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CONFERENCE OF THE PARTIES

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

**Follow-up analysis of the Thematic Monitoring Review
of the Conference of the Parties to CETS No.198 on
Article 11 (“Previous Decisions),
Article 25 §2 - 3 (“Confiscated Property”), and Article 14¹**

¹ Adopted by the Conference of the Parties to CETS No. 198 at their 16th meeting, Strasbourg, 17 - 18 October 2024.

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INTRODUCTION

1. The Conference of the Parties (hereinafter: “the COP”), at its 9th meeting held in Strasbourg from 21 to 22 November 2017, decided to initiate the application of a horizontal thematic monitoring mechanism for an initial period of two years. The 11th meeting of the COP (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 19bis of the Rules of Procedures.
2. Further to this, the COP amended its Rules of Procedure with regard to the application of the follow-up process. To that end, Rule 19bis(20) states that *‘the Conference may decide that those Parties whose implementation of a certain provision of the Convention was not considered satisfactory report back on progress made within three years’ time at the latest, taking into account the nature of the recommendations rendered in the thematic monitoring reports. State Parties which declared not to apply the Articles selected to be assessed through the thematic monitoring shall be exempted from the follow – up process on these Articles.’* Consequently, at its 13th meeting the COP decided to launch a follow up process on Thematic Monitoring Report on Article 11 and Article 25(2) and 25(3) of the Convention while at the 14th COP meeting, follow up procedure was initiated on the Thematic Monitoring Report on Article 14 of the Convention. In 2019, 2022 and 2023 the COP discussed and analysed progress made by several State Parties in implementing selected articles of the Convention. The further outcomes of the follow up procedure are explained below.

METHODOLOGY

3. The thematic monitoring report on Article 11 established the extent to which international recidivism is taken into account by the Parties. There are several possibilities to comply with the provision of Article 11, such as by providing for a harsher sanction in case of previous convictions by both domestic and foreign courts, or by providing that courts and prosecutors take previous convictions into account by assessing the offenders’ past circumstances when setting a sentence². It was also emphasised that Article 11 does not enforce a positive obligation on courts or prosecution services to inquire whether persons being prosecuted have received final convictions from the courts of another State Party.
4. The report on Article 25 (2 and 3) established the extent to which asset sharing, for the purposes of victim compensation and return of property to the legitimate owner, as well as the possibility to negotiate relevant asset sharing agreements between different States Parties, are taken into account by the States Parties. More precisely, Article 25(2) requires States Parties to have in place any kind of measure to oblige the competent authorities, to consider, as a matter of priority, returning the confiscated property to the legitimate owner or to compensate the victim(s) of crime, upon a request received from other State Party(ies). Moreover, it was noted that, according to Article 25(3), States Parties are not required, but encouraged to give special consideration to concluding arrangements or agreements on asset sharing, and preferably on a solid, long-term basis as the sharing of confiscated property

² Note that the drafters of the Warsaw Convention in the explanatory report consider that merely “assessing the offenders’ past circumstances when setting a sentence” would possibly be too vague or ambiguous.

usually concerns significant funds. Effective implementation of Article 25 (2 and 3) was assessed through a combination of factors, such as the transposition of the provision into the respective legislative framework, and through submitted case studies and related statistics.

5. Both horizontal reviews contain a number of general recommendations following the summary findings, as well as country-specific recommendations following the individual state's analysis.
6. It needs to be noted that both reports were subject to a follow-up procedure in 2019, 2022 and 2023. The first follow-up report (2019) concluded that little progress had been made to implement the recommended actions with regard to both articles. Only seven States Parties were able to demonstrate progress and present concrete measures that they applied with the aim to address the recommendations of Article 11 and eight countries with respect to the recommendations of Article 25 (2 and 3). Moreover, improvements with regard to the implementation of Article 25 resulted mostly from the adoption of Regulation 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders, which is applicable to all State Parties that are EU member states.
7. Furthermore, the follow up report adopted at the 14th COP meeting (2022) noted that four years after the adoption of the Thematic Monitoring report of Article 11 and Article 25 (2 and 3) some progress has been achieved. In particular, progress in implementing Article 11 was observed in Azerbaijan and the United Kingdom, whilst other countries (Montenegro, the Russian Federation, Serbia and Türkiye) have not introduced any changes. Five countries (Croatia, Belgium, Montenegro, the Netherlands and Poland) demonstrated sufficient progress in implementing the provisions of Article 25 (2 and 3) whereas San Marino and North Macedonia made progress only in addressing deficiencies identified under Article 25 (3). The COP at its 14th meeting therefore proposed further follow up procedures for the State Parties that did not address the recommendations. In addition, the COP also decided that the Russian Federation should report on progress made with regard to Article 14³ ('postponement of suspicious transactions').
8. The 2023 Follow up report adopted at the 15th COP meeting concluded that no progress was observed in Montenegro, the Russian Federation, Serbia and Türkiye in implementing Article 11 of the Convention into their national legal system. With regard to Article 25 (2 and 3), only Azerbaijan made sufficient progress in implementing both paragraphs of this article of the Convention, while San Marino made progress with regard to application of Article 25(2). However, other three countries were either in the process of reforming their legislation (Armenia) or had not yet initiated them (Serbia and North Macedonia). The Plenary decided to grant one more year to those State Parties that did not address the recommendations.
9. The 2023 Follow up report also analysed the progress made by the Russian Federation on the implementation of recommendations made in the Thematic Monitoring Review (2019)⁴ dealing with Article 14 of the Convention. It was concluded that the Russian Federation has to make further progress to meet the requirements of this Article and was asked to report back at the 16th Plenary meeting.
10. To sum up, this follow-up report analyses the progress made by the following countries: (i) Montenegro, the Russian Federation, Serbia, and Türkiye in implementing Article 11; (ii) Armenia, and Serbia in implementing Article 25 (2 and 3); (iii) North Macedonia in implementing Article 25 paragraph 2; and (iv) the Russian Federation in implementing Article 14 ('postponement of suspicious transactions'). These countries are being assessed in

³ <https://rm.coe.int/c198-cop-2019-1rev2-hr-ii-art14-en/1680aaa20a>

⁴ <https://rm.coe.int/c198-cop-2019-1rev2-hr-ii-art14-en/1680aaa20a>

relation to the respective articles mentioned, reflecting ongoing efforts to ensure their compliance with these requirements of the Warsaw Convention.

11. This analysis, however, does not assess the implementation of 'soft recommendations' which aim at better implementation of the articles concerned (e.g. maintaining statistics), or enhanced application of the provisions concerned (by e.g. providing for aggravating circumstances in law in case of previous decisions).

ARTICLE 11

12. The following general recommendations with regard to the implementation of Article 11 were made in the 2018 report:

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

- *Amend their laws with an express reference made to the concept of international recidivism, handing the competence to their criminal courts and prosecutor's offices to take into account previous decisions handed down by another State Party;*
- *Extend the possibility of taking into account the decisions by criminal courts to all States Parties, as required by Article 11;*

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

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

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

13. The country specific analysis, which is provided below, aimed at assessing any progress made in implementing country specific recommendations from the 2018 Report. Findings of the previous follow-up report were taken into account; however, the main source of information were the responses to the follow-up questionnaire provided by the States Parties.

Montenegro

14. Montenegro reported that in December 2023, the Parliament adopted amendments to the Criminal Code (CC) introducing the requirement for the court to take previous convictions as an aggravating circumstance when determining the punishment. According to Article 43 of the CC the condition for applying this aggravating circumstance is that less than five years have passed since the previous conviction. In addition, in instances when the perpetrator has already been convicted twice or more for the same kind of criminal offence, the court shall impose the punishment that exceeds half of the prescribed range (as per Article 44 of the CC). These provisions are applicable to all criminal offences from the appendix of the Convention and are not restricted to the domestic convictions only. The authorities confirmed that convictions handed down in a foreign country will also be considered when determining the penalty. Furthermore, in order to implement these provisions, prosecutors as part of all criminal investigations are obliged to collect evidence concerning offender's past convictions

(Article 289 of the CPC) regardless of the fact if the offender is Montenegrin national or foreign. There is a Register of Criminal Records where all criminal convictions (both domestic and foreign) are recorded which is used by prosecutors to solicit information on the offender's prior recidivism. In addition, Article 42 of the Law on Mutual Legal Assistance in Criminal Matters provides the legal framework for exchanging information on prior convictions. In conclusion, recent legislative amendments introduced in Montenegro aim to implement the requirements of Article 11 of the Convention. Given the fact that these legislative changes are quite recent, the country is invited to effectively implement them.

Russian Federation

15. The Russian Federation has undergone a 'selected follow up procedure' in 2021 and the report on Article 11 was then amended⁵. The then report called for a need to introduce the specific notion of international recidivism into domestic legislation. Furthermore, the 2022 and 2023 follow up reports⁶ noted that no progress was achieved towards implementing this recommendation.
16. In their response to the 2024 follow-up questionnaire, the authorities confirmed that no legislative or other measures have been taken to implement recommendations related to Article 11 of the Convention. The authorities also clarified that draft amendments to the Criminal Code, which would introduce international recidivism, were considered by the Government, but it was determined that the existing legislation in the Russian Federation is sufficient to enable foreign conviction to be taken into consideration. Considering that no legislative amendments have been introduced, the conclusion is that the Russian Federation still has to make further progress in order to implement Article 11 of the Convention.

Serbia

17. The authorities informed the COP that the Ministry of Justice has prepared amendments to the Criminal Code (CC) aiming to transpose the requirements of Article 11 of the Convention into national legislation. According to the proposed amendments of Article 55a of the CC, the court shall impose a higher punishment (above the half of the range of the prescribed punishment starting with the lowest measure of such punishment) if the perpetrator has been twice convicted for the same or similar offence. The condition for applying this aggravating circumstance is that less than five years have passed since the previous conviction. The proposed provision defines "previous conviction" as final judgements handed down by domestic and foreign courts. Whilst the proposed amendment to a large extent would satisfy the requirements of Article 11, these amendments have not yet been adopted. Therefore, Serbia has to make further progress to implement Article 11 of the Convention.

Türkiye

18. The authorities reiterated their view expressed during the previous plenary meetings (namely in 2018, 2022 and 2023), that their national legislation sufficiently complies with Article 11. The arguments, as expressed by the country's delegation, emphasise the fact that a number of predicate offences to ML are included in the scope of the domestic legislation on recidivism. This has already been a subject of the 2018 Thematic Monitoring Review and the 2022 and 2023 Follow-Up Reports which all confirm that international recidivism is only applied in some

⁵ <https://rm.coe.int/c198-cop-2018-1rev2-hr-i-art-11-en/1680aaa206>

⁶ <https://rm.coe.int/c198-cop-2022-3prov-fuhr-art11-25-en/1680aac055>; <https://rm.coe.int/c198-cop-2023-7-cop-follow-up-reportart11-25-14-en/1680adf1aa>

specific circumstances (i.e., when the offender commits looting, fraud, production and trade of narcotics or psychotropic substances, and counterfeiting money or valuable stamps) and it was considered insufficient to comply with Article 11 requirements. Meantime, no legislative amendments have been reported to ensure that all predicate offences to ML would be subject to recidivism. Nevertheless, the authorities in their response to the 2024 Questionnaire, advised that the relevant authorities are undertaking legislative studies in order to possibly consider legislative amendments. Consequently, it could be concluded that no progress since the adoption of the thematic monitoring report was achieved.

ARTICLE 25 (2 and 3)

19. The following general recommendations with regard to implementation of Article 25 (2 and 3) were made in the 2018 report:

“With the aim to promote a harmonised approach to sharing of confiscated property, States Parties are recommended, if they have not yet done so, with regard to Article 25(2), to:

- *Ensure that their authorities are, to the extent permitted by domestic law and if so requested, in a position to give priority consideration to returning the confiscated property to the requesting Party in order to both compensate the victims or return such property to the legitimate owners (as required by Article 25(2)).*
- *Modify their domestic legislation to put in place appropriate legislative measures and the institutional framework as to guarantee that this provision of the Convention can be effectively applied;*
- *Introduce provisions in domestic legislation permitting priority consideration for returning the confiscated property to the requesting Party for both victim compensation and return of property to the legitimate owner;*

For the purposes of the successful implementation and application of Article 25(2), States Parties are invited to consider with regard to Article 25(2) to:

- *Include in their training programmes for the judiciary and other relevant authorities the strengthening of the institutional capacities to better understanding and applying in practice the provisions of Article 25(2 and 3) of the Convention;*
- *Maintain statistics on the effective implementation of these provisions.*

States Parties are also recommended, if they have not yet done so, with regard to Article 25(3), to:

- *Provide for the possibility to conclude agreements or arrangements on asset sharing specifically by introducing such provisions into their domestic legislation;*
- *Negotiate and conclude asset sharing agreements, in accordance with its domestic law or administrative procedures, either on a case-by-case or on a regular basis, with other States Parties, to effectively apply this Convention’s provision;*

- *Extend the possibility to conclude asset-sharing agreements (which may be limited to COP States Parties which are at the same time EU Member States) to all COP States Parties⁷*

20. The country specific analysis provided below assesses progress reported by Parties since 2018 in application of Article 25 (2 and 3), primarily on the basis of their responses to the follow-up questionnaire, while also taking into account the findings of the previous follow-up report.

Armenia

21. In their responses to the follow-up questionnaire, the Armenian authorities reiterated that amendments to the “Law on on Legal Assistance in Criminal Cases” presented in the 2022 Follow up report are to be adopted in December 2024. The authorities advised that proposed amendments to the Law aim to ensure that, based on the request of foreign country, victims’ compensation and/or returning the property to the legitimate owner(s) would be given priority as it was analysed in the previous report.
22. The draft amendments clearly address the requirements as stipulated in Article 25 (2 and 3). Consequently, their approval by the legislator would provide a solid legal basis for application of the aforementioned article of the Convention. This notwithstanding, the fact that these amendments are not yet adopted, the conclusion is that insufficient progress has been achieved by the country to meet the requirements of Article 25 (2 and 3) the Convention during the period under review.

North Macedonia

23. North Macedonia reported that the competent authority has initiated the process of amending Law on International Cooperation to meet the requirements of Article 25 (2) of the Convention. The proposed amendments will allow priority consideration to be given to returning confiscated property to the requesting state so that it can give compensation to the victims. More precisely, the amendments of Article 95 of the Law, read as follow:
24. *“(6) Priority is given to the return of the confiscated property to the requesting state for the purposes of compensation to the victims of the crime, that is, the return of the property to its legitimate owners, which is provided on the basis of an act that determines the compensation of the victims, that is, the return of property of legitimate owners, in which case the compensation of the victims and the return of the property takes precedence over the disposal in the manner of paragraphs (3), (4) and (5) of this article.”*
25. While it appears that the proposed amendments would address the requirements as stipulated in Article 25 (2) of the Convention, the fact that these amendments are not yet adopted, leads to the conclusion that insufficient progress has been achieved by the country to implement Article 25 (2) of the Convention.

⁷ At the 10th plenary meeting one delegation raised a concern as to whether EU Member States would be competent to conclude *ad-hoc* agreements on asset sharing with non-EU Member States. The delegation noted that the competence to sign such agreements might fall within the exclusive competence of the European Union. The Plenary clarified that the relevant general recommendation shall not be understood as a requirement of the Warsaw Convention to extend the EU asset sharing framework (to which the EU Member States are bound) to all COP States Parties. The recommendation would merely entail that States Parties which are EU Member States provide for a possibility to sign asset-sharing agreements with non-EU COP States Parties, as long as this is in line with the EU legal framework.

Serbia

26. The authorities indicated that, in order to transpose requirements of Article 25 (2 and 3) of the Convention, the Ministry of justice has prepared amendments to the Law on Confiscation of Property Derived from Criminal Activity. These proposed amendments of the Law would enable returning the confiscated property to the requesting state, so that priority can be given to the victims' compensation. More precisely, the proposed amendments of Article 78 of the law read as follow:
27. *"The permanently confiscated property derived from a criminal activity shall be disposed of in compliance with the provisions of this Law, unless laid down otherwise by an international agreement.*
- In the distribution of permanently confiscated property, priority is given to the possibility of returning the property to the requesting state, if required, so that it can give compensation to the victims of the crime or to return such property to their legitimate owners."*
28. Furthermore, the proposed amendments of the Law would also allow Serbian competent authorities to conclude agreements with other countries in order to share confiscated property. Specifically, the final paragraph of the proposed amendments to Article 78 states: *"For the distribution of permanently confiscated property, the Republic of Serbia may enter into a general agreement or a specific arrangement with the requesting state."*
29. The proposed legislative amendments would meet the requirements of Article 25 (2 and 3) of the Convention. However, as these amendments are still pending adoption by the Parliament, it can be concluded that Serbia has to make further progress to implement Article 25 (2 and 3) of the Convention.

OVERALL CONCLUSION ON PROGRESS MADE WITH REGARD TO ARTICLES 11 AND 25 (2 AND 3)

30. Following the adoption of the 2018 Thematic Monitoring and 2022 and 2023 Follow-Up Report, several State Parties introduced legislative changes in order to meet requirements of Article 11. In the past year, only one State Party (Montenegro) adopted legislative measures in order to transpose Article 11 of the Convention into the national legislation. However, the other three State Parties (the Russian Federation, Serbia and Türkiye) did not report any progress in implementing Article 11.
31. With regard to Article 25 (2 and 3), Armenia and Serbia reported that they have initiated legislative amendments in order to implement the requirements of both paragraphs, while North Macedonia is also preparing transposition of the requirements of Article 25(2) into the national legislation. Nevertheless, further efforts need to be demonstrated since none of the amendments are yet adopted.
32. The plenary is, therefore, invited to adopt this follow up report and proceed with further procedures in relation to the countries which have not demonstrated the sufficient progress with regard to both or any of the articles concerned, as per the decision adopted by the 15th COP Plenary.

ARTICLE 14

Russian Federation

33. The COP, at its 15th Plenary meeting concluded that the Russian Federation should make further progress to meet the requirements of Article 14 and was asked to report back in one year. Article 14 requires Parties to take measures to permit urgent action to be taken by FIUs or other competent authorities or bodies in order to postpone a domestic suspicious transaction. The paragraph does not foresee a maximum duration of the postponement; instead, the duration of the measures shall be determined by national law. Parties may permit reporting entities to carry out a transaction in urgent cases before a suspicious transaction report (STR) is submitted. Parties may also require a STR as a basis for every postponement order issued by the FIU (or any other competent authority), but they could opt for extending the basis of the order to other information sources (i.e. upon the request of a domestic judiciary authority or upon request of a foreign FIU).
34. The 2023 Follow-up Report concluded that the Russian Federation had presented draft legislation which took into account requirements of Article 14. However, since at the time of the adoption of the report these amendments were not adopted, the Russian Federation was recommended to make further progress in implementing these requirements.
35. In responses to the 2023 Questionnaire, the Russian Federation provided information on several legislative developments since the last Plenary meeting.
36. The authorities reported that in October 2023, the information sharing mechanism was established between bank of Russia and Ministry of Internal Affairs in order to improve information sharing in countering fraud. In addition, the Federal Law No. 369-FZ on Introducing Changes to the Federal Law on the National Payment System came into force in July 2024 which allows payment operators to refuse or not execute money transfers (e.g. in cases where transfers are made without client's consent). While these legislative amendments enable postponement of transactions, this is only applicable in cases of fraudulent activity. The requirement of Article 14 of the Convention, however, pertain to the legal possibility to suspend or postpone transactions related to money laundering.
37. It should be noted that the authorities also reiterated that the draft amendment of the CPC is being prepared. According to the authorities' response, the new provision (Article 115² of the CPC) would enable investigator to suspend banking operation in criminal cases (*up to 10 days*). Furthermore, the authorities advised that they are taking measures to authorities FIU to suspend transactions, though they did not provide details of the legislative progress in this area.

OVERALL CONCLUSION ON ARTICLE 14

38. The Russian Federation adopted several legislative amendments in the period under the review, allowing the exchange of information and suspension of transactions in cases of fraud. However, none of these provisions implement the requirements as it is prescribed in Article 14 of the Convention. While it should be noted that the authorities are taking steps to empower the FIU to suspend or postpone transaction in relation to money laundering, not having such powers in force indicates that further progress is needed to meet the requirements of this Article. The COP should, therefore, determine the next steps with regard to necessary progress to be made with respect to implementation of this article of the Convention.