the final court decisions made by other Contracting State when determining the sentence. In this regard, the Georgian legislation did not require changes, since the Article 79-"record of conviction" and Article 17-"recidivism" of the Criminal Code of Georgia is interpreted in the way, that does not imply only the decision taken within the State, the person is a convict from the date of entering into force the sentence of conviction until the removal conviction status, regardl'ss of which country's sentence is passed. Furthermore, Law of Georgia on International Cooperation in Criminal Matters stipulated rules about effect of judgements delivered by foreign competent courts on proceedings conducted in Georgia, According to the Article 56 of this Law, during proceedings conducted in Georgia against a person, the authority conducting the proceedings shall take into account the judgement delivered against the person for another crime in a foreign state only where so required by a relevant international or individual agreement. Considering that Georgia is a party of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism and to the European Convention on the International Validity of Criminal Judgments, decisions against natural or legal persons taken in another Party in relation to offences established in accordance with the CETS no. 198 may be taken into account on proceedings conducted in Georgia. In addition, according to Article 7 of the law on Normative Acts of Georgia, international treaties binding for Georgia are part of the Georgian legislation. According to this regulation local authorities are obliged to take into consideration inter alia the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS no. 198) In this regard, we will also inform you that Georgia is state party of European Convention on the International Validity of Criminal Judgments convention. Under Article 56 and Article 57 of the Convention, as a Contracting Party, Georgia undertakes the obligation to take into account any European criminal judgment pronounced against the defendant. As regards statistical information, we would like to inform you that in case of money laundering, there was no case for consideration of a foreign country judgment for identifying the recidivism.

Germany	The requirements imposed by Article 11 of the Convention have been fulfilled under German law. Previous final and binding convictions are to be taken into account as a general rule (cf. Federal Court of Justice, CJ 5 StR 282/07 of 1 August 2007; Bavarian Higher Regional Court, RReg. 2 St 429/77 of 17 March 1978; with regard to taking previous convictions from other EU Member States into account, cf. Bundestag printed paper 16/13673, p. 3 et seq.). In determining the sentence to be imposed, section 46 of the German Criminal Code (*Strafgesetzbuch* – StGB) requires a comprehensive examination of all circumstances. Pursuant to section 46 (2), second sentence SGB, this i'cludes the offender's prior history. As a rule, the court is also to take foreign convictions into account (more details are contained in Bundestag printed paper 18/3122, ibid.). However, the foreign decision may not contradict important principles of the German legal order (Article 6 of the European Convention on Human Rights (*Europäische Menschenrechtskonvention* – EMRK; Article 25, second sentence of the Basic Law (*Grundgesetz* – GG); as per section 73, first sentence of the Act on International Cooperation in Criminal Matte44uthorized44n44*r die internationale Rechtshilfe in Strafsachen* – IRG); section 53a, first sentence of the Federal Central Criminal Register Act (*Bundeszentralregistergesetz* – BZRG)). Decisions by a Member State of the European Union must not be in contradiction to the European Charter of Fundamental Rights (*Charta der Grundrechte der Europäischen Union* – EUGrCh) (Article 6 of the Treaty on the European Union (*Vertrag über die Euopäische Union* – EUV)); Article 47 et seq. EUGrCh; as per section 73, second sentence IRG; section 53a, second sentence BZRG. If special preconditions are met, section 55 StGB allows previous judgments that have not yet been enforced, barred by the statute of limitations or remitted to be included in sentencing. In calculating monetary fines against legal entities and partnerships, it is likewise provided that a comprehensive examination of all circumstances must take place; and this also specifically includes rule violations in the past. No statistical data or case studies exist that would document the consideration of previous, foreign and final and binding criminal convictions or monetary fines in calculating criminal penalties or monetary fines in domestic criminal or monetary fine proceedings.
	Referring to your question I transmit a translation of the relevant provisions mentioned in our answer to your questionnaire. In the attachment you will find an excerpt of the GERMAN CRIMINAL CODE (Strafgesetzbuch, StGB) - translated in English. The complete acts are provided by http: GERMAN CRIMINAL CODE - http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html Act on Regulatory Offences - http://www.gesetze-im-internet.de/englisch_owig/englisch_owig.html

Greece	Article 7 par. 1 of Law 4478/2017, which ratified CETS no. 198, added a provision to article 45 par. 1 of the Greek AML/TF Law (L. 3691/2008), according to which courts trying ML offences take into account final convictions issued by courts of other States Parties to the Convention, for the application of the recidivism provisions of arts 88-93 of the Penal Code. A similar provision was added by article 6 par. 2 L. 4478/2017 in art. 187A par. 6 Penal Code with respect to terrorism financing. As regards the practical aspect of finding out about the existence of final convictions pronounced in another State Party, Greece has adhered to a number of international agreements relating to the exchange of data on criminal records. These include: a) Law 4218/1961, Ratification of the European Convention on Mutual Assistance in Criminal Cases, articles 13 and 22, b) Law 1760/1988, Ratification of the Convention on judicial assistance in criminal cases between the Government of the Greek Republic and the Arab Republic of Egypt, article 11, and c) Law 2312/1995, Ratification of the Convention between the Greek Republic and the Republic of Tunisia on Extradition and Mutual Assistance in Criminal cases, article 11. Moreover, Greece is bound by the most important instruments in this field, namely: a) Framework Decision 2009/315/JHA on the organization and content of the exchange of information extracted from criminal records between Member States, and b) Framework Decision 2009/316 JHA, on the establishment of the European Criminal Records Information System, pursuant to article 11 of the framework decision 2009/315/JHA. These instruments, which were incorporated in the Greek legislation by L. 4360/2016, aim at improving the exchange of information between EU Member States on convictions and, where imposed and entered in the criminal records of the convicting Member State, on disqualifications arising from criminal conviction of citizens of the Union. In addition to the obligations of a convicting Member State to transmit information to the Member States of the person's nationality concerning convictions handed down against their nationals, an obligation on the Member States of the person's nationality to store information so transmitted is also introduced, in order to ensure that they are able to reply fully to requests for information from other Member States. Finally, these instruments lay down the framework for the development of a fully computerised system of exchange of information on convictions between Member States. **Art. 89 – Punishment for recidivism** 1. In the case of recidivism, the stipulated punishment for the act shall be aggravated, and may exceed the upper punishment limit [for that act] set by law and may reach instead the upper limit for that type of stipulated punishment. If the law imposes custodial punishment or alternatively pecuniary punishment, the former shall always be imposed, aggravated as the previous sent. of this article provides. 2. Regarding a third and every further case of recidivism, if the act is threatened with the punishment of imprisonment, the upper limit of which exceeds one year, imprisonment of at least eighteen months shall be imposed. 3. In the case of conversion of the punishment of imprisonment imposed in

	accordance with this article, the sum of the conversion cannot be lower than: a) twice the lower limit of the conversion sum regarding the first case of recidivism; b) three times the lower limit of the conversion sum regarding the second case of recidivism; and c) five time the lower limit of the conversion sum regarding every further case of recidivism.
Hungary	Ministry of Justice: Articles 178/B and 268 (2) of ACP: obligation to obtain the data concerning the previous convictions, Articles 31-34, 76/A-76/D of Act XLVII of 2009: the register of judgments delivered by courts of the Member States of the European Union against Hungarian citizens and the data transfers from this register, Articles 47-48 of Act XXXVIII of 1996: recognition of the validity of foreign judgments, Articles 108-111/H of Act CLXXX of 2012: validity of judgments delivered by the courts of the Member States of the European Union. The abovementioned rules apply accordingly to judgments which contain any measure concerning legal persons. National Office for the Judiciary: Articles 46-48 of Act XXXVIII of 1996: recognition of the validity of foreign judgments delivered by foreign courts of countries outside the European Union, Part IV of Act CLXXX of 2012: validity of judgments delivered by the courts of the Member States of the European Union. Hungarian courts become aware of the existence and data of foreign judgments via criminal record system regarding the Member States of the European Union, while with regard to the countries outside the European Union via the Ministry of Justice (as central authority) on an incidental basis. Prosecutor General's Office: After and due to a recent decision of the Court of the European Union in a preliminary ruling procedure(C-25/15-Balogh case: http://curia.europa.eu/juris/liste.jsf?language=en&num=C-25/15#), the legal framework for recognizing and considering foreign judgments has been conceptually amended from the 1st of January, 2018. Previously, the structure based on a special procedure carried out by county courts, regardless if the judgment to be recognized had been rendered in an EU MS or outside the Union. From the 1st of January 2018 a new legal regime has been introduced, according to which a foreign judgement might be treated three different ways in a domestic case. Based on the principle of mutual recognition, a sentence of an EU MS court might be taken into consideration in a domestic case, without any further legal steps, such as a formal procedure to recognize the judgement. In cases however, where the foreign ruling provides factual basis to apply a more severe or detrimental punishment or measure upon the defendant of the domestic case, the foreign court's judgment should still be corresponded (transposed, translated) to Hungarian laws in a legal process. The third channel for taking a foreign judgment into consideration is the one for the non-EU countries, where the previous regime is still in place. The fundamental principle in this third structure is that the foreign judgement should be recognized by a Hungarian court

in a formal procedure in order to take any effect in Hungary.

The main elements of the currently existing legal structure – such as domestic legal basis, legal effect, source of foreign judgements and acting courts - are as shown in the next chart:

	consideration (EU only)	correspondence (EU only)	recognition (non-EU only)
LEGAL BASIS	Act 180 of 2012 on mutual cooperation in criminal matters with the European Union's Member States, Art. 109-110/B. (official legal translation is not available)	Act 180 of 2012 on mutual cooperation in criminal matters with the European Union's Member States, Art. 111-111/H. (official legal translation is not available)	Act 38 of 1996 on International Legal Assistance in Criminal Matters, Art. 47-48. (official legal translation is not available)
EFFECT	The system is based on the principle of mutual recognition. Any sentence rendered in an EU MS should be automatically taken into consideration in domestic criminal proceedings starting afterwards, unless provided otherwise by law. Taking into consideration an EU MS sentence might result in establishing aggravating circumstances, but shall not be sufficient for applying additional legal consequences.	Correspondence is more than consideration: it means, that a final judgement in an EU MS is explicitly needed in the domestic procedure, in order to apply certain legal provisions. E.g.: the latter crime committed under probation period, the defendant is a repeat offender or a habitual recidivist, or the MS judgement is needed to establish an element of the crime to be judged in the Hungarian procedure.	The system is the opposite compared to the one with EU MSs. Non EU state judgments should be "recognized" (transposed) in a legal procedure, otherwise they cannot be taken into consideration, and shall not have any legal effect in the Hungarian criminal proceedings. Recognizing a non-EU MS judgement is equal to corresponding an EU MS judgment to domestic law. Both procedures are to transform, transpose the foreign sentence in accordance to Hungarian law, in order to apply specific legal consequences.

	SOURCE OF JUDGMENTS	The source of information for an EU MS sentence is the ECRIS. [Based on Council framework decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States, and Council decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA.]	The source of information for an EU MS sentence is the ECRIS. [Based on Council framework decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States, and Council decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA.]	Non EU states are submitting final judgements on a yearly basis, through diplomatic channels, based on Art 22 of the 1959 Strasbourg Convention. The data we get from non-EU states on sentences is far from up-to-date, and is fragmented compared to the ECRIS.
	RESPONSIBLE AUTHORITY	Consideration shall be done by the court (prosecutor, investigating authority) acting in the domestic case, regardless any special competence or jurisdiction.	Corresponding EU judgements is falling in the exclusive competence of the Metropolitan Court, unless an MLA is in progress to transfer the execution of the specific conviction. In this case, corresponding the EU MS sentence shall be done by the local courts, which also have competence to decide upon taking over the execution or not.	Recognizing non-EU judgements is falling in the exclusive competence of the Metropolitan Court. The facts of the case are binding and cannot be altered, the court is trying to transpose the legal consequences of the verdict (conviction) onto domestic law, by finding the most appropriate measures and penalties.
	Comment 1: There is a legal framework and an existing ECRIS system at union level to fulfil this obligation concerning the previous convictions of the courts of EU Member States. However, the international legal framework is missing at the level of the European Council. The only legal basis to carry out data exchange in this regard is Article 22 of 1959 Strasbourg Convention, therefore the data exchange is on yearly basis. Comment 2: The data exchange is not incidentally. It is on yearly basis in accordance with Article 22 of 1959 Strasbourg Convention. Besides this, if the competent authorities are informed by anybody or data arisen in any			

	way in connection with previous conviction of the perpetrator, during the investigation the competent authorities are obliged to obtain the data of criminal records concerning the perpetrator or to initiate the recognition of the foreign judgment [Article 389 of the Act CX of 2017 on the Criminal Proceedings (hereinafter: the new ACP)]. Please see Article 261 (1), (3) and Article 498 (3) of new ACP as well. Comment 3: If the foreign judgment has been recognised by the Hungarian court, the data concerning the previous conviction has to be included to the criminal records system [Article 11 (1) point k) and Article 16 (1) point j) of the Act XLVII of 2009] Comment 4: According to Article 47 (1) of the Act XXXVIII of 1996, a judgment of a foreign court shall have the same effects as a judgment of a Hungarian court, if the foreign judgment has been recognised by the Hungarian court under this Act. If the criminal offences of the perpetrator are to be considered as simple re-offending (for example the previous or the latter criminal offence or both of them were committed by negligence), the court can assessed this fact during the imposition of the punishment as aggravating circumstance [Article 80 (1) of HCC]. Article 459 (1) point 31 of HCC establishes the definitions of recidivist, special, multiple or violent multiple recidivist. If the perpetrator has to be considered special, multiple or violent multiple recidivist, Article 89-90 of HCC applies to him/her. HCC establishes stricter legal consequences for recidivist, special, multiple or violent multiple recidivist, for example the punishment is more severe. However, the stricter legal consequences may not be applied if the perpetration as a special recidivist of a criminal offence is to be punished under the Special Part of the Act as a qualified case [for example: Article 160 (2) point h)]. In the light of the above, the Hungarian regulations fully comply with Article 11 of the Warsaw Convention concerning not only the EU Member States but the non-EU COP State Parties as well. Comment 5: Hungary fulfils all obligations stemming from international and union regulations in this regard both in legislation and in practice. However, as long as there is not an obligation to establish a database at the level of the European Council, this recommendation cannot be carried out.

Italy	**A.** The recognition of foreign criminal judgments for domestic purposes (including, in particular, recidivism or another criminal effect resulting from the conviction) is provided for by Article 12 of the Italian Criminal Code. The relevant rules of procedure are contained in Title IV of Book XI of the Code of Criminal Procedure (Articles 730 et seqq., herein enclosed: see, especially, Articles 730, 733 and 734). The recognition of judgment is followed by its entry into the criminal records, available to all Judicial Authorities. **B.** With regard to the EU provisions it must be specified that: **1.** Legislative Decree of 12 May 2016, n. 73 implemented the Framework Decision 2008/675/JHA, on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings; **2.** Legislative Decrees no. 74 and 75, also adopted on 12 May 2016, implemented the Framework Decision 2009/315/JHA on the organization and content of the exchange of information extracted from the criminal record between Member States, and the Framework Decision 2009/316/JHA on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA in compliance with Article 11 of the Framework Decision 2009/315/JHA respectively.
	Referring to your kind request for supplementary information, as for Article 11 of the Convention, please find in the following table data regarding the proceedings initiated - since 2016 - for the recognition of foreign criminal judgements in view of recidivism (or another criminal effect resulting from the conviction) ***2018*** 19 ***2017*** 55 ***2016*** 128 Please also notice that further cases of recognition have taken place in the (different but possibly connected) framework of proceedings for execution purposes. The latter are quite frequent in our legal system, but cannot be listed by using computerized means, as they're classified in our archives on the basis of their major aim (that is the execution of the sentence, as said). Hence, these cases are not included in the data above.
Latvia	In regard to natural persons Section 46 "General Principles for Determination of Punishment" of the Criminal Law stipulates that in determining the type of punishment, the personality of the offender shall be taken into account, which includes also his or her criminal record. The Punishment Register Law establishes a uniform record-keeping regarding persons who have committed criminal offences and administrative violations in order to facilitate the prevention and disclosing of such offences and violations, as well as regarding control of execution of the punishment and restriction of the rights imposed on a person

	for the committed offences and violations. Section 16 of this Law provides that the Information Centre of the Ministry of the Interior shall include and store in the Register the information provided by the central authority of a European Union Member State with regard to the conviction of a citizen of Latvia, non-citizen of Latvia, the conviction of a citizen of a European Union Member State, the European Economic Area or the Swiss Confederation (hereinafter - Union citizen) who holds a Latvia-issued registration certificate of a Union citizen or a permanent residence certificate of a Union citizen, and regarding the conviction of a foreign national who holds a Latvia-issued temporary or permanent residence permit, as well as the information provided by a third country in accordance with international agreements with regard to the conviction of the abovementioned persons. Section 17 of this Law allows the Information Centre for the Ministry of the Interior to request such information from the central authority of the European Union Member State if any persons or authorities having the right to receive information from the Register in accordance with this Law need information regarding the conviction of a national of a European Union Member State in a European Union Member State or a third country. In addition, it should be noted that according to the Criminal Law (Section 48(1(1))) if the criminal offence constitutes recidivism of criminal offences it is recognised as an aggravating circumstance. According to Section 27 “Recidivism of Criminal Offences” of the Criminal Law the recidivism of a criminal offence is constituted by a new intentional criminal offence committed by a person after the conviction of such person for an intentional criminal offence committed earlier, if at the time of commission of the new criminal offence the criminal record for it has not been set aside or extinguished in accordance with the procedures laid down in Law. There is no specific legislative or other measures which would provide for the possibility of taking into account, when determining the penalty, final decision against legal persons taken in another Party in relation to offences established in accordance with the CETS no. 198. Below the respective provisions of the Criminal Law and the Punishment Register Law are included: <u>Section 27 “Recidivism of Criminal Offences” of the Criminal Law:</u> Recidivism of a criminal offence is constituted by a new intentional criminal offence committed by a person after the conviction of such person for an intentional criminal offence committed earlier, if at the time of commission of the new criminal offence the criminal record for it has not been set aside or extinguished in accordance with the procedures laid down in Law. <u>Section 46 “General Principles for Determination of Punishment” of the Criminal Law:</u> (1) A punishment shall be determined to the extent provided for the committed criminal offence by the sanction of the relevant Section of the Special Part of this Law, conforming to the provisions of the General Part of this Law. (2) In determining the type of punishment, the nature of and harm caused by the criminal offence committed, as well as the personality of the offender shall be taken into account. (3) In determining the amount of punishment, the circumstances mitigating or aggravating the liability shall be taken into account. (4) The punishment of deprivation of liberty for a criminal violation and a less serious crime shall be applied if the purpose of the punishment cannot be achieved by determining any of the types of lesser punishment provided for in the sanction of the relevant Section. <u>Section 48 “Aggravating Circumstances” of the Criminal Law:</u>

	(1) The following may be considered to be aggravating circumstances: 1) the criminal offence constitutes recidivism of criminal offences; 2) the criminal offence was committed while in a group of persons; 3) the criminal offence was committed, taking advantage in bad faith of an official position or trust of another person; 4) the criminal offence has caused serious consequences; 5) the criminal offence was committed against a woman, knowing her to be pregnant; 6) the criminal offence was committed against a person who has not attained sixteen years of age or against a person taking advantage of his or her helpless condition or of infirmity due to old-age; 7) the criminal offence was committed against a person taking advantage of his or her official, financial or other dependence on the offender; 8) the criminal offence was committed with particular cruelty or with humiliation of the victim; 9) the criminal offence was committed taking advantage of the circumstances of a public disaster; 10) the criminal offence was committed employing weapons or explosives, or in some other generally dangerous way; 11) the criminal offence was committed out of a desire to acquire property; 12) the criminal offence was committed under the influence of alcohol, narcotic, psychotropic, toxic or other intoxicating substances; 13) the person committing the criminal offence, for the purpose of having his or her punishment reduced, has knowingly provided false information regarding a criminal offence committed by another person; 14) the criminal offence was committed due to racist, national, ethnic or religious motives; 15) the criminal offence related to violence or threats of violence, or the criminal offence against morality and sexual inviolability was committed against a person to whom the perpetrator is related in the first or second degree of kinship, against the spouse or former spouse, or against a person with whom the perpetrator is or has been in unregistered marital relationship, or against a person with whom the perpetrator has a joint (single) household. (2) Taking into account the nature of the criminal offence, it may be decided not to consider any of the circumstances referred to in Paragraph one of this Section as aggravating. (3) In determining punishment, such circumstances may not be considered as aggravating which are not set out in this Law. (4) A circumstance which is provided for in this Law as a constituent element of a criminal offence shall not be considered an aggravating circumstance. <u>Section 16 of the Punishment Register Law:</u> (1) The Information Centre of the Ministry of the Interior shall include and store in the Register the information provided by the central authority of a European Union Member State with regard to the conviction of a citizen of Latvia, non-citizen of Latvia, the conviction of a citizen of a European Union Member State, the European Economic Area

	or the Swiss Confederation (hereinafter - Union citizen) who holds a Latvia-issued registration certificate of a Union citizen or a permanent residence certificate of a Union citizen, and regarding the conviction of a foreign national who holds a Latvia-issued temporary or permanent residence permit, as well as the information provided by a third country in accordance with international agreements with regard to the conviction of the abovementioned persons. (2) If the central authority of a European Union Member State provides information regarding any adjustments to the information provided earlier, the Information Centre of the Ministry of the Interior shall adjust the information in the current database of the Register accordingly. (3) If, when providing the information referred to in Paragraph one of this Section, the central authority of a European Union Member State has indicated that the information should be used exclusively for the purposes of criminal proceedings, such information shall not be provided to another central authority of a European Union Member State. In such case, the Information Centre of the Ministry of the Interior shall provide information regarding the European Union Member State from which the information has been received. (4) The Information Centre of the Ministry of the Interior shall provide third countries with the information that has been provided by the central authority of a European Union Member State and is included in the Register, respecting the restrictions determined by the European Union Member State. <u>Section 17 of the Punishment Register Law:</u> (1) If any persons or authorities having the right to receive information from the Register in accordance with this Law need information regarding the conviction of a national of a European Union Member State in a European Union Member State or a third country, the Information Centre for the Ministry of the Interior shall request such information from the central authority of the European Union Member State by filling out a form, the contents and template of which shall be determined by the Cabinet. (In this case those would be a person or authority performing investigative operations or a person authorised to perform the investigation, a unit of the public prosecutor's office and the court - information that is required to enable the performance of the functions laid down in the laws and regulations governing the operations of the respective authorities or persons as stipulated in Section 19 (1.2) of the Punishment Register Law.) (2) The form referred to in Paragraph one of this Section shall be filled out in the language of the respective European Union Member State or in the language this state has indicated to the General Secretariat of the Council of the European Union as the language for communication. (3) The Information Centre of the Ministry of the Interior shall request a copy of the decision in a criminal case on convicting a person from the central authority of a European Union Member State, if it is needed for the persons and authorities that have the right to receive information from the Register in accordance with this Law. The information referred to in Section 17, Paragraph one of this Law that has been provided by the central authority of a European Union Member State may be used exclusively for the initially designated purposes, except in the cases when: 1) the restrictions stipulated by the European Union Member State are respected; 2) it is necessary for preventing imminent and serious threat to public order. In reply to the additional questions the Ministry of Justice would like to provide the following information. Regarding statistics or a case example which demonstrates the

	actual implementation of Article 11 CETS no. 198 the Ministry of Justice will not be able to provide the requested information as such specific data is not stored in the information system of courts which contain information on judgments.
Lithuania	Extract from Criminal Code on previous decisions. **Article 27. Repeat Offence** 1. Repeat offence shall mean a situation when a person already convicted for a premeditated crime which he committed after attaining the age of majority, where his prior conviction has not expired yet or has not been expunged in accordance with the procedure laid down by laws, repeatedly commits one or several premeditated crimes. Such a person shall be considered a repeat offender. 2. Repeat offence shall be considered dangerous, and the offender may be recognised as a dangerous repeat offender by a court where this person: 1) commits a new grave crime while having an unexpired conviction for the commission of a grave crime; 2) already being a repeat offender, commits a new grave crime; 3) already being a repeat offender, where at least one of the crimes constituting a repeat offence is a grave crime, commits a new serious crime; 4) commits a new serious crime while having three prior convictions for the commission of serious crimes. 3. When passing a judgment of conviction for the most recent crime, a court may recognise a person as a dangerous repeat offender having regard to the offender's personality, the extent to which criminal intentions have been accomplished, the nature of participation in the commission of crimes and other circumstances of the case. 4. When deciding on the recognition of a person as a dangerous repeat offender, a court shall have no regard to prior convictions for the crimes committed by the person below the age of 18 years, the crimes committed through negligence, the crimes for which conviction has expired or has been expunged, also the crimes committed abroad in the cases provided for in Article 97(9) of this Code. 5. The recognition of a person as a dangerous repeat offender shall no longer be valid if his prior convictions expire or are expunged. **Article 56. Imposition of a Penalty upon a Dangerous Repeat Offender for the Commission of a Premeditated Crime** For the commission of a premeditated crime, a dangerous repeat offender shall be imposed a penalty more severe than the average custodial sentence prescribed by the sanction of an article for the committed crime. Another penalty may be imposed upon a dangerous repeat offender only on the grounds provided for in Article 62 of this Code. **Article 60. Aggravating Circumstances** 1. The following shall be considered as aggravating circumstances: /.../ 13) the act has been committed by a repeat offender. 2. When imposing a penalty, a court shall not take into consideration an aggravating circumstance which is provided for in a law as constituting the body of a crime.

	Article 38. Release from Criminal Liability upon Reconciliation between the Offender and the Victim 1. A person who commits a misdemeanour, a negligent crime or a minor or less serious premeditated crime may be released by a court from criminal liability where 1) he has confessed to commission of the criminal act, and 2) voluntarily compensated for or eliminated the damage incurred to a natural or legal person or agreed on the compensation for or elimination of this damage, and 3) reconciles with the victim or a representative of a legal person or a state institution, and 4) there is a basis for believing that he will not commit new criminal acts 2. A dangerous repeat offender, also a person who had already been released from criminal liability on the basis of reconciliation with the victim, where less than four years had lapsed from the day of reconciliation until the commission of a new act, may not be released from criminal liability on the grounds provided for in paragraph 1 of this Article. /.../ **Article 97. Previous Conviction** 1. The persons convicted of commission of a crime in respect of whom a judgment of conviction passed by a court of the Republic of Lithuania or another Member State of the European Union has become effective shall be considered as persons having previous conviction. The persons convicted of commission of a crime in a non-EU Member State, provided that a notice of the coming into effect of a judgment of conviction passed by a court of that state is received under international treaties of the Republic of Lithuania, shall also be considered as persons having previous conviction. The court shall take previous conviction into consideration when imposing a penalty for the commission of a new criminal act, deciding the issue of the offender's release from a penalty or criminal liability, also when identifying the person as a repeat offender. 2. Previous conviction may be a basis for restricting only those rights and freedoms of citizens whose restriction is provided for by laws of the Republic of Lithuania. 3. The following persons shall be considered as having previous conviction: 1) the persons in respect of whom the execution of a sentence has been suspended – during the period of suspension of execution of the sentence; 2) the persons convicted of negligent crimes – during the period of serving the sentence; 3) the persons convicted of premeditated crimes who have actually served the imposed sentence – during the period of serving the sentence and during the following period commencing after they have served the sentence or have been released from serving the sentence: a) for three years if convicted of a minor or less serious crime; b) for five years if convicted of a serious crime; c) for eight years if convicted of a grave crime;

	d) for ten years if they are dangerous repeat offenders. 4. The terms of previous conviction following serving of a sentence or release from serving of the sentence in respect of the minors convicted of the crimes provided for in point 3 of paragraph 3 of this Article shall be reduced by half. 5. The terms stipulated in point 3 of paragraph 3 and in paragraph 4 of this Article shall be calculated from fully serving of the imposed sentence or release from serving of the sentence. 6. Upon the expiry of the time limits laid down in this Article, previous conviction shall expire and the persons shall be considered as having no criminal record. 7. After the lapse of a least one half of the term of conviction, the court may, at the request of the convict, reduce the term of conviction or expunge the conviction. 8. Where a person who has a previous conviction commits a new crime or misdemeanour, the term until the expiry of previous conviction shall stop running. In such a case, the term until the expiry of the conviction for the previous criminal act shall start to run from the serving of the penalty for the new crime or misdemeanour. The person shall be considered as having previous conviction for each criminal act until the expiry of conviction for the most serious of the acts. 9. When imposing a penalty for the commission of a new criminal act, deciding on the release of the offender from the penalty or criminal liability, also recognising the person as a dangerous repeat offender, the court shall not take into account an effective judgment of conviction passed by the court of another state as referred to in paragraph 1 of this Article where: 1) the taking into account of the effective court judgment of conviction would violate fundamental human rights and/or freedoms; 2) the committed act is not regarded as a crime under this Code; 3) at the time of commission of a criminal act, the person was not of the age at which the act committed by him becomes subject to criminal liability under criminal laws of the Republic of Lithuania; 4) the information received about the judgment of conviction passed by the court of another state is not sufficient, and the state which has forwarded this information does not supply additional information within the specified time limit; 5) there exist other grounds provided for by international treaties to which the Republic of Lithuania is party. It should be noted that general rules and criteria for the imposition of penalties specified under Art. 54 of the Criminal Code apply not only to natural persons but also to legal persons. **Article 54. Basic Principles of Imposition of a Penalty** 1. A court shall impose a penalty according to the sanction of an article of the Special Part of this Code providing for liability for a committed criminal act and in compliance with provisions of the General Part of this Code. 2. When imposing a penalty, a court shall take into consideration:

	1) the degree of dangerousness of a committed criminal act; 2) the form and type of guilt; 3) the motives and objectives of the committed criminal act; 4) the stage of the criminal act; 5) the personality of the offender; 6) the form and type of participation of the person as an accomplice in the commission of the criminal act; 7) mitigating and aggravating circumstances; 8) the damage caused by the criminal act. 3. Where imposition of the penalty provided for in the sanction of an article is evidently in contravention to the principle of justice, a court may, taking into consideration the purpose of the penalty, impose a commuted penalty subject to a reasoned decision.
Malta	In terms of the Criminal Code a recidivist is considered to be any person who '*after being sentenced for any offence by a judgement, even when delivered by a foreign court, which has become res judicata, he commits another offence*' [article 49(1)]. This definition was introduced by means of Act XXIV of 2014 and allows Maltese courts to also take into account a judgement delivered by a foreign court when determining the *quantum* of punishment, as long as the said judgement has become final and absolute. Additional provisions were introduced by means of the aforementioned amending Act, allowing for a foreign judgement to be evidenced by means of a document, duly authenticated, certifying that the person in question was convicted on a date specified in the said document of one or more offences against the law of the State transmitting the said document or against the law of part of that State [article 49(2)]. The said document is deemed to be authenticated if it purports (a) to be signed by a judge, magistrate or officer of the sentencing State; or (b) to be certified, whether by seal or otherwise, by the Ministry, department or other authority responsible for justice or for foreign affairs of the sentencing State; or (c) to be authenticated by the oath, declaration or affirmation of a witness [article 49(3)]. As to the method of transmission, the Criminal Code stipulates that the said document can be transmitted by any secure means capable of producing written records and under conditions permitting the ascertain ability of its authenticity [article 49(4)]. Also relevant in this regard are the European Investigation Order Regulations ("the Regulations") which transpose into Maltese law the requirements of Directive 2014/14/EU. The said Directive, and by implication the transposing regulations, is intended to facilitate the cross-border execution of specific investigative measures so as to obtain evidence for use in proceedings which are criminal or may themselves give rise to criminal proceedings [Regulation 7] and a European Investigation Order ("EIO") may be availed of by any of the authorities which the Regulations include within the definition of "issuing authority" in Regulation 2. As *per* the definition of "European Investigation Order" set out in Regulation 2, said order "may also be issued for obtaining evidence that is already in the possession of the competent authorities of the executing State" which can include information on the past criminal conduct of the person being investigated or prosecuted. However, it should be

	noted that the Regulations also provide a number of grounds which allow a Member State in receipt of an EIO not to recognise the same. These grounds are to be found in Regulation 14. Similarly to art 49(4) of the Criminal Code, the Regulations require that an EIO "be transmitted from the issuing authority to the executing authority by any means capable of producing a written record under conditions allowing the executing State to establish authenticity" [Regulation 10(1)]. However, unlike the Criminal Code, the Office of the Attorney General has been designated as the authority responsible for the transmission and receipt of EIOs [Regulation 10(3)] and the use of the telecommunications system of the European Judicial Network is encouraged [Regulation 10(4)].
Monaco	Dans votre juridiction, lors de l'appréciation d'une peine, quelles mesures législatives et autres prévoient la possibilité de prendre en compte les décisions prises à l'encontre de personnes physiques ou morales par une autre Partie portant sur les infractions établies conformément à la Convention STCE n°198 ? ***Réponse*** Il n'existe pas de texte à portée générale dans le Code pénal ou de procédure pénale, consacrant et reconnaissant la notion de récidive internationale. Néanmoins, cette récidive internationale constitue une circonstance aggravante de nombreux délits. Ainsi, aux termes de l'article 218.2° du Code pénal, *« Il y a circonstance aggravante lorsque l'auteur a été condamné par une juridiction étrangère pour une infraction de blanchiment".* En cas de circonstance aggravante, la peine encourue sera de dix à vingt ans d'emprisonnement, au lieu de cinq à dix ans, et le maximum du montant de l'amende prévue au chiffre 4 de l'article 26, pourra quant à lui être multiplié par vingt. En matière de fausse monnaie, l'article 83-4 du Code pénal dispose que *« lorsque une personne engage sa responsabilité pénale pour une des infractions prévues aux articles 77 à 83-2, la récidive est constituée si la personne a déjà été condamnée définitivement, par une juridiction pénale d'un État membre du Conseil de l'Europe, pour un crime ou un délit ayant les mêmes éléments constitutifs".* Conformément aux obligations prescrites par l'article 22 de la Convention européenne d'entraide judiciaire en matière pénale du 20 avril 1959, la Principauté de Monaco transmet spontanément, deux fois par an, aux Etats signataires de ladite Convention, les avis de condamnation à des sentences pénales, et des mesures postérieures concernant leurs ressortissants et qui ont fait l'objet d'une inscription au casier judiciaire monégasque. La Principauté de Monaco reçoit également de la part des Etats signataires de la Convention du 20 avril 1959, les avis de condamnation concernant ses ressortissants. **Ainsi, les Cours et Tribunaux monégasques appliquent la circonstance aggravante de récidive internationale, et prennent en compte les condamnations prononcées par les juridictions étrangères à l'encontre de leurs ressortissants, pour les délits et crimes pour lesquels cette notion de récidive internationale est reconnue par les textes comme une circonstance aggravante.**

Montenegro	In Criminal Code of Montenegro in article 42 recidivism is stipulated. Courts are obliged to take into consideration any previous decision when determining the sentence of the offender. The same obligation is for the legal entities when they are convicted. The Law on Criminal Liability for Criminal Acts of Legal Entities prescribes this obligation in article 17 and 18. Furthermore, Criminal Procedure Code in art. 289 prescribes that: "Before the investigation is concluded, the State Prosecutor shall obtain ... information on the accused person's previous convictions". Example: In every day practice previous decisions of the accused are taking into consideration when determining the penalty, no matter where the previous conviction was passed (in country or in a foreign country). For example, in one case against accused person was R.G for the criminal offence counterfeiting documents from the article 412 para 2 and 1 of the Criminal Code of Montenegro. R.G has committed criminal offence in Montenegro and he was from the Republic of Serbia. During the procedure, the criminal record of the accused was provided as an evidence (it was obtained through the mutual legal assistance) and the judge in the case K.no. 11/574 in the part that is related to his personal information stated "R.G, father's name___, mother's name ____, date of birth_, employment_, and he was earlier convicted by the final judgement form the County Court of Subotica no.383/03 from 01.08.2003. for the criminal offence from article 33 of the Act of weapons of Republic of Serbia punished by the imprisonment of 6 months, final judgement from the County Court of Subotica no. 61/07 dated 30.04.2007. for the criminal offence from the article 54 para 2 of the Criminal Code of Republic of Serbia punished by imprisonment of 2 months, final judgement of the Municipality Court of Subotica no 859/06 dated 20.04.2007. for the criminal offence from the article 289 para 3 of the CC of Republic of Serbia punished by fine in the amount of 30.000,00 Serbian dinars." So in the explanation of the judgement, the court on the page 5 of the judgement states the following "Making decision on the penalty the court took into account all circumstances which can influence that the penalty can be higher or lower, and in that sense the court took into account the aggravating circumstances that the court found for the accused and that his previous convictions, which fact the court found from the criminal record obtained from the Republic of Serbia" This is only one example, and in all cases we provide criminal records of the accused so the judge can determine the penalty for that person. Regarding your questions, I would like to inform you that there is no explicit legal provision providing for asset sharing with third countries for the purpose of compensation of the victims of the crime or returning of such property to the legitimate owners. Thus, there is no case law that I can provide to you. Also, it is worth mentioning that so far we did not have such requests.
Netherlands	As a general principle of criminal procedural law, in the Dutch system of statutory penalty maximums, there is room to take account of previous convictions within these maximum penalties. This may also include relevant foreign convictions. Recidivism is therefore seen as a general aggravating circumstance.

Poland	The issue of taking into account final decisions against natural or legal persons taken in another Party, have been addressed by a number of provisions of the Polish Criminal Code and the Code of Criminal Procedure as well as the rulings of the Supreme Court followed by the current judicial practice. In respect of the Criminal Code the following provisions should be adduced: Article 114. § 1. A sentencing judgement rendered abroad shall not bar criminal proceedings for the same offence from being instituted before a Polish court. § 2. The court shall credit to the penalty, imposed the period of deprivation of liberty actually served abroad and the penalty there executed, taking into consideration the differences between these penalties. § 3. The provision of § 1 shall not apply: 1) in the event that the sentencing judgement adjudicated abroad was taken over to be enforced in the territory of the Republic of Poland and in the event that the sentence passed abroad refers to an offence with respect to which either the prosecution was taken over or the perpetrator was surrendered from the territory of the Republic of Poland 3) to verdicts of international criminal courts operating under international law that is binding for the Republic of Poland, § 4. If a Polish citizen validly and finally sentenced by a court in a foreign country, has been transferred to execute the sentence within the territory of the Republic of Poland, the court shall determine, under Polish law, the legal classification of the act, and the penalty to be executed or any other penal measure provided for in this Act; the basis for determination of the penalty or other measure subject to execution shall be provided by the sentencing judgement rendered by a court of a foreign country, the penalty prescribed for such an act under Polish law, the period of actual deprivation of liberty abroad, the penalty or other measure executed there, and the differences between these penalties considered to the favour of the sentenced person. **Art. 114a.** § 1. A sentencing judgement is also a final conviction for a criminal offense rendered by a court having jurisdiction in criminal matters in a Member State of the European Union, unless, according to the Polish criminal law, the act is not a crime, the perpetrator is not subject to punishment or the imposed punishment is unknown to the Polish criminal law § 3 The provision of § 1 shall not apply if the information obtained from the criminal record or from the court of a Member State of the European Union is not sufficient to establish the conviction or the imposed punishment is subject to a pardon in the country in which the conviction took place. Possibility of taking into account final decisions against natural or legal persons taken in another Party has been reflected in the practice of the Polish criminal courts. In the judgment of 16.09.2015 rendered in the case ref II AKa 157/15, The Appellate Court in Kraków stated that : “The prior criminality of the offender applies not only to penalties imposed by Polish courts.” The positive obligation on courts and prosecution service to take steps to find out about the existence of final convictions pronounced in another State Party stems from the provisions of the Criminal Code and Criminal Procedure Code. It is a duty of a criminal court, when imposing the penalty, to take into consideration convict’s “way of life prior to the commission of the offence” which is understood as a duty to check the criminal records. The duty is envisaged in Article 53 CC which reads:

Article 53. § 1. The court shall impose the penalty according to its own discretion, within the limits prescribed by law bearing in mind that its harshness should not exceed the degree of guilt, considering the level of social consequences of the act committed, and taking into account the preventive and educational objectives which the penalty has to attain with regard to the sentenced person, as well as the need to develop a legal conscience among the public.

§ 2. In imposing the penalty, the court shall above all take into account the motivation and the manner of conduct of the perpetrator, committing the offence together with a minor, the type and degree of transgression against obligations imposed on the perpetrator, the type and dimension of any adverse consequences of the offence, the characteristics and personal conditions of perpetrator, his way of life prior to the commission of the offence and his conduct thereafter, and particularly his efforts to redress the damage or to compensate the public perception of justice in another form. The court shall also consider the behavior of the injured person.

§ 3. In imposing the penalty, the court shall also take into consideration the positive results of the mediation between the injured person and the perpetrator, or the settlement reached by them in the proceedings before the state prosecutor or the court.

It is clearly stated in the Criminal Procedure Code that in the course of criminal proceedings previous convictions of the accused persons (as well as the suspects) must be determined. The respective provision of the Criminal Procedure Code reads as follows:

Art. 213. § 1. The proceedings should determine the identity of the accused, its number of the Universal Electronic System of Population Register (PESEL), and in the case of a person without a PESEL number - the number and name of the document confirming the identity and name of the authority that issued the document, as well as the age of the accused, his family and property relations, education, profession and sources of income, data on his or her criminal record, and, if possible, telephone number or e-mail address enabling contact with the accused and tax identification number (NIP). With regard to the accused being a public official at the time of committing the act or during the proceedings, it is also necessary to collect data on the conduct of the public service, distinctions and disciplinary punishments.

§ 2. If the suspect has already been finally convicted, to determine whether the offense was committed under the terms of art. 64 of the Penal Code or under the conditions of art. 37 § 1 item 4 of the Penal Fiscal Code, a copy or excerpt of the sentence and data regarding the serving the sentence shall be attached to the files of the proceedings; these documents shall be enclosed to the files in cases concerning crimes.

§ 2a. If the authority conducting the proceedings has received information about a final conviction, the provision of § 2 shall apply accordingly to convictions handed down by a court of another EU Member State.

Court practice corroborates the duty of the prosecution service and the courts to establish previous final convictions of the accused persons.

In the ruling of the Supreme Court of 1 March 2005 (case ref. no V KK 13/05) it is stated that:

"According to art. 213 CPC, in the proceedings there should be determined data on the criminality of accused persons. The legislator did not confine itself to the presumption of criminal unpunishability of the accused, but extended the obligation to reach true factual findings in this area too

Portugal	According to Article 71 (1) of the Criminal Code, the determination of the penalty applicable, within the limits defined in the law, is made according to the guilty of the offender and the requirements of criminal prevention. When determining the concrete penalty to be applicable, the court shall attend to all circumstances, which, not forming part of the crime, shall be taken into consideration in favour of or against the offender, considering in particular, its behaviour prior to and after the commission of the crime, especially when it is designed to repair the consequences of the crime. In addition, Article 75 (3) of the same Code states that the convictions of a person in foreign courts shall be considered and count for recidivism (…) provided that the act constitutes a crime under Portuguese law. In the event of recidivism, as results from Article 76 (1), the minimum limit of the sentence applicable to the criminal offence is aggravated by one third while the maximum limit remains unaltered. The aggravation cannot exceed the extent of the most severe sentence imposed in previous convictions. Therefore we consider that Article 11 of the Convention is met. As introductory remark, we would like to state that in our interpretation the words «*implementation*» and «*application*» has diferent meaning. This means that, as it is clear from Article 11 of the Convention, this legal instrument it's not self-applicable in the domestic legal order of the Parties, but each Party shall adopt such legislative and other measures as may be necessary to <u>implement</u> its provisions. A different issue is the <u>application</u> of the provisions foreseen in the domestic law that have been adopted in order to implement the Convention. Having said that and as stated in out first answer, we consider that Portugal implemented Articles 11 and 25. **Article 11** Regarding Article 11, as already informed, this provision was implemented through Article 71 (1) and Article 75 (3) of the Criminal Code. A search in the databases of decisions of the Courts of first instance and of jurisprudence of the Appeal Courts (2nd instance) confirmed that there is no application of the aforementioned Articles 71 and 73 in criminal court cases related to money laundering. Decisons of the national criminal courts where the decisions taken in another country have been considered in the concrete sentence to be applied, but related to other crimes, have been found.
Republic of Moldova	According to the para. 7 art.11 Criminal Code the punishments and the criminal records for crimes committed outside of the territory of Moldova, shall be taking into account hereunder the process of individualization of the punishment for a new committed crime by the same person on the territory of Moldova as well as settling issues related to amnesty in conditions of reciprocity based on a court decision. In the process of settling of the criminal liability and criminal punishment according to the art.7 Criminal Code, criminal law shall be applied with due consideration of the prejudicial nature and degree of the crime committed, the personality of the criminal, and the circumstances of the case that mitigate or aggravate criminal liability. One of circumstances that influence the process of individualization of the punishment,

	foreseen by the provision of the art. 34 Criminal Code is the recidivism. Thus it is considered as recidivism, the deliberate commission of one or several crimes by a person with a criminal history of crimes committed with intent. Upon determination of recidivism as per paragraphs, the final conviction and sentences issued abroad and recognized by the court of the Republic of Moldova shall be considered. **(art. 34 CP)**. The Criminal Procedure Code, Chapter IX, "International legal assistance in criminal mater", Section 4, Acknowledgement of Criminal Judgments of Foreign Courts, establish in details the procedure of acknowledgements of foreign court decisions in criminal matter of foreign courts on the territory of Republic of Moldova. For taking into account final decisions issued in other state-Party of the CETS No. 198, when applying the Punishment in Cases of Cumulative Sentences, of Cumulative Crimes or for Recidivism, this decision shall be acknowledged. The Acknowledgment of Criminal Judgments is foreseen in Article 558 of the Criminal Code of Procedure, according to which: (1) The final criminal judgments pronounced by foreign courts and those of a nature to produce legal effects in line with the criminal law of the Republic of Moldova may be acknowledged by the national court upon a motion of the Minister of Justice or the Prosecutor General based on an international treaty or a reciprocity agreement. The criminal judgment of a foreign state may be acknowledged only if the following conditions are met: 1) the judgment was pronounced by a competent court; 2) the judgment does not contradict the public order of the Republic of Moldova; 3) the judgment can produce legal effects in the country in line with national criminal law. But if the criminal judgment has not been acknowledged, it may be taken into account only as aggravating circumstances. According to Art. 78 par. (3) of the Criminal Code of Procedure*, "In the case of aggravating circumstances, the maximum punishment set in the corresponding article of the offense committed may be applied."* A motion of the Minister of Justice or the Prosecutor General on acknowledging a foreign court judgment shall be reasoned and settled by a court in the territorial circumscription of which the Ministry of Justice or the General Prosecutor's Office is located. 2)The representative of the Ministry of Justice or, as the case may be, of the General Prosecutor's Office, the convict and his/her defense counsel shall participate in the settlement of the motion. The court may also examine the motion in the absence of the convict if he/she is detained on the territory of a foreign state. (3) The convict shall be advised of the judgment of the foreign court and of the documents attached hereto translated into the state language or into a language spoken by the convict. (4) The court shall hear the opinions of those present and based on the materials attached to the motion, if finding that the legal conditions are met, shall acknowledge the criminal judgment of the foreign court. If the punishment set by the foreign court was not or was partially executed, the court shall replace the unexecuted punishment or the remaining punishment with a respective punishment in line with the provisions in art. 557

	para. (1) point 1). (5) Civil provisions of a judgment of a foreign court shall be executed in line with the rules provided for the execution of the civil judgments of foreign courts. As, it was mentioned, at the national level the courts do not keep the statistical data related to the subject. The Ministry of Justice indeed confirm the existence of such cases in practice. Due to certain circumstances, the court requested additional time for providing cases.
Romania	Committing a crime after a definitive decision of court or after executing a penalty constitutes an aggravating circumstance under Romanian criminal law. In accordance with Article 41 paragraph 3 of Criminal Code, for a violation that is also included in Romanian criminal law, a conviction rendered abroad against a person is to be taken into account when determining the penalty if it has been recognised domestically by a Romanian court according to the relevant provisions of title V, chapter 1 of Law 302/2004 on international judicial cooperation in criminal matters. In particular, the Romanian court dealing with the matter needs to check the following: the right to a fair trial has been observed; the decision was issued by the competent court and the conviction does not concern a political or military offence; the decision is in line with the public order of the Romanian State; there has been no violation of the principle *ne bis in idem*; and an international agreement exists between Romania and the third country, or the condition of reciprocity is met. Specific arrangements exist in the context of the European Union. The report of the Conference of the Parties to CETS no. 198 on Romania from 2012 stated regarding article 11 of CETS no. 198 that: "The Romanian courts and prosecution services are in a position to take into account final decisions rendered in another Party in relation to offences established in accordance with CETS N° 198. The Romanian authorities have pointed out that this is actually done on an on-going basis since 1969." We mention that since the 2012 report, a new Criminal Code has entered into force on 1st of February 2014 that regulates, at art. 41 para. 3 (as we mentioned above in the answer), similar provisions as the old Criminal Code regarding taking final decisions rendered in another Party into account. The wording of article 41 paragraph 3 Criminal Code is the following: "To establish the existence of a repeat offense consideration shall also be given to a conviction judgment returned in another country, for a violation that is also included in Romanian criminal law, if that conviction has been recognized under the law." Romanian courts may use European legal instruments, such as Council Decision 2005/876/JHA of 21 November 2005 on the exchange of information extracted from the criminal record and Council Framework Decision 2009/315/JHA *of 29 February 2009 on the organisation and content of the exchange of information extracted from the criminal records between the Member States*, to find out information regarding previous convictions issued by other Member States' courts. Even if a conviction in another State shall not be taken into account as recidivism, it may be taken into account while deciding upon the severity of a sentence. In the same context, according to relevant bilateral and multilateral conventions (e.g. European Convention on judicial cooperation in criminal matters, Strasbourg, 20 April 1959), it is provided that signatory states shall periodically communicate information regarding convictions issued against their own citizens. **Art. 11** The provisions of art. 11 regarding statistics were object of previous thematic evaluation on the assessment report from 2012 and the follow-up report from 2014, therefore we propose the deletion of the recommandation.

	In this context, it is noted in the follow-up report from 2014 that art 11 of the Convention is implemented.[15] Romania has the legislative framework necesary, through art. 41 of the Criminal Code, for the courts to consider final decisions from other member states regarding the offences provided in the Convention, in the process of establishing and applying penalties, so therefore the compliance with art. 11 is insured. The statements from the recommandation regarding statistics in applying the provision exceed the scope of art. 11 of the Convention.
Russian Federation	*Letter received:* **ANSWERS** **of the Russian Federation to the Questionnaire for the Transversal Monitoring of States Parties' Implementation of Article 11 and Article 25(2) and 25(3) of the CETS no. 198** *As to Article 11* In accordance with the provisions of Article 11 of Federal Law no. 115-FZ of 7 August 2001 on Countering the Legalisation of Illegal Earnings (Money Laundering) and the Financing of Terrorism ("the Legalisation Countering Act"), the Russian Federation recognises, pursuant to its international treaties and federal laws, final judgments (decisions) delivered by foreign courts against persons having proceeds from crime. According to Article 12 of the Criminal Code of the Russian Federation ("the Criminal Code"), citizens of the Russian Federation and stateless persons permanently residing in the Russian Federation who have committed an offence against the interests protected by the Criminal Code outside the Russian Federation shall be criminally liable in accordance with the Criminal Code if no foreign court judgment has been passed against these persons for this offence (Part 1). In the same vein, foreign citizens and stateless persons not permanently residing in the Russian Federation who have committed an offence outside the Russian Federation shall be criminally liable under the Criminal Code where the offence is directed against the interests of the Russian Federation or a citizen of the Russian Federation or a stateless person permanently residing in the Russian Federation and where so provided for by an international treaty of the Russian Federation or another international document containing obligations recognised by the Russian Federation in the area of relationships governed by the Criminal Code if the foreign citizens and stateless persons not permanently residing in the Russian Federation have not been convicted in a foreign state and are held criminally liable in the Russian Federation. This approach is based on the constitutional principle enshrined in Article 50 of the Constitution of the Russian Federation. According to Part 1 of this Article, no one may be convicted for the same offence twice. By virtue of the provisions of Article 76 of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of the CIS Member States of 22 January 1993 (Minsk Convention), when imposing a punishment courts of the Member States may take into account the guilty person's previous conviction as an aggravating circumstance.

[15] *Comment: <u>This provision appears to be implemented effectively</u>*. (Follow up Romania Country Report adopted by the Conference of the Parties to CETS 198 at their 6th meeting, Strasbourg, 29 September – 1 October 2014, pg. 11)

	At the same time, in accordance with Article 63 of the Criminal Code of the Russian Federation, the presence of an unexpunged or outstanding conviction if a person is convicted in a foreign state is not an aggravating circumstance. The list of aggravating circumstances provided for in Article 63 of the Criminal Code is exhaustive and cannot be interpreted broadly. Thus, the Criminal Code does not contain any provisions that would allow to take into account a person's previous conviction in a foreign state and to consider this circumstance in determining whether the offence is a repeated one. At the same time, according to Article 60 § 3 of the Criminal Code, when imposing a punishment, the personality of the convict shall be considered alongside with the nature and degree of public danger of the crime, and therefore the fact of a person being convicted in a foreign state can be taken into account by a court when passing the sentence.
	A second letter was received: on 22 August 2018 with additional answers ***Answer*** A final decision of a foreign Court is not taken into account when establishing the gravity of punishment for repeated offences and is not considered an aggravating circumstance when passing a sentence (Article 18 of the Criminal Code of the Russian Federation; hereinafter – "Criminal Code"). Furthermore, when determining penalty, the Courts, in accordance with the provisions of Part 6 of Article 86 of the Criminal Code ("The annulling or removing of a criminal record shall annul all the legal consequences related to the record or conviction") do not consider annulled convictions as a negative factor (Decision of the Plenary of the Supreme Court of the Russian Federation No. 58 of 22.12.2015). Such circumstances may not be considered as an aggravating or mitigating circumstance. It should be noted that Article 12 of the Criminal Code ("The operation of the Criminal Law in Respect of Persons who have Committed Offences outside the Boundaries of the Russian Federation") provides: "1. Citizens of the Russian Federation and stateless persons permanently residing in the Russian Federation who have committed outside the Russian Federation a crime against the interests guarded by the present Code shall be subject to criminal liability in accordance with the present Code, unless a decision of a foreign state's Court exists concerning this crime in respect of these persons.

	2. Servicemen of military units of the Russian Federation located beyond the confines of the Russian Federation shall bear criminal liability for their crimes committed on the territories of foreign states under this Code, unless otherwise stipulated by international agreements of the Russian Federation. 3. Foreign nationals and stateless persons who do not reside permanently in the Russian Federation and who have committed crimes outside the boundaries of the Russian Federation shall be brought to criminal liability under this Code in cases where the crimes run against the interests of the Russian Federation or a citizen of the Russian Federation or a stateless person permanently residing in the Russian Federation, and also in the cases provided for by international agreements of the Russian Federation, and unless the foreign citizens and stateless persons not residing permanently in the Russian Federation have been convicted in a foreign state and are brought to criminal liability on the territory of the Russian Federation." However, Article 70 of the Criminal Code provides for a possibility of imposing punishment with cumulative sentences. In imposing punishments with cumulative sentences, the unserved part of the penalty under the Court's previous sentence shall be added, in full or in part, to the sentences imposed by the Court's latest judgment.
San Marino	Under San Marino Criminal Code, "repeated infringement" is considered as an aggravating circumstance for the application of a penalty in the context of criminal proceedings. However, under the domestic legal system in force, "repeated infringement" does not cover criminal offences previously perpetrated by the offender on a territory that does not fall under the jurisdiction of the Criminal Code of San Marino. Given the response provided to question # 1, no cases of application of the provision can be provided. The San Marino legal system does grant the possibility for the courts to take into account international recidivism, i.e. under Art. 18 of the Criminal Code, which explicitly provides that: "il giudice può tener conto delle condanne pronunciate dall'autorità giudiziaria di Stato estero, salvo che non sia diversamente stabilito da convenzioni internazionali" (A judge may take into account convictions issued by a foreign judicial authority, unless otherwise provided for by international conventions).
Serbia	**Article 55 of the Criminal Code: Repeat Offence** *The court may, in determining punishment for a perpetrator of a criminal offence they*

	*committed after serving of sentence, pardon or sentence under limitations or remittance of punishment, upon expiry of period for revocation of parole or admonition by the court, take such circumstance as aggravating, and shall give particular consideration to seriousness of the previous offence, whether the previous offence was of the same kind as the latter, whether both offences were committed from same motives, circumstances under which the offences were committed and the time elapsed from the previous conviction or pronounced punishment, pardon or sentence under limitations, remittance of punishment or of the expiry of the time limit for revocation of previous suspended sentence or pronounced caution by the court**.*** This article establishes the notion of ***recidivism***. It's wording allows the competent authorities to take into account,under their general powers to assess the individual's circumstances in setting the sentence, earlier convictions, regardless of the sentence determined in those cases. Being a general provision, Article 55 of the Criminal Code can be implemented regardless of the criminal offence and the jurisdiction that issued the final sentence for that offence. Moreover, the **Criminal Procedure Code prescribes in Art. 309** that *"The public prosecutor will before concluding an investigation obtain data about the suspect (Article 85 paragraph 1) if they are missing or should be checked, as well as **data about prior convictions**, and if the suspect is already serving a criminal sanction involving incarceration - data about his conduct during the service of the criminal sanction. If the pronouncement of a single penalty encompassing penalties from earlier convictions may be considered, the public prosecutor will request the files of the cases in which the said convictions were made, or certified copies of the final judgments".* **European Convention on Mutual Assistance in Criminal Matters (ETS No. 30*)*** Republic of Serbia has ratified and implemented the Convention and Protocols thereto by adopting The Law on ratification of the European Convention on Mutual Legal Assistance in Criminal Matters with Additional Protocols ("Official Gazette of the FRY - International Treaties", No. 10/2001). In addition, Republic of Serbia is contracting party to 52 bilateral agreements governing all or some forms of judicial cooperation in criminal matters with 31 countries. Republic of Serbia has direct judicial cooperation with 4 countries (Slovenia, Montenegro, Bosnia and Herzegovina and "the former Yugoslav Republic of Macedonia"). According to provisions in Agreements on Mutual Legal Assistance in Criminal and Civil Matters with these 4 countries, judicial authorities in the state party conducting the criminal procedure are enabled to make request for the copy of criminal record of the defendant directly to the authority competent for keeping the criminal records in that state party.
Slovak Republic	The legislation in the Slovak Republic recognizes the principle of recidivism and international recidivism with various impacts for an offender. There might be following scenarios: 1. A final foreign judgment was recognised in the territory of the Slovak Republic. If a foreign judgment was recognised by the Slovak Court, it has the same effects as the judgment of the Slovak court. Article 515 of the Code of Criminal Procedure of the Slovak Republic states that A foreign decision may be recognised in a statement by which: a) a fault was pronounced, but the imposition of the punishment was conditionally deferred,

	b) a prison sentence or a conditional prison sentence was imposed, c) a monetary penalty or punishment by disqualification was imposed, d) a conditional punishment or a monetary penalty was converted to a prison sentence, or e) a forfeiture of assets or any part thereof, or items or their confiscation was pronounced, provided they are located in the territory of the Slovak Republic (hereinafter referred to as "foreign assets decision"). The conditions are stipulated in Article 516 para 2 of the Code of the Criminal Procedure of the Slovak Republic and are as follows: The foreign decision shall be recognised in the territory of the Slovak Republic if a) an international treaty includes the possibility or obligation of recognition or the enforcement of foreign decisions, b) it is valid in the convicting State or an appeal may no longer be filed against it, c) the act for which the punishment was imposed is a criminal offence under the legal system of the convicting State as well as under the legal system of the Slovak Republic, d) the decision was issued in proceedings that comply with the principles contained in Article 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms, e) the person was not convicted of a criminal offence that is of an exclusively political or military nature, f) the execution of the punishment is not statute-barred under the legal system of the Slovak Republic, g) the person has not yet been convicted of such act by the Slovak courts, h) the foreign decision of another State against the same person and for the same act was not recognised in the territory of the Slovak Republic, and i) the recognition is not contrary to the protected interests under the provisions of Section 481. (The request of a foreign authority may not be granted if its performance would violate the Constitution or any provisions of the system of law of the Slovak Republic) For applying recognition and enforcement of a foreign judgment the treaty basis are needed. For instance, the recognition and enforcement of a foreign judgment usually takes place if a Slovak national or a person with a permanent residence in the Slovak Republic wishes to enforce in the Slovak Republic the sentence imposed in another state. If a judgment was recognised, even if a person would withdraw his or her consent with a transfer and the transfer would not happened ,a recognised judgment would have equal effects to the judgment of the Slovak court. 2. A final foreign judgment was issued by the court of the EU Member State for the offence that is considered criminal offence in the Slovak Republic The Slovak legislation transposed Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA in particular in Articles

	17, 17a and 17b. These articles generally oblige General's Prosecutor Office of the Slovak Republic to inform competent authorities of other member states about all final judgements issued against nationals of other member states of EU or legal persons which has a seat in other member state of EU. The same obligation in regards of exchange of such information about previous convictions applies to other members states of EU. According to Article 7b para 2 of the Criminal Code the final judgment by Court of member state of EU in criminal matters shall be taken into consideration in same manner as domestic judgment if the judgment issued by a Court of other EU member state was taken for criminal offence which is also defined as criminal offence in Slovak Law. The procedure is stipulated in article 488a of the Code of Criminal Proceedings of the Slovak republic. According to para 1 of this article the competent authority to consider a foreign judgement are law enforcement authorities of the Slovak Republic or Courts. The competent authorities may request the General Prosecutor's Office of Slovak Republic to provide copy of foreign judgement or other relevant information for such a proceeding. In addition to this, according to Article 1 para 2 of the Act. No. 330/2007 Coll. on criminal records, the essential part of criminal records in the Slovak Republic are information on previous convictions and decision taken with regard of this matters by Court of other EU member states and also by other States, for example States that are Parties to the European Convention on Mutual Assistance in in Criminal Matters. If the law enforcement authorities found out that a person was convicted in the EU Member State, they require a foreign judgment. If conditions of Article 7 para 2b are met, the decision of a court of the EU member state is taken into account the same way as it would be issued by a Slovak Court. 3. A fact that a person was sentenced by a foreign court was notified to the Slovak authorities The Slovak authorities are informed about the previous decisions also through different legal obligations in bilateral or multilateral treaties (e.g. Article 22 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959). These are registered in the Criminal Register and could be used as an example of a behaviour of a person (when evaluating a way of living of a defendant). There are two regimes upon which can the competent authority take into account previous final decision against natural or legal persons taken in another Party. For the EU member states there is European Criminal Records Information System (ECRIS) which provides access to judicial authorities of member state to comprehensive information on the criminal history of persons concerned, including in which EU countries that person has previously been convicted. For other countries there is proceeding in place according to the article 515 of Code of Criminal proceeding dealing with recognition and execution of a foreign decision. Letter e) of aforementioned article acknowledges the foreign property decision as a foreign decision which can be possibly recognized and executed in the territory of the Slovak Republic if the operative part of foreign decision includes such penalty. Foreign property decision can be viewed in the Slovak law as forfeiture of assets or part of it or confiscation of certain items. So the possibility to determine the penalty, final decisions against natural or legal persons taken in another Party is de facto possible through recognition of previous decisions issued by another Party so this previous decision would constitute using the aggravating circumstance of recidivism which will be used in

	future cases. Comment 1: There is no statistic on such data but we do not see any added value of a specific statistical burden to evaluate this issue. So, recommendation is disproportionate - going beyond the aim or reasonable expectation from the authority. It would create additional burden without any results. We are of the opinion that overall system should be improved by all parties. In particular, by establishing that any foreign final conviction relevant to the Convection a is available to the authorities when deciding a new criminal case. Therefore, this is of horizontal nature, so our recommendation is to analyse this issue together with PCOC and to draw common solution. The issue of international recidivism is present also in other COE Treaties Comment 2: The articles concerning recognition of foreign decision are essential part of the Criminal Code of the Slovak Republic. The Slovak Court in any case have knowledge about the previous decisions issued by foreign judicial authority there is possibility to evaluate the perpetrator with aforementioned decision taken into account. If the suspect is known, or in the case of the charge, the file always contains information from the criminal record. This is sometimes considered, for example, when deciding whether a prosecutor should make a proposal for custody, designing a sanction (this must be approved by the Chief Prosecutor), or when considering an alternative way of ruling (for example, conditional cessation of proceedings). Finally, the court also assesses criminal record information (usually updated at each stage of the proceedings). The Prosecutor also generally evaluates the criminal history (as well as the exploiters) in court proceedings. These considerations are present in each individual case.
Slovenia	Slovenia is in line with this provision. Final decisions issued by another Party can be taken into account during sentencing as provided in **Art. 49 of the Criminal Code.** (Cf. judgement I Ips 4532/2012-238.) ***ARTICLE 49 OF THE CRIMINAL CODE*** *(1) The perpetrator shall be sentenced for a criminal offence within the limits of the statutory terms provided for such an offence and with respect to the gravity of his offence and his culpability.* *(2) In fixing the sentence, the court shall consider all circumstances, which have an influence on the grading of the sentence (mitigating and aggravating circumstances), in particular: the degree of the perpetrator's criminal liability; the motives, for which the offence was committed; the intensity of the danger or injury caused to the property protected by law; the circumstances, in which the offence was committed; the perpetrator's past behaviour; his personal and pecuniary circumstances; his conduct after the committing of the offence and especially, whether he recovered the damages caused by the committing of the criminal offence; and other circumstances referring to the personality of the perpetrator.* *(3) In fixing the sentence of a perpetrator who committed a criminal offence after he had already been convicted or had served his sentence, or after the implementation of his sentence had been barred by time, or after his sentence*

	has been remitted (recidivism), the court shall pay particular attention to whether the earlier offence is of the same type as the new one, whether both offences were committed for the same motive and to the time, which has lapsed since the former conviction or since the serving, withdrawing, remitting or barring of the sentence. As indicated in our answer we provided an example refering to the Judgement no. I Ips 4532/2012-238. Statistics of court decisions do not cover this data, therefore we are not able to provide statistical data. **1) Analysis concerning implementation of Art. 11 of the CETS 198** The report states the Slovenian legislation indirectly provides for considering previous judgments through the requirement for courts to assess the perpetrator's past behaviour. Report recommends considering adopting legislative or other measures to provide concretely for the judicial authorities' power to consider and recognise previous judgments handed down abroad for offences established in accordance with CETS no. 198, as well as to consider introducing an aggravating circumstance or harsher penalty for such cases of (international) recidivism in domestic legislation. **Comment by Slovenia:** We reiterate that the judicial authorities have legal powers to consider during the process of sentencing to recognise previous judgments handed down abroad for offences established in accordance with CETS no. 198. As for the Supreme Court judgement I Ips 4532/2012-238, it was referenced in our answers **since it repeats an established jurisprudence that previous judgements issued in another Party are taken into account when Slovene court determines the penalty.** If needed, we can translate the relevant paragraph of the decision. Slovenia is in line with Art. 11 of the Convention both by adopted legal framework as well as with established jurisprudence.
Spain	Article 14 of Organic Law 7/ 2014 on exchange of information on criminal records and consideration of criminal judgments in the European Union regulates the legal effects of previous court convictions in relation to a new judicial proceeding. It states that final decisions previously handed down by another Member State of the European Union shall have the same effects than those adopted by Spanish Courts, provided that some requirements are fulfilled. Article 22 of the Criminal Code includes recidivism as an aggravating circumstance. It also establishes that final judgements of courts handed down in other European Union countries shall produce the effects of recidivism unless the criminal record has been cancelled or could be cancelled pursuant to Spanish law.
	There is not a specific legislative provision regarding this particular issue. Yet, according to article 741 of the Spanish Law on Criminal procedure, the competent judge will pass sentence "appraising the evidence given during the trial in good conscience". Article 973 specifies that the judge shall express what elements he has taken into account in order to pass sentence. This implies that he may consider final decisions against natural or legal persons adopted in non-EU member States when handing down a sentence (even if he is not obliged to do it). There are no statistics available. Recidivism as an aggravating circumstance only applies to final decisions against natural or legal persons adopted in Spain or other EU country. Nevertheless the court

	may take in consideration a final decision adopted in third countries. The Spanish Council of the Judiciary offers specific training regarding criminal judicial cooperation and, also, economic crimes. Judges are provided with information of international instruments and tools they can apply in order to improve the investigation and prosecution of these crimes.
Sweden	The fact that the defendant has a prior conviction, Swedish or foreign, may affect sentencing according to the Penal Code. A prior conviction may be a reason to sentence to incarceration (Ch. 30 Sect. 4) and constitute a circumstance, which increases the seriousness of the offence at hand (Ch. 29 Sect. 4). A prior conviction may also increase the maximum penalty for the offence (Ch. 26 Sect 3). When determining the size of a corporate fine, reasonable considerations may be given to prior corporate fines, Swedish or foreign. (Ch. 36 Sect. 9). There is no mandatory requirement for Swedish courts to inquire about foreign convictions. Such inquiries may, however, be made by the prosecutor or the court. Regarding article 11, it is not possible to search the case management systems of the law enforcement agencies or the courts in a way that enables identification of the cases where the relevant provisions have been applied. To identify such cases, a manual review of each individual file is required. As these provisions are universally applicable, the amount of files is too large to enable such manual search. In addition, to identify such examples the judge must explicitly have referred to the foreign judgment in the sentence. If not, it is not possible to be certain that the provisions have been applied in the individual case. To conclude, unfortunately, we are unable to provide any examples or statistical information demonstrating the implementation of article 11.
“The former Yugoslav Republic of Macedonia”	Regarding the aforementioned measures related to the previous conviction of the person against whom the criminal procedure is conducted, the positive legislation of “the former Yugoslav Republic of Macedonia” does not presume collection of evidence from other states, with the indication of the circumstance that it is not possible to know whether, when and where a person was convicted, but if a joint investigation was conducted with a state before, this evidence from the participating state in the procedure is still at the stage of the pre-trial procedure. As well as, articles 39, 40, 41, 42, 43, 44, 45 and 46 of the Criminal Code standardizes how the punishment of a person to be pronounced is measured. If there is an evidence in provided criminal record for a person that he has been convicted in another state, that judgment is evidence of his criminal background and constitutes an aggravating circumstance that affects the determination of the sentence. There are such cases (in this prosecutor's office) where persons who have being prosecuted had been previously convicted in the Republic of Germany and information of their criminal background and convictions was considered by the competent court as an aggravating circumstance and was taken into account in the determination of the sentence.

Türkiye	In international law, recidivism is regulated in Article 11 of Council of Europe's 198 No. *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism*. The said provision imposes on the State Parties the obligation to take legal and other necessary measures to ensure that a criminal sentence given in the court of a foreign country for offenses under the Convention is taken into account when determining the amount of punishment in the proceedings in its own country. In order for a finalized foreign court judgment to be taken into account as an aggravating factor of punishment in criminal procedure in another country, the important point to consider is the sharing of relevant criminal records. As regards Türkiye, the sharing of criminal records with foreign countries is provided within the framework of multilateral agreements, bilateral agreements and the principle of reciprocity. The most important multilateral agreement to which Türkiye is party in this regard is the European Convention on Mutual Assistance in Criminal Matters (CETS No.30). Article 13 of the said convention grants the judicial authorities of the member States the right to request the contents of the criminal records in other countries if necessary. Moreover, in accordance with Article 22 of the same convention, the State Parties are obliged to regularly notify the said country regarding the criminal record of the citizens of another State Party and the subsequent measures. The said convention, with regard to Türkiye, has been in effect since 22 September 1969. It is also a legal obligation for our domestic law to provide the criminal record information requested by the competent foreign authorities. Article 7 of the Law No. 5352 on Criminal Records is crucial in this matter. As per paragraph 2 of the said Article, "Criminal record information requested by foreign States is given on the basis of the principle of reciprocity." Furthermore, Article 9 of the Regulation on Criminal Records, another instrument of domestic law which details the regulation of the method of application of the Law on Criminal Records, also confirms this obligation. As per the said Article; "Criminal record information requested by foreign States are provided on the basis of bilateral and multilateral agreements to which Türkiye is party and where there is no agreement, countries are granted information on the basis of reciprocity." As it can be understood, criminal records in our country are provided to foreign countries that request them. As regards the direct notification of the penalty impose on a foreign national in Türkiye without making any request to foreign countries; paragraph 5 of Article 90 of the Constitution of the Republic of Türkiye stipulates that, "international agreements duly put into effect have the force of law." As can be understood from the Article, CETS No. 30 has the force of law in terms of our domestic law and pursuant to Article 22 of the said Convention, it is also an obligation for our domestic law to share criminal records of their nationals with foreign countries. Thus, there is a regular exchange of criminal records among the Parties to CETS No.30. The same situation applies to crimes falling within the scope of CETS No.198. In Türkiye, it is the duty and responsibility of the Directorate General for Criminal Records and Statistics at the Ministry of Justice of Türkiye to keep criminal records. Criminal records are kept in accordance with the Law No. 5352 on Criminal Records. According to Article 2 of the Law; *"all criminal records of any Türkiye citizens who have a finalized judgment by Türkiye courts or the courts of foreign countries and a judgment of conviction recognized by Türkiye Law against them, as well as records of foreigners who have committed offences in Türkiye, following the transfer of these records to the computer in the local area, shall be kept at the Central Criminal Record Office in the Directorate General for Criminal Records and Statistics of the Ministry of Justice."*

	Hence, criminal convictions and criminal records issued by foreign courts are recorded in the central criminal record registry system once they are notified to our country. Within this scope, according to the data obtained from the Directorate General for Criminal Records and Statistics, a total of 97.434 foreign criminal records, most of which are from the COE Member States, were notified to our country between the years 2013- 2017, and they have been registered in the Central Criminal Record Registry System. These records are accessible to all judicial organs through the National Judiciary Informatics System (UYAP), a system used by the judicial authorities of Türkiye. Therefore, when a judgment of criminal conviction issued and finalized by a foreign country court is reported to our country, it is registered in the central criminal record registry system and is open to access to all judicial organs, just like a court decision issued in our country. Thus, judicial organs become aware of the judgment of convictions given in foreign countries regarding the person being tried. Upon evaluating whether the final judgment of conviction given by foreign courts for offenses set forth in the CETS No.198 will be taken into consideration, during the identification of the sentence in the criminal procedure in our country, it is understood that, primarily, Article 58 of the Türkiye Criminal Code No. 5237 regulating recidivism is of vital importance. Recidivism in Türkiye Criminal Law is not directly related to determining the penalty to be imposed but is a matter that effects the conditions under which the sentence is executed. In other words, the period of time a repeat offender spends in prison is longer than that of a non-repeat offender. In addition to this, after the execution of the sentence, a period of probation is determined and in the case that the offence is committed a second time, the person will not be able to benefit from conditional release. As per Article 58 of the Türkiye Criminal Code entitled *"Repeat Offending and Especially Dangerous Offenders"* regulating repeat offending; *(1) The repeat offending provisions shall be applied where there has been a commission of an offence subsequent to a previous finalized conviction. For this provision to apply it is not necessary that any penalty has been enforced.* *(2) The repeat offending provisions shall not apply to offences committed:* *a) five years after the completion date of the sentence for the previous conviction, where such a sentence was for a period greater that five years,* *b) three years after the completion date of the sentence for the previous conviction, where such sentence was for a period of imprisonment of 5 years or less or was a judicial fine,* *3) In cases of repeat offending, if a penalty of imprisonment or a judicial fine is prescribed as alternatives in the law in respect of the most recent offence committed, a penalty of imprisonment shall be given.* *4) The repeat offending provisions shall not be applied where an offence of recklessness follows an offence of intent or vice versa and where a strict military offence follows any other offence or vice versa. <u>The judgments of foreign courts shall be not be subject to recidivism, excluding the offences of Intentional Killing, Intentional Injury, Robbery, Deception, Production and Trade of Narcotics or Psychotropic Substances, Counterfeiting Money or Valuable Stamps.</u>* *5) The repeat offending provisions shall not be applicable to offences committed by any person who was under eighteen years old at the time of the commission of the act.* *(6) The sentence, in cases of repeat offending, shall be enforced in accordance with The Enforcement Code. Further, for the repeat offender a probationary measure shall be*

	applied following the completion of the term of imprisonment. *7)The judgment of the Court should clearly state what the applicable enforcement regime for repeat offenders is and should state that the repeat offender probationary measure is applicable following the completion of the term of imprisonment.* *(8) The Enforcement Code pertaining to repeat offenders and the application of the probationary measure shall be imposed pursuant to the law.* *(9) The Enforcement Code pertaining to repeat offenders and the probationary measure following the completion of the sentence of imprisonment shall also apply to: an habitual offender, a career offender or a member of a criminal organization.* As can be seen, judgments given by foreign courts for intentional killing, intentional injury, looting, fraud, production and trade of narcotics or psychotropic substances, counterfeiting money or valuable stamps play a part in the amount of sentence to be executed in the prison according to the individual execution regime pertaining to repeat offender. Among these types of crimes, particularly looting, fraud, production and trade of narcotics or psychotropic substances, counterfeiting money or valuable stamps are offences among the predicate offences of money laundering under the CETS No.198. Therefore, the judgment of conviction given in a foreign country due to the said crimes will be based on the repeat offending in the trial period in Türkiye, and thus the time to be served in prison will be longer. That said, grounds for discretionary mitigation are regulated in Article 62 of the Türkiye Criminal Code. The said article states that: (1*) "Where there are grounds for discretionary mitigation, a penalty of life imprisonment shall be imposed where the offence committed requires a penalty of aggravated life imprisonment; or twenty-five years imprisonment where the offence committed requires a penalty of life imprisonment. Otherwise the penalty to be imposed shall be reduced by up to one-sixth.* *(2) In the evaluation of discretionary mitigation the following matters shall be taken into account: background, social relations, the behavior of the offender after the commission of the offence and during the trial period, and the potential effects of the penalty on the future of the offender. The reasons for any discretionary mitigation are to be stated in the judgment."* As can be seen, where there are grounds for mitigation in favor of the offender as per the said article, the court shall reduce the penalty to be imposed by one-sixth. The background of the offender is stated as among the reasons for reduction of penalty imposed, a reduction in penalty for a suspect who had previously committed an offence in a foreign country may not be given in court and the amount of penalty to be imposed shall be higher.
Ukraine	**Article 9 "Legal consequences of conviction outside Ukraine" of the Criminal Code of Ukraine.** 1. A judgment passed by a foreign court may be taken into account where a citizen of Ukraine, a foreign national, or a stateless person have been convicted of a criminal offense committed outside Ukraine and have committed another criminal offense on the territory of Ukraine. 2. Pursuant to the first paragraph of this Article, the recidivism of criminal offenses, or a sentence not served, or any other legal consequences of a judgment passed by a

	foreign court shall be taken into account in the classification of any new criminal offense, determination of punishment, in the discharge from criminal liability or punishment. Yes, the sentence of a foreign state court, the recidivism of crimes, the unexpired penalty or other legal consequences of a sentence of a foreign state court in Ukraine are taken into account during the qualification of a new crime and sentencing under the general rules of the criminal process. The above-mentioned circumstances are taken into account by the court of Ukraine as aggravating circumstances. Stated circumstances may be taken into account by the court of Ukraine as a sign that strengthens responsibility if it is directly provided by the relevant articles of the Criminal Code of Ukraine (hereinafter - the CCU). For example, the commission of legalization of proceeds from crime repeatedly is a qualifying feature of Article 209 of the CCU. For the commission of the mentioned crime, responsibility comes under part two of the mentioned-above article and is severer than the penalty provided under part one of this article. Therefore, during the imposition of penalty under part two of Article 209 of the CCU, the recidivism of a crime is no longer applied by the court as an aggravating circumstance. Excerpts from the CCU. **Article 9. Legal consequences of conviction outside Ukraine** 1. A judgment passed by a foreign court may be taken into account where a citizen of Ukraine, a foreign national, or a stateless person have been convicted of a criminal offense committed outside Ukraine and have committed another criminal offense on the territory of Ukraine. 2. Pursuant to the first paragraph of this Article, the repetition of criminal offenses, or a sentence not served, or any other legal consequences of a judgment passed by a foreign court shall be taken into account in the classification of any new criminal offense, determination of punishment, in the discharge from criminal liability or punishment. **Article 32. Repetition of criminal offenses** 1. Repetition of criminal offenses is the commission of two or more offenses, prescribed by the same article or the same paragraph of an article of the Special Part of this Code. 2. Repetition prescribed by paragraph 1 of this Article shall not be present in commission of a continuing offense comprised of two or more similar acts connected by one criminal intent. 3. Committing two or more criminal offenses created by different articles of this Code shall be recognized as repetition only in cases prescribed in the Special Part of this Code. 4. There shall be no repetition if a person was discharged from criminal liability for the previously committed criminal offense on grounds provided for in the law or where the criminal record for that criminal offense was canceled or revoked. **Article 65. General principles of imposition of punishment** 1. A court shall impose a punishment: 1) within the limits prescribed by a sanction of the article (sanction of the part of the article) of the Special Part of this Code, which creates liability for the committed criminal offense except in cases provided under the second part of Article 53 of this Code;

	2) pursuant to provisions of the General Part of this Code; 3) having regard to the degree of gravity of the committed offense, character of the guilty person, and circumstances mitigating or aggravating the punishment. **Article 67. Circumstances aggravating punishment** 1. For the purposes of imposing a punishment, the following circumstances shall be deemed to be aggravating: 1) repetition of an offense or recidivism; 2) the commission of an offense by a group of persons upon prior conspiracy (paragraph 2 or 3 of Article 28); 3) the commission of an offense based on racial, national or religious enmity or discord or on the ground of sex; 4) the commission of an offense in connection with the discharge of official or public duty by the victim; 5) grave consequences caused by the offense; 6) the commission of an offense against an elderly, a person with a disability or a helpless person or a person suffering from a mental disorder, in particular dementia, has a mental disability, and also committing a crime against a young child or in the presence of a child; 6^1) the commission of an offense against spouse or ex-spouse or other person with whom the culprit is (was) in the family or close relations; 7) the commission of an offense against a woman who, to the knowledge of the culprit, was pregnant; 8) the commission of an offense against a person who was in a financial, official or other dependence on the culprit; 9) committing a crime with the use of a minor or a person suffering from mental illness or dementia; 10) committing a crime with particular cruelty; 11) committing a crime with the use of military conditions or a state of emergency, other extraordinary events; 12) committing a crime in a dangerous way 13) committing a crime by a person who is in a state of intoxication or in a state caused by the use of narcotic or other seductive means. 4. If any of the aggravating circumstances that impose a punishment is stipulated in the Article of the Special Part of this Code as a sign of a crime that affects his qualification, the court can not once again take it into account as an aggravating circumstance when imposing a sentence. **Article 209. Legalization (laundering) of proceeds from crime** 1. The commission of a financial transaction or transaction with funds or other property obtained as a result of the commission of a socially dangerous unlawful act preceding the legalization (laundering) of proceeds, as well as the commission of actions aimed at concealing or disguising the illegal origin of such funds or other property or possession thereof, rights to such funds or property, sources of their origin, location, movement,

	change of their form (conversion), as well as the acquisition, possession or use of funds or other property obtained as a result of the commission socially dangerous unlawful act preceding legalization (laundering) of proceeds, - shall be punishable by imprisonment for a term of three to six years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to two years with the confiscation of property. 2. Actions provided for in the first part of this article, committed repeatedly or by a prior conspiracy by a group of persons, or in respect of large amounts, - shall be punishable by imprisonment for a term of seven to twelve years, with the deprivation of the right to occupy certain positions or engage in certain activities for up to three years with the consfiscation of property. 3. Actions provided for in paragraphs 1 or 2 of this article, committed by an organized group or in respect of especially large amounts, - shall be punishable by imprisonment for a term of eight to fifteen years, with the deprivation of the right to occupy certain positions or engage in certain activities for up to three years with the confiscation of property. **Could you provide us with statistics or case example which demonstrate the actual implementation of Article 11 of the Conference of the Parties to the Convention No. 198?** On August 28, 2012, the person was convicted of a crime by Polonsky district court of Khmelnytsky region according to part three, Article 185 of the CCU. In imposing punishment, the court considered the aggravating circumstance of the relapse of crimes, in particular, the international recurrence caused by the conviction of the said person in 2000 and 2003 by Ust-Donetsk district court of the Rostov region of Russian Federation. The person was found guilty in committing a crime envisaged by part two, Article 186 of the CCU by the sentence of Malinovsky District Court of Odessa of 24.11.2014. In imposing a sentence, the court considered the aggravating circumstance of recidivism of crimes, in particular, the international recurrence caused by the conviction of the mentioned person in 1991 by Cimislian District Court of Moldova.
United Kingdom	There are no specific references in UK legislation to a possibility of taking into account the decision of a court in another Party when determining a penalty, but the rules of court allow previous non-UK convictions to be taken into account. Any action would need to be taken in accordance with the UK Rules of Court, and would be a matter for the Court to decide. In the UK, aggravating circumstances are taken into account when a court determines a penalty for an offence, rather than being a separate penalty. So an international offence could be taken into account when considering the sentence for a separate offence in the UK. We do not keep separate stats on this.