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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 7(2c) and 19(1)¹

¹ Adopted by the Conference of the Parties to CETS No. 198 at their 16th meeting, Strasbourg, 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 19 bis(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.’*
3. Consequently, at its 15th meeting, held in Strasbourg from 9-10 November 2023, the COP decided to launch a follow up procedure on the Thematic Monitoring Report on Article 7 (2c) and 19 (1) of the Convention. Subsequently, in June 2024, a questionnaire was circulated, to which States Parties were asked to reply by 1 September.

METHODOLOGY

4. The Conference of the Parties, at its 12th Plenary meeting (27-28 October 2020) discussed and adopted the thematic monitoring report on Articles 7(2c) and 19(1) of the Convention. The report was further amended following the inputs provided by the UK and Lithuania and ratification by Estonia, and is published here: <https://rm.coe.int/c198-cop-2023-15-hr-art-7-2c-and19-1-en/1680ae26e1>.
5. Article 7(2c) of the Convention provides for the power to conduct “prospective” monitoring of accounts. More specifically, it provides for “monitoring, during a specified period, the banking operations that are being carried out through one or more identified accounts.” Article 19(1) provides for the same measure as Article 7(2c), nonetheless, it requires the States Parties to apply the measure upon request of another State Party and communicate results thereof to the requesting Party.
6. The Horizontal Review contains a number of general recommendations following the summary findings, as well as country-specific recommendations following the individual states’ analysis.
7. This follow-up report therefore analyses the measures adopted by the following States Parties: Denmark, France, Lithuania, Monaco and Spain, since the adoption of the thematic monitoring report in 2020. In other words, this report aims to assess the extent to which selected countries have introduced measures to implement the referred articles of the Convention and address country specific recommendations. This analysis, however, does not evaluate the implementation of ‘soft recommendations’ which aim to better implement the articles concerned (e.g. maintaining statistics), or to enhance the application of the provisions concerned.

ARTICLE 7(2C) AND 19(1)

8. The following general recommendations were made with regard to the implementation of Article 7(2c) in the 2020 report:

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

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

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

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

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

- Raise awareness/tailor and carry out specific training to their FIUs/law enforcement and judiciary on application of this instrument in practice and how it can bring valid evidence in ML/FT and other serious crimes investigations/prosecutions.*
- Further develop the jurisprudence and share good practices among different competent authorities in the country.*
- Regularly update the COP with cases of practical implementation of the Convention”.*

9. The country specific analysis, which is provided below, aims to review any progress made in implementing country specific recommendations from the 2020 Report and is largely based on the responses to the follow-up questionnaire provided by the States Parties.

Denmark

10. In the context of the 2020 Horizontal Review, Denmark was recommended to align its legislation with Art.7(2c) and 19(1) requirements and include monitoring of banking operations.

11. In their response to the 2024 follow-up questionnaire, authorities indicated that the monitoring of bank accounts is not specifically regulated in the Danish legal system. Authorities indicated that legislation adopted in 2021, provides that Danish police can issue a production order to Danish banks. Before 2021, a court decision was required to allow

the Danish Prosecutions Service to receive bank statements. Such a production order allows the Danish police to receive historical bank statements, and future information (with a time limit), but the authorities have confirmed that the monitoring will still not be carried out.

12. Regarding Article 19(1), the authorities have indicated that there have been no developments since the Thematic Monitoring Review.
13. Therefore, Denmark has to make further progress to implement Articles 7(2c) and 19(1) of the Convention.

France

14. In the Horizontal Review, France was recommended to amend the legislation and provide the monitoring of banking operations in such a way that the requirements of Articles 7(2c) and 19 (1) are met.
15. In its responses to the 2024 follow-up Questionnaire, France has indicated that there are no express provisions allowing monitoring of banking operations. Nevertheless, the authorities have indicated that the country has mechanisms enabling it to identify information concerning bank accounts, in particular beneficial owners and transactions carried out on one or more specified bank accounts. These provisions only provide an opportunity for the investigative authorities to obtain, upon request, all details related to financial flows/transactions made over the period referred to in the request. It is recalled that this elements can be used as evidence in criminal investigations. France provided two examples of investigations based on the examination of banking transactions, but without monitoring of banking operations. Therefore, France has to make further progress to implement Article 7(2c) of the Convention.
16. Regarding Article 19(1), France referred to Article 694-49 of the code of criminal procedure, which transposes Article 28 of Directive 2014/41/EU. This article stipulates that, referring to EU Member States, when a State requests the execution of an investigative measure requiring the obtaining of evidence relating to the monitoring of banking transactions, the practical details of the measure are determined by mutual agreement between the magistrate to whom the request is made and the competent authority of the requesting state. The authorities have not given any examples of these “practical arrangements”, which makes it impossible to assess the practical effectiveness of the measure. The authorities recalled that all the tools of investigation provided for in the Code of Criminal Procedure may be used in the context of the execution of a request for mutual assistance. However, the shortcomings set out in article 7(2c) have a cascading effect on Article 19. Therefore, France has to make further progress to implement Article 19 of the Convention.

Lithuania

17. During the 13th plenary meeting, the COP amended the thematic monitoring reports on Article 7(2c) and 19(1) following Lithuania’s ratification of the Convention. During the meeting, Lithuania stated that its national legislation allows competent authorities to monitoring banking operations and bank accounts, contrary to what was mentioned in the report. Additional information was submitted late to the Secretariat and was not included

in the report. The COP decided to adopt the report as it stands but said the follow-up procedure would be applied to update the report².

18. In their responses to the 2024 Questionnaire, the authorities stated that monitoring of a banking operation is possible based in the The Law on Criminal Intelligence (2012). Article 10(13) prescribes that the Government shall establish, in coordination with the Bank of Lithuania, the procedure for overseeing and documenting the use of economic and financial operations as well as financial and/or payment instruments of natural or legal persons. The Lithuanian Government therefore approved in July 2014 the *Resolution on the procedures for controlling and recording the use of payment operations, financial instruments and/or payment instruments of a natural or legal person*. According to this Resolution (item 1.9) criminal intelligence entity can make an order to the Bank of Lithuania, or other financial or a credit institution, to control and record, payment transactions and/or the use of payment instruments of any natural or legal person. The authorities indicated that this monitoring will be conducted by using technical and/or software equipment, but in case this is not possible there is special procedure to be followed. This procedure is applicable to almost all the offences listed in the Annex to the Convention and that the information may be used as evidence in investigations. However, there was no statistics or case law presented to confirm that this procedure is implemented in practice. Beside this, authorities stated that Criminal Procedure Code contains provisions (Article 155 and 158) enabling investigative authorities to obtain banking information. Considering the authorities' submissions and explanations, it can be concluded that requirements of Article 7 (2c) are transposed into the national legislation.
19. With regard to Article 19(1), the authorities have clarified that requests for surveillance of bank transactions received by other countries are executed on the basis of the CCP or the Criminal Intelligence Act. The authorities may therefore apply the measures provided for in Article 7(2c) at the request of a foreign counterpart. No examples were provided, which does not allow for an assessment of the actual implementation of Article 19(1).
20. Overall, it can be concluded that the Lithuania legislation is largely compliant with articles 7(2c) and 19(1). The authorities are recommended to develop case law and effectively apply this measure in practice. Also, this investigative technique should be available for all the offence listed in the Appendix to the Convention.

Monaco

21. The Thematic Monitoring Review on Article 7 (2c) concluded that Monegasque legislation did not contain specific provisions relating to the monitoring of banking operations.
22. In their responses to the 2024 Questionnaire, the authorities referred to the amendments of the Code of Criminal Procedure (CCP) adopted in 2022, in order to address the requirement of the Convention. According to the amended Article 106-11-1 of the CCP, the investigating judge may order a bank to monitor, for a specified period, the banking transactions carried out on one or more identified accounts. Information obtained in this procedure is further used as evidence in criminal proceedings. This investigative technique in Monaco can be applied to almost all the offences listed in the Annex to the Convention. However, no statistics or practical cases were provided to assess the effective implementation of this mechanism. Therefore, it can be concluded that recent legislative changes in Monaco addressed requirements of Article 7(2c) of the Convention.

² COP, Meeting report, 13th meeting, Strasbourg, 17-18 November 2021, p. 16.

23. With regard to Article 19(1) of the Convention, the authorities indicated that provisions contained in the CCP dealing with mutual legal assistance (Article 106-11-1) are also applicable when there is a request to monitor banking operations. Therefore, Monaco has legal framework enabling monitoring of banking operation when requested by the foreign counterparts.

Spain

24. The 2020 Thematic Monitoring Review on Article 7 (2c) concluded that Spain does not have explicit provisions in place enabling monitoring of banking operations as provided for in Article 7(2c). It was therefore recommended to consider introducing more explicit and detailed provisions on applying monitoring of banking operations and to ensure that the measure is applied to offences listed in the Appendix to the Convention.

25. The authorities in their response to the 2024 Questionnaire indicated that the current legislation still does not contain specific provisions on the monitoring of banking operations. However, the authorities have stated that the judicial authorities may order measures on the basis of the general powers prescribed in the Code of Criminal Procedure in order to access banking information. To have access to the *statements of bank movements*, a court decision is required. Given that no legislative amendments have been introduced, it can be concluded that Spain has to make further progress to implement Article 7(2c) of the Convention.

26. Concerning Article 19(1) of the Convention, the authorities indicated several provisions of Spanish law, but none of them allow specifically monitoring of banking transactions based on a request from another State Party. Authorities also mentioned that the Warsaw Convention, directly applicable in domestic law, forms the basis for the exchange of information with other States, especially non-EU countries. Given the deficiencies identified in the implementation of Article 7(2)(c) at the national level, it cannot be concluded that the country is able to effectively execute a request received from another State Party to monitor banking operations, as required by Article 19(1). Therefore, Spain has to make further progress to implement Article 19(1) of the Convention.

OVERALL CONCLUSION ON ARTICLES 7(2C) AND 19(1)

27. Following the adoption of the Thematic Monitoring Report on articles 7(2c) and 19(1), only one State Party (Monaco) has introduced legislative amendments to meet the requirements of Article 7(2c) and Article 19(1). Furthermore, the Lithuanian legislation which was reassessed provides for monitoring of banking operations since 2014 and is in line with the requirements of Articles 7(2c) and 19(1). However, three other States Parties (Denmark, France and Spain) reported no progress in the implementation of the requirements of these articles.

28. 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 the articles concerned.