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CONFÉRENCE DES PARTIES

Convention du Conseil de l'Europe relative au blanchiment, au dépistage, à la saisie et à la confiscation des produits du crime et au financement du terrorisme (STCE n° 198)

Étude de suivi thématique de la Conférence des Parties à la STCE n° 198 sur l'article 9(3) (« Infractions de blanchiment »)[1]

[1] Examiné et adopté par la Conférence des Parties à la STCE n° 198 lors de sa 11e réunion, Strasbourg, 22-23 octobre 2019. Amendée par suite de la ratification de la Convention par Monaco en 2020, de la Lituanie en 2021, Estonie en 2023, ainsi que suite aux contributions reçus par la Fédération de Russie et suite de procédure de suivi sélectionnée par la Croatie (2020).

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Introduction

1. Lors de sa 9e réunion, tenue à Strasbourg les 21 et 22 novembre 2017, la Conférence des Parties (ci-après : « la CdP ») a décidé d'engager un suivi thématique transversal pour une durée initiale de deux ans. Ce nouveau mécanisme de suivi porte sur la manière dont les États Parties ont mis en œuvre certaines dispositions de la Convention du Conseil de l'Europe relative au blanchiment, au dépistage, à la saisie et à la confiscation des produits du crime et au financement du terrorisme (STCE n° 198, ci-après : « Convention de Varsovie »). À cette fin, la CdP a ajouté à ses Règles de procédure la règle 19bis, annexée au présent rapport.

2. À sa 10e réunion plénière, la CdP a examiné et adopté le premier rapport de suivi thématique qui portait sur l'article 11 et l'article 25, paragraphes 2 et 3 de la Convention de Varsovie. Elle a décidé que le deuxième suivi thématique traiterait de l'article 9, paragraphe 3 et de l'article 14 de la Convention. La présente étude porte exclusivement sur l'article 9, paragraphe 3.

3. En décembre 2018, un questionnaire (que l'on trouvera en annexe II au présent document) a été diffusé, auquel les États parties ont répondu fin février 2019. Les réponses ont été analysées par les rapporteures Mme Oxana Gisca (République de Moldova) et Mme Ani Goyunyan (Arménie) avec l'appui du Secrétariat. Le projet d'analyse a ensuite été diffusé auprès des États parties pour observations et compléments d'information. On trouvera au chapitre « Synthèse » du présent rapport les principaux constats issus des réponses au questionnaire.

4. Le présent rapport cherche à déterminer dans quelle mesure les États parties ont adopté des mesures pour établir une infraction de blanchiment lorsque l'auteur (a) a soupçonné que le bien constituait un produit et/ou (b) aurait dû être conscient que le bien constituait un produit.

5. Le rapport commence par préciser le champ d'application de l'article 9, paragraphe 3 de la Convention de Varsovie (ci-après : « article 9(3) ») et la méthodologie employée pour l'étude. Il présente ensuite des conclusions sur les dispositions législatives et leur mise en œuvre effective et propose des recommandations. Les réponses des États parties sont analysées individuellement et des recommandations sont formulées pour chacun d'entre eux. Les réponses des États sont annexées au présent rapport.

Champ d'application de l'article 9(3)

6. L'article 9(3) concerne la *mens rea* du blanchiment de capitaux, dans les cas où l'auteur a fait preuve de négligence et/ou soupçonnait que le bien constituait un produit. Le paragraphe en question est rédigé comme suit :

« Chaque Partie peut adopter les mesures législatives et autres qui se révèlent nécessaires pour conférer le caractère d'infraction pénale, conformément à son droit interne, à certains ou à l'ensemble des actes évoqués au paragraphe 1 du présent article, dans l'un et/ou l'autre des cas suivants :

a) lorsque l'auteur a soupçonné que le bien constituait un produit,
b) lorsque l'auteur aurait dû être conscient que le bien constituait un produit ».

7. Il peut s'avérer très difficile de prouver l'élément moral d'une infraction de blanchiment, car les tribunaux nationaux prescrivent souvent un niveau élevé de connaissance de l'origine des produits par les auteurs de l'infraction de blanchiment présumée. L'article 9(3) permet donc

aux Parties d'établir une infraction pénale même lorsque ce niveau très élevé de connaissance n'est pas prouvé. L'alinéa 3(a) prévoit un élément moral moins subjectif couvrant la situation dans laquelle une personne s'interroge quelque peu sur l'origine des produits (autrement dit, lorsqu'elle soupçonne que le bien constitue un produit), mais n'a pas la certitude qu'il s'agit de produits du crime. L'alinéa 3(b) prévoit l'incrimination du comportement négligent, pour lequel le tribunal déterminera, après évaluation des éléments de preuve, si l'auteur de l'infraction aurait dû être conscient que le bien constituait un produit. Dans cette situation, il n'est pas nécessaire que la personne ait eu un soupçon quant à l'origine illicite du bien.

8. L'article 9(3) va au-delà des exigences relatives à l'infraction de blanchiment de capitaux énoncées à l'article 3 de la Convention de Vienne de 1988 et à l'article 6 de la Convention de Palerme de 2000. Ces deux conventions ayant servi de base aux normes internationales de lutte contre le blanchiment de capitaux et contre le financement du terrorisme (LAB/CFT), l'article 9(3) va également plus loin que la recommandation 3 des Recommandations de 2012 du GAFI (de conférer le caractère d'infraction pénale au blanchiment de capitaux sur la base de ces deux instruments). Par conséquent, l'article 9(3) apporte une valeur ajoutée aux normes internationales de LAB/CFT en facilitant l'établissement de l'infraction pénale de blanchiment de capitaux. La mise en œuvre de cette disposition pourrait accroître l'efficacité des enquêtes et des poursuites menées par les États sur ces infractions. De plus, la valeur ajoutée de cette disposition est également soulignée par une disposition parallèle à l'art. 3(2) de la Directive (UE 2018/1673) du 23 octobre 2018 sur la lutte contre le blanchiment de capitaux par le droit pénal.

9. Il convient de noter à cet égard que la performance globale du réseau mondial de LAB/CFT dans ce domaine n'est pas très satisfaisante à l'heure actuelle. Dans une récente étude interne du GAFI, le Résultat immédiat 7 (*« les activités et les infractions de blanchiment de capitaux font l'objet d'enquêtes et les auteurs d'infractions sont poursuivis et font l'objet de sanctions efficaces, proportionnées et dissuasives »*) n'était globalement atteint qu'à un niveau relativement modeste. 59 % des pays du GAFI qui avaient été évalués en mai 2019 avaient obtenu une notation de niveau d'efficacité « faible » ou « modéré », tandis que les pays évalués par MONEYVAL ou d'autres organes régionaux semblables au GAFI avaient obtenu à 98 % une notation de niveau d'efficacité « faible » ou « modéré ». Bien que le Résultat immédiat 7 contienne de nombreux aspects allant au-delà de l'incrimination de l'infraction de blanchiment de capitaux (ce qui incite à la prudence pour ce qui est de tirer des conclusions générales), un tour d'horizon des évaluations réalisées à ce jour par le GAFI ou MONEYVAL sur les États de la CdP montre que ceux qui avaient mis en œuvre les deux éléments de l'article 9(3), ou au moins un des deux, avaient globalement obtenu une meilleure notation pour ce Résultat immédiat. Il semblerait donc que les États parties qui ne l'ont pas encore fait puissent tirer un avantage de l'adoption de l'article 9(3) dans leur droit interne sur le plan de l'amélioration de l'efficacité des enquêtes et des poursuites pour blanchiment de capitaux.

10. La formulation du paragraphe (« *peut adopter* ») le rend facultatif. Par conséquent, les États parties qui n'ont pas encore (pleinement) intégré cette disposition dans leur droit interne ne manquent pas à leurs obligations de mise en œuvre de la Convention à cet égard. Cela dit, la CdP a pris l'habitude au cours de la décennie passée d'analyser l'application de l'article 9(3) par les États parties dans ses rapports d'évaluation. Bien qu'il y ait parfois eu quelques écarts

dans les recommandations de la CdP sur cette disposition[2], le présent rapport s'efforcera de proposer des recommandations qui correspondent dans la mesure du possible à la pratique antérieure des rapports de la CdP.

11. Le présent rapport examine la législation interne présentée par les autorités, et plus particulièrement la disposition conférant le caractère d'infraction pénale au blanchiment de capitaux et les principes généraux de droit relatifs au niveau de connaissance ou d'intention requis pour qu'une infraction soit constituée. La mise en œuvre effective a également été évaluée en demandant aux États de fournir des exemples de jurisprudence démontrant l'application de l'article 9(3) dans la pratique.

Méthodologie

12. Le « Questionnaire pour le suivi transversal de la mise en œuvre par les États parties de l'article 9(3) et de l'article 14 de la STCE n° 198 » demandait des informations sur les deux questions suivantes concernant l'article 9(3) :

« Votre législation et d'autres mesures permettent-elles d'établir une infraction de blanchiment de capitaux lorsque la personne soupçonnait *que le bien constituait un produit ? »*

« Votre législation et d'autres mesures permettent-elles d'établir une infraction de blanchiment de capitaux lorsque la personne aurait dû être consciente *que le bien constituait un produit ? »*

13. Les délégations ont été invitées à présenter les dispositions de leur législation interne traitant de ces questions. Par ailleurs, elles ont été encouragées à étayer leurs réponses par des cas concrets ou autres informations pertinentes.

14. La présente étude de suivi thématique inclut des informations sur 38 États de la CdP[3]. Dix pays[4] ont fait l'objet d'une évaluation individuelle par pays de la CdP, dont les analyses ont également été prises en compte.

Synthèse

15. L'évaluation de la mise en œuvre et de la transposition de l'article 9(3) permet d'aboutir à plusieurs constats généraux. On trouvera les conclusions spécifiques à chaque État partie dans l'analyse par pays.

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[2] Dans un rapport (Croatie), les évaluateurs ont recommandé d'incriminer l'élément de soupçon alors que l'élément de négligence était déjà en place, pour que le paragraphe 3(a) et le paragraphe 3(b) soient mis en œuvre, alors que d'autres (Albanie, Pologne, Roumanie) ont recommandé d'envisager d'introduire l'un ou l'autre des alinéas, ou les deux. Des rapports (Arménie, Belgique) ont cité la jurisprudence pour démontrer l'application effective de la disposition, tandis que d'autres (Bosnie-Herzégovine) ont uniquement noté que cette pratique était absente. Il a été recommandé à un pays (Malte), en l'absence de jurisprudence pertinente, de sensibiliser les procureurs et les juges aux éléments de l'infraction de blanchiment de capitaux tels qu'interprétés par les tribunaux, alors qu'aucune recommandation de ce type n'a été faite à d'autres pays dans une situation comparable (Albanie, République de Moldova, Monténégro et Roumanie).

[3] La réponse de la Fédération de Russie a été reçue en 2020 et l'analyse a été modifiée en conséquence. Monaco, la Lituanie et l'Estonie ont ratifié la Convention de Varsovie après que les présentes procédures de suivi thématique ont été engagées. La mise en œuvre de l'article 9(3) par Monaco a été donc analysée en 2020, par Lituanie en 2021 et par l'Estonie en 2023.

[4] Albanie, Arménie, Belgique, Bosnie-Herzégovine, Croatie, Malte, République de Moldova, Monténégro, Pologne et Roumanie.

16. Le questionnaire demandait si les États parties avaient adopté des mesures législatives ou autres pour permettre d'établir une infraction de blanchiment de capitaux dans le cas où l'auteur soupçonnait (« alternative 1 ») ou aurait dû être conscient (« alternative 2 ») que le bien constituait un produit. Les observations générales suivantes peuvent être faites concernant les 37 États parties qui ont répondu :

    - sept États parties (Bosnie-Herzégovine, Croatie, Danemark, Allemagne, Italie, République slovaque et Slovénie) ont incriminé les deux situations prévues à l'article 9(3) ;
    - quinze États parties ont incriminé au moins l'une des deux situations (six l'alternative 1 et dix l'alternative 2), ce qui porte à vingt-deux le nombre total d'États ayant mis en œuvre l'exigence minimale contenue dans cette disposition.
    - les seize États parties restants n'ont mis en œuvre aucune des deux mesures prévues à l'article 9(3), compte tenu de la formulation non contraignante de la disposition. L'exclusion de cette disposition du champ d'application des infractions de blanchiment de capitaux tirait son origine de la formulation de la législation applicable et/ou a été confirmée par la jurisprudence des tribunaux internes. La jurisprudence pertinente a été présentée pour le démontrer, le cas échéant.

Mise en œuvre effective

17. Sur les vingt-deux États parties qui mettent en œuvre l'article 9(3), seuls dix États (Belgique, Bosnie-Herzégovine, Bulgarie, Croatie, Hongrie, Malte, République de Moldova, Roumanie, République slovaque et Suède) ont inclus dans leur réponse des informations sur la jurisprudence existante relative à l'article 9(3), confirmant l'application de cette disposition dans la pratique. Trois pays (Pays-Bas, Slovénie et Espagne) ont fourni des statistiques sur le nombre d'affaires pour démontrer l'application de l'article 9(3) dans la pratique. Plusieurs États parties ont indiqué qu'ils n'avaient pas d'affaires à présenter concernant l'article 9(3).

Recommandations et suivi

18. Plusieurs recommandations générales peuvent être formulées sur la base des constats résumés ci-dessus. Les États parties sont invités à y donner suite et à assurer la mise en œuvre effective des mesures recommandées. Bien que des recommandations spécifiques figurent dans les analyses individuelles par pays ci-dessous, les deux types de recommandations – générales et spécifiques – devraient être prises en compte lors de l'adoption de mesures législatives ou autres visant à mettre en œuvre plus avant les dispositions de la Convention de Varsovie. Les États parties devraient être invités à signaler à la CdP lors de futures réunions plénières, conformément aux décisions de celle-ci, toute évolution et toute mesure prise concernant les points abordés dans la présente étude.

19. Comme expliqué précédemment dans la partie « champ d'application de l'article 9(3) », les rapports d'évaluation de la CdP ont appliqué différentes approches pour ce qui est des conclusions et recommandations relatives à l'article 9(3). Dans la présente étude, il a été décidé de formuler des recommandations dans deux cas de figure : d'une part, lorsque ni la négligence, ni le soupçon n'étaient couverts – ce qui revient à ne pas exiger des États parties qu'ils prévoient les deux éléments, mais au moins l'un des deux (conformément au libellé de la disposition : « l'un et/ou l'autre ») et d'autre part, lorsque les États n'ont pas présenté

d'exemples de jurisprudence ni d'autres données pour démontrer l'application de l'article 9(3) dans la pratique[5].

20. Afin d'encourager une approche harmonisée entre les États parties de la CdP – tout en gardant à l'esprit le caractère non obligatoire de l'article 9(3) –, il est recommandé aux États parties qui ne l'ont pas encore fait, d'envisager :

    - d'adopter des mesures législatives ou autres pour conférer le caractère d'infraction pénale aux actes visés à l'article 9(1) de la Convention de Varsovie, dans l'un et/ou l'autre des cas mentionnés à l'article 9(3), c'est-à-dire lorsque l'auteur a soupçonné ou aurait dû être conscient que le bien constituait un produit.

21. Aux fins d'une transposition réussie de l'article 9(3), les États parties qui ont adopté les mesures de l'article 9(3) sont invités à envisager :

    - de sensibiliser les autorités de police et les autorités judiciaires à l'élément moral moins subjectif et/ou à la négligence relativement à l'infraction de blanchiment de capitaux.

22. Les États parties sont fortement encouragés à mettre en œuvre les recommandations générales précitées en plus des recommandations spécifiques par pays. Les mesures législatives correspondantes pourraient être adoptées en modifiant le Code pénal et/ou les lois en matière de LAB/CFT (lorsque la définition de l'infraction de blanchiment de capitaux est contenue dans ces lois, et non dans le Code pénal). Les mesures non législatives pourraient privilégier les activités de sensibilisation, la formation ou la publication d'orientations pour les magistrats sur la *mens rea* de l'infraction de blanchiment de capitaux.

23. Ayant présent à l'esprit le caractère non contraignant de l'article 9(3) mais compte tenu de sa pratique de longue date consistant à formuler des recommandations aux États parties qui n'ont pas encore mis en œuvre cette disposition, la CdP pourrait décider de procéder à un suivi des recommandations découlant de la présente analyse.

[5] Il convient de noter à cet égard que la Recommandation 33 (« Statistiques ») des recommandations de 2012 du GAFI demande aux États de tenir des statistiques complètes, notamment sur les enquêtes, poursuites et condamnations pour blanchiment de capitaux. Cette formulation est suffisamment large pour couvrir également les enquêtes, poursuites et condamnations pour blanchiment de capitaux par négligence, bien que la recommandation 3 des Recommandations du GAFI n'exige pas l'incrimination du blanchiment de capitaux dans la même mesure que l'article 9(3) de la Convention de Varsovie.

Analyse par pays

Albanie

1. En 2011, le rapport d'évaluation de la CdP sur l'Arménie a noté que l'article 287 du Code pénal n'exigeait pas « que l'auteur de l'infraction sache que les biens constituent un produit pour établir le *corpus delicti* concernant les actes visés aux paragraphes 1(b) à 1(e) ».
2. Dans leur réponse au questionnaire, les autorités albanaises ont indiqué que l'article 287 en question, applicable au moment du rapport d'évaluation de 2011, avait été modifié depuis par la loi n° 23/2012.
3. Bien que les autorités affirment qu'il n'existe aucun obstacle à l'application de l'article 9(3), la disposition exacte ne figure pas dans la législation interne. Tel qu'il est formulé, l'article 287(1) sur l'infraction de blanchiment mentionne uniquement la connaissance par une personne du fait qu'un bien constitue le produit d'une infraction pénale ou d'une activité criminelle : « *a) l'échange ou le transfert de biens dont celui qui s'y livre sait que ces biens constituent le produit d'une infraction pénale ou d'une activité criminelle [...] dans le but de dissimuler ou de déguiser l'origine illicite desdits biens* » [soulignement ajouté par nos soins]. La référence à la connaissance (dans la phrase soulignée) ne figurait pas dans le précédent article 287 en vigueur lors de l'évaluation de 2011 de la CdP. La formulation actuelle de l'article 287 exclut donc à la fois le cas dans lequel l'auteur soupçonnait que le bien constituait un produit et celui où il aurait dû en être conscient, limitant ainsi le champ d'application de l'article à l'élément de connaissance.
4. En l'absence de preuve directe de la connaissance de l'origine du bien, l'autorité chargée des poursuites s'appuiera sur des preuves indirectes ou d'autres indices graves, précis et concordants (article 152/2 du Code de procédure pénale).
5. Aucun exemple d'affaire n'a été présenté pour démontrer l'application de l'article 9(3) dans la pratique.

Conclusion/Recommandation

6. Depuis les récents amendements au Code pénal, la législation albanaise n'inclut plus aucune des mesures proposées dans l'article 9(3). Il est par conséquent recommandé aux autorités d'envisager l'adoption de mesures législatives ou autres pour prévoir expressément une notion de négligence et/ou de soupçon que le bien constitue un produit du crime dans le contexte de l'infraction de blanchiment de capitaux.

Arménie

1. En vertu de la législation arménienne, l'infraction de blanchiment de capitaux est constituée dans les seuls cas où la connaissance et l'intention directe sont établies, en tant que composante obligatoire de l'élément subjectif. L'article 190, partie 1 du Code pénal définit l'élément subjectif de l'infraction de blanchiment de capitaux comme suit : « *la conversion ou le transfert de biens (dont celui qui s'y livre sait que ces biens constituent le produit d'une activité criminelle) dans le but de dissimuler ou de déguiser l'origine illicite desdits biens ou d'aider toute personne à échapper à la responsabilité des actes criminels qu'elle a commis, ou la dissimulation ou le déguisement de la nature, de l'origine, de l'emplacement, de la disposition, du mouvement ou de la propriété réels de biens ou de droits y relatifs (dont celui qui s'y livre sait que ces biens constituent le produit d'une activité criminelle) ou l'acquisition, la détention, l'utilisation ou la cession de biens (dont celui qui les acquiert, les détient, les utilise ou les cède sait, au moment où il les reçoit, qu'ils constituent le produit d'une activité criminelle […]* » [soulignement ajouté par nos soins]

2. Par ailleurs, la Cour de cassation a conclu[6] le 24 février 2011 que « *dans la pratique, l'article 190 du Code pénal trouvera à s'appliquer si l'existence d'une intention spécifique de dissimuler ou de déguiser l'origine réelle de produits illicites et d'intégrer ces fonds dans des activités légitimes est établie en tant que composante obligatoire de l'élément subjectif de l'infraction en question. L'absence d'une telle intention exclut la possibilité de l'infraction en question [...] »*
3. Le rapport d'évaluation de 2016 de la CdP a également conclu qu'en Arménie, l'infraction de blanchiment de capitaux ne peut être commise avec un élément moral moins subjectif ou par négligence.

Conclusion/Recommandation

4. L'Arménie n'a pas adopté de mesures comme celles proposées à l'article 9(3) dans sa législation interne, ce qui est également confirmé par la jurisprudence. Il est par conséquent recommandé aux autorités arméniennes d'envisager l'adoption de mesures législatives ou autres pour prévoir expressément une notion de négligence et/ou de soupçon que le bien constitue un produit du crime dans le contexte de l'infraction de blanchiment de capitaux.

Autriche

1. Selon les autorités autrichiennes, l'infraction de blanchiment de capitaux est inscrite dans la section §165 du Code pénal autrichien. Les autorités ont indiqué que seul le paragraphe 1 requiert la caractérisation d'un dolus eventualis, tandis que les infractions visées aux paragraphes 2 et 3 nécessitent la caractérisation de la connaissance de l'origine illicite des biens. Cependant, cette disposition légale n'a pas été fournie, ce qui rend toute analyse ultérieure impossible.
2. L'élément moral est prévu à l'article 5 du Code pénal, qui dispose que l'intention d'agir est caractérisée lorsqu'une personne « agit de manière à accomplir les éléments constitutifs d'une infraction au regard de la loi ; ainsi, pour caractériser l'élément moral, il suffit de montrer que la personne avait conscience de l'existence d'un risque important qu'une infraction se produise et, eu égard aux circonstances, décide de prendre ce risque ».
3. Le comportement négligent n'est érigé en infraction pour aucune infraction d'atteinte aux biens. Le paragraphe 3(b) de la Convention n'est ainsi pas appliqué en Autriche.
4. Par ailleurs, la Cour suprême autrichienne a jugé que "l'infraction de blanchiment de capitaux selon l'article 165, paragraphe 1, du Code pénal exige tous les éléments de l'infraction soient réunis (à la différence du paragraphe 2). Les éléments subjectifs sont donc réunis si l'auteur soupçonne sérieusement que l'argent est contaminé pénalement" (14 Os 181/95 ou 14 Os 150/02 du 9.9.2003). Aucune explication plus approfondie n'a été fournie.
5. En outre, aucune étude de cas n'a été fournie pour démontrer l'application de la jurisprudence susmentionnée établie par la Cour suprême.

Conclusions/Recommandations

6. Au vu des informations manquantes, il n'est pas certain si la législation autrichienne requière expressément la caractérisation de l'infraction de blanchiment de capitaux lorsque l'auteur de l'infraction soupçonnait ou aurait dû connaître l'origine illicite des produits. Par conséquent, il est recommandé aux autorités d'envisager, si tel n'a pas encore été le cas, d'adopter des mesures législatives et de développer une jurisprudence

[6] La Cour de cassation est la plus haute instance judiciaire de la République d'Arménie ; elle assure l'application uniforme de la loi, hormis sur les questions de justice constitutionnelle (article 92(2) de la Constitution de la République d'Arménie).

prévoyant ainsi un cadre global dans lequel l'infraction de blanchiment de capitaux pourrait être caractérisée lorsque l'auteur soupçonnait ou aurait dû supposer que les biens sont des produits du crime.

Azerbaïdjan

1. Aucune loi ne prévoit actuellement les mesures proposées à l'article 9(3). Les autorités ont informé la CdP qu'un projet de législation portant sur *« la légalisation de fonds ou de biens obtenus de manière criminelle, ainsi que l'acquisition, la détention, l'utilisation ou la cession de ces fonds ou biens, commises par négligence »* [soulignement ajouté par nos soins] était en cours de préparation. La nouvelle législation devrait entrer en vigueur d'ici octobre 2019.
2. En l'absence de législation interne, il n'existe aucune jurisprudence en la matière.

Conclusion/Recommandation

3. L'Azerbaïdjan n'a pas encore adopté de mesures comme celles proposées à l'article 9(3) dans sa législation interne. Un projet de législation incluant l'élément de négligence est envisagé. Les autorités azerbaïdjanaises devraient être invitées à faire rapport à la CdP sur la dernière étape de cette procédure législative. Il leur est recommandé d'assurer la mise en œuvre effective de ce projet de législation après son entrée en vigueur en envisageant de sensibiliser les autorités de police et les autorités judiciaires à cette question.

Belgique

1. En Belgique, la législation contient une formulation similaire à l'article 9(3)(b) : l'infraction de blanchiment de capitaux s'applique aux situations dans lesquelles l'auteur « était ou aurait dû être conscient » de l'origine des biens en question.
2. Un exemple d'application de cet article a été fourni dans le rapport d'évaluation 2016 de la CdP sur la Belgique (Cass. 21 juin 2000, Pas. 2000, n. 387 ; CA Gand, 9 février 2012). Le rapport de la CdP a conclu que la Belgique avait démontré, dans une mesure satisfaisante, la mise en œuvre de l'article 9(3).

Conclusion

3. La Belgique a adopté dans sa législation interne des mesures comme celles proposées à l'article 9(3). Une affaire donnée en exemple confirme qu'un acte de négligence quant à l'origine illicite d'un bien suffit à engager des poursuites pour blanchiment de capitaux.

Bosnie-Herzégovine

1. Le rapport d'évaluation 2015 de la CdP sur la Bosnie-Herzégovine a conclu que des mesures visant à établir une infraction de blanchiment de capitaux dans les deux variantes stipulées à l'article 9(3) étaient prévues dans la législation mais qu'aucune affaire concrète n'avait été communiquée pour démontrer l'application des dispositions pertinentes. Par ailleurs, il a été recommandé aux autorités d'envisager d'harmoniser le régime de sanctions entre le niveau étatique et les divers districts. Cette recommandation a été mise en œuvre car tous les codes pénaux prévoient depuis une amende ou une peine d'emprisonnement maximale de trois ans.
2. L'article 209(4) du Code pénal de Bosnie-Herzégovine confère le caractère d'infraction pénale au fait d'agir avec négligence relativement à l'infraction de blanchiment de capitaux. Il en est de même pour les Codes pénaux du district de Brčko (article 265(5)), de la République de Srpska (article 263(5)) et de la Fédération de Bosnie-Herzégovine

(article 272(5)). Ces infractions sont toutes passibles d'une amende ou d'une peine d'emprisonnement maximale de trois ans.

3. Les autorités ont cité en exemple une affaire dans laquelle la Cour de Bosnie-Herzégovine a condamné le 1er décembre 2017 une personne qui avait fait preuve de « négligence » quant au fait qu'une somme importante d'argent avait été acquise en commettant une infraction pénale. La personne avait agi en violation de l'article 209(4) conjugué à l'article 209(1) (infraction de blanchiment de capitaux) du Code pénal. Elle a été condamnée à un an d'emprisonnement et à une amende de 30 000 BAM (ce qui équivaut à 15 000 EUR).

Conclusion

4. La législation de la Bosnie-Herzégovine et de ses districts comprend les deux alternatives énoncées à l'article 9(3). La jurisprudence existante confirme l'application de l'article par les juges et les procureurs.

Bulgarie

1. D'après la législation bulgare, le blanchiment de capitaux est une infraction commise intentionnellement. Il peut y avoir deux types d''intention : lorsque l'auteur sait ou lorsqu'il soupçonne que le bien est d'origine illégale. Dans ce dernier cas de figure, le soupçon peut être prouvé quand les circonstances connues de l'auteur ne peuvent qu'amener à conclure que l'objet de l'infraction a été acquis illégalement. L'infraction de blanchiment de capitaux peut être constituée même si l'auteur n'avait aucune indication directe que le bien était un produit du crime. En effet, l'article 253 du Code pénal prévoit que « *toute personne qui conclut une opération financière ou une transaction relative à des biens ou qui dissimule l'origine, l'emplacement, le mouvement réels de biens ou les droits y relatif*s, *lorsqu'elle sait ou soupçonne que lesdits biens ont été acquis par le biais d'un acte criminel ou autre acte dangereux pour le public, est punie pour blanchiment de capitaux* […] » [soulignement ajouté par nos soins]. Cet article s'applique également à toute personne qui acquiert, reçoit, détient, utilise, transforme ou participe de quelque façon que ce soit à la transformation de biens, sachant ou suspectant qu'ils constituent des produits, ainsi qu'à toute personne qui utilise les fonds ou les biens qu'elle savait ou soupçonnait être des produits (articles 253(2) et 253(4)).
2. Les autorités ont expliqué que la notion de « soupçon » couvrirait également le cas où l'auteur « aurait dû être conscient » que le bien constituait un produit. Cela découlerait du fait que l'auteur a utilisé le bien alors qu'une « personne raisonnant normalement » aurait supposé que le bien avait été acquis illégalement.
3. Les autorités ont présenté deux exemples d'affaires portées devant la Cour suprême de cassation ayant donné lieu à une condamnation pour blanchiment de capitaux, dans lesquelles les auteurs soupçonnaient que les fonds étaient d'origine illégale. Ces exemples prouvent l'application effective de l'article 9(3).

Conclusion

4. La Bulgarie a mis en place les mesures proposées à l'article 9(3) dans sa législation interne et la jurisprudence confirme l'application effective de l'article.

Croatie

1. L'analyse de suivi 2016 de la CdP sur la Croatie a noté que le Code pénal incriminait l'infraction de blanchiment de capitaux en cas de négligence, mais pas dans la situation où une personne soupçonnait que le bien constituait un produit. Elle a conclu que les autorités devraient envisager d'introduire l'élément de soupçon dans leur cadre juridique.

2. Des amendements au Code pénal de Croatie, y compris concernant l'infraction pénale de blanchiment de capitaux (article 265), ont été adoptés le 14 décembre 2018 et sont entrés en vigueur le 3 janvier 2019. Le nouvel article 265(5) prévoit l'infraction de *« négligence quant au fait qu'un avantage pécuniaire est le produit d'une activité criminelle »* [soulignement ajouté par nos soins], passible d'une peine maximale d'emprisonnement de trois ans.
3. Le Code pénal de Croatie prévoit deux formes de négligence par lesquelles une infraction pénale peut être commise : la conduite imprudente et la négligence inconsciente (article 29 (1 et 2)). En termes de terminologie juridique croate, les dispositions de l'article 29 (1 et 2) couvrent les deux cas - lorsque la personne soupçonne que le bien est un produit et lorsque la personne aurait dû supposer que le bien était un produit. L'article 265, paragraphe 6, du code pénal incrimine le blanchiment d'argent commis par négligence.
4. Un exemple d'affaire a été fourni pour démontrer l'application de la disposition de l'article 265(5) du Code pénal.

Conclusion

5. La législation croate prévoit expressément un acte de négligence quant à la source illégale des biens. Il a été démontré que cet article était appliqué.

Chypre

1. La loi chypriote en matière de LAB/CFT dispose à l'article 4(1) que l'infraction de blanchiment de capitaux est constituée si une personne savait ou, à l'époque des faits, aurait dû savoir qu'un bien était le produit d'activités illégales.
2. La connaissance ou l'intention peuvent être déduites de circonstances factuelles objectives.
3. Aucune affaire n'a été présentée pour démontrer la pratique.

Conclusion/Recommandation

4. La législation chypriote inclut l'élément de négligence permettant d'établir l'infraction de blanchiment de capitaux, mais aucune affaire n'a été présentée pour démontrer l'application de la disposition juridique en question. Il est par conséquent recommandé aux autorités d'envisager de sensibiliser les autorités de police et les autorités judiciaires à cet élément de l'infraction de blanchiment de capitaux.

Danemark

1. La législation danoise exige que l'auteur ait eu l'intention de commettre l'infraction de blanchiment de capitaux au moment où il a commis l'acte (article 290A du Code pénal, adopté en juin 2018). L'élément intentionnel est notamment présent lorsque l'auteur considère la survenue de certaines circonstances comme possible et décide tout de même d'adopter un comportement donné. L'intention est un principe juridique confirmé par la jurisprudence.
2. Les autorités affirment que la connaissance ou le soupçon peuvent être suffisantes pour établir l'intention délictueuse, selon les circonstances de l'espèce. Une connaissance des infractions pénales antérieures n'est pas nécessaire.
3. Par ailleurs, conformément à l'article 303 du Code pénal, toute personne qui, par négligence grave, acquiert ou reçoit des biens constituant le produit d'un crime est passible d'une amende ou d'une peine d'emprisonnement maximale d'un an. Cette infraction est limitée à un ensemble défini d'infractions principales, à savoir la fraude et les infractions contre les biens. Il convient de souligner que l'expression « acquiert ou

reçoit » ne couvre pas les diverses techniques de blanchiment de capitaux énoncées dans la Convention de Vienne et reprises à l'article 9(1) de la Convention de Varsovie (dissimulation, détention et utilisation de biens acquis illégalement). Il a été noté dans le rapport d'évaluation mutuelle du GAFI sur le Danemark[7] en 2017 que cette infraction est retenue lorsqu'il n'est pas possible de prouver le blanchiment de capitaux intentionnel en application de l'article 290 du Code pénal. Par conséquent, si l'auteur aurait dû savoir que les biens obtenus constituaient le produit d'une infraction pénale (mais ne le savait pas), des poursuites seront engagées en vertu de l'article 303 du Code pénal. Cela dit, eu égard à l'applicabilité limitée de cette infraction en considération de la définition large du blanchiment de capitaux, il n'est pas possible de conclure que le blanchiment de capitaux par négligence est entièrement incriminé au Danemark.

4. L'article 290A du Code pénal ayant été adopté récemment, il n'existe pas encore de jurisprudence interprétant la notion d'intention relativement à l'infraction de blanchiment de capitaux. Les autorités ont néanmoins pu produire un exemple d'affaire dans laquelle il y a eu une condamnation pour « négligence grave » en application de l'article 303 du Code pénal (décision de la Haute Cour de justice U.2013.42.Ø).

Conclusion/Recommandation

5. L'infraction de blanchiment de capitaux à l'article 290A du Code pénal ne fait pas expressément référence au « soupçon », bien que les autorités aient indiqué que cet élément serait couvert par la notion d'« intention », interprétée au sens large. La législation danoise incrimine une situation de négligence grave à l'article 303 du Code pénal, mais les actes en question (« acquérir et recevoir ») ne couvrent qu'en partie les activités mentionnées dans les dispositions internationales relatives à l'infraction de blanchiment de capitaux. Une affaire a été présentée pour démontrer l'application du concept de « négligence grave ». Il est recommandé aux autorités d'envisager d'étendre le champ d'application de la négligence grave à l'ensemble des activités relevant de l'infraction de blanchiment de capitaux.

Estonie

1. La législation estonienne ne prévoit pas les mesures proposées au titre de l'article 9(3) de la Convention. Plus précisément, le Code pénal estonien ne prévoit l'infraction de blanchiment que dans les cas où l'auteur a agi "en connaissance de cause, intentionnellement ou dans un but précis", ce qui peut également être "déduit de faits objectifs" (article 394 du Code pénal). Néanmoins, les références à la déduction à partir de circonstances factuelles objectives ne peuvent être interprétées comme un "élément mental moindre", étant donné qu'elles exigent toujours que la conscience de l'auteur concernant l'origine des avoirs soit prouvée (voir également la Note interprétative sur l'article 9(3) de la Convention https://rm.coe.int/c198-cop-2021-4-interprnoteart-9-3-en/1680a85903).

Conclusion/Recommandation

2. L'Estonie n'a pas adopté les mesures proposées au titre de l'article 9(3). Il est donc recommandé aux autorités d'envisager de prévoir un élément moral moindre de suspicion ou de négligence, ou les deux, en ce qui concerne les biens constituant des produits du crime dans le contexte des infractions de blanchiment de capitaux.

[7] Voir page 144, http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Denmark-2017.pdf.

France

1. La France incrimine, dans le cadre de l'infraction de blanchiment de capitaux, la « présomption » que le bien constituait un produit. L'article en question prévoit que : « *pour l'application de l'article 324-1, les biens ou les revenus sont présumés être le produit direct ou indirect d'un crime ou d'un délit dès lors que les conditions matérielles, juridiques ou financières de l'opération de placement, de dissimulation ou de conversion ne peuvent avoir d'autre justification que de dissimuler l'origine ou le bénéficiaire effectif de ces biens ou revenus* » (soulignement ajouté par nos soins) (article 324-1-1 du Code pénal).
2. Cela dit, l'article en question ne fait pas référence au niveau de connaissance de l'auteur, mais se concentre plutôt sur la nécessité de prouver l'infraction principale ou l'origine illicite des fonds. Le Code pénal dispose en revanche qu'il n'y a point de crime ou de délit sans intention de le commettre (article 121-3).
3. Il ressort de la jurisprudence que les employés des institutions financières peuvent être visés par un élément de négligence (dans le cas où *« ils ne pouvaient ignorer le caractère frauduleux des fonds »)*, mais cette disposition ne semble pas s'appliquer de manière générale à tous les auteurs d'infractions, ce qui serait nécessaire pour couvrir le champ d'application de l'article 9(3) de la Convention de Varsovie.
4. En l'absence d'incrimination du blanchiment de capitaux sur la base de l'article 9(3), il n'existe pas de jurisprudence qui démontrerait l'application de cette disposition.

Conclusion/Recommandation

5. La législation française ne contient pas de notion de soupçon ou de négligence pour l'établissement de l'infraction de blanchiment de capitaux. Aucune affaire n'a été présentée pour démontrer la pratique. Il est recommandé aux autorités d'envisager l'adoption de mesures législatives ou autres pour prévoir expressément un élément moral moins subjectif et/ou une notion de négligence relativement à l'infraction de blanchiment de capitaux.

Géorgie

1. La législation géorgienne dispose que le blanchiment de capitaux relève de la catégorie des « délits intentionnels ». Une infraction n'est constituée que si les éléments suivants sont présents : la connaissance par la personne du fait que le bien constitue un produit d'une activité illégale, et l'intention de la personne de le légaliser. Ces éléments sont déduits de circonstances factuelles objectives.
2. Il est donc impossible de qualifier un acte de blanchiment de capitaux lorsqu'une personne soupçonnait ou aurait dû être consciente que le bien était le produit d'une activité illégale.
3. Par conséquent, il n'existe aucune jurisprudence qui démontrerait l'application de l'article 9(3).

Conclusion/Recommandation

4. La Géorgie n'a pas adopté de mesures comme celles proposées à l'article 9(3) dans son droit interne. C'est pourquoi il est recommandé aux autorités d'envisager de prévoir une notion de négligence et/ou un élément moral moins subjectif de soupçon que le bien constitue un produit du crime dans le contexte de l'infraction de blanchiment de capitaux.

Allemagne

1. L'infraction de blanchiment de capitaux est définie à l'article 261 du Code pénal allemand. Les définitions données dans la loi incluent les actes intentionnels, mais ne contiennent pas de critères subjectifs particuliers quant à la connaissance de l'origine du bien. L'un

des principes généraux du droit allemand est le dol éventuel – c'est-à-dire l'intention conditionnelle ou la « conscience du résultat probable d'une action » – en vertu duquel il suffit pour établir l'infraction de blanchiment de capitaux que l'auteur ait pu penser que le bien pouvait provenir d'une infraction principale et ait pourtant accepté cette possibilité.

2. Par ailleurs, l'article 261(5) du Code pénal allemand dispose qu'il suffit qu'un auteur « ignore, par imprudence, que le bien constitue le produit de l'un des actes illicites visés ». L'imprudence, dans ce sens, désigne une forme grave de négligence consciente ou inconsciente. D'après les autorités, « une conduite est réputée imprudente lorsque tout semble indiquer dans la pratique que le bien constitue le produit de l'un des actes illicites énoncés à l'article 261(1) du Code pénal allemand, mais que l'auteur n'en tient pas compte et agit tout de même, par indifférence ou négligence grave ».
3. Le principe du dol éventuel et la notion d'imprudence s'appliquent à tous les groupes et activités professionnels, hormis l'avocat pénaliste. En effet, une solide connaissance est requise en ce qui concerne l'origine des honoraires des avocats ; le soupçon ou la négligence ne s'appliquent pas. Cela est confirmé par la jurisprudence.
4. Aucune affaire n'a été présentée pour démontrer l'application des notions de dol éventuel ou d'imprudence relativement à l'infraction de blanchiment de capitaux, hormis dans le cas des honoraires d'un avocat pénaliste.

Conclusion/Recommandation

5. La partie générale du Code pénal, qui s'applique à l'infraction de blanchiment de capitaux, contient des notions qui peuvent s'apparenter à un élément moral moins subjectif et à la négligence. L'Allemagne a donc mis en place les deux mesures prévues à l'article 9(3). Cela dit, aucune affaire n'a été présentée pour démontrer la mise en œuvre de la disposition dans la pratique. Il est par conséquent recommandé aux autorités d'envisager de sensibiliser les autorités de police et les autorités judiciaires aux notions de dol éventuel et d'imprudence relativement à l'infraction de blanchiment de capitaux.

Grèce

1. La législation grecque ne prévoit pas de notion de soupçon ou de négligence quant à l'origine du bien pour ce qui est de l'infraction de blanchiment de capitaux. La condition selon laquelle l'auteur doit avoir agi en sachant que le bien constituait un produit exclut les cas dans lesquels il soupçonnait ce fait et l'a accepté en tant qu'éventualité, ou n'en n'a pas tenu compte, ainsi que les cas dans lesquels il aurait dû être conscient que le bien constituait un produit.
2. Par conséquent, il n'existe aucune jurisprudence qui démontrerait l'application de l'article 9(3).

Conclusion/Recommandation

3. La Grèce n'a pas adopté dans son droit interne les mesures proposées à l'article 9(3). Il est par conséquent recommandé aux autorités grecques d'envisager la possibilité de prévoir une notion de négligence et/ou un élément moral moins subjectif de soupçon que le bien constitue un produit du crime dans le contexte de l'infraction de blanchiment de capitaux.

Hongrie

1. La Hongrie incrimine le blanchiment de capitaux par négligence au moyen de la formulation suivante : « *[lorsque] l'auteur utilise un objet ou fournit ou obtient un service financier lié à un objet qui tire son origine d'un acte punissable commis par une autre personne, et ignore par négligence l'origine de cet objet* » [soulignement ajouté par nos

soins] (article 400 du Code pénal). Conformément à l'article 8 du Code pénal, la négligence est établie si l'auteur prévoit les conséquences possibles de son acte mais compte en dépit du bon sens qu'elles ne se produiront pas, ou s'il ne peut en prévoir les conséquences possibles car il ne fait pas preuve de la diligence et de la circonspection requises.
2. La Hongrie a fourni des exemples de cas au-delà de la date limite. Les rapporteurs n'ont donc pas été en mesure d'analyser ces cas en temps voulu.

Conclusion/Recommandation

3. La législation hongroise inclut une notion de négligence permettant d'établir l'infraction de blanchiment de capitaux. Il est recommandé aux autorités d'envisager de sensibiliser les autorités de police et les autorités judiciaires à l'élément de négligence dans l'infraction de blanchiment de capitaux.

Italie

1. Les dispositions du Code pénal de l'Italie relatives à l'infraction de blanchiment de capitaux ne contiennent pas de référence à la négligence ou à un élément moral moins subjectif de l'infraction. Cela dit, les autorités affirment que l'article 712 du Code pénal établit une responsabilité pénale pour négligence et soupçon. Conformément à cette disposition, toute personne qui soupçonnait qu'un bien constituait un produit du crime en raison de la qualité, du prix ou des conditions de celui qui proposait ce bien, et sans en avoir vérifié au préalable l'origine légitime, peut être reconnue coupable de l'infraction d'achat de biens d'origine suspecte (*acquisto di cose di sospetta provenienza*).
2. Cette infraction est passible d'une peine d'emprisonnement maximale de six mois ou d'une amende d'un montant minimal de dix euros. Aucune jurisprudence concernant l'application de cet article n'a été fournie.
3. Cela dit, l'article en question ne fait aucune référence à l'infraction de blanchiment de capitaux, et l'étendue des activités (« acquérir ou recevoir ») ne couvre pas l'ensemble des activités relevant du blanchiment de capitaux telles qu'elles figurent à l'article 9(1) de la Convention de Varsovie. L'infraction d'achat de biens d'origine suspecte est inscrite dans le Code pénal au chapitre « contraventions », et relève plus particulièrement des atteintes à la sécurité publique et à la prévention des atteintes aux biens, alors que le blanchiment de capitaux est un délit, entrant dans la catégorie des « délits contre les biens par la fraude ». Par ailleurs, aucune affaire n'ayant été présentée pour démontrer l'application de l'article 712 du Code pénal dans le contexte de l'infraction de blanchiment de capitaux, il n'est pas possible de conclure que la législation italienne incrimine le blanchiment de capitaux par négligence.

Conclusion/Recommandation

4. La législation italienne ne contient pas de dispositions établissant clairement des infractions pénales dans les cas prévus à l'article 9(3) de la Convention de Varsovie en rapport avec l'infraction de blanchiment de capitaux. Il est par conséquent recommandé aux autorités italiennes d'envisager la possibilité de prévoir une notion de négligence et/ou un élément moral moins subjectif de soupçon que le bien constitue un produit du crime dans le contexte de l'infraction de blanchiment de capitaux.

Lettonie

1. La Lettonie a modifié sa loi en matière de LAB/CFT, qui est entrée en vigueur le 1er août 2017. La définition qu'elle donne du blanchiment de capitaux sert également à définir l'infraction de blanchiment de capitaux à l'article 195 du Code pénal, qui fait

directement référence à cette disposition. Le nouvel article 5(1) prévoit un élément moral moins subjectif de l'infraction de blanchiment de capitaux et considère que le blanchiment peut être commis lorsqu'un auteur « était conscient » que les fonds constituaient des produits du crime. Il est à noter que les actes relevant du blanchiment de capitaux visés à l'article 5(1), paragraphes 1-3, sont également commis « *lorsqu'une personne a accepté délibérément que les fonds constituaient des produits du crime* » [soulignement ajouté par nos soins] (article 5(1)[1] de la loi LAB/CFT).

2. Les amendements à la loi LAB/CFT ont été adoptés trop récemment pour que les tribunaux aient pu établir une jurisprudence en la matière.

Conclusion/Recommandation

3. La législation lettone prévoit la notion de soupçon, mais il n'y a pas encore eu d'affaires portant sur l'application des dispositions pertinentes. Il est recommandé aux autorités d'envisager de sensibiliser les autorités de police et les autorités judiciaires à l'élément moral moins subjectif de l'infraction de blanchiment de capitaux.

Lituanie

1. La législation lituanienne ne prévoit pas les mesures proposées à l'article 9(3) de la Convention de Varsovie. Le Code pénal n'établit l'infraction de BC que dans l'hypothèse où l'auteur a agi intentionnellement. En effet, les articles 189 et 216 du Code pénal définissent l'élément subjectif de l'infraction de BC comme la connaissance de l'origine illicite des biens.

2. Les autorités ont déclaré que l'intention et la connaissance peuvent être déduites de circonstances factuelles objectives. Toutefois, cela ne peut pas être interprété comme un « élément moral moindre » puisqu'il est toujours exigé d'établir la connaissance de l'auteur de l'origine des avoirs (voir également la note interprétative sur l'article 9(3) https://rm.coe.int/c198-cop-2021-4-interprnoteart-9-3-en/1680a2d66d).

Conclusion/Recommandation

3. La Lituanie n'a pas adopté les mesures proposées à l'article 9(3). Il est donc recommandé aux autorités d'envisager de prévoir un élément moral moindre de soupçon ou de négligence, ou les deux en ce qui concerne les biens étant des produits du crime dans le contexte de l'infraction de lutte contre le BC.

Malte

1. La définition maltaise du blanchiment de capitaux (chapitre 373 des lois de Malte) prévoit un élément de « soupçon » quant à l'origine illicite des produits : *« on entend par « blanchiment de capitaux » la conversion ou le transfert de biens dont celui qui s'y livre sait ou suspecte que ces biens proviennent indirectement ou indirectement, ou constituent le produit d'une activité criminelle ou d'un ou plusieurs actes de participation à une activité criminelle, dans le but de dissimuler ou de déguiser l'origine desdits biens ou d'aider toute personne impliquée dans ou concernée par une activité criminelle* […] » [soulignement ajouté par nos soins].
2. Par ailleurs, le 19 janvier 2012, la Cour d'appel a considéré dans l'affaire *Police c. Carlos Frias Matteo* que « le renversement de la charge de la preuve, en ce qui concerne l'origine des produits du crime présumés, est subordonné à la condition que la partie poursuivante apporte des preuves *prima facie*, même circonstancielles, du lien entre les fonds détenus et l'activité licite (en général) et du fait que la personne concernée savait, ou à tout le moins soupçonnait, que les produits présumés constituaient un produit du crime ».

3. Le rapport d'évaluation de 2014 de la CdP a pris note de la même affaire, tout en affirmant qu'aucune autre pratique pertinente ne semblait être en place. Il a par conséquent conclu que des mesures supplémentaires devaient être prises pour sensibiliser les procureurs et les juges aux éléments de l'infraction de blanchiment de capitaux. Le rapport de suivi de 2018 sur Malte a ensuite noté que les autorités avaient soutenu un certain nombre de formations de sensibilisation des procureurs et des juges à la nature et aux éléments de l'infraction de blanchiment de capitaux. Il a considéré que la recommandation correspondante était mise en œuvre.

Conclusion/Recommandation

4. Malte a inclus la notion de soupçon dans sa législation interne, et une affaire confirme que le soupçon concernant l'origine illicite du bien est un motif suffisant de poursuites. Des magistrats et des agents du Bureau du Procureur général ont participé à des ateliers et à un séminaire sur la question.

Monaco

1. L'article 218 du Code pénal monégasque incrimine le blanchiment. Il pose que le blanchiment est une infraction intentionnelle et que son auteur ne peut donc qu'avoir agi en sachant que les produits étaient d'origine criminelle.
   L'élément intentionnel de l'infraction peut être déduit de circonstances factuelles objectives (Art.218-4 du Code pénal).

2. Les autorités font valoir que l'article 218-2 du Code pénal introduit l'infraction de "blanchiment par négligence". Cet article prévoit que "Sera puni d'un emprisonnement de un à cinq ans et de l'amende prévue au chiffre 4 de l'article 26 dont le maximum pourra être porté au décuple ou de l'une de ces deux peines seulement quiconque aura, par méconnaissance de ses obligations professionnelles, apporté son concours à toute opération de transfert, de placement, de dissimulation ou de conversion de biens et capitaux d'origine illicite." Si l'expression "apporté son concours" indique qu'une infraction de blanchiment peut aussi être commise par aide, complicité ou tentative, cette disposition reflète davantage la condition prévue à l'article 9(1d) de la Convention que celle prévue à l'article 9(3).
3. Aucune jurisprudence n'a été communiquée.

Conclusion/Recommandation

4. En droit monégasque, alors qu'un moindre élément moral peut être déduit dans un certain nombre de cas, en particulier pour ceux qui « par méconnaissance de leurs obligations professionnelles » aident à commettre l'infraction de blanchiment, le droit monégasque ne prévoit pas clairement que le blanchiment peut être commis si un contrevenant soupçonnait ou aurait dû connaître l'origine illicite du produit. Il est donc recommandé aux autorités monégasques de prévoir un cadre plus précis ou une jurisprudence à l'appui du soupçon que les biens sont les produits d'un crime dans le cadre d'une infraction de blanchiment, de la négligence ou des deux.

République de Moldova

1. La République de Moldova incrimine l'infraction de blanchiment de capitaux, y compris l'élément de négligence : l'infraction est constituée lorsque « *la personne sait ou aurait dû savoir* » que le bien constituait un produit du crime (article 243(1) du Code pénal).

2. Les autorités considèrent que les termes « *aurait dû être consciente* » de la Convention de Venise sont couverts par la formulation « *aurait dû savoir* » à l'article 243(1) du Code pénal. Les autorités ont présenté un cas de condamnation pour infraction de blanchiment de capitaux dans une affaire où l'auteur n'était pas conscient, mais « aurait dû savoir » qu'il détenait et utilisait des fonds d'origine criminelle (affaire n° 1354/17, décision du tribunal de district de Chisinau du 04.04.2018, en appel au moment de l'évaluation).
3. Le rapport d'évaluation de 2014 de la CdP sur la République de Moldova a également conclu que la notion de négligence était présente en ce qui concerne l'infraction de blanchiment de capitaux. Les informations fournies aux fins du présent rapport n'ont pas cité d'affaires dans lesquelles l'élément de soupçon a permis d'établir l'infraction de blanchiment de capitaux.

Conclusion

4. La législation de la République de Moldova inclut expressément une disposition relative à l'infraction de blanchiment de capitaux par négligence. L'application de la disposition a été démontrée au moyen d'un exemple concret d'affaire.

Monténégro

1. Le Code pénal du Monténégro incrimine à l'article 268 (blanchiment de capitaux) le soupçon et la négligence relativement à l'infraction de blanchiment de capitaux : « *Quiconque commet l'infraction visée aux paragraphes 1 et 2 du présent article et aurait pu ou aurait dû savoir que les fonds ou les biens provenaient d'une activité criminelle, sera puni d'une peine d'emprisonnement [...]* » [soulignement ajouté par nos soins] (article 268(5)).
2. Il n'y a pas encore de jurisprudence sur cette question.

Conclusion/Recommandation

3. La législation du Monténégro prévoit un élément de soupçon et de négligence relativement à l'infraction de blanchiment de capitaux, mais aucune jurisprudence n'a été établie pour l'heure sur son application. Il est recommandé aux autorités d'envisager de sensibiliser les autorités de police et les autorités judiciaires à la négligence et à l'élément moral moins subjectif dans le contexte de l'infraction de blanchiment de capitaux.

Pays-Bas

1. La législation néerlandaise (article 420 quater du Code pénal) prévoit une peine maximale de deux ans d'emprisonnement en cas de soupçon raisonnable que le bien provient d'une infraction : *« toute personne qui :*
   a) cache ou dissimule la nature, l'origine, l'emplacement, le transfert ou le mouvement réels d'un objet, cache ou dissimule l'identité de la personne ayant droit à cet objet ou détenant cet objet, alors qu'elle a des motifs raisonnables de soupçonner que cet objet provient directement ou indirectement de la commission d'une infraction grave ;
   b) obtient un objet, le détient, le transfère ou le convertit ou en fait usage alors qu'elle a des motifs raisonnables de soupçonner que cet objet provient directement ou indirectement de la commission d'une infraction grave ;
   est coupable de blanchiment par négligence et passible d'une peine d'emprisonnement maximale de deux ans ou d'une amende de cinquième catégorie » [soulignement ajouté par nos soins]
2. Entre 2010 et 2016, près de 5 % de l'ensemble des affaires de blanchiment de capitaux ont fait l'objet de poursuites conformément à l'article 420quater, ce qui démontre l'application de la disposition dans la pratique.

Conclusion

3. La législation des Pays-Bas prévoit un élément de soupçon dans le cadre de l'infraction de blanchiment de capitaux. Il a été démontré que la disposition législative en question est appliquée dans la pratique.

Macédoine du Nord

1. La législation de Macédoine du Nord incrimine les actes d'une personne qui sait ou aurait dû savoir que des fonds, des biens et d'autres revenus ont été obtenus de façon criminelle (article 273, paragraphes 1-4 et 9 du Code pénal[8]). En effet, le paragraphe 4 dispose que *« quiconque commet l'infraction visée aux paragraphes 1, 2 et 3 alors qu'elle aurait dû et pu savoir que les fonds, les biens et autres revenus d'un acte punissable ont été obtenus de façon criminelle, sera puni d'une amende ou d'une peine d'emprisonnement maximale de trois ans »* [soulignement ajouté par nos soins]. Le paragraphe 9 dispose que *« si l'infraction visée au paragraphe 7 du présent article est commise par négligence, l'auteur est puni d'une amende ou d'une peine d'emprisonnement maximale de trois ans »* [soulignement ajouté par nos soins].
2. Le comportement négligent d'une personne est évalué selon les circonstances de l'espèce, c'est-à-dire la position (officielle) ou les obligations professionnelles de l'auteur, les sommes en jeu ou la valeur marchande du bien. La connaissance par l'auteur de l'origine criminelle des produits (le fait qu'il aurait « dû et pu savoir ») peut donc être établie sur la base des circonstances factuelles objectives de l'espèce, y compris des soupçons fondés que le bien a été obtenu de manière criminelle.
3. Il n'existe pas d'affaires qui démontreraient l'application de l'article 9(3).

Conclusion/Recommandation

4. La législation de Macédoine du Nord prévoit la notion de négligence relativement à l'infraction de blanchiment de capitaux. Aucune affaire n'existe pour démontrer la pratique. Il est par conséquent recommandé aux autorités d'envisager de sensibiliser les autorités de police et les autorités judiciaires à la *mens rea* de l'infraction de blanchiment de capitaux.

Pologne

1. Le rapport d'évaluation de 2013 de la CdP sur la Pologne a conclu qu'il n'y avait pas d'exigence formelle concernant l'élément intentionnel dans la définition juridique du blanchiment de capitaux. La référence à la connaissance du fait que le bien constitue un produit n'est qu'implicite. Les évaluateurs ont par conséquent conclu que la négligence ne constituait pas une infraction pénale et que le soupçon n'était pas un élément moral prévu dans la législation. En ce qui concerne la recommandation d'envisager une disposition liée à l'article 9(3) de la Convention de Varsovie, les autorités ont indiqué qu'elles avaient considéré la question et décidé de ne pas introduire une telle référence.
2. La législation polonaise prévoit un élément moral moins subjectif de l'infraction de blanchiment de capitaux mais il ne s'applique qu'à certaines entités soumises à obligation et à leurs employés : *« toute personne qui, en tant qu'employée d'une institution bancaire, financière ou de crédit, ou toute autre entité ayant l'obligation légale d'enregistrer les transactions et les personnes qui les exécutent »* (article 299(2) du Code pénal). Cet article prévoit des exigences réduites en matière de preuve de la perpétration de l'infraction de blanchiment de capitaux, en évoquant un « soupçon justifié » quant à

[8] Pour le texte complet de l'article, voir l'annexe III comportant les réponses des États.

l'origine illicite des fonds. Les autorités considèrent que les personnes ou entités citées devraient savoir, du fait de leur expérience professionnelle, quels types de transactions elles traitent. Cela dit, il est important de noter que le fait de ne cibler que ce groupe d'auteurs ne couvre pas la totalité du champ d'application de l'article 9(3) de la Convention de Varsovie.

3. En l'absence de mesures législatives pertinentes, aucun jugement n'a été rendu dans les tribunaux ordinaires polonais (entre 2017 et 2018) ou par la Cour suprême, qui démontrerait l'application de l'article 9(3).
4. Les autorités polonaises ont indiqué qu'un projet de loi incriminant les actes de négligence des personnes morales relativement au blanchiment de capitaux était en préparation, mais n'avait pas encore été adopté dans son intégralité.

Conclusion/Recommandation

5. La Pologne n'a pas mis en place un élément moral moins subjectif de l'infraction de blanchiment de capitaux conformément aux mesures proposées à l'article 9(3), si bien qu'il n'existe aucune jurisprudence en la matière. Il est par conséquent recommandé aux autorités de considérer à nouveau l'introduction d'une notion de soupçon et/ou de négligence relativement à l'infraction de blanchiment de capitaux, car cela étendrait le champ d'application de cette dernière autant qu'il est légitimement possible de le faire.

Portugal

1. Les autorités portugaises ont indiqué que le Code pénal institue à l'article 368-A l'infraction de blanchiment de capitaux en tant qu'infraction intentionnelle. Cela dit, on trouve un élément moral moins subjectif applicable à l'infraction de blanchiment de capitaux dans le Code pénal (article 14). Cette disposition prévoit trois types de dols différents (dol direct, dol nécessaire et dol éventuel). Le dol éventuel tel qu'il figure à l'article 14(3) du Code pénal permet d'établir l'infraction de blanchiment de capitaux dès lors que l'auteur a considéré que le bien pouvait provenir d'une infraction principale mais a tout de même commis l'infraction en acceptant cette possibilité.
2. Il convient de distinguer la notion de dol éventuel du concept juridique de négligence grave. Les autorités ont indiqué que cette distinction pouvait être particulièrement difficile à établir dans certains cas.
3. Aucune affaire démontrant l'application de la notion de dol éventuel dans le contexte de l'infraction de blanchiment de capitaux n'a été recensée.

Conclusion/Recommandation

4. La législation portugaise reconnaît le concept de dol éventuel relativement à l'infraction de blanchiment de capitaux et met ainsi en œuvre la première alternative prévue à l'article 9(3) de la Convention de Varsovie. Aucune affaire n'a été fournie pour démontrer l'application de la notion de dol éventuel dans le cas d'une infraction de blanchiment de capitaux. Il est par conséquent recommandé aux autorités portugaises d'envisager de sensibiliser les autorités de police et les autorités judiciaires à la notion de dol éventuel dans l'infraction de blanchiment de capitaux.

Roumanie

1. La législation roumaine n'érige pas en infraction pénale le blanchiment de capitaux par soupçon ou négligence. Pour que l'infraction soit constituée, il doit y avoir eu connaissance du fait que le bien était un produit du crime.
2. Les autorités roumaines affirment que selon une interprétation de la pratique judiciaire et de la littérature spécialisée, la culpabilité pourrait s'exprimer sous la forme d'une intention

directe et indirecte. Il y a intention indirecte lorsqu'une personne peut prédire les résultats d'un acte et accepte la possibilité qu'ils se produisent, même sans pour autant le vouloir expressément. Dans un exemple d'affaire, la personne connaissait, à en juger par son attitude, les risques que comportaient ses actes et a accepté l'activité illicite d'un tiers. L'auteur a été condamné à une peine d'emprisonnement. Cette décision a été confirmée en appel. La Haute Cour de justice a réaffirmé que « la doctrine et la jurisprudence maintiennent l'autonomie du blanchiment de capitaux, ce qui signifie qu'il n'est pas nécessaire que l'auteur du blanchiment connaisse la nature exacte, les circonstances temporelles, le lieu ou l'identité de la personne, victime ou auteur de l'infraction principale ». Il n'est pas non plus nécessaire de connaître l'infraction principale en ce qui concerne l'origine des fonds (décision n°454/2015 de la chambre criminelle de la Haute Cour de cassation et de justice).

3. Le rapport d'évaluation de la CdP de 2012 a conclu qu'il n'y avait pas de référence expresse à la négligence dans la législation roumaine, mais que « les praticiens auraient probablement une marge de manœuvre suffisante pour développer une nouvelle jurisprudence sur la base de la règle générale applicable à l'intention ». Il a néanmoins été recommandé d'envisager l'introduction de la notion de soupçon ou de négligence dans la législation, conformément à l'article 9(3) de la Convention de Varsovie.

Conclusion

4. Bien que la législation roumaine ne contienne pas de référence expresse à la négligence ou à l'élément moral moins subjectif de l'infraction de blanchiment de capitaux, la notion d'intention indirecte pourrait constituer un motif suffisant pour établir l'infraction. Cette interprétation est confortée par une affaire qui démontre qu'un élément moral moins subjectif de l'infraction de blanchiment de capitaux peut être déduit de circonstances factuelles objectives.

Fédération de Russie

1. La Fédération de Russie ne prévoit l'infraction de blanchiment de capitaux que dans les cas où la connaissance est établie. En effet, la première partie de l'article 174 du code pénal de la Fédération de Russie établit une infraction de blanchiment de capitaux pour les transactions financières et autres transactions portant sur des sommes d'argent et autres biens qui sont en toute connaissance de cause acquis par des tiers de manière criminelle dans le but de donner une apparence de légalité à la possession, l'utilisation et la disposition desdites sommes d'argent et autres biens. [soulignement ajouté par nos soins]. Cet article implique donc une connaissance précise, fiable par la personne, et non une présomption, que les biens impliqués dans la transaction ont été acquis par des moyens criminels.
2. En outre, le 7 juillet 2015, le plénum de la Cour suprême de la Fédération de Russie a statué que pour qualifier un acte comme relevant des dispositions de l'article 174 du Code pénal de la Fédération de Russie, le tribunal doit établir que l'auteur avait connaissance de l'origine criminelle des biens impliqués dans les transactions financières et autres affaires qu'il a menées, ainsi que dans les actes d'acquisition ou de vente (paragraphe 19 de la décision n° 32). En même temps, la loi implique que la personne peut ne pas avoir connaissance des circonstances spécifiques de l'infraction principale.

Conclusion/Recommandation

3. La Fédération de Russie ne prévoit pas spécifiquement de mesures telles que proposées à l'article 9(3), dans sa législation pénale nationale, ce qui a également été confirmé par la jurisprudence. Il est donc recommandé aux autorités russes de (ré)envisager de prévoir

l'élément soit de soupçonque les biens sont des produits du crime et/ou la négligence (tel que stipulé dans l'article 9(3)(a) et (b) de la Convention) qui conduit à ce que les biens soient des produits du crime dans le cadre de l'infraction de blanchiment.

Saint-Marin

1. Saint-Marin ne prévoit pas expressément de mesures législatives ou autres concernant le soupçon ou la négligence relativement à l'infraction de blanchiment de capitaux. Pour être poursuivi, l'auteur doit savoir que les biens ont été obtenus par le biais d'une infraction pénale. L'intention délibérée est nécessaire pour établir l'infraction de blanchiment de capitaux, et il n'est pas toujours facile de la déduire de l'intention éventuelle d'une personne participant à l'infraction.
2. Cette approche des autorités a été confirmée par la jurisprudence selon laquelle « l'auteur du blanchiment de capitaux doit avoir la certitude que les sommes qu'il transfère sont d'origine illicite [...] » (juge d'appel en matière pénale[9], jugement du 3 février 2015 dans la procédure pénale n° 204/09 RNR).

Conclusion/Recommandation

3. Saint-Marin n'a pas adopté de mesures relatives à l'article 9(3) dans sa législation interne, ce qui est confirmé dans la jurisprudence. Il lui est par conséquent recommandé de reconsidérer la possibilité de prévoir une notion de négligence et/ou un élément moral moins subjectif de soupçon que le bien constitue un produit du crime dans le contexte de l'infraction de blanchiment de capitaux.

Serbie

1. La législation serbe relative à l'infraction de blanchiment de capitaux (article 245 du Code pénal) inclut une référence à la situation dans laquelle un auteur « *aurait pu être conscient et devait savoir que les fonds ou les biens étaient les produits d'une activité criminelle* » (article 245(5) du Code pénal) [soulignement ajouté par nos soins]. L'infraction est passible d'une peine d'emprisonnement maximale de trois ans. Le comportement négligent est donc érigé en infraction pénale.
2. Aucune jurisprudence démontrant l'application de l'article 9(3) n'a été fournie.

Conclusion/Recommandation

3. La législation serbe incrimine le comportement négligent relativement à l'infraction de blanchiment de capitaux, mais aucune jurisprudence n'a été fournie sur l'application de cette disposition dans la pratique. Il est par conséquent recommandé d'envisager de sensibiliser les autorités de police et les autorités judiciaires à l'élément de négligence dans l'infraction de blanchiment de capitaux.

République slovaque

1. Les autorités slovaques affirment que l'existence de l'élément infractionnel de « soupçon » en rapport avec le blanchiment de capitaux peut être établie sur la base des dispositions relatives à l'infraction de blanchiment de capitaux, car celles-ci n'incluent pas de référence à la connaissance de l'origine criminelle des biens : « *quiconque commet l'un des actes suivants s'agissant de revenus ou d'autres biens obtenus de manière criminelle avec l'intention de dissimuler ces revenus ou objets […]* » (article 233(1) du Code pénal, « Légalisation des produits du crime »). L'intention existe lorsque l'auteur

[9] On notera qu'il se n'agit pas de la plus haute juridiction d'appel à Saint-Marin.

commet l'infraction et a) obtient par cet acte un bénéfice plus important pour lui-même ou pour un tiers ou b) en étant animé par des motivations particulières ou c) s'il utilise les objets en question pour ses propres activités. Cela couvrirait le cas du « soupçon ».

2. Les circonstances de l'espèce seraient à prendre en compte lors de l'examen de la question de savoir si le bien constituait un produit et si la personne en était consciente. L'intention et la connaissance peuvent être déduites de circonstances factuelles objectives, y compris la valeur disproportionnée du bien ou la survenue de l'activité criminelle et l'acquisition du bien.
3. L'article 232 du Code pénal (complicité) incrimine le comportement négligent en rapport avec l'infraction de blanchiment de capitaux, comme suit : « *quiconque, par négligence, dissimule ou transfère pour lui-même ou un tiers un objet d'une valeur considérable constituant le produit d'une infraction pénale commise par une autre personne […]* » [soulignement ajouté par nos soins]. Pour les personnes morales, l'incrimination est limitée aux actes de négligence (article 4(2) de la loi n°92/2016 Coll. sur la responsabilité pénale des personnes morales).
4. L'article 234(1) du Code pénal dispose en outre que l'infraction de blanchiment de capitaux peut être commise par toute personne qui manque à son obligation d'informer ou de signaler a) la perpétration par un tiers d'une infraction de blanchiment de capitaux ou b) des transactions commerciales inhabituelles qu'il a l'obligation de déclarer du fait de son emploi, de sa profession, de sa position ou de sa fonction. Les autorités considèrent que l'alinéa a) couvre la situation dans laquelle la personne qui avait des soupçons mais n'a pas déclaré la situation suspecte a agi avec négligence.
5. Trois exemples d'affaires ont été fournis dans lesquels des personnes ont été condamnées pénalement pour l'infraction de complicité (conformément à l'article 231 (intention d'une personne) et à l'article 232 (comportement négligent) du Code pénal).

Conclusion

6. La République slovaque incrimine la négligence relativement au blanchiment de capitaux par l'infraction de « complicité ». Des exemples tirés de la jurisprudence ont été fournis, dans lesquels des personnes ont été condamnées pour négligence ou soupçon en vertu des dispositions relatives à la complicité.

Slovénie

1. Les autorités slovènes ont expliqué que le « soupçon » est couvert au sens d'un dol éventuel, ce qui correspond en théorie du droit à une intention présente lorsque l'auteur prévoit objectivement la possibilité que son acte ait des conséquences interdites/illégales.
2. Le dol éventuel est une forme d'intention spécifique par laquelle une infraction pénale peut être commise (article 25 du Code pénal) ; l'intention peut être directe ou indirecte.
3. La négligence correspond en droit slovène à une situation dans laquelle l'auteur n'était pas conscient qu'il pouvait commettre une infraction mais qu'il aurait pu et dû l'être, eu égard aux circonstances et à ses caractéristiques personnelles (article 25 du Code pénal) ; la négligence peut être consciente ou inconsciente.
4. Par ailleurs, l'article 245(5) du Code pénal relatif à l'infraction de blanchiment de capitaux incrimine également la négligence : « toute personne *qui aurait dû ou pu savoir que les fonds ou les biens avaient été acquis en commettant une infraction pénale* […] » [soulignement ajouté par nos soins].

5. Les statistiques suivantes ont été fournies pour démontrer l'application des principes juridiques ou de l'article 245(5) :

Année	Code de l'infraction pénale*	Condamnation	Acquittement	Rejet
2012	245051	2		
2013	245051	4		
2014	245051	4	1	
2015	245051 245053	2 1	1	
2016	245051	1		1
2017	245051 245053	2	1 1	
2018	245051	1		
2019 –	245051	1		2
Total		*18*	*4*	*3*

* Les données sont réparties entre la code 245051 (infraction pénale de blanchiment de capitaux par négligence) et la code 245053 (infraction pénale de blanchiment de capitaux par négligence concernant des sommes élevées, c'est-à-dire supérieures à 50 EUR).

Conclusion

6. La législation slovène reconnaît le concept de dol éventuel qui peut être considéré comme un élément moral moins subjectif du soupçon. La Slovénie a expressément adopté dans sa législation interne des mesures législatives concernant la négligence en rapport avec l'infraction de blanchiment de capitaux. Il a été démontré que l'infraction de blanchiment de capitaux par négligence est établie dans la pratique.

Espagne

1. Le Code pénal espagnol incrimine à l'article 301.3 le blanchiment de capitaux commis par « négligence grave », qui est sanctionné d'une amende et d'une peine d'emprisonnement comprise entre six mois et deux ans. Cela inclut le cas dans lequel l'auteur aurait facilement pu savoir que le bien constituait un produit s'il avait agi avec la diligence requise.
2. Conformément à la jurisprudence de la Cour suprême espagnole relative à l'infraction de blanchiment de capitaux (article 301.1 du Code pénal), l'infraction peut être constituée s'il apparaît au regard des circonstances de l'espèce que l'auteur aurait pu connaître l'origine (illicite) des biens uniquement en observant les normes de diligence habituelles. La connaissance de l'origine des biens par la personne n'est donc pas une exigence stricte.
3. D'après les autorités, 133 décisions de justice ont été rendues entre le 1er janvier 2016 et le 20 mars 2019, ce qui démontre l'application dans la pratique de l'article 301.3 relatif à la négligence grave.

Conclusion

4. Le droit espagnol prévoit un acte de négligence grave relativement à l'infraction de blanchiment de capitaux, et l'application pratique de cette disposition a été démontrée.

Suède

1. La législation suédoise couvre la situation dans laquelle une personne aurait dû être consciente que le bien constituait un produit. Une personne est coupable du délit de blanchiment de capitaux si elle n'avait pas pris conscience du fait que le bien provenait

d'une infraction ou d'activités criminelles, mais avait des motifs sérieux de penser que c'était le cas (article 6(2) de la loi sur les infractions de blanchiment de capitaux). La Suède n'a pas directement adopté dans la loi une disposition couvrant la situation dans laquelle une personne soupçonne que le bien constitue un produit.
2. L'intention et la connaissance requises pour prouver l'infraction de blanchiment de capitaux peuvent être déduites de circonstances factuelles objectives.
3. Un exemple de cas été fournie pour démontrer l'application de l'article 6(2) dans la pratique.

Conclusion/Recommandation

4. La législation suédoise contient une référence à la négligence relativement à l'infraction de blanchiment de capitaux. Il a été démontré que cet article était appliqué dans la pratique.

Turquie

1. L'infraction de blanchiment de capitaux est inscrite à l'article 282 du Code pénal et englobe deux cas de figure : a) le transfert à l'étranger des produits d'une infraction et b) le traitement de ces produits par divers moyens pour en dissimuler la source illicite ou donner l'impression qu'ils ont été légitimement acquis.
2. Le Code pénal inclut également les notions d'intention directe et d'intention possible (article 21), cette dernière existant *« lorsqu'une personne commet une infraction en sachant que ses éléments constitutifs tels que définis par la loi pourraient être réunis »* [soulignement ajouté par nos soins]. L'infraction de blanchiment de capitaux peut être commise directement ou lorsqu'il existe une intention possible pouvant être déduite de circonstances factuelles objectives. Il convient de noter que dans la législation turque, la connaissance de la source illicite des produits n'est pas requise pour établir l'infraction de blanchiment de capitaux.
3. Cela dit, l'intention possible de blanchiment de capitaux (quelque peu similaire à la notion d'élément moral moins subjectif du blanchiment de capitaux) ne peut exister que dans le cas où une personne transfère à l'étranger des fonds illicites. La doctrine considère que l'infraction de traitement de produits dans le but d'en dissimuler la source ou de donner l'impression qu'ils ont été acquis légitimement ne peut être constituée qu'en cas d'intention directe. Par conséquent, l'intention possible ne sera pas suffisante pour démontrer la perpétration d'une infraction de blanchiment de capitaux dans les situations autres que celles où une personne transfère des fonds illicites à l'étranger.
4. Aucune jurisprudence n'a été fournie pour démontrer l'application de la notion d'intention possible. La jurisprudence fournie a uniquement montré que les tribunaux n'exigent pas une connaissance certaine ; elle ne répond pas à la question de savoir dans quelle mesure l'élément moral moins subjectif de l'infraction de blanchiment de capitaux ou l'intention possible pouvaient être des motifs de condamnation.
5. Conformément au Code pénal, l'infraction de blanchiment de capitaux ne peut être commise par négligence.

Conclusion/Recommandation

6. La législation turque ne prévoit pas expressément une situation dans laquelle l'auteur « suspecte » ou « néglige » le fait que le bien constitue un produit, et aucune affaire n'a été communiquée pour démontrer l'application de l'article 9(3). Il est par conséquent recommandé aux autorités d'envisager de prévoir spécifiquement, par des mesures législatives ou autres, une notion de « soupçon » et/ou de « négligence » relativement à l'infraction de blanchiment de capitaux.

Ukraine

1. Les autorités ukrainiennes ont indiqué que la définition de l'infraction de blanchiment de capitaux donnée à l'article 209 du Code pénal n'établit pas de distinction entre la connaissance, le soupçon ou la négligence de la part de l'auteur. Cela n'est pas expressément stipulé dans la disposition en question car l'infraction de blanchiment de capitaux n'inclut pas de référence à la connaissance de l'origine criminelle des biens.
2. En revanche, les autorités ont affirmé que l'infraction de blanchiment de capitaux pouvait être établie sur la base de circonstances factuelles objectives. De leur point de vue, pour que l'infraction de blanchiment de capitaux soit constituée, il suffit que la personne ait suspecté ou été consciente du fait que le bien était un produit. C'est donc le tribunal qui détermine dans chaque cas d'espèce le niveau de connaissance de l'origine des produits par la personne concernée[10].
3. Cela dit, aucune jurisprudence pertinente n'a été fournie pour démontrer qu'une interprétation de l'infraction de blanchiment de capitaux est possible en l'absence de l'élément de connaissance de l'origine illicite du bien. L'approche selon laquelle l'article 9(3) peut être déduit de circonstances factuelles objectives n'est donc pas confirmée par la pratique.

Conclusion/Recommandations

4. L'élément moral moins subjectif de l'infraction de blanchiment de capitaux ou la négligence ne figurent pas expressément dans la législation ukrainienne et aucune jurisprudence n'a été fournie pour confirmer que des éléments comme ceux visés à l'article 9(3) peuvent être déduits de circonstances factuelles objectives. Il est par conséquent recommandé aux autorités d'envisager d'adopter des mesures expresses, législatives ou autres, pour introduire le soupçon et/ou la négligence en tant que motifs suffisants pour établir l'infraction de blanchiment de capitaux. Par ailleurs, aucune jurisprudence pertinente n'ayant été produite, il est également recommandé aux autorités d'envisager de sensibiliser les autorités de police et les autorités judiciaires à la possibilité d'établir une infraction de blanchiment de capitaux avec les éléments de soupçon et/ou de négligence, sur la base de circonstances factuelles objectives.

Royaume-Uni

1. Conformément aux articles 327-329 de la loi sur les produits du crime, l'infraction de blanchiment de capitaux est constituée lorsque l'auteur qui gère le bien sait ou soupçonne qu'il s'agit d'un produit.
2. Le comportement négligent n'est pas inclus comme *mens rea* de l'infraction de blanchiment de capitaux. Dans le secteur réglementé uniquement, une responsabilité est

[10] On notera que le rapport d'évaluation mutuelle MONEYVAL sur l'Ukraine examine la question de l'incrimination du blanchiment de capitaux sur la base de l'article 9(5) de la Convention de Varsovie. L'approche des autorités concernant la mise en œuvre de l'article 9(3) de la Convention de Varsovie semble comparable à celle adoptée pour l'article 9(5) de cette même convention (voir page 143, paragraphes 28-29, https://rm.coe.int/fifth-round-mutual-evaluation-report-on-ukraine/1680782396). Le rapport indique qu'en dépit « *des tentatives des autorités d'inscrire clairement l'article 9(5) de la Convention de Varsovie dans le droit interne, l'article 216-8 CPC [qui correspondrait à l'article 9(5)] ne répond pas directement à la question de savoir si l'exercice de poursuites pénales pour blanchiment de capitaux est subordonné à l'existence d'une condamnation pour l'infraction principale* ». En ce qui concerne la pratique, le rapport conclut que *« dans l'immense majorité des cas, l'exercice de poursuites pénales pour blanchiment de capitaux est seulement envisagé après qu'une infraction principale [...] a été mise en évidence, ou après que cette infraction principale a fait l'objet d'une condamnation »*, ce qui semble indiquer qu'une infraction principale est requise pour qu'une affaire de blanchiment de capitaux soit portée devant un tribunal (voir page 55, par. 209).

imposée en cas de négligence pour encourager l'accomplissement consciencieux du devoir de signalement, mais il ne s'agit pas là de la finalité poursuivie par l'article 9(3)(b).

3. Aucune jurisprudence n'a été fournie pour démontrer l'application pratique de l'article 9(3)(a) par recours aux articles 327-329 de la loi sur les produits du crime.

Conclusion/Recommandation

4. Le droit britannique prévoit une situation dans laquelle l'auteur « soupçonnait » que le bien était un produit en rapport avec une infraction de blanchiment de capitaux. Aucune application pratique n'a été démontrée. Il est par conséquent recommandé aux autorités d'envisager de sensibiliser les autorités de police et les autorités judiciaires à l'élément moral moins subjectif de l'infraction de blanchiment de capitaux.

Annexe I. Résumé des réponses des États Parties

Pays	Dans la loi	L'une ou l'autre situations ou les deux ?	Observations	Mise en œuvre effective
Albanie	Non			Pas d'information
Arménie	Non		Soupçon/négligence absentes de la jurisprudence	s. o.
Azerbaïdjan	Non		Amendements en cours incriminant la négligence	s. o.
Belgique	Oui	Négligence		Oui
Bosnie-Herzégovine	Oui	Les deux		Oui
Bulgarie	Oui	Soupçon		Oui
Croatie	Oui	Les deux		Oui
Chypre	Oui	Négligence		Pas d'information
Danemark	Oui	Les deux	Soupçon dans le cadre de l'intention, négligence expressément prévue, sanctions très faibles	Oui
Estonie	No		Connaissance requise	N/A
France	Non		Négligence pour les employés des institutions financières	s. o.
Géorgie	Non		L'intention est requise	s. o.
Allemagne	Oui	Les deux	Dol éventuel et « imprudence ». Exception pour les honoraires d'avocats.	Non
Grèce	Non		Connaissance requise	s. o.
Hongrie	Oui	Négligence		Pas d'information
Italie	Oui	Les deux	Responsabilité pénale (générale) en cas de soupçon et négligence, faibles sanctions	Pas d'information
Lettonie	Oui	Soupçon		Non
Lituanie	No		Connaissance requise	N/A
Malte	Oui	Soupçon		Oui
Monaco	Non		L'intention est requise	N/A
République de Moldova	Oui	Négligence		Oui
Monténégro	Oui	Négligence		Non
Pays-Bas	Oui	Soupçon		Oui

Macédoine du Nord	Oui	Négligence		Non
Pologne	Non		Le soupçon ne s'applique qu'aux entités soumises à obligations et à leurs employés	s. o.
Portugal	Oui	Soupçon	Dol éventuel	Non
Roumanie	Non		La pratique judiciaire confirme que l'infraction de blanchiment de capitaux peut être constituée en cas d'intention indirecte	Oui
Fédération de Russie	Non		Connaissance requise	N/A
Saint-Marin	Non		Soupçon/négligence absentes de la jurisprudence	s. o.
Serbie	Oui	Négligence		Pas d'information
République slovaque	Oui	Les deux	Négligence prévue expressément, soupçon de manière non explicite	Oui
Slovénie	Oui	Les deux	Dol éventuel de manière non explicite, négligence expressément prévue	Oui
Espagne	Oui	Négligence		Oui
Suède	Oui	Négligence		Oui
Turquie	Non		L'intention possible se limite aux transferts de capitaux à l'étranger	s. o.
Ukraine	Non		Aucun obstacle à l'application de l'article 9(3), circonstances factuelles objectives	Non
Royaume-Uni	Oui	Soupçon		Pas d'information

Annexe II – Règles de procédure: 19 *bis*

Règle 19[2] – Procédure de contrôle de la mise en œuvre de la Convention

En relation avec sa fonction en vertu de l'article 48, paragraphe 1a de la Convention, la Conférence des Parties applique les procédures ci-après.

Questionnaire

1. La Conférence des Parties prépare dans un délai de six mois après la première réunion de la Conférence un questionnaire aux fins du contrôle de la mise en œuvre appropriée de la Convention (ci-après « le Questionnaire »).

2. Le Questionnaire vise à recueillir des informations sur la mise en œuvre de dispositions de la Convention qui ne sont pas couvertes par d'autres normes internationales pertinentes faisant l'objet d'une évaluation mutuelle par le GAFI, MONEYVAL et d'autres organismes d'évaluation équivalents LCB/FT (les organismes régionaux de type GAFI, le Fonds monétaire international et la Banque Mondiale).

[2] Lors de sa 9ème plénière, la CdP a décidé de suspendre la procédure établie par la Règle 19 et d'appliquer un suivi thématique transversal selon les termes de la Règle 19 bis nouvellement adoptée, pour une période initiale de deux ans, avec une nouvelle discussion faisant le bilan de la question lors de sa 11ème plénière en 2019. La procédure de suivi relative à la Règle 19 continuera au moins jusqu'à une prochaine discussion en 2018.

Annexe III – Questionnaire

Introduction

Lors de sa 9e réunion, qui s'est tenue à Strasbourg du 21 au 22 novembre 2017, la Conférence des Parties à la Convention relative au blanchiment, au dépistage, à la saisie et à la confiscation des produits du crime et au financement du terrorisme (STCE n°198) a décidé de lancer la mise en œuvre d'un mécanisme de suivi thématique horizontal pour une période initiale de deux ans. Cet examen porte sur la manière dont tous les États parties appliquent certaines dispositions de la Convention, et doit être documenté dans un rapport de suivi thématique (Règle 19 bis des Règles de procédure).

Lors de sa 10e réunion, tenue à Strasbourg du 30 au 31 octobre 2018, la Conférence des Parties a décidé que le deuxième rapport de suivi thématique devrait traiter de l'article 9(3) ainsi que de l'article 14 de la Convention.

Les Parties sont invitées à soumettre des informations sur la mise en œuvre de ces dispositions sur la base du questionnaire fourni ci-dessous. Les Parties sont également invitées à examiner le Guide pour la préparation des réponses, ajouté à ce questionnaire.

Soumission d'informations et date limite

Les questions ci-dessous reflètent les parties pertinentes du questionnaire adopté par la Conférence des Parties lors de sa 2e réunion (Strasbourg, 15-16 avril 2010). Le questionnaire permet aux Parties de structurer les informations qu'elles soumettent, une fois recueillis les éléments et données nécessaires sur la mise en œuvre des dispositions de la Convention. Les Parties sont priées de s'assurer que leurs réponses restent aussi concises et brèves que possible.

Le Rapport explicatif de la STCE n°198[11] peut être utile aux Parties pour structurer leurs réponses au questionnaire.

Les exemples fournis par les Parties peuvent inclure des cas de coopération fructueuse et/ou infructueuse avec d'autres Parties. La période de référence à prendre en compte pour le recueil de données doit commencer en janvier 2015.

Les réponses à ce questionnaire resteront confidentielles. Lorsque les parties communiquent des cas/exemples, certaines données (par exemple le nom de l'accusé ou d'autres détails pouvant révéler l'identité de celui-ci ou de la victime) peuvent être anonymisées si elles le souhaitent.

Les Parties sont invitées à envoyer leurs réponses au Secrétariat le **28 février 2019** au plus tard à l'adresse suivante : DGI-COP198@coe.int.

Contacts

Veillez indiquer le nom et les coordonnées de la ou des personnes dans votre pays qui peuvent être contactées au sujet des réponses au questionnaire.

Nom et prénom	

[11] Le document peut être consulté sur le site web du Conseil de l'Europe : https://rm.coe.int/16800d388e.

Profession	
Institution	
Adresse électronique	

QUESTIONNAIRE

Article 9 – incrimination du blanchiment d'argent

(3) Est-ce que la législation et d'autres mesures permettent de conférer le caractère d'infraction pénale à l'acte de blanchiment lorsque l'auteur *soupçonnait* que le bien constituait un produit[12] ?

Réponse

Existe-t-il des dispositions législatives et autres permettant de conférer le caractère d'infraction pénale à l'acte de blanchiment lorsque l'auteur *aurait dû être conscient* que le bien constituait un produit du crime[13] ?

Réponse

Informations à l'appui de la réponse

L'article 9 réglemente l'incrimination du blanchiment d'argent. L'article 9, paragraphe 3, en particulier, ajoute de la valeur à l'incrimination du blanchiment d'argent, car il prévoit la possibilité pour des éléments mentaux moins importants de blanchir de l'argent des soupçons et de la négligence.

« Chaque Partie peut adopter les mesures législatives et autres qui se révèlent nécessaires pour conférer le caractère d'infraction pénale, conformément à son droit interne, à certains ou à l'ensemble des actes évoqués au paragraphe 1 du présent article, dans l'un et/ou l'autre des cas suivants :

a) lorsque l'auteur a soupçonné que le bien constituait un produit,

b) lorsque l'auteur aurait dû être conscient que le bien constituait un produit. »

Les Parties doivent, au minimum, fournir les **articles pertinents de la législation nationale** traitant de cette question, par exemple de leur code pénal ou de leur code de procédure pénale, ou d'autres lois. En outre, les Parties sont encouragées à appuyer leurs réponses en fournissant des **études de cas** ou **toute autre information** pouvant être pertinente à cet égard.

[12] « Produit » désigne tout avantage économique provenant directement ou indirectement de la commission d'une infraction pénale ou obtenu directement ou indirectement en la commettant. Cet avantage peut consister en tout bien. « Bien » comprend un bien de toute nature, qu'il soit corporel ou incorporel, meuble ou immeuble, ainsi que les actes juridiques ou documents attestant d'un titre ou d'un droit sur le bien (art. 1, STCE n° 198).

[13] Cf. note de bas de page 2.

Annexe IV – Réponses des États: article 9(3)

Remarque : les informations fournies ci-après se limitent aux réponses des États parties au questionnaire. Les informations supplémentaires demandées par les rapporteurs/Secrétariat et envoyées ultérieurement sous différentes formes (courriers électroniques, documents scannés, Excel, etc.) n'étaient pas incluses dans cette annexe.

Albania	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds?[14] There is no any obstacle on application of this article. But this paragraph is not imposed specifically in domestic legislation Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds[15]? There is no any obstacle on application of this article. But this paragraph is not imposed specifically in domestic legislation. The Assembly of the Republic of Albania upon law no. 9646 dated 27.11.2006 has ratified without legal reserve the Council of Europe Convention "On Laundering, Search, Seizure and Confiscation of the Crime Products and on the Financing of Terrorism". This Convention, after its publication in the Official Journal no.134, dated December 22, 2006, based on article 122[16] of the Constitution of the Republic of Albania, has been part of the domestic legal system and has superiority over the laws of the country that disagree with it. ii) This Convention, in article 9, the third paragraph, provides: "3. Each Party may take those legislative and other measures necessary to classify as a criminal offense under its domestic legislation, all or some of acts referred to in paragraph 1 of this Article, in one or both following cases when the author; a) suspected that property was a product of crime; b) should have assumed that the property was a product of crime." 2. The Albanian Criminal Code in Article 287 "Laundering the Proceeds of Criminal Offence or Criminal Activities" provides: "Laundering the Proceeds of Criminal Offence or Criminal Activities, through: a) exchange or transfer of the property, for purposes of concealing or disguising its illicit origin knowing that such property is a proceed of criminal offense or criminal activity; b) Concealing or disguising the real nature, source, location, disposition, relocation, ownership or rights in relation to the property, knowing that such property is a proceed of a criminal offence or activity; c) Obtaining ownership, possession or use of property, knowing at the time of its acquisition, that such property is a proceed of a criminal offence or activity;

[14] "Proceeds" means any economic advantage, derived from or obtained, directly or indirectly, from criminal offences. It may consist of any property. "Property" includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property (Art. 1, CETS No. 198).

[15] See footnote 2.

[16] See article 122 of the Constitution, which in paragraphs 1 e 2 provides:

"1. Any international ratified agreement is part of the domestic legal system after being published in the Official Journal of the Republic of Albania. It applies directly, unless when it is not self-enforceable and its implementation requires issuance of a law. Amendments, supplements and abrogation of laws adopted by the majority of all members of the Assembly for the purpose of ratifying international agreements are made by the same majority.

2. An international agreement ratified by law has precedence over the laws of the country that disagree with it. "

	ç) Conducting financial operations or fragmented transactions to avoid reporting, according to the legislation on the prevention of money laundering; d) Investing money or items in economic or financial activities, knowing that they are proceeds of a criminal offence or activity; dh) Advising, assisting, inciting or making a public call for the commission of any of the offences defined above; -shall be punished by imprisonment of five to ten years. Where that offence has been committed in the exercise of a professional activity, in complicity, or more than once, it shall be punished by imprisonment of seven to fifteen years. Where that offence has caused grave consequences, it shall be punished by imprisonment of no less than fifteen years. The provisions of this Article shall apply where: a) The criminal offence, the proceeds of which are laundered, has been committed by a person who cannot be prosecuted as a defendant or who cannot be punished; b) Criminal prosecution for the offence the proceeds of which are laundered, has reached the statute of limitations or has been amnestied; c) The person who performs laundering of the proceeds is the same person who committed the offence, from which the proceeds have derived; ç) No criminal prosecution has been initiated, or no punishment has been imposed by a final criminal decision in relation to the criminal offence, from which the proceeds have derived; d) The offence, the proceeds of which are laundered, has been committed by a person, regardless of his citizenship, outside of the territory of the Republic of Albania, and is also punishable both in the foreign country and Republic of Albania. Knowledge and intent, under the first paragraph of this Article, shall be derived from objective factual circumstances". - Amendments made to Article 287 with Law No.23 / 2012 are in line with the provisions of the CoE Convention "On Laundering, Search, Seizure and Confiscation of the Crime Products and on the Financing of Terrorism", concerning the manner and forms of objectively conducting the actions that are considered the Laundering of the proceeds of the offense or the criminal activity, as well as the subjective side, by providing that knowledge and purpose as elements of the subjective side are extracted from the totality of factual circumstances of the objective side that prove that property was the product of the crime. - Knowing that property was the product of crime is an essential element to bring the criminal responsibility of the author of this work. Moreover, this knowledge can be derived by carefully analyzing the elements and the objective side of the offense. "Knowledge" is easier to prove when the author of the main work launders the product money of this work. In case other persons are involved in money laundering then the proceeding body in the absence of direct evidence to prove knowledge of the origin of the property relies on indirect evidence or in some important, accurate and consistent indications.[17] iii) For committing the offense "Laundering the Proceeds of Criminal Offence or Criminal Activities", in addition to the main punishments stipulated by Article 287 above, the Criminal Code in Article 36[18] "Confiscation of instruments for committing the criminal offence and criminal offence proceeds" provides: 1. Confiscation is mandatorily imposed by the court and pertains to obtaining and transferring to the benefit of the state:

[17] Article 152/2 of the Code of Criminal Procedure.

[18] See also Article 36 "Confiscation of instruments for committing the criminal offence and criminal offence proceeds".

	a) assets that have been used or specified as instruments for committing the criminal offence; b) the criminal offence proceeds, including any kind of assets, as well as legal documents or instruments establishing other titles or interests in the assets stemming from or obtained directly or indirectly from the commission of the criminal offence; c) the promised or given remuneration for committing the criminal offence; ç) any other assets, the value of which corresponds to the criminal offence proceeds; d) the assets, the production, use, possession or alienation of which consist a criminal offence, even if no conviction decision was entered. 2. If the criminal offence proceeds have been transformed or partly or fully converted into other assets, the latter shall be subject to confiscation; 3. If criminal offence proceeds are merged with assets gained legally, the latter shall be confiscated up to the value of the criminal offence proceeds; 4. Subject to confiscation shall also be other income or proceeds out of the criminal offence, out of assets that criminal offence proceeds have been transformed or altered to, or out of assets with which these proceeds have been merged, to the same amount and manner as the criminal offence proceeds. -The provisions of Article 36 of the Criminal Code above are in line with the provisions of Article 3 of this Convention as legal measures enabling the confiscation of instruments and products or assets the value of which corresponds to these products. iv) Criminal Procedure Code in Article 274[19] provides “Object of preventive seizure” as a property security measure that may be decided by the court on the prosecutor's request for objects, criminal offenses products and any other property that is allowed to be confiscated under Article 36 of the Criminal Code above, where there is a risk that the free disposition of an object that is linked to a criminal offense may aggravate or prolong its consequences or facilitate the commission of other criminal offenses. The provisions of this Article of the Criminal Procedure Code are in line with the provisions of Article 4 of this Convention as a temporary investigative measure enabling the immediate freezing / blocking of assets subject to confiscation under Article 36 of the Criminal Procedure Code above. v) For the criminal offense provided by Article 287 of the Criminal Code, the statistical data from 2015 to 9-month period of 2018[20] (attached table) are presented where there is evidence that there has been an increasing trend in the number of registered proceedings, as well as in the number of defendants sent for trial and convicted. vi. Study Case on Criminal Case No. 2/2015 against M.F. The citizen M.F. has been proclaimed in international search, based on the International Arrest Order No. BII07 Of'C, issued on 03.12.2014, by the Prosecutor's Office at the Brussels Court of Appeal, Belgium, for the criminal offense of "Intentional Murder" to the detriment of citizen A.K provided by articles 66 and 394 of the Belgian Penal Code carried out in cooperation between citizens M.F, B.V, K.M and L.Xh. The District Crimes Court in Brussels, Belgium, with its decision dated 15.01.2010 sentenced in absentia to 10 years imprisonment, the citizens M.F, alias B.M, B.V, A.B. and B.D. The citizens B.V. and L.D, result to be sentenced in absentia with 10 years of imprisonment upon the decision dated January 15, 2010 cited above.

[19] Shih, neni 274 “Objekti i sekuestros preventive” i Kodit të Procedurës Penale, i cili parashikon:
“1. Kur ka rrezik që disponimi i lirë i një sendi që lidhet me veprën penale mund të rëndojë ose të zgjasë pasojat e saj ose të lehtësojë kryerjen e veprave penale të tjera, me kërkesën e prokurorit, gjykata kompetente urdhëron sekuestrimin e tij me vendim të arsyetuar.
2. Sekuestroja mund të vendoset edhe për sendet, produktet e veprës penale dhe çdo lloj pasurie tjetër që lejohet të konfiskohet, sipas nenit 36 të Kodit Penal.”
[20] Të dhënat vjetore do t’u vihen në dispozicion sapo të jenë përpunuar.

	The citizens M.F, alias B.M and K.M, alias A.B, have appealed the penalty decision given for the period of 10 years of imprisonment and the judicial case against them is still being examined by the Serious Crimes Court, Brussels, Belgium. Referring to Article 7 of the Code of Criminal Procedure, which stipulates that: " No one may be tried again for the same criminal offence, for which one has been tried by a final decision ", according to the data sent by the Belgian Judicial Authorities, sent through the National Interpol Office Tirana and the Ministry of Justice, based on Article 6[21] of the Criminal Code, Article 287 of the Code of Criminal Procedure, and paragraph 7[22] of Article 38 of Law no.10193, dated 03.12.2009 " On Juridical Relations with Foreign Authorities in Criminal Matters ", The General Prosecution of the Republic of Albania has registered, - criminal proceeding No. 2, 2015 for the criminal offense "Intentional Murder" committed in cooperation, provided by articles 78/1 and 25 of the Criminal Code in charge of citizens M.F e K.M; - criminal proceeding No. 3, 2015 for criminal offense " Refusal for declaration, non-declaration, concealment or false declaration of assets of elected persons and public employees, ", provided by Article 257 / a / 2 "of the Criminal Code and for the criminal offense " Laundering the Proceeds of Criminal Offence or Criminal Activities ", provided by article 287/b of the criminal code in charge of the citizen M.F; as well as the criminal proceeding no.8, year 2015 for the criminal offence " Illegal construction", provided by article 199/a/2 of the criminal code, in charge of the citizen M.F., a proceeding added to the criminal proceeding no.2 and no.3 of the year 2015. Regarding the charge, for the criminal offense of " Refusal for declaration, non-declaration, concealment or false declaration of assets of elected persons and public employees ", provided by article 257/a/2 of the criminal code in charge of the citizen M.F, it has been proved that in the quality of the declarant subject (MP of the Assembly of the Republic of Albania) according to the law no.9049, dated 10.4.2003 " On the declaration and control of assets, financial obligations of the elected persons and some public employees " (amended), has not declared the source of assets declared by him, has made a false declaration of private interests, has concealed assets, liquidities, bank transfers in and out of the country, private interests and the source of their creation. Regarding the charge, for the criminal offense of "Illegal construction", provided by article 199 / a / 2 of the Criminal Code, it has been proven that the defendant M.F in the building "ish Hotel Pensioni", has made a one-storey annexe without a construction permit for which he applied for legalization of this construction in the office of ALUIZNI (The Agency for Legalisation, Urbanisation and Integration of Informal Areas and Buildings) in Tirana on 24.11.2014. Regarding the charge of the criminal offense of " Laundering the Proceeds of Criminal Offence or Criminal Activities ", provided by article287/b of the Criminal code it has been proven that, the defendant M.F, upon the Decision No.13/l29123-02, dated 04.12.2002 of the Court of Amsterdam/ the Netherlands, was sentenced to three years imprisonment for the criminal activity of narcotics trafficking, using there the name P.S, born in Korça (Albania) on July 2, 1969. During the period of 2008 - 2013 the defendant M.F. created a wealth of 209.627.218 ALL, which is not justified by legitimate financial resources, being

[21] See, article 6 of the Albanian Criminal Code, which in the second paragraph provides: "*The criminal law of the Republic of Albania shall also be applicable to the Albanian citizen committing a crime within the territory of another country, as long as that crime is concurrently punishable, unless a foreign court has rendered a final decision. The condition of concurrent punishment in the territory of the other state shall not apply in the cases of corruption-related crimes in public or private sectors and illicit trading in influence.*"

[22] See, article 38 "International Order of Arrest of Albanian Citizens "of Law No. 0193/2009, which provides in paragraph 7: "*7. The prosecutor in the competent court for the criminal proceeding of an Albanian citizen, if he does not proceed according to paragraph 3 of this article, records in the notification records of the criminal offenses the data of the international arrest warrant, in order to carry out the procedural verifying actions for the commencement of criminal proceedings. If the prosecutor decides not to initiate the criminal proceeding, he or she shall notify this decision to the Ministry of Justice through the General Prosecutor within 5 days of his receipt.* "

	proved in the trial that the property in question is a product of the illegal activity of exploitation of prostitution and narcotics trafficking during the years 1999-2002. Through the establishment of commercial companies the defendant M.F. has covered and concealed the money secured by the above-mentioned illegal criminal activity. Upon the Decision no.1184, dated 21.04.2017 pf the Judicial District Court of Tirana, left in force with decision no.1798, dated 20.12.2017 of the Court of Appeal in Tirana, the defendant M.F. was found guilty and finally sentenced to 6 years imprisonment for the criminal offenses "Refusal for declaration, non-declaration, concealment or false declaration of assets of elected persons and public employees", "Laundering the Proceeds of Criminal Offence or Criminal Activities", and "Illegal construction", provided by article 257/a/2, 287 letter (b) and 199/a/2 of the Criminal Code. Upon the Decision no.5, dated 16.03.2018 of the Court of first Instance for the Serious Crime in Tirana , pursuant to Law No. 10192, dated 03.12.2009 "On preventing and hitting the organized crime, trafficking and corruption through preventive measures against property", the seizure of the property of the citizen M.F. is set, which according to the evaluation expertise conducted during the trial, in the free market have a total value of 158.534.730 ALL.
Armenia	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Please refer to: • Part 1, Article 190 of the CC. The subjective element of the ML offence is defined under Armenian legislation as follows: "The conversion or transfer of property (knowing that such property is the proceeds of criminal activity) for the purpose of concealing or disguising the illicit origin of the property or of helping any person to evade the responsibility for the crime committed by him; or the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to or ownership of property (knowing that such property is the proceeds of criminal activity); or the acquisition or possession or use or disposition of property (knowing, at the time of receipt, that such property is the proceeds of criminal activity)…" Moreover, according to Court of Cassation Ruling from February 24, 2011 (para. 16, page 20), the practical application of Article 190 of the CC should be based on a conclusion that the mandatory element of the subjective side of the offence in question contains a specific intention to conceal or disguise the true origin of the illicit proceeds, and to integrate these funds into legitimate businesses. The absence of such intention excludes the possibility of the offence in question. Thus, Armenian legislation establishes ML offence only in cases, where knowledge and direct intention are present as a mandatory part of subjective element. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? Please refer to the response above.

Austria	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person *suspected* that the property was proceeds[23]? *Yes. Austrian Criminal Law defines intention in § 5 (1) of the Criminal Code:* *"(1) A Person acts with intention if the person means to complete the elements of an offence who wants to produce the facts constituting an offence under the law; to prove intention, it is enough to show that the person is aware of a substantial risk that the offence will occur and, having regard to the circumstances, takes the risk."* *In general dolus eventualis is therefore always sufficient unless a criminal offence calls for a higher level of intent.* *For the offence of money laundering according to § 165 of the Criminal Code this means that the offences according to § 165 paragraph 1 can be committed with dolus eventualis whereas the offences according to paragraphs 2 and 3 require knowledge of the criminal origin of the property.* *The Austrian Supreme Court rules (e.g.14 Os 181/95 of 5.12.1995 or 14 Os 150/02 of 9.9.2003) that "the offence of money laundering according to § 165 paragraph 1 of the Criminal Code demands for all elements of the offence (different from paragraph 2 leg cit) dolus eventualis. The subjective element is therefore already met, if the perpetrator seriously suspects that the money is criminally contaminated".* Do your legislation and other measures allow a money laundering offence to be established where the person *ought to have assumed* that the property was proceeds[24]? *No. The Austrian Legislator has chosen not to criminalize negligent behaviour in any case of offences against property. Paragraph 3.b was therefore not implemented into Austria law.*
Azerbaijan	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Please kindly note that currently there is no applicable legislation on implementation of Article 9(3) of the Convention. However, this question was a subject of analysis and discussions by the state authorities. As a result, the draft Law has been prepared to implement the respective provisions into national legislation. Please see below the text of the prepared draft Law on amendments to the Criminal Code of the Republic of Azerbaijan: "194-1. Legalization of criminally obtained funds or other property, as well as acquisition, possession, use or disposition of such funds or other property committed by negligence 194-1.1. Legalization of criminally obtained funds or other property committed by negligence, i.e.: 194-1.1.1. conversion or transfer of funds or other property, execution of financial transactions or other deals with funds or other property, when a person should and could have known that such funds or other property are the proceeds of crime;

[23] "Proceeds" means any economic advantage, derived from or obtained, directly or indirectly, from criminal offences. It may consist of any property. "Property" includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property (Art. 1, CETS No. 198).

[24] See footnote 2.

	194-1.1.2. creating conditions to conceal or disguise the true nature, source, location, disposition, movement, rights with respect to, or ownership of, funds or other property, when a person should and could have known that such funds or other property are the proceeds of crime – shall be punished by corrective works for the term up to two years; or penalty from two thousands up to five thousands manats or restriction of liberty for the term up to two years with or without deprivation of the right to hold certain positions or to engage in certain activities up to two years. 194-1.2. Acquisition, possession or use of funds or other property, as well as disposition of such funds or other property with no purpose to conceal its origin, when a person should and could have known that such funds or other property are proceeds of crime – shall be punished by the penalty from one thousand to two thousands manats or restriction of liberty for the term up to one year. 194-1.3. The acts stipulated by Articles 194-1.1 and 194-1.2 committed in a significant amount – shall be punished by the penalty from five thousands up to seven thousands manats or restriction of liberty for the term of two to three years with or without deprivation of the right to hold certain positions or to engage in certain activities up to two years. 194-1.4. The acts stipulated by Articles 194-1.1 and 194-1.2 committed in a large scale – shall be punished by the penalty from seven thousands up to ten thousands manats, or restriction of liberty for the term of three to five years, or imprisonment for the term of one to two years with or without deprivation of the right to hold certain positions or to engage in certain activities up to three years. Note: the term “significant amount” stipulated in Article 194-1.3 means the amount from twenty thousands to one hundred thousand manats, the term “large scale” stipulated in Article 194-1.4 means the amount above one hundred thousand manats.”. Please kindly note that it is expected that the draft Law will be in force at the time the COP considers the report. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? Please refer to answer of question 1 of Article 9(3) above. The above indicated draft Law is also intended to address this part.
Belgium	(3) Est-ce que la législation et d’autres mesures permettent de conférer le caractère d’infraction pénale à l’acte de blanchiment lorsque l’auteur soupçonnait que le bien constituait un produit ? Existe-t-il des dispositions législatives et autres permettant de conférer le caractère d’infraction pénale à l’acte de blanchiment lorsque l’auteur aurait dû être conscient que le bien constituait un produit du crime ? Réponse Oui pour les deux questions. Oui. La législation belge a opté pour l’adoption d’un élément moral plus faible que celui de l’infraction de blanchiment correspondant à l’article 9 paragraphe 3(b). L’infraction de blanchiment, par conséquent, s’applique aux situations où l’auteur « savait ou aurait dû savoir» l’origine des biens en questions. Un exemple d’une telle possibilité a été présenté au travers d’une affaire soumise aux

	autorités belges dans le rapport de 2016 (Cass., 21 juin 2000, Pas., 2000, n°387; CA de Gand, 9 février 2012). Le blanchiment d'argent est une infraction qui est incriminée à l'Article 505 du Code pénal : Article 505 du Code pénal « Seront punis d'un emprisonnement de quinze jours à cinq ans et d'une amende de vingt-six francs à cent mille francs 4 ou d'une de ces peines seulement: 1° ceux qui auront recelé, en tout ou en partie, les choses enlevées, détournées ou obtenues à l'aide d'un crime ou d'un délit; 2° ceux qui auront acheté, reçu en échange ou à titre gratuit, possédé, gardé ou géré des choses visées à l'article 42, 3°, alors qu'ils connaissaient ou devaient connaître l'origine de ces choses au début de ces opérations; 3° ceux qui auront converti ou transféré des choses visées à l'article 42, 3°, dans le but de dissimuler ou de déguiser leur origine illicite ou d'aider toute personne qui est impliquée dans la réalisation de l'infraction d'où proviennent ces choses, à échapper aux conséquences juridiques de ses actes; 4° ceux qui auront dissimulé ou déguisé la nature, l'origine, l'emplacement, la disposition, le mouvement ou la propriété des choses visées à l'article 42, 3°, alors qu'ils connaissaient ou devaient connaître l'origine de, ces choses au début de ces opérations. Les infractions visées à l'alinéa 1er, 3° et 4°, existent même si leur auteur est également auteur, coauteur ou complice de l'infraction d'où proviennent les choses visées à l'article 42, 3 Les infractions visées à l'alinéa 1er, 1° et 2° existent même si leur auteur est également auteur, coauteur ou complice de l'infraction d'où proviennent les choses visées à l'article 42, 3°, lorsque cette infraction a été commise à l'étranger et ne peut pas être poursuivie en Belgique. Sauf à l'égard de l'auteur, du coauteur ou du complice de l'infraction d'où proviennent les choses visées à l'article 42, 3°, les infractions visées à l'alinéa 1er, 2° et 4°, ont trait exclusivement, en matière fiscale, à des faits commis dans le cadre de la fraude fiscale grave, organisé ou non. Les organismes et les personnes visés aux articles 2, 2bis et 2ter de la loi du 11 janvier 1993 relative à la prévention de l'utilisation du système financier aux fins du blanchiment de capitaux et du financement du terrorisme, peuvent se prévaloir de l'alinéa précédent dans la mesure où, à l'égard des faits y visés, ils se sont conformés à l'obligation prévue à l'article 28 de la loi du 11 janvier 1993 qui règle les modalités de la communication d'informations à la Cellule de traitement des Informations financières. Les choses visées à l'alinéa 1er, 1° du présent article constituent l'objet de l'infraction couverte par cette disposition, au sens de l'article 42, 1°, et seront confisquées, même si la propriété n'en appartient pas au condamné, sans que cette peine puisse cependant porter préjudice aux droits des tiers sur les biens susceptibles de faire l'objet de la confiscation. Les choses visées à l'alinéa 1er, 3° et 4°, constituent l'objet des infractions couvertes par ces dispositions, au sens de l'article 42, 1°, et seront confisquées, s'agissant de chacun des auteurs, coauteurs ou complices de ces infractions, même si la propriété n'en appartient pas au condamné, sans que cette peine puisse cependant porter préjudice aux droits des tiers sur les biens susceptibles de faire l'objet de la confiscation. Si ces choses ne peuvent être trouvées dans le patrimoine du condamné, le juge procédera à leur évaluation monétaire et la confiscation portera sur une somme d'argent qui lui sera équivalente. Dans ce cas, le juge pourra toutefois réduire cette somme en vue de ne pas soumettre le condamné à une peine déraisonnablement lourde. Les choses visées à l'alinéa 1er, 2°, du présent article constituent l'objet de l'infraction couverte par cette disposition, au sens de l'article 42, 1°, et seront confisquées, dans

	le chef de chacun des auteurs, coauteurs ou complices de ces infractions, même si la propriété n'en appartient pas au condamné, sans que cette peine puisse cependant porter préjudice aux droits des tiers sur les biens susceptibles de faire l'objet de la confiscation. Si ses choses ne peuvent être trouvées dans le patrimoine du condamné, le juge procédera à leur évaluation monétaire et la confiscation portera sur une somme d'argent qui sera proportionnelle à la participation du condamné à l'infraction. La tentative des délits visés aux 2°, 3° et 4° du présent article sera punie d'un emprisonnement de huit jours à trois ans et d'une amende de vingt-six francs à cinquante mille francs ou d'une de ces peines seulement. Les personnes punies en vertu des présentes dispositions pourront, de plus, être condamnées à l'interdiction, conformément à l'article 33. » Le quatrième cycle d'évaluations mutuelles du GAFI a donné lieu à l'adoption du rapport d'évaluation de Belgique en avril 2015. Celui-ci conclut que l'incrimination du blanchiment d'argent est conforme avec les standards internationaux (Conventions de Viennes et de Palerme). Le rapport de la CoP198 en 2016 a également considéré que l'infraction comprend tous les éléments matériels qui constituent l'infraction telle que définie par la convention de Varsovie. La législation belge dispose que tous les crimes et délits peuvent constituer l'infraction préalable. La définition de la propriété est large, tandis que l'article 42 du Code Pénal rend aussi possible la confiscation des instruments et produits du (des) crime(s). La confiscation peut être ordonnée à l'égard de « chacun des auteurs, coauteurs ou complices de ces infractions, même si la propriété n'en appartient pas au condamné ». L'article 9 paragraphe 3 de la Convention prévoit que « Chaque Partie peut adopter les mesures législatives et autres qui se révèlent nécessaires pour conférer le caractère d'infraction pénale, conformément à son droit interne, à certains ou à l'ensemble des actes évoqués au paragraphe 1 du présent article, dans l'un et/ou l'autre des cas suivants: a) lorsque l'auteur a soupçonné que le bien constituait un produit, b) lorsque l'auteur aurait dû être conscient que le bien constituait un produit ». La législation belge a opté pour l'adoption d'un élément moral plus faible que celui de l'infraction de blanchiment correspondant à l'article 9 paragraphe 3(b). L'infraction de blanchiment, par conséquent, s'applique aux situations où l'auteur « savait ou aurait dû savoir» l'origine des biens en questions. Un exemple d'une telle possibilité a été présenté au travers d'une affaire soumise aux autorités belges dans le rapport de 2016 5. La Belgique n'a pas adressé de déclaration telle que prévue par l'article 9(4) de la Convention. La qualification de l'infraction de blanchiment, comme déjà établie plus haut, est basée sur une « approche globale des infractions » conformément à l'article 505 du Code Pénal en conjonction avec l'article 42 alinéa 3 du même code. Toutes les catégories d'infraction principales prévues dans l'annexe de la Convention ont été prévues dans la législation belge et peuvent, par conséquent, être considérées comme une infraction préalable à celle de blanchiment de capitaux. Le paragraphe 5 de l'article 9 de la Convention traite du problème majeur en ce qui concerne les poursuites pour blanchiment d'argent. C'est la nécessité d'une condamnation de l'infraction préalable comme prérequis d'une poursuite pour blanchiment. La Convention prévoit que chaque Partie doit s'assurer qu'une condamnation pour blanchiment est possible en l'absence de condamnation préalable ou concomitante au titre de l'infraction principale. En Belgique, une condamnation du seul chef de blanchiment était possible, même en l'absence de condamnations antérieures ou simultanées de l'infraction principale. Comme indiqué dans le rapport du GAFI en 2015 et le rapport CoP198 de 2016, les poursuites de l'infraction de blanchiment d'argent en Belgique ne sont pas dépendantes de condamnations de l'infraction préalable, mais aussi elles ne dépendent pas de la preuve de l'infraction préalable dans tous ses éléments constitutifs. Cependant, il doit être prouvé que les produits avaient une origine illégale ou qu'ils ne pouvaient pas avoir d'origine légale. La Cour de Cassation belge a confirmé l'application pratique de cette disposition6. La

	jurisprudence est bien établie et que les interprétations de la Cour de cassation sont contraignantes en pratique. Le paragraphe 6 de l'article 9 exige des Etats d'assurer la possibilité de prononcer une condamnation pour blanchiment d'argent dans tous les cas où il est prouvé que la propriété a une origine illicite, sans le besoin de prouver une infraction préalable précise. Comme le précise le rapport explicatif de la Convention, dans le but de faciliter la conduite du procès, les rédacteurs de la Convention ont mis en avant l'importance pour les procureurs de ne pas avoir à prouver, dans le cadre d'une poursuite pour blanchiment, tous les éléments factuels de l'infraction préalable, si la preuve de l'origine illicite des fonds peut être rapportée de toute autre circonstance. En Belgique, la jurisprudence soumise en 2016 à la CoP198 a bien démontré comme l'indique le rapport de la CoP198 en 2016 que la condamnation du chef de blanchiment d'argent est possible, si la preuve de l'origine illicite des biens peut être déduite de toute circonstance ou à tout le moins que les biens ne peuvent provenir des revenus officiels du prévenu. Ainsi, l'origine illicite des biens peut être déduite de la circonstance qu'il ne ressort d'aucune donnée crédible que cette origine peut être licite Un projet de nouveau code pénal a été rédigé et va être déposé au Parlement. Le nouvel article du Code pénal belge en projet introduira les circonstances aggravantes prévues dans la directive UE 2018/1673 du Parlement et du Conseil européen du 23 octobre 2018 visant à lutter contre le blanchiment d'argent au moyens du droit pénal.
Bosnia and Herzegovina	CRIMINAL CODE OF BOSNIA AND HERZEGOVINA Money Laundering Article 209 (1) Whoever accepts, exchanges, keeps, disposes of, uses in commercial or other business operations, the money or some other property he knows was acquired through the perpetration of a criminal offence, or performs its conversion or transfer or otherwise conceals or attempts to conceal its nature, origin, location, disposal, movement, ownership or another right, and such money or assets representing the proceeds of crime were acquired by the perpetration of a criminal offence: a) abroad or throughout the territory of Bosnia and Herzegovina or in the territory of the two Entities or in the territory of one Entity and the Brčko District of Bosnia and Herzegovina or b) which is prescribed by the Criminal Code of Bosnia and Herzegovina or other state level legislation, shall be punished by imprisonment for a term of between one and eight years. (2) The perpetrator of the offence referred to in paragraph (1) of this Article who is at the same time a perpetrator or an accomplice in the perpetration of a criminal offence whereby the money or assets representing the proceeds of crime referred to in paragraph (1) of this Article were acquired, shall be punished by imprisonment for a term of between one and ten years. (3) If the money or assets representing the proceeds of crime referred to in paragraph (1) of this Article exceed the amount of BAM 200,000, the perpetrator shall be punished by imprisonment for a term of not less than three years. (4) If the perpetrator, during the perpetration of the criminal offence referred to in paragraphs (1) and (2) of this Article, acted negligently with respect to the fact that the money or assets represent the proceeds of crime, he shall be fined or punished by imprisonment for a term not exceeding three years. (5) The money, material gain, income, profit or other gain representing the proceeds of crime referred to in paragraphs (1) through (4) of this Article shall be confiscated.

	(6) The knowledge, intention or purpose as elements of the criminal offence referred to in paragraph (1) of this Article may be evaluated on the grounds of objective factual circumstances. CRIMINAL CODE OF THE BRČKO DISTRICT OF BOSNIA AND HERZEGOVINA Money Laundering Article 265 (1) Whoever directly or indirectly accepts, exchanges, keeps, disposes of, uses in commercial or other business operations, the money or some other property he knows was acquired through the perpetration of a criminal offence, or performs its conversion or transfer or otherwise conceals or attempts to conceal its nature, origin, location, disposal, movement, ownership or another right, shall be punished by imprisonment for a term of between six months and five years. (2) The perpetrator of the offence referred to in paragraph (1) of this Article who is at the same time a perpetrator or an accomplice in the perpetration of a criminal offence whereby the money or assets representing the proceeds of crime referred to in paragraph (1) of this Article were acquired, shall be punished by imprisonment for a term of between one and eight years. (3) If the money or assets representing the proceeds of crime referred to in paragraphs (1) and (2) of this Article is of great value, the perpetrator shall be punished by imprisonment for a term of between one and ten years. (4) If the offences referred to in the preceding paragraphs are perpetrated by several persons who have joined for the commission of such offences, the perpetrator shall be punished by imprisonment for a term of between two and twelve years. (5) If the perpetrator, during the perpetration of the criminal offence referred to in paragraphs (1) and (2) of this Article, acted negligently with respect to the fact that the money or assets represent the proceeds of crime, he shall be fined or punished by imprisonment for a term not exceeding three years (6) The money, material gain, income, profit or other gain representing the proceeds of crime referred to in paragraphs (1) through (4) of this Article shall be confiscated. CRIMINAL CODE OF THE REPUBLIC OF SRPSKA Money Laundering Article 263 (1) Whoever accepts, exchanges, keeps, disposes of, uses in commercial or other business operations, the money or some other property he knows was acquired through the perpetration of a criminal offence prescribed by the legislation of the Republic of Srpska, or performs its conversion or transfer or otherwise conceals or attempts to conceal its nature, origin, location, disposal, movement, ownership or another right, shall be punished by imprisonment for a term of between one and five years and a fine. (2) The perpetrator of the offence referred to in paragraph (1) of this Article who is at the same time a perpetrator or an accomplice in the perpetration of a criminal offence whereby the money or assets referred to in paragraph (1) of this Article were acquired, shall be punished by imprisonment for a term of between one and eight years and a fine.

	(3) If the value of money or assets representing the proceeds of crime referred to in paragraphs (1) and (2) of this Article exceed the amount of BAM 200,000, the perpetrator shall be punished by imprisonment for a term of between two and ten years and a fine. (4) If the offences referred to in paragraphs (1), (2) and (3) of this Article are perpetrated by several persons who have joined for the commission of money laundering or the money laundering is committed for the purpose of financing terrorism, the perpetrator shall be punished by imprisonment for a term of between three and fifteen years and a fine. (5) If the perpetrator, during the perpetration of the criminal offence referred to in paragraphs (1) and (2) of this Article, acted negligently with respect to the fact that the money or assets represent the proceeds of crime, he shall be fined or punished by imprisonment for a term not exceeding three years. (6) The money, material gain, income, profit or other gain representing the proceeds of crime referred to in paragraphs (1) through (4) of this Article shall be confiscated. CRIMINAL CODE OF THE FEDERATION OF BIH Article 272 Money Laundering (1) Whoever directly or indirectly accepts, exchanges, keeps, disposes of, uses in commercial or other business operations, the money or some other property he knows was acquired through the perpetration of a criminal offence, or performs its conversion or transfer or otherwise conceals or attempts to conceal its nature, origin, location, disposal, movement, ownership or another right, and such money or assets are acquired through the perpetration of a criminal offence prescribed by the legislation of the Federation of BiH, shall be punished by imprisonment for a term of between six months and five years. (2) The perpetrator of the offence referred to in paragraph (1) of this Article who is at the same time a perpetrator or an accomplice in the perpetration of a criminal offence whereby the money or assets representing the proceeds of crime referred to in the preceding paragraph were acquired, shall be punished by imprisonment for a term of between one and eight years. (3) If the money or assets representing the proceeds of crime referred to in paragraph (1) of this Article is of great value, the perpetrator shall be punished by imprisonment for a term of between one and ten years. (4) If the offences referred to in paragraphs (1), (2) and (3) of this Article are perpetrated by several persons who have joined for the commission of such offences, the perpetrator shall be punished by imprisonment for a term of between two and twelve years. (5) If the perpetrator, during the perpetration of the criminal offence referred to in paragraphs (1) and (2) of this Article, acted negligently with respect to the fact that the money or assets represent the proceeds of crime, he shall be fined or punished by imprisonment for a term not exceeding three years. (6) The money, material gain, income, profit or other gain representing the proceeds of crime referred to in paragraphs (1) through (4) of this Article shall be confiscated.

	Final and binding Judgment of the Court of Bosnia and Herzegovina, reference number: S1 2 K 020583 17 Kžk dated 1 December 2017, criminal offense of Money Laundering, negligence Article 209 (4) in conjunction with (1) of the Criminal Code of BiH / Article 9 (3) of the Warsaw Convention/ The Convicted S.V. has, during the time period from 17 September 2008 to the end of May 2013, received to his foreign currency accounts opened with *Pavlović International Bank a.d. Bijeljina*, *Hypo Alpe Adria Bank a.d. Banja Luka* and *Sberbank a.d. Banja Luka*, without a legitimate legal basis, money in the total amount of USD 650,400.33 USD and EUR 512,958.00 acquired through commission of the criminal offense of Trafficking in Persons under Article 186 of the Criminal Code of Bosnia and Herzegovina; the money was paid into the accounts, in the aim of hiding its real origin, by his brothers , against whom a criminal proceeding was initiated, pursuant to the indictment of the Prosecutor's Office of BiH reference no. T20 0 KTO 0001099 09 dated 27 June 2014, before the Court of BiH for the criminal offense of Organized Crime under Article 250 (3) in conjunction with the criminal offense of Trafficking in Persons under Article 186 (1) of the Criminal Code of BiH and criminal offense of Money Laundering under Article 209 (3) in conjunction with (1) and (2) of the Criminal Code of BiH against and the criminal offense of Money laundering under Article 209 (3) in conjunction with (1) of the Criminal Code of Bosnia and Herzegovina against , ; and has as well received money paid by persons known to them through offshore companies from New Zealand, Panama and Great Britain, as well as from natural persons known to them from Azerbaijan as follows: 1.1. In the period from 11 June 2009 to 22 December 2010 he has received to his account number 5542030001440430 opened with *Pavlović International Bank a.d. Slobomir Bijeljina* the money in the total amount of USD 404,603.33, which was paid to him successively by the following offshore companies: offshore company AZT LIMITED 2 / LEVEL 5, 369 QUEEN STREET 3 / NZ / AUCKLAND in the total amount of USD 269,794.4; offshore company "OKRA ENTERPRISES LIMITED 2 / LEVEL 5 369 QUENN STREET 3 / NZ / AUCKLAND in the total amount of USD 89,940.50; offshore company" FIRMWIDE LIMITED 1734 17 / F STAR HSE 3 SALISBURY RD TSIMSHATSUI KLN " in the total amount of USD 19,921.07 USD; offshore company "EXPERT PRECISION LIMITED 1734 17 / F STAR HSE 3 SALISBURY RD TSIMSHATSUI KLN" in the amount of USD 14,957.87; offshore company "CEDALE HOLDING CO SA 2 / RICARDO J. ALFARO AVENUE, THE CENT 2 / URY TOWER FOURTH FLOOR NO401 3 / PA / PANAMA" in the amount of USD 9,989.47 and has, in the period from 4 August 2009 to 15 May 2013 received, to the same account; the money in the total amount of EUR 512,958.00 which was paid to him successively by the following persons/entities: a natural person from Azerbaijan, HAJIYEV RAHIM 241 TAGISHAHBAZI STR. APT.31 BAKU in the total amount of EUR 339,966.00; his brother in the total amount of EUR 52,892.00; offshore company ZENITH ACTIVITY LIMITED RM 1734 17 / F STAR HOUSE 3 SALISBURY ROAD TSIMSHATSUI KLN " in the amount of EUR 10,020.00; offshore company "PACIFIC COSMO LIMITED RM 1734 STAR HOUSE 3 SALISBURY RD TSIMSHATSUI KLN" in the amount of EUR 20,040.00; offshore company "HIGH FLY INVESTMENTS LIMITED RM 1734 17 F STAR HOUSE 3 SALISBURY RD TSIMSHATSUI KLN" in the amount of EUR 20,040.00, his brother in the amount of EUR 20,000.00 and offshore company" CEDALE HOLDING CO SA2 / RICARDO J. ALFARO AVENUE, THE CENT 2 / URY TOWER FOURTH FLOOR NO401 3/ PA / PANAMA" in the amount of EUR 50,000.00 with the purpose listed as "transfer"; "payment per invoice for electronic

	equipment", "financial support" or payments were made without specifying the legal basis, 1.2. has received, in the time period from 10 November 2008 to 27 February 2009, to his account number 5673215410272696 opened with *Sberbank a.d. Banja Luka* money in the total amount of USD 99,957.00 USD, which was paid to him by the following persons: a natural person NAGIYEV KAMILA R BEHBUDOVA 44 BAKU AZERBAIJAN in the total amount of USD 19,979.00, a natural person CAMILOV PARVIZ U. HAGIBAYOV STR.27 BAKU AZERBAIJAN in the total amount of USD 79,978.00, without specifying the basis of payment, 1.3. has received, in the period from 17 September 2008 to 20 April 2009 to the account number 1233549427, opened with *Hypo Alpe Adria Bank a.d. Banja Luka* money in the total amount of USD 145,840.00, which was paid successively by the following: offshore company ACORA BUSINESS LTD.C / O GLOBAL CORP. CONSULTANSRIA HOUSE in the total amount of USD 75,840.00, a natural person JAMILOV PARVIZ YASAMAL in the total amount of USD 70,000.00 with the purpose of remittance listed as "foreign currency remittances from abroad" or without specifying the basis of payment, Eventhough, on the basis of the following circumstances: purpose of payment; the amounts of payment; the payers themselves among whom, apart from were also unknown persons from Azerbaijan; payments made through offshore companies; instructions received from his brother regarding the manner of spending the funds received; and his personal qualifications i.e. the fact that he is a graduate economist and that due to his professional title he is well aware of what the basis of legal payments or transactions through the account are and that each payment must have its legal basis and purpose and that there has to be a legitimate legal basis between the payer and the recipient of money; the characteristics of close family relations with payers , he could have known that the received money was acquired through commission of a criminal offense. He successively withdrew the entire amount of money received and purchased, as instructed by xxxxxxxxxxxxxxxxx immovable property (sale contracts with following numbers: OPU-528/09 dated 27 August 2009; OPU-850/08 dated 26 December 2008; OPU-117/09 dated 10 March 2009; OPU-164/09 dated 25 March 2009; OPU-326/09 dated 11 June 2009; OPU-146/10 dated 23 March 2010; OPU-167/10 dated 1 April 2010; OPU-256/10 dated 6 May 2010; OPU-483/10 dated 23 August 2010; OPU-487/10 dated 25 August 2010; OPU-493/10 dated 27 August 2010; OPU-602/10 dated 28 September 2010; OPU-653/10 dated 22 October 2010; OPU-433/09 dated 21 July 2009) machinery and equipment (sale contract on movable items number OPU-529/09 dated 27 August 2009). Therefore, the money of significant value acquired through commission of a criminal offense was received, exchanged, kept, disposed with and otherwise concealed by him acting in negligent manner in relation to the circumstance that the money was acquired through commission of a criminal offense, By doing so he committed the criminal offense of Money Laundering under Article 209 (4) in conjunction with (1) of the Criminal Code of Bosnia and Herzegovina[25]. The Court therefore, pursuant to the aforementioned legislation, and on the basis of the provisions of Articles 41, 42 and 48 of the Criminal Code of BiH renders a

[25] Law on Amendments to the Criminal Code of BiH ("Official Gazette of BiH", no.8/10).

SENTENCE
OF IMPRISONMENT FOR A TERM OF 1 (ONE) YEAR

Pursuant to Articles 41 and 46 of the Criminal Code of BiH the defendant is also rendered an accessory punishment

OF A FINE IN AN AMOUNT OF
BAM 30,000 (thirty thousand Bosnian Convertible Marks)

which the accused is obliged to pay within one month from the day the judgment becomes effective. Should the defendant fail to pay the fine within the time limit, pursuant to the provisions of Article 47 (3) of the CC BiH, it will be replaced by imprisonment, whereby each BAM 100.00 (hundred) of the fine is determined as one day of imprisonment, however it cannot exceed the prescribed sentence for this criminal offense.

Pursuant to Article 209 (5) of the CC BiH and Articles 110 and 110a of the Criminal Code of BiH, the property gain acquired through commission of a criminal offense shall be confiscated from the persons to whom it was transferred: , as follows:

- from ,
real estate:

- cadaster particle no.2/9, *"Potkućnica"* comprises of a yard of 500 m², 1st class arable land of 374 m², 198 m² factory, house and buildings of 50 m², registered in the title deed of the Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 30 July 2009 under number 21.18-952.1-1-5199/ 2009, number 715/3, cadaster municipality Nova Topola, (sale contract number OPU-528/09 dated 27 August 2009);
- cadaster particle.br.665/2, *"Njiva"* comprises of a yard of 500 m², 1st class arable land of 1999 m², house and buildings of 124 m², registered in title deed of Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 24 December 2008 under number 21.18-952.1-1-8400 / 2008, number 383/0, cadaster municipality Rovine, (sale contract number OPU-850/08 dated 26 December 2008);
- cadaster particle no.323/5, *"Majdan šljunka"* comprising of a yard of 1000 m², 4th class arable land of 575 m², house and buildings of 81 m², registered in the title deed of the Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 2 March 2009 under number 21.18-952.1-1-1489 / 2009, number 519/1, cadaster municipality Nova Topola, (sale contract number OPU-117/09 dated 10 March 2009);
- cadaster particle no.615/9, *"Rovine",* comprising of a 2nd class arable land of 1227 m², registered in the title deed of the Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 24 March 2009 under number 21.18-952.1-1-2127 / 2009, number 327/1, cadaster municipality Rovine, (sale contract number OPU-164/09 dated 25 March 2009);
- cadaster particle. no.629/1, *"Njiva"* comprising of a 1st class arable land of 5880 m², 2nd class arable land of 3000 m², registered in the title deed of the Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 27 May 2009 under the number 21.18-952.1-1-3473 / 2009, number 272/5, cadaster municipality Rovine, (sale contract number OPU-326/09 dated 11 June 2009);
- cadaster particle no.195/3, *"Plac"* comprising of a yard area of 68 m², house and buildings of 31 m²; and cadaster particle no. 195/6, *"Plac"* comprising of a yard of 83 m², house and buildings of 36 m², registered in the title deed of the

	Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 22 March 2010 under number 21.18-952.1-1-2588 / 2010, number 943/5, cadaster municipality Nova Topola, (sale contract number OPU-146/10 dated 23 March 2010); – cadaster particle no.50/10, *"Okućnica"* comprising of a 2nd class arable land of 2045 m², registered in the title deed of Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 31 March 2010 under number 21.18-952.1-1-2925 / 2010, number 44/5, cadaster municipality Rovine, (sale contract number OPU-167/10 of 1 April 2010); – cadaster particle no.2554/4, "Staro kućište", comprising of a yard of 500 m², field of 691 m², a commercial building of 294 m², entered in the land register excerpt no. 174, cadaster municipality Gradiška - village, on 26 April 2010, number listed in the register for requested excerpts, transcripts and certificates and number listed in the register for various land registry writs: 431/10, which corresponds to the situation recorded in title deed no. 784/17, cadaster municipality Gradiška - village, (sale contract number OPU-256/10 dated 6 May 2010); – cadaster particle no.442, *"Golubuša",* comprising of a 6th class arable land of 7097 m², registered in the title deed of the Republic Administration for Geodetic and Real Estate Affairs of RS Banja Luka, Regional Unit Gradiška on 16 August 2010 under number 21.18-952.1-1-6606 / 2010, number 474/1, cadaster municipality Bistrica, (sale contract number OPU-483/10 dated 23 August 2010); – cadaster particle no.1738, *"Trešnjevac",* comprising of a 6th class arable land of 4822 m²; and cadaster particle no. 1739, *"Trešnjevac"* comprising of 4th class forest of 920 m², registered in the title deed of the Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 4 August 2010 under number 21.18-952.1-1-6249 / 2010, number 661/5, cadaster municipality Bistrica, (sale contract number OPU-487/10 dated 25 August 2010); – cadaster particle no.1736, *"Trešnjevac*", comprising of a 6th class arable land of 4042 m²; and cadaster particle no. 1737, "*Trešnjevac",* comprising of a 4th class forest of 1141 m², registered in the title deed of the Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 26 August 2010 under the number 21.18-952.1-1-6930 / 2010, number 382/2, cadaster municipality Bistrica, (sale contract number OPU-493/10 dated 27 August 2010); – cadaster particle no.1746/3, *"Okućnica"* comprising of a 3rd class orchard of 714 m²; and cadaster particle no. 1747/3, *"Okućnica",* comprising of a 6th class arable land of 5042 m², registered in the title deed of the Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 27 September 2010 under number 21.18-952.1-1-7574 / 2010, number 413/1, cadaster particle Bistrica, (sale contract number OPU-602/10 dated 28 September 2010); – cadaster particle. no.1745, *"Okućnica",* comprising of a yard of 128 m², house and buildings of 32 m²; cadaster particle. no. 1746/1, *"Okućnica*", comprising of a 3rd class orchard of 958 m²; and cadaster particle no. 1747/1*, "Okućnica*", comprising of a 6th class arable land of 1701 m², registered in the title deed of the Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 22 October .2010 under number 21.18-952.1-1-8152 / 2010, number 412/1, cadaster municipality Bistrica, (sale contract number OPU-653/10 dated 22 October 2010), <u>and movable property (machines and equipment):</u> – machinery and equipment for stone processing and manipulation, such as: bridge milling machine ZAMBON, mower BANDIERI with table, CANANDA

	COMANDULI polisher, pantograph INCIMAR 1000 with letters, compressor with two pistons, self-propelled forklift POBEDA Novi Sad, bridge crane with crane track, (sale contract for movable property number OPU-529/09 dated 27.08. 2009); *- from* , real estate: - *cadaster particle no.323/3, "Majdan šljunka",* comprising of a yard of 500 m², 4th class arable land of 1045 m², house and buildings of 123 m², registered in the title deed of the Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 6 July 2009 under the number 21.18-952.1-1-4369 / 2009, number 549/1, cadaster municipality Nova Topola, (sale contract number OPU-433/09 dated 21 July, 2009). Pursuant to Article 188 (1) of the Criminal Procedure Code of BiH, the defendant is obliged to pay a lump sum in the amount of BAM 200,00 for court expenses which he is obliged to pay within 15 days from the day the judgement becomes effective.
Bulgaria	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Answer According to the Bulgarian Criminal code the offence of money laundering is a crime committed intentionally. There are two types of intent in the case of money laundering: where the perpetrator knows or suspects the illegal origin of the property. The first case is where the offender knew that the property subject of the crime is derived from a criminal activity or another act which is dangerous for the public. The second case is where the offender suspected that the property had been acquired through crime or another act that is dangerous for the public. In this case the suspicion or assumption is proven when from the circumstances known to the perpetrator can be made only the conclusion that the object of the crime was acquired illegally or through an activity which is dangerous for the public, even though the perpetrator did not have any direct indications that the property was proceeds. The relevant provisions from the Bulgarian Criminal code are stated here below: “Criminal Code /Promulgated, State Gazette No. 26/2.04.1968, effective 1.05.1968, last amended and supplemented, SG No. 101/19.12.2017, amended, SG No. 55/3.07.2018/ Article 253 (Amended, SG No. 28/1982, repealed, SG No. 10/1993, new, SG No. 62/1997) (1) (Amended, SG No. 85/1998, SG No. 26/2004, supplemented, SG No. 75/2006) The one who concludes a financial operation or property transaction or conceals the origin, location, movement or the actual rights in the property, knowing or suspecting that the property is acquired through crime or another act that is dangerous for the public, shall be punished for money laundering by imprisonment from one to six years and a fine from BGN three thousand to five thousand. (2) (New, SG No. 26/2004, supplemented, SG No. 75/2006) The punishment under paragraph 1 shall also be imposed on the one who acquires, receives, holds, uses, transforms or assists, in any way whatsoever, the transformation of property, knowing or suspecting as of the receipt of the property that it has been acquired through crime or another act that is dangerous for the public. ….

(4) (New, SG No. 21/2000, renumbered from Paragraph 3, supplemented, SG No. 26/2004, amended, SG No. 75/2006) The punishment shall be deprivation of liberty from three to twelve years and a fine from BGN 20,000 to BGN 200,000 where the act under Paragraphs (1) and (2) has been committed by the use of funds or property which the perpetrator knew or suspected to have been acquired through a serious crime of intent.

…"

Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds?

Answer

The hypothesis where the offender suspects that the property is derived from a criminal activity or another act which is dangerous for the public comprises also the case where he/she ought to have assumed that the property was proceeds. There is 'suspicion' of the illegal origin of the proceeds where the evidences show that from the circumstances known to the perpetrator at the moment of receipt of the property, a normally reasoning person would make a reasonable assumption that the property has been acquired in an illegal way.

The relevant provisions from the Bulgarian Criminal code are stated here below:

"Criminal Code /Promulgated, State Gazette No. 26/2.04.1968, effective 1.05.1968, last amended and supplemented, SG No. 101/19.12.2017, amended, SG No. 55/3.07.2018/

Article 253 (Amended, SG No. 28/1982, repealed, SG No. 10/1993, new, SG No. 62/1997)

(1) (Amended, SG No. 85/1998, SG No. 26/2004, supplemented, SG No. 75/2006) The one who concludes a financial operation or property transaction or conceals the origin, location, movement or the actual rights in the property, knowing or suspecting that the property is acquired through crime or another act that is dangerous for the public, shall be punished for money laundering by imprisonment from one to six years and a fine from BGN three thousand to five thousand.

(2) (New, SG No. 26/2004, supplemented, SG No. 75/2006) The punishment under paragraph 1 shall also be imposed on the one who acquires, receives, holds, uses, transforms or assists, in any way whatsoever, the transformation of property, knowing or suspecting as of the receipt of the property that it has been acquired through crime or another act that is dangerous for the public.

(3) (Renumbered from Paragraph 2, supplemented, SG No. 26/2004) The punishment shall be imprisonment for one to eight years and a fine from BGN five thousand to twenty thousand, if the act under paras 1 and 2 has been committed:

3. by an official within the sphere of his office;

(4) (New, SG No. 21/2000, renumbered from Paragraph 3, supplemented, SG No. 26/2004, amended, SG No. 75/2006) The punishment shall be deprivation of liberty from three to twelve years and a fine from BGN 20,000 to BGN 200,000 where the act under Paragraphs (1) and (2) has been committed by the use of funds or property which the perpetrator knew or suspected to have been acquired through a serious crime of intent.

…

Article 253b (New, SG No. 85/1998, renumbered from Article 253a, amended, SG No. 26/2004) Any official who violates or fails to comply with the provisions of the Law on measures against money laundering (LMML) shall be punished, in cases of significant impact, with imprisonment for up to three year and a

	fine from BGN one thousand to three thousand, unless the deed does not constitute a more serious crime.” Case examples: - In its decision No. 334 dated 11/07/2011 on criminal case No. 1668/2011, the Supreme Court of cassation found guilty a person (K.) who made a deal with property - ceded/ transferred to "M. Ltd" in Varna his claim of 100 000 leva from another person (the victim) suspecting that this claim of 100 000 leva was obtained through blackmailing. It was proven that the offender assumed that the claim of money was acquired for his benefit by two other persons through a serious intentional crime – blackmailing under Art. 213a of the Criminal Code. The victim was blackmailed and compelled by force by two other offenders to take on a property obligation of the amount of 100 000 BGN for the benefit of K. Therefore K. was found guilty on the grounds of Art. 253, para 4 in the connection with para 1, item 2 of the same Art. 253 of the Criminal Code. - In another more recent case, the Supreme Court of cassation (decision No. 242/21.11.2017 on criminal case No. 837/2017 on the inventory of the same court) confirmed a decision of the Appellate court in Varna which imposed a sanction of two years of imprisonment on a person who was found guilty for opening and maintaining a bank account in Bulgaria with the amount of 18 400 euros, suspecting that the sum of money was acquired illegally in Romania. At the time of receipt of the money the perpetrator suspected that the money was acquired through criminal activity by an organised criminal group in Romania. The organized criminal group was dealing with illegal access to information, illegal transfer of information, falsification of information and realization of financial operations through unauthorized access to bank accounts. The suspicion of the illegal origin of the property was proven by the fact that at the time of the opening of the bank account in Bulgaria the accused person made false declaration about the origin of the money stating that the sum of money was acquired in a sale of real estate. There was evidence from the registries of the Bulgarian Registry agency within the Ministry of justice showing that there is no data about any property transaction in the name of the accused person. Moreover, it was proven that the accused had no income from other legal sources such as labour income, real estate, vehicles or money on his name. At the same time, the Bulgarian authorities had received information from the Central directorate for investigation of organized crime and terrorism in Romania about illegal financial transactions realized by the criminal group whose activity consisted in bank transfers through unauthorized e-banking access to accounts. There was evidence that the Romanian company, which was investigated for the illegal transactions, made the transfer of the sum of money on the account of the accused person. The Supreme Court of the Republic of Bulgaria ruled that the fact that the accused person opened a bank account prior to the transfer of the sum of money, made a false declaration about the origin of the money (committing another crime under Art. 313 of the CC) and after receiving the money withdrew them in cash in a short period of time show knowledge or at least suspicion of the illegal origin of the money.
Croatia	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Answer Law on Amendments to the Criminal Code was adopted on the 14th December 2018, published in the Official Gazette on 27th December 2018 and entered into force on 3rd January 2019. The criminal offence of money laundering, as prescribed by Article 265 was also amended. The Article 265 paragraph 6 of the Criminal Code of the Republic of Croatia reads as follows:

		"(6) Whoever commits the offence referred to in paragraph 1, 2 or 5 of this Article through negligence with respect to the circumstance that the pecuniary advantage is derived from criminal activity shall be sentenced to imprisonment for a term of up to three years." The whole amended Article 265 reads as follows: Money Laundering Article 265 (1) Whoever invests, takes over, converts, transfers or replaces a pecuniary advantage derived from criminal offence for the purpose of concealing or disguising its illicit origin, or helps to the perpetrator or accomplice of the criminal offence by which pecuniary advantage was acquired to evade prosecution or confiscation of pecuniary advantage derived from criminal offence shall be sentenced to imprisonment for a term of between six months and five years. (2) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever conceals or disguises the true nature, source, location, disposition, movement, rights with respect to, or ownership of a pecuniary advantage derived from criminal activity. (3) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever acquires, possesses or uses the pecuniary advantage derived by another from criminal activity. (4) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever intentionally provides instructions or counselling or removes obstacles or in another manner facilitates the commission of the offence referred to in paragraph 1, 2 or 3 of this article (5) Whoever commits the offence referred to in paragraph 1 or 2 of this Article in financial or other dealings or where the perpetrator engages professionally in money laundering or the pecuniary advantage referred to in paragraph 1, 2 or 3 of this Article is of considerable value, shall be sentenced to imprisonment for a term of between one and eight years. (6) Whoever commits the offence referred to in paragraph 1, 2 or 5 of this Article through negligence with respect to the circumstance that the pecuniary advantage is derived from criminal activity shall be sentenced to imprisonment for a term of up to three years. (7) If the pecuniary advantage referred to in paragraphs 1 through 6 of this Article is derived from criminal activity carried out in a foreign country, the perpetrator shall be punished when the activity is a criminal offence also under the domestic law of the country where it is committed. (8) The perpetrator referred to in paragraphs 1 through 6 of this Article who significantly contributes of his/her own free will to the discovery of the criminal activity from which a pecuniary advantage has been derived may have his/her punishment remitted.

	(9) The pecuniary advantage, instrumentalities and items that were produced by the commission of the offence referred to in paragraph 1 through 5 of this article or intended for use or used in the commission of the offence referred to in paragraph 1 through 5 of this article shall be forfeited while the rights shall be pronounced void. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? Answer The amended Article 265 paragraph 6 of the Criminal Code of the Republic of Croatia reads as follows: "(6) Whoever commits the offence referred to in paragraph 1, 2 or 5 of this Article through negligence with respect to the circumstance that the pecuniary advantage is derived from criminal activity shall be sentenced to imprisonment for a term of up to three years."
Cyprus	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? The Prevention and Suppression of Money Laundering Activities and Terrorist Financing Laws of 2007-2018 (188(I)/2007) (AML/CFT Law) applies to prescribed offences, namely money laundering offences and predicate offences. Article 4(1) of the Law states that every person who (a) knows or (b) at the material time ought to have known that any kind of property constitutes proceeds from the commission of illegal activities, carries out the following activities: (i) converts or transfers or removes such property, for the purpose of concealing or disguising its illicit origin or of assisting in any way any person who is involved in the commission of the predicate offence to carry out any of the above actions or acts in any other way in order to evade the legal consequences of his actions; (ii) conceals or disguises the true nature, the source, location, disposition, movement of and rights in relation to, property or ownership of this property; (iii) acquires, possesses or uses such property; (iv) participates in, associates, co-operates, conspires to commit, or attempts to commit and aids and abets and provides counselling or advice for the commission of any of the offences referred to above; (v) provides information in relation to investigations that are carried out for laundering offences for the purpose of enabling the person who acquired a benefit from the commission of a predicate offence to retain the proceeds or the control of the proceeds from the commission of the said offence, commits an offence punishable by fourteen years' imprisonment or by a pecuniary penalty of up to Euro 500.000 or by both of these penalties in the case of (a) above and by five years' imprisonment or by a pecuniary penalty of up to Euro 50.000 or by both in the case of (b) above.

	Furthermore, article 4(2)(c) provides that the knowledge, intention or purpose which are required as elements of the offences referred to in subsection (1) may be inferred from objective and factual circumstances; According to Section 2-(1) of the AML/CFT Law, “proceeds” means any economic advantage derived directly or indirectly from a criminal offence; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds and any valuable benefits; “Property” means assets of any kind, whether corporeal or incorporeal, movable assets including cash, immovable assets, tangible or intangible, and legal documents or instruments in any form including electronic or digital, evidencing title to or an interest in such asset. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? As already mentioned above, according to Article 4(1) of the AML/CFT Law, the money laundering offence applies to every person who (a) knows or (b) at the material time ought to have known that any kind of property constitutes proceeds from the commission of illegal activities. The offence is punishable by five years’ imprisonment or by a pecuniary penalty of up to Euro 50.000 or by both in the case the person ought to have known.
Denmark	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Answer The Danish Criminal Code section 290 A prohibits money laundering. The offence requires that is it proven that the perpetrator at the time of the crime had the intention to commit the crime. According to Danish legal principles and established case law, ‘intention’ is either when 1) the perpetrator has spcific knowledge/positively intents to commit the crime, 2) the perpetrator considers certain circumstances as predominantly probable to exist or 3) the perpetrator considers the existence of certain circumstances as possible, and decides to act in a certain manner anyway. Knowledge or suspicion based upon the specific circumstances of the case may be enough in order to establish a guilty mind, and further knowledge about further details with regard to the previous criminal offences is not necessary. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? Answer According to section 303 of the Danish Criminal Code any person, who, in gross negligence, buys or in similar manner receives property, which are proceeds of a crime against property, is sentenced to a fine or imprisonment for a term not exceeding one year.

Estonia	Money laundering offence has been provided by the Penal Code § 394. Full text of Penal Code available in English: https://www.riigiteataja.ee/en/eli/520032023010/consolide The § 394 of the Penal Code does not define money laundering. There are almost no definitions in the part 2 of the Penal Code called Special Part. The Special Part of the Penal Code relies on the definitions in other acts.The definition for money laundering is included in the Money Laundering and Terrorist Financing Prevention Act (MLTFPA) § 4. "§ 4. Money laundering (1) 'Money laundering' means: 1) the conversion or transfer of property derived from criminal activity or property obtained instead of such property for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person's actions; 2) the acquisition, possession or use of property derived from criminal activity or property obtained instead of such property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation therein; 3) the concealment of the true nature, origin, location, manner of disposal, relocation or right of ownership of property acquired as a result of a criminal activity or property acquired instead of such property or the concealment of other rights related to such property. (2) Money laundering also means participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the activities referred to in subsection 1 of this section. (3) Money laundering is regarded as such also where a criminal activity which generated the property to be laundered was carried out in the territory of another country. (4) Knowledge, intent or purpose required as an element of the activities referred to in subsections 1–3 of this section may be inferred from objective facts. (5) Money laundering is regarded as such also where the details of a criminal activity which generated the property to be laundered have not been identified." Full text of MLTFPA available in English: https://www.riigiteataja.ee/en/eli/521022023001/consolide As the subsection 4 states: "Knowledge, intent or purpose required as an element of the activities referred to in subsections 1–3 of this section may be inferred from objective facts.", for the establishing of money laundering offence, the court does not need to establish for certainty that the accused knew that the proceeds were of criminal origin. This allows to establish liability when the person suspected or should have suspected the illegal origin of the funds.
France	(3) Est-ce que la législation et d'autres mesures permettent de conférer le caractère d'infraction pénale à l'acte de blanchiment lorsque l'auteur soupçonnait que le bien constituait un produit ?
	La loi du 6 décembre 2013 a introduit, après l'incrimination de blanchiment, un article 324-1-1, qui dispose : « Pour l'application de l'article 324-1 (blanchiment par justification mensongère de l'origine d'un bien ou par placement dissimulation conversion du produit de tout crime ou délit), les biens ou les revenus sont présumés être le produit direct ou indirect d'un crime ou d'un délit dès lors que les conditions matérielles, juridiques ou financières de l'opération de placement, de dissimulation ou de conversion ne peuvent avoir d'autre justification que de dissimuler l'origine ou le bénéficiaire effectif de ces biens ou revenus. »

	Existe-t-il des dispositions législatives et autres permettant de conférer le caractère d'infraction pénale à l'acte de blanchiment lorsque l'auteur aurait dû être conscient que le bien constituait un produit du crime ?
	Même réponse
Georgia	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? According to Georgian legislation, money laundering means giving legal form to illicit and/or undocumented property (use, purchase, possession, conversion, transfer or other actions in connection with property) in order to conceal its illegal and/or undocumented origin or to assist another person in evading liability, as well as concealment or disguising of its genuine nature, source of origin, location, dislocation, movement, its title and/or of other rights related to it (Article 194, Criminal Code of Georgia). To give the offence this qualification it is not important whether the predicate offence is committed by the same person who is accused for money laundering or not, also it does not matter if the predicate crime is not the subject of Georgian criminal jurisdiction. According to Georgian legislation, money laundering falls under the category of intentional crimes and its constituent elements are – person's knowledge that the property is proceeds from illegal activity, and person's purpose to legalize it. In other words the person makes any acts prescribed in the article 194 (money laundering, Criminal Code of Georgia), with the knowledge that the property represents proceeds from illegal activity. Constituent elements of the crime (knowledge and purpose) are established by factual and objective circumstances. According to Georgian legislation, it's impossible to qualify action as money laundering, when the person suspected that the property was proceeds from illegal activity. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? As we mentioned above, under Georgian money laundering represents intentional offence and its constituent elements are person's knowledge that the property is proceeds from illegal activity, and person's purpose to legalize it. Thus person commits any action prescribed in the article 194 (money laundering, Criminal Code of Georgia) with the knowledge that the property represents proceeds from illegal activity. Constituent elements of the crime (knowledge and purpose) are established by factual and objective circumstances. According to Georgian legislation, it's impossible to qualify action as money laundering, when the person ought to have assumed that the property was proceeds from illegal activity.
Germany	Question 1 – (3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? The requirements of Article 9 paragraph 1 are satisfied in the provisions of section 261 of the German Criminal Code, that is to the extent possible given Germany's constitutional principles and the main features of its legal system. Under section 261 (1)

	of the German Criminal Code, hiding objects which are the proceeds of a predicate offence, concealing their origin, as well as obstructing or endangering their being found, confiscated or secured are punishable offences. Section 261 (2) of the German Criminal Code covers the procurement and use of the proceeds of unlawful acts. The statutory definitions of the offences laid down in section 261 (1) and (2) of the German Criminal Code include acting with intent, but they make no specific subjective requirements as to knowing the origin of the property obtained. The term “suspected” as used in Article 9 paragraph 3 point a) corresponds, in German law, to the principle of dolus eventualis, i.e. conditional intent. It is, thus, sufficient for the perpetrator to believe that it is possible that property originates from a predicate offence and to have tacitly accepted that possibility. By way of derogation, an assumption as to the origin of a criminal defence lawyer’s fee is not sufficient: reliable knowledge thereof is required. This restriction is based on the rulings of the Federal Constitutional Court (judgment of 30 March 2004 – case no. 2 BvR 1520/01; order of 28 July 2015 – case nos 2 BvR 2558/14, 2 BvR 2571/14, 2 BvR 2573/14). However, the restriction does not apply to other professional groups, even if they advise clients in the fields of law, taxation and finances, so long as their activity does not simultaneously involve criminal defence work. Question 2 – Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? The phrase “ought to have assumed” in Article 9 paragraph 3 point b) means that reasonably weighing up all the circumstances suggests that the property in question represents the proceeds of criminal offences. This corresponds to the concept of negligence in German law. In accordance with section 261 (5) of the German Criminal Code, it is sufficient for a perpetrator to be recklessly unaware that property represents the proceeds of one of the listed unlawful acts. The punishment is imprisonment for up to two years or a fine. The term “reckless” refers to a serious form of conscious or unconscious negligence. Conduct is deemed reckless where it practically suggests itself that property represents the proceeds of one of the unlawful acts listed in section 261 (1) of the German Criminal Code but the perpetrator nevertheless acts and ignores this out of gross carelessness or indifference. Examples include an especially large sum of money, considering the property and its holder, unusual types of transactions and knowing about the extent and degree of organisation of the predicate offences. By way of derogation, reckless conduct in relation to the origin of a criminal defence lawyer’s fee is not sufficient: reliable knowledge thereof is required. This restriction is based on the rulings of the Federal Constitutional Court (judgment of 30 March 2004 – case no. 2 BvR 1520/01; order of 28 July 2015 – case nos 2 BvR 2558/14, 2 BvR 2571/14, 2 BvR 2573/14). However, the restriction does not apply to other professional groups, even if they advise clients in the fields of law, taxation and finances, so long as their activity does not simultaneously involve criminal defence work.
Greece	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds?

	The answer is negative. According to the definition of money laundering contained in Art. 2 par. 2 of the AML-Law (Law 4557/2018), "Legalisation of proceeds of crime (money laundering) shall mean the following acts: a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action, b) the concealment or disguise of the true nature, source, location, disposition, use, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, c) the acquisition, possession or use of property, knowing, at the time of receipt or administration, that such property was derived from criminal activity or from an act of participation in such activity, d) the utilisation of the financial sector by placing therein or moving through it proceeds from criminal activities for the purpose of lending false legitimacy to such proceeds, e) the setting up of an organisation or group comprising two persons at least, for committing one or more of the acts described in cases a) through d), and the participation in such an organisation or group, f) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in cases a) through d)." The condition that the perpetrator must have acted "knowing" that the property was proceeds, excludes cases where he/she suspected such fact and accepted it as an eventuality, or was indifferent towards it or believed at the end that the opposite would be true. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? The answer is again negative. Money laundering committed by negligence is not criminalized.
Hungary	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Firstly, it has to be underlined, that the wording of ML offence [(Article 399-402 of the Act C of 2012 on the Criminal Code (hereinafter: CC)] in Hungary follows the so called "all-crime approach", which means that every criminal offence which is punishable and generates "proceeds" can be considered as a predicate offence. According to Article 400 of CC, Hungary criminalises ML committed by negligence in the following way: 1. If the perpetrator • in his/her business activities uses an object, • performs any financial activity in connection with an object, or • receives any financial service in connection with an object, that originates from a punishable act committed by another person and by negligence is unaware of the origin of the object, this is a criminal offence which is punishable by imprisonment for up to two years.

	2. Qualified cases: if the criminal offence specified above is committed: • for particularly considerable or larger value (particularly considerable and larger value: 50.000.001 and more HUF); • by an officer or an employee of a financial institution, an investment firm, commodities brokers, an investment fund management company, a venture capital fund management company, a stock market, a central depository or a body acting as a central counterparty, an insurance company, a reinsurance company or an independent insurance intermediary, a voluntary mutual insurance fund, a private pension fund or an institution for occupational pension providers, an organization engaged in the operation of gambling activities or a regulated real-estate investment company in such a capacity; • by a public official. In this case, the punishment shall be imprisonment for up to three years. 3. CC excludes the punishability of the perpetrator if he/she voluntarily reports to the authorities and reveals the circumstances of the commission, provided that the criminal offence has not yet been revealed, or it has been revealed only partially. Pursuant to Article 8 of CC, the criminal offence shall be considered negligent if the perpetrator foresees the possible consequences of his act but recklessly trusts that they would not take place, or if he cannot foresee the possible consequences of his act because he fails to exercise the care or circumspection expected of him. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? Please see the answer above.
Italy	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? According to the Article 712 of the Italian Criminal Code, a person who – without having verified beforehand its legitimate provenance – suspected that – due to its quality or price or due to the conditions of the people offering it – the property was proceeds from crime may be convicted on a charge of a special offence “Acquisto di cose di sospetta provenienza”, which is not, however, a money laundering offence. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? A review of the decisions taken in the judicial cases referring to the above indicated Article 712 allows to state that a person may be convicted on a charge thereof – not only when actually suspecting that the property was proceeds from crime – also when he/she ought to have assumed – given the mentioned quality, price and conditions – that the property was proceeds from crime.
Latvia	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? On 1 August 2017 the amendments to Section 5 of the Law on the Prevention of Money Laundering and Terrorism Financing (AML/CFT Law) entered into force. The

amendments provide for a lesser subjective mental element of an offence and were based on the provisions of Article 9 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198). The previous wording of Section 5 (1) of the AML/CFT Law required a high level of knowledge as to the origin of the proceeds:

"(1) The following actions are money laundering:

1) the conversion of proceeds of crime into other valuables, transfer of their location or ownership, knowing that that these funds are proceeds of crime and if such actions are carried out for the purpose of concealing or disguising the illicit origin of funds or assisting any person who is involved in committing of a criminal offence in evading the legal liability;
2) the concealment or disguise of the true nature, origin, location, disposition, movement, ownership of proceeds of crime, knowing that these funds are proceeds of crime;
3) the acquisition, possession or use of proceeds of crime, if at the time of acquisition of such rights it is known that these are proceeds of crime; or
4) the participation in any of the activities specified in Paragraph one, Clauses 1, 2 and 3 of this Section. "knowing"."

The amended Section 5 (1) of the AML/CFT Law since 1 August 2017 stipulates:

"(1) The following actions are money laundering:

1) the conversion of proceeds of crime into other valuables, transfer of their location or ownership, being aware that that these funds are proceeds of crime and if such actions are carried out for the purpose of concealing or disguising the illicit origin of funds or assisting any person who is involved in committing of a criminal offence in evading the legal liability;
2) the concealment or disguise of the true nature, origin, location, disposition, movement, ownership of proceeds of crime, being aware that these funds are proceeds of crime;
3) the acquisition, possession, use or disposal of the proceeds of crime of another person, while being aware that these funds are the proceeds of crime.

(1^1) The actions referred to in Paragraph one, Clauses 1, 2, and 3 of this Section, when a person deliberately assumed the funds to be proceeds of crime, shall also be regarded as money laundering."

As the amendments apply to those money laundering cases which took place after the amendments entered into force there are no yet case law developed.

Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds?

On 1 August 2017 the amendments to Section 5 of the AML/CFT Law entered into force. The amendments provide for a lesser subjective mental element of an offence and were based on the provisions of Article 9 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198). The previous wording of Section 5 (1) of the AML/CFT Law required a high level of knowledge as to the origin of the proceeds:

"(1) The following actions are money laundering:

1) the conversion of proceeds of crime into other valuables, transfer of their location or ownership, knowing that that these funds are proceeds of crime and if such actions are carried out for the purpose of concealing or disguising the illicit origin of funds or

	assisting any person who is involved in committing of a criminal offence in evading the legal liability; 2) the concealment or disguise of the true nature, origin, location, disposition, movement, ownership of proceeds of crime, knowing that these funds are proceeds of crime; 3) the acquisition, possession or use of proceeds of crime, if at the time of acquisition of such rights it is known that these are proceeds of crime; or 4) the participation in any of the activities specified in Paragraph one, Clauses 1, 2 and 3 of this Section. "knowing"." The amended Section 5 (1) of the AML/CFT Law since 1 August 2017 stipulates: "(1) The following actions are money laundering: 1) the conversion of proceeds of crime into other valuables, transfer of their location or ownership, being aware that that these funds are proceeds of crime and if such actions are carried out for the purpose of concealing or disguising the illicit origin of funds or assisting any person who is involved in committing of a criminal offence in evading the legal liability; 2) the concealment or disguise of the true nature, origin, location, disposition, movement, ownership of proceeds of crime, being aware that these funds are proceeds of crime; 3) the acquisition, possession, use or disposal of the proceeds of crime of another person, while being aware that these funds are the proceeds of crime. (1^1) The actions referred to in Paragraph one, Clauses 1, 2, and 3 of this Section, when a person deliberately assumed the funds to be proceeds of crime, shall also be regarded as money laundering." As the amendments apply to those money laundering cases which took place after the amendments entered into force there are no yet case law developed.
Lithuania	3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Laundering offences are criminalised by Art. 216 and Art. 189 of the Criminal Code of the Republic of Lithuania: ***Article 216. Laundering of Property as Proceeds from Crime*** *1. A person who, with a view to concealing or legitimising his own or another person's property, while being aware that it has been obtained as proceeds from crime, acquires, manages, uses, transfers the property to other persons, performs financial operations related to this property, enters into transactions, uses it in economic and commercial activities, otherwise transforms it or falsely indicates that it has been obtained from lawful activities, also a person who conceals the actual nature of his own or another person's property, its source, location, disposal and movement or ownership thereof or other rights related to the property, while being aware that the property has been obtained as proceeds from crime,* *shall be punished by a fine or a custodial sentence for a term of up to seven years.* *2. A legal entity shall also be held liable for the acts provided for in this Article*. ***Article 189. Acquisition or Handling of Property Obtained by Criminal Means*** *1. A person who acquires, uses or handles property while being aware that the property has been obtained by criminal means*

		shall be punished by a fine or by restriction of liberty or by arrest or by a custodial sentence for a term of up to two years. *2. A person who acquires, uses or handles property of a high value or the valuables of a considerable scientific, historical or cultural significance while being aware that the property or the valuable properties have been obtained by criminal means* *shall be punished by a fine or by arrest or by a custodial sentence for a term of up to four years.* *3. A person who acquires, uses or handles property of a low value while being aware that the property has been obtained by criminal means shall be considered to have committed a misdemeanour and* *shall be punished by community service or by a fine or by arrest.* *4. A legal entity shall also be held liable for an act provided for in paragraphs 1 and 2 of this Article.* Besides, the ML offences are elaborated in Prosecutor General's Recommendations on Pre-trial Investigation into Criminal Offences of Money Laundering (Articles 189, 216 of the Criminal Code), approved by the Order No. I-358 of 16 November 2020. Section 4.1. of these Recommendations state that: *4.1. Money laundering activities include:* *4.1.1. alteration of the legal status of property or transfer of property knowing that such property is derived from or participating in a criminal offense, in order to conceal or disguise the illicit origin of the property or to assist any person involved in the criminal offense in avoiding legal consequences;* *4.1.2. concealment or disguise of the true nature, true origin, source, location, disposition, movement, ownership or other rights with respect to property, knowing that such property is derived from criminal activity or from an act of participation in such activity;* *4.1.3 acquisition, management or use of property, knowing at the time of acquisition (transfer) that the property was obtained from a criminal offense or by participating in such an offense;* *4.1.4. preparation for, attempt to commit, complicity in committing any of the acts specified in sub-paragraphs 4.1.1, 4.1.2 and 4.1.3 of the Recommendations.* And they also specify that: *4.2. Primary (predicate) money laundering crime is any criminal act provided for in the Criminal Code of the Republic of Lithuania.* Section 16 of the Recommendations state that: "*Where it is established that the assets have been obtained from a criminal offence committed in the Republic of Lithuania or any other foreign state, where such offence is considered a crime or misdemeanour under the Criminal Code, it shall not be necessary to establish all factual elements or circumstances relating to that criminal offence, including the person(s) who have committed the criminal offence or their identities. In the course of investigation of such criminal offences concerning the laundering of money or property derived from a*

	crime, the authorities must collect the data confirming that the money or other property has been derived from a criminal offence (but it is not necessary to establish all the factual elements or all circumstances relating to that criminal offence) and confirming that the person was aware of this and carried out one of the alternative actions provided for in Article 189 or Article 216 of the Criminal Code while laundering money or other assets." Thus, Lithuania applies an all-crimes approach. The ML offence refers to any property obtained by criminal means. The ML offence does not require a conviction for the predicate offence. It simply refers to property obtained by criminal means. As long as the property is obtained by criminal means, whether within or outside Lithuania, a person may be found guilty of the ML offence. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? The criminal offenses specified in Articles 189 and 216 of the CC are committed with direct intent, i. e. the perpetrator, in committing these offenses, realizes that by his actions he was laundering the money or other property obtained by the crime (acquires, uses, realizes, legalizes or conceals the true origin) and wishes to do so. In other words, according to Art. 216(1) of the Criminal Code, a person shall commit ML if s/he conceals, transfers, uses, etc., his/her own property while being aware that it has been obtained by criminal means. The Criminal Code does not regulate the conditions for proving the intent, which is left in the hands of the courts. There is case law, which indicates that intent and knowledge may be inferred from objective factual circumstances, meaning that case law permits the mental element of the ML offence to be inferred from objective factual circumstances.
Malta	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Yes. In terms of Maltese law the money laundering offence specifically includes as one of its elements "suspicion" that the proceeds are illicit. Please kindly refer to the definition of Money Laundering as provided in terms of Chapter 373 of the Laws of Malta. "money laundering" means - (i) the conversion or transfer of property knowing or suspecting that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity; (ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity; (iii) the acquisition, possession or use of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity; (iv) retention without reasonable excuse of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

	(v) attempting any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii) and (iv) within the meaning of article 41 of the Criminal Code; (vi) acting as an accomplice within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub- paragraphs (i), (ii), (iii), (iv) and (v). In so far as judicial pronouncements on this aspect are concerned, it should be noted that in the case Police vs Carlos Frias Matteo the Court of Appeal held, on the 19th of January 2012, that the shifting of the burden of proof, with respect to the origin of the alleged proceeds of crime, is subjected to the condition that the prosecution merely proves on a prima facie level, even though circumstantial evidence, the link between the funds held and licit activity (in general) and that he knew, or at least suspected, that the alleged proceeds were the proceeds of crime. Hence in this case the Court held that money laundering charge can be successful even in those cases in which the accused's standard of living is not commensurate with his legitimate income with no legitimate justification from his part. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? The money laundering offence in terms of Maltese Law does not specifically include: 'ought to have assumed' as it specifically includes "knowledge and suspicion" that the proceeds are illicit. Please kindly refer to the definition of Money Laundering as provided in terms of Chapter 373 of the Laws of Malta which was cited in the previous answer.
Monaco	(3) Est-ce que la législation et d'autres mesures permettent de conférer le caractère d'infraction pénale à l'acte de blanchiment lorsque l'auteur *soupçonnait* que le bien constituait un produit? ***Réponse*** Aux termes de l'article 218 du Code Pénal, le blanchiment est une infraction intentionnelle, son auteur doit ainsi avoir agi *«sciemment ».* Toutefois, aux termes du dernier alinéa du même article, l'élément intentionnel du délit de blanchiment *« peut être déduit de circonstances factuelles objectives".* Ces circonstances factuelles objectives sont constituées, notamment aux termes de l'article 218-4 du Code penal, par des opérations qui "*ne peuvent manifestement avoir d'autre justification que de dissimuler l'origine ou le bénéficiaire effectif de ces biens, capitaux ou revenus aux fins de blanchiment de capitaux ou de financement du terrorisme".* Au surplus, le législateur a également introduit un délit de «blanchiment par négligence». L'article 218-2 du Code pénal prévoit en effet que *«Sera puni d'un emprisonnement de un à cinq ans et de l'amende prévue au chiffre 4 de l'article 26 dont le maximum pourra être porté au décuple ou de l'une de ces deux peines seulement quiconque aura, par méconnaissance de ses obligations professionnelles, apporté son concours à toute opération de transfert, de placement, de dissimulation ou de conversion de biens et capitaux d'origine illicite".* La loi N°1.462 du 28 juin 2018 renforçant le dispositif de lutte contre le blanchiment de capitaux, le financement du terrorisme et la corruption, a en effet instauré une obligation, et des mesures de vigilance à l'égard de leur clientèle, à l'encontre, notamment : - des personnes qui effectuent à titre habituel des opérations de banque ou d'intermédiation bancaire ; - des établissements de paiement et les établissements de monnaie électronique ;

	- des personnes exerçant les activités visées à l'article premier de la loi n° 1.338 du 7 septembre 2007 sur les activités financières; - des enterprises d'assurance; - des personnes effectuant, à titre habituel, des opérations de création, de gestion et d'administration de personnes morales, d'entités juridiques ou de trusts, en faveur de tiers… **En conclusion, l'élément moral de l'infraction du blanchiment est constitué dès lors que son auteur, connaissait, ne pouvait ignorer, ou soupçonnait, l'origine illicite d'un produit, dont le caractère illicite, et sa connaissance, peuvent se déduire de circonstances factuelles objectives, telles que des opérations n'ayant pour unique but que de dissimuler l'origine ou le bénéficiaire effectif de ces produits.** **De même, un auteur pourra être reconnu coupable de blanchiment, par simple négligence, et manquement à ses obligations professionnelles de vigilance à l'égard de sa clientèle**.
	Existe-t-il des dispositions législatives et autres permettant de conférer le caractère d'infraction pénale à l'acte de blanchiment lorsque l'auteur *aurait dû être conscient* que le bien constituait un produit du crime?
	Réponse Comme indiqué supra, l'article 218-2 du Code pénal a introduit un délit de « blanchiment par négligence » à l'encontre de celui qui aura apporté son concours à toute opération de transfert, de placement, de dissimulation ou de conversion de biens et capitaux d'origine illicite, par méconnaissance de ses obligations professionnelles. **Ainsi, celui qui aurait du être conscient que le bien constituait un produit du crime par le simple respect de ses obligations de vigilance à l'égard de sa clientèle imposées par la loi N°1.462 du 28 juin 2018 évoquée ci-dessus, mais qui les aura méconnues, et ainsi apporté son concours à une opération de blanchiment, sera reconnu coupable du délit de blanchiment**.
Montenegro	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Answer Criminal Code of Montenegro stipulates in article 268 money laundering as a criminal offence: "1) Whoever converts or transfers money or other property knowing them to be derived from criminal activity, for the purpose of concealing or disguising the origin of money or other property or who acquires, possesses or uses money or other property knowing at the time of receipt that they are derived from criminal activity, or who conceals or disguises facts on the nature, source, place of deposit, movement, disposal or ownership of money or of other property knowing they are derived from criminal activity shall be punished by a prison sentence for a term from six months to five years. (2) The penalty set out in paragraph 1 of this Article shall be imposed on the perpetrator of the offence set forth in paragraph 1 of this Article who is at the same time the perpetrator or the accomplice in the criminal offence resulting in acquisition of the money or property set out in paragraph 1 of this Article or on whomever assists a perpetrator in view of avoiding his accountability for the offence committed, or undertakes actions, with the same objective, to conceal the origin of money or property set out in paragraph 1 of this Article. (3) Where the amount of money or value of the property set out in paragraphs 1 and 2 of this Article exceeds forty thousand euro, the

	perpetrator shall be punished by a prison sentence for a term from one to ten years. (4) Where the offence set forth in paragraphs 1 and 2 of this Article is committed by several persons who associated for the purpose of committing such offences, they shall be punished by a prison sentence for a term from three to twelve years. (5) Whoever commits the offence set forth in paragraphs 1 and 2 of this Article and could have known or should have known that the money or property are derived from criminal activity shall be punished by a prison sentence for a term not exceeding three years. (6) The money and property set out in paragraphs 1, 2 and 3 of this Article shall be confiscated. (7) Property, within the meaning of this Article, shall imply property, rights of every kind, whether tangible or intangible assets, movable or immovable things, securities or other documents evidencing title to or interest in such assets." Ratifying 198 Convenction, Montenegro has decided to implement Article 9(3) of the Convention which introduces lesser mental element for the criminal offence of money laundering. Thus, when the perpetrator has suspected that the property was proceed is criminalized whitin the criminal offence of money laundering. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? Money laundering offence in Montenegro is established when the person ought to have assumed that the property was proceeds. It is prescribed in the article 268 paragraph 5 where it is stated that (5) Whoever commits the offence set forth in paragraphs 1 and 2 of this Article and could have known or should have known that the money or property are derived from criminal activity shall be punished by a prison sentence for a term not exceeding three years. There is no case law.
Netherlands	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Yes, Article 420quater of the Criminal Code: maximum of two years prison in case of reasonable suspicion that the object originates from an offence. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? Yes, Article 420quater of the Criminal Code: maximum of two years prison in case of reasonable suspicion that the object originates from an offence.

North Macedonia	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Answer Yes, taking into account explanation provided with footnote 2, incrimination of "Money laundering and other income from crimes" in article 273 of the Criminal Code of Macedonia covers and person whosoever is aware that the property is proceeds, ie. has been obtained through a crime. Namely, Macedonian legislation incriminates actions of person who knows, as well as, actions of person who ought to know (obligated and in position to know) that the money, the property and the other incomes were obtained through a crime. This is stipulated with article 273 para.1, para.2, para.3, para.4 and para.9 of the Criminal Code, as follows: "Money laundering and other income from crimes Article 273 (1) Whosoever brings into circulation or trade, receives, takes over, exchanges or changes money or other property being obtained through a punishable crime or whosoever is aware it has been obtained through a crime, or whosoever by conversion, exchange, transfer or in any other manner covers up their origin from such source or its location, movement or ownership, shall be sentenced to imprisonment of one to ten years. (2) The sentence stipulated in paragraph (1) of this Article shall be imposed to whosoever holds or uses property of object being aware to have been obtained by commission of a punishable crime or by forging documents, by not reporting facts or to whosoever in any other manner covers up their origin from such source, or covers up their location, movement and ownership. (3) If the crime stipulated in paragraphs 1 and 2 is performed in banking, financial or other type of business activity or if he, by splitting of the transaction, avoids the obligation for reporting in the cases determined by law, the offender shall be sentenced to imprisonment of at least three years. (4) Whosoever performs the crime stipulated in paragraphs 1, 2 and 3, yet he was obligated and in position to know that the money, the property and the other incomes from a punishable act were obtained through a crime, shall be fined or sentenced to imprisonment of up to three years. (5) Whosoever commits the crime stipulated in paragraphs 1, 2 and 3 as a member of a group or other association that is dealing with money laundering, illegal obtaining of property or other incomes from a punishable act, or with the assistance of foreign banks, financial institutions or persons, shall be sentenced to imprisonment of at least five years. (6) Official person, responsible person in a bank, insurance company, company for organization of games of chance, exchange office, stock exchange or other financial institution, attorney-at-law, except when in role of an attorney, notary or other person performing public authorizations or activities of public interest, who shall enable or allow transaction or business relation against his legal obligation or who shall perform transaction against a prohibition pronounced by a competent body or a temporary measure appointed in court or who shall fail to report laundering money, property or property benefit, for which he became aware during the performance of his function or duty, shall be sentenced to imprisonment of at least five years. (7) Official person, responsible person in a bank or other financial institution, or a person performing activities of public interest, who according to law is an authorized

entity for applying measures and activities for prevention of money laundering and other incomes from a punishable act, who shall without authorization reveal to a client or to an uninvited person data referring to the procedure for examining suspicious transactions or to applying other measures and activities for prevention of money laundering, shall be sentenced to imprisonment of three months to five years.

(8) If the crime is committed out of covetousness or for the purpose of using data abroad, the offender shall be sentenced to at least one year imprisonment.

(9) If the crime referred to in paragraph (7) of this Article is committed out of negligence, the offender shall be fined or sentenced to imprisonment of up to three years.

(10) If there are factual or legal obstacles for confirming a previously punishable act and prosecuting its offender, the existence of such act shall be confirmed based on the factual circumstances of the case and the existence of well-founded suspicion that the property has been obtained through such crime.

(11) The awareness of the offender, i.e. the duty and possibility to know that the property has been obtained through a punishable act can be confirmed based on the objective factual circumstances of the case.

(12) If the crime referred to in this Article is committed by a legal entity, it shall be fined.

(13) The income from a punishable crime shall be seized, and if seizing it it from the offender is not possible, other property corresponding to its value shall be seized.

Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds?

Answer

Yes. In our laws, the criminal act "money laundering" also applies to a person who should assume that the property is a proceeds of a criminal act, which means that in addition to the intentional execution of this criminal act, the criminal act can be done by negligence. The duty and the possibility for the awareness that the property is a proceeds of crime is assessed according to the particular circumstances of the case, such as the official or other position and the professional obligations of the perpetrator, the amount of money or the value of the property being placed on the market (eg If an authorized person in a bank without a higher control receives a deposit from a person who knows that he has been in insolvency for a long time, is in bankruptcy, etc.). This is especially regulated by the provisions of Article 273 paragraph 4, Article 9, paragraph 10 and Article 11 of the Criminal Code, as follows:

“(4) Whosoever performs the crime stipulated in paragraphs 1, 2 and 3, yet he was obligated and in position to know that the money, the property and the other incomes from a punishable act were obtained through a crime, shall be fined or sentenced to imprisonment of up to three years.

(9) If the crime referred to in paragraph (7) of this Article is committed out of negligence, the offender shall be fined or sentenced to imprisonment of up to three years.

(10) If there are factual or legal obstacles for confirming a previously punishable act and prosecuting its offender, the existence of such act shall be confirmed based on the factual circumstances of the case and the existence of well-founded suspicion that the property has been obtained through such crime.

	(11) The awareness of the offender, i.e. the duty and possibility to know that the property has been obtained through a punishable act can be confirmed based on the objective factual circumstances of the case." In pervious reply please find full text of the article 273 of the Criminal Code.
Poland	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Answer Polish Criminal Code of 1997 provides for the types of intent of a criminal offense. According to Art. 8 an indictable offence must involve intent; a summary offence may be committed without intent, where stated by the law. The question makes a reference to that particular situation where the law has to provide explicitly such possibility for the offense to be committed with no intent. The Art. 9 §2 of the Criminal Code states that a prohibited act is committed without intent where the offender does not intend to commit it, but does so out of a failure to exercise due care under the circumstances, even though the possibility of committing the prohibited act was foreseen, or could have been foreseen. The lawmaker foresaw in the art. 299§2 of the Criminal Code a responsibility of the bank employee in case of "circumstances raising a justified suspicion of an employee of a bank". In this particular situation the criminal responsibility is based on the fact of a failure to exercise due care. The issue requires to be elaborated further down. The entire provision says as follows: Art. 299 of Criminal Code. Money laundering. § 1. Anyone who receives, transfers or transports abroad, or assists in the transfer of title or possession of legal tender, securities or other foreign currency values, property rights or real or movable property obtained from the profits of offences committed by other people, or takes any other action that may prevent or significantly hinder the determination of their criminal origin or place of location, their detection or forfeiture, is liable to imprisonment for between six months and eight years. § 2. Anyone who, as an employee of a bank, financial or credit institution, or any other entity legally obliged to register transactions and the people performing them, unlawfully receives a cash amount of money or foreign currency, or who transfers or converts it, or receives it under other circumstances raising a justified suspicion as to its origin from the offences specified in § 1, or who provides services aimed at concealing its criminal origin or in securing it against forfeiture, is liable to the Criminality specified in § 1. To give more explanation to the grounds of subject side of liability we explain it, as follows: the reception of cash amount or foreign currency/proceeds provided by the Article 299.2 of the Criminal Code takes place in circumstances that raise a reasonable suspicion that they (the proceeds) are subject to the crime of money laundering. The expression introduced in the art.299 §2 of the Criminal Code indicates primarily the reduced requirements of evidence and affects the requirements set for the obliged entities and their employees. It is sufficient for an employee of an institution responsible for criminal liability to have an awareness of the social assessment of these circumstances. Employee's personal, subjective belief about the origin of the financial means/proceeds may be completely different. The legislator refers in this way to the professional experience of bank employees, financial institutions and credit institutions that should know what type of transaction they are dealing with. Experienced employees have higher requirements in terms of "vigilance" against the so-called money laundering.

	Negligence in this respect determines responsibility for the offense under art. 299 § 2 CC. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? Answer Different standards of legal responsibility for money laundering are to be created by the new Polish Law on Criminal Responsibility of Collective Entities. As for now the government adopted the draft law. There is no concept of classic intent like it was in the case of natural persons' criminal responsibility (art.8 of Polish CC quoted above). In order to describe the principles and circumstances of this type of responsibility we explain as follows. Inter alia, a condition of liability of the collective entity is the exhaustion of the elements of a prohibited act in case of: 1) at least the lack of due diligence in the selection of the person responsible in the supervision over them by a collective entity; 2) such an irregularity in the organization of the activities of a collective entity that facilitated or enabled the commission of a prohibited act, although another organization of activities could prevent the commission of that act. The irregularity may consists in: 1) the rules of conduct in the event of the threat of committing a prohibited act or the consequences of non-observance of the prudence rules were not specified, 2) the scope of responsibility of the bodies of the collective entity, other organizational units, its employees or persons authorized to act on its behalf or interest is not specified, 3) a person or an organizational unit supervising compliance with regulations and rules regulating the activity of an entity that is at least a medium-sized entrepreneur 4) the authority of the collective entity or natural person authorized to represent it, take decisions on its behalf or exercise supervision in connection with its activities in the interest or on behalf of that entity, knew of an irregularity in the organization that facilitated or enabled the commission of an offense. The above gives you in brief a view on how the responsibility of the collective entities will work in the context of money laundering. Of course, it requires the adoption of the law and first indictments to learn the court practice related to the law due to the fact that the solutions adopted in the law are innovative. In fact, it is the only possibility in which the legislation may allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds. In other words, if there had been no irregularity in the organization neither due diligence in selection of the person responsible – that person if properly selected would have assumed "that the property was proceeds" and consequently would not have committed a criminal offense.
Portugal	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds?

NO.

According to Article 9 (1) of the Convention, Each Party shall adopt such legislative and other measures as may be necessary to establish the offence of money laundering when the conducts foreseen in paragraphs a) to c) are committed intentionally.

Article 9 (3) states that each Party may adopt such legislative and other measures as may be necessary to establish as an offence under its domestic law all or some of the acts referred to in paragraph 1 of this article, in either or both of the following cases where the offender:

a) Suspected that the property was proceeds;
b) Ought to have assumed that the property was proceeds.

Money laundering is foreseen in Article 368-A of the Criminal Code as an intentional offence, meaning that negligent money laundering was not established in the Portuguese criminal law.

Article 368-A
Laundering

1 – For the purposes of the following paragraphs, advantages are assets derived from the commission, through any type of participation, of typical unlawful acts of sexual exploitation, sexual abuse of children or dependent minors, extortion, traffic in narcotic drugs and psychotropic substances, arms trafficking, trafficking in human organs and tissues, trafficking of protected species, tax fraud, influence peddling, corruption and other breaches set out in Article 1 (1) of Law no. 36/94, of 29 September, and Article 324 of the Industrial Property Code, and of typical unlawful acts punishable by a minimum penalty of more than six months' imprisonment and a maximum penalty of more than five years' imprisonment, as well as the assets obtained from these acts.

2 - Any person who converts, transfers, assists or facilitates, whether directly or indirectly, any operation of conversion or transfer of proceeds, obtained by himself or by a third party, for the purpose of disguising the illicit origin of the property or of assisting any person who commits or is involved in the commission of such an offence or offences to evade the legal consequences of his/her actions is punished by imprisonment for a term between two and twelve years.

3 - The same penalty applies when the person conceals or disguises the true nature, origin, location, disposal, movement or rights with respect to, or ownership, of the proceeds.

4 – The offences laid down in paragraphs 2 and 3 are punished even if the acts which constitute the predicate offence have been committed outside the national territory, or if the place where the offence was committed or the identity of the offenders remain unknown, except where these are lawful activities under the law of the place where they were committed and to which Portuguese law pursuant to Article 5 [of the Criminal Code] does not apply.

5 - The fact is punishable even if the criminal proceeding concerning the typical illicit acts from which the advantages come depends on the complaint and it has not been presented.

6 – The penalty provided for in paragraphs 2 and 3 is increased by one third if the offender commits the unlawful acts regularly.

	7 – Where the offender fully compensates the victim for the damage caused by the unlawful conduct whose practice derives the advantages, without causing illicit damage to a third person, until the beginning of the hearing in first instance court, the penalty is especially mitigated. 8 - Once the requirements set forth in the previous paragraph have been verified, the penalty may be especially mitigated if the compensation is partial. 9 – The penalty may be especially mitigated if the offender assists in the gathering of evidence that is essential for the identification and arrest of those who are responsible for committing the unlawful typical acts from which the advantages derive. 10 – The penalty applied in accordance under the terms of the preceding paragraphs may not exceed the maximum length of the highest penalty prescribed for the unlawful typical acts from which the advantages derive. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? NO. As referred to in the previous answer, negligent money laundering was not established in the Portuguese criminal law.
Republic of Moldova	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Answer The ML offence is criminalised under art.243 para (1) of the Criminal Code (CC) of the Republic of Moldova, as following: "(1) Money laundering committed by: a) the conversion or transfer of goods by a person who knew or should have known that such goods were illegal incomes in order to conceal or to disguise the illegal origin of goods or to help any person involved in the commission of the main offence to avoid the legal consequences of these actions; b) the concealment or disguise of the nature, origin, location, disposal, transmission, or movement of the real property of the goods or related rights by a person who knew or should have known that such were illegal incomes; c) the acquirement, possession or use of goods by a person who knew or should have known that such were illegal incomes; d) the participation in any association, agreement, complicity through assistance, help or advice on the commission of actions set forth in letters a)-c); shall be punished by a fine in the amount of 1350 to 2350 conventional units or by imprisonment for up to 5 years, in both cases with (or without) the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years, whereas a legal person shall be punished by a fine in the amount of 8000 to 11,000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal person." Paragraphs (2) and (3) of the art.243 of the CC set out the aggravated forms of the ML offence: "(2) The same actions committed:

		[Letter a) excluded by Law No. 277-XVI of 18.12.2008, in force as of 24.05.2009] b) by two or more persons; c) by using of an official position, shall be punished by a fine in the amount of 2350 to 5350 conventional units or by imprisonment for 4 to 7 years, with a fine imposed on the legal person, from 10000 to 13000 conventional units, with the deprivation of the right to exercise certain activities or with the liquidation of the legal person; (3) The actions set forth in par. (1) or (2) committed: a) by an organized criminal group or a criminal organization; b) in extremely large proportions; shall be punished by imprisonment for 5 to 10 years, with a fine imposed on the legal person, from 13000 to 16000 conventional units or with the liquidation of the legal person." Para (4) of the art.243 of the CC provides that "(4) Illegal actions shall also be acts committed beyond the territory of the country provided that such acts include the constitutive elements of an offence in the state where they were committed and may be the constitutive elements of an offence committed on the territory of the Republic of Moldova." The transposition of the art.9 para 3 letter a) of the CETS No. 198 in the domestic legislation of the RM could be supported by the following case studies. Case of C.D. (investigated by National Anticorruption Center): The case against the natural person C.D. was referred to court in July 2018. C.D. was accused of committing ML offence in agreement with persons established abroad, who obtained criminal financial means from cyber fraud. According to their agreement, in the period 2013-2015, aiming to disguise the nature and origin of the criminal money, C.D. received the total amount of 179.071 USD on different bank accounts and through Western Union system. Knowing that received money were proceeds of crime, C.D. withdrew them in cash from the accounts periodically and transferred a part of them, 107.080 USD, through the Western Union system to several beneficiaries from the Republic Federal Republic of Nigeria, the United Kingdom and Benin, disguising the nature of these funds by declaring them in the banking forms under the heading "purpose of transactions / transactions" as material aid, free aid, financial aid, donations and gifts. According to prior agreements, C.D. acquired the difference of 71.991 USD and used them for his own needs. C.D. pleaded guilty, requested a simplified procedure before the court. By the sentence of the Chisinau District Court of 17.12.2018, C.D. was found guilty of committing the ML offense under art.243 par.(3) letter b) of the Criminal Code of the Republic of Moldova and convicted for 4 years of imprisonment, which was suspended for a probationary period of 4 years. By the same sentence the confiscation of the equivalent in MDL of the amount of 179.071 USD was disposed by the Court. The case of B.A. (investigated by Prosecutor's Office for Combating Organised Crime and Special Cases): A natural person B.A., between January and February 2018, realizing that money from illegal drug trafficking will be transferred to his bank account, via the "telegram" application, has transferred pictures of his bank card, opened on his name in a resident bank, to the author of the predicate offense. As a result, between February 13, 2018 and July 11, 2018, money resulting from the drug trafficking was transferred to the account of the named person in the amount of 513.802 MDL.

During criminal prosecution, prosecutors interacted with FIU and, through international legal assistance, with the criminal investigating bodies in the Russian Federation, in order to pursue the transferred funds.
On August 9, 2018, the criminal case was referred to court, the physical person being charged with the money laundering offense, the money was placed under sequester.
B.A. pleaded guilty, requested a simplified procedure before the court.
By the sentence of the Chisinau District Court of 15.12.2018, B.A. was found guilty of committing the ML offense under articles 42 par.(5), 46, 243 par.(3) letters a) and b) of the Criminal Code of the Republic of Moldova and convicted for 3 years and 4 months of imprisonment, which was suspended for a probationary period of 1 year. By the same sentence the confiscation of the equivalent of the amount of 513.802 MDL was disposed by the Court.

Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds?

Answer

The Moldovan CC allows a money laundering offence to be established where the person ought to have assumed that the property was proceeds of crime.

The relevant provisions are set out in the same article 243 para (1) letters a), b), c) and d) of the CC of the RM (see the previous box).

The transposition of the art.9 para 3 letter b) of the CETS No. 198 in the domestic legislation of the RM could be supported by the following case study.

Case of L.C. . (investigated by Anticorruption Prosecutor's Office):
The case against the natural person L.C. and the legal persons C.C. and B.E.I. was referred to court at 01.08.2017.
In the period 28.11.2012 – 23.10.2014, the non-resident company I.P.A., based in the Principality of Liechtenstein, received 440,100 USD on its bank accounts opened in the country of residence, as a result of 14 transfers from the companies T.T.C., P.I. and H.
The effective beneficiary and the manager, through intermediaries, of the non-resident company I.P.A. was the citizen of the Republic of Moldova L.C., ex-member of the Parliament of the Republic of Moldova.
Transfers have been made on the basis of fictitious contracts of providing consulting services, and the companies T.T.C., P.I. and H. were affiliated with a person involved in the so-called "fraud of the banking system" of the Republic of Moldova.
Thus, the effective beneficiary of company I.P.A. owned and used funds for a total amount of 440,100 USD of criminal origin, which he should have known about.
The conduct of L.C. has been qualified as money laundering in extremely large proportions.

On 27.03.2013, the resident company T.D.L. received a loan of 5,000,000 MDL, converted to 401,650 USD and transferred for purchasing of equipment to the bank accounts of the offshore company Z.P.L..
The effective beneficiary and the manager, through intermediaries, of the resident company T.D.L. was the same citizen of the Republic of Moldova L.C., ex-member of the Parliament of the Republic of Moldova.
On 27.12.2013, under a claim assignment contract, T.D.L. received 278,242 EUR from the non-resident company T.U., affiliated to the same person involved in the so-called "fraud of the banking system" of the Republic of Moldova. The money originated from a 3,886,730 USD credit granted by a Moldovan commercial bank to the resident company D.M.C., affiliated to the same person involved in the bank fraud.

	L.C., the effective beneficiary of the resident company T.D.L. used the amount of 278,242 EUR to reimburse the 5,000,000 MDL loan, although he should have known about the criminal origin of the funds. The conduct of L.C. has been qualified as money laundering in extremely large proportions. By decision of the Chisinau District Court of 04.04.2018, the defendant L.C. was found guilty of committing two ML offenses under art.243 par.(3) letter b) of the Criminal Code of the Republic of Moldova and convicted for 5 years 6 months of imprisonment, with the deprivation of the right to hold public positions for 4 years. The countervalues of 440,100 USD and 278,242 EUR were confiscated from the convicted person L.C.
Romania	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Article 9(3) of the Convention provides a possibility for the State Parties to adopt such legislative and other measures as may be necessary to establish as an offence under its domestic law all or some of the acts referred to in paragraph 1 of this article, in either or both of the following cases where the offender a. suspected that the property was proceeds, b. ought to have assumed that the property was proceeds. At points 97 and 98 from the Explanatory report of the Convention, it is underlined that "Paragraph 3.a provides for a lesser subjective mental element and could cover a person who gives the origin of the proceeds some thought (it is sufficient that he/she suspects the property was proceeds) but hasn't the firm knowledge that the property is proceeds. Paragraph 3.b suggests the criminalisation of negligent behaviour where the court objectively weights the evidence and determines whether the offender should have assumed the property was proceeds, whether or not he/she gave any thought to the matter. 98. Paragraph 3 criminalises acts other than those designated in the 1988 United Nations Convention. Paragraph 3 is optional. It follows that the fact that a Party decides not to adopt it in its internal law cannot be raised or criticised during the monitoring process envisaged by the Convention." 5. Also, the Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law provides, in art. 3 para 2, similarly with the Convention, the possibility for the Member States to take necessary measures to ensure that the ML activities are punished as offences when the perpetrator suspected or should have suspecting that the assets derived from the committing of offences. In RO, money laundering (ML) is criminalised under Article 29 of Law No. 656/2002 on the prevention and sanctioning of money laundering and on setting up of certain measures for the prevention and combating terrorism financing, as completed and amended, which makes liable to imprisonment from 3 to 10 years, the following criminal acts: (1) a) the conversion or transfer of assets, knowing that such assets are derived from the committing of offences, for the purpose of concealing or disguising the illicit origin of assets or of assisting any person who is involved in the committing of the offence from which the assets are deriving, to evade the prosecution, trial or punishment execution;

b) the concealment or disguise of the true nature of the origin, location, disposition, movement, rights with respect to, or ownership of assets, knowing that such assets are derived from the committing of offences;

c) the acquisition, possession or use of assets, knowing, that such assets are derived from the committing of offences.

(2) The attempt is punishable.

(3) If the offence was committed by a legal person, one or more of the complementary penalties referred to in article 136 para (3) (a) –(c) of the Criminal Code is applied, by case, in addition to the fine penalty.

(4) Knowledge of the assets origin or the purpose required as an element of the activities mentioned in the paragraph (1) may be inferred from objective factual circumstances.

(5) Provisions of para (1) – (4) shall be applied, irrespective of the facts that the predicate offence was committed on Romanian territory of abroad.

According to the Romanian legislation, the ML committed by negligence does not constitute a criminal offence. The various criminal actions provided under the money laundering incrimination (conversion or transfer; concealment or disguise, acquisition, possession or use [of assets]) must be accomplished with the mental element of "knowledge" of the illicit origin of assets in order to constitute a criminal offence (in accordance with article 9 paragraph 1 of CETS N° 198).

According to article 16 from the Romanian Criminal Code there is a distinction between intentional and negligent offences. The same article expressly provides that the offences committed with negligence are punishable only when expressly provided by the law, which is not the case for article 29 from Law No. 656/2002 – the AML Law.

Analysing the mental element of the ML offence provided by art. 29 para. (1) a) from Low no. 656/2002, the specialized literature as well as the judicial practice have interpreted that in the Romanian law the guilt is expressed through direct intention, qualified by purpose (the perpetrator predicts the socially dangerous result of his act and intents it):

- concealing or disguising the illicit origin of the assets, or
- assisting any person who is involved in the committing of the offence from which the assets are deriving, to evade the prosecution, trial or punishment execution.

6. With regard to art. 29 para. (1), b) and c) from Low no. 656/2002, republished, the guilt is expressed through direct intention, not qualified by purpose in this case, and indirect intention (predicts the result of his deed and even if he doesn't intend it, accepts the possibility of its occurrence).

As an example of jurisprudence, we would like to make reference to the Decision no. 454/2015 of the Criminal Section of the High Court of Cassation and Justice, presented below.

<u>* Short presentation of Decision no. 454/2015 of the Criminal Section from the High Court of Cassation and Justice</u>

Through Criminal Sentence no. 75 from 13 June 2014, pronounced by the Court of Appeal Bacau, the defendant was convicted for committing money laundering according to art. 29 para. (1) a) from Law nr. 656/2002, republished.

The Court noted that, considering the objective element for committing this offence, the following two conditions must be accomplished: the concealment or disguise of the true nature of the origin, location, disposition, movement, rights with respect to, or

	ownership of assets, knowing that such assets are derived from the committing of offences and the origin of the money to be the result of an offence incriminated by the criminal law. In this case the conditions were accomplished. The Court mentioned that the indirect intention was indicated by the defendant's attitude which knew the risks of her actions and accepted the illicit activity developed by another defendant, indicted in the same case. For individualizing the penalty, the Court took into consideration the degree of concrete social danger of the committed offences, the defendant's participation to the illicit activity and her attitude during the trial and convicted her to imprisonment, suspending the execution of the punishment according to the criminal law. The defendant appealed the Court decision to the High Court of Cassation and Justice and claimed acquittal for money laundering offence because she didn't try to conceal the origin of the money and moreover, she returned some of the money, giving to the criminal investigation bodies all the evidences that she possessed (e-mails between her and the other defendant, bank statements). She also said that she didn't know that the money were the result of a criminal offence. Moreover, money laundering is an offence committed with intent and not by negligence and considering this the money transfer between two bank accounts can't be interpreted as concealment. Analysing the appealed decision, the defendant's statements and taking into consideration the legislative provision for money laundering offence, the High Court of Cassation and Justice found that the defendant's activity of transferring the money from an account to another represent exactly the activity mentioned in art. 29 para. (1) a) from Law 656/2002. The defendant's affirmation of not knowing about the origin of the money was unfounded because she participated as an accomplice for committing abuse in office which was the predicate offence for money laundering in this case. For sustaining the idea of intentional behaviour, the High Court underlined the fact that the defendants' statements expressed to one of the witnesses and to the investigative bodies were contradictory. The High Court stated that doctrine and jurisprudence sustain the autonomy of money laundering, which means that is not necessary that the author of money laundering to have known the exactly nature, temporal circumstances, place or identity of the person, victim or author of the principal offence. Also, it's not necessary for the offender to know exactly the principal offence as origin of the money, the author of the principal offence or if this person is criminal liable or not. If the defendant knows, in the moment of his action, that the money is resulting from an offence, than he is considered the author of money laundering offence. The defendant's behaviour of cooperating with the investigative bodies reflected her attitude after committing the offence and was took into consideration by the Court of Appeal as mitigating circumstances. Taking into consideration all the evidences, the High Court considered that the Court of Appeal has pronounced the right decision and maintained it. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? Please see the previous answer.
Russian Federation	The responsibility for financial transactions and other deals with money and other property knowingly acquired by other persons in a criminal way for the purpose of bringing the appearance of legality to the possession, use and disposal of the said amounts of money and other property is stipulated in Part One of Article 174 of the Criminal Code of the Russian Federation.

	In accordance with paragraph 19 of Decision No. 32 of the Plenum of the Supreme Court of the Russian Federation of 7 July 2015 *On Judicial Practice in Cases Concerning the Legalization (Laundering) of Money and Other Property Acquired by Criminal Means and the Acquisition or Sale of Property Knowingly Obtained by Criminal Means*, when qualifying an act under Article 174 of the Criminal Code of the Russian Federation the court must establish that the perpetrator was aware of the criminal origin of the property involved in financial transactions and other deals conducted by him/her, as well as in the acts of acquisition or sale. At the same time, the law implies that the person may not be aware of the specific circumstances of the principal offence. Thus, the criminalization criterion of "knowingly" used in the disposition of Part One of Article 174 of the Criminal Code of the Russian Federation implies precise, reliable rather than presumptive knowledge by the person that the property involved in the transaction was acquired by criminal means. Accordingly, in cases where the person suspected or should have suspected that the property was criminal proceeds criminal liability does not arise under this Article.
San Marino	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds2? No. Please see, however, the attached supplementary document containing excerpts of the most relevant appeal judgements in this context. (3) Do your legislation and other measures allow for a money laundering offence to be established where the person ought to have assumed that the property was proceeds2? No. Please see, however, the attached supplementary document containing excerpts of the most relevant appeal judgements in this context.
Serbia	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Article 245, paragraph 1 of the Criminal Code reads as follows: Whoever converts or transfers assets knowing that such assets originate from a criminal activity, with the intention of concealing or misrepresenting the unlawful origin of the assets, or conceals and misrepresents facts on the assets knowing that such assets originated from a criminal activity, or obtains, keeps or uses assets with foreknowledge, at the moment of receiving, that such assets originated from a criminal activity shall be punished with imprisonment of six months to five years and fined. According to the above quoted provision, money laundering offence cannot be established in cases where the offender suspects that the property was proceeds. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? As per Article 245, paragraph 6 of the Criminal Code reads as follows: Responsible person with the legal entity who commits the ML offence shall be punished with the punishment prescribed for such an offence if he/she was aware, i.e. could know and was obliged to know that the money or assets were proceeds from a criminal activity.
Slovak Republic	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds?

		Articles 233 (Legalisation of the Proceeds of Crime) and 231 (Complicity) of Criminal code of the Slovak Republic can be applicable to intentional money laundering offences. Article 233 para 1 states the following: Any person who performs any of the following with regard to income or other property obtained by crime with the intention to conceal such income or thing, disguise their criminal origin, conceal their intended or actual use for committing a criminal offence, frustrate their seizure for the purposes of criminal proceedings or forfeiture or confiscation: a) transfers to himself or another, lends, borrows, transfers in a bank or a subsidiary of a foreign bank, imports, transits, delivers, transfers, leases or otherwise procures for himself or another, or b) holds, hides, conceals, uses, consumes, destroys, alters or damages, shall be liable to a term of imprisonment of two to five years. Also Articles 231 (Complicity) can be applied as answer to this question. Article 231 criminalise the intentional conduct as follows: Any person who conceals, transfers to himself or another, leases or accepts as a deposit a) a thing obtained through a criminal offence committed by another person, or b) anything procured in exchange for such a thing, shall be liable to a term of imprisonment of up to three years. (2) The offender shall be liable to a term of imprisonment of three to eight years if he commits the offence referred to in paragraph 1, a) and obtains larger benefit for himself or another through its commission, b) by reason of specific motivation, or c) uses such thing for his own business purposes. (3) The offender shall be liable to a term of imprisonment of seven to twelve years if he commits the offence referred to in paragraph 1, a) and obtains substantial benefit for himself or another through its commission, or b) acting in a more serious manner. (4) The offender shall be liable to a term of imprisonment of twelve to twenty years if he commits the offence referred to in paragraph 1, a) and obtains large-scale benefit for himself or another through its commission, or b) as a member of a dangerous grouping. The offence of Legalisation of the Proceeds of Crime according to article 233 and Article 231 of Criminal code of the Slovak Republic is connected to the intention of person as for examples the specific intention to conceal the criminal origin of property. The term “suspected” as stated in question suggest that the conduct of person to commit such offence is intentional therefore such action is punishable according to the Slovak law. When considering whether the property is derived from criminal activity and whether the person was aware of it, the specific circumstances of the case should be taken into account, such as the fact that the value of the property is disproportionate to the lawful income of the accused person and that the criminal activity and acquisition of

property occurred within the same time frame. Intention and knowledge can be inferred from objective, factual circumstances.

Legal persons are also criminally liable for such conduct according to same articles of Criminal code of Slovak Republic, however criminal liability is extended to negligible acts in accordance to article 4 para. 1 and para 2 of Act No. 92/2016 Coll. on Criminal liability of legal persons. The aforementioned article 4 para 1 and para 2 states the following:

(1) A legal person is considered to have committed a criminal offence under Section3(list of criminal offences liable for legal persons) if the criminal offence was committed for its benefit, on its behalf, as part of or through its activities by

(a) its statutory body or a member of its statutory body,

(b) a person performing control or supervision within the legal person, or

(c) another person authorised to represent the legal person or make decisions on its behalf.

(2) A legal person is considered to have committed a criminal offence under Section 3 also if a person referred to in paragraph 1 fails, even if by negligence, to properly perform its control and supervision duties, thus allowing a criminal offence being committed by a person acting within the scope of authority conferred by the legal person.

Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds?

Article 234, para. 1 together with Article 232 of Criminal Code of the Slovak Republic regulates this unlawful conduct.

Articles 232 (Complicity) criminalise the negligible conduct as follows:

(1) Any person who, by negligence, conceals or transfers to himself or another a thing of considerable value obtained through a criminal offence committed by another person, shall be liable to a term of imprisonment of up to one year.

(2) The offender shall be liable to a term of imprisonment of between six months and three years if he commits the offence referred to in paragraph 1, and enables another to disguise the origin or disclosure of a thing obtained through a criminal offence committed in the territory of the Slovak Republic or abroad.

(3) The offender shall be liable to a term of imprisonment of one to five years if he commits the offence referred to in paragraph 1,
a) and obtains substantial benefit for himself or another,
b) acting in a more serious manner, or
c) with respect to things originated from the trafficking in narcotics, psychotropic, nuclear or high risk chemical substances, or from another particularly serious felony.

(4) The offender shall be liable to a term of imprisonment of three to eight years if he commits the offence referred to in paragraph 1,and obtains large-scale benefit for himself of another through its commission.

	Legal persons are held responsible in accordance with article 4 para. 1 and para 2 of Act No. 92/2016 Z.z. of Criminal liability of legal persons (see the text of this article in previous question). Article 234, para. 1 of Criminal Code of the Slovak Republic reads as follows: Any person who fails to inform or report a) the facts indicating that other person has committed the criminal offence of laundering the proceeds of crime pursuant to Section 233, or b) an unusual business transaction, although he has such obligation by virtue of his employment, profession, position or function, shall be liable to a term of imprisonment of two to eight years. According to Article 234, the persons who are eligible for such offence are persons which have duty to report such unlawful conduct and fail to do so. Although this offence is considered as intentional offence, we assume it can be partly fit into scope of this question. The definition of Article 234 of Criminal Code of Slovak republic, mainly the first part, i.e. “Any person who fails to inform or report” is covered by definition of article 9 para 3 letter b) of this convention, i.e. “ought to have assumed”. According to our understanding, if the person ought to have assumed something, this can be interpreted as person who had the obligation or duty to assume or know that the property was proceeds, therefore failure of these obligation can be criminal conduct as stated in Article 234 para. 1 of Criminal Code of the Slovak Republic.
Slovenia	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? We understand the term “suspected” in a sense of dolus eventualis which is in legal theory an intent present when the perpetrator objectively foresees the possibility of his act causing prohibited/illegal consequences. Slovenian criminal code provides this form of intent as a specific form of intent with which a criminal offence can be committed. See Art. 25 of the Criminal Code: http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5050 Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? The type of criminal liability you refer to in your question is consistent with a type of negligence that occurs, when the perpetrator was not aware that he can commit an offence but should and could be aware of it with in view of the circumstances and his personal attributes. This is a concept analogous to the German “unbewusster Fahrlässigkeit”. Article 26 of the Criminal Code provides for the incrimination of this type of negligence. Money laundering offence can be committed also with negligence, see Art. 245, para. 5 of the Criminal Code: http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5050

Spain	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Yes. Article 301.3 of the Spanish Criminal Code criminalizes money laundering perpetrated due to gross negligence. Even if this provision does not expressly define the actions which constitute “gross negligence”, it shall be considered that it includes those cases where the person could have easily known that the property came from a criminal origin if he had acted with due diligence. In this sense, Spanish Supreme Court´s case law states that although the application of Article 301.1 does not require that the person knew the origin of the goods, it is necessary that the circumstances of the case had allowed him to know it only by observing the normal diligence standards. Article 301 of the Criminal Code: 1. Whoever acquires, possesses, uses, converts or conveys assets, knowing they originate from a criminal activity, committed by himself or by any third party, or who perpetrates any other deed to hide or conceal their unlawful origin, or to aid the person who participated in the criminal offence or criminal offences to avoid the legal consequences of his deeds, shall be punished with a sentence of imprisonment of six months to six years and a fine from one to three times the value of the goods. In these cases, the Judges or Courts of Law, in view of the severity of the deed and the personal circumstances of the offender, may also sentence him to the punishment of special barring from exercise of his profession or industry for a term from one to three years, and order the measure of temporary or definitive closing of the establishment or premises. If the closing is temporary, its duration may not exceed five years. The punishment shall be imposed in its upper half when the assets have their origin in any of the criminal offences related to trafficking of toxic drugs, narcotics or psychotropic substances described in Articles 368 to 372 of this Code. In these cases, the provisions set forth in Article 374 of this Code shall be applied. The punishment shall also be imposed in its upper half when the assets originate from any of the criminal offences included in Chapters V, VI, VII, VIII, IX and X of Title XIX or in any of the criminal offences of Chapter I of Title XVI. 2. The same penalties shall be used to punish, as appropriate, hiding or concealment of the true nature, origin, location, destination, movement or rights of the assets, or their ownerships, knowing that the originate from any of the criminal offences described in the preceding Section or a deed of participation therein. 3. Should the deeds be perpetrated due to gross negligence, the punishment shall be imprisonment from six months to two years and a fine of one to three times thereof. 4. The offender shall also be punished even though the criminal offence from which the assets, of the deeds punishable pursuant to the preceding Sections may have been committed, full or partially, abroad. 5. Should the offender have obtained gains, these shall be confiscated pursuant to the rules of Article 127 of this Code.

	Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? See the previous answer.
Sweden	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Article 9.3 a, which is optional, has not been adopted in Swedish law. However, under Section 6, second paragraph of the Money Laundering Offences Act (Annex A), a money laundering offence can be established where the person ought to have assumed that the property was proceeds. In other words, in situations where the person suspected that the property was proceeds a money laundry offence can be established under section 6, second paragraph of the Money Laundering Offences Act. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? Yes, the Swedish legislation do allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds. Money laundering misdemeanour A person is guilty of a money laundering misdemeanour if he or she did not realise but had reasonable cause to assume that the property derived from an offence or criminal activities. These acts of carelessness under Section 6, second paragraph refer to money laundering offences under Sections 3 and 4 (Annex A). It is possible for the intent and knowledge required to prove the money laundering offence to be inferred from objective factual circumstances. According to the Swedish Code of Judicial Procedure, the court, after evaluating everything that has occurred in accordance with the dictates of its conscience, shall determine what has been proved in the case (Chapter 35, section 1 [Annex B]). Section 3 of the Act on Penalties for Money Laundering Offences establishes that a person is guilty of a money laundering offence if he or she - transfers, acquires, converts, stores or takes another such measure with the property - or supplies, acquires or draws up a document that can provide a seeming explanation for the possession of the property, participates in transactions that are carried out for the sake of appearances, acts as a front or takes another such measure. A person is also guilty of a money laundering offence if he or she, without the measure having a purpose such as is indicated in above, improperly promotes the possibility of someone converting money or other property deriving from an offence or criminal activities (section 4). Sweden has an “all crimes” approach which means that all criminal offences which generate proceeds can be predicate offences to money laundry. The Swedish criminal legislation covers all categories of offences. No limitation or threshold is placed on the predicate crime. This means that not only offences involving alienation or acquisition

		can constitute a valid predicate offence to money laundering; offences by which someone is enriched as a result of a tax/customs offence or other evasion offence are encompassed by the term “property deriving from an offence or criminal activities” and can thus be a predicate offence to money laundering. Through the broad requisite of “criminal activities”, the preparatory works make clear that it is not necessary to be able to demonstrate that the property derives from a particular concrete offence. A prosecutor is to be able to point to concrete circumstances indicating criminal activities of a particular type, such as economic crime or narcotics crime. Details on their extent and focus do not need to be supported. The requisite is satisfied even if it cannot be demonstrated that any more specified acts have taken place (Government Bill 2013/14:121, p. 109). To summarize, where the person ought to have assumed that the property was proceeds a money laundering offence can be established under section 6, second paragraph of the Money Laundering Offences Act.
Türkiye	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds?	Yes Conceptually, intention is described as the commission of actions given place in the legal definition of an offense willingly and knowingly in Turkish criminal system [Article 21(1) of the Turkish Criminal Law-TCL]. In this regard, the perpetrator shall be culpable if he/she is aware of the actions given place in the legal definition of the offense and he/she wants the result. In regard to “negligence”, acts conducted with negligence shall be subject to a penalty only where explicitly prescribed by law according to article 22(1) of the TCL. Accordingly, offences which can be committed by negligence are restricted and they shall be notified in the legal definition of offences. The relevant Article of the Turkish Criminal Code reads: Article 21 titled "Intent" – (1)) The existence of a criminal offence depends upon the presence of intent. Intent is defined as knowingly and willingly conducting the elements in the legal definition of an offence. (2) There is probable intent when the individual conducts an act while foreseeing that the elements in the legal definition of an offence may occur. Accordingly, for offences that require a penalty of aggravated life imprisonment, life imprisonment shall be imposed; for those offences that require a penalty of life imprisonment, a term of twenty to twenty-five years of imprisonment shall be imposed; otherwise the penalty shall be reduced by one-third to one-half. When it comes to money laundering (ML) offence, the legal definition is set out in the Article 282 of the TCL as below: Article 282 Laundering of Assets Acquired from an Offence (1) A person who transfers abroad the proceeds obtained from an offence requiring a minimum penalty of six months or more imprisonment, or processes such proceeds in various ways in order to conceal the illicit source of such proceeds or to give the impression that they have been legitimately acquired shall be sentenced to imprisonment from three years up to seven years and a judicial fine up to twenty thousand days

(2) A person who, without participating in the commitment of the offence mentioned in paragraph (1), purchases, acquires, possesses or uses the proceeds which is the subject of that offence knowing the nature of the proceeds shall be sentenced to imprisonment from two years up to five years."

In this regard, the definition of ML offence in Article 282(1)of the TCL clearly points out that ML offence can be committed intentionally which is the mental element (mens rea) of the offence.

In Turkish Criminal Law, the intention is divided into two groups:

(i) The "direct intention" is laid down in Article 21(1) of the TCL. It means the commitment of an offence knowingly, willingly and being aware of the components defined in the statute.

(ii) The "possible intention" is established in Article 21(2) of the TCL. Where a person commits an offence knowing the fact that the components defined in the statute might emerge, possible intention is supposed to exist.

In regard to ML offence, it is sufficient for the perpetrator to presume the fact that the proceeds he laundered derive from a predicate offence. Laundering offence can be committed directly or by possible intention (Article 21/2 of the TCL),which implies that intent and knowledge can be understood from objective factual circumstances. Additionally, it should be noted that there is not any restriction in the wording of ML offence set forth in Article 282(1) with regard to the fact that ML offence can only be committed with direct intention.

For this reason, the offence of laundering, regulated in Article 282(1) of the Turkish Criminal Code, can be committed through probable intent in terms of certain criminal conducts. As is seen, the first paragraph of the aforementioned Article includes alternative criminal conducts regarding how the offence of laundering can be committed. These conducts are listed as:

A- Transferring abroad;

B- Processing such asset to conceal its source or give the impression that it has been legitimately acquired

Through the act of "transferring abroad", the offence of laundering can be committed by probable intent. For example, if a delivery person receives a bag filled with money acquired as a result of drug trafficking and transfers it abroad for his own personal gain, despite predicting that the money could not have been acquired through legal ways, he should be punished in accordance with the provisions relating to probable intent.

Different opinions exist in the Turkish academic world regarding whether the act specified in B can be committed by probable intent. However, it is generally accepted that it cannot be committed by probable intent as the lawmaker has consciously preferred to use the term "... to give the impression that..." when defining the act of "processing". In other words, the intent through which the act should be committed is clearly emphasized in the Article. Therefore, it is not possible for an act to be committed through both a specific intent and "probable intent". As a result, its application is limited to the act of "transferring abroad" in terms of the first paragraph of Article 282.

On the other hand, it is considered that the offense prescribed in the second paragraph of the Article 282 of TCL can only be committed by direct intention. Briefly, it is necessary for the perpetrator to know that the proceeds he purchases, accepts, possesses or uses is the laundered proceeds of offense in Article 282(2). This

	inference stems from the term "...by being aware of its such nature..." used in the second paragraph of Article 282. Furthermore, it is also stated in the grounds of the relevant Article that this offence can only be committed by direct intent. The grounds of the Article refer to the document indicating the reasons for passing the law or amending the Articles, which should be included in draft laws and bills of law. This document is not binding for judicial authorities when they apply the law; however, it should be taken into consideration as it specifies the reason for the adoption of the law. In conclusion, the offence stated in the second paragraph of Article 282 of the Turkish Criminal Code can only be committed by direct intent. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? No As it is pointed out in paragraph 97 of the Explanatory Report of CETS 198, Article 9(3)(b) refers to the fact that negligent behaviours may give rise to the criminalization of ML offence. In this regard and as it is explained in detail above, ML offence cannot be committed by negligence according to TCL. Furthermore, paragraph 98 of the Explanatory Report indicates that this standard, which goes beyond the requirements set out in 1988 UN Vienna Convention, is optional and countries cannot be criticized in case of non compliance with this article.
Ukraine	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Article 209 of the Criminal Code of Ukraine envisages criminal responsibility for «Legalization (laundering) of proceeds from crime», i.e.: 1. Conducting financial transaction or concluding an agreement involving money or other property obtained as a result of committing a socially dangerous unlawful action which preceded legalization (laundering) of proceeds, as well as carrying out actions aimed at concealing or disguise of illegal origin of such money or other property or possession thereof, rights to such money or property, source of their origin, location, displacement, changing of form (conversion), as well as acquiring, owing, or disposing of money or other property obtained as a result of committing socially dangerous unlawful action which preceded legalization (laundering) of proceeds, - shall be punished by imprisonment for a term of from three to six years, with deprivation of right to hold certain positions or carry out certain activities for a term of up to two years, with confiscation of property. 2. Actions as referred to in paragraph 1 of this Article, if committed repeatedly or by a group of persons upon prior conspiracy, or if committed in large amounts, - shall be punished by imprisonment for a term of from seven to twelve years, with deprivation of right to hold certain positions or carry out certain activities for a term of up to three years, with confiscation of property. 3. Actions as referred to in paragraph 1 or 2 of this Article, if committed by an organized group or if committed in especially large amounts, - shall be punished by imprisonment for a term of eight to fifteen years, with deprivation of right to hold certain positions or engage in certain activities for a term up to three years, with forfeiture of money or other property obtained as proceeds from crime, and with confiscation of property.

Note. 1. A socially dangerous unlawful action which preceded legalization (laundering) of proceeds Under this Article, is considered an action, for which the Criminal Code of Ukraine envisages the main punishment of imprisonment or a fine of more than three thousand of non-taxable minimum incomes of citizens, or an action committed abroad, in case it is considered as a socially dangerous unlawful action which preceded legalization (laundering) of proceeds according to the law of State, where the action was committed, and is a crime under the Criminal Code of Ukraine, and as result of which illegal proceeds were obtained.

2. Legalization (laundering) of proceeds from crime is considered to be committed in large amounts if the value of money or other property involved in crime concerned exceeds six thousand of non-taxable minimum incomes of citizens.

3. Legalization (laundering) of proceeds from crime is considered to be committed in especially large amounts if the value of money or other property involved in crime concerned exceeds eighteen thousand of non-taxable minimum incomes of citizens.

Article 9 of the CETS.198 distinguishes cases where the offender carried actions concerning property, knowing that such property is proceeds (Para 1), and cases where the offender suspected that the property was proceeds and/or ought to have assumed that the property was proceeds (Para 3).

Article 209 of the Criminal Code of Ukraine does not provide such distinction and for the qualification of actions according to Art. 209 of the Criminal Code of Ukraine the exact knowledge of person about character and particular circumstances of committing predicate offence is not required. It is sufficient that the person assumed or suspected, that property is proceeds.

Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds?

Article 209 of the Criminal Code of Ukraine envisages criminal responsibility for «Legalization (laundering) of proceeds from crime», i.e. for conducting financial transaction or concluding an agreement involving money or other property obtained as a result of committing a socially dangerous unlawful action which preceded legalization (laundering) of proceeds, as well as carrying out actions aimed at concealing or disguise of illegal origin of such money or other property or possession thereof, rights to such money or property, source of their origin, location, displacement, changing of form (conversion), as well as acquiring, owing, or disposing of money or other property obtained as a result of committing socially dangerous unlawful action which preceded legalization (laundering) of proceeds.

Under the Note to Art. 209 of the CC of Ukraine a socially dangerous unlawful action which preceded legalization (laundering) of proceeds Under this Article, is considered an action, for which the Criminal Code of Ukraine envisages the main punishment of imprisonment or a fine of more than three thousand of non-taxable minimum incomes of citizens, or an action committed abroad, in case it is considered as a socially dangerous unlawful action which preceded legalization (laundering) of proceeds according to the law of State, where the action was committed, and is a crime under the Criminal Code of Ukraine, and as result of which illegal proceeds were obtained.

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	exact knowledge of person about character and particular circumstances of committing predicate offence is not required. It is sufficient that the person assumed or suspected, that property is proceeds.
United Kingdom	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? S.327-329 Proceeds of Crime Act 2002 (POCA) provide for the principal money laundering offences. Each of the offences criminalises involvement with criminal property. Under s.340(3) of POCA property is criminal property if (a) it constitutes a person's benefit from criminal conduct or it represents such a benefit, and (b) the alleged offender knows or suspects that it constitutes or represents such a benefit. As such, each of the offences can be committed where the person suspected the property was the proceeds of crime. s327: An offence is committed if a person conceals, disguises, converts, transfers or removes from the jurisdiction property which is, or represents, the benefit of criminal conduct (i.e. the proceeds of crime) and the person knows or suspects represents such a benefit. s328: An offence is committed when a person enters into or becomes concerned in an arrangement which he knows or suspects will facilitate another person to acquire, retain, use or control benefit from criminal conduct and the person knows or suspects that the property is benefit from criminal conduct. s329: An offence is committed when a person acquires, uses or has possession of property which he knows or suspects represents benefit from criminal conduct. In addition to the money laundering offences set out in Sections 327 – 329 of the Proceeds of Crime Act 2002 (POCA), Section 330 of POCA provides that it is an offence for a person acting in the course of business in the regulated sector to fail to report, either to a nominated officer or to the National Crime Agency (NCA), that they know or suspect, or have reasonable grounds for knowing or suspecting, that another person is engaged in money laundering. The suspicious activity report (SAR) must contain relevant information, if available, such as the name of the person, the whereabouts of the laundered property and any information on which the suspicion is based. The offence is committed if the "required disclosure" is not made. The "required disclosure" is defined at Section 330(4) as being a disclosure to a nominated officer, or to a person authorised by the Director General of the NCA, which has been made in the form and manner (if any) prescribed under the order making power at Section 339. No offence is committed where a person has a reasonable excuse for not making the required disclosure. Neither is an offence committed if the person is a professional legal adviser or relevant professional adviser and he received the information in privileged circumstances. No offence will be committed by staff who have not been provided by their employer with the training specified by the Secretary of State concerning the identification of transactions which may be indicative of money laundering, as long as the staff member does not actually know or suspect money laundering. No offence is committed where a person knows or believes on reasonable grounds that the money laundering is occurring outside the UK and the money laundering is not unlawful under the criminal law applying in that place, and it is not of a description prescribed by the Secretary of State. The scope of Section 330 extends to inchoate offences such as conspiracy by reason of the definition of money laundering in Section 340(11).

Section 331 creates an offence where a nominated officer who receives a report under Section 330 (the failure to disclose offence) which causes him to know or suspect or gives reasonable grounds for knowledge or suspicion, that money laundering is taking place, does not disclose that report as soon as practicable after the information comes to him. Subsection (4) specifies that the "required disclosure" which a nominated officer must make, has to be made to the National Crime Agency, in the form and manner (if any) prescribed by the order making power at Section 339.

Section 332 creates an offence where a nominated officer who receives a report under Section 337 or 338 (in other words, a disclosure in relation to one of the principal money laundering offences or a voluntary disclosure) which causes him to know or suspect that money laundering is taking place does not disclose that report as soon as practicable after the information comes to him. The nominated officer is required to disclose to the National Criminal Agency in the form and manner (if any) prescribed by Section 339. This clause applies to nominated officers both in the regulated sector and outside the regulated sector.

The penalty for these offences is up to a maximum of five years in prison.

Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds?

No, the s.327-329 POCA principal money laundering offences can only be committed where a person “knows or suspects” property constitutes a criminal penalty and not where they ought to have assumed.

However, the failure by someone in the regulated sector to report a suspicion of money laundering offences under s.331 and s.332 of POCA can be committed where the person had “reasonable grounds for knowing or suspecting, that another person is engaged in money laundering”. This is an objective test, where the person in the regulated sector ought to have assumed money laundering. This obligation to report is in addition to where they “know or suspect” money laundering.
Imposing liability for negligence on those in the regulated sector is justified to encourage diligent reporting from those best placed to spot money laundering. Given that the principle money laundering offences can be committed by those outside the regulated sector including non-professionals, in addition to those in it, a negligence element would be too onerous. As such, we have not taken up the invitation in Article 9(3)(b) of the Convention in relation to the principle offences.