



Strasbourg, 10 November 2023

C198-COP(2021)17

## **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 Article 10 (1 and 2), (“Corporate Liability”)<sup>1</sup>**

---

<sup>1</sup> Examined and adopted by the Conference of the Parties to CETS No. 198 at its 13 meeting, Strasbourg, 17-18 November 2021. Amended in 2023 following the ratification of the CETS 198 by Estonia.

INTRODUCTION.....	4
Scope of Article 10 (paragraphs 1 and 2).....	4
Methodology.....	6
Summary .....	7
Effective implementation .....	9
Recommendations and follow-up.....	9
COUNTRY REVIEW .....	11
Albania .....	11
Armenia.....	12
Austria.....	13
Azerbaijan .....	14
Belgium .....	14
Bosnia and Herzegovina.....	16
Bulgaria .....	17
Croatia.....	19
Cyprus .....	20
Denmark.....	21
Estonia.....	23
France.....	24
Georgia.....	25
Germany.....	26
Greece .....	27
Hungary.....	27
Italy .....	28
Latvia.....	30
Lithuania .....	30
Malta .....	31
Republic of Moldova .....	33
Monaco .....	34
Montenegro .....	35
The Netherlands.....	36
North Macedonia .....	37
Poland .....	38
Portugal.....	39
Romania .....	40
Russian Federation.....	42

San Marino.....	43
Serbia .....	43
Slovak Republic .....	44
Slovenia .....	45
Spain.....	46
Sweden.....	48
Türkiye .....	48
Ukraine.....	49
United Kingdom .....	50

## INTRODUCTION

1. The Conference of the Parties (hereinafter: “the COP”), at its 9<sup>th</sup> 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 11<sup>th</sup> meeting of the COP (held in October 2019) decided to prolong the application of a horizontal monitoring for the next five years (i.e. until 2024). Such review looks 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 12<sup>th</sup> meeting, decided that the fourth thematic monitoring would deal with Article 10, paragraphs 1 and 2 of the Warsaw Convention.
3. Subsequently, in December 2020, a questionnaire was circulated, and the States Parties were asked to reply by 10 March 2021. The responses received were analysed by the Rapporteurs Mr Johnathan Phyll (Malta) and Ms Hasmik Musikyan (Armenia) 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 necessary to ensure that legal persons can be held liable for the criminal offence of money laundering (ML) committed for their benefit by any natural person acting individually or as a part of the organ of the legal person and who has a leading position within the legal person. Leading position has been defined as a power entrusted to a natural person to represent a legal person, take decisions on its behalf or exercise control within the legal person. Furthermore, the report analyses whether State Parties have measures enabling the responsibility of the legal person in case the natural person is involved as accessory or instigator. Finally, the report seeks to determine the extent to which State Parties can hold legal persons liable for the money laundering offence committed due to the lack of supervision or control by a natural person who holds a leading position.
5. The report commences with laying out the scope of Article 10 (1 and 2) 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.

### **Scope of Article 10 (paragraphs 1 and 2)**

6. Article 10 of the CETS N°198 addresses the issue of the corporate liability for money laundering offences. In particular, it establishes (i) the liability of a legal person for a money laundering (ML) offence committed on its behalf and for its benefit (ii) the liability of the legal person for a ML offence committed due to the lack of supervision or control. In particular, Article 10, paragraphs 1 and 2, states:
  - (1) *Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal*

person, who has a leading position within the legal person, based on: a) a power of representation of the legal person; or b) an authority to take decisions on behalf of the legal person; or c) an authority to exercise control within the legal person, as well as for involvement of such a natural person as accessory or instigator in the abovementioned offences.

(2) Apart from the cases already provided for in paragraph 1, each Party shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of the criminal offences mentioned in paragraph 1 for the benefit of that legal person by a natural person under its authority”

7. Liability of legal persons can be particularly valuable for the effective fight against money laundering. Reports of different monitoring mechanisms (MONEYVAL, FATF, COP 198) show that criminals (ab)use corporations, charities and businesses to launder their illicit gains. These reports also signal that competent authorities have not achieved good results in pursuing criminal offences committed by legal persons. On the other hand, numerous typologies show that criminals frequently use corporations to carry out sophisticated ML schemes which enable them to avoid any liability, by disguising their individual involvement in crime through the ‘collective’ decision-making process attached to a legal person. They also rely on the weaknesses in systems of sanctioning legal persons and confiscation of their illicit gains.
8. International fora have recognised the importance to hold legal persons liable when offences are committed on their behalf and for their benefit. Corporate liability envisaged in Article 10 of the Convention presents one of the international standards in this area, together with those embedded in the Council of Europe Criminal Law Convention on Corruption<sup>2</sup> or the Second Protocol to the European Union Convention on the Protection of the financial interest of the European Community of 19 June 1997<sup>3</sup> (i.e. its Article 3), supporting the recognition of the corporate liability for ML offences. EU Directive 2018/1673<sup>4</sup>, also discusses this matter and its Article 7 very much resembles the requirements of Article 10 of the Convention. Criminal liability of legal persons or, in case this is contrary to the fundamental principles of domestic law, their civil or administrative liability is, *inter alia*, a subject of the FATF Recommendations 3 and 5<sup>5</sup> (i.e. standards concerning ML and TF offences). Nevertheless, Article 10 of the Warsaw Convention goes beyond the requirements of the FATF Recommendations 3 and 5, whilst the added value of Article 10 vis-à-vis these recommendations is further discussed in the paragraphs below.
9. Article 10 provides that legal persons shall be held liable for the money laundering offence. Even though Article 2 of the Warsaw Convention, as well as the Explanatory Report on Article 10 state that the liability of legal persons should extend to the financing of terrorism offences, this cannot be concluded solely from the wording of the Article 10. Namely, Article 10 clearly requires establishing the liability of legal persons ‘for criminal offences of ML established in accordance with this Convention’. Similarly to what the FATF Recommendation 3 provides, the Convention does also not limit, i.e. does not oblige States Parties to establish the *criminal* liability, but provides the possibility for the State Parties to introduce one or more other forms, such as *civil* or *administrative* liability if the

---

<sup>2</sup> <https://rm.coe.int/168007f3f5>

<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A133019>

<sup>4</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2018.284.01.0022.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.284.01.0022.01.ENG)

<sup>5</sup> <https://www.fatf-gafi.org/publications/mutualevaluations/documents/fatf-methodology.html>

criminal liability would be in contrary to the fundamental principles of their legal systems. It should be made clear however that, by a virtue of this provision, States Parties undertake to establish some form of liability for legal persons engaged in money laundering practices (see also Explanatory Report to the Convention – paragraph 105).

10. To hold a legal person liable, the Convention stipulates three conditions which shall be met: (1) the money laundering offence must be committed; (2) the offence shall be committed for the benefit of the legal person; and (3) the offence shall be committed by any natural person who has a leading position within the legal person. The third condition, which serves to limit the scope of this form of liability, requires the involvement of "any person who has a leading position". The leading position can be assumed to exist in the three situations described – a power of representation or an authority to take decisions or to exercise control - which demonstrate that such a physical person is legally able to engage the liability of the legal person. The Explanatory Report further notes that the liability should be established if the offence was committed either on behalf or for the benefit of legal persons.
11. It should be noted that paragraph 1 of Article 10 requires State Parties also to introduce legislative or other measures to provide for the liability of legal persons in case a natural person acted as an instigator or accessory. In this case, the same requirements (*money laundering offence must be committed for the benefit and on the behalf of the legal person by any natural person who has a leading position within the legal person*) need to be met to hold a legal person liable. However, the natural person in such case is not acting as a main perpetrator of the ML offence, rather he/she has a role of an accessory or instigator.
12. Liability of legal persons for money laundering offences committed due to the lack of supervision or control is envisaged in paragraph 2 of Article 10. The Explanatory Report provides further explanation of this requirement. The aim of this provision is to hold legal persons liable for the omission by a person in a leading position to exercise supervision over the acts/doings committed by a subordinate person acting on behalf of the legal person.
13. For the purposes of this thematic monitoring report, the implementation of Article 10, paragraphs 1 and 2, was assessed through a combination of factors, such as examining the manner in which the provisions were transposed into the respective legislative frameworks, as well as through exploring case law and relevant statistics.

## **Methodology**

14. The 'Questionnaire for the Transversal Monitoring of States Parties' Implementation of Articles 10 (1 and 2) of the CETS No. 198' requested responses to the following questions:
  - (1) How are legal persons held liable for criminal offences of money laundering in respect of criminal offences of money laundering established in accordance with the CETS No. 198 committed for their benefit by any natural person, acting either individually or as a part of an organ of the legal person, who has a leading position within the legal person based on:
    - a) a power of representation of the legal person; or
    - b) an authority to take decisions on behalf of the legal person; or
    - c) an authority to exercise control within the legal person,as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences.

(2) How is the notion of corporate liability applied to legal persons in instances where lack of supervision or control by a natural person who has a leading position in the legal person has made possible the commission of the criminal offences in paragraph 1 for the benefit of that legal person by a natural person under its authority?

Delegations were asked to provide 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 statistics. Rapporteurs and the COP Secretariat have also used the previous country specific reports adopted by the COP198<sup>6</sup> as well as those adopted by MONEYVAL/FATF to prepare the analysis of the States Parties' compliance with the afore-mentioned article of the Convention.

15. This horizontal review includes information on 38 COP States Parties. The responses 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 their implementation of Article 10.

## **Summary**

16. From the assessment on implementation and application of Article 10 (1 and 2), several general findings could be drawn. Pursuant to the relevant domestic provision as well as additional information provided on case law and statistics, the findings of the report are aimed at contributing to enhanced understanding of Article 10. State specific conclusions can be found in the respective analysis of each State Party.

17. The provisions of Article 10 (paragraphs 1 and 2) have been fully transposed in 17 State Parties (Azerbaijan, Cyprus, Croatia, Georgia, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Republic of Moldova, Romania, Portugal, San Marino, Serbia, Slovak Republic and Sweden) whilst 19 State Parties have implemented these provisions to different degrees. One State Party has not transposed the provisions of Article 10 in its legislation.

### **Article 10 (1)**

18. The Questionnaire on paragraph 1 of Article 10 inquired whether or not the relevant State Party holds a legal person liable for criminal offences of money laundering established in accordance with the CETS No.198 committed for their benefit by any natural person, acting either individually or as a part of an organ of the legal person, who has a leading position within the legal person as well as for involvement of such natural persons as accessory or instigator. In general, the report found that, out of 38 State Parties, all but one (i.e. 37 of them) introduced the liability of legal persons for ML offence.

19. However, it became apparent that the transposition of Article 10 (1) into domestic legislation differ considerably among the States Parties and not all of them entail the full scope of requirements stipulated by this provision. 28 State Parties (Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Hercegovina, Croatia, Cyprus, Denmark, France, Georgia, Greece, Italy, Latvia, Lithuania, Malta, Republic of Moldova, Monaco, Montenegro, Netherlands, Portugal, Romania, San Marino, Serbia, Slovak Republic, Spain, Sweden and UK) have transposed all the elements required (from a) to c)) with regard to the natural person who has a leading position within the legal person (see also paragraph 6(1) of this report).

---

<sup>6</sup> <https://www.coe.int/en/web/cop198/implementation/reports>

20. The liability of legal persons for an offence committed by a natural person acting as accessory or instigator is envisaged in 28 out of 38 State Parties (Armenia, Azerbaijan, Bosnia and Hercegovina, Bulgaria, Croatia, Cyprus, Denmark, Georgia, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Monaco, Republic of Moldova, Romania, the Netherlands, North Macedonia, Poland, Portugal, Romania, San Marino, Serbia, Slovak Republic, Sweden, Türkiye, Ukraine). The majority of the States Parties introduced this provision through the general provisions of their criminal codes which define complicity when committing a criminal offence. Other State Parties have not provided information on this element of Article 10(1) or did not incorporate it into their legislation.
21. As it could be observed from the 'Country Review' section of the report, for Article 10(1) different State Parties undertook different approaches to apply it in their legislative framework. The vast majority of State Parties apply the criminal liability of legal entities, whilst few State Parties still opt for administrative liability. Furthermore, in some countries a pre-condition for holding a legal person liable is to have a prior identification and charges against a natural person who committed an offence on behalf of a legal person (the so called "identification liability model"). From the Explanatory Report it is clear that the Convention aims to establish a system of corporate liability, which would enable countries to prosecute ML/TF offences independently of the prosecution of the natural person. Practice had revealed serious difficulties in prosecuting natural persons acting on behalf of the legal persons involved in ML/TF offences, especially in business transactions. A forceful argument of the Explanatory Report was the fact that sometimes legal persons escape the liability of natural persons involved due to their collective decision-making process.
22. In some States Parties, legal provisions were not explicit enough in defining a person with a leading position within a legal person. The conclusions by the authorities as expressed in the 2021 Questionnaire on what this term encompasses were mostly based on their interpretation and understanding of the relevant legal provisions. Often, these interpretations were not confirmed in practice or no information on this has been made available by these States Parties for the purposes of this report.

#### **Article 10 (2)**

23. With regard to the second paragraph of Article 10, the questionnaire required the States Parties to respond whether the notion of corporate liability is applied to legal persons in instances where lack of supervision or control by a natural person who has a leading position within the legal person has made possible the commission of criminal offences for the benefit of that legal person by a natural person under its authority. This report observed different approaches by the States Parties in applying Article 10(2) of the Convention. For example, in Belgium, specific legal norms, if read and interpreted together with their travaux préparatoires clarify that criminal liability of the legal person can be established based on the conduct resulting from an intentional decision taken within the legal person or from negligence within the legal person. Indications of negligence on the part of the legal person will include poor internal organisation, lack of training or supervision of its staff, and/or unreasonable budgetary restrictions by the legal person. In the Netherlands, the relevant jurisprudence (Zijpe case) provides for corporate criminal liability in cases when "the behaviour was under the control of, accepted or deemed to have been accepted, or failed to have been prevented by the company". In some States Parties (Italy, Spain) the liability could be excluded in cases a legal person effectively implemented its "compliance programme". These programmes aim at preventing the type of offence which an individual has nevertheless committed by fraudulently circumventing the compliance



program. In order to be exempted from a liability, the entity is also required to have allocated the task of ensuring the implementation and observation of the program's application to a unit with autonomous powers of initiative and control.

24. The analysis of the responses provided concluded that 24 States Parties transposed, in different forms, this requirement into their corporate liability regimes. These are: Albania, Austria, Azerbaijan, Belgium, Cyprus, Estonia, Georgia, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Republic of Moldova, Romania, Monaco, Portugal, San Marino, Serbia, Slovak Republic, Slovenia, Spain and Sweden. 7 State Parties transposed this requirement only partially (Armenia, Bosnia and Herzegovina, the Netherlands, North Macedonia, Poland, Slovenia and Ukraine). Other 8 State Parties have not implemented the requirement of Art. 10(2) of the Convention or have implemented it to a very limited extent (Bulgaria, Croatia, Denmark, France, Montenegro, Russian Federation, Türkiye and UK).

### **Effective implementation**

25. Along with the existing legislative provisions, the State Parties were also asked to demonstrate the effective implementation of Article 10 (1 and 2) of the Warsaw Convention either through the relevant statistics or case studies. 4 State Parties were able to demonstrate an effective implementation of the corporate liability regime for ML cases (the Netherlands, France, San Marino, Portugal), while other 13 State Parties have demonstrated effectiveness to a certain extent (Bosnia and Herzegovina, Croatia, Denmark, Estonia, Georgia, Greece, Hungary, Latvia, Lithuania, Moldova, Romania, Serbia, Spain, Türkiye) through provision of case law or statistics for ML offence. 11 State Parties have presented the information on the existing investigations and prosecutions for ML offence or convictions for other offences, which illustrates that the corporate liability regime is applied in these jurisdictions (Albania, Bulgaria, Cyprus, Italy, Malta, Montenegro, North Macedonia, Portugal, Slovak Republic, Slovenia, Ukraine). Other State Parties did not provide case law or statistics relevant for the application of Article 10 of the Convention.

### **Recommendations and follow-up**

26. A number of general recommendations can be drawn from the summary findings above. As already noted, the application of the provisions of Article 10 varies among States Parties. Consequently, the State Parties are invited to follow up and ensure proper implementation of these recommended actions.
27. While country specific recommendations are included in the individual country analysis of this report, these recommendations should be read and implemented in conjunction with general observations and recommendations as set out below.
28. With the aim to enable better implementation of Article 10 (1 and 2) as well as to strengthen its effective implementation in practice, those States Parties which have not yet done so, are recommended to adopt legislative or other measures in order to:
- hold legal persons liable for ML offences committed for their benefit and on its behalf by the natural person who has the leading position; States Parties in which a liability of natural person is a precondition for holding legal persons liable, should amend their legislation and no longer apply this principle;

- have a clear definition in their legislation on the scope of the leading position of the natural person based on the power of representation, authority to take decisions or to exercise control, or in case there are any ambiguities in the relevant provisions on this matter, clarify this through case law or specific guidance;
- ensure liability of the legal person for the offence committed by the natural person acting as accessory or instigator;
- hold legal persons liable where the lack of supervision or control within the legal person constitute the commission of a ML offence;

29. For the purpose of an effective application of Article 10 (1 and 2) States Parties are strongly encouraged to take additional steps to facilitate the use of corporate liability mechanisms by judicial and law enforcement authorities (guidance documents, instructions etc.) in money laundering cases, in the various circumstances envisaged by Article 10 of the Convention (including in case of lack of supervision or control).

30. States Parties are encouraged to implement both the above-mentioned general recommendations and the country-specific recommendations (see 'Country review' below).

## COUNTRY REVIEW

### Albania

#### *Article 10 (1)*

1. Albania has undergone the COP assessment in 2011. The rapporteurs considered that the language of article 3 of the Law on the Criminal Liability of Legal Persons (“...*legal persons shall be liable for the offence committed on its behalf and for its benefit by representatives...*”) was in line with Article 10 (1) of the Convention. Furthermore, it was noted that the definition of the representatives of the legal person covers all the categories of natural persons who have a leading position as set forth by the Convention’s provision. In their response to the 2021 Questionnaire, the competent authorities reiterated the abovementioned Article 3 of the Law on Criminal Liability of Legal Persons, meaning that the conclusion on its application remains the same as the one from the 2011 COP assessment.

2. However, neither the 2011 report nor the responses to the 2021 Questionnaire informed whether the legal person shall be held liable for the offence of the natural person acting as accessory or instigator in a ML offence. Consequently, it could only be concluded that this element is not included in the legislation.

#### *Article 10 (2)*

3. The COP Assessment report from 2011 noted that the Albanian legislation did foresee the criminal liability of legal persons where the lack of supervision or control of natural person had made possible the commission of a criminal offence for the benefit of a legal person. Namely, it was covered by Art. 3(c) of the Law on criminal liability of legal persons, which stated that a legal person can be held liable due to the “*lack of control or oversight*” by a natural person directing, representing or administering the legal person.

4. Since the last assessment, no amendments to the relevant legal framework have been made, and therefore the conclusion on its application remains the same as reached through the 2011 COP assessment.

#### ***Effective implementation***

5. Authorities provided one case example of prosecution of legal persons for a ML offence, but the case is still pending before the court. In addition, statistics have been provided on the number of the criminal proceedings initiated against different legal entities. However, it is not clear if these statistics concern ML offences. The 2018 MONEYVAL mutual evaluation report on Albania stated that no exact or approximate figures had been disclosed to the assessment team on the cases of liability of legal persons for ML. Therefore, it can be concluded that Albanian authorities do apply to a certain extent Article 10 (1 and 2) of the Convention, whereas the level of its effective implementation cannot be assessed given the limited information received from the authorities.

#### ***Conclusion/Recommendation***

6. The Albanian legislation is largely compliant with Article 10 (1 and 2) of the CETS N°198. However, legal persons are not held liable for the offence of the natural person acting as accessory or instigator in a ML offence. The authorities are therefore invited to address this shortcoming and amend the legal provisions accordingly. In addition, they are recommended to consider raising awareness among law enforcement and judicial authorities on the legislative framework on criminal liability of legal persons and its application. The authorities should therefore take steps to facilitate the use of corporate liability mechanisms in the various circumstances envisaged by Article 10 of the Convention (including in case of lack of supervision).

## Armenia

### Article 10 (1)

1. Armenia has undergone the COP assessment in 2016, where it was noted that the administrative liability of a legal entity was envisaged when the offence had been committed by its representative for the benefit and on behalf of the legal person (Article 31 of the AML/CFT law). The rapporteurs stated that the scope of application of corporate liability was extended to any representative, including those holding a leading position, who acted or failed to act for the benefit or on behalf of the legal person. However, no jurisprudence was presented to confirm such interpretation of the relevant norms. Furthermore, the report concluded that it was possible for a legal person to be held liable in case a natural person acted as instigator or accessory.

2. In the responses to the Questionnaire, the authorities indicated that the legal reform with regard to the liability of legal entities for criminal offences were introduced in 2021. In particular, amendments to the Criminal Code have been adopted introducing the concept of criminal corporate liability in cases where a crime was committed *on behalf* and *for the benefit* of the legal entity, by a natural person *authorized to influence the activities or decisions* made by a legal person or by its representative. No details were provided as to whether a natural person authorised to influence the activities or decisions made by a legal person or its representative is interpreted broad enough to cover all requirements of Art.10(1). It also needs to be noted that these amendments will enter into force in 2023. Given these facts, the rapporteurs conclude that the situation remains as it was at the time when the 2016 report was adopted.

### Article 10 (2)

3. In the 2016 COP Assessment Report on Armenia it was stated that Art. 31 of the AML/Law covered the liability of legal persons when the offence *was committed due to failure to act* by any representative of the legal person. The rapporteurs were of the opinion that the country would benefit from further clarification to ensure that the provisions encompass cases of lack of supervision.

4. According to the updated information submitted by the authorities in their responses to the 2021 Questionnaire, amendments to the Criminal Code will further clarify this matter. Since these amendments are not yet in force, the conclusion reached by the 2016 assessment remains valid.

### **Effective implementation**

5. In the absence of additional information on the cases of application of corporate liability for ML, the rapporteurs can only reiterate the findings of the 2016 assessment –the lack of effective application of corporate liability in the Republic of Armenia.

### **Conclusion/Recommendation**

6. Armenian legislation foresees the administrative liability of legal entities for ML offences which is generally in line with the requirements of Art. 10 (1 and 2) of the Warsaw Convention. With the aim to address remaining deficiencies, the authorities undertook a legislative reform and inform the rapporteurs on the content of the amendments to the CC. Whilst the amendments are to enter into force in 2023, this report will reiterate relevant recommended actions of the 2016 COP assessment where authorities were recommended to undertake legislative or other measures as may be necessary to (i) ensure that the concept of representation under Art. 31 of the AML/CFT Law is applied in line with the requirements of

the Convention and that it encompasses persons acting as part of an organ of the legal person (unimplemented recommendation of the 2016 COP assessment report) and (ii) enable the liability of legal entities for the offence committed due to the lack of supervision or control. Furthermore, it appears that there is still a lack of effective application of corporate liability for money laundering offences and therefore, it is recommended to raise awareness of the law enforcement and judiciary and take steps to facilitate the use of corporate liability mechanisms in the various circumstances envisaged by Article 10 of the Convention (including in case of lack of supervision). In addition, the Armenian authorities are encouraged to address any possible questions that may already be surfacing with respect to the amendments carried out to the Criminal Code.

## **Austria**

### *Article 10(1)*

1. According to the authorities, Austrian legislation provides for a general criminal liability of legal persons for all criminal offences (including money laundering) committed on their behalf and by representatives (Federal Statute on Responsibility of Entities for Criminal Offences). These representatives can be individuals, ranging from leading positions with decision-making power (section 2, paragraph 1 of the VbVG) or by other “staff” (section 2, paragraph 2 of the VbVG). The notion of representatives is wide as it includes bodies who are legally or statutorily obliged to take decisions (managing directors, an executive board member of whoever is authorized in a comparable manner to represent the entity vis-à-vis third parties), or exercise control (a member of the supervisory board or board of directors) or a person exercising relevant influence on the management of the entity (section 3, paragraph 1 of the VbVG). However, the relevant provisions were not provided.

2. Authorities did not provide responses on whether the provisions of their national legislation provide for a liability of a legal person when an offence is committed by a natural person acting as an accessory or instigator.

### *Article 10(2)*

3. The liability of legal persons for ML offences committed by other staff is subject to the condition that the “commission of the offence was made possible or considerably easier due to the fact that decision-makers failed to apply the due and reasonable care required in the respective circumstances, in particular by omitting to take material, technical, organization or staff-related measures to prevent such offences” (section 3, paragraph 3 of the VbVG).

### ***Effective implementation***

4. Authorities provided statistics for the period of 2014-2020, for all offences. It cannot be determined how many legal persons were convicted for ML offences.

### ***Conclusion/ Recommendation***

5. From what was observed from inputs and quotes on national legislation provided in the Questionnaire, Austria has adopted measures which introduce the liability of legal persons for the ML offence as foreseen by Art. 10(1). With regards to the implementation of Art. 10(2), the legislation foresees the liability of legal persons in instances where it is established that a lack of supervision or control by the natural person holding decision-making powers made possible or considerably easier the commission of the offence. In addition, the authorities are encouraged to continue developing cases on criminal liability of legal persons for ML offences.

## Azerbaijan

### Article 10(1)

1. In their responses to the 2021 Questionnaire, the authorities indicated that criminal liability of legal persons is envisaged in Chapter 15-2 of the Criminal Code (Art. 99-4.1) of Azerbaijan. Legal persons are liable for money laundering if the offence is committed in favour of a legal person or to protect its interests. A legal person shall be liable if the offence is committed by a natural person (i) authorised to represent the legal person, (ii) has the power to take decisions on behalf of the legal person or (iii) has the power to control the activities of the legal person. The scope of authority of the natural person authorised to represent a legal person in Azerbaijan is in line with the requirements of Art. 10 (1).

2. The liability of legal persons is envisaged even in cases where the natural person who has a leading position has acted as an accessory or instigator in the commission of a criminal offence (Criminal Code Art. 32).

### Article 10 (2)

3. Criminal liability of legal persons, in case an offence was committed due to the lack of supervision or control by a natural person, is regulated by Art. 99-4.1.4 of the Criminal Code. Legislation envisages that the legal person shall be criminally liable if the offence was committed by the employee as a result of non-performance of supervision by officials.

### **Effective implementation**

4. Azerbaijani authorities stated that no case examples are available to confirm the application of the provisions of the liability of legal persons for money laundering offences. Even though, the liability of legal persons for the criminal offence is in force since 2018, it appears that the relevant provisions have not yet been applied in practice.

### **Conclusion/Recommendation**

5. Azerbaijan adopted legislative measures in line with the requirements of Art. 10 (1 and 2). This notwithstanding, the relevant provisions are yet to be fully applied. Therefore, the competent authorities are recommended to raise awareness among law enforcement agencies and judiciary about corporate liability and take additional steps to facilitate the use of corporate liability mechanisms (prepare guidance documents, instructions etc.) in money laundering cases, in the various circumstances envisaged by Article 10 of the Convention.

## Belgium

### Article 10 (1)

1. Belgium has undergone the COP assessment in 2016 and its follow up procedure in 2018. The rapporteurs noted that Belgium recognised the criminal liability of legal persons when one of the three conditions are met: the offence was (i) intrinsically linked to the legal person's interests or (ii) its defence or when there was (iii) tangible evidence that the offence was committed on its behalf (Art. 5 CC). Further to this assessment, in 2018 amendments to the Criminal Code were made and Art. 5 of the Criminal Code was changed. Nevertheless, the new provisions maintain the legal features of the former corporate liability regime. As described by the 2016 COP assessment report on Belgium, additionally to the specific elements related to the offence, three alternative conditions (see above) must be met, in order for the legal person to be held liable. According to the explanations provided by the Belgium authorities, the wording of Art. 5 of the Criminal Code provides for an autonomy between the liability of the legal person and that of the natural person, thus ensuring that acts committed by a natural person, which do not fulfil one of the above-mentioned conditions, when

committed for their own interest/benefit, do not entail the liability of the legal person. The 2018 amendments of the Criminal Code (Art. 5 (3)) also provide for the possibility of cumulative liability of the natural and legal persons: “the criminal liability of legal persons does not exclude the liability of natural persons who are perpetrators of the same acts or who have participated in them.”

2. Art. 5 of the Criminal Code does not specify the categories of natural persons set forth by the Convention under the definition of “natural person who has a leading position within the legal person”. Pursuant to the explanation of the Belgium authorities, the law does not distinguish between various categories (director, agent, any employee) in order to avoid any limitations for the liability of the legal person. Nevertheless, as it was acknowledged by the 2016 COP assessment report on Belgium, a non-exhaustive list of criteria can be inferred from the jurisprudence, which were considered to be compatible with the Convention:

- an offence committed by someone representing the legal person,
- an offence ordered, directed or accepted by the legal person’s de facto management,
- negligence by the legal person, with a casual relationship to the offence: defective internal organisation, inadequate security rules, unreasonable financial constraints (or lack of measures to ensure compliance with social obligations).

3. No explanation was provided by the Belgium authorities on how the legislation covers the situations of involvement of the natural person with a “leading position” as accessory or instigator for the commission of the offence, as a factor for triggering the liability of the legal person. Therefore, this particular requirement of the Convention seems not to have been covered by the country’s legislation.

#### *Article 10 (2)*

4. Art. 5 of the Criminal Code gives the possibility to hold a legal person liable for any type of offence. The 2016 COP assessment report on Belgium explains that “*two elements are necessary to establish any person’s liability, a mental one (intention or negligence) and a material one. The courts are empowered to assess the mental element with reference to the attitude of the legal person’s organs, which may not necessarily correspond to identifiable individuals.*”. Although, the article does not make a specific reference to situations when a lack of supervision or control by the natural person can determine the liability of legal persons, the *travaux préparatoires* of the Criminal Code of 1999 (provided by Belgium within the framework of the 2016 Follow-up report and in the replies to the 2021 Questionnaire), indicate the coverage of such situations. The interpretation given by these documents clarifies that criminal liability of the legal person can be established based on the conduct resulting from an intentional decision taken within the legal person or from negligence within the legal person. Indications of negligence on the part of the legal person will include poor internal organisation, lack of training or supervision of its staff, and/or unreasonable budgetary restrictions by the legal person. In addition, negligence may also result from passivity in the face of very specific circumstances, or from inadequate responses. Consequently, requirement of Art.10(2) is applied in Belgium.

#### ***Effective implementation***

5. The 2016 COP assessment report concluded on an effective implementation of the Art. 10 of the Convention based on a “*constant rate of criminal inquiries and investigation of legal persons for money laundering*”. Nevertheless, for the period following the 2016 assessment, Belgium indicated a lack of statistics and case law. The invoked reason, i.e. the recent enactment of the new 2018 law, cannot be accepted as the provisions of Art. 5 establishing



the corporate criminal liability, after the amendments, have not changed the main characteristics of the former criminal corporate regime.

### **Conclusion/Recommendation**

6. It can be concluded that Belgian legislation and the established jurisprudence ensure the implementation of the requirements established under Art. 10(1) and (2) of the Convention. The issue regarding the acts of the natural person with a leading position as accessory or instigator, as a precondition for the corporate liability, still needs to be clarified and/or addressed by the country.

It remains unclear why the new Art. 5 of Criminal Code on the liability of legal persons has impacted the previously achieved effectiveness of the regime (before 2016). The new wording preserved the same three alternative conditions which have to be met, in order to hold a legal person liable and the rapporteurs do not see a particular reason why the authorities could not demonstrate effective application of the law since 2016. Therefore, the Belgian authorities are recommended to assess what are the obstacles that impede obtaining convictions of legal persons, including in ML cases, after the entry into force of the provisions of Art. 5 of the Criminal Code.

### **Bosnia and Herzegovina**

#### *Article 10(1)*

1. Bosnia and Herzegovina was assessed by the COP in 2015. Rapporteurs noted that criminal liability of legal persons was envisaged at all state levels (Federal level, Republic of Srpska, and Brčko District) and provisions were harmonized. It was concluded that Article 10 paragraph 1 was adequately covered.

2. This notwithstanding, in the 2015 assessment report there was no analysis as to whether legal persons could be held liable in case a natural person is involved as accessory or instigator. In their responses to the 2021 Questionnaire, the authorities informed that all four Criminal Codes enclosed general provisions on complicity (Art.31-33 of CC Federation, art. 29-31 of CC BiH, Art. 37-39 of RS and Art. 31-33 of CC BD) which indicates that if natural persons act as instigator or accessory it can trigger the liability of the legal person. Consequently, the rapporteurs are of the view that the legislation of Bosnia and Herzegovina does comply with this specific requirement of Art.10(1).

#### *Article 10(2)*

3. In the 2015 Report it was noted that, unlike the scope of Art. 10 (2) of the Convention, the legislation of Bosnia and Hercegovina was limited to the cases when the managerial or supervisory bodies of the legal person fail to carry out due supervision over the legality of work of the employees. The report also emphasised that Article 10 paragraph 2 of the Convention extends the liability to cases where the offence was committed by a natural person under its authority, and not only to employees. Moreover, the Explanatory Report of the Convention indicates that Article 10 paragraph 2 aims at holding legal persons liable for the omission by persons in a leading position to exercise supervision over the acts committed by subordinate persons acting on behalf of the legal person.

4. The authorities of Bosnia and Herzegovina, in their responses to the 2021 Questionnaire, re-stated the same legal provisions as the one that were assessed previously. Consequently, this thematic review could only reiterate the conclusion regarding application of Art.10(2) of the 2015 assessment that this provision of the Convention is not fully applied by Bosnia and Herzegovina.



### **Effective implementation**

5. Authorities provided two case examples which include the liability of legal persons for money laundering offences. Whilst the rapporteurs are of the view that the cases presented show an encouraging trend in the application of the corporate liability regime for ML offences, the material provided is not sufficient to reach a firm conclusion that Art.10 is effectively applied in Bosnia and Herzegovina.

### **Conclusion/Recommendation**

6. Bosnia and Herzegovina introduced legal measures establishing the liability of legal persons for the ML offence. Some deficiencies still remain and therefore the authorities are recommended to revise the legislation and introduce legislative measures to implement requirements of Article 10 paragraph 2 and introduce the criminal liability of the legal persons to the case where the offence is committed due to the lack of supervision or control in line with the exact requirements of the Convention (i.e. supervision of legality of work of employees is not required by this provision ). Authorities are further invited to consistently apply the legislation in practice and effectively identify and pursue cases of corporate criminal liability.

## **Bulgaria**

### *Article 10 (1)*

1. Bulgaria has adopted an administrative-punitive<sup>7</sup> type of liability for legal persons under the Administrative Violations and Sanctions Act (in force since 2015). According to Art. 83a of the Act, legal entities are liable for a limited number of criminal offences, including ML (Art. 253 of the Criminal Code), as well as for any crime committed under the orders of, or when implementing a decision of, an organised criminal group. Proceedings under Art.83a have to be initiated by the prosecutor and heard by a criminal court, with subsidiary application of the Criminal Procedure Code. 2. The liability of legal persons can be imposed under the condition that, as a consequence of a crime, the legal person *has enriched* or *would enrich himself*. The authorities stated that the concept of “enrichment” is broad enough to cover all types of benefit as required by Art. 10(1) of the Convention.

3. Art. 83a of the Act specifies the categories of persons whose acts can trigger the legal person’s liability. These include:

- an individual, authorised to formulate the will of the legal person;
- an individual, representing the legal person;
- an individual, elected to a control- or supervisory body of the legal person;
- an employee to whom the legal person has assigned a certain task, when the crime was committed during or in connection with the performance of such task.

4. The provided case law confirms that the provision of Art. 83a does not require in any way the person expressing the will of the legal person, to be a part of its board or to participate in its statutory management bodies, thus ensuring a broad interpretation of the article. Art. 83a. of the Act covers all three categories of natural persons who have a leading position, as provided by Art. 10(1) of the Convention and, therefore, is considered to be in line with the requirement of the Convention.

5. The authorities have indicated in their responses to the 2021 Questionnaire, that the administrative liability of legal persons is conditioned by a liability of a natural person for the same act (Art. 83b(1) para.1). Thus, there is a need for a prior conviction of the natural person

---

<sup>7</sup> Same wording was used in the OECD report on Liability of Legal Persons for Corruption in Eastern Europe and Central Asia of 2015, Table 1, page 14 - <https://www.oecd.org/corruption/ACN-Liability-of-Legal-Persons-2015.pdf>, Table 1, page 14.

whilst the necessary evidence against a legal person can be collected during the criminal proceedings against the natural person. The authorities also indicated that the administrative liability of legal persons has a secondary nature and that it can be imposed also in cases where the natural person has not been convicted in the criminal proceedings and the criminal liability was not established. This possibility is, however, limited, to cases where, for example, the perpetrator died or fell into a permanent disorder of consciousness, excluding sanity; he/she was released from criminal liability with imposition of educational measures; the criminal proceedings were transferred to another State etc. The procedure for sanctioning a legal person can (exceptionally) be initiated even when the criminal proceedings against the natural person have not been initiated or were abandoned on legal grounds (inter alia, death, amnesty, expired prescription period, mental illness, Art. 83b (1) para. 2 and 3). In any case, the application of sanctions to a legal entity is tied to the requirement that a natural person has been identified and that the person is alleged to have committed an offence. Subsequently, the legal person cannot be held liable if the natural person is not identified or has absconded. Likewise, the prolonged criminal proceeding to establish the liability of an individual could discourage proceedings in respect of the legal entity. The requirement on prior conviction of the natural person imposes limitations on the corporate liability regime and does ensure that in all relevant circumstances the sanction against legal persons would be applicable.

6. The involvement of the natural person with a “leading position” as accessory or instigator, as a condition for determining the liability of the legal person, is covered by Art. 83a para. 3 of the Act. It provides that the financial penalty shall also be imposed on legal persons in cases when a natural person has abetted or assisted the commission of an offence.

#### *Article 10 (2)*

8. The Bulgarian legislation does not provide for the possibility to hold a legal person liable in instances where lack of supervision or control by a natural person who has a leading position in a legal person has made possible the commission of an offence. The authorities are of the opinion that such instances would be covered by Art. 83 a (1), item 4 of the Act. This provision refers to corporate liability in cases where the offence is committed by “*an employee to whom the legal person has assigned a certain task, when the crime was committed during or in connection with the performance of such task*”. In the rapporteurs’ view, this norm extends the categories of natural persons whose actions may engage corporate liability, but does not include instances where lack of supervision or control by a natural person with a leading position in a legal person has made possible the commission of an offence. Consequently, the conclusion is that Bulgaria does not comply with the requirement of Art.10(2).

#### ***Effective implementation***

9. In their responses to the 2021 Questionnaire, Bulgarian authorities referred to the existing case law on the administrative liability of the legal persons (2 cases). However, no details were provided as to whether these cases related to ML or to some other offence for which Art 83a would be equally applicable. In addition, the authorities informed that during 2013-2020, 130 sanctions were applied against legal persons for various types of criminal offences (mostly for tax offences and offences against intellectual property). These numbers indicate that Bulgaria makes use of the corporate liability mechanism and represent a positive feature of the system, although the information provided does not point to the sanctions applied for ML.

#### ***Conclusion/ Recommendation***

10. Bulgarian legislation introduced administrative-punitive liability for legal persons for ML offences. Legal persons may be held liable only if there is a prior liability of a natural person. This imposes limitations on the level of compliance with Art. 10 (1) of the Convention. Furthermore, the Bulgarian legislation does not provide a basis for application of principles of Art.10 (2) of the Convention. With regard to the effective application of existing provisions on corporate liability, the rapporteurs observed a number of cases where these provisions were applied in practice, although these cases were in relation to other offences and not ML. The Bulgarian authorities are therefore recommended to: i) remove from the legislation a precondition that a natural person has to be held liable before pursuing a liability of a legal person; (ii) extend the liability of legal persons to cases where the lack of supervision within the legal person makes it possible to commit the ML offence; (iii) take additional steps to facilitate the use of corporate liability mechanisms by judicial authorities (guidance documents, instructions etc.) in money laundering cases, in the various circumstances envisaged by Article 10. Besides that awareness should be continuously raised among the law enforcement and judicial authorities on liability of legal persons for ML offences.

## Croatia

### Article 10 (1)

1. Croatia has undergone the COP assessment in 2013 and a follow up procedure in 2016. Both reports noted that Croatia had introduced the criminal liability of legal persons. Legal persons are criminally liable if one out of two alternative conditions are met: (i) *the legal person shall be punished for a criminal offence of a responsible person if such offence violates any of the duties of the legal person or (ii) if the legal person has derived or should have derived illegal gain for himself or a third person.* The legal person shall also be punished for the criminal offences prescribed by the Criminal Code and other laws prescribing the criminal offences.

With regard to the definition of the responsible person, the 2013 report noted that it was provided in the Law on Responsibility of Legal Persons for Criminal Offences (LRLP) as well as in the Criminal Code, noting that the latter appeared to be more comprehensive. Furthermore, in the 2016 follow up report, rapporteurs concluded that it was not possible to firmly confirm whether the definitions of the responsible person in different pieces of legislation were coherent.

2. The 2013 assessment and the follow up reports did not reflect whether the legal person could be held liable for ML offences committed by a natural person acting as accessory or instigator. This issue was a subject of subsequent comments by the Croatian authorities. They pointed out that the issue of taking part in committing an offence (incitement, accessory and perpetration) are included in the Criminal Code (CC) which is being applied in accordance with the Article 2 of the LRLP (*'Unless otherwise prescribed by this Act, the provisions of the Criminal Code, the Criminal Procedure Act and the Law on the Office for the Prevention of Corruption and Organized Crime shall apply to legal persons'*). Since the CC provides that persons who commit an offence as accessory or instigator shall be held criminally liable and thus punished, the requirements of Art.10(1) are therefore fulfilled.

### Article 10 (2)

4. The 2013 Report stated that there was no explicit provision ensuring that a legal person could be held liable where the lack of supervision or control by a natural person made possible the commission of criminal offences for the benefit of that legal person and by a natural person under its authority. However, the report emphasised that incrimination of the negligent money laundering as well as the possibility to punish a legal person for a criminal offence committed by a responsible person even in the case when there are legal or factual obstacles

to determine the liability of a responsible person (LRLP Art. 5(2)), were sufficient to cover the requirements of Art. 10 (2).

4. This notwithstanding, in their responses to the 2021 Questionnaire the Croatian authorities undertook a different approach on this matter. It needs to be noted that in the meantime no legislative changes have been made. Namely, they referred that the liability of legal persons for a ML offence committed due to the lack of supervision or control, stating that it is possible to establish such liability is based on the General Part of the Criminal Code and its Art.20. This provision indicates that criminal offences may be committed by acting (performing) or by omitting to act (refrain from taking an action). Authorities argued that this provision reflects the requirement of Art. 10 (2). Nevertheless, this argument was not supported with any case example neither with an explanation how potential cases would be pursued in line with this provision. Furthermore, it must be noted that in Croatia, the conditions to hold legal persons liable are envisaged in the Law on Responsibility of the Legal Person for the Criminal Offence – this piece of legislation does not include the possibility to hold legal persons liable if the offence was committed due to the lack of supervision or control. Therefore, it could be concluded that the arguments raised by the authorities in the 2021 Questionnaire cannot be accepted by the rapporteurs. It should be emphasized that Art.10 foresees that a legal person shall be held liable for the offences committed due to the lack of supervision or control by a natural person even when the responsible person did not participate in or had no knowledge of the ML offence. Consequently, the rapporteurs could only reiterate the conclusion of the 2013 report. Similar conclusion vis-à-vis the Croatian Law on Responsibility of Legal Persons for Criminal Offences was also made by the OECD<sup>8</sup>.

#### **Effective implementation**

5. One case example was provided where a legal person was sanctioned for a ML offence in 2016. In addition, authorities provided abstracts from their annual report for 2019. However, these abstracts do not allow to conclude as to whether there were any reports filed against legal persons for ML or whether any legal person was convicted for ML. Thus, the rapporteurs are of the view that the information provided with regard to the effective implementation of Art.10 of the Convention is insufficient to conclude on this matter.

#### **Conclusion/Recommendation**

6. The Croatian legislation provides, to a large extent, for criminal liability of legal persons for ML offences. In addition, Croatian authorities are recommended to more clearly establish or clarify the liability of legal persons for ML offences committed due to the lack of supervision or control. Authorities are also invited to take additional steps to facilitate the use of corporate liability mechanisms by judicial authorities (guidance documents, instructions etc.) in money laundering cases, in the various circumstances envisaged by Article 10.

## **Cyprus**

### *Article 10 (1)*

1. The Cypriot AML/CFT Law in its Art. 4 provides for incrimination of money laundering offences that are committed by *any person*. Furthermore, Article 2 of the same law provides the definition of 'person' which includes both natural as well as legal persons.

2. In their responses to the 2021 Questionnaire, the authorities stated that in March 2021 the amended AML/CFT Law entered into force providing in Article 2 the definition of a legal person as any entity having legal personality, except for states, state's institutions or international

---

<sup>8</sup> *Liability of legal persons for corruption in Eastern Europe and Central Asia 2015*, p.20  
<https://www.oecd.org/corruption/acn-liability-of-legal-persons-2015.pdf>

organisations. New provisions have also been added in Article 4 of the AML/CFT Law and they regulate responsibility of legal persons for the criminal offence of ML. The new provision aimed to harmonise national legislation with EU Directive 1673/2018 on Combating Money Laundering by Criminal Law. 3. The amended provision of Article 4 of the AML/CFT Law is in line with the requirements of Article 10 (1). It provides for the liability of legal persons for the offence committed on its behalf and for its benefit by any person having the leading position within the legal entity. Furthermore, amendments introduced the definition of the “*person having the leading position within the legal entity*” and it covers all the elements listed under Art.10(1).

4. Cypriot authorities advised that legal persons may be held liable for ML offences if a natural person acted as accessory or instigator. In particular, incrimination of the ML offence encloses the acts of “participation in, association, co-operation, conspiracy to commit or attempts to commit, as well as aiding, abetting and the provision of counselling or advice for the commission of ML” (Art. 4 (1) of the AML/CFT Law). Therefore, the liability of legal persons is possible for all afore-mentioned doings in relation to ML (Art. 4 (3) of the AML/CFT Law) and the rapporteurs are of the view that this specific requirement of the Convention (when natural person acts as an accessory or instigator) is met.

#### *Article 10 (2)*

5. Cyprus introduced criminal liability of legal person where the lack of supervision or control by a responsible person made the commission of any of the offences possible, including ML (Art. 4(3b) of the AML/CFT Law. The cited provisions of the legislation cover the relevant aspects of Art.10(2) and the rapporteurs conclude that the requirements of Art. 10 (2) are met.

#### **Effective implementation**

6. Due to the recent amendments, no case law has yet been available on the liability of legal persons for ML offences. However, it is worth stating that in the MONEYVAL’s MER of Cyprus dated 2019<sup>9</sup>, assessors noted that there had been a number of ongoing cases - 60 legal persons were investigated for ML offences. Therefore, the rapporteurs commended the Cypriot authorities for these initiatives and encouraged them to continue with their efforts in this regard.

#### **Conclusion/Recommendation**

7. As a result of recent amendments to the AML/CFT Law, the Cypriot legislation implemented requirements of Article 10 (1 and 2) of the Warsaw Convention. Given the novelties recently introduced in their legislation, the authorities are recommended to use the corporate liability mechanisms by law enforcement and judicial authorities taking into account the various circumstances envisaged by Article 10.

## **Denmark**

#### *Article 10 (1)*

1. Corporate criminal liability in Denmark is governed by Chapter 5 of the Danish Criminal Code and is applicable for ML offences. Section 27(1) of the Criminal Code establishes two cumulative conditions upon which the criminal liability of a legal person can be applied: the offence was committed in the course of a legal person’s activities (operations) and is attributable to one or more *natural persons connected to the legal person* or to *the legal person* as such. Danish authorities also provided their interpretation of the legislation vis-à-vis Art.10 (1 and 2) of the Warsaw Convention, which is drawn from the travaux préparatoires of Section

---

<sup>9</sup> <https://www.coe.int/en/web/moneyval/jurisdictions/cyprus>

27(1) of the CC. In order to warrant criminal liability of a legal person, the offence must be committed by the “connected” natural person on behalf or for the interest of legal person. On the contrary, when the committed actions by the “connected” natural person are too distant from the operations of the legal persons, i.e. purely private activities of the employee, this would not be sufficient to secure the liability of the legal person.

No case examples or guidelines were provided to support such interpretation. In lack of the relevant case law, the rapporteurs are of the view that it remains unclear in which circumstances the offence would be considered attributable to the legal person.

2. The second condition under Section 27(1) (*‘offence attributable to the legal person as such’*) does not restrict the categories of natural persons whose actions can trigger the liability of the legal person. The mandatory criterion remains that the natural person *is connected to the legal person*. According to the interpretation provided by the authorities which is again based on the travaux préparatoires of Section 27(1), a person is considered to be connected to the legal person if he is an employee or part of the management of the legal person. This interpretation, i.e. a broader approach established by the Danish legislation, does not contradict the Convention and would encompass the categories of the natural person under the concept of “having a leading position”. However, considering the broad provisions of Section 27(1) and the absence of any case law examples that would substantiate the interpretation envisaged at the travaux préparatoires, some guidelines would be beneficial in this respect in order to ensure a uniform application of the provisions, encompassing all elements required by the Convention.

3. The liability of legal persons is possible when the “connected” person acts as accessory or instigator in line with Section 23 of the CC which provides liability for those who are accessory to or instigating an offence. Thus, “offence” under Section 27(1) of the CC also covers the act of instigating, commissioning or being accessory to an offence.

#### *Article 10 (2)*

4. Section 27(1) of the Criminal Code does not specifically provide for the possibility to hold legal persons liable in instances of lack of supervision or control by the natural person who is holding a leading position.

#### **Effective implementation**

5. The statistics for 2020, provided in the 2021 Questionnaire, based on an ad hoc review of the judgements, indicate 5 convictions of legal persons for ML offences. While this information is not sufficient for any in-depth analysis on the overall effectiveness of the system, it still indicates that Denmark applies the provisions on corporate criminal liability, including in ML cases.

#### **Conclusion/ Recommendation**

6. The corporate criminal liability regime established by Denmark broadly implements the requirement of Art.10 (1) of the Convention and is silent in respect of the requirement under Art. 10 (2). It remains unclear under which circumstances the offence would be considered attributable to the legal person as such, in a manner that would trigger its criminal liability. The interpretation envisaged by the travaux préparatoires in relation to the relevant parts of the CC are still to be confirmed by judiciary. Alternatively, this interpretation should become a part of the guidelines for law enforcement and judicial authorities on how the legislation shall be applied in practice. Therefore, authorities are recommended to extend the liability of legal persons to cases where the lack of supervision or control within the legal person makes it



possible to commit ML offences (Art.10(2)), as well as to further confirm *via* guidelines or jurisprudence that all elements required by Art.10(1) of the Convention are covered. Finally, the authorities are recommended to facilitate the use of corporate liability mechanisms by judicial and law enforcement authorities taking into account the various circumstances envisaged by Article 10.

## Estonia

### Article 10(1)

1. The framework regulating the criminal liability of legal persons is provided for in Article 14 of the Penal Code. The said article stipulates that a legal person shall be held responsible for an act which is committed in its interest by “*its body, a member thereof or by a senior official or competent representative*”.

2. In the responses provided, the Estonian authorities indicated that with regards to the criminal offence of money laundering, legal persons can be held liable under Article 394 subsection 3. Similar provisions are provided under subsection 2) of the Article 394<sup>1</sup> which concern ‘money laundering agreement’ (i.e. concluding an agreement for the purpose of execution of money laundering, is a specific criminal offence which may also be committed by a legal person); and subsection (2) of the Article 237<sup>3</sup> for financing and support of act of terrorism and activities directed at it.

3. Article 14 of the Penal Code foresees the liability of legal person if the act is committed by its body, a member thereof or by a senior official or competent representative. According to the information provided, the notion of “competent representative” covers all the situations where a third person, acting individually or acting as an employee of the legal person, has the right to represent the legal person. The interpretation of the authorities is that the ‘competent representative’ would cover all three (a, b, c) categories referred to in Article 10.

4. Estonia also indicated that the general provisions of the Penal Code (Articles 22 and 22<sup>1</sup>) foresee liability when acting as accessory or instigator, and that the judicial practice confirms that legal persons can be prosecuted when a natural person holding a “leading position” as accessory or instigator is involved in the commission of the above-mentioned offences.

### Article 10(2)

5. The Estonian authorities informed of the very recent changes in the legislation which now include the requirements of paragraph 2 of Article 10 of the Warsaw Convention. The amended Article 14 of the Penal Code now states that, *inter alia*, a legal person shall be held responsible for an act which is committed in its interest or by not fulfilling its legal obligations by:

- 1) Its body, a member thereof or by a senior official or competent representative or
- 2) a person acting under the order of a person or body specified in clause 1 of this subsection or in cases where there is inadequate supervision.

These changes enter into force on 1 November 2023. Article 14(2) of the Penal Code satisfies the requirements of Article 10(2) of the Convention.

### **Effective implementation**

6. The findings of the 5<sup>th</sup> round MONEYVAL Mutual Evaluation Report indicate that Estonia has achieved thirteen convictions of legal persons for ML between 2015-2020 ([page 94 of the 2022 Estonian mutual evaluation report](#)). Apart from the general information on penalties applied to legal persons for some predicates (i.e. fraud) and ML, the details of the cases presented demonstrate to some extent the application of Article 10(1) of the Convention. In

these cases, a person who was charged with ML was acting as a board member of the company which was also under charges and then convicted for ML. Given the recent amendments, the effective application of Article 10(2) is yet to be materialised in practice.

### **Conclusion/ Recommendation**

7. Estonia has established some form of liability for legal persons. The corporate liability regime in Estonia is to a large extent in line with the requirements of Article 10(1) of the Convention. In the absence of specific examples of application of the law in cases where a natural person, holding a leading position, would act as accessory or instigator, it is difficult to confirm if this element of Article 10(1) is being fully applied. On the other hand, the recent amendments to the Penal Code set a solid basis for the application of Article 10(2) in practice. The Estonian authorities should take any relevant steps, including training or awareness - raising activities, to familiarize the police, prosecutors and the judiciary on the application of these provisions in relation to ML and other relevant predicate offences to ML.

## **France**

### *Article 10(1)*

1. French legislation (Criminal Code Art. 121-2) provides for the criminal liability of legal persons for all criminal offences committed on their behalf and by their representatives. These representatives can be individuals, ranging from directors to subordinate employees as well as non-executive employees empowered with the authority to take decisions. Furthermore, the representatives can be collective bodies who are legally obliged to take decisions or exercise control (manager, board of directors, chairman of the board, general managers, management board, etc.). In addition, jurisprudence in recent years increasingly extended the meaning of the term 'representative', including now *de facto* collegial bodies (executive committees). Rapporteurs can therefore conclude that the scope of representatives in the French legislation covers the range of persons with the leading position, as envisaged by Article 10 (1).

2. Authorities did not provide responses whether the provisions of their national legislation provide for a liability of a legal person when an offence is committed by a natural person acting as an accessory or instigator. The rapporteurs, however, analysed the relevant provisions of the Criminal Code and found that these requirements of the Convention are covered by Articles 121-6,121-7 ('The accomplice to the offence, in the meaning of article 121-7, is punishable as a perpetrator. The accomplice to a felony or a misdemeanour is the person who knowingly, by aiding and abetting, facilitates its preparation or commission. Any person who, by means of a gift, promise, threat, order, or an abuse of authority or powers, provokes the commission of an offence or gives instructions to commit it, is also an accomplice'). Article 121-2 clearly makes reference to both Art121-6 and 121-7 of the Criminal Code. Consequently, the rapporteurs conclude that this particular provision is covered in the French legislation.

### *Article 10(2)*

3.The liability of legal persons for ML offences committed due to the lack of supervision or control is not provided for in the French criminal law.

### **Effective implementation**

4. Authorities provided statistics stating that for a 4 years period, 114 legal persons were convicted for ML offence. Furthermore, authorities introduced innovative procedural mechanisms in the CPC providing for the efficient criminal procedure for legal persons. In



view of these, and based on the materials presented, the rapporteurs conclude that France has demonstrated effective application of Art. 10 of the Warsaw Convention.

### **Conclusion/Recommendation**

5. France has adopted measures which introduce the liability of legal persons for the ML offence as foreseen by Art. 10 (1). On the other hand, the legislation does not foresee the liability of legal persons in instances where a lack of supervision or control by the natural person who holds a leading position was established. Consequently, the authorities are recommended to adopt legislative or other measures necessary to enable to hold legal persons liable for the ML offences committed due to the lack of control or supervision as it is envisaged in Art. 10 (2). In addition, the authorities are encouraged to continue developing cases on criminal liability of legal persons for ML offences.

## **Georgia**

### *Article 10 (1)*

1. Georgian legislation provides for the criminal liability of legal persons, including for ML offences (Criminal Code - Art. 107<sup>1</sup> *Grounds for criminal liability of a legal person* and Art. 194 *Legalization of illegal income*). The criminal liability of legal persons does not exclude the liability of the natural person (and legal persons shall be criminally liable for an offence committed “*on behalf of or through and/ or in favour of the legal persons*” (Art. 107<sup>1</sup> (2) of the CC).

2. The categories of a natural persons encompassed under the concept of persons with “leading positions”, are implemented by Art.107<sup>1</sup> (3) of the CC. A natural person shall be considered a *responsible person* if the person is:

- responsible for the management and representation of the legal person;
- responsible making decisions on behalf of the legal person;
- a member of the supervisory, monitoring or audit body of the legal person.

3. The liability of legal persons is possible when the responsible person acts as accessory or instigator and the offence is committed on behalf, through and/or in favour of the legal person, (Art. 24 and 25 of the CC).

### *Article 10 (2)*

4. Art. 107 (4) of the CC ensures that the legal person shall be held criminal liable also in cases of improper performance of supervision and monitoring by the responsible person.

### **Effective implementation**

5. Georgia provided three cases of conviction of legal persons for ML offence and three ML case under prosecution involving a legal person (in one case 13 legal persons have been prosecuted for ML offence). The Moneyval Mutual Evaluation Report on Georgia of 2020<sup>10</sup> mentions (in para. 246) that between 2015 and 2019, only two legal persons were prosecuted for ML even though legal persons were used for laundering purposes.

### **Conclusion/Recommendation**

6. The provisions on the corporate criminal liability in the Georgian legislation follow closely the wording of the Convention and fully implement the requirements of Art. 10(1) and (2). As described above, the effectiveness of the regime has been increased in recent years. Georgia

---

<sup>10</sup> <https://www.coe.int/en/web/moneyval/jurisdictions/georgia>

should continue to undertake measures to increase the effectiveness of the corporate liability regime.

## Germany

### *Article 10(1)*

1. The Act on Regulatory Offences (*Ordnungswidrigkeitengesetz – OWiG*), section 30, provides conditions for holding a legal person liable for criminal offences. Legal persons (and associations of persons) may be held liable if a person holding a managerial position has committed a criminal offence as a result of violation of legal person's regulations, or where a legal person has been enriched or was intended to be enriched. In this context, section 30 (1) No. 1 to 5 OWiG regulate the situations in which a natural person holds a leading position within a legal person or association of persons, in line with the requirements set out in Article 10 (1).

2. Authorities indicated that a legal person may be held liable if a person occupying a managerial position acted as accessory or as instigator. To support this statement the authorities stated that the commission of the criminal offence includes acts of accessory and instigation. However, no exact legal basis neither their interpretation (e.g. case law or interpretative notes) were provided to further substantiate this statement. Consequently, the rapporteurs are not in a position to conclude to what extent the requirements of Article 10 (1) are met.

3. The responses to the 2021 Questionnaire confirmed that there is no mandatory prosecution of legal persons in Germany - prosecutors have a discretionary right to pursue or not to pursue criminal proceedings against legal persons. The authorities, however, did not provide any further details (e.g., any criterion to be applied by prosecutors when making decisions to pursue or not to pursue legal entities liability, etc.) which in the view of the rapporteurs contradicts the requirements of Article 10. Authorities further advised that legislative reforms are underway, which would include the introduction of the mandatory prosecution of legal persons.

### *Article 10(2)*

5. In their responses to the 2021 Questionnaire, the German authorities stated that the liability of legal persons for ML offences committed due to the lack of supervision or control is envisaged in Articles 30 and 130 of the OWiG. In particular, Article 30 of the OWiG provides that a legal person should be held liable where a natural person in a managerial position has committed a criminal or regulatory offence. Article 130 of the OWiG then prescribes that any omission by the owner of an operation or undertaking to apply supervisory measures is to constitute a regulatory offence. While the application of Article 30 and Article 130 OWiG would cover one of the situations envisaged under Article 10(2), the rapporteurs have some doubts as to whether the said provisions can be applied in a sufficiently wide manner as to allow for the complete coverage of Article 10(2) due to the limited application of Article 30 with respect only to the owner of the entity concerned.

### ***Effective implementation***

6. German authorities do not maintain statistics on cases where legal persons were held liable or ML offences, neither have they submitted specific cases.. Therefore, it cannot be concluded that there is an effective implementation of the provisions of Article 10 of the Convention.

### ***Conclusion/Recommendation***

7. In Germany, legal provisions are in place covering the liability of legal persons for criminal offences. Whilst these provisions are, to some extent, in line with the requirements of Article

10 (1 and 2) of the Convention, some major deficiencies do still remain. In view of this, the authorities are recommended to amend the legislation and provide the liability of legal entities for ML offences in case the natural person holding the leading position acted as accessory or instigator. Likewise, authorities are encouraged to continue with the legislative reform and prohibit prosecutorial discretion with regard to the cases where there are sufficient grounds to hold a legal person liable. In addition, the authorities should raise awareness among their peers responsible to investigate/prosecute legal persons and take additional steps to facilitate the use of corporate liability mechanisms taking into account the various circumstances envisaged by Article 10.

## Greece

### Article 10 (1)

1. Greece has adopted an administrative liability for legal persons, with a wide range of available sanctions, which are also applicable for ML offences (Art. 45 of the AML/CFT Law). One of the preconditions for the corporate liability is that the offence is committed “*for the benefit or on account of a legal person or entity*”. Another condition is that the offence must be committed by a natural person who has:

- a leading position;
- a power of representation or an authority to take decisions on their behalf;
- an authority to exercise control within the legal person.

2. Legislation further provides the same sanctions for the legal person in case the natural person acted as accessory or instigator (Art. 45 para 1 of the AML/CFT Law).

### Article 10(2)

3. The legal person can be held liable even in situations when the offence was committed due to the lack of supervision or control by the categories of the natural persons with leading positions (Art. 45(2) of the AML/CFT Law).

### **Effective implementation**

4. Greek authorities provided an example of successful conviction of a legal person in a well-known ML (and corruption) case. Whilst this case confirms that the legislation is applied in practice, a more general conclusion whether or not the legislation is systematically applied could not be reached since details of one case appear insufficient for this purpose.

### **Conclusion/Recommendation**

5. Greece ensures the implementation of Art. 10 (1) and (2) of the Convention. The existing legal provisions have been applied in practice but details of one case only cannot be deemed representative for effective application of Art.10 in the country. Therefore, the authorities are recommended to take additional steps to facilitate the use of corporate liability mechanisms as appropriate, taking into account the various circumstances envisaged by Article 10.

## Hungary

### Article 10(1)

1. Act CIV of 2001 on Criminal Measures Applicable to Legal Entities, foresees that criminal measures may apply to legal persons in connection with individuals' intentional criminal acts committed for the benefit/s of a company or when a company is used for commission of an offence if either of the following conditions are met:

a. the criminal act was committed in connection with the company's operation by an executive officer, other authorized representatives, board members or anyone else acting on their behalf;

b. the criminal act was committed in connection with the company's operations by a member or employee or owner and an appropriate management approach or effective supervision by the executive officers or board could have prevented the abovementioned criminal act.

2. However, there are several possibilities determined by the law where criminal liability of legal persons may be established even if the natural person committing the offence cannot be held criminally liable, but the commission of the criminal offence and the connection between the criminal act and the legal person is obvious [Section 3 (2) of the Act CIV of 2001].

3. The definition of the natural person who has a leading position is provided in the law and includes the legal person's executive officer, or its member, employee, officer, managing clerk entitled to represent the legal person, its supervisory board member, and/or their representatives. It seems that the definition is broad enough to meet the scope of the natural person who has a leading position as envisaged by Art. 10 (1).

3. Moreover, authorities advised that, given the general rules of the criminal legislation dealing with the definition of the offender, instigators and abettors (accessory), and the fact that the liability of legal person is associated to the acts of a natural person, it can be concluded that a legal person could be held liable if the natural person is involved as accessory or instigator. Although no case law was provided to confirm this interpretation of the legislation, the rapporteurs are of the view that such approach would hardly be disputed by judiciary and therefore accept this argument. Consequently, it could be concluded that this requirement of Art.10(1) is met.

#### *Article 10(2)*

4. The authorities explained that legislation provides the possibility to establish a criminal liability of legal persons in case a criminal offence was committed due to the lack of supervision or control. In particular, liability of legal person is possible if effective supervision by the executive officers or board could have prevented criminal offences [Section 2 (1) of the Act CIV of 2001].

#### **Effective implementation**

5. Hungarian authorities provided several case examples demonstrating the application of the liability of legal persons for the acts that can be described as ML offences. Further to the revision of the materials provided, the rapporteurs conclude that Art.10 is effectively applied in Hungary.

#### **Conclusion/Recommendation**

6. The criminal legislation in Hungary provides for the liability of legal persons for the criminal offence of money laundering. In addition, the authorities are encouraged to continue developing case law in this area.

### **Italy**

#### *Article 10(1)*

1. Italian legislation recognises the administrative liability of the legal person for criminal offences, including for money laundering. In order to establish the liability of a legal person. Legislative Decree n. 231/2001 (art. 5) envisages that the offence shall be committed by the representatives of the legal person and for its benefit. Benefit should be understood also as a

benefit of a perpetrator or of a third party. Furthermore, legislation determines the scope of the representatives of the legal person as having function of representation, administration or management of the entity or even individuals who *de facto* exercise management and control of the legal person. Therefore, rapporteurs are of the view that all three categories of natural persons who have a leading position are covered in the legislation as envisaged by Art. 10 (1).

2. Italy has also introduced liability “exemptions” in Art. 6 of the Legislative decree. This instrument enables a legal person to avoid liability in case it had adopted and effectively applied a compliance program aimed at preventing the type of offence which an individual has nevertheless committed by fraudulently circumventing the compliance program. In order to be exempted from a liability, the entity is also required to have allocated the task of ensuring the implementation and observation of the program’s application to a unit with autonomous powers of initiative and control. Furthermore, the afore-mentioned Article 6 lists the minimum requirements of the criminal compliance programme which include identification of the risk, methods for managing financial resources, obligation of notification on the functioning of the compliance model, disciplinary measures in case of non-compliance and whistle-blower programme. The “compliance model” requires periodic verification and possible modification in case of significant violations. In case there are suspicions/investigations against legal entity for an offence committed by its side, the application of a compliance programme will not automatically release a legal entity from its liability since the court is free to assess evidence and decide on each case. In view of this, the provisions of Article 6 of the Legislative decree do not limit the scope of the requirements of the Convention.

3. In line with what the authorities submitted in their responses to the 2021 Questionnaire, the liability of legal persons for the offence committed by the natural person acting as accessory and instigator is provided through the general provisions of the Criminal Code (Art. 110 of the CC).

#### *Article 10(2)*

4. In the responses to the 2021 Questionnaire, authorities stated that legal persons may be held liable for a crime committed for its benefit by individuals subject to the management or supervision, when the commission of a crime was possible due to failure to comply with management and supervisory obligations. Similarly to what has been said above, Art.6 of the Legislative Decree provides that the liability could be excluded in case the legal person effectively implemented a “compliance programme”. As a matter of fact, the effective implementation of a “compliance programme” excludes any crime committed by an individual subject to management or supervision, “when the commission of a crime was possible due to failure to comply with management and supervisory obligations”.

#### **Effective implementation**

5. Italy provided evidence linking the conviction of a legal person to an ML offence. The FATF Mutual Evaluation Report on Italy of 2016 mentions in para. 170 that *Italy does not have available up-to-date statistics on sanctions of legal persons and only one case where a legal person was sanctioned was provided*. Given all these facts, the rapporteurs find it difficult to make a firm conclusion if Italy ensures an effective implementation of the corporate criminal liability in ML cases.

#### **Conclusion/Recommendation**

6. Italy introduced the administrative liability of the legal entities for ML offences in line with Article 10 requirements. The authorities are recommended to follow the development of more practical cases of matters related to the effective application of compliance programme and

its implications on liability of legal persons where the lack of supervision or control was established.

## Latvia

### Article 10 (1)

1. Corporate criminal liability in Latvia is established under the Criminal Law of Latvia and is applicable for criminal offences of ML (Sections 12 and 70<sup>1</sup> of the Criminal Law). Both, Section 12 and 70<sup>1</sup> implement the requirements of Art. 10(1) of the Convention, which states that the offence is committed *in the interests or for the benefit* of the legal person.

2. The categories of the natural persons correspond to those established by the Convention and include persons, acting individually or as a member of the collegial authority of the legal person:

- *on the basis of the right to represent the legal person or act on the behalf thereof;*
- *on the basis of the right to take a decision on behalf of the legal person;*
- *in implementing control within the scope of the legal person.*

3. Latvian authorities advised that in instances where the natural person, if acting in one of the capacities mentioned above as accessory or instigator, may trigger the liability of the legal person. Section 20 of the Criminal Law provides that an accessory or instigator, shall be held liable in the same way as the perpetrator. If the person who has a leading position within the legal person acts as an accessory or an instigator, he/she can be convicted for ML, which then may trigger the criminal liability of the legal entity in accordance with Sections 12 and 70<sup>1</sup> of the Criminal Law. Therefore, it can be concluded that the specific requirement of the Convention is met.

### Article 10(2)

4. The liability of a legal person for the offence committed as a result of *insufficient supervision or control is envisaged by Section 12 and 70 of the Criminal Law.*

### **Effective implementation**

5. The information provided by the Latvian authorities indicate an overall effective implementation of the legislation on corporate criminal liability (2020 – criminal sanctions applied to 8 legal persons; 2019 – applied to 11 legal persons). Nevertheless, only one of these cases refers to a conviction for ML, and therefore the rapporteurs would not advance with a firm conclusion on the effective implementation of Article 10 (1 and 2) in Latvia.

### **Conclusion/Recommendation**

6. Latvia fully implements the requirements established under Art. 10(1) and (2) of the Convention. Nevertheless, in the context of only one conviction achieved for ML involving a legal person, Latvia is recommended to further develop case law with regard to ML offences involving legal persons.

## Lithuania

### Article 10(1)

1. The Lithuanian legal framework includes the criminal liability of legal persons for a money laundering offence through the incrimination of the ML offence (Criminal Code Art. 216 (2)). Furthermore, conditions to be met to hold legal persons liable are envisaged in Art 20 of the Criminal Code.



2. Criminal liability of legal persons is possible if the offence is committed for the benefit or in the interest of the legal person by a natural person who holds an executive position within a legal person. Executive position is determined in the same way as it is required by Art.10(1) of the Convention (i.e., a natural person who has power of representation, taking decisions or exercising control). Liability is possible even in cases the offence is committed by any employee who is acting based on the instructions of any of the three positions as defined above.

3. An act of a natural person as an instigator or accessory in the commission of a criminal offence for the benefit or interests of a legal person can cause liability of a legal person (Criminal Code Art. 20 (5)).

#### *Article 10(2)*

4. Lithuanian legislation provides for the possibility to establish the criminal liability of legal persons for the offence committed as a result of insufficient supervision or control (Criminal Code Art. 20(4)).

#### **Effective implementation**

5. In the responses to the Questionnaire, the authorities indicated that in 2019, 4 legal entities were sentenced for the ML offence. In 2020 there are 6 ongoing pre-trial investigations into money laundering offences committed by legal persons. In addition, 2 prosecutions in 2020 reached the court, and the trials are about to commence. Based on the materials provided, the rapporteurs conclude that the Lithuanian authorities apply provisions of Article 10 of the Convention in practice.

#### **Conclusion/Recommendation**

6. Lithuania has a proper legal framework to implement the requirements of Art. 10(1 and 2). The effective implementation is confirmed through the case law provided together with the 2021 Questionnaire. The authorities are therefore recommended to continue with good practice and further develop the case law.

#### **Malta**

##### *Article 10 (1)*

1. Malta has undergone the COP assessment in 2014 and the follow up procedure in 2018. In the 2014 assessment report, the rapporteurs noted that the legislation recognised the liability of legal persons for ML offences (Art. 3 (1,4) of the AML/CFT Law and Art. 121D of the Criminal Code). The report found that the legislation was mostly in line with Article 10 of the Warsaw Convention. The liability of legal persons could be established if the crime was committed by a natural person who had a leading position in a legal person and the scope of the natural person corresponded to the requirements of Article 10(1). The report also identified certain shortcomings in relation to an apparent “*additional condition to find a natural person guilty of a ML offence*” in order to hold the legal person liable. In order to avoid any doubts, Malta was recommended to align the penalties provided by Art. 3(1) and (4) of the AML/CFT Act. The 2018 follow up report concluded that this recommendation was implemented by the amendments introduced to Art. 3(4) of the AML/CFT Act (Amending Act VIII of 2015). In the same context, the 2014 COP assessment report recommended to the country to reconsider if a conviction against a natural person is a pre-condition for criminal liability of the legal entity in ML cases. The 2018 follow up report concluded that even though this particular recommendation was not, strictly speaking, implemented, due to the amendment of Art. 3(4) of the AML/CFT Act (Amending Act VIII of 2015), “the legal situation had become meanwhile

sufficiently clear” and both recommendations of the 2014 COP report regarding the requirements of Art. 10(1) of the Convention were considered implemented.

2. In addition, the Act VIII of 2015 amended Art. 121D of the Criminal Code. The new wording of Art. 121D of the Criminal Code follows more closely the provisions of Art.10 of the Convention. It makes reference to the situations *where an offence has been committed* by the persons holding leading positions, compared to the former wording – “*Where the person found guilty of an offence...*”. The new wording of Art. 121D also maintains the previously assessed provisions (in 2014) which implement the requirements of Article 10. These refer to the categories of the natural persons who have a leading position within the legal person and the possibility of corporate liability where an infringement is committed “*for the benefit, in part or in whole*” of the legal person. Therefore, these requirements of Art. 10(1) of the Convention are considered to be implemented.

3. In their response to the 2021 Questionnaire, the Maltese authorities indicated in general terms that pursuant to the Maltese legal framework on criminal liability of legal persons, corporate or unincorporate, the legal persons may also be held criminally liable for the involvement of a natural person as accessory or instigator who had a leading position within the legal person. The 2019 Mutual evaluation report on Malta adopted by MONEYVAL<sup>11</sup> provides that there is “*sufficient range of ancillary offences under Maltese law pursuant to Art. 2(1) PMLA (in conjunction with the relevant provisions of the CC, to which the PMLA makes reference)*”. These include different forms of complicity such as *instigation, incitement, aiding/ assisting or commandment* of the commission of a crime (Art. 42 of the CC). The accomplice in a crime is liable to the same punishment established for the principal (Art. 43 of the CC). Therefore, the “offence” under Art. 121D of the CC would include the instigation, incitement, aiding/ assisting or commandment of the commission of a crime and would trigger the liability of the legal persons. Consequently, legal persons may also be held criminally responsible for the involvement of a natural person as accessory or instigator who has a leading position within the legal person.

#### *Article 10(2)*

4. The 2014 COP Assessment Report on Malta concluded that the provisions of Art. 248E(4) c) of the Criminal Code (applicable for ML offences, via Art. 3(7) of the AML/CFT Act) covers the situations in which “*the commission of the offence was rendered possible because of lack of supervision or control by a person referred to in article 121D*” of the Criminal Code. In their responses to the 2021 Questionnaire, the authorities made reference to the same legal provision.

#### ***Effective implementation***

5. Malta has not yet achieved convictions for ML concerning legal persons. Nevertheless, the authorities informed that during the period 2020 – 2021, there were 9 arrangements involving 18 legal persons where the main offence is ML, which is a promising trend in applying Art 10 of the Convention.

#### ***Conclusion/Recommendation***

7. As a result of the 2015 legislative amendments, Malta is compliant with the requirements established under Art. 10(1) and (2) of the Convention. In the absence of any convictions for legal persons in ML cases, Malta should undertake measures to increase the effectiveness of the corporate liability regime. The previous recommendation of the 2014 COP report regarding

---

<sup>11</sup> <https://rm.coe.int/moneyval-2019-5-5th-round-mer-malta2/168097396c>



the effectiveness of the system is maintained - *to draw up guidance and instructions for the law enforcement and prosecutors on the practical application of the legal provisions on corporate criminal liability.*

## **Republic of Moldova**

### *Article 10 (1)*

1. The Republic of Moldova was assessed by the COP in 2014 whilst the follow up report was adopted in 2017. The follow-up analysis noted that the liability of legal persons for a ML offence was possible in line with the provisions of the Criminal Code and Criminal Procedure Code. The definition of a natural person who has a leading position within the legal person was generally compliant with the requirements as set up by Art. 10 (1) of the CETS N°198. Nevertheless, it was recommended to take further measures, as appropriate, to facilitate the understanding of the scope of liability of legal persons at domestic level, by clarifying, in a consistent manner, who is the natural person holding a leading position within the legal person. Also, the report stated that general provisions of the Criminal Code would apply in case the natural person acted as accessory or instigator, but that they were limited to the acts “allowed, sanctioned, approved, or used by the body or the person empowered with the legal entity’s administrative functions”.

2. In their responses to the 2021 Questionnaire, the Moldovan authorities indicated that all deficiencies identified in the 2014 and 2017 COP assessment and follow up reports have been rectified through the amendments to the legislation that were prepared in 2016. In that regard, the 2017 Follow up report stated that deficiencies were addressed to a large extent. Authorities further indicated that general provisions of the Criminal Code (instigator and accomplice) would also apply in cases where legal persons are charged with criminal offence(s) – i.e. when a natural person acted as accessory or instigator.

### *Article 10 (2)*

3. The 2014 report noted that there were no explicit provisions dealing with situations where legal persons can be held liable as a result of lack of supervision or control. However, authorities argued that this is covered by provisions which refer to a situation where an illegal act is admitted, sanctioned, approved, or used by the body or the person empowered with the legal entity’s administrative functions. Whilst the rapporteurs accepted this reasoning to some extent, there were no recommended actions on this matter.

4. In their responses to the 2021 Questionnaire, the authorities indicated that amendments made to Criminal Code 2016 introduced the criminal liability of the legal person for the act committed due to the lack of the supervision and control of the person vested with management powers (Criminal Code, Art. 23 (3c)). The provision stipulates that legal persons shall be liable if “*the act was committed due to the lack of supervision and control of the person vested with management powers*”. Furthermore, the provisions define the management power as the power of representation, taking decision or exercising control. Therefore, the rapporteurs are of the view that this provision addresses the requirements of Art. 10 (2).

### ***Effective implementation***

5. Moldavian authorities provided statistics showing the number of cases where legal persons were convicted (only at first instance) for different criminal offences. Some of these cases include the liability of legal persons for the criminal offence of money laundering.

### ***Conclusion/Recommendation***

6. The Moldovan legislation provides for the liability of legal persons for ML offence to the extent that it meets the criteria of Art. 10 (1 and 2). In order to make the liability of a legal person more effective, it is recommended to the authorities to continue to use the corporate

liability mechanism by judicial and law enforcement authorities taking into account the various circumstances envisaged by Article 10.

## **Monaco**

### *Article 10(1)*

1. Criminal liability of legal persons in Monaco is envisaged in the Criminal Code (Art. 4-4) for all criminal offences including money laundering. In line with the code, it is possible to establish the liability in case the offence is committed on behalf of the legal person, by one of its organs or representatives. Authorities consider that the notion of representative is broad enough to cover all elements and include natural persons who have a leading position as required by Article 10. It was also indicated that the term 'representative' covers any natural person who has a power to represent a legal person even on an ad hoc mandate or delegation of powers. However, neither case law nor specific guidelines were presented to confirm this interpretation. In view of the rapporteurs, the interpretation of the afore-mentioned legal requirement seems to be broad enough to cover Art.10(1) requirement but this has still to be proven in practice.

2. The responses submitted by the Monegasque authorities indicate that Art. 4-4 (3) of the CC provides that "*criminal liability of legal person does not exclude the liability of the responsible person acting as co-perpetrator or accomplices*". Therefore, it can be concluded that elements of the Art. 10 (1) of the Convention are implemented.

### *Article 10(2)*

3. Apart from the Criminal Code provisions, Monegasque's authorities indicated that the Law n° 1.362 of 2009, which primarily regulates the fight against money laundering, terrorist financing and corruption, states that legal persons, having the vocation to manage capital, are obliged to exercise vigilance with regard to their customers. In addition, article 67-2 of the same law prescribes the liability of legal persons in case there are breaches of the obligation of vigilance or declaration. These breaches are considered done if an offence is committed by a natural person on behalf of the legal person, who has acted individually or as a member of an organ of the legal person, and who occupies a managerial position based on (1) the power to represent the legal person in relation to third parties (2) the power to adopt binding decisions of a legal person and (3) exercises control over the legal person.

4. It seems that the definition in this *lex specialis* is comprehensive enough and provides grounds for holding the legal person liable for criminal offences committed in cases of lack of supervision or control. This notwithstanding, the scope of the representative of legal person is still narrower than the requirements of the Convention. Namely, it is restricted to the natural person who has the power to represent and take decisions in relation to third parties.

### ***Effective implementation***

5. Whilst the authorities provided a case together with the 2021 Questionnaire, the rapporteurs did not find it relevant for the application of Art.(10) of the Convention.

### ***Conclusion/Recommendation***

6. Monegasque legislation recognises the liability of legal persons for the criminal offence of ML. However, the authorities are recommended to align the legislation more properly with the requirements of Art. 10 (2).. In addition, the authorities are also recommended to take additional steps to facilitate the use of corporate liability mechanisms by judicial and law enforcement authorities taking into account the various circumstances envisaged by Article 10.

## Montenegro

### Article 10 (1)

1. The 2014 COP Assessment Report on Montenegro noted that the country has taken legislative measures with regard to the criminal liability of legal persons for ML offences. The assessment focused on Art. 5 of the Law on Criminal Liability of Legal Entities for Criminal Acts of 2007, which establishes that an offence is committed “*with the intention to obtain any gain for the legal entity*” and by a *responsible person*. The definition of responsible person largely encompassed the categories of persons *with a leading position*, having powers of representation and authority to take decisions on behalf of the legal person. The persons with authority to exercise control within the legal person were not explicitly covered. Overall, the fact that *any natural person entrusted with certain duties* (which is a broader concept than the one required under the Convention) was also considered a responsible person, led to the conclusion by the previous assessment that “*these provisions taken together are largely in line with the requirements provided for under Article 10(1) of CETS N 198*”.

2. In their responses to the 2021 Questionnaire, the authorities reiterated the legal provisions discussed above. No further explanation was provided on how the legislation covers the situations of involvement of the natural person with a “leading position” as accessory or instigator for the commission of the offence, as a factor for triggering the liability of the legal person. Therefore, this particular requirement of the Convention still needs to be addressed by the country.

### Article 10(2)

3. The 2014 COP assessment report on Montenegro concluded that the legislation (the 2007 Law on Criminal Liability of Legal Entities) did not cover explicitly situations where lack of supervision or control by the natural person, who had a leading position in the legal person, had made possible the commission of a criminal offence for the benefit of the legal person. In their responses to the 2021 Questionnaire, the authorities made reference to the provisions of the same Law - Art. 5 *Grounds for liability of a legal entity* and Art. 6 *Limits of the liability of legal entity for criminal offences*. Therefore, this requirement of Art.10 cannot be considered as implemented.

### **Effective implementation**

4. The statistics provided by the authorities illustrate indictments against 15 legal persons, without a clear indication that these concern ML offences. Nor is there an indication as to whether these indictments resulted in any conviction of a legal person for ML. This leads an ambiguity as to whether there are convictions for legal persons for ML offences and whether the provisions on corporate criminal liability were tested in practice.

### **Conclusion/ Recommendation**

5. The corporate criminal liability regime in Montenegro is partially in line with the requirements of Art. 10(1) of the Convention. The issue regarding the acts of the natural person with a leading position as accessory or instigator, being a precondition for the corporate liability, still needs to be addressed. In addition, the legislation does not expressly and fully implement the requirements of Art.10(2). Therefore, the authorities are recommended to undertake legislative measures as necessary to provide for the liability of legal entities for the offence committed due to the lack of supervision or control. The indictments against 15 legal persons (even if not for ML) is definitely a positive sign for developing the case law. Nevertheless, since no conviction for the ML was provided, the authorities are recommended to take additional

steps to facilitate the use of corporate liability mechanisms by judicial and law enforcement authorities taking into account the various circumstances envisaged by Article 10.

## The Netherlands

### Article 10 (1)

1. Dutch legislation (Article 51 of the Dutch Criminal Code) provides for the liability of legal persons for the criminal offence of ML. Legislation does not establish specific criteria which have to be met for imposing the criminal sanction against legal persons. This notwithstanding, the explanations provided by the Dutch authorities indicate that these criteria were developed by the jurisprudence, namely through the Supreme Court rulings of 23 February 1954 (IJzerdraad case) and 21 October 2003 (Zijpe case), which were confirmed and further clarified by the subsequent Supreme Court decisions. The relevant jurisprudence confirms that the basis for criminal liability of a legal person is whether the relevant *behaviour* of a natural person can be reasonably attributed to a legal person. In authorities' view, this provides a wide legal basis for attribution of criminal liability to a legal person, including for 'the lack of supervision or control'. Relevant extracts from these cases were made available to the rapporteurs. Indeed, these cases provide relevant criteria which are to be used to determine in which cases the behaviour of natural persons can be attributed to legal persons. Dutch authorities call this as '*functioneel daderschap*' (i.e. 'effective perpetration'). Effective perpetration can be established when a legal person has a) disposition force over, and b) acceptance of the prohibited physical behaviour of another natural person. The disposition force over the prohibited physical behaviour of another, means that the accused has a hierarchically higher position and thus a control (i.e. to permit or to ban) acts of another natural person, often an employee, who performs the prohibited act. Acceptance means that the accused knew that a prohibited act took place, or knew that the act generally happens in such a (prohibited) way but did nothing to prevent such situation.

2. Unlike the scope of the Convention (the requirements concerning the categories and involvement of natural persons in committing an offence, i.e. "any person who has a leading position") the criteria established by the Dutch jurisprudence is by far broader and refers to anyone "*working for the company*", whether the person has a leading position in the company or not.

3. Liability of legal persons is possible in cases where the natural person acted as instigator or accomplice. This is based on the general provisions of the Criminal Code ( Art.48 ) which establishes the liability of natural persons who intentionally aids and abets the commission of a serious offence. Once it is determined that a legal person could be held liable, the exact involvement of a natural person can then be determined. Whether a natural person acted as a co-perpetrator, instigator, accomplice or as a participator in a criminal organisation is then decided in accordance with Articles 47 and 48 Criminal Code. In the view of the rapporteurs, the explanations provided by the authorities indicate that these provisions in conjunction with the criteria developed by jurisprudence cover the requirements of the Article 10 (1).

### Article 10 (2)

4. Dutch legislation does not have provisions which directly addresses the requirements of the Article 10 (2) in the legislation. However, the authorities advised that the above-mentioned jurisprudence (Zijpe case) provides for corporate criminal liability in cases when "*the behaviour was under the control of, accepted or deemed to have been accepted, or failed to have been prevented by the company*". In addition, they referred to the recent case of ING Group Bank where a natural person who was in charge of supervision, was prosecuted. In authorities view, the jurisprudence has shown that Art.10(2) is applied in practice and that the Art. itself does

not require 'legislative measures' but rather 'measures' which is what they already had. The rapporteurs, to the extent to which the jurisprudence was presented to them (i.e. the ING Group Bank case was not made available in English) agree that the Dutch system includes some form of liability of legal persons for the offence committed due to the lack of supervision or control. In rapporteurs' view, the country would still benefit if corresponding legislative amendments would be introduced to clearly reflect the requirements of Art.10 of the Convention.

### ***Effective implementation***

5. The authorities provided statistics on the number of cases where the liability of legal persons for the ML offence had been established. In the period 2015-2020, 138 legal persons were held liable for ML offences. In addition, jurisprudence was presented in order to demonstrate the practical application of specific criteria required by Art. 10 (1 and 2). The presented jurisprudence is relevant and confirms the effective application of Article 10 by Netherlands.

### ***Conclusion/Recommendation***

6. Dutch legislation and jurisprudence introduced the liability of legal persons for the ML offence. The jurisprudence appears to be well developed and it interprets the legislation broadly, thus applying the requirements of Art.10 of the Warsaw Convention. This notwithstanding, the rapporteurs recommend to authorities to consider amending the legislation and fully reflect the requirements of Article 10 therein. The authorities are also encouraged to continue developing case law on the liability of legal persons for ML offences.

## **North Macedonia**

### *Article 10(1)*

1. Criminal legislation of the Republic of North Macedonia provides for the liability of legal persons. The Criminal Code either includes the possibility of legal persons being held liable as one of the provisions of an article which defines exactly the offence (Criminal Code, Art. 28-a (1)) whilst for the other offences (i.e. those which do not have such a provision in articles where they are defined) the criminal liability of legal entities is envisaged if a significant material benefit has been acquired or significant damage has been caused to others (Criminal Code, Art. 28-a (2)).

2. Money laundering incrimination explicitly envisages the criminal liability of the legal person (Criminal Code, Art 273 (6)). Furthermore, there are specific conditions required to be met to hold legal persons liable. Consequently, the liability is possible if the offence is committed by a responsible person within a legal entity, on behalf, for the account and for the benefit of a legal entity. 'Responsible person' is defined in Art. 122 (7) of the CC, and it includes a natural person entrusted with the execution of regulations, use of property, management of production and supervision. In rapporteurs' view this definition lacks of one of the elements envisaged by Art. 10 (1) and that is a natural person with the power of representation.

3. The legal entity shall also be liable for a crime even when there are factual or legal obstacles for determining the criminal liability of a natural person as an offender (Art. 28-b (2) CC).

4. Authorities indicated that the liability of legal persons is possible when the natural person has acted as accessory or instigator in the commission of the ML offence if it is committed by a responsible person within a legal entity, on behalf, for the account and for the benefit of a legal entity. According to what the authorities have explained, liability of a natural person acting as an instigator or an accomplice is covered by the general part of Criminal Code, in particular Art. 22 and 23. Article 22 of the CC states that 'if two or more persons, by participating in an act of committing or by any other significant contribution towards the committing of the crime,



jointly commit a crime, each one of them shall be sentenced with the proper sentence prescribed for such crime.’ In addition, according to the Article 23 stipulates that ‘whosoever premeditatively instigates another to committing a crime, shall be punished as if he had perpetrated the crime himself. Consequently, in all instances, whether the natural person committed the crime or acted as an accessor or instigator of the crime, criminal liability of the legal person would be possible.

#### *Article 10(2)*

5. A legal person is liable for an offence committed due to failure of the governing, managing and supervising body to prevent a crime, or if they conceal it or do not report it. This rule is valid only with regard to an offence resulting in significant proceeds or in significant damage to a third party (Criminal Code, Art. 28 (a)).

#### **Effective implementation**

6. The authorities provided some examples of the prosecution of legal persons for ML offences. Whilst these initiatives are welcome, a firm conclusion on effective application of Art.10 cannot be reached due to the fact that these cases are still pending before the court.

#### **Conclusion/Recommendation**

7. Whilst the legislation of North Macedonia provides elements of the corporate liability as prescribed by Art. 10 (1,2), some important requirements are still to be included in the legislation in relation to Art.10(1). Therefore, the authorities are recommended to introduce the definition of the natural person who has a leading position – i.e. add the element of Art.10(1) a. Likewise, authorities shall adopt legislative measures as to extend the liability of legal persons regardless of the amount of benefit or damage caused. In addition, the authorities are also encouraged to take additional steps to facilitate the use of corporate liability mechanisms by judicial and law enforcement authorities taking into account the various circumstances envisaged by Article 10.

### **Poland**

#### *Article 10 (1)*

1. Poland has undergone the COP assessment in 2013 and was reassessed three times under the follow up procedure (in 2015, 2016 and 2017). It was noted that the corporate liability of legal persons was introduced in 2002 through provisions of the Act of 28 October 2002 on the Liability of Collective Entities for acts prohibited under penalty. The legal person could be held liable for offences committed by a natural persons who held a leading position and for the benefit of the legal person (Art. 3). The Conference of the Parties, in its assessment report, concluded that the definition of corporate liability was broadly in line with Art.10. However, there had been no final convictions or indictments of legal persons for money laundering or any other economic crime. Poland was recommended to conduct a review for identifying and removing possible obstacles to use the corporate liability, including the elimination of the pre-condition of prior liability of natural person(s). In the follow up reports it was stated that the recommendations had not been addressed even though the authorities informed about the preparatory steps introducing a new system of criminal liability for corporate entities.

2. In their responses to the 2021 Questionnaire, the authorities, further to the above-mentioned provision, drew the rapporteurs attention to Art. 4 of the Act of 28 October 2002 on Liability of Collective Entities for Acts Prohibited under Penalty. This article requires a valid conviction or the discontinuation of criminal proceedings against a natural person in order to hold legal persons liable. This presents a considerable restriction with regard to the principles of corporate liability as envisaged by Art.10.

3. The authorities indicated that the criminal liability for the accessory (aiding and abetting) and instigator is the same as liability of a perpetrator (Art. 18 of the Criminal Code). Bearing in mind the secondary nature of the corporate liability, a prior conviction of the natural person as accessory or instigator would be necessary to hold a legal person liable in line with this requirement of Art.10(1).

#### *Article 10(2)*

4. In the 2013 COP assessment report on Poland, rapporteurs noted that there was a legal provision enabling the liability of legal persons for the offence committed due to the lack of supervision or control (Art. 5 of the Liability of Collective Entities for Acts Prohibited under Penalty). Nonetheless, the restrictions imposed by Art. 4 of the Act, as described above, limit such liability to the situations where there is a conviction against a natural person or the process against him/her is discontinued.

#### **Effective implementation**

5. For the period 2015 – 2018, the authorities informed about 18 final judgments against legal persons under the provision of the 2002 Act. None of them are for ML offences. No convictions were achieved since 2018. Consequently, it cannot be concluded that Art.10 has been effectively applied in practice.

#### **Conclusion/Recommendation**

6. The Polish legal framework implements, in general, the requirements of Art. 10(1) and (2) of the Convention. The recommendations of the 2013 COP assessment report regarding the need to review the corporate liability regime in terms of the potential obstacles for effective implementation and the possible elimination of the pre-condition of establishing the liability of a natural person before holding a legal person liable, have not been implemented. Therefore, the recommendations of the 2013 COP assessment report on Poland on the implementation of Art. 10 of the Conventions are still valid and remains to be implemented by the country.

## **Portugal**

#### *Article 10 (1)*

1. Portuguese authorities indicated that liability of legal persons for money laundering offences is envisaged in Art. 11 of the Criminal Code. A legal person shall be held liable for the offence committed on their behalf and in their collective interests by persons holding a leading position or by anyone acting under its authority as a result of a breach of their duty of supervision or control. The norms envisage a form of protection of the entities against their liability in cases when the natural person “*has acted against express orders or instructions*” (Art. 11(6)). The acts must be committed by “*persons holding a leading position*” within the legal entity. Para. 4 of Art. 11 clarifies that it is understood that “*the bodies and representatives of the legal person and whoever has authority to exercise control over its activity occupy a leading position*”. The presented conclusions of the case-law clarify that “*acting as an organ of the company does not have to mean acting as the holder of the organ, with a valid formal bond. What really matters is the exercise by the agent of a power corresponding to that of the body...*”.

2. In their responses to the 2021 Questionnaire, the Portuguese authorities consider that the requirement of Art. 10(1) with regard to the situations of the liability of legal persons when the natural person with a “leading position” acted as accessory or instigator, is implemented by the *normative regime in force*, namely, Art. 11 of the Criminal Code. Art. 26 and 27 of the Criminal Code establish the criminal liability of the persons acting as accessory or instigator, who shall be punished in the same manner as the principal to the crime - a person who

“intentionally determines another person to carry out the act” (Art. 26) and who “in any manner aids and abets another person in the commission of a crime” (Art. 27), If the person who has a leading position within the legal person acts as an accessory or an instigator, he or she can be convicted, including for ML, which may trigger the criminal liability of the legal person in accordance with Art. 11 of the Criminal Code. Therefore, it can be concluded that the specific requirement of the Convention is met.

#### *Article 10(2)*

3. An offence committed by anyone under the authority of the person with a leading position, as a result of “a breach of their duty of supervision or control” is also a criterion which can determine the criminal liability of the legal person (Art. 11(2) b) of the Criminal Code). Therefore, the requirement of Art. 10(2) of the Convention is met.

#### **Effective implementation**

4. Authorities indicated and presented statistics regarding the criminal liability of legal persons are maintained, including cases of convictions against legal persons for ML offence.

#### **Conclusion/Recommendation**

5. Portugal has implemented the requirements established under Art. 10(1) and (2) of the Convention. Article 10 is effectively applied by the jurisdiction. Therefore, the authorities are recommended to continue facilitating the use of corporate liability mechanisms by judicial and law enforcement authorities taking into account the various circumstances envisaged by Article 10.

### **Romania**

#### *Article 10 (1)*

1. Romania has undergone the COP assessment in 2012 and the follow up procedure in 2014. Both reports noted that legislation provided for the liability of legal persons for ML offences (Art 19<sup>1</sup> of the Criminal Code) and provisions were broadly in line with the requirements of Art. 10 (1).

2. From the responses to the 2021 Questionnaire, it becomes apparent that the legislation has undergone changes since the last assessment. The Criminal Code has been replaced in 2014 and previously assessed provisions of Art. 19<sup>1</sup> of the 1968 Criminal Code on corporate criminal liability have been replaced by Art. 135 of the CC. Nevertheless, the new article maintained the same features as the previous regime on the criminal liability of legal persons, including for ML offences. The liability of legal person is possible when offences are committed: i) “in the performance of the object of activity of the legal person”; ii) “in their interest”; iii) on their “behalf”. The conditions are alternative and fulfil the corresponding requirement of the Convention.

3. Art. 135 of the CC, in a similar manner as the previous Art. 19<sup>1</sup>, uses a broad approach, without specifying the categories of natural persons, whose actions can determine the liability of the legal persons. Any category of person acting in the course of action of a legal person, which is an action in its interest or on its behalf, is covered. This would include persons having managing positions and non-employees who have some legal or factual relationship with the legal entity. Therefore it can be concluded that the category of natural persons in the Criminal Code is in line with the scope of the natural person who holds the leading position as established by the Art. 10(1) of the Convention.



4. Authorities have indicated that the Criminal Code imposes a general provision dealing with the instigator and accomplice and therefore the legal person can be held liable when natural persons acted as accessory or instigator (Art. 47 and 48 of the CC). If the person who has a leading position within the legal person acts as an accessory or an instigator, he or she can be convicted, including for ML. Same articles induce the criminal liability of the legal person in accordance with Art. 135 of the CC. Therefore, it can be concluded that the specific requirement of the Convention is met.

#### *Article 10(2)*

5. The 2012 COP Assessment Report noted that the legislation did not explicitly foresee that corporate liability was applicable in cases the criminal conduct was a result of a lack of supervision whilst the Romanian authorities argued that this was a natural pre-condition for holding a legal person liable under the criminal law.

6. In their responses to the 2021 Questionnaire, authorities indicated the same Article 135 of the Criminal Code when arguing on the implementation of this provision of the Convention. In addition, the authorities referred to Art. 49 of the AML Law which states that *the commission of the ML offence by one of the obliged entities, in the course of its professional activity, as provided under art. 5 of this Law, shall be considered as an aggravating circumstance*. Whilst the rapporteurs are of the view that the Criminal Code does not explicitly envisage the liability of legal persons in cases when the offence would be committed as a result of a lack of supervision or control by a natural person holding a leading position, the aforementioned provision of the AML law provides, to some extent, a liability when lack of supervision has made possible the commission of an ML offence. This liability is limited to the entities subject to AML/CFT obligations and does not extend to all legal persons. On the other hand, the OECD report ‘Liability of Legal Persons for Corruption in Eastern Europe and Central Asia’<sup>12</sup> considered Romania as the only ACN<sup>13</sup> country *where the corporate liability doctrine has been developed in the light of the organisational approach*. The report also states that the law does not determine the specific persons whose acts will trigger the liability of a legal entity, but it requires that their “deeds have to be committed in the form of the guilt provided by the penal law”. What constitutes the guilt of the legal person is not specified in the law, but according to the doctrine, the guilt should be attributed in two steps, not only to the natural person, but also to the legal person (its organs) who instigated, authorized, tolerated the criminal behavior, **did not control or supervise its employees**, did not ensure a proper internal organization or a proper integrity policy. The rapporteurs took a note of this conclusion, as well as the interpretation of legislation as quoted in this report which further specifies the regime Romania has for this particular aspect of corporate liability. Consequently, the rapporteurs’ view is that the criterion under Art. 10(2) of the Convention is implemented, though indirectly and without clear legislative provisions in the Criminal Code or elsewhere (i.e. the referred AML Law)..

#### ***Effective implementation***

7. The implementation of the provisions on corporate criminal liability was demonstrated through the statistics provided by the Romanian authorities. During the period 2018 – 2020, 41 legal entities were prosecuted for ML (usually together with the natural persons). It is not clear from the information submitted how many and if any of the prosecuted cases ended in a conviction. Nevertheless, compared to the situation as described in the 2012 COP assessment

---

<sup>12</sup> <https://www.oecd.org/corruption/ACN-Liability-of-Legal-Persons-2015.pdf>

<sup>13</sup> Anti-Corruption Network for Eastern Europe and Central Asia (ACN)

(4 indictments of legal persons for ML, with no conviction), the effectiveness of the regime could be considered as improved.

### **Conclusion/ Recommendation**

8. The Romanian corporate criminal liability regime is broadly in line with the requirements established under Art. 10(1) of Convention. The exact fact on what constitutes corporate liability in case of lack of supervision is not specified in the laws, but in the doctrine as further elaborated above. Since the current legislation does not expressly implement the provisions of Art. 10(2), authorities are recommended to introduce further clarity via legislative or other measures for the offences committed by legal persons due to the lack of supervision or control. Although it is not clear how many (if any) convictions of legal persons for ML were achieved, the prosecution against 41 legal persons for ML offences is an indicator that implementation of the relevant provisions moves in the right direction. Romania is encouraged to continue developing case law in this area.

### **Russian Federation**

#### *Article 10(1)*

1. Russian legislation does not foresee the criminal liability of legal persons due to the fundamental principles of domestic law. However, legal persons are subject to administrative sanctions for the failure to comply with the Code of Administrative Offences. This is without prejudice to the criminal or administrative liability of natural persons who manage or direct a legal person (CAO Art. 2.1(3)).

2. Russia underwent the FATF mutual evaluation process and the report was adopted in 2019. In the MER, assessors noted under Recommendation 3, criterion 3.10, that there was a shortcoming concerning the liability of legal persons for the ML offence. According to CAO Article 15.27(4) it is an administrative offence for an organisation or its officials to fail to apply the AML/CFT law if such a failure results in ML or TF “*established by an effective court sentence.*” This offence is mainly intended to punish compliance violations by obliged entities.

3. Authorities also informed about the fact that the draft federal law has been prepared. The aim of this law is to introduce the liability of legal entities in line with the requirements of Art.10 of the Warsaw Convention.

#### *Article 10(2)*

4. . In the response to the 2021 Questionnaire, the Russian Federation indicated that, in line with Article 2.1 (2) CAO a legal person shall be held liable for an administrative offence in case it fails to observe regulations whose violation is administratively punishable. This notwithstanding, the wording as it stands in this article does not fully reflect the requirements of Art.10(2) of the Convention.

### **Effective implementation**

4. The authorities, in their responses to the 2021 Questionnaire, did not provide case examples or statistics.

### **Conclusion/Recommendation**

5. Russian authorities are recommended to further develop their legal system as may be necessary to implement both paragraphs of Art. 10 (1 and 2). Once this is completed, the authorities should take additional steps to facilitate the use of corporate liability mechanisms by judicial authorities taking into account the various circumstances envisaged by Article 10.

## San Marino

### Article 10 (1)

1. The concept of criminal liability of legal persons has been introduced in San Marino by the Law No. 99 of 2013 on the liability of legal persons. The Law is applicable in relation to all types of legal entities, including public bodies carrying out economic activities (Art. 1(1)). Art. 2(1) a) of the Law fulfils the mandatory element established by the Convention (Art. 10(1)) requiring offences to be committed on *behalf* or in the *interest* of legal persons. The offence must be committed by a “*person who had the power to act for the legal person*”. Although not expressly stated, the provisions of Art. 2(1) b) of the Law and the case-law provided by the authorities, indicate that all categories of persons listed under the Convention’s concept “*who have a leading position*” are encompassed.

2. The liability of legal persons is possible when the responsible person acts as accessory or instigator and the offence is committed on behalf, through and/or in favour of the legal person. According to the explanations provided by the authorities, the two hypotheses of the natural person acting as an accomplice or as an instigator are covered by the provisions of the Criminal Code, namely Art. 73 and 289. Under Art. 73 of the Criminal Code (Complicity and collaboration), all those who have in any way taken part in committing an act envisaged as a criminal offence, shall be subject to the punishment established for that offence. Pursuant to Art. 289, anyone who publicly instigates a crime is punishable with the first-degree imprisonment. Consequently, in all instances, whether the natural person committed the crime or acted as an accessor or instigator of the crime, criminal liability of the legal person would be possible.

### Article 10(2)

3. The liability of legal persons for the offence committed due to the *lack of supervision or control* is envisaged by the Art. 2(1) b) of the Law. The mandatory element is that the offence has to be committed *in carrying out the activity of the legal person*. The case-law provided confirms that this provision of the Convention is properly applied in practice. Furthermore, the authorities advised that it is not enough to show just the absence of supervision or control of the company, rather than a causal link between the responsible person’s omission and the crime needs to be proved. The legislation extends this condition to instances when the offence was “*possible because of an organisational failure attributable to the legal person*”.

### **Effective implementation**

4. The provided statistics indicate six successful convictions of legal persons for ML offences (out of seven prosecuted cases), since the 2013 Law entered into force.

### **Conclusion/Recommendation**

5. San Marino implements the requirements of Art. 10(1) and (2) of the Convention. The provisions on corporate liability appear to be implemented effectively in the light of the six convictions of legal persons for ML offences. San Marino is encouraged to continue developing case law in this area.

## Serbia

### Article 10(1)

1. Serbian legislation established the criminal liability of legal persons for ML offences. The Law on Liability of Legal Entities for Criminal Offenses (Official Gazette of the RS, No. 97/08) defines conditions upon which a legal person can be held liable. Legal persons shall be liable

for a criminal offense which, within the scope of its activities or authorisations, is committed by a responsible person with the intention of obtaining a benefit for the legal entity. In addition, the law provides a definition of the responsible person as a natural person who is - either in line with the regulations or de facto - entrusted with certain duties within a legal entity, as well as a person authorised to act on behalf of a legal entity (Article 5 (2) of the Law on Liability of Legal Persons for Criminal Offences). Given the definition provided by the authorities, it seems that the scope of the responsible person is in line with the requirement of the Art. 10 (1) of the Convention.

2. According to the submission of the authorities, responsibility of legal persons is envisaged even when the responsible person acted as accessory or instigator. The Law on Liability of Legal Entities for Criminal Offenses (Art.34) stipulates that the general part of the Criminal Code should apply when determining liability of legal entities. Furthermore, Art. 34 and 35 of the CC define complicity when committing a criminal offence which implies that the liability of legal persons will be triggered in cases when a natural person acted as accessory or instigator. It is apparent that these provisions meet the requirement of the Art. 10(1)

#### *Article 10(2)*

3. Liability of a legal entity also exists if the ML offence is committed due to the lack of supervision or control by a responsible person (Article 6 par. 2 of the Law on Liability of the Legal Entity for Criminal offences).

#### **Effective implementation**

4. No case law was provided. Authorities submitted statistics which show that two convictions, both not being final yet, against legal persons for ML offences have been achieved in 2020. This is an encouraging trend, however, it does not allow for a firm conclusion whether or not Art.10 is effectively implemented in Serbia.

#### **Conclusion/Recommendation**

5. Serbia has implemented provisions of Art. 10 (1 and 2) and therefore legal persons can be held liable for the ML offence. Authorities are recommended to take additional steps to facilitate the use of corporate liability mechanisms by judicial and law enforcement authorities taking into account the various circumstances envisaged by Article 10.

## **Slovak Republic**

#### *Article 10 (1)*

1. Corporate criminal liability was introduced in the Slovak Republic through the Act No. 91/2016. Section 3 of the Act applies to a broad range of offences, including those related to ML (Sections 233, 234a and 234 of the Criminal Code). Legal persons can be held liable if the offence was committed *for the benefit* of the legal person, *on its behalf* or *as part of or through its activities*. Another element requires that the offence is committed by: i) *a member of its statutory body*; ii) *a person performing supervision or control within the legal entity*; iii) *a person authorised to represent the legal person or make decisions in its behalf*. The conditions are considered to be met irrespective of whether the natural person was found criminally liable or if the specific person has been identified. These provisions include a wide range of individuals holding various levels of authority within the legal person, and therefore Art. 10(1) of the Convention is considered as implemented in the Slovak Republic. In addition, the legislation states that the liability can be determined by the actions of the “statutory body”. It remains unclear how the liability would be linked to a statutory body in practice.

2. The liability of legal persons is possible when the responsible person acts as accessory or instigator and the offence is committed on behalf, through and/or in favour of the legal person, (Section 21 and 6(3) of the CC).

#### *Article 10(2)*

3. Slovak legislation provides for the possibility to hold legal persons liable for the offence committed due to the lack of control or supervision. Namely, section 4(2) states that an offence would be committed in cases when the natural person referred to in Section 4(1) of the Act *fail to perform properly its control and supervision duties, even if by negligence*. This would not involve cases of “*negligible significance with regard to the object of activity of the legal person and to the manner, consequences and circumstances of the commission of the offence*”.

4. No jurisprudence is available yet which would provide an interpretation of some terms and provisions where clarification appears necessary, such as the expressions (i) “*properly fulfil*” control or supervision duties or (ii) the “*negligible significance*” of the failure. It remains to be seen how the courts will interpret these provisions in practice.

#### **Effective implementation**

5. All convictions against legal persons are publicly available and appear to be numerous.<sup>14</sup> The statistics also clearly indicate an increased effectiveness in recent years (202 criminal proceedings against legal persons in 2020 compared to 71 in 2018). The Slovak Republic indicated three final convictions against legal persons for serious ML. The imposed penalties appear to be dissuasive and include prohibition to undertake certain activities and forfeiture of property, including the whole property of the legal person (in two cases out of three).

#### **Conclusion/ Recommendations**

6. Slovakia implemented the requirements of Art. 10 (1) and (2) of the Convention. However, some provisions would benefit from further interpretation/clarification or guidelines by judicial authorities. This concerns the liability of a legal person linked to the actions of its statutory body and the meaning of the terminology used (e.g. “*properly fulfil*” control or supervision duties or the “*negligible significance*” of the failure to properly perform control or supervision duties). Slovakia is recommended to ensure that the interpretation and practical application of the exception from liability under Art. 4(2) with regard to cases of “*negligible significance*” does not enable legal persons to deny their liability. Numerous convictions of legal persons have been achieved for various offences which demonstrates the ability of the authorities to effectively apply the relevant provision. Three convictions against legal persons were achieved for serious ML, which further confirms the effective application of Art.10 (1 and 2) of the Convention. The Slovak authorities are encouraged to continue developing case law on the liability of legal persons for ML offences.

#### **Slovenia**

##### *Article 10(1)*

1. Slovenian Law on Liability of Legal Persons for Criminal Offences envisages in Art. 4, that legal entities can be held criminally liable for ML offences. Legal persons may be held liable if an offence is committed by a perpetrator in the name or on behalf of or for the benefit of a legal person and if: (1) the criminal offence committed entails carrying out an illegal resolution, order or endorsement of legal person’s management or supervisory bodies, or (2) the legal person’s management or supervisory bodies influenced the perpetrator or enabled him/her to

---

<sup>14</sup> <https://esluzby.genpro.gov.sk/zoznam-odsudenych-pravnicky-osob>



commit a criminal offence Slovenian law goes even further, stating that an offence can be imputed to the legal person also if the legal person “ acquires illegal property benefit or uses objects obtained through a criminal offence.” Legal persons can be held liable if any natural person who acts in the name or on behalf of the legal person carries out an unlawful resolution, order or endorsement of a management or supervisory body of that legal person. Therefore, rapporteurs are of the view that the three categories of natural persons who have the leading position as envisaged in Art. 10 (1) are not properly transposed in the Slovenian legislation.

2. The authorities indicated that liability of a legal person is possible if the management or supervisory body influenced or supported the commission of the criminal offence claiming that this covers requirement of the Art. 10 (1). However, the requirement of the Art. 10 (1) goes beyond that requirement and demands the liability in case that any natural person (perpetrator of the offence) is acting as accessory or instigator and not only members of the management or supervisory body. Therefore, the rapporteurs conclude that this requirement of Art 10(1) has not been incorporated in the Slovenian legislation.

#### *Article 10(2)*

3. In their responses to the 2021 Questionnaire, Slovenian authorities indicated that legal persons shall be liable for a criminal offence committed by the perpetrator in the name of, on behalf of or to the benefit of a legal person in case where the management or supervisory bodies have omitted obligatory supervision (Law on Liability of Legal Person for Criminal Offence, Art. 4 (4)). In rapporteurs’ view, the Slovenian legislation foresees a broad responsibility in case of lack of supervision. In particular, it criminalises not only the deeds for the benefit of, but also on behalf of or to the benefit of a legal person. Art.10(2) of the Convention is therefore applied in Slovenia.

#### **Effective implementation**

4. Slovenia provided statistics for 2019. The figures provided indicate that there are ongoing cases involving corporate liability and that one legal person was convicted for ML offence. This information is insufficient and does not enable reaching a firm conclusion on effective implementation of Art. 10.

#### **Conclusion/Recommendation**

5. Slovenia has introduced legislation which establishes a liability of legal persons for the criminal offences, including for money laundering. This notwithstanding, the authorities are recommended to introduce the definition of the natural person who has the leading position as it is provided in the Art. 10 (1) of the Convention.. Due to the fact that a legal person could not be held liable if the natural person acted as an instigator or accessory, it is further recommended to amend the legislation and bring it in line Art. 10 (1). Last but not least, the authorities should consider taking additional steps to facilitate the use of corporate liability mechanisms by judicial and law enforcement authorities taking into account the various circumstances envisaged by Article 10.

## **Spain**

#### *Article 10 (1)*

1. Legal entities can be held criminally liable in Spain, including for ML offences in line with Art. 301 and 302 of the Spanish Criminal Code. The conditions under which such a liability may occur are established by Art. 31 *bis* of the Criminal Code. It is required that the offence is committed: i) in the *legal person’s name, or on their behalf* and ii) to *its benefit*, which can be direct or indirect iii) by a natural person individually or as a member of a body of the legal persons. A natural person is defined as *a legal representative of a legal person, authorised to*

*take decisions* in the name of the legal person, or to possess *organizational and controlling powers* over the legal person. The scope of the natural person as defined in the Spanish Criminal Code meets the requirement of the natural person who has a leading position as defined by Art. 10 (1) of the Convention.

2. The 2015 reform of the corporate criminal liability in Spain introduced a criminal liability “exemption”. Art. 31 *bis* (2) - (5) of the Criminal Code provides for a possibility for the legal persons to benefit from “defence”, if they are able to prove they had in place and had effectively implemented, before an offence was committed, *an organizational and management model*, which would be adequate to prevent criminal offences or reduce significantly the risk of such offences being committed. This provision lists the minimum requirements of a corporate criminal compliance program, which includes risk analysis of potential vulnerable spheres of activities, models for adequate management of financial assets, an obligation of notifying on possible risks and cases of non-compliance, a disciplinary measures in case of non-compliance and periodic audits. The “compliance model” has to be adequately monitored independently by a management body, with sufficient controlling authority or directly by management bodies in case of a small size legal persons (Art. 31 *bis* (2) and (3)). In those cases, in which only partial evidence of compliance with the afore-mentioned requirements is met, the exemption of the liability would not be possible. The undertaken measures might be considered as factor to reduce the penalty (Art. 31 *bis* (2) 4.) The implementation of a non-mandatory compliance “model” does not exempt the legal person from liability, but rather allows the courts to take into account the legal person’s efforts to prevent criminal offences from occurring. Therefore, the new provisions do not affect the compliance of Art. 31 *bis* of the Criminal Code with the requirements of the Convention.

3. No explanation was provided by the authorities on how the legislation covers the situations of involvement of the natural person with a “leading position” as accessory or instigator for the commission of the offence, as a factor for triggering the liability of the legal person. Consequently, the rapporteurs could only conclude that this requirement of Art 10(1) has not been incorporated in the Spanish legislation.

#### *Article 10(2)*

4. The requirement of Art. 10(2) is implemented by Art. 31 *bis* (1) b) of the Criminal Code. It covers situations where the offences were committed when *carrying out corporate activities* (by any employee or any non-employee, under supervision/control based on a contract) *due to serious breach of duties* of supervision, surveillance and monitoring by the categories of natural persons mentioned by Art. 31 *bis* (1) a). The non-serious breaches would not be criminally liable and might be sanctioned based on administrative law. In the responses to the 2021 Questionnaire, the Spanish authorities did not elaborate on the interpretation of the legal terms *serious* and *non-serious* breaches. It remains to be seen how these provisions are applied in practice with a view to enable legal persons to avoid liability.

#### ***Effective implementation***

5. The statistics provided by the authorities indicate two successful convictions of legal persons for ML offences (in 2018 and 2019). Whereas this fact confirms that the laws are applied in practice, the number of cases does not allow a firm conclusion that Article 10 is effectively applied by the Spanish authorities.

#### ***Conclusion/Recommendation***

6. Spain has implemented the requirements of Art. 10 (1) and (2) of the Convention. Some specific provisions of the legislation such as the “*defence*” *exemption* and the exemption for



the *non-serious breaches* of duties of supervision, surveillance and monitoring are yet to be tested in practice. So far, two successful convictions against legal persons in ML cases were achieved. This, to some extent, demonstrates the effective application of the legislation in practice.

## Sweden

### Article 10(1)

1. Swedish legislation recognises the liability of legal persons for the criminal offence through corporate fines (Criminal Code, Section 36). Liability is possible for criminal offences when the conditions of certain thresholds of penalties are met (ML included) and if the offence was committed in the exercise of either (1) business activities; (2) public activities that can be equated with business activities; or (3) other activities conducted for the benefit of the company. The offence shall be committed by the responsible person who is defined in accordance with the definition of the natural person holding a leading position, as required by Article 10 (1).

2. Moreover, corporate fines may be imposed on a company if a person, acting either individually or as a part of an organ of the legal person with a leading position in the company (based on a power of representation of the company or with a power to take decisions on its behalf), is involved as accessory or instigator in any criminal offence.

### Article 10(2)

3. According to Chapter 36, Section 7 of the Swedish Criminal Code, a corporate fine may be imposed if the legal person did not take reasonable steps to prevent the crime. As a consequence, a legal person can be held liable if the lack of supervision or control by a natural person made it possible to commit an offence for the benefit of that legal person. Furthermore, a corporate fine may also be imposed on a legal person, under the Corporate fine system, in cases where an offence was committed by a person from that company who has a particular responsibility for supervision or control of its activities.

### **Effective implementation**

4. In their responses to the Questionnaire, authorities did not provide statistics. However, extracts from two cases completed before the court were provided. These cases discuss situations where legal persons were held liable, although the extracts provided by Sweden do not contain sufficient details in relation to the nature of the offences committed by these legal persons nor the evidence used to prove their liability. Given the limited information provided, the rapporteurs are of the view that although it is clear that liability of legal entities is applied in practice, no exact conclusion could be made with regard to its effective application.

### **Conclusion/Recommendation**

5. Swedish legislation ensures that legal persons can be held liable for the criminal offence of ML. Based on the responses provided by the authorities in the 2021 Questionnaire, the rapporteurs are of the view that the legislation is in line with Art.10 (1 and 2). This notwithstanding, authorities are recommended to take additional steps to facilitate the use of corporate liability mechanisms by judicial authorities taking into account the various circumstances envisaged by Article 10.

## Türkiye

### Article 10(1)

1. Türkiye's legislation does not recognise the criminal liability of legal persons due to fundamental principles of national law. However, when a legal person is involved in the

commission of an ML offence, it is subject to specific measures such as the cancellation of its license and confiscation of illicit gains, including the property laundered. Cancellation of licence of legal persons, as security measure, is possible only if the previous conviction against a responsible natural person is achieved, which, in the view of the rapporteurs, limits the application of Art. 10(1) in Türkiye. On the other hand, application of confiscation measures against legal persons does not require prior conviction of a natural person.

2. In addition to security measures, legal persons being misused for the commission of a ML offence are also subject to administrative fines (Misdemeanour Law Art. 43/A).

3. The scope of a natural person who has a leading position is determined as “the body or representative” which, according to the authorities’ view, covers all categories of persons as described in Art. 10(1) and Türkiye has provided caselaw to this effect.

4. According to the responses provided by Türkiye’s authorities, security measures (cancellation of licences and confiscation) can be applied on legal persons in case the natural person acted as accessory or instigator. In this regard, the general part of the CC would be applied (Art. 38-39 of the CC). Thus, application of administrative fines is possible in cases “*in case more than one person gets involved in the commission of the misdemeanour*” which would cover the situations where the natural person is either an accessory or an instigator.

#### *Article 10(2)*

5. Authorities stated that the only condition to apply security measures for legal persons is that the offence is committed for the benefit of a legal person. This would allow for the application of administrative sanctions when a natural person undertakes a duty within the operational framework of a legal person. This argument is used to demonstrate that the liability of legal persons is possible for the offence committed due to the lack of supervision or control. However, no case law or guidelines to this effect was provided and therefore the rapporteurs are not convinced that the requirements of Article 10\_2 are actually covered.

#### **Effective implementation**

6. Türkiye’s authorities submitted statistical data for 2015-2020, showing that specific security measures were applied in 106 cases for different offences. Within the same period, Article 43/A of the Law on Misdemeanours was applied two times by the courts against legal persons. Given the shortcomings of the technical compliance with Art.10 as elaborated above, these figures do not allow reaching a firm conclusion on the effective implementation of Art.10 in Türkiye.

#### **Conclusion/Recommendation**

7. Legislation in Türkiye does recognise the administrative liability of legal persons for ML offences. However, the requirement of a previous conviction for the cancellation of licences does not allow a firm conclusion to be reached as to whether Türkiye fully implements the requirements of Article 10 of the Convention (. Moreover, Türkiye is encouraged to take measures to better clarify its position with respect to whether its legal framework includes the liability of legal persons for ML offences committed when there is a lack of supervision or control. Finally, additional steps should be taken to facilitate the use of corporate liability mechanisms by judicial authorities taking into account the various circumstances envisaged by Article 10.

#### **Ukraine**

#### *Article 10(1)*

1. Ukrainian legislation provides for criminal liability of legal persons for ML offence. To establish the liability of legal persons several criteria are to be met. The first one is that the offence shall be committed by an authorised person who is acting on behalf of a legal person – i.e., the offence should be committed for legal person’s benefit. Furthermore, legislation (art. 96 of the Criminal Code) provides a definition of the authorised person – these are officials of a legal entity, as well as other persons who, in accordance with the law, legal entity’s statutory documents or contract, have the right to act on behalf of a legal entity. It seems that the definition of the natural person acting on behalf of the legal person in the Ukrainian legislation is narrower than the requirements from the Convention, since it does not cover the natural person who has a leading position based on the authority to exercise control within the legal person.

2. Liability of a legal person is, according to the general part of Criminal Code, possible even when the natural person acted as accessory or instigator (CC, Art. 27 (1)).

#### *Article 10(2)*

3. Ukrainian legislation envisages, to some extent, the responsibility of a legal person when the offence is committed based on the lack of supervision or control (Criminal Code, Art. 96<sup>3</sup> Para 1(2)). However, this is limited to cases where corruption is a predicate offence to ML (*“legal person shall be liable in case of failure to ensure the fulfillment by the authorized person of obligations, imposed by law or legal entity’s statutory documents, to take measures to prevent corruption, which led to a criminal offense of ML”*). In view of that, the rapporteurs, although concluding that Art.10(2) is applied in Ukraine, note that this implementation imposes as already noted above a specific limitation.

#### **Effective implementation**

4. Authorities provided statistics showing that in the period 2017–2019, there were 4 indictments against legal entities for committing a ML offence. No case law was presented. Whilst having 4 indictments is a commendable fact, the information provided by the authorities is insufficient to form a firm conclusion on effective application of Art.10 of the Convention in Ukraine.

#### **Conclusion/Recommendation**

5. Ukraine has introduced the liability of legal persons for ML offences in line with the majority of requirements of Art. 10 (1 and 2). Still, some deficiencies are in place. Therefore, the authorities are recommended to amend the legislation and broaden definition of the natural person acting on behalf of the legal person which, at the moment is narrower than the requirements from the Convention. In addition, authorities are invited to introduce the liability of legal entities for the ML offence (regardless of the predicate offence) committed due to the lack of supervision or control. Finally, additional steps should be taken to facilitate the use of corporate liability mechanisms by judicial authorities taking into account the various circumstances envisaged by Article 10.

### **United Kingdom**

#### *Article 10(1)*

1. UK authorities advised that the legal mechanisms by which companies can be held accountable for wrongdoing are largely governed by common law rules, collectively referred to as the "identification doctrine". This states that where a particular mental state is required, the acts of a senior person representing the company’s “controlling mind and will” can be attributed to the company. The Guidance for Corporate Prosecutions states that ‘in the absence of legislation which expressly creates criminal liability for companies, corporate liability may be established by (i) vicarious liability for the acts of a company’s

employees/agents; and (ii) Non-vicarious liability arising from the so-called “identification principle”. The identification principle requires identifying and establishing a directing mind and will of the company, and then proving corporate criminal liability through his/her conduct and state of mind. It applies to all types of offences, including ML. This notwithstanding, from the materials provided by the UK, it seems that the positions that are considered as representing a company’s directing mind and will are limited to the Board of Directors and, at most, those occupying the immediate next level of control/representation/decision-making. Thus, while it may be said that all three elements referred to in Article 10(1) are covered in terms of control, decision-making and representation, the UK adopted more restrictive position than the Convention as to who may be considered as exercising a leading role within corporate entities - this is acknowledged in the Crown Prosecution Guidelines as well as the Law Reform Commission’s Discussion Paper.

This approach creates certain repercussions with respect to the so-called inchoate offences. Through the application of the identification doctrine, these offences would equally find application in the context covered by the Convention but there would be a restricted application due to the issue highlighted above.

#### *Article 10(2)*

2. The authorities advised that the compliance with the supervision liability provision under Article 10(2) is achieved through reliance on corporate civil liability and property recovery proceedings under Part 5 of the Proceeds of Crime Act 2002 (‘Civil recovery of the proceeds etc. of unlawful conduct’). Where there is a lack of supervision by the legal person, the UK has taken the position that this is a civil matter and can be transposed through the civil recovery provisions in Part 5 of POCA.

Apart from these explanations, the rapporteurs were also given an opportunity to read some of the Government’s strategic discussions and action plan vis-à-vis corporate liability. These documents appear to be giving a right direction in further legal reform in this area. The key points of this reform suggest replacing the current common law rules with the legislation that would (i) *establish corporate criminal liability in economic crime cases arising from complicity of persons from a much broader range of functions within a corporate management structure than the identification doctrine*; (ii) *a new form of vicarious liability which would make a corporate body guilty, through the actions of its employees, representatives or agents, of the substantive economic crime offence without the need to prove the existence of a directing mind at the corporate centre*; and (iii) *failure to prevent an offence being committed by a company/corporation in which the prosecution is required to prove not only the occurrence of the predicate offence but also the failure on the part of the management of the company to prevent the offence by, for example, failing to put in place any procedures designed to prevent such offending*.

The points raised in this document further confirm that, at the moment, common law rules do not sufficiently regulate the matter vis-à-vis the requirements of Article 10 (1 and 2). Whilst some requirements of Art.10(1) are applicable in UK, elements such as involvement of a natural person (as referred to in Art.10(1)) as accessory or instigator and situations where lack of supervision or control by natural person who has a leading position in the legal person has made possible the commission of the criminal offences, are yet to be incorporated in the UK legislation.

#### ***Effective implementation***

In their responses to the Questionnaire, authorities did not provide statistics neither case law. Consequently, it cannot be concluded that there is an effective implementation of Art.10 in the UK.

#### ***Conclusion/Recommendation***

Although the UK introduced the liability of legal persons for ML offences which features some requirements of Art. 10(1), concerns still remain with regard to who may be considered as exercising a leading role within corporate entities. In view of that, legislation needs to be reformed and thus include the missing elements of Art.10(1) – transposition of Convention requirements with regard to who has a leading position within a legal person. In addition, liability of legal persons in cases of involvement of natural person (as referred under Art.10(1)) as accessory or instigator needs to be included in the legislation. With regard to Art.10(2) requirements – a lack of supervision or control by natural person who has a leading position in the legal person has made possible the commission of the criminal offences – these elements should also be included in the legislation.