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CONFERENCE OF THE PARTIES

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

FOLLOW UP REPORT OF THE CONFERENCE OF THE PARTIES TO CETS NO.198 ON BELGIUM[1]

Memorandum prepared by the Secretariat

[1]Examined and adopted by the Conference of the Parties to CETS 198 at its 10th meeting (Strasbourg, 30-31 October 2018)

Introduction

1. Article 48 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) establishes a Conference of the Parties with the mandate to, inter alia; monitor the proper implementation of the Convention.

2. The Conference of the Parties adopted the assessment report on Belgium at its eight meeting (Strasbourg, 25-26 October 2016). In application of the Conference of the Parties' rules of procedure, the report and subsequent comments made by Belgium to the report were made public within four weeks of adoption.

3. At its fourth meeting, held in Strasbourg in June 2012, the Conference of the Parties decided to include in its Rules of Procedure a follow-up mechanism (Rule 19, paragraphs 30-36), based on a questionnaire completed by the assessed party, assisted by a rapporteur country and a draft analysis prepared by the Secretariat of the Conference of the Parties. As a result of this process, Belgium submitted an update of its progress in meeting the recommendations and other issues identified in the adopted report, which was received on 18 April 2018. The scope of the review is focused on the implementation of the recommendations formulated by the Conference of the Parties in the assessment report of Belgium. Notwithstanding the adoption of Rule 19*bis* during the COP's 9th meeting, establishing a Thematic monitoring review, Belgium decided to undergo the initial follow-up procedure.

4. Armenia was appointed as Rapporteur Country, being responsible for reviewing the replies to the questionnaire and for raising any questions to assist the Conference of the Parties in assessing whether the information supplied is sufficient to demonstrate satisfactory progress by the Party assessed.

5. The Conference of the Parties was satisfied with the information provided in the follow-up report and progress made by Belgium in meeting certain CoP recommendations. Pursuant to Rule No. 19 (39f), the Conference of the Parties adopted the replies to the questionnaire and the analysis prepared by the Secretariat.

Review of implementation of selected articles of CETS no. 198 by Belgium and progress made since October 2016

6. The following review of Belgium's implementation of the CETS no. 198 has been prepared by the Secretariat pursuant to Rule 19 (par. 33) of the Rules of Procedure, based on the information and statistics provided by the Party, the additional information and clarifications received from the Belgian authorities and a review of other relevant evaluation reports of Belgium.

7. This report analyses the progress made by Belgium to meet the deficiencies and to implement the recommendations and/or issues identified for follow-up by the Conference of the Parties. When assessing progress made, effectiveness was taken into account to the extent possible in a desk review, on the basis of the information and statistics provided by the Party. The report also sets out an appraisal of the level of progress in meeting the recommendations and/or issues identified in the adopted report, in order to assist the Conference of the Parties in its analysis and decision-making process.

8. The sections below set out the main findings on issues pertaining to the implementation of selected provision of CETS no. 198. They reflect the detailed article by article findings covering provisions of the Convention and recommendations for improvement made in the assessment report.

Chapter III - Measures to be taken at national level

Section 1 – General provisions

A. Management of frozen or seized property – Article 6

9. The Conference of the Parties made one recommendation to the Belgian authorities on the issue of the proper management of frozen and seized property.

To ensure that clear procedures for managing seized property are set, in line with the requirements of Article 6.

10. Until 1 July 2018, the Law of 26 March 2003 was applied in this regard, which establishes the Central Organ for Seizure and Confiscation (OCSC). The initial COP assessment was based on this law. On 1 July 2018 the 'Law of 4 February 2018 regulating the missions and composition of the Central Organ for Seizure and Confiscation' entered into force.

11. Among other measures, this new law clarifies the role of the OCSC, its functioning and the essential of its missions. It also provides definitions of the notion of patrimonial assets and the principles of compulsory asset management, discretionary asset management and constant value asset management. Those were previously regarded unclear and were interpreted differently. Authorities believe that the clarifications should facilitate and improve the effectiveness of the OCSC's work. Furthermore, the new law defines the missions of the OCSC's partners, to the aim of improving co-operation between the various bodies in the area of AML/CFT (asset recovery offices and asset management offices). The international role of the OCSC and its missions in relation to judicial training on seizure and confiscation are also further defined and strengthened.

12. The principles governing the management of seized assets remain largely unchanged. They come down to the following[2]: (1) the public prosecutor or the investigating judge in consultation with the OCSC ensures the value-based management of the seized assets; (2) the OCSC manages the seized assets entrusted to it in good faith (as a bonus pater familias) and according to the principles of prudent and passive management; (3) certain assets (e.g. money, banks account balances and virtual currencies) are managed by the OCSC, other seized assets are managed optionally by the OCSC when these assets require specialised management; (4) and some seized property may be made available to the federal police for a pre-defined period.

13. The new law also introduces changes and novelties to the management of seized property. It (i) provides the definition of management concepts with constant value management, compulsory management and optional management; (ii) designates the OCSC as "the central office for the management of frozen assets"; (iii) establishes mandatory management by the OCSC of the virtual currencies; (iv) establishes that costs related to the management by the OCSC of the seized property assets are court fees taxed by the Director of the OCSC; (v) introduces a new regulation for the payment of interest in the event of the return of sums of money after the lifting of the criminal seizure is determined; (vi) includes a time limit for the reimbursement of frozen funds and the restitution of seized movable assets; (vii) determines the procedure to be applied in the event of the sale of seized immovable property; (viii) indicates the OCSC as the authority to manage the credit balances of seized bank accounts and introduces a time limit to the procedures thereof; (ix) and simplifies the procedure for making seized assets available to police. It further establishes that the constant-value management rules also apply to assets seized in Belgium pursuant to a MLA request. The Royal Decree of 17 May 2018 executing articles 8, § 3 and 18, § 1, 2° of the Law of 4 February 2018 determines the foreign currencies, besides the euro, that can be managed by the OCSC.

14. Overall, the new law offers a legal basis for the management of frozen and seized assets, it further clarifies the OCSC's powers, and it establishes continuity on the matter of management of frozen and seized assets.

15. Given the aforementioned, it can be concluded that the recommendation has been implemented.

B. Criminalisation of money laundering – Article 9

16. The Conference of the Parties, in its assessment report, addressed one recommendation to Belgium regarding the implementation of Article 9 of the Convention.

To clarify the legal provisions on the criminalisation of money laundering to endorse established jurisprudence.

17. The Belgian authorities indicated that the initial Article 505 of the Penal Code, stipulating the criminalisation of money laundering, has not yet been the subject of legislative amending. A comprehensive reform of the Penal Code will also include amendments to Article 505. This reform is currently under preparation. No further specifications are provided regarding the measures taken to clarify the legal provisions on the criminalisation of money laundering.

18. Therefore, this recommendation has not been implemented.

[2] In random sequence

C. Corporate liability – Article 10

19. The initial assessment report included one recommendation on the implementation of the Convention's provisions on corporate liability.

To provide further clarification, including, where necessary, in the legal provisions, regarding the implementation of Article 10, in particular with regard to legal liability for lack of supervision (paragraph 2)

20. Paragraph 2 of Article 10 stipulates the States Parties' obligation to extend corporate liability to cases where the lack of supervision within the legal person makes it possible to commit the ML offence. Particularly, it aims at holding legal persons liable for the omission by a person in a leading position to exercise supervision over the acts committed by subordinate persons acting on behalf of the legal person.

21. The Belgian authorities in their response to the follow-up questionnaire provided extensive explanation of Article 5 of the Penal Code as amended in July 2018. Although the article does not provide additional provisions covering the liability for lack of supervision, the authorities advised that the Interpretative Note concludes that '*the hierarchical level of the person whose conduct engages the liability of the legal person is not explicitly mentioned in the text,…This means that possible criminal liability is not limited to the governing bodies only. It gives a judge a discretion in assessing the wide variety of decision-making bodies in the legal persons'* (unofficial translation).In view of this, it can be concluded that, whilst the exact reference to a lack of supervision is not embedded in the law, its interpretation provides for the possibility to hold a legal person liable for the omission (by a person in a leading position) to exercise supervision over the acts committed by subordinated persons acting on behalf of the legal person.

22. Therefore it can be concluded that this recommendation is partially implemented.

D. Previous decisions – Article 11

23. With regard to the ability to take previous decisions into account, the COP rapporteurs found that Belgium had restricted this option solely to EU Member States. Therefore, it made one recommendation.

To take the necessary steps to enable courts and prosecutors to take account of previous judgments, irrespective of the State Party in which they were handed down.

24. The Belgian authorities indicated that the legislative provision for complying with Article 11 has not been changed. Article 99bis of the Penal Code establishes the power to take into account previous decisions handed down in other EU Member States, and also establishes that such judgments have the same judicial weight as Belgian condemnations. However, with regard to COP States Parties the scope of the respective Article is not further clarified.

25. In addition, Article 590 of the Code of Criminal Procedure on the legal status of prisoners and the supervision of prisons was amended by the Law of 25 December 2016. It provides that information on convictions on Belgians citizens or legal persons with an office in Belgium or acting from Belgium shall be registered in the Criminal Records.

26. The authorities advised that in January 2017, the Council of Ministers approved the new Penal Code. However, Article 74 of the draft Code repeats the provision of the current Article 99bis.

This provision allows the judge to take into account convictions handed down by the criminal courts of another Member State of the European Union. This provision does not therefore refer to judicial decisions of States Parties. The question as to whether Article 74 should be amended in the sense that criminal convictions in non-European Union states that are parties to conventions should be included was discussed by the authorities during the preparation of the new Penal Code. The agreement was that it should not be a part of the Code, whilst it is up to a judge to decide whether or not to take the decisions brought in non-EU MS into account.

27. Therefore it appears that this recommendation has not been implemented. The COP also considers the conclusion and recommendation on Belgium in the thematic monitoring report on Article 11, as adopted during the 10th Plenary meeting.

Section 2 – Financial intelligence unit (FIU) and prevention

E. Postponement of domestic suspicious transactions – Article 14

28. The initial COP Assessment report included two recommendations on suspending or withholding consent to a suspicious transaction being executed.

To ensure that the CTIF can exercise a right of postponement based on the declarations of all the reporting entities and to give these entities all the necessary means for applying blocking measures.

29. The Belgian Financial Intelligence Processing Unit (CTIF) functions as the FIU. Its functioning is clarified in the new Law of 18 September 2017 on the prevention of money laundering and terrorism financing and the limitation of the use of cash (entry into force on 16 October 2017). This new AML/CFT Law replaces the previous AML/CFT Law of 11 January 1993 on the prevention of the use of the financial system for the purposes of money laundering and terrorism financing. Through Article 80 of the new law, the CTIF is allowed to oppose the execution of any transaction when it receives a suspicious transaction report or information pursuant to Article 79. The latter article stipulates the powers and competences of the CTIF, including the ability to receive and analyse reports of suspicious transactions transmitted by reporting entities, foreign FIUs and other authorities.

30. The relevant provision in Article 80(1) of the new Law is as follows: "*when the CTIF receives a suspicious transaction report or information pursuant to Article 79, it may oppose the execution of any transaction relating to it. The CTIF shall determine the transactions and the bank accounts concerned by the blocking measure, and shall immediately notify its decision, in writing, to the taxable entities concerned"* (unofficial English translation).

31. In addition, Article 80(4) explicitly provides that the CTIF may decide on a blocking measure at the request of a foreign FIU: "*The CTIF may also decide on a blocking measure referred to in paragraph 1 at the request of another FIU. […]*" (unofficial English translation).

32. In practice, the postponement is executed once the request is sent by the FIU via mail or fax and confirmed by phone with the compliance officer of the financial institution. In case the financial institution does not enforce the request sent by the FIU, the supervisory authority is empowered to sanction the financial institution. The authorities advised that between 2015 and 2017, the FIU

requested the postponement of a transaction or blocked a bank account 42 times (13 in 2015, 17 in 2016 and 12 in 2017)..

33. It is therefore concluded that this recommendation is implemented.

To amend Belgian legislation to make the provisions of Articles 22 and 23 clearer and more consistent.

34. This recommendation refers to Articles 22 and 23 of the previous Belgian AML/CFT Law of 11 January 1993, which stipulated the competences of the CTIF. In the initial assessment report, it was noticed a lack of consistency between Article 22(2) and Article 23. One one hand, Article 22(2) granted the CTIF wide-ranging powers and authorised it to take all necessary measures, in accordance with Articles 23-28 and 33-35 of that law, whilst on the other, Article 23, restricted the CTIF's powers to suspended transactions in cases where there is a prior STR report filed by one of the individuals or bodies specified in Article 2(1).

35. Article 80(1) of the new Law of 18 September 2017, only specifies that *when* ("*lorsque*") the CTIF receives an STR, it may oppose the execution of any transaction relating to it.[3] Notwithstanding the exact wording used, it appears possible to the CTIF to apply blocking measures also in cases where there is no STR report filed.

36. Through the adoption of the new Law, the former Articles 22 and 23 are replaced by Article 80, which is more clear and consistent.

37. This recommendation has therefore been implemented.

Chapter IV – International co-operation

Section 2 – Investigative assistance

F. Requests for information on bank accounts – Article 17; Requests for information on banking transactions – Article 18; Requests for the monitoring of banking transactions – Article 19

38. The rapporteurs found that the domestic legal arrangements met the requirements of the Convention regarding MLA requests. However, it made one recommendation on the maintenance of data on this matter.

To improve the availability of detailed statistics on requests for mutual legal assistance to better assess the effectiveness of the implementation of the measures referred to in Articles 17, 18 and 19.

39. The Belgian authorities responded that "co-operation under Articles 17-19 is a sub-category of co-operation of mutual assistance". From this response it does not become clear whether the authorities have implemented the recommendation.

[3] Article 80, paragraph 1, of the Law of 18 September 2017, in official French: "*Lorsque la CTIF est saisie d'une déclaration de soupçon ou d'informations en application de l'article 79, elle peut faire opposition à l'exécution de toute opération qui y est afférente*".

Section 4 – Confiscation

G. Obligation to confiscate – Article 23

40. The rapporteurs made three recommendations with regard to the implementation of the provision establishing an obligation to confiscate.

1. *To establish a mechanism to co-operate with States Parties for the enforcement of non-conviction based confiscation decisions, in accordance with Article 23, paragraph 5, of the Convention.*
2. *To ensure that there are legal provisions to return confiscated property to the requesting Party so that it can compensate the victims of the crime or return the property to its rightful owner.*
3. *To maintain useful statistics on the practice of international co-operation in the field of return of confiscated property, in whole or in part, to the requesting State.*

41. The Belgian authorities indicated that "no steps have been taken to establish a mechanism to co-operate in the execution of 'in rem' confiscation orders. In Belgium, confiscation is conserved a sentence.

42. From this answer it appears that the first recommendation has not been implemented. It does not become clear whether or not the second and third recommendation are implemented either.

Section 5 – Refusal and postponement of co-operation

H. Grounds for refusal – Article 28

43. The rapporteurs made one recommendation with regard to the effective implementation of the

To ensure the possibility to provide meaningful statistics on the practice of international co-operation in the areas stipulated in Article 28 of the Convention.

44. According to the Belgian authorities, the criminal database has been adapted in line with the types of offences which can enact every type of co-operation, including money laundering and terrorist financing offences.

45. It therefore appears that this recommendation has been implemented.

Section 7 – Procedural and other general rules

I. Direct communication – Article 34

46. The COP rapporteurs made three recommendations on the operational framework for co-

1. *To improve the statistical system for direct correspondence requests.*
2. *To group judicial competences of the districts in Belgium, and give priority to communicating the relevant information on their competences in clear form to the foreign judicial authorities within the Council of Europe.*
3. *To raise awareness regularly among the judicial authorities regarding the possibilities to communicate directly with the competent authorities of the States Parties to the Convention.*

47. Belgium responded that “the PC-OC website contains a basic factsheet on Belgium, including modalities for direct co-operation on mutual legal assistance”.

48. From the answer provided, it does not become clear whether any of the three recommendations has been implemented.

Chapter IV – International co-operation

J. Co-operation between FIUs – Article 46

49. The rapporteurs in the assessment report noted that Belgium was carrying out the requirements of Article 46 to a satisfying extent, although some paragraphs needed further attention. Therefore, they made one recommendation.

To consider adopting provisions to ensure that the requirements of Article 46, paragraphs 4, 6, 7, 8, 9 and 12 are duly incorporated into the national AML/CFT framework.

50. In their response to the questionnaire, the Belgian authorities reiterated the outcomes of the assessment report to a large extent. Little information has been added to that, to demonstrate Belgium’s consideration of the recommendation.

51. The FATF Mutual Evaluation Report rated the effectiveness of international co-operation “significant” (Immediate Outcome 2). Indeed, the CTIF has regularly exchanged information with its counterparts. It has increasingly received requests.

52. Paragraph 4: this paragraph stipulates that a request for MLA shall be accompanied by a brief statement of the relevant facts known to the requesting FIU. This FIU will also specify the usage of the requested information. In Belgium, there is no internal law specifically governing the content of requests for co-operation, but the CTIF adheres to the rules and principles of the Egmont Group.

53. Requests to or from non-EU Member States are sent through the Egmont Secure Web. The requests contain a number of variables, such as the personal contact details of the FIU requesting information, the ties with the requested country, the suspicious transactions and the existing links between such transactions and the requested country. For requests to or from EU Member States, CTIF uses the FIU-NET secure communication system. Requests made through FIU-NET are also motivated. FIU-NET includes a specific feature (Match3) to interconnect and match data from several EU FIUs. Through this feature, CTIF participates in regular data exchange. The Belgian authorities further mention that its Memoranda of Understanding with foreign counterparts contain the necessary requirements for the motivation of a request for mutual assistance. CTIF also co-operates with FIUs with which it does not have a co-operation agreement (MoU). A MoU is not a pre-requisite.

54. Authorities stated that CTIF never refused international cooperation and it always checked its database and available commercial databases seeking information on the persons mentioned in the request. If any relevant information is found, CTIF would provide the requesting FIU with the results of these researches. Other than that, Belgium did not provide new information compared to the assessment report. It does not appear that the authorities have considered adopting provisions to ensure that Article 46(4) is duly incorporated into the national AML/CFT framework.

55. Paragraph 6: according to this paragraph, an FIU may refuse to divulge information under certain circumstances. Article 83 of the new AML/CFT Law stipulates that the CTIF may exchange information with its counterparts provided that they are subject to secrecy obligations similar to those of the CTIF; and in the absence of effective protection of the data provided to a foreign counterpart, the CTIF may decide to no longer provide sensitive data to this foreign counterpart.

56. As mentioned in paragraphs 54 and 55, CTIF will not refuse to take into consideration requests for information from a foreign FIU. However, CTIF can modulate its response, particularly when the request does not demonstrate a link with Belgium or when the request is formulated outside the context of the FIU analysis. In case of refusal, the Belgian legislation does not provide for a specific requirement related to the sending of a justification to the foreign FIU. Instead, it will follow the Egmont Group principles which require a justification in writing.

57. The assessment report noted that the Belgian legislation does not contain an explicit requirement to send an explanation to the FIU concerned in case of refusal of a request. The authorities still apply the Egmont Principles for this purpose. Yet, with regard to the specific recommendation, it appears that the adoption of the new AML/CFT brought forward the possibility for the CTIF to refuse to divulge information under specific circumstances.

58. Paragraph 7: this paragraph establishes that the data will be used only for the purpose of AML/CFT. The Belgian law does not provide for restrictions on the disclosure of information received by foreign counterparts to third parties and the use of such information for purposes other than analysis. The principles of the Egmont Group and specific clauses in MoUs provide for such restrictions. The conditions of use foreseen in the MoUs require (a) the prior authorisation of the requested FIU for the purpose of using the information, (b) the prohibition to transmit the information obtained to third parties or for other purposes without the prior consent of the issuing authority, and (c) the prohibition to permit the use or dissemination of any information obtained from the respective authorities for purposes other than those mentioned in the agreement, without the prior consent of the supplying authority.

59. The Belgian authorities did not provide more information complementing the assessment report. It therefore appears they have not considered adopting provisions in line with the recommendation on Article 46(7).On the other hand, the authorities advised that the FIU applies the Egmont Principles and uses the information received from another FIU in line with these principles and the MoUs signed. In addition, the authorities stated that the absence of specific provisions on international cooperation did not negatively impact the effectiveness of this cooperation. In 2017, 2.123 requests for assistance or spontaneous information were received whilst 1.283 requests for information were sent. The FATF Mutual Evaluation Report rated the effectiveness of the international co-operation of the FIU as “Substantial” (Immediate Outcome 2).

60. Paragraph 8: this paragraph regulates that when transmitting information, the FIU making the transmission may impose restrictions and conditions on the use of the information for purposes other than those foreseen in paragraph 7. The Belgian law does not impose restrictions on the use of information or documents submitted by the CTIF for the purposes of analysis. However, if the receiving FIU wishes to divulge the information, it must obtain the CTIF’s prior authorisation. The requirements laid down in Article 46(7) are applicable.

61. Belgium’s answer does not differ from the answer provided in the assessment report. It does not appear that authorities have considered adopting new measures concerning Article 46(8).

62. Paragraph 9: according to this paragraph, the FIU may not refuse its consent to the use of another Party of the information or documents submitted for investigation or prosecution for the purposes referred to in paragraph 7, unless restrictions provided for in national law or the conditions referred to in paragraph 6 apply. The Belgian law does not provide for specific legal provisions concerning the procedure the CTIF must follow when authorising a foreign counterpart to use information supplied in judicial inquiries or prosecutions. In general, the CTIF does not refuse to an applicant the authorisation to use the information, unless the request is made outside of a ML/TF context or where there are no ML/TF indications. Information exchanged between FIUs cannot be used directly in judicial proceedings.

63. The information provided by the authorities is the one as used for the assessment report. Therefore, it does not appear that authorities have considered adopting measures to duly transfer Article 46(9) into domestic law.

64. Paragraph 12: this paragraph stipulates that the transmitting FIU may make reasonable inquiries as to the use made of the information provided. The receiving FIU shall, whenever practicable, provide feedback on the matter. Belgian legislation does not provide for any monitoring of the use of information transmitted by the CTIF or for the provision of such information in return, at the request of a foreign FIU. In practice, the CTIF occasionally asks its foreign counterparts to inform it of the action taken on case files transmitted by the CTIF, as well as through a regular meeting held once or twice a year in which the CTIF meets with its main foreign counterparts. The CTIF completes a "feedback" form, if requested, in case information is received from the foreign counterpart. It also systematically and spontaneously provides counterparts with general and detailed information on a file.

65. The information provided for this follow-up analysis is no different from the initial assessment analysis.

66. Following the analysis of the information provided, it does not appear that the Belgian authorities have considered adopting measures with regard to Article 46, paragraphs 4, 7, 8, 9 and 12, as the information provided is similar to the one used when the assessment report was prepared. Only the recommendation on Article 46(6) appears implemented through the adoption of the new AML/CFT law.

K. International co-operation for postponement of suspicious transactions – Article 47

67. According to the rapporteurs, the lack of a clearly worded provision on the CTIF's right to block transactions, at the request of a foreign FIU, casted certain doubts about the effective implementation of Article 47 of the Convention. Therefore, the rapporteurs made one recommendation.

To take legislative or other measures allowing the CTIF to initiate urgent action, at the request of a foreign FIU, to suspend or withhold consent to a transaction, under conditions identical to those provided for by domestic law.

68. The Belgian authorities provided that the new AML/CFT Law of 18 September 2017, through its Article 80, allows the CTIF to oppose the execution of any transaction, when it received a suspicious transaction report or information pursuant to Article 79[4].

69. In addition, Article 80(4) explicitly provides that the CTIF may decide on an opposition measure, and make use of the provisions of paragraphs 1 to 3 of Article 80, at the request of a foreign FIU.

70. The information provided by the Belgian authorities concerning this particular recommendation is identical to the information provided for Article 14. Given the adoption of the new AML/CFT Law, the CTIF has acquired the competence to "oppose" the execution of a transaction, which in practice is similar to the wording of the recommendation "to suspend or withhold consent" to a transaction.

71. It is therefore concluded that this recommendation has been implemented.

Conclusion

72. In order for Belgium to make full use of the Convention's provisions and adequately implement its obligations under the Convention, the Conference of the Parties reiterates a number of its recommendations previously formulated in the assessment report. The Conference of the Parties invites Belgium to fasten its reforms aimed at adapting the domestic legal framework to the Convention's requirements and also to consider additional measures, as appropriate, in order to support the implementation of the adopted provisions.

Adaptation of the national legislation to the Convention's requirements and implementation aspects

Implementation of Article 9 of the Convention

a. As previously recommended, the Belgian authorities are advised to clarify the legal provisions on the criminalisation of money laundering, particularly in cases where there has been no conviction for a predicate offence and the legislation on the liability of legal persons, to confirm the already established evolutions in case-law.

Implementation of Article 10 of the Convention

b. The Belgian authorities should consider including in the legal provisions, the legal liability for lack of supervision as established in Article 10, paragraph 2.

Implementation of Article 11 of the Convention

c. Belgium should take all necessary measures to ensure that its courts and prosecutor's office are in a position to take account of previous judgments, irrespective of the State Party in which they were handed down.

[4] Article 79 AML/CFT Law outlines the powers and powers of the CTIF, which are, among others, the competence to receive and analyse STRs transmitted by obliged entities, foreign FIUs and other authorities.

Implementation of Articles 17, 18 and 19 of the Convention

d. The Belgian authorities should improve the availability of detailed statistics on MLA, to allow for better evaluation of the effective implementation of the measures covered by Articles 17, 18 and 19 of the Convention.

Implementation of Article 23 of the Convention

e. Belgium is recommended to establish a mechanism to co-operate with States Parties for the enforcement of non-conviction based confiscation decisions, in accordance with Article 23(5) of the Convention.
f. Belgium is also recommended to adopt legislative or other measures to ensure that the restitution of confiscated property to the requesting Party, either for the purpose of victim compensation or for return of such property to the legitimate owners, is considered as a matter of priority.
g. The authorities are recommended to maintain useful statistics on the practice of international co-operation in the field of return of confiscated property, in whole or in part, to the requesting State.

Implementation of Article 34 of the Convention

h. As previously recommended, the Belgian authorities are recommended to ensure that there are effective and clear procedures for direct communication, whether or not the country concerned is an EU Member State, and even in a period of change to the domestic judicial landscape.
i. They are also recommended to clarify the various competences of the judicial districts in Belgium for the purpose of improving direct communication between them and foreign judicial authorities, as well as to raise awareness among the judicial authorities regarding the possibilities to communicate directly with the competent authorities of the States Parties to the Convention.

Implementation of Article 46 of the Convention

j. Belgium is encouraged to consider adopting provisions to ensure that the requirements of Article 46, paragraph 4, 7, 8, 9 and 12 are duly transposed into the domestic AML/CFT framework.

The Secretariat