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CONFERENCE OF THE PARTIES

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

Thematic Monitoring Review of the Conference of the Parties to CETS No.198 on Articles 7(2c) and 19(1)[1]

[1] Adopted by the Conference of the Parties to CETS No. 198 at its 12th meeting, Strasbourg, 27-28 October 2020. Amended following the inputs received from the UK and Lithuania in 2021 and ratification by Estonia in 2023.

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Introduction

1. The Conference of the Parties (hereinafter: "the COP"), at its 9th meeting held in Strasbourg from 21 to 22 November 2017, decided to initiate the application of a horizontal thematic monitoring mechanism for an initial period of two years. The 11th meeting of the COP decided to prolong the application of a horizontal monitoring for the next five years (i.e. until 2024). Such review would look at the manner in which all States Parties implement selected provisions of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS no. 198, hereinafter: "the Warsaw Convention"). To that effect, the COP adopted a new Rule 19*bis* of the Rules of Procedures.

2. The COP Plenary, at its 11th meeting, examined and adopted the second thematic monitoring report, which dealt with Article 9(3) as well as with Article 14 of the Warsaw Convention. It decided that the third thematic monitoring would deal with Article 3(4) and Article 7(2c) and Art. 19(1) of the Warsaw Convention. The present study deals exclusively with Articles 7(2c) and 19(1).

3. Subsequently, in November 2019, a questionnaire was circulated, and the States Parties were asked to reply by 14 February 2020. The responses received were subsequently analysed by the Rapporteurs, Ms Ewa Szwarska-Zabuska (Poland) and Ms Ana Boskovic (Montenegro) together with the COP Secretariat. A final draft analysis was circulated amongst the COP States Parties to provide comments and further information. The main findings drawn from these responses are set out in the summary section of the report.

4. This report seeks to establish the extent to which States Parties have legislative or other measures in place to provide the possibility for the monitoring of banking operations as an investigative technique available to the competent authorities. In addition, the report seeks to determine the extent to which States Parties can apply this measure upon request of another State Party and then communicate the results to a requesting State Party.

5. The report commences with laying out the scope of Articles 7(2c) and 19(1) of the Warsaw Convention and the methodology applied for the review. It then draws conclusions on legislative provisions and their effective implementation and proposes recommendations. States Parties' submissions are individually analysed and recommendations are made for the respective State Party when applicable. Their submissions are annexed to this report (Annex I).

Scope of Articles 7(2c) and 19(1)

6. The provisions of Article 7 introduce powers to make available or seize bank, financial or commercial records for assistance in actions for freezing, seizure or confiscation. In particular, Article 7 paragraph 1 provides that "*Each Party shall adopt such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in articles 3, 4 and 5. A Party shall not decline to act under the provisions of this article on grounds of bank secrecy*." Paragraph 2 goes further and provides for specific measures referred in paragraph 1. These measures include identification of the beneficial owner of one or more accounts (a), obtaining information on particular accounts and

transactions thereof (b), whilst paragraph (c) provides for the power to conduct "prospective" monitoring of accounts. More specifically, it provides for *'monitoring, during a specified period, the banking operations that are being carried out through one or more identified accounts*." Article 19(1) provides for the same measure as Article 7(2c), nonetheless, it requires the States Parties to apply the measure upon request of another State Party and communicate results thereof to the requesting Party.

7. The application of the monitoring of banking operations, as one of the special investigative (or pre-investigative) techniques, intends to add value and increase the effectiveness of investigations of ML, FT and other serious crimes.[2] The logic behind this provision is that in case such a technique is not available in a country, the effectiveness of money laundering, terrorism financing and major proceeds-generating offences' investigations could be hampered in a way that some evidence which could be gathered by applying this measure could not or might not be obtained otherwise. In other words, the competent authorities which do not have such a measure at their disposal could be in a disadvantageous position versus those who have it when investigating/prosecuting ML/FT and other serious offences. The provision of this measure in national legislation is not required by the 2012 FATF standards as established by its Recommendation 31 ('Powers of law enforcement and investigative authorities'), meaning that Article 7(2c) and consequently Article 19(1) go beyond global AML/CFT standards.

8. Explanatory Memorandum to the Warsaw Convention provides further interpretation in what Article 7 and its paragraph (2c) aim at. It states that '*Paragraph 2 was drafted to make it mandatory on States to adopt at a national level, procedures enabling them, in the conditions foreseen in such procedures, to identify accounts held by specified beneficiaries and to obtain information on specified accounts. In this context, Paragraph 2a requires the tracing of any accounts that may be held by specified beneficiaries and it indirectly requires States to have procedures in place that enable them to trace any such accounts. While this provision obliges States to have procedures in place to comply with this obligation, the paragraph leaves it free to States to decide how to comply with this obligation and does not impose an obligation on States to create, for instance, a centralised bank accounts register. Paragraphs 2b and 2c, on the other hand, require the obtaining of information and the monitoring of accounts that have already been identified. The wording is also intended to afford to the Contracting Parties a broad level of discretion as to how best to satisfy the requirements of these sub-paragraphs.'*

9. The committee drafting the Warsaw Convention also discussed whether it would be appropriate to extend the obligations under Article 7 to include also accounts in non-bank financial institutions, i.e. other institutions which do not provide banking services but still provide for the maintenance of certain types of accounts (e.g. securities accounts) and undertake transactions on such accounts for their customers. At the time, experts agreed that the application of the obligations under this article, which are mandatory for accounts held by banks, should, at national level, remain optional for non-bank financial institutions. The interpretation of this term, the financial activity and the accounts to be covered, remain within the domestic law of the Party.

10. Contrary to what has been elaborated under Art.7(2c) of the Convention, the Explanatory Memorandum provides very basic interpretation of Art.19(1) – it states that Art.19(1) *only obliges Parties to set up a mechanism whereby they are able, upon request, to monitor any banking operations that take place in the future on a specified bank account during a specified*

[2] The list of serious offences is provided in the Appendix to the Warsaw Convention.

period. In other words, implementation of Art.19(1) largely depends on States Parties ability to implement Art.7(2c). Should the Party fail in applying Art.7(2c), the Party would also fail with application of Art.19(1).

11. Furthermore, the Explanatory Memorandum remains silent whether Art.7(2c) is supposed to be applied in relation to all offences provided in the Appendix to the Convention. Whilst for some other provisions in the Convention this is clearly indicated (i.e. Articles 3, 9 and 17 explicitly refer to the Appendix and offences listed therein), such requirement is not imposed for Article 7(2c) and consequently to Art.19(1). On the other hand, the COP country specific assessments (adopted in period 2011 – 2017), when discussing Art.7(2c), assessed whether or not the mechanism provided in Art.7(2c) was applicable to all the offences listed in the Appendix. This horizontal review, therefore, followed this approach and applied the same logic in the present analysis.

12. It should also be noted that several Parties to the Convention used the option provided in Art. 53 (2) to reserve its right not to apply, in part or in whole, the provisions of Article 7, paragraph 2, sub-paragraph c. Germany, Greece, Russian Federation and the Slovak Republic reserved their right not to apply in whole Article 7 paragraph 2, sub-paragraph c) as follows:

    Germany: *The Federal Republic of Germany declares that Article 7, paragraph 2, shall not be applied.*

    Greece: *The Hellenic Republic reserves its right not to apply Article 7, paragraphs 2, sub-paragraph c.*

    Russian Federation*: the Russian Federation declares that it reserves the right not to apply Article 7, paragraph 2. sub-paragraph c) in whole or in part.*

    Slovak Republic*: the Slovak Republic reserves the right not to apply in whole the procedure under Article 7, paragraph 2, subparagraph c).*

    This notwithstanding, the present report analysed the legislation provided by some of these Parties and recommended them to consider further steps with the aim to increase the effectiveness with Art.7(2c) and 19(1) of the Convention.

Methodology

13. The 'Questionnaire for the Transversal Monitoring of States Parties' Implementation of Articles 7(2c) and 19(1) of the CETS No. 198' (see Annex III) requested information on the following questions:

    a) Are there legislative and other measures in place to monitor, during a specified period, the banking operations that are being carried out through one or more identified accounts?

    b) Do you have the power, at the request of another Party, to monitor during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicate the results thereof to the requesting Party?

Delegations were asked to provide provisions of their domestic legislation dealing with these issues. In addition, they were encouraged to support their response with case studies or any other relevant information, including available statistics on the matter. Rapporteurs and the COP Secretariat used previous country specific reports adopted by the COP/MONEYVAL/FATF and the Explanatory Report to prepare the analysis of the States Parties' compliance with the afore-mentioned articles.

14. This horizontal review includes information on 38 COP States Parties. The replies provided by the State Parties were fully taken into account and the legal provisions of their domestic legislation quoted therein were analysed and used to support the conclusions on the implementation of Art.7(2c) and 19(1).

Summary

15. The assessment on the implementation and application of Articles 7(2c) and 19(1) reveals several general findings. State-specific conclusions are included in the respective analysis of each State Party.

16. The questionnaire inquired whether or not the States Parties had adopted such legislative or other measures to allow for monitoring of banking operations and if such measure could be applied upon request of another State Party and results of such monitoring then be communicated to the requesting Party.

17. The following general observations can be made with regard to the 38 States Parties which have responded:

- Four States Parties (Germany, Greece, Russian Federation and Slovak Republic) reserved their right not to apply in whole Article 7 paragraph 2, sub-paragraph c). None of these Parties, undertook steps to include monitoring of banking operations as a specific investigative (or pre-investigative) mean in their legislation.

- Other than these States Parties, seven other countries (Austria, Denmark, France, Lithuania, Monaco, Spain and Türkiye) - which made no reservation on application of the two articles - do not have sufficient legislative measures in place to implement Art.7(2c) and consequently Art.19(1).

- Other States Parties implement, in general, the requirements of Art.7(2c) and 19(1). However, the scope of application of the relevant provisions differs significantly among these Parties. Parties which apply Art.7(2c) and Art.19(1) are Belgium, Croatia, Estonia, Georgia, Hungary, Latvia, Malta, the Netherlands, North Macedonia, Portugal, Romania, Serbia, Slovenia, Sweden, Ukraine and UK. Thirteen other States Parties (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Cyprus, Italy, Republic of Moldova, Montenegro, San Marino, Poland, Portugal) apply the afore-mentioned articles but their application raises some uncertainties or (possibly) imposes,[3] certain limitations. Whilst these limitations (in application of Art.7(2c)), as well as some

[3] This formulation refers to the fact that for some States Parties, given the information they provided, the rapporteurs still have doubts whether the monitoring of banking operations in real time is available to all the offences listed by the Appendix to the Convention regardless of their eventual connection with ML/FT suspicions.

specificities/uncertainties of the countries that apply Art.7(2c) are summarised below, the 'Country Review' chapter provides more thorough analysis with regard to each Party's compliance with Art.7(2c) and 19(1):

i) Legislation provides that the monitoring of banking operations is available only to the FIUs whereas in some countries it remains questionable in which cases and to what extent this measure and results obtained thereof may be used by LEAs to develop evidence/pursue seizure and confiscation in the course of criminal investigations/proceedings. In some States Parties this measure is available only in case of suspicion of ML/FT or ML/FT and related predicate offences, thus not being available when other offences listed in the Appendix are investigated independently – i.e. regardless of potential ML of FT links (Albania, Bosnia and Herzegovina, Bulgaria, Cyprus, Poland, Montenegro, San Marino. Some jurisdictions did not specify for which offences such measure is available (Belgium, Ukraine);

ii) Legislation provides general provisions which, according to the interpretation provided by some States Parties, could be used to apply the monitoring of banking operations. However, no case law was provided to confirm these States Parties' statements (Azerbaijan, Italy);

18. Several States Parties also reported that their systems featured some elements of Art.7(2c) – these are France, Germany, Denmark, Monaco, Spain and Türkiye. Whereas this report acknowledges that these Parties do include some aspects that may, in general terms, create basis for application of monitoring of banking operations, the rapporteurs could not conclude that this was enough to comply, to a satisfactory extent, with requirements of Art.7(2c) and 19(1). In view of this, these Parties are further encouraged to implement the recommendations made (see 'Country Review') and thus enable competent authorities to apply monitoring of banking operations the way this mechanism is provided in the Convention.

Effective implementation

19. Of those States Parties which transposed Articles 7(2c) and 19(1) in their legislation, ten State Parties informed the COP on application of this principle either through statistics (Cyprus, Estonia, San Marino, Republic of Moldova) or case law (Belgium, Georgia, Hungary, the Netherlands, Romania, Serbia, Sweden).

Recommendations and follow-up

20. A number of general recommendations can be drawn from the summary findings above. States Parties are invited to follow-up and ensure proper implementation of these recommended actions. While country-specific recommendations are included in the individual country-analysis below, both the general and the country-specific recommendations should be considered when adopting legislative or other measures to further implement the provisions of the Warsaw Convention. States Parties shall be invited to inform the COP, at future Plenaries (as decided by the COP), of any developments and measures taken regarding the issues addressed in this review.

21. With the aim to promote a harmonised approach across the COP States Parties, it is recommended to consider the following actions depending on States Parties' level of application of Art.7(2c):

    a) States Parties that declared/reserved the right not to, in full or in part, apply Art.7(2c), are invited to give proper consideration whether their declarations/reservations are still needed (Germany, Greece, Russian Federation, Slovak Republic).

    b) States Parties that have not made declarations and which still do not have, at their disposal, a specific measure to monitor banking operations, are invited to adopt legislative or other measures to provide to their law enforcement and/or other competent authority, the possibility to monitor banking operations that are being carried out through one or more identified accounts during a specific period (Austria, Denmark, France, Lithuania, Monaco, Spain and Türkiye).

    c) States Parties which introduced Art.7(2c) and consequently Art.19(1) through their legislation/jurisprudence, but still impose (or possibly impose) certain limitations in its applications, such as limiting it to ML/FT/or related predicate offences (Albania, Armenia, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Montenegro, Poland, San Marino) or towards which there still lacks certainty as to the scope of offences covered by the monitoring (Republic of Moldova, Ukraine), are invited to implement the specific recommended actions provided in the 'Country Review' chapter and thus take out the elements which restrict the application of Articles 7(2c) and 19(1).

22. In addition, and with the aim to improve the application of Articles 7(2c) and 19(1), States Parties are invited to consider to:

    - Raise awareness/tailor and carry out specific training to their FIUs/law enforcement and judiciary on application of this instrument in practice and how it can bring valid evidence in ML/FT and other serious crimes investigations/prosecutions.

    - Further develop the jurisprudence and share good practices among different competent authorities in the country.

    - Regularly update the COP with cases of practical implementation of the Convention.

23. With regard to the way the recommended actions should be implemented, it needs to be noted that the States Parties are encouraged to implement them the way they deem appropriate - respective legislative measures could be adopted/further aligned by amending the criminal and/or criminal procedure codes or any *lex specialis* which deals with criminal matters (e.g. special laws against organised crime). Non-legislative measures may focus on specifically tailored trainings for targeted audiences (with or without technical assistance from other Parties/international organizations), publication of specific guidance and examining good practice of jurisdictions which successfully apply both Articles 7(2c) and 19(1).

24. Bearing in mind its long-standing practice to provide and then review the implementation of the recommended actions, the COP may decide to follow-up on the recommendations following from this analysis.

Country review

Albania

The COP Assessment report on Albania in 2011 noted that the language of Article 210 of the Albanian Criminal Code did not *"require for competent authorities to request prospective monitoring of bank accounts".* The COP assessment report on Albania in 2011 therefore concluded that, at that time, no appropriate measures meeting the requirements of Art. 7 (2c) were in place.

The Albanian authorities, in their response to the 2020 questionnaire, indicated that the Law no.9917 (from 2008) "To prevent money laundering and terrorist financing", as amended, in its Article 22, letter "l" provides that the General Directorate for the Prevention of Money Laundering, in case of suspicion/existence of reasonable grounds to believe that money laundering and terrorist financing could or might have been committed, is empowered to monitor, over a specified period, banking operations that are being performed through one or more designated accounts. The paragraph of the article reads as follows: '*the FIU can order, when there are reasonable grounds for money laundering and financing of terrorism, the monitoring, during a certain period of time, of bank transactions that are being made through one or more specified accounts.'*

The authorities also put forward the following arguments, which, in their view justify that Article 7(2c) is implemented: the Criminal Procedure Code, among the means of gathering evidence, also provides for "checks", which are governed by Articles 202 to 207. The wording of Article 203(2) provides that *"in order to determine the items that may be seized or to verify certain circumstances necessary for the investigation, the proceeding authority or judicial police officers authorised by this authority may check the actions, documents and correspondence at the banks*". Also, the prosecutor, in case of urgency, may act on his own or request the court (on the basis of the Article 210 of the Code of Criminal Procedure), to seize documents, securities, sums etc. from banks.

No case law targeting the investigative instrument elaborated under Art.7(2c) of the Convention was provided.

In view of the rapporteurs, the measures provided by the criminal legislation in Albania do not correspond to the requirements of Art.7(2) which requires 'monitoring of banking operations' rather than collecting/seizing documents/data from a bank. The latter is a requirement of Art.7(1) rather than of Art.7(2c). On the other hand, the AML/CFT law allows for monitoring of banking operations, but limits this measure to ML/FT offences only.

Art 19(1)

The 2011 COP assessment on Albania, confirmed that Art.19(1) is not implemented in national legislation. In their responses to the 2020 questionnaire, the authorities provided a number of Articles from the Law No. 10193/2009 "On Jurisdictional Relations with Foreign Authorities in the Criminal Field" , in particular Article 22 ("Control and seizure of items"), Article 23 ("Delivery of seized items"), Article 26 ("Preliminary measures") and Article 27 ("Forwarding data without request") in support to their view that Article 19(1) of the Convention is applied in the national legislation.

The afore-mentioned legal references have a general nature on international cooperation on AML/CFT matters and the authorities advised that their interpretation indicates that, at the request of another Party, it is also possible to monitor, during a specific period of time, banking operations that may be carried out through one or more accounts defined in the request. The results of such monitoring can be communicated to the requesting Party and/or the foreign judicial authority without request when the domestic authority considers that the transmission of such information may assist in initiating a proceeding or in filing a request for legal assistance by a foreign authority. Given the nature of the measure and the fact that it is included in the AML/CFT law, it is assumed that it can be applied upon request of foreign counterparts, and thus in line with Art.19(1). This notwithstanding, the shortcomings/limitations noted under Art.7(2c) would have an effect on implementation of Art.19(1).

Conclusion/Recommendation

In the reply to the 2020 Questionnaire Albania did put forward the information demonstrating that the AML/CFT legislation provides for the possibility to monitor banking operations in case of suspicions on ML/FT.

Given the limitation posed by the law – and that is to apply this measure only in cases of ML/FT suspicions - it is recommended to the authorities to extend the list of offences for which this measure is available to all these listed in the Appendix to the Convention.
In addition, the authorities are recommended to develop case law/apply this measure in practice and monitor how the intelligence provided by the FIU on this matter can be developed as evidence in criminal investigations/proceedings.

Armenia

The Armenian Law on Operational Intelligence Activity (LOIA), in its Article 14 paragraph 1(15) declares that monitoring financial transactions is a special investigative measure that, as an operational intelligence measure, is available before and after instigation of a criminal case. Under Article 29 of LOIA, access to financial data and *ex parte* monitoring of financial transactions consists of the acquisition of information on bank and other type of accounts (deposits) from banks or other financial institutions, as well as of the permanent monitoring of financial transactions without the knowledge of the persons engaged therein.

Moreover, pursuant to Part 3.2 of Article 172 of the Criminal Procedure Code (CPC), the prosecution may obtain i) information containing bank secrecy with regard to persons involved as a suspect or as an accused in a criminal case, ii) official information on transactions in securities by the Central Depositary (based on securities market legislation)", as well as iii) information containing insurance secrets based on a court decision. Similar provisions are foreseen in the Law on Insurance and Insurance Activities with Regard to Insurers, Reinsurers and Insurance Intermediaries and the Securities Market. However, the 2016 COP Assessment report on Armenia concluded that such monitoring is, in practice, not available for basic ML offence or predicate crimes that are not qualified, by virtue of the CC, as grave or particularly grave, which presents a serious limitation with respect to Article 7(2c). In other words, whilst the requirements of Art.7(2c) are embedded in the Armenian legislation, this special investigative mean is not available for all crimes listed in the Appendix to the Convention.

The authorities also informed the COP of the new package of laws which introduce changes to the CPC, as well as to the Law on Bank Secrecy. The proposed changes aim at widening

the scope of certain offences and the amendments allow for the search and seizure of financial information (upon a court decision) with regard to persons involved in a crime whose official status is yet not at the level of 'suspect' or 'accused', provided that the information is determined to be essential for investigation, and that there are no other reasonable means to disclose it. In addition, the package of amendments to the Law on Securities Market was adopted by the Parliament of the Republic of Armenia on 3 June, 2020 and entered into force on 25 June, 2020. The amendments envisage a direct online access for the LEAs to the information on shareholders of stock companies registered in the Republic of Armenia.

Art 19(1)

Armenian legislation provides that information available in country (including banking secrecy) may be collected by LEAs either through operational intelligence measures based on LOIA (Article 14 (1) and 15), or through investigatory measures conducted under the CPC.

The authorities advised that the possibility to exchange this information with the foreign LEAs is based on the general cooperation rule provided by the AML/CFT Law (Article 14(1)). Also, pursuant to article 474 of the CPC, when conducting procedural actions stipulated by the Code in the territory of the Republic of Armenia upon request of the competent authorities of foreign states, *the court, prosecutor, investigator or inquest body of the Republic of Armenia shall apply the norms of the CPC in combination with the exceptions provided by the relevant international treaties.*

Armenia can therefore apply measures foreseen in Article 7(2c) upon request of their foreign counterparts, meaning that it also has the tools and mechanisms to apply Art.19(1). However, shortcomings noted under Art.7(2c) remain relevant for application of Art.19(1). This is also confirmed in the conclusion of the 2016 COP assessment on Armenia. The report states that *some of the limitations identified in the context of implementation of Article 7 of the Convention apply also in the context of MLA when it concerns investigations* (i.e. techniques under LOIA cannot be executed with regard to basic ML, and this can form an obstacle to the full implementation of Article 19(1)).

Conclusion/Recommendation

The 2016 COP report recommended to ensure that access to information covered by banking secrecy, insurance secrecy and information on transactions with securities, which may be required for evidentiary reasons, is available to LEA in line with the fundamental principles of national law (e.g. upon judicial approval) and not only on "suspect" or "accused" but also on other natural or legal persons - holders or beneficial owners of bank accounts.

The 2016 report further recommends authorities to ensure that the monitoring of banking operations by LEAs is available in respect of cases of basic ML offences and all predicate offences to ML.

Since then, as the Armenian authorities have informed in the responses to 2020 questionnaire, a package of laws had been drafted, encompassing changes to the CPC, as well as changes to the Law on Bank Secrecy as elaborated in the analysis above. Moreover, a legislative package dealing with changes to the Law "On securities market" and the Tax Code has entered into force. However, it is yet unknown if the recommendation to ensure that the monitoring of banking operations by LEAs is available in respect of cases of suspicion of basic ML offences and all predicate offences to ML is addressed.

Once the new laws are in force, the Armenian authorities are invited to inform the COP on the status of these recommended actions.

Austria

The Austrian authorities indicated in their responses that the disclosure of information on bank accounts and bank transactions is permissible if it seems to be necessary to clarify a criminal act committed intentionally or a criminal act under the jurisdiction of the regional courts or to clarify the prerequisites for a seizure or confiscation order in proceedings because of a criminal act committed intentionally, for which the regional court would have jurisdiction in the main proceedings (§116, paragraph 1 of the Code of Criminal Procedure).

However, Article 7(2c) requires States Parties to have a special investigative mean available to LEAs (usually after being approved by competent judicial authorities) which would consist of monitoring, during a specified period, the banking operations that are being carried out through one or more accounts. In this context, the legal provisions submitted by the authorities are not relevant.

Consequently, monitoring of banking operations in real time does not seem to be possible based on current provisions of the Austrian Criminal Procedure Code.

Article 19(1)

The Federal Law on Extradition and Mutual Assistance in Criminal Matters (ARHG) provides the basis for executing international requests over criminal law matters (§50 ARGH). However, limitations in applying Article 7(2c) of the Warsaw Convention have a cascading effect here, meaning that Austria cannot apply this measure based on other country's (ies') request(s).

Conclusion/Recommendation

It is not clear whether Austrian authorities have at their disposal the possibility to monitor banking operations in line with Article 7(2c) and 19(1). Should this not be the case, the country is therefore recommended to adopt legislative or other measures (i.e. developing case law) to enable the competent authorities to apply monitor banking operations during the specific period of time and to communicate the results upon requests from other States Parties.

Azerbaijan

Azerbaijan informed the COP, in its responses to the 2020 questionnaire, that Article 177.3.6 of the CPC provides that investigators and prosecutors have investigative tools to obtain information regarding "*financial transactions, state of bank accounts or tax payments and private life and family, state, commercial or professional secrets*". This kind of coercive investigative measures can only be performed on the basis of a decision rendered by the court, upon prosecutor's request and before and after the initiation of a criminal investigation. This special investigative mean (SIM) is applicable to all crimes.

In addition, Law of the Republic of Azerbaijan No.1367-VQD from 2018, which introduced amendments to the CPC, enables the prosecution authority to obtain information about financial transactions and bank accounts before the initiation of a criminal investigation (i.e.

whilst the preparation of the crime is underway). Before these amendments entered into force, this SIM was applicable only when the crime was underway or already committed.

The Azerbaijani authorities advised that although monitoring of financial transactions during a specified period is not explicitly mentioned in Article 177.3.6 of the CPC, the above-mentioned amendments to Article 207.4 allows the prosecuting authority to have access to bank accounts and financial transactions of suspects without their knowledge, and the possibility for on-going monitoring is not excluded. The logic/reason for having such SIM is to establish sufficient grounds for initiation of a criminal investigation. Moreover, the meaning of the Article 177.3.6 is broad enough to be applicable for gathering of information regarding both - current state of bank account and changes happened to it during the specified period of time.

The rapporteurs, after giving proper consideration to these arguments, may accept the interpretation of the CPC (as amended) by the authorities. However, there was no case law presented to confirm that the afore-mentioned interpretation of the legislation is implemented in practice. In view of that, the rapporteurs could only conclude that the question of proper application of Art.7(2c) of the Convention in Azerbaijani legal system is yet to be demonstrated in practice.

Art 19(1)

Authorities advised that Article 19 of the Convention can be implemented under the Constitution, CPC and the Law of the Republic of Azerbaijan "On Legal Assistance in Criminal Matters" (LLACM).

Article 148 part II of the Constitution states that "*International treaties to which the Republic of Azerbaijan is a party shall be an integral part of the legislative system of the Republic of Azerbaijan*". Also, Article 2.2 of the LLACM states that provisions of international agreements on mutual legal assistance the Republic of Azerbaijan is a party to, have direct applicability in the country, and there is no need to explicitly incorporate them into national legislation.

Moreover, Article 2.2 of the LLACM Law shall apply when there is no agreement on legal assistance between Azerbaijan and requesting foreign country, or on matters not regulated with relevant agreement to the extend not contrary to the relevant agreement.

Whilst the rapporteurs may agree, in general, that the legislation does not prevent execution of monitoring bank operations upon request of another State Party, it yet remains to be seen if Art.7(2c) could be properly applied in practice. Before that is confirmed through the case law, it cannot be concluded if Art.19(1) is applied by Azerbaijan.

Conclusion/Recommendation

The Azerbaijani legal system provides, although in general terms and indirectly, a possibility to apply requirements of Art.7(2c). However, there are no proofs that the way authorities interpret the legislation is actually applied in practice. Consequently, the amended legislation needs to be tested in practice and only then a firm conclusion on implementation of Art.7(2c) and 19(1) could be reached.

The authorities are therefore recommended to develop jurisprudence which would clearly demonstrate the application of Art.7(2c) and subsequently Art.19(1). In addition, the authorities

are invited to consider providing specific guidance and training to LEAS/judiciary on application of the measure that would entail monitoring of banking operations.

Belgium

The 2016 COP assessment report on Belgium states that '*the investigative tools required by Article 7(2c) of the Convention are covered by Article 46quater paragraph 2a of the CPC'*, and then provides the wording of the said article: *'When the need for information so requires, the public prosecutor may also order that: a) during a renewable period of two months, banking transactions relating to one or more of the suspect's bank accounts, safe deposits or financial instruments will be observed.'* The report does not specify for which exact offences this measure can be applied.

In addition, and following the explanation provided by Belgium under Article 7 paragraph 2a), the Conference of the Parties was assured that the term 'suspect' is understood in a broad sense, allowing the Belgian competent authorities to carry out the monitoring measures in line with the Convention. In conclusion, it was stated that Belgium properly applies Art.7(2c).

The Belgian authorities, in their responses to the 2020 questionnaire, also provided an in-depth elaboration of the aforementioned legislation, as well as the explanations of the measures introduced in the 2017 AML/CFT law. In rapporteurs view, these latter measures are not considered to be relevant for the purposes of Art.7(2c) of the Convention. The authorities also provided case law which confirms the effective implementation of Art.7(2c).

Article 19(1)

The 2016 COP report states that the Belgian authorities have confirmed that in practice the requests (both incoming and outgoing) are based on a whole range of legal sources, and thus on international conventions. The report confirms that Belgium has a proper legal basis for implementing Art.19(1). However, no requests based solely on Convention CETS No. 198 have been received, i.e. no request so far exclusively dealt with execution, on behalf of other State Party, of the monitoring of banking operations. In view of that, no assessment on effective implementation of Art.19(1) could be made.

Conclusion

Belgium has tools and mechanisms in place to apply Art.7(2c) and 19(1) of the Convention. No information has been provided as to whether the monitoring of banking operations is available for all crimes listed in the Appendix to the Convention. The authorities are therefore recommended to ensure the application of this measure to all crimes listed in the Appendix and also to closely follow the cases/requests eventually coming from the COP States Parties and to respond to their requests promptly.

Bosnia and Herzegovina

The arguments provided by the authorities of Bosnia and Herzegovina in their responses to the 2020 questionnaire were identical to those provided in the 2015 COP assessment report - Article 60 of the Law on Prevention of Money Laundering and Financing of Terrorist Activities prescribes that the Financial Intelligence Department of the State Investigation and Protection Agency may continuously monitor the financial operations of a client when there are grounds

to suspect money laundering or financing of terrorism activities, or other persons where it could be reasonably concluded that such persons aided or took part in transactions or affairs of the suspects. As far as it concerns the application of provisions under Article 7(2c) to accounts held in non-bank financial institutions, relevant provisions are extended to reporting entities and other legal persons engaged in financial transactions. Confidentiality is also guaranteed and persons who receive the relevant information at the Bank/other reporting entity, has to handle the information in accordance with the Law on Data Protection. If that person makes such information available to the client or to the third party, then such a person is subject to criminal prosecution for breach of secrecy of proceedings. In view of this, it is concluded that Art.7(2c) is applied in Bosnia and Herzegovina but only in respect of ML/FT offences.

Authorities also advised that Article 72 of the CPC was relevant for application of the monitoring of banking operations. The referred article, in summary, provides that the prosecutor, upon approval by the Court, may request the bank or other financial institution to turn over information concerning the bank accounts of the suspect or of persons who are reasonably believed to be involved in the financial transactions or affairs of the suspect, if such information could be used as evidence in the criminal proceedings. A Court may, on the motion of a prosecutor, order any special investigative mean foreseen by the CPC (Article 116) to enable the detection and finding of the illicitly gained property and collection of evidence thereupon. However, Article 116 does not explicitly refer to monitoring of banking operations the way it is embedded in Art.7(2c) of the Convention.

In view of this, the rapporteurs would reiterate the conclusions of the 2015 COP Assessment report on Bosnia and Herzegovina and call the authorities to introduce legal mechanisms and thus ensure that the provisions of Article 7 paragraph 2 are extended to monitoring of accounts in respect of all criminal offences as listed in the Appendix to the Convention and not only in ML/TF cases.

Article 19(1)

Article 62 of the AML/CFT Law prescribes that the FIU, upon a substantiated request from the foreign authority submitted to the competent authorities in Bosnia and Herzegovina, is able to collect data, information and documentation in relation to criminal offences of money laundering, financing of terrorism and other predicate offences.

In addition, the 2015 COP assessment report noted that, in line with Articles 67 of the AML/CFT Law, the FIU is authorised to share, with its foreign counterparts, information and documentation obtained. The FIU submits information, upon request, to the foreign law enforcement agencies only when an explanation for suspicion and concrete links with money laundering and financing of terrorism activities are stated, provided that similar protection of confidentiality is ensured. Actions undertaken under the AML/CFT Law could be executed for the purposes of that law.
Article 1 of the Law on International Legal Assistance in Criminal Matters stipulates that legal assistance is provided in accordance with the provisions of the Law. Requests from other States signatories to the Convention are therefore to be implemented and enforced in the same way as in domestic procedures.
Notwithstanding the provisions noted above, it needs to be noted that monitoring of banking operations can be applied upon request of other States Parties in the same manner and scope as it is the case with Art.7(2c) – i.e. only to ML and TF offences.

Conclusion/Recommendations

The rapporteurs wish to reiterate the conclusion made in the 2015 COP Assessment report on Bosnia and Herzegovina which states that Art.7(2c) of the Convention is applied only with respect to ML/FT. Therefore, the authorities should extend the application of this special investigative mean (i.e. monitoring of banking operations) in respect of other serious offences. This recommendation includes the application of monitoring of banking operations on behalf of foreign counterparts with an obligation to communicate such results. In addition, the authorities are invited to consider providing specific guidance and training to LEAS/judiciary on application of this measure in practice and develop good practice how the intelligence obtained by application of monitoring of banking operations by the FIU is developed into evidence in criminal investigations/proceedings.

Bulgaria

In line with what Bulgarian authorities provided in their responses to 2020 questionnaire, their legislation provides for the possibility to monitor banking operations, but limits its use to ML/FT offences and identification of proceeds of crime. Article 74, Paragraph 7 of the Law on Measures Against Money Laundering (AML law) states that "*the Financial Intelligence Directorate (FIU) of the State Agency for National Security may instruct the persons responsible in the financial institutions to carry out monitoring of the transactions or operations carried out in the course of the business relationship for a specified period and to provide information on the said transactions or operations to the Directorate*". The decision regarding the period within which the monitoring is carried out and regarding the type of transactions and operations on which information is to be provided shall be taken on a case-by-case basis by the Director of the FIU. The FIU can instruct not only the banks but also all other obliged entities (as listed in Art. 4 of the AML law) to perform the monitoring. This instruction can be based not only on suspicious transaction reports on ML and/or involvement of proceeds of criminal activity from an obliged entity (analysed domestically), but also on information on potential ML received by (i) the state authorities or (ii) through international cooperation, as well as (iii) on a request by foreign FIUs, relevant international authorities, authorities of the European Union and other authorities of other States on the basis of international treaties. Information provided by the FIU cannot be used as evidence by LEAs or before the court of law. The types of information which constitutes evidence is defined in the procedural laws. The information the LEAs and the Prosecution receive from the FIU can only be "converted" into evidence by applying the provisions for evidence gathering as defined by the Criminal Procedure Code.

Paragraph 11 of the same Article declares that "*the provision of information may not be refused or limited on considerations regarding official, banking, trade or professional secrecy, or because the said information constitutes tax and insurance information or protected personal information".*

With regard to FT, Art. 9 of the Law on Measures Against Financing of Terrorism declares that in case of "suspecting and/or becoming aware of terrorist financing" there is an obligation "*to notify immediately the Financial Intelligence Directorate of the State Agency for National Security before the operation or transaction is carried out and to delay the execution of said operation or transaction within the time allowed in accordance with the statutory instruments governing the type of activity concerned". In such cases, the Directorate shall exercise the powers vested therein under Articles 74 and 90 of the Law on Measures Against Money Laundering*

Overall, the rapporteurs conclude that monitoring of banking operations is available, however its application imposes certain limitations. This mean is available only to the FIU when there are suspicions of ML/FT and/or f if proceeds of crime are involved.

Art 19(1)

The authorities provided provisions of the afore-mentioned AML law which regulate international cooperation in this fields.

Article 90, Section II of the AML Law states that "*State Agency for National Security shall exchange information on a suspicion of ML and associated predicate offences with the relevant international authorities … on the basis of international treaties and/or by reciprocity", and "to achieve the objectives of Directive (EU) 2015/849 of analysis of the risk and a uniform application of international standards within the European Union*". The authorities have confirmed that, in line with this article, they may apply article 74 of the AML Law upon foreign request and monitor and provide information on banking operations and communicate the results of such monitoring. However, no case of practical application of monitoring of banking operations upon request of foreign authorities was provided to confirm that Article 90 could accommodate such a request.

Limitations noted under analysis of Art.7(2c) would also affect the ability to execute monitoring of banking operations upon request by a foreign counterpart – it would be possible for the FIU for ML/FT and/or where the proceeds of crime are involved.

Conclusion/ Recommendation

Bulgaria has some legal provisions in place that allow for monitoring of banking operations once there is a suspicion on ML/FT and identification of proceeds of crime. There is no possibility to apply this measure by law enforcement agencies for seizure and confiscation purposes. Whilst no relevant cases have been provided for application of Article 19 it needs to be noted that Bulgaria keeps statistics on application of this mean by its FIU.

Therefore, it is recommended that Bulgaria extends the application of monitoring of banking operations to law enforcement authorities for the purpose of seizure and confiscation, and develop case law which would confirm proper application of this SIM domestically and upon request of foreign authorities. In addition, the authorities are invited to consider providing specific guidance and training to LEAS/judiciary on application of monitoring of banking operations.

Croatia

The COP Assessment report on Croatia in 2013 notes that competent authorities have the right to request on-going monitoring of bank accounts in view of respective provisions. Article 265(5) of the Criminal Procedure Code prescribes that the investigating judge, upon request of the State Attorney, may order the bank or any other legal entity to follow up on money transfer and transactions on the account of a certain person and to regularly inform the State Attorney during the term stipulated in the ruling.

Similarly, Article 49(4) of the USKOK Act (i.e. law against organised crime and corruption) states that upon the request of the State Attorney, the investigating judge may oblige the bank to provide data on the state of accounts of the person, *to monitor the transactions of a particular person*, and to *regularly report the transactions on the monitored account during the time specified in the order.*

The report concludes that Croatia properly applies Art.7(2c) of the Convention. In addition to the findings of the 2013 COP report, the Criminal Procedure Code now empowers the authorities to execute the monitoring of banking transactions not just for the offences listed in the Appendix to the Convention, but also for all other criminal acts defined in the Criminal Code of the Republic of Croatia. The country, in its responses to the 2020 questionnaire included information/practice concerning availability and possibility to obtain information on holders/beneficial owners of bank accounts. Moreover Croatian authorities explained that the basic provision that regulates monitoring of banking transactions is Art. 256(5) of the Criminal Procedure Act and that Croatian courts, acting on the basis of MLA request/EIO/principle of reciprocity, are ordering monitoring of banking transactions for all acts that are offence in accordance with the Criminal Code of the Republic of Croatia. In other words, the monitoring of banking transactions is being ordered not just for the offences in the Appendix, but also for all other acts that are punishable as offence in accordance with the Criminal Code of the Republic of Croatia. The statistical data of the State Attorney´s Office were provided regarding the received MLA/EIO for the purpose of obtaining monitoring of bank data and other investigative actions conducted for the purpose of tracing the proceeds of crime, obtained in the execution of EIO (data concerned ML, FT and " predicate offences", which mean all other offences punishable by the Croatian Criminal Code).

Art 19(1)

The 2013 COP assessment report on Croatia also notes that if the requested state has ratified the Warsaw Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism then the Convention's provisions shall be directly applicable in the cases where the requesting State issued an MLA request to monitor during a specified period, the banking operations that are being carried out through one or more accounts specified in the request.

In case of the request issued by the judicial authority of the state that has no international treaty on legal assistance in force with the Republic of Croatia the mutual legal assistance shall be afforded in the widest sense under the condition of reciprocity under the Act on mutual legal assistance in criminal matters, CPC and the Act on the Office for the suppression of corruption and organized crime.
In conclusion, it is stated that Croatia has a proper basis for application of Art.19(1).

Conclusion/Recommendation

The Croatian legal system incorporates the provisions of Articles 7(2c) and 19(1) of the Warsaw Convention. Croatia is recommended to continue developing jurisprudence which would confirm proper application of Art.7(2c) and 19(1) of the Convention.

Cyprus

The Cypriot AML/CFT Law in Section 55 (1) (e) (i) provides that the FIU is empowered to "*issue instructions to an obliged entity for the suspension or non-execution of a transaction or to have the movement of a bank account monitored, where there is reasonable suspicion that the transaction relates to money laundering or terrorist financing for the purpose of analyses of a suspicious transaction".*

During the 2015-2019 period 20 monitoring orders were issued.

Based on this, the rapporteurs conclude that some elements of Art.7(2c) are included in the national legislation. The reason why the rapporteurs refer to 'some elements' is the fact that this measure is only available to the FIU and for ML and FT offence and not to other offences listed in the Appendix to the Convention. In addition, the Cypriot authorities explained that information from monitoring can be used by LEAs for intelligence purposes and/or for the purposes of tracing the proceeds of crime in cooperation with the FIU.

Art 19(1)

The power of the FIU to order the obliged entity to monitor, during a specified period, the banking operations that are being carried out through one or more accounts, can also be executed in cases where the FIU receives relevant justified requests by its foreign counterpart, according to subparagraph (ii) of paragraph (e) of section 55(1) of the AML/CFT Law. This measure would be applied for ML/TF and identification of proceeds of crime. In view of that, the legislation provides for application of Art.19(1). However, the deficiencies noted under analysis of Art.7(2c) have an effect on the scope of application of Art.19(1).

Conclusion/Recommendation

Cypriot authorities have some measures in place for application of Art.7(2c) of the Convention. However, the measure available can serve for intelligence purposes and it results cannot be presented before the court as a valid evidence. The authorities are therefore invited to amend the current legislation and introduce monitoring of banking operations for a specified period as a special investigative mean available to the competent authorities in all serious crimes' cases, covering all offences from the Appendix to the Convention. Consequently, the authorities/the FIU would then be able to measure and communicate the results of such monitoring upon request of another State Party to the Convention no matter which offence from the Appendix is concerned.

Denmark

The Danish Prosecution Service and the Danish Police do not have the tools to monitor banking operations in real time. The Danish Prosecution Service can obtain a court order that

allows for the Danish Prosecutions Service to receive historical bank statements with no time limit and access to receive future information for up to 4 weeks from the date of the court order. Jurisprudence (Supreme Court's ruling from October 2016) confirmed that a production order can entail an access to information/bank transactions which are yet to be made by the subjects under scrutiny for up to 4 weeks from the date of the court order.

Art 19(1)

As specified in the answer to Article 7(2c) the authorities do not have the power to monitor banking operations in real time. Therefore, the Danish Prosecution Service cannot monitor in real time during a specified period and upon request of other State Party's authority, the banking operations that are being carried out through one or more accounts, however they may access the historical bank statements and access to receive future information for up to 4 weeks from the date of the court order.

Conclusion/Recommendation

Monitoring/tracking of banking operations in real time is not possible in Denmark.
It is therefore recommended that Denmark aligns its legislation with Art.7(2c) and 19(1) requirements and include real time monitoring of banking operations.

Estonia

In their responses to the 2023 questionnaire the Estonian authorities provided that, since 2020, there is a data exchange platform ("the electronic seizure system E-Arrest") through which the FIU, the Police, the Border Guard Board, the Tax and Customs Board and the Internal Security Service are able to request information about accounts and their users (§ 631 of the Code of Enforcement Procedure and Part 4 of the regulation of the bailiffs). Credit and financial institutions are required to provide up-to-date information (§ 81 of the Money Laundering and Terrorist Financing Prevention Act) on this matter. The authorities further advised that Police and the Border Guard Board have the possibility to request such information and obtain it usually within few hours (according to § 215 of the Code of Criminal Procedure and § 88 subsection (5) of the Credit Institutions Act).

Furthermore, the authorities advised that, for the purposes of monitoring the banking operations, a number of competent authorities (the FIU, the Police, the Border Guard Board, the Tax and Customs Board and the Internal Security Service) approach and have direct communication with the obliged entities in order to implement this measure. The obligation to answer to the FIU request stems from the paragraph 49 subsection (4) of the Money Laundering and Terrorist Financing Prevention Act ("The obliged entity submits to the Financial Intelligence Unit without delay all the information available to the obliged entity, which the Financial Intelligence Unit requested in its enquiry."). Whilst the intelligence collected by the FIU cannot be used as evidence, other agencies (the Police, the Border Guard Board, the Tax and Customs Board as well as the Internal Security Service can use the paragraph 215 subsection (1) of the Code of the Criminal Procedure for purposes of further usage of results of application of this measure. The exact ongoing monitoring solution conducted by the obliged entity, also depends on technical solutions an obliged entity has put in place. Some credit and financial institutions have automated technical solutions, but some have to hold the transactions until an employee releases the funds and records them. The results of the monitoring are then reported by the obliged entity to the authority which requested it. Whereas

the Estonian FIU have demonstrated the ability to effectively monitor banking operations, no evidence has been provided with regard to other competent authorities to carry out this measure. Given the findings and analysis of the Thematic Monitoring Review on Article 7(2c) it can be concluded that the Estonian system has incorporated elements of Article 7(2) (c) in its legislation. In order to implement fully the provision, the country would need to demonstrate, in practice, that information obtained through the application of this article may also be used as evidence in criminal proceedings.

Article 19 (1)

In accordance with Article 53, paragraph 3, Estonia declared that under Article 19, paragraph 32, of the Convention, accounts are monitored through an electronic seizure system provided for in Estonian legislation, collecting information about transactions on the account with a weekly reference. Pursuant to Article 19, paragraph 5 of the Convention, Estonia extended the application of the provision only to those financial institutions that open payment accounts with an IBAN code for customers.

In cases when the Estonian competent authority receives a request to monitor banking operations from a foreign competent authority, the e-arrest is then used to determine the existence and number of accounts belonging to a person and to single out the service providers that offer services to this person for the purpose of monitoring the banking operations. In view of that, the measure as foreseen by Article 7(2) (c) is applicable upon request of a foreign counterpart. However, issues noted under the analysis of the implementation of Art.7(2) (c) above have an effect on the scope of application of Art.19(1).

Effective implementation

The authorities provided statistics on application of the electronic seizure E-Arrest system (number of enquiries made through E-Arrest (single enquiry to a specific credit or financial institution) in the period 2020–2022. The inquires made through the usage of this mechanism are high, going into thousands for each year and mostly being limited to obtaining information on existence of bank accounts, their beneficial owners bank account balances and movements of funds. Nonetheless, given the issues raised with regard to Article 7(2) c) and limitations discussed therein, no firm conclusion on effective implementation of this provision of the Convention could be made.

Conclusion/Recommendation

Estonia has adopted legislation which enables the competent authorities to carry out monitoring of banking operations. The authorities are invited to ensure that monitoring of banking operations during a specified period (as a special investigative mean) is available to the competent authorities in all serious crimes' cases, covering all offences from the Appendix to the Convention. With regard to Article 19(1) and the declaration made by the country with respect to this article, the authorities are able to apply the measures and communicate the results of such monitoring upon request by another State Party.

France

The French authorities indicated in their responses that a relevant information on financial flows over a given period of time can be obtained directly from the bank concerned and upon

judicial request (articles 60-1, 60-2, 77-1, 77-1-1, 99-3 and 99-4 of the Code of Criminal Procedure). In other words, the legislation empowers the public prosecutor, the investigating judge or the judicial police to request any person, private or public entity (which is likely to hold information relevant to the investigation, including those originating from a specific software or from processing personal data) to provide these authorities with the requested information on financial flows. These entities are not allowed to refuse rendering such information on a basis of professional secrecy. The authorities argued that Article 60-1 of the Code of Criminal Procedure constitutes the legal basis for monitoring of banking operations given the general power provided in this article which empowers the investigative authorities to request "any information relevant to the investigation". This applies to banking institutions given that the bank secrecy is not enforceable against the investigating and prosecuting authorities.

These provisions, however, do not directly provide for dynamic monitoring, in real time, of banking operations. They only provide an opportunity for the investigative authorities to get, upon request, all details related to financial flows/transactions made over the period referred to in the request. Similar requests to these noted above may be made to the organisation managing the national data base (the 'BNDP') which holds information related to tax declarations, real estate, companies' registration, and national trust registration.

The authorities also provided a case of trafficking in narcotic drugs and money laundering when the investigators used the afore-mentioned legal basis to obtain the details from bank accounts of the suspects. The information obtained enabled them to check the movements of funds and compare the amounts therein with suspects' legitimate incomes. Since the amounts were inconsistent with their declared income, this information obtained highlighted the facts relevant for money laundering charges.

Given that no case law on application of monitoring of banking operations in real time was provided to confirm that under Article 60-1 of the CPC this measure can be applied, the rapporteurs cannot conclude that France transposed the requirements of Art.7(2c) into its legislation.

Art.19(1)

Since real-time monitoring of a bank account is not possible under French law, the French judicial authorities, upon request of other EU member states, would apply any of the measures described under analysis of Art.7(2c). These measures can be executed in line with Article 694-29 et seq. of the Code of Criminal Procedure.

The evidence obtained would then be sent to the requesting state, either directly (article 694-42) or through diplomatic channels (article 694). This, however, does not fulfil the requirements of Art.19(1) given the analysis provided under Art.7(2c).

Conclusion/Recommendation

French legislation does not provide for monitoring of banking operations. Whilst some measures aiming at obtaining bank records and transactions are in place, the authorities are recommended to amend the legislation and provide the monitoring of banking operations in such a way that the requirements of Art. 7(2c) and Art.19 (1) are met. Consequently, this measure should be implementable upon request of other States Parties and results of such monitoring should be communicated accordingly.

Georgia

Georgian legislation (CPC – Article 124) provides that monitoring of banking account is one of the investigative means available in criminal proceedings. The legislation states that if there is a probable cause that the bank accounts are used for criminal activity, and/or the information is sought for the purpose of searching/identifying property that is subject to confiscation, a prosecutor may, with the consent of the General Prosecutor of Georgia or his deputy, file a motion with a court and request authorisation to monitor relevant bank accounts.

The period of monitoring cannot be longer than the period required for obtaining evidence in a criminal case. Bank secrecy is not an obstacle for investigation and there is no restriction to specific criminal offences. Whereas this SIM - in terms of language used in the Georgian legislation – also features requirements included in Art.7(2b), the case law provided by the authorities confirm that it includes monitoring of banking operations. Authorities provided information on an on-going case where monitoring of banking operations was approved by the judicial authorities. This investigation concerns large scale ML which includes involvement of various natural and legal persons. Based on article 124 of the Criminal Procedure Code, the investigative authority obtained approval for the monitoring of bank accounts/bank operations during the period of two months.

Art 19(1)

The International Cooperation in Criminal Matters Act, which is the basis for executing international requests over criminal law matters, also provides the possibility to monitor bank accounts based on international request. Article 56 (b) of International Cooperation in Criminal Matters Act provides the possibility, in case of existence of relevant legal basis, to use "*measures stipulated in the legislation of a requested state, which would facilitate the identification and tracking of property subject to confiscation, including the collection of information on bank accounts and transactions as well as monitoring"*.

Article 56 of the law also provides that in case of appropriate legal basis the Prosecutor's Office examines requests of competent authorities of foreign states on monitoring of banking accounts in Georgia. If the request satisfies legal requirements, Prosecutor's Office of Georgia executes it and transmits the results to the requesting state. It is therefore concluded that Georgia has a proper legal basis for implementation of Art.19(1).

Conclusion/Recommendation

Georgia has legislative measures in place to monitor bank accounts and subsequently the operations therein, if there is a probable cause that the bank accounts are used for criminal activity, and/or for the purpose of searching/identifying property. The bank is obliged to disclose real-time information concerning the transactions from or to the bank account. This, in conjunction with the case law provided, creates basis for proper application of the requirements of Art.7(2c) of the Convention. Consequently, and based on Art. 56 of the International Cooperation in Criminal Matters Act, Georgia applies Article 19(1) of the Convention.

The country is recommended to further develop case law on implementation of these two articles of the Convention.

Germany

The Federal Republic of Germany declared, when depositing the instruments of ratification, that Article 7, paragraph 2, shall not be applied.
In their responses to the 2020 questionnaire, the authorities advised that temporary monitoring of transactions made through specific bank accounts is, however, possible in Germany. German laws make no provision for "bank secrecy".
Such monitoring can be carried out directly by the bank where the specific account is held. Banks can avoid searches or confiscation by providing information.

Among the means available to LEAs, the seizure of commercial records, customer identity data and bank account details can be executed in accordance with sections 94 ff of the Criminal Procedure Code (StPO), whilst business premises (including those of banks) can be searched under sections 103 ff. of the StPO. Within the boundaries of proportionality, law enforcement authorities may request bank statements (showing retrospective account activity) at periodic intervals.

In addition, the authorities informed the COP that in cases involving documents that contain information about circumstances covered by tax secrecy (pursuant to section 30 of the German Fiscal Code - Abgabenordnung – AO), section 31b AO provides the revenue authorities with authorisation for disclosure. This provision also applies to non-bank financial institutions, in line with the recommendation in the second sentence of Article 7(2) of the CETS No. 198.

However, the ongoing monitoring of financial transactions ("real-time monitoring") is not permitted under the German Code of Criminal Procedure. On the other hand, for serious crimes such as particularly severe cases of money laundering and concealing unlawfully acquired assets (section 261 StGB), one possible option to monitor banking operations is to surveil suspect's IT systems (e.g. computer or telecommunication devices) under the conditions stipulated in section 100b StPO, whereby the person's digital behavior is covertly monitored and (indirect) conclusions are drawn about the financial transactions conducted using these IT systems.

Overall, the rapporteurs acknowledge the various investigative means available to German LEAs. Whilst some of them feature those means stipulated under Article 7 of the Convention, a real-time monitoring of banking operations appears not yet to be included in German criminal legislation.

Art. 19(1)

Requests from Parties for the investigation which include different financial transactions can be carried out by German LEAs as long as the request does not involve the (targeted) real-time monitoring of bank accounts. Given the shortcomings noted under Art. 7(2) it is apparent that Germany does not apply Art.19(1) in this respect either.

The authorities also informed the COP on general cooperation framework in place for non-EU Member States. The provision of legal assistance is based primarily on sections 59 ff. of the German Act on International Cooperation in Criminal Matters (Gesetz über die internationale Rechtshilfe in Strafsachen – IRG). Legal assistance is provided to the same extent and under the same conditions as when German courts and LEAs render mutual legal assistance to each other (section 59 (3) IRG). For EU Member States, the legal assistance to be provided within

the present context is based on sections 91 ff. IRG, which transpose the Directive on the European Investigation Order (Directive 2014/41/EU) under sections 91a ff. IRG.

Conclusion/Recommendation

Germany has in place a number of means to carry out financial investigations when different bank accounts are concerned, however a real-time monitoring of banking operations is not a part of these means. The country has declared that it will not apply Art.7(2c) of the Convention. In view of that, it is recommended that Germany gives proper consideration if the declaration is still needed and in case it is not, the authorities are invited to amend the legislation and empower LEAs and judiciary to apply real time monitoring in justified cases of serious offences (i.e. the offences listed in the Appendix to the Convention). Consequently, this measure should include a power to carry it upon request of other States Parties and communicate the results of such monitoring to them.

Greece

Greece has made a declaration, based on Art. 53(2), that "it reserves its right not to apply par. 2c of Article 7". No specific measures targeting monitoring of banking operations are in place.

Art 19(1)

Greece has made a declaration, based on Art. 53(3), that "it will apply Article 19 only on the condition that it lifts the reservation made above under a, relating to par. 2c of Article 7".

Conclusion/Recommendation

Greece does not apply Art.7(2c) and 19(1) of the Convention based on reservations made upon ratification. The authorities are therefore invited to consider if it is still necessary to keep the declaration. Accordingly, the authorities are invited to consider adopting legislative measures which would allow for monitoring banking operations that are being carried out through one or more accounts during a specific period. It is also recommended that upon request of another State Party, Greece can execute monitoring of banking operations and communicate the results of such monitoring to the requesting Party.

Hungary

The authorities, in their responses to the 2020 questionnaire, stated that by virtue of Act XC of 2017 and changes it introduced in the CPC, the amended Articles 216-218 now establish the proper legal framework for implementation of Art.7(2c) of the Convention. In line with the aforementioned articles, monitoring of bank operations could be executed upon Prosecutor's approval in the course of the criminal proceedings and can be applied for a maximum period of six months. Although the amended law refers to '*monitoring of payment through transaction'* and whereas this could be less than monitoring of banking operations, the case law presented by Hungarian authorities, read in conjunction with the Convention Explanatory Report (i.e. its para 82), confirm that Hungarian legislation is in line with the respective requirements of Art.7(2c).

Art 19(1)

Title 2 and 3 of the Act XXXVIII of 1996 on the international legal assistance in criminal matters determines the general procedural rules for legal assistance with regard to the international treaties ratified by Hungary or on the basis of reciprocity. According to these rules, the authorities should request or provide mutual legal assistance in line with this Act. If the Act does not specifically restrain rendering assistance, then the means available at the national level could be applied upon foreign request and the results then communicated to the foreign counterpart. Given that the possibility to request or execute the monitoring of banking transactions in the framework of international cooperation is not restrained by the Act, application of monitoring of banking operation measure and communication of its results to foreign partners is doable.

In addition, the possibility to request or execute the monitoring of banking transactions within the European Union is ensured by Sections 62-62/A, 68-68/A of the Act CLXXX of 2012 on the judicial cooperation in criminal matters with the Member States.
According to the Sections 62-62/A of this Act CLXXX disclosure of data on accounts kept with a financial institution and account turnover is a specific form of procedural act which can be requested or executed in the framework of the European Investigation Order (EIO) with those Member States which apply EIO.

Conclusion/Recommendation

Hungary implements Art.7(2c) and 19(1) requirements through its legal system. The application of these provisions has already taken place in several investigations. Hungary is therefore encouraged to continue to monitor the effective application of these provisions and develop case law.

Italy

Italian authorities, in their responses to the 2020 questionnaire, advised that judicial authorities in the country are entitled to order (Art. 256 of the CPC) the banks to provide documents (including bank statements) as a mean of obtaining evidence in the course of investigation. This investigative mean, according to the authorities' interpretation, includes monitoring for a period of time yet to come, the bank movements on a specified account. It is further explained that judicial authority, in its order, needs to specify not only the account to be monitored, but also the future financial movements through this account, allowing the competent police (which executes this measure and which, in the majority of cases, is Guardia di Finanza) to collect information periodically within the set timeframe. The authorities continue by stating that the frequency of such movements can be intensive and the way the afore-mentioned measure is applied can allow a rapid response in case there is a need to seize the money. Knowing where the money goes, a new targeted order can be issued by the same judicial authority. In addition, within the extensive cooperation developed by law enforcement agencies and prosecutors with the Italian FIU (as regulated by art. 12, para. 1bis and 3 of the Legislative Decree n. 231/2007) the FIU is in charge to provide assistance to Investigative and Judicial Authorities with regard to monitoring specific bank accounts, financial operations and business relationship.

The rapporteurs are of the opinion that the explanations provided by the Italian authorities on measures available and authorities' interpretation how they are/could be applied, to a large

extent, do address the requirements of Art.7(2b and 2c). This notwithstanding, the authorities did not present relevant practical cases which would confirm that their interpretation is indeed applied in practice by LEAs/prosecutors and relevant judicial authorities with respect to all crimes listed in the Appendix to the Convention. Consequently, the rapporteurs can conclude that, whilst the authorities have a general legal framework, which if interpreted widely, includes monitoring of banking operations, the effective application of Art.7(2c) is yet to be demonstrated.

Art 19(1)

The authorities state that the afore-mentioned special investigative mean (as specified in Art.256 of the CPC) does not have specific limitations, thus it is possible to answer to requests of another Party to monitor banking operations if such request will not jeopardize the secrecy of investigation. In view of this, these general norms put forward by the authorities present a legal basis for rendering cooperation as foreseen by Art.19(1).

Conclusion/Recommendation

Italy has a legal basis to implement the requirements of both – Art.7(2c) and Art.19(1). However, the authorities are invited to provide case law illustrating the effective application of monitoring banking operations and rendering assistance on this matter upon other States Parties request. In addition, the authorities should (if this is not the case already) follow the development of its case law in order to ensure and confirm in practice that this measure is available for all offences listed in the Appendix to the Convention.

Latvia

Latvia has introduced several legal provisions which allow monitoring of the banking operations that are being carried out through one or more identified accounts during a specified period. This measure can be applied before or upon initiation of criminal proceedings. Section 33.2 of the Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing states that "*the FIU shall issue an order, with approval of the Prosecutor General or his or her specially authorised prosecutor, to the subject of the Law (I.e. reporting entity) to monitor transactions in its customer's account for a period of time not exceeding one month, if the FIU … has reasonable suspicions that a criminal offence has been committed or is being committed, including money laundering, terrorism and proliferation financing or an attempt to carry out such actions.*"

Moreover, according to Section 16.1 of the Operational Activities Law, a body which is mandated to perform operational activities, during the criminal intelligence phase, may carry out monitoring of operational transactions of the client's account.

During the pre-trial proceedings, the CPC (Section 121) provides for monitoring of bank accounts but also for monitoring of transactions in the accounts of the customers of credit institutions or financial institutions for a definite period. The decision to apply this measure has to be initiated by a *person directing the proceedings* and has to be approved by an investigating judge. Transaction in the account of a client of a credit institution or financial institution may be monitored for a period of time up to three months, but, if necessary, the investigating judge may extend the time period for a period of time up to three months. The afore-mentioned provisions indicate that Latvia applies Art.7(2c).

Art 19(1)

Latvia has the power, at the request of another Party, to monitor the banking operations that are being carried out through one or more identified accounts before criminal proceedings are initiated, as well as during criminal proceedings in accordance with the Section 62 of the AML/CFT Law and Articles 845, and 849 of the CPC. The latter articles regulate assistance to a foreign country in the performance of procedural actions and execution of the request of a foreign country. Both articles of the CPC pose no restrictions to application of monitoring of banking operations thus fulfilling the requirements of Art.19(1).

Conclusion/Recommendation

Latvia has introduced several legal provisions which allow monitoring of the banking operations that are being carried out through one or more identified accounts during a specified period before criminal proceedings are initiated, as well as during criminal proceedings. It can also render assistance to other States Parties, monitor and communicate the results of such monitoring to them.

Since no case law on application of this investigative mean was presented, the country is invited to develop case law on application of this investigative mean and on international assistance upon request for implementation of monitoring of banking operations.

Lithuania

Lithuanian authorities, in their responses to the Questionnaire, indicated numerous provisions of the AML/CFT Law as well as some of the provisions of the Criminal Procedure Code. These provisions mostly discuss temporary freezing/seizure of bank accounts/property and do not include an investigative mean of monitoring banking operations during a specific period of time as required by Art7(2c) of the Convention. Consequently, the conclusion is that this element of the Warsaw Convention has not yet been transmitted into Lithuanian legislation.

Art 19(1)

Given the fact that Art.7(2c) is not applied in Lithuania, there is no possibility to execute foreign request which would require monitoring of banking operations as foreseen by Article 19 (1).

Conclusion/Recommendation

Lithuania does not have legislative or other measures to enable the competent authorities to monitor banking operations during the specific period of time and apply this measure and communicate the results of its application upon other States Parties requests. Therefore, the country is invited to adopt legislative measures and develop case law which would ensure proper application of Articles 7(2c) and 19(1).

Malta

The 2014 COP Assessment report on Malta noted that monitoring of banking operations that are being carried out through one or more identified accounts can be performed based on a monitoring order. Article 4B of the AML Law enables the Attorney General to request approval by the Criminal Court for a monitoring order in case of suspicion that there is a money

laundering offence. Based on such an order, the banks are required to monitor, for a specific period, transactions or banking operations that are being carried out through one or more accounts. The accounts monitored can be of a specific suspect, can be suspected of being used in commission of a criminal offence or can provide information about the offence or about the circumstances of an offence. The results of the monitoring must be communicated to the persons or authority indicated by the Attorney General and the collated information is transmitted subsequently to the Attorney General.

With respect to other offences covered by the Appendix to CETS No. 198, the monitoring order can be requested based on Article 435AA(1) of the Criminal Code. The relevant offence for the purpose of monitoring under Article 435AA (1) means any offence which is liable to the punishment of imprisonment or of detention for a term of more than one year. As it can be seen from the Annex VIII of the report (https://rm.coe.int/conference-of-the-parties-council-of-europe-convention-on-laundering-s/168072b556 - page 61 and onwards), the predicate offences covered by the Appendix to the Convention may be punishable by a term of imprisonment under one year.

The FIU can also issue monitoring orders when, on the basis of the information in its possession, it suspects that one or more subjects, including banks, may have been used for transactions suspected to involve ML/FT, or if the property being held by a subjects may have been derived directly or indirectly from proceeds of criminal activity or from acts of participation in a criminal activity. From the statistics provided by the authorities, the FIU regularly makes use of this power.

Overall, from the description provided above, Malta applies Art.7(2c) of the Convention.

Art 19(1)

If a request is made by another Party to the Convention to the Attorney General, and such a request is made for the purpose of monitoring of the transactions or banking operations being carried out through one or more accounts of a suspect, Article 9A/Chapter 373 of the AML Law stipulates that the Attorney General may apply to the Criminal Court for a monitoring order.
In the cases where another Party to the Convention requests the monitoring during a specified period of the banking operations that are being carried out through one or more accounts specified in the request concerning a “relevant offence”, the legislation also provides the possibility of issuing a monitoring order in this regard.
The FIU can also issue monitoring orders (these being limited to ML/FT) when requested to do so by a counterpart FIU.
Therefore, Art.19(1) is properly applied in Malta.

Conclusion/Recommendation

The COP assessment 2014 concluded and recommended to Malta as follows:

“*Malta implemented most of the requirements of CETS No 198 stated under Article 7. The legal provisions in place establish sufficient power in order to obtain information on account holders, including the beneficial owner, to obtain the “historic” banking information. The legislative measures are also sufficient to prevent the disclosure of the information related to the investigation or monitoring order. The statistics provided by the Maltese authorities indicate that the powers provided for in this Convention are not being used regularly in investigations*

of proceeds generating crimes and that no monitoring orders have been issued by the courts. The Maltese authorities are encouraged to further raise awareness of the practical possibilities for law enforcement of these powers". The follow up report discussed and adopted by the COP in 2018 confirmed that 'over the period 2015-2018 no monitoring orders were issued. The Maltese authorities also informed that law enforcement received training on how to use this instrument."

Therefore, Malta is invited to apply monitoring measures more frequently and develop cases on its implementation.

Monaco

In their responses to the 2020 questionnaire, the Monegasque authorities advised that there is no specific provision in their legislation providing for a special investigation technique which would include the monitoring, during a specific period of time, of banking operations carried out through one or more accounts.

However, the authorities pointed out that, under the terms of article 87 of the Code of Criminal Procedure (CPC), the investigative judge is empowered to order the application of measures he/she considers useful for the purpose of establishing the relevant facts of the offence committed. Likewise, article 91 of the same Code provides that "*the public prosecutor may request from the investigating judge any act he/she deems useful for establishing the relevant facts and all necessary security measures".* In addition, article 100 of the Code of Criminal Procedure allows seizure of *documents, computer data, and any objects relevant for establishing the truth.*

The afore-mentioned provisions, in the view of the Monegasque authorities, create sufficient basis for applying Art.7(2c) of the Convention. In other words, using these articles of the CPC as a basis, the Public Prosecutor and the Investigating Judge could request the monitoring of banking operations which are carried out through one of more accounts during a specified period. The *specific period,* as a rule for all special investigative means, is limited to two months, which could be extended by another two months as per decision of an investigative judge (articles 106-1 to 106-11 of the CPC). The authorities also advised that article 107 of the CPC provides that "*the investigating judge, in cases where a technical question arises, may either at the request of the Public Prosecutor, or ex officio or at the requests of the parties in the procedure, designate one or more experts to carry out the measure, the nature and purpose of which are prescribed by the decision of the judge* ".

No case law was provided to reflect the jurisdiction's application of Article 7(2c).

Whereas it is clear that the legislation provided by Monaco do not explicitly include the requirements of Art.7(2) whilst the measures referred in the afore-mentioned article 100 rather reflect the requirement of Art.7(1), article 87 of the CPC empowers an investigative judge to request application of measures as deemed appropriate for purposes of establishing the facts. Whereas this general norm could be interpreted differently, in absence of case law which specifically refers to the monitoring of banking operations, the rapporteurs cannot conclude that Article 7(2c) of the Convention is properly applied in Monaco.

Art. 19(1)

The Monegasque authorities advised that they had never received a request to monitor banking operations by another Party, and thus had never carried out such an operation on behalf of another Party.

In their view, articles 87, 91,106 and 107 of the CPC create a sound basis for application of Art.19(1) of the Convention. Whereas the rapporteurs can agree that these provisions are broad enough to allow application of different measures which may be requested by a foreign jurisdiction, the fact that monitoring of banking operations is not included among another measures in the Monegasque CPC and that such measure has never been applied by the authorities during their investigations or upon request from abroad, casts doubts whether Art.19(1) is currently applicable in Monaco.

Conclusion/Recommendations

Monegasque legislation does not specifically provide for monitoring of banking operations. Whilst some general measures are in place, taking into account the willingness of the authorities to amend the legislation, they are recommended to specifically provide for the monitoring of banking operations the way this measure is foreseen by Art.7(2c) of the Convention. Consequently, this measure should be implementable upon request by the States Parties and results of such monitoring should be communicated accordingly.

Republic of Moldova

The 2014 COP assessment on Moldova confirms that LEAs and different prosecutor's offices, in charge of criminal investigations, have the power to apply a variety of special investigative techniques from an exhaustive list provided by the Art. 132/2 of the Moldovan CPC. Such techniques could be undertaken in cases of serious crimes, extremely serious crimes and exceptionally serious crimes and should be carried out with authorization of investigative judge or prosecutor.

The monitoring, during a specified period, of the banking operations that are being carried out through one or more identified accounts, is defined by the CPC as a special investigative technique, under Art. 132/2 par. (1) point 1) let. f): "*monitoring or control of financial transactions and access to financial information constitutes operations that disclose the contents of financial transactions carried out through financial institutions or other competent institutions or receiving documents or information from financial institutions related to deposits, accounts or transactions that belong to a person.*"

According to Art. 132/4 par. (7) of CPC, which provides the general procedure for ordering special investigative measures, this measure shall be ordered for 30 days with the possibility of reasonable extension for up to 6 months, with exceptions provided by this Code. Each prolongation of the special investigative measure may not exceed 30 days. The COP assessment report notes, however, that this SIM is available only in cases of i) serious crimes (acts for which criminal law provides as a maximum punishment, imprisonment for a term more than 5 and up to 12 years inclusively); ii) extremely serious crimes (crimes committed with intent for which criminal law provides for a maximum punishment by imprisonment for a term of more than 12 years.) and iii) exceptionally serious (crimes committed with intent for which criminal law provides for life imprisonment). In other words, this SIM cannot be applied for all

of the offences included in the Appendix to the Convention, but as a minimum, to those punishable by up to 12 years of imprisonment. In their responses to the 2020 questionnaire, the Moldavan authorities reiterated the same arguments as when the afore-mentioned reports were discussed. They also provided a list of Articles which include those crimes for which the monitoring of banking operations can be ordered. These crimes are set out in articles 158, 165, 1651, 189¬-192, 196, 199, 206, 208, 209, 217-2175, 220, 236, 237, 239-248, 251-253, 255, 256, 278, 279, 2791, 2793, 283, 284, 290, 292, 3011, 302, 324-327, 3301, 333, 334, 343, 352, 361 and 3621 of the Criminal Code. The Moldovan authorities advised that the afore mentioned list includes also the exceptions when the monitoring of the banking operations could be applied even for minor or less serious crimes. The authorities provided statistics on application of this measure: according to the statistical data provided by the General Prosecutor's Office, the monitoring and control of financial transactions and the access to financial information was carried out by the LEAs and prosecutors in 12 cases in 2017, in 41 cases in 2018 and in 78 cases in 2019.

Overall, it can therefore be concluded that whilst Art.7(2c) of the Convention is embedded in Moldovan legislation, however, there is no certainty if all offences from the Appendix could be investigated by using this SIM.

Art 19(1)

The CPC, in its Article 533 (1) defines the scope of legal assistance that can be provided to foreign states. It lists several powers and investigative techniques which may be requested and provided for MLA purposes. In particular, it provides the possibility for the "*on-site investigations, searches, seizures of objects and documents and their transmission abroad, sequestration, confrontations, presenting for identification, identification of telephone subscribers, wiretapping, expert reports, confiscation of goods obtained from the commission of crimes and other criminal investigative actions provided".*

Thus, the CPC also provides that the MLA shall be executed under the provisions of the Law on international legal assistance, providing as a main goal the establishment of a mechanism for implementation of regulations of the Criminal Procedure Code, as well as of the international treaties.

Consequently, the monitoring of banking operations could be executed and results communicated to other States Parties.
Limitations noted under Art.7(2c) also prevent the effective application of Art.19(1) for those offences from the Appendix which may not be investigated by using this SIM.

Conclusion/Recommendation

Whilst the Republic of Moldova has legislation in place to comply with requirements of Art.7(2c), the 2014 COP assessment report also recommended taking additional measures in order to fully implement the relevant aspects under Article 7 of the Convention, and in particular to:

- ensure that monitoring of accounts is permissible in respect of all the relevant criminal offences in accordance with the Convention's provisions;
- review the legal framework so as to clearly prohibit any disclosures by banks to customers or third persons that information has been sought or obtained at pre-investigative stage.

The 2017 follow up report on Republic of Moldova states that the information provided by the Moldovan authorities does not refer to additional measures taken to ensure the permissibility of monitoring of accounts and the Conference of the Parties thus concluded that these recommendations have not been implemented. The responses to the 2020 questionnaire did not provide any information which would contradict these findings of the follow up report.

In view of that, the Moldovan authorities are therefore recommended to further compile and analyse cases and statistics on the effective functioning of the system and cover (through legislative changes) all the relevant criminal offences with a view to increase the effectiveness and to implement recommendations given in 2014.

Montenegro

The 2014 COP assessment report on Montenegro confirms that the country's legislation provides a mechanism for application of Art.7(2c). In particular, the AML/CFT Law through its Article 63 transposes the requirements of Article 7(2c) of the Convention. Article 63 declares that "*the FIU shall, in writing, request from the reporting entity an ongoing monitoring of customer's financial business, in relation to which there are reasons for suspicion of money laundering and related predicate offences or terrorist financing, or other person, for whom it may be concluded that he/she has cooperated or participated in transactions or businesses activities for which there are reasons for suspicion of money laundering and related predicate offences or terrorism financing, and shall determine deadline within which the reporting entity is obliged to inform the FIU and provide the required data."*
Also, the *"reporting entity shall provide or inform the financial intelligence unit on data (referred above), before carrying out the transaction or concluding the business and state in the report the deadline estimation, within which the transaction or business should be done".*
Regarding the timeframes, Article 63 states that the "*ongoing monitoring of transactions … shall not be longer than 3 months" and "shall be prolonged not later than 3 months starting from the day of submitting the request from Paragraph 1 of this Article"* in case of reasons for suspicion of money laundering, related predicate offences and terrorism financing. The cooperation between the State Prosecutor and the FIU for the purposes of criminal investigations is further enhanced by Art. 57, which states that the FIU "*is obliged upon the request of the court or state prosecutor to provide available data, information and documentation from the register of transaction and persons that are necessary for the needs of case prosecution, except for the information obtained on the basis of international cooperation and for which there is no approval of the competent authority of the foreign state".*
Relevant statistics were also provided in the report.
Consequently, the requirements of Art.7(2c) appear to be met. The 2020 responses to the questionnaire submitted by the Montenegrin authorities reiterated the same arguments as those discussed when 2014 COP report was adopted. No case law was provided.

Art 19(1)

The Montenegrin legislation makes it possible to satisfy requests from other Parties under Article 19(1) of the Convention. Such requests are considered in the context of MLA requests and can be executed in accordance with Article 42 of the Law on mutual legal assistance in criminal matters.
Also, in Article 64 of the AML/CFT Law it is laid down that upon an initiative of a competent authority from a foreign country the FIU may initiate the procedure for collecting and analysing data, information and documentation, when there are reasons for suspicion of money

laundering and related predicate offences or terrorist financing in relation to a certain transaction or person.
Article 19(1) is therefore applied by Montenegro.

Conclusion/Recommendation

Montenegro has taken legislative measures to implement the requirements set out in Art.7(2c) and 19(1)and although Montenegro has an all crimes approach concerning ML, it does not necessarily follow that for all the offences from the Appendix of the Convention, where the monitoring of banking operations is available. Consequently, the authorities are recommended to include all offences from the Appendix to the Convention as those upon which the monitoring of banking operations is available, autonomously and irrespectively from ML/FT context. In addition, the 2014 assessment report recommended that the MLA law specifies the possibility for the Prosecutor to order, further to a request from a foreign Party, that the competent authority (the FIU) may execute monitoring, during a specified period, of the banking operations that are being carried out through one or more accounts. From what has been reported by the authorities in their 2020 responses, it appears that this recommended action was not explicitly provided in MLA law. The authorities are invited to develop jurisprudence on application of Art.7(2c) of the Convention and give proper consideration if specific guidelines/training programme should be delivered to LEAs/judiciary.

The Netherlands

The Netherlands' Criminal Procedure Code assigns extensive powers to the law enforcement authorities to demand, inter alia, banking data (Articles 126ne, 126uc et. seq.,126ue and 126nc et seq. of the Code of Criminal Procedure). These powers also include the power to monitor future transactions. With the entry into force of the European General Data Protection Regulation in 2018, these powers are even generalised and no longer limited to the financial sector.
As practical example of implementation of Article 7(2c) of the Convention, the authorities provided a case that took place in March 2019 when searching for a suspect, who had committed a serious crime. Banks, police and the judiciary cooperated by live monitoring of the suspect's banking account and subsequent transaction(s).
Given the details of this case, although the legal framework is providing only general regulations and does not specify that the monitoring of banking operation is one of the means available to LEAs, the rapporteurs can conclude that Art.7(2c) is applied in the country. The authorities advised that due to the "all crimes approach" taken in Netherlands the legislation does not differentiate between ML and predicate offences and therefore no specification of the applicable predicate offences is necessary".

Art 19(1)

The Netherlands has implemented the obligations under the EU Protocol on Mutual Assistance in Criminal Matters (Art. 3, '*requests for the monitoring of banking transactions*') by providing for the special investigative powers, including those listed under the analysis on Art.7(2c) above (articles 126nc et. seq., 126ne, articles 126uc et. seq. and 126ue of the CPC). However, the Authorities confirmed that they could also apply this measure upon request of COP States Parties that are not EU Member States. No case law was provided to confirm this statement.

Conclusion/Recommendation

The Netherlands has provisions in its CPC that provide general regulations on access to banking accounts/operations by LEAs. The country applies these provisions in practice (as demonstrated by the case law presented) and the measures provided for in the CPC enable the competent authorities to monitor banking operations. In view of that, it is concluded that the Netherlands applies Art.7(2c) of the Convention. In addition, this investigative mean could be applied upon request of EU MS and also upon request of other COP States Parties. The country is encouraged to further develop case law, and render assistance (upon request) to non-EU COP States Parties on application of this SIM.

North Macedonia

North Macedonian legislation, in particular its CPC, states (Article 200 para 1 and 6) that the analysis of information that contains a bank secret, or checks of the property in a bank safe-deposit box, as well as monitoring of payment operations and accounts' transactions may be implemented upon prosecutor's request "*if there is a grounded suspicion that a certain person receives, holds, transfers or otherwise manages crime proceeds on his or her bank account". Also in para 6 of Article 200, the Court, at the motion filed by the prosecutor's "may instruct the bank or another financial institution with a decision, to monitor the payment operations and the transactions in the accounts of a certain person and regularly inform the public prosecutor during the time period defined in the decision".*

Moreover, the AML/CFT Law through its Article 119 ("Order for monitoring of business relationship"), stipulates the power of the FIU to issue a written order to the obliged entity to monitor client's business relationship in case of ML/TF suspicion. This monitoring "*may be in effect no longer than three months, while in justified cases the duration of the measure may be extended for one more month, whilst the monitoring of the business relationship may be in effect for maximum of six months".*

The authorities also informed the COP that the FIU applied the measure of monitoring of business relationship in 10 cases in period 2018-2019. No details on application of the measure foreseen by the CPC was provided.

The afore-mentioned provisions guarantee that the authorities are given a possibility to monitor banking operations. It can therefore be concluded that Art. 7(2c) is applied by North Macedonia. The authorities confirmed that the provisions for monitoring of banking operations could be applied regardless of the type of the offence.

Art 19(1)

The Law on international cooperation in criminal matters (MLA Law) regulates conditions and proceedings for international cooperation in criminal matters. It does not explicitly stipulate if it is possible, to monitor during a specified period, the banking operations upon request from a foreign counterpart, and then communicate the results upon request of another Party.

However, Article 29 of the MLA Law states that, at the request of the foreign competent authority, the domestic judicial authority may introduce temporary measures with the aim to collect evidence, to secure the evidence collected and to protect the endangered legal

interests. It is an understanding by North Macedonian authorities that this provision allows for application of Article 200 of the CPC.

Also, the AML/ CFT Law does not provide for the FIU to monitor during a specified period, the banking operations that are being carried out through one or more accounts upon the request of foreign FIU. As a result, the Government prepared and adopted amendments to the AML/ CFT Law. These amendments introduced new powers for the FIU in the field of international cooperation, including the possibility to act upon request for monitoring of business relationship (Article 131 – "Provisional measures and order for monitoring in the framework of international cooperation").

Conclusion/Recommendation

North Macedonia has legal provisions authorising the monitoring of banking transactions in both the Criminal Procedure Code (Art. 200) and the AML/CFT Law (Art. 119) and to execute this measure (as provided by the CPC) and communicate results thereof to its foreign counterparts.

Overall, the authorities are invited to further develop case law on application of monitoring of banking operations.

Poland

The 2013 COP assessment report on Poland concluded that Polish legislation does not provide for a possibility for competent authorities/law enforcement to monitor, during a specified period, the banking operations that are being carried out through one or more accounts. The same conclusion was reached in the 2017 follow up report adopted by the COP. By contrast, in the 2020 questionnaire, the authorities argued that the 2018 AML/CFT Act empowers the FIU to request information from obligated entities on monitoring of transactions within the specified scope and time limit. More precisely the authorities argued that Art. 76 (1)(4) - which empowers *the FIU to request, from obligated entities, information or documents held on ongoing monitoring of business relationship with customers* - provides the legal basis for application of Art.7(2c). At the same time Art. 76(3) of the AML/CFT Act provides for the possibility for the FIU to specify the scope of information requested as well as the time limit for which the information is requested. However, these measures are defined as a part of the CDD procedure, they allow requesting the obligated entities to provide information on business relationship or occasional transactions of the customer – within a defined time limit for their acquisition and in the defined scope. Details of the case provided by the Polish authorities in their 2020 responses reveal that they used this measure to order monitoring of banking operations by the relevant reporting entities and then made the results of such monitoring available to the FIU for further investigative purposes. In view of that, the rapporteurs can conclude that Poland has a regulation in place implementing Art. 7(2c), however its scope of application is limited to ML, FT and ML predicate offences. Monitoring of business relationship or occasional transactions is available only for the FIU and not for other LEAs.

Art 19(1)

Similarly to the assessment report from 2013, the COP follow up report from 2017 confirmed the non-availability of the measures foreseen under Art.19(1) of the Convention. Arguments provided in the 2020 questionnaire cannot be considered sufficient to cover this requirement

as they only concern general provision to act upon foreign request. Shortcomings noted under the analysis on Art.7(2c) of the Convention therefore have a cascading effect on application of Art.19(1).

Conclusion/Recommendation

Poland has introduced some measures to implement Art.7(2c) of the Convention as the FIU, in fact, orders monitoring of business relationship for its investigative purposes. Poland does not have an explicit regulation in place to implement art. 19(1) of the Convention. In view of this, Poland is recommended to introduce, in its legislation, powers to monitor banking operations by LEAs and the explicit regulation enabling requesting monitoring of business relationship at the request of other States Parties and communicating the results to them accordingly.

Portugal

Portugal provided information on a legal basis upon which the authorities deem requirements of Art.7(2c) met. Namely, the Law for Fight against Organised Crime, as amended, provides that, for serious crimes, the following measures (SIMs) are, *inter alia*, available:

i) obtaining information on bank accounts or payment accounts - and related operations – of which the defendant or the legal person is the holder or co-holder, or in relation to which the defendant or the legal person has powers to make transactions;
ii) obtaining information on banking and financial transactions, including payments and issuing operations, distribution and return of electronic currency, in which the defendant or the legal person intervenes;
iii) identification of other stakeholders intervening in the transactions mentioned in (i) and (ii) above;
iv) obtaining documents supporting the information mentioned in the preceding paragraphs.

These provisions provide for a possibility to obtain evidence, upon judicial approval, which, in their essence, are similar to those obtained through monitoring of banking operations. Portuguese authorities also advised that monitoring of bank and payment accounts is provided for in Law 5/2002 of 11 January, in Article 4(1) which "obliges the respective credit institution, payment institution or electronic money institution to report any movements on the account to the judicial authority or to the criminal police body within the following twenty-four hours". Moreover, according to Article 4(4), the monitoring order "*identifies the account or accounts covered by the measure, the period of its duration and the judicial authority or criminal police body responsible for the control".*

Taking into consideration the additional explanations of the authorities the rapporteurs could conclude that the core of Art.7(2c) seems to be embedded in the Portuguese legislation. Portugal provided information on jurisprudence which confirms that information from account monitoring is used for gathering evidence, including in ML cases (the decision of the Oporto Court of Appeal, of 21 June 2017, which stated that
" (i) The judicial control of bank accounts (which may include the control of bank accounts and movements and the order to abstain from certain banking movements) constitutes a special regime for the collection of evidence, among others, regarding the crime of money laundering (Article 4 4 of Law 5/2002 of 11/2 and Article 17 of Law 25/2008 of 5/6).

(ii) Such measures are not measures of coercion or of asset guarantee, but means of gathering evidence". This notwithstanding it is still unclear if the monitoring of bank and payment accounts is applied for all offences listed in the Appendix to the Convention.

Article 19(1)

Portuguese authorities may exercise the powers (SIMs) as described above upon receiving a request for mutual legal assistance in criminal matters. This is ruled by Law 144/99, on international judicial cooperation in criminal matters. Article 145 defines the principle and scope of a request for mutual legal assistance in criminal matters stating that the assistance includes the communication of information, procedural acts and other public acts admitted by Portuguese law, when they appear necessary to carry out the process. The assistance includes finding/gathering evidence (article 145, paragraph 2 b).

This legal act also rules Portugal's cooperation with international judicial entities established under treaties or conventions that are ratified by Portugal.

Potential limitation of the scope of application noted under the analysis on Art.7(2c) of the Convention could have a cascading effect on application of Art.19(1)."

Conclusion/Recommendation

Portugal applies both Art.7(2c) and 19(1). The authorities confirmed that they apply the measure to all offences listed in the Appendix to the Convention, in order to fully comply with Art.7(2c) and 19(1) of the Convention. The country is encouraged to follow the development of case law to ensure practical implementation of this provision.

Romania

The 2012 COP assessment report on Romania confirms that Art.7(2c) was properly introduced in the domestic legislation. However, the authorities indicated that in line with the new CPC (which according to the open sources entered into force in 2014), the monitoring of banking operations that are carried out through one or more identified accounts is now regulated by Article 138 para. (1) letter e) and para. (9) of the 2014 CPC. As per the language of the 2014 CPC, this measure is called '*obtaining data on a person's financial transactions*.' In other words, this measure is composed of two elements:
- *requesting bank's records concerning the operations carried out through accounts;* and
- *placing the bank accounts under supervision.*

According to Art. 146^1 of the 2014 Criminal Procedure Code, obtaining data on a person's financial transactions can be approved by a judge of the competent court. As for the particularities of the procedure to apply this investigative mean, it needs to be noted that it is the same as for any other investigative mean, i.e. that it can be applied with maximum duration of 30 days, with a possibility of extension for a maximum of 6 months. The procedure is carried out as follows: upon judicial approval, the prosecutor sends to the financial institution that holds relevant financial data, a request to immediately communicate the information to him/her. If the request concerns operations that are yet to be performed by a bank or other financial entity (investment companies or securities) where the suspect holds account(s), the prosecutor will request the details on the supervision/monitoring of transactions on a daily basis or periodically. In cases where there is an emergency, and when obtaining judicial approval could

lead to a substantial delay in the investigations, the loss, alteration or destruction of the evidence or would endanger the safety of the victim or other persons, the prosecutor may request the financial transactions data without judicial approval. These data concern transactions which were carried out or are to be carried out within 48 hours. Then, in 24 hours, the prosecutor should submit to the competent judge the information received and the case files. Romania took all crimes approach to application of monitoring of banking operations..

Romania also provided relevant case law which confirms proper application of Art.7(2c) of the Convention.

Given the afore-mentioned, the rapporteurs can reaffirm the conclusions of the 2012 COP assessment on Romania and confirm that Art.7(2c) is properly applied in the country.

Art 19(1)

Law no. 302/2004, which was republished, covers the field of international judicial cooperation, including the judicial cooperation carried out under international courtesy. This Law applies to the several forms of international judicial cooperation in criminal matters like international rogatory commissions, information on bank accounts (art. 267), information on banking operations (art. 268) and supervision of banking transactions (art. 269). In view of this, the 2012 COP assessment report confirmed that Art.19(1) is properly applied and the 2020 COP assessment can only confirm this statement.

Conclusion/ Recommendation

Romania applies both Art.7(2c) and 19(1).
The case confirms that the afore-mentioned articles are applied in practice in Romania and the authorities are encouraged to continue with this practice.

Russian Federation

Russia has made a declaration, based on Art. 53(2) that it reserves the right not to apply, in part or in whole, the provisions of Article 7(2c) of the Convention.
This notwithstanding, the Russian authorities informed the COP that they had mechanisms to obtain bank secrecy as provided in Article 26 of the Federal law No.395-1 on Banks and Banking Activities (1990). In particular, statements on accounts and deposits of individuals are to be provided by a credit institution upon the approval of the head of the investigation authority and in the course of pre-trial investigation.

Statements of the operations and accounts of legal entities, individual entrepreneurs and individuals are to be provided by a credit institution, based on a court decision, if there is information/indication that crimes are being prepared, committed or have been committed. The information should include details on individuals who are preparing, committing or have committed them. Whilst the COP welcomes Russia's efforts to meet the requirements of Art.7 in general, the provisions noted above do not provide for monitoring of banking operations as foreseen by Art.7(2c) in particular.

Art 19(1)

Upon ratification of the Convention the Russian Federation has reserved the right to apply the provisions of Article 19 of the Convention in accordance with the international treaties on cooperation in criminal matters and legislation of the Russian Federation. Given the declaration made on Art.7(2c) and shortcomings noted above, it appears uncertain whether this measure could be applied upon request of another State Party.

Conclusion/Recommendation

Although Russian Federation is not applying Art 7(2c) and 19(1) due to a declaration made under Art. 53 (2), some elements are in place to enable the country to apply other measures foreseen by Art.7 of the Convention. In view of that, the authorities are invited to consider widening the scope of the measures in order to fully reflect the requirements of Art.7(2c).
Upon such consideration, the Russian Federation is recommended to consider whether the afore-mentioned declaration is still needed. In case the authorities deem that the declaration could be lifted, they are invited to amend the legislation and fully apply the requirements of Art. 7(2c) and 19(1) of the Convention.

San Marino

San Marino authorities, in their responses to the 2020 questionnaire, informed the COP that Article 5 of the AML/CFT Law, provides for the FIU to monitor financial business relations, postpone transactions and block funds, assets or other economic resources.

The monitoring measures may be ordered:

i) by the FIU on its own initiative, (for example when the in-depth analysis of the case is still pending and the reporting entity might execute a suspicious transaction to/from the monitored accounts or provide new CDD information eventually useful to the FIU analysis).
ii) by the FIU upon request of a Foreign FIU, (although no practical request and consequently no case of such monitoring occurred so far); and
iii) by the FIU upon request of the Judicial Authority, when the Investigating Judge, during the evaluation of a case disseminated by the FIU, wants to be timely informed of any initiative related to possible use of assets or of funds deposited on the reported accounts (in order to take a decision related to eventual seizure/freezing measures).

San Marino also provided statistics which confirm that in last five years 64 requests for monitoring were issued.

San Marino has legal basis (and most notably through point iii) quoted above, for application of art. 7(2c). The measures referred could be applied to ML/FT offences but also to all predicate offences. However, having this measure regulated solely in the AML/CFT Act, it remains questionable if against all the offences from the Appendix this measure could be applied – i.e. if it is applicable only when these offences are linked with ML/FT. Further considerations are about the fact the monitoring of banking operations seems to be available to the FIU only and not to other LEAs. The measures foreseen by the AML/CFT law are, according to the statistics provided, frequently applied in practice.

Art 19(1)

As noted above, Article 5 of the AML/CFT Law (point ii) above) empowers the FIU to apply the monitoring measure upon request of a foreign financial intelligence unit and for a specific period of time, in line with the procedures and time limits laid down by the FIU (Art. 5, para 1, letter d) thus ensuring the application of Art.19(1) of the Convention. However, eventual limitation in the scope of application of Art. 7(2c) has cascading effect on the implementation of art. 19(1)."

Conclusion/Recommendation

San Marino implements both Art.7(2c) and 19(1) in the national legislation. Whilst San Marino authorities advised that account monitoring is "available and applicable for all crimes listed in the Appendix to the Convention", the rapporteurs still have doubts if this measure is applicable only for the offences linked to concrete ML/FT cases. If this is the case, San Marino is recommended to provide regulations that enable application of account monitoring also for offences that are not linked with ML/FT and are listed in the Appendix. Further, San Marino should enable LEAs to autonomously apply this measure. In addition, the jurisdiction is recommended to continue to compile cases and develop case law when the information gathered through the monitoring of banking operations was used to develop evidence in criminal investigations/proceedings.

Serbia

Serbian AML/CFT law in Article 76, empowers the FIU to issue a written order to an obliged entity to monitor all the transactions or operations once the FIU assesses that there are reasons to suspect that money laundering or terrorism financing may be committed. Both - transactions and persons conducting such transactions - are under scrutiny. Based on this article, an obliged entity is required to inform the FIU on any transaction or operation before they are conducted, as well as to indicate the deadline within which the transaction or operation is to be conducted.

In addition, Article 143 of the CPC prescribes that, where there are grounds for suspicion that a person suspected of committing criminal offence(s) possesses accounts or conducts transactions, the judge for preliminary proceedings may order that accounts or suspicious transactions are supervised/monitored. The monitoring may last no more than three months and may be extended by another three months. Unless specified otherwise in the order, the bank or other financial institution is required to notify the public prosecutor before any further transaction is carried out from or to the accounts concerned and also specify exact timing of the attempted transactions. The bank or financial institution is required to keep the information requested by the judicial authorities as confidential. Whilst the vast majority of offences listed in the Appendix are covered by this investigative mean, it appears that some offences from the Appendix are not within the scope of Art.143 of the CPC.

The authorities also provided a case investigated by the prosecutor's office for organised crime where monitoring of banking operations was applied. This investigative mean produced a valid evidence to further pursue the investigation and prosecution.

In light of the provisions elaborated above, it can be concluded that Serbia has a proper legal framework for application of Art.7(2c) which has also been demonstrated in practice. However,

the authorities did not inform the COP if there are any restrictions to application of Art. 143 of the CPC.

Art. 19(1)

Article 81 of AML/CFT Law contains a provision which empowers the FIU to provide data, information and documentation on persons and transactions with regard to which there are reasons to suspect money laundering and terrorism financing, on its own initiative or at a written and well-explained request of a foreign AML/CFT authority.

The authorities are of the opinion that the abovementioned provision covers the requirement of Art 19 of the Convention in case of a well-explained request from a foreign counterpart for data, information and documentation on persons and transactions. However, this provision only gives a possibility that such request would be considered by the FIU. Also, such a request may be refused if the provision of such data would/could hinder a criminal proceeding in Serbia.

As far as the MLA in judicial matters is concerned, Serbia is governed by international multi-lateral treaties and, bilateral treaties, or, in the absence of any international treaty, the MLA Law. In line with this piece of legislation Serbian authorities may provide a broad range of assistance and undertake all the actions to which they are empowered under domestic criminal procedure. Given that no restrictions are posed on application of Art.143 of the CPC upon foreign request, Serbia can provide assistance as required by Art.19(1) of the Convention.

Conclusion/Recommendation

Serbia has legislative measures in place to monitor transactions or operations also upon foreign request in line with the requirements of Art.7(2c) and 19(1). A potential shortcoming concerns the fact that, although most of the offences from the Appendix are subject to this measure, some of them appear yet to be out of the scope of Art.143 of the CPC. The authorities are therefore invited to make sure that the measure envisaged in Art.143 of the CPC is available for all offences listed in the Appendix.

In addition, Serbia is recommended to further develop case law and monitor the effective application of this legislative measure.

Slovak Republic

The Slovak Republic authorities made a reservation in accordance with Article 53, paragraph 2, and decided not to apply in whole the procedure under Article 7, paragraph 2, sub-paragraph c).
Whilst the authorities argued that CDD measures as provided by the AML/CFT legislation feature the elements of Art.7(2c) these are not, per se, measures that can ensure application of the respective requirements of this article of the Convention. CDD is primarily a preventive measure and, as such, is not sufficient to fulfil the requirements of Art.7(2c).

Article 19(1)

Given the declaration made under Art.7(2c) and while lacking explicit measures as foreseen by this article of the Convention, Art.19(1) is not applicable in the Slovak Republic.

Conclusion/ Recommendations

Slovakia made a reservation under Art.53(2) CETS not to apply Art. 7(2c).

The country is encouraged to consider if the declaration is still necessary and in case of a finding that it is not, to consider amending its legislation as appropriate.

Slovenia

In the 2020 questionnaire, the authorities indicated that the Slovenian AML/CFT Act (Article 98) empowers the FIU to issue requests for ongoing monitoring of a customer's financial transactions. In particular, the FIU "*may request in writing from the obliged entities, the ongoing monitoring of the financial transactions of a person in respect of whom there are reasonable grounds to suspect that money laundering or terrorist financing have been or are to be committed".* In return, the obliged entity shall provide the requested data to the FIU *"before the transaction or business has been effected*".

Regarding the time limits, the Article states that "*the application of the measure … may continue for no longer than three months"* with possible extension "*each time by one month, but for no more than six months in total*".

Slovenian Authorities advised that "all information gathered by the FIU (i.e. also from the monitoring of banking operations) is shared, in a timely manner, with LEAs and judiciary. Moreover Slovenian authorities also advised that in line with Article 156 (3) and (4) of CPC the monitoring of accounts may be ordered by the investigating judge *upon a reasoned proposal of the state prosecutor and that it may be ordered to a bank, savings bank, payment institution, electronic money institution or branch or agent providing payment services or electronic money or a company issuing, managing or operating virtual currency. The order concerns continuous monitoring of the financial operations of the suspect, defendant and other persons involved.*

Whereas it can be concluded that Slovenia has transposed Art.7(2c) in its legislation, no case law was provided to confirm the use of this measure in criminal investigations.

Article 19(1)

The AML/CFT Act (Article 106) empowers the FIU to submit data and information at the request of a foreign financial intelligence unit. Para 2 of the Article states that the FIU "*shall apply all authorisations available to it pursuant to the provisions of this Act"* if a foreign FIU requests for an information and documentation on an obliged entity. This general norm empowers the FIU to carry out all the measures available at national level at the request of another Party, including to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicate the results thereof to the requesting Party. Slovenian authorities also advised that if there was a case that a foreign LEA/judiciary requesting the monitoring of banking operations, this should be either communicated through the foreign FIU or on the grounds of a foreign MLA request. In the case of a request done by a foreign FIU there is no obstacle to execute the power of monitoring as may be seen from Article 113 AML/CFT law on diagonal exchange. Furthermore, in the case of an MLA request by foreign LEA/judicial authority, the above mentioned

provisions of Article 156 of the CPC apply as well on the basis of an extensive list of multilateral and bilateral treaties, including the Warsaw Convention, and for the EU Member States also on the basis of an European Investigation Order.

Conclusion/Recommendation

Slovenia has a mechanism in place, in the AML/CFT law, and the Criminal Procedure Code (CPC) to request the monitoring of financial transactions/banking operations. The measure is available for offences listed in the Appendix to the Convention.

Implementation of Article 19(1) is ensured through FIU to FIU cooperation. Additionally, an MLA request by foreign LEA/judicial authority to monitor banking operations would be executed in accordance with the CPC. Thus the legislation enables the execution of other States Parties MLA requests submitted by their LEAs/judiciary on monitoring of banking operations.

Spain

The Spanish authorities stated in their responses that the possibility to monitor banking operations of a given individual is doable in line with Article 11.2 d of the Data Protection Organic Law 15/1999 which declares that *"personal data that are the object of processing may only be communicated to a third party for the fulfilment of purposes directly related to the legitimate functions of the transferor and the transferee with the prior consent of the data subject"*. There is an exclusion in obligations to require the prior consent in such cases where a third party is "*Ombudsman, the Public Prosecutor's Office or the judges or courts or the Court of Auditors in the exercise of their functions*" including their regional offices.
Spanish authorities advised that there is no detailed regulation referring to who, upon request of whom, in which manner and during which period of time is empowered to carry out this measure. They also informed the COP that there are different legal instruments that allow for application of account monitoring by enforcement agencies and judicial parties (judges and public prosecutors) and that monitoring of banking operations is common practice in investigations. However, no case law was provided to confirm this practice. Therefore, rapporteurs have doubts whether and to what extent monitoring of banking operations can be applied in Spain. There were no statistics provided in this regard neither. It is also not clear from responses provided whether all offences from the Appendix to the Convention are covered.

Art 19(1)

With regard to Art.19(1) of the Convention, the Spanish authorities, *inter alia*, referred to Article 218 of the Mutual recognition Law (Law 23/2014): Execution of a European investigation order to obtain information on banking and other financial transactions.

This article states that the competent authority for the recognition and execution of a European Investigation Order shall provide the information on banking and other types of financial transactions in accordance with the Spanish law, unless the financial institution does not have such information.

Given the analysis of application of art. 7(2c) it appears that this provision depends on powers at national level to monitor the banking operations. Without reviewing relevant case law the rapporteurs have doubts whether Art. 19(1) is applied in Spain.

Conclusion/Recommendation

It appears that Spain does not have explicit provisions in place on the monitoring of banking operations. In absence of the relevant case law, the rapporteurs cannot conclude that Art.7(2c) could be applied in Spain.

The country is, therefore, recommended to consider ensuring more explicit and detailed provisions on applying monitoring of banking operations and ensure that the measure is applied to offences listed in the Appendix to the Convention. Consequently, it is recommended to extend the application of art. 218 of the Mutual recognition law (through this or any other piece of legislation and in the way the country deem appropriate) to non-EU COP States Parties.

Sweden

The Swedish authorities informed the COP, in their responses to the 2020 questionnaire, that the FIU, which is a part of LEAs in Sweden, is empowered to request information from financial institutions, as provided for in the AML/CFT Act, Chapter 4, Sections 6–7. Such requests are made as a part of intelligence activities and may be framed in a variety of ways, also covering a specific period of time. As regulated in the Banking and Financing Business Act (2004:297), Chapter 1, Section 11, the same power may be exercised by investigating officers (in the course of criminal investigation) and by public prosecutors - corresponding provisions on obligations to provide information are replicated throughout the financial legal framework, covering all financial institution. Information from financial institution may be requested continuously. Bank secrecy does not constitute an obstacle to criminal investigations or to provision of mutual legal assistance. It means that this measure may be applied by Swedish authorities on behalf of their foreign counterparts and results can then be communicated to them (see analysis on Art.19(1) below).

Analysing these legislative provisions, it appears, however, that monitoring of banking operations is not explicitly provided in the law. In addition, the authorities pointed out that, although there is a legal obligation for credit institutions to respond to LEAs' requests "without delay", the legal framework does not expressly refer to real-time monitoring of banking operations. Swedish Authorities explained, however, that the monitoring of banking operations is provided "implicitly and from other legal sources" and that in Swedish legislation "generally worded provisions are common" and "the validity of this principle has been confirmed e.g. by the ECJ in Case C-478/99, Commission v Sweden (2002) ECR I-4147".

On the other hand, the authorities provided case law which confirms that monitoring of banking operations is applicable in practice. Namely, the case presented to the COP (which is from 2014 and concerned the distribution of child pornography), the Swedish authorities were – through a comprehensive analysis of bank accounts – able to identify buyers and producers in five different countries. Whilst the joint investigative team was set up, the monitoring of banking transactions through a specific period of time (including the suspect's transactions through electronic payment services) enabled the investigative team to carry out the comprehensive analysis which led to arrests and prosecution of several persons.

The authorities also advised that approximately 50 000 requests for information are made annually under the Banking and Financing Business Act and corresponding financial regulations. This presents a total number of requests; hence it remains unknown whether and how many of these requests specifically required banks or other financial institutions to monitor operations during the specific period of time.

Given the arguments provided by the Swedish authorities, it may be concluded that, despite a lack of explicit provision in the legislation, monitoring of banking operations is applicable in Sweden in practice. Taking into account the specific institutional set up (e.g. FIU being a LEA) and the all crimes approach, applied by the country as well as the relevant case law presented by the authorities, it could be concluded that all the offences listed in the Appendix to the Convention could be investigated by using monitoring of banking operations as an investigative tool

Art 19(1)

According to the Swedish AML/CFT Act, Chapter 4, sections 6–7, the FIU is able to respond and communicate the result of an application of measures provided by the law upon request from a foreign counterpart. Apart from the EU Member States, the FIU can also exchange the information with Egmont members and may, if necessary, sign a Memorandum of Understanding.

Swedish authorities also advised that they can assist with a request from another state for monitoring of banking transactions under the same conditions as it would be carried out in a course of preliminary investigation initiated by Swedish authorities. The results would then be communicated to the requesting party. In accordance with Chapter 1, Section 2 paragraph 2 of the International Assistance in Criminal Matters Act (Annex D), a Swedish prosecutor can assist with measures, including monitoring of banking transactions, if it can be taken without using coercive measures or other coercive means. Thereby, Sweden can assist with a request from another state for monitoring of banking transactions.

The European Investigation Order Directive (2014/41/EU) has replaced the mutual legal assistance procedure when cooperation concerns EU member states. Therefore, in a case involving another EU member state, the European Investigation Order Act (2017:1000) is applicable. Sweden provided statistics concerning bank enquiries made in 2019 based on requests from other states and European investigation orders.
Given the afore-mentioned, and if read in conjunction with Art.7(2c) analysis, it appears that Sweden applies Art.19(1).

Conclusion/Recommendation

Sweden does not have explicit regulations/provisions in place but provides, in general terms, the possibility to monitor banking operations, as a specific investigative mean available to the FIU/LEAs, in practice. Whilst some general provisions on this matter do exist, as per Swedish legislative tradition which is often general rather than specific, the case law confirms that monitoring of banking operations is possible and that it has been used by LEAs/prosecutors. Given the general legal framework on MLA matters, it is concluded that there is a sound basis for application of Art.19(1) in Sweden.

Swedish legislation is based on an all-crimes approach and according to the information provided by their authorities all offences listed in the Appendix to the Convention could be investigated by using monitoring of banking operations as an investigative tool.
The country is encouraged to continue developing case law on application of Art.7(2c) and 19(1).

Türkiye

Türkiye's authorities, in their responses to the 2020 questionnaire, provided numerous provisions from the criminal and other codes which regulate protection of personal data and customer's secrets. As relevant for the purposes of this report, Article 28/1 of the Law on the Protection of Personal Data was also quoted. It stipulates that processing of the personal data by the "*judicial authorities or execution authorities with regard to investigation, prosecution, criminal proceedings or execution proceedings*" is an exemption from general rules which provide protection to these data.

Authorities also stated that the CPC (incl. Article 161/1) allows the investigators and prosecutors to obtain the afore-mentioned information directly or through law enforcement units and impose sanctions for not responding to requests for information within 10 days.
In other words, Public Prosecutor, during investigation phase, or a judge, during prosecution phase, may require the financial institution to provide relevant information on specific account's activity or to monitor the account during a period of time. However, the authorities did not provide a concrete article of the criminal/criminal procedure law that provides for a monitoring of banking operations. Only general norms regulating the obligation to provide responses to the prosecutorial/judicial authorities were quoted.

The authorities also referred to the AML/CFT legislation (Article 7(1)) which empowers MASAK (the FIU) to request all kind of information and documents from public institutions/organisations, natural/legal persons and unincorporated organisations.

Nevertheless, the rapporteurs consider that the legislation provided by the authorities in their responses does not include explicit reference to monitoring banking operations during a specified period that are being carried out through one or more accounts. In addition, no practical cases were provided to confirm the authorities' interpretation of the general norms they put forward for the purposes of this report.

Art 19(1)

As a general rule in Türkiye's legislation, sharing information with foreign countries regarding banking transactions within the scope of an investigation or prosecution, is provided in the multilateral contracts, bilateral contracts and is also guaranteed by the principle of reciprocity. Whereas various possibilities to provide MLA are quoted in the response provided to the COP (e.g. Law on International Judicial Cooperation in Criminal Matters No. 6706), the authorities also referred to several examples on cooperation with EU MS which included provisions of information from different bank accounts and transactions therein. However, none of these cases included a measure of monitoring banking operations upon request of another state - these cases include provision *of information upon request, and not an execution of a request to monitor banking operations during a specific period*. Consequently, and based on the analysis of Article 7(2c) above, it could be concluded that there is a lack of provisions which would ensure proper application of Art.19(1) at the moment.

Conclusion/Recommendation

Türkiye still needs to adopt legislative or other measures (i.e. to develop case law) to enable the competent authorities to monitor banking operations during the specific period of time, apply this measure and communicate the results of its application upon other States Parties requests. Therefore, the country is invited to adopt legislative measures and develop case law which would ensure proper application of Articles 7(2c) and 19(1).

Ukraine

Ukrainian authorities, in their responses to the 2020 questionnaire, referred to the CPC, which in their view, provides a proper legal basis for application of Art.7(2c). In particular Article 269-1 of the CPC ('Monitoring of Bank Accounts') stipulates that:

'If there is a reasonable suspicion that a person is committing criminal actions using a bank account; or for the purpose of search or identification of property, subject to confiscation or special confiscation in criminal proceedings, which fall within the competence of the National Anti-Corruption Bureau of Ukraine 5 (NABU), the prosecutor may apply to the investigative judge in the manner, as prescribed by Articles 246, 248, 249 of the CPC of Ukraine, for a decision to monitor bank accounts.'

Consequently, the law obliges the banks to provide the NABU with actual information on transactions carried out on one or more bank accounts. Information on the transactions on bank accounts also need to be forwarded to the NABU prior to carrying out respective operation, and in case it is impossible – immediately after its execution.

Confidentiality of this process is also embedded in the law. It can therefore be concluded that Ukraine has a legal basis for application of Art.7(2c).

The authorities did not however indicate if there are any restrictions to application of this measure – i.e. if any of the offences listed in the Appendix is exempted.

No case law was provided.

Art 19(1)

According to Article 561 of the CPC, in execution of a request for international legal assistance any procedural actions as provided for in the CPC of Ukraine or international treaties may be conducted upon request of a foreign party.

Also, if the procedural action requested by the foreign counterpart needs a permission of a public prosecutor or a court of Ukraine, such request, in accordance with the Article 562 Para 1 of the CPC, may be carried out only after such permission is obtained.
According to the legislation, the information concerning bank transactions/accounts, may be submitted at the request of a foreign competent authority in line with the CPC and upon approval by an investigative judge or a court.

In line with the AML/CFT Law, the FIU, among its competences, has a right to execute the respective request of the foreign counterpart and require the reporting entity to carry out

monitoring of the respective person's financial operations during a specified period and communicate the results accordingly (Article 31 Para 3(3)). This measure by the FIU may be applied when there are suspicion of ML/FT or financing of proliferation of weapons of mass destruction, or in cases related to the commission of a publicly dangerous act that resulted in the receipt of criminal proceeds.

Conclusion/Recommendation

Ukraine has a sound legal framework for application of Articles 7(2c) and 19(1). However, the rapporteurs could not conclude if the monitoring of banking operations is available for all offences listed in the Appendix to the Convention, given that the relevant criminal proceedings must fall within the competence of NABU. Ukraine is therefore recommended to ensure that all offences from the Appendix are covered. The country is invited to further develop case law and apply the respective provisions in practice.

United Kingdom

United Kingdom legislation – i.e. Proceeds of Crime Act, in its Section 370 provides for monitoring of banking operations - a judge may, on an application made to him by an appropriate officer, make an account monitoring order if he is satisfied that each of the requirements for the making of the order is fulfilled.
The application for an account monitoring order must state that a person specified in the application is subject to a confiscation or a money laundering investigation. In addition, the application must also state that the order is sought for the purposes of the investigation; and that the order is sought against the financial institution specified in the application in relation to account information of the description so specified.
In addition, the Section specifies that account information is information relating to an account or accounts held at the financial institution as provided in the application and may also specify (i) information in relation to all accounts held by the person specified in the application for the order at the financial institution so specified; (ii) a particular description, or particular descriptions, of accounts so held, or (iii) a particular account, or particular accounts, so held.
The period stated in an account monitoring order must not exceed 90 days beginning with the day on which the order is made.
Apart from ML and confiscation cases, Section 371 of POCA states that monitoring can be applied 'in the case of any investigation, where there is a reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought, or where there are reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained. Consequently, it may be concluded that, although indirectly, all offences listed in the Appendix to the Convention are covered.

No case law was provided.

Art.19(1)

UK legislation also provides basis for application of monitoring of banking operations upon foreign request. For acting on external investigations (overseas requests) three pieces of legislation are relevant for account monitoring orders:
(i) The Proceeds of Crime Act 2002 (External Investigations) Order 2013 (articles 29 and 63). This Order makes provision to assist external investigations relating to civil recovery. This Order makes provision for the whole of the UK.
(ii) The Proceed of Crime Act 2002 (External Investigations) Order 2014 (article 29). This Order makes provision to assist external investigations relating to criminal proceedings or investigations. This Order makes provision for England, Wales and Northern Ireland.
(iii) The Proceeds of Crime Act 2002 (External Investigations) Order 2015 (article 29). This Order makes provision to assist (in Scotland) with external investigations relating to criminal proceedings or investigations.

Conclusion/Recommendation

UK has a sound legal framework for application of Articles 7(2c) and 19(1). UK authorities are therefore encouraged to apply these provisions in practice.