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Agenda item 2

Review of implementation of the United Nations Convention against Corruption

Executive summary: Cyprus

Note by the Secretariat

The present conference room paper is made available to the Implementation Review Group in accordance with paragraph 36 of the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption (Conference of the States Parties resolution 3/1, annex). The summary contained herein corresponds to a country review conducted in the third year of the first review cycle.



II. Executive summary

Cyprus

1. Introduction: Overview of the legal and institutional framework of Cyprus in the context of implementation of the United Nations Convention against Corruption

Cyprus signed the Convention on 9 December 2003 and ratified it on 23 February 2009 (Ratification Law, L.25(III)/2008). Upon deposition of the instrument of ratification with the Secretary-General of the United Nations on the same day, the Convention entered into force on 25 March 2009.

The domestic anti-corruption legislative framework includes provisions of the Constitution, the Criminal Code (CC) and the Criminal Procedure Code (CPC), as well as specific laws of relevance, mentioned below.

This legislative framework constitutes a “nexus” of, on the one hand, domestic provisions existing before the ratification of applicable anti-corruption international instruments, and, on the other, new standards enshrined in those instruments, such as the Council of Europe Criminal Law Convention on Corruption, (“Criminal Law Convention on Corruption”), which was extensively used for incorporating mainly new criminalization requirements into the domestic law. However, the coexistence of various domestic provisions which overlap to a certain degree and, in some instances, incorporate differing substantive requirements, may raise, in the area of implementation, issues of inconsistency and lack of coherence. The Cypriot authorities referred to amendments to four pieces of legislation, which came into force in 2012 to ensure compatibility as regards elements of offences and applicable penalties. However, despite the greater level of approximation achieved, the review team was of the opinion that opting for mere modification of existing legislative acts did not entirely prevent inconsistencies. Therefore, the reviewing experts made the following recommendation:

- For purposes of legal certainty monitor the application of the relevant legislation and consider if further ways and means are needed to ensure consistent application of the legal framework for the criminalization and sanctioning of corruption offences, as defined by domestic provisions and ratified international anti-corruption instruments.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active and passive bribery of public domestic officials are among the acts criminalized through section 4 of Law 23(III)/2000, as amended by Law 22(III)/2012 (by explicit reference to articles 2 and 3 of the Criminal Law Convention on Corruption), as well as section 100 CC on “official corruption”, as amended by the Criminal Code (Amendment) Law 95(I)/2012. Section 101 CC (“Extortion by public officers”) is also relevant.

The constituent elements of active and passive bribery are covered by section 4 of Law 23(III) /2000, which explicitly refers to articles 2 and 3 of the Criminal Law

Convention on Corruption. The element of direct or indirect commission of the offences is not explicitly contained in section 100 CC. The national authorities referred to the general provision on participation in criminal offences (section 20 CC, Cap 154).

The “public official” is defined in section 4 CC, while, pursuant to section 2 of the Interpretation Law (Cap. 1), “... “public official” includes every official employed in the public service of the Republic, who has powers and exercises duties of a public nature, either according to the direct control of the Council of Ministers or not”. According to section 2 of the Prevention of Corruption Law (Cap. 161), the term “agent” also includes any person employed by or acting for another and any person serving the Republic or any public body.

Both active and passive bribery of foreign public officials and officials of public international organizations are criminalized through section 4 of Law No. 23(III)/2000 (by reference to articles 5 and 9 of the Criminal Law Convention on Corruption).

Trading in influence in its active and passive forms is criminalized through section 4 of Law 23(III)/2000, by reference to article 12 of the Criminal Law Convention on Corruption. Of relevance are also sections 102 (“Public officers receiving property to show favour”) and 105A (“influence of competent authority”) CC.

Corruption in the private sector is criminalized through section 4 of Law 23(III)/2000, by reference to articles 7 and 8 of the Criminal Law Convention on Corruption; and through section 3 (“Punishment of corrupt transactions with agents”) of the Prevention of Corruption Law Cap. 161, as amended by the Prevention of Corruption (Amendment) Law No. 97(I)/2012, by virtue of the wide definition of “agent”, who can also be “any person employed by or acting for another”.

Money-laundering, concealment (arts. 23 and 24)

The anti-money-laundering legislation was enacted in 1996 (Law No. 61/1996) and consolidated into the Prevention and Suppression of Money Laundering and Terrorist Financing Laws of 2007 (“AML Law”).¹ The offence of money-laundering is established in section 4 of that Law and contains all the constituent elements prescribed in article 23 of the Convention.

The money-laundering offence extends to any type of property, regardless of its value, which directly or indirectly represents property from a predicate offence that carries at least one-year imprisonment, hence a corruption offence as well (section 5 of the AML Law). It is irrelevant whether the predicate offence is subject to national jurisdiction. Self-laundering is also possible according to section 4(2)(b) of the AML Law.

The offence of concealment was reported to be established through the same provision of the domestic legislation without any differentiation from money-laundering and its element of concealing or disguising the true nature or location of property constituting the proceeds of crime.

¹ Subsequently amended, including after the country visit in 2016.

Money-laundering statistics are provided to the Unit for Combating Money Laundering (MOKAS — the FIU) by the police every three months.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

The combined use of section 255(1) (Stealing) and 270(b) (Stealing by agents etc.) CC seems to ensure, in general terms, the implementation of article 22 and, in an analogous manner and through the broad definition of the term “agent”, article 17 of the Convention.

Under “The Illicit Acquisition of Property Benefits by State Officials and Public Officers Law” No. 51(I)/2004, the offence of illicit enrichment is defined as the acquisition of a property benefit by a state official or public officer by abuse or taking advantage of his/her office or capacity, whereby either the benefit goes directly or indirectly to himself/herself or a member of his/her family or a relative up to the third degree of kindred. The burden of proof rests with the prosecutor.

The abuse of functions is criminalized according to section 105 (Abuse of office) CC, which is broader than article 19 of the Convention as it does not include the subjective element of the “purpose of obtaining an undue advantage”. On the other hand, section 105 CC requires that the arbitrary act committed in abuse of the authority of office should be “prejudicial to the rights of another”. This condition is not foreseen in article 19 of the Convention.

Obstruction of justice (art. 25)

Article 25(a) of the Convention is implemented through sections 118 (Inducing witnesses to give false or to withhold true testimony), 121(b) (Interference with witnesses) and 91(c) (Threatening violence) CC. Section 122 CC (Deterrence of judges etc. and interference with judicial proceedings) domesticates article 25(b) of the Convention.

Liability of legal persons (art. 26)

The national legislation (Civil Code and the Act ratifying the Civil Law Convention on Corruption) provides for civil liability of legal persons, while administrative sanctions can be imposed for their involvement in corruption offences. Moreover, legal persons can be held criminally liable. Corporate liability, as defined in article 18 of the Criminal Law Convention on Corruption, is established through specific reference in section 4 of Law 23(III)/2000.

The criminal liability of legal persons is independent and does not affect the criminal liability of the individuals involved.

The types of sanctions that can be imposed on a company by a court are a fine (up to 17,000 euros, according to section 4 of Law 23(III)/2000 or the payment of compensation). Legal persons may also be subject to a permanent or temporary prohibition from any commercial activity or exclusion from any public procurement. The review team found the stipulated fine to be low and favoured more streamlined efforts at the domestic level to ensure that sanctions in place against legal persons are effective, proportionate and dissuasive. A Bill amending the UNCAC (Ratification) Law, which provides for a series of penalties

independently or in combination with a fine, is pending before the House of Representatives.

Participation and attempt (art. 27)

Sections 20-25 CC cover different forms of participation in the commission of criminal offences.

Sections 366-368 CC regulate aspects pertaining to the attempt to commit a criminal offence. No provision on the criminalization of preparation of a criminal offence exists, but it is a factual matter to assess whether or not preparation falls within the definition of attempt in section 366 CC.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

In general, the review team found the sanctions relating to corruption offences to be adequate and sufficiently dissuasive, taking into account the gravity of the offence.

As reported, the CC (Cap. 154) provides some guidelines in relation to the imposition of sanctions. The review team found such guidance too generic and was not in a position to locate additional guidelines enabling the competent judicial and, where appropriate, prosecutorial authorities to adjust the framework of sanctions, taking into account, for example, mitigating circumstances or other factors necessitating the “individualization” of punishment.

Only the President and Vice-President of the Republic and the members of the House of Representatives benefit, during their term of office, from immunities in criminal proceedings. However, they can be prosecuted for any offence, following special leave obtained by the President of the Supreme Court (for the President and Vice-President), and the Supreme Court (for the members of the House of Representatives) (article 83(2) of the Constitution).

The Attorney-General is the legal adviser of the Republic, the President and the Council of Ministers. The Constitution entrusts the Attorney-General with the overall responsibility for all prosecutions and with broad powers in the execution of his functions. However, the statutory legislation has not determined the exact parameters of his broad role and has afforded great latitude to the post-holder in the specification and use of his powers. The Attorney-General has powers to institute, conduct, take over and continue or discontinue any proceedings for an offence against any person in the Republic. Although the domestic legal system does not allow for plea-bargaining as such, the Attorney-General may withdraw in practice charges in consideration of the accused pleading guilty to another charge.

In Cyprus, the gravity of the offence is normally taken into account when considering the eventuality of early release or parole of persons convicted for such offences.

According to article 85(1) of the Public Service Law, public servants who are accused of a corruption offence, may be interdicted from office during the investigation (article 85(1)) or until the final completion of the case (article 85(2)).

According to article 31(d) of the Public Service Law, a person convicted for an offence of a serious nature which entails dishonesty or moral turpitude cannot be appointed to the public service.

A public officer is liable to disciplinary prosecution if he/she commits an offence involving dishonesty or amounting to a contravention of his/her duties or obligations (section 73 of the Civil Service Law of 1990). Disciplinary sanctions are foreseen in section 79 of the Law.

The Cypriot authorities reported that the cooperation between persons who have participated in the commission of an offence with competent investigating authorities, in line with article 37 of the Convention, is encouraged through the application of the provisions of the Protection of Witnesses Law (L. 95(I)/2001). The decision of granting immunity from prosecution falls within the discretion of the Attorney-General. A separate bill has been prepared providing supplementary provisions on measures of leniency for those persons. No international agreements have been concluded so far in this field.

Protection of witnesses and reporting persons (arts. 32 and 33)

According to section 5 of the Protection of Witnesses Law (L.95(I)/2001), special protection measures for witnesses may be ordered by the court. Section 16 provides for the establishment of a Scheme for the Protection of Witnesses and those who assist justice, which is under the control and supervision of the Attorney-General.

Fragmented information was provided on the provisions of the Protection of Witnesses Law. Moreover, no information was made available regarding the operational effectiveness of the Scheme for the Protection of Witnesses.

Cyprus reported the application of general principles of labour law for the protection of reporting persons. Section 9 of Law No. 7(III)2004 provides that an official who, in contravention of article 9 of the Civil Law Convention on Corruption, imposes an unjustified punishment on a whistle-blower for reporting corruption, commits an offence which may lead to imprisonment or a pecuniary penalty. Reference was also made to section 16(3) of the Protection of Witnesses Law No. 95(I)2001.

The review team noted that the national regulations on whistle-blower protection are largely ineffective due to their disparate and vague application and therefore strongly supported the elaboration of specific legislation. However, a separate bill has been prepared providing supplementary provisions on the protection of reporting persons and cooperating offenders.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

The confiscation regime is set out in the AML Law, according to which confiscation can be applied to any criminal act that constitutes a predicate offence for money-laundering purposes.

Value-based confiscation may be imposed in relation to any “realisable property”, as defined in section 13 of the AML Law, which covers any property held either by the accused or by another person to whom the accused has directly or indirectly made a “prohibited gift”.

In order to secure property for the purpose of confiscation, the AML Law provides for “interim orders”, such as restraint and charging orders to freeze and secure realizable property.

Confiscation is conviction-based (section 6 of the AML Law), but under certain conditions (section 33) in rem confiscation without conviction is possible. Instrumentalities used and destined for use in crimes are also subject to confiscation (section 8(1)(b) of the AML Law), together with “secondary” proceeds of crime (transformed or converted property and intermingled property). The rights of bona fide third parties are protected (section 3(4)(b)).

Section 7 of the AML Law provides that the court may assume, unless the contrary is proved by the accused, that any property acquired by the accused after the commission of the predicate offence or transferred to his/her name at any time during the last six years prior to the commencement of criminal proceedings against him/her, was acquired in connection with the commission of the offence.

After a confiscation order is made, the court may, on the application of the prosecution, appoint a receiver for the “realization” of the property in order to satisfy the confiscation order. Sections 17-24 of the AML Law set out the procedure to be followed. The role of the receiver is entrusted to the Ministry of Commerce.

Chapter IX of the Business of Credit Institutions Laws of 1997 to 2016, sections 28(A) and 29, as well as sections 45 and 55(2) of the AML Law, contain provisions on the lifting of bank secrecy for purposes of domestic investigations. In general, there are no bank secrecy restrictions which could present obstacles in corruption-related investigations, although the establishment of a central register of bank accounts to prevent potential delays in getting access to bank information could be considered.

Statute of limitations; criminal record (arts. 29 and 41)

There is no statute of limitations for any offence in Cyprus. However, the possibility of the defendant’s rights being affected due to a long period of time which has elapsed shall be taken into account in the final judgment and may even terminate the judicial proceedings.

According to article 80A CPC, the Court, when sentencing or at any other stage of the criminal proceedings, may, inter alia, take into account previous convictions imposed against the offender by courts in other EU Member States. No further information was provided regarding the consideration by domestic courts of convictions in countries other than the EU Member States.

Jurisdiction (art. 42)

Section 5 CC establishes jurisdiction over criminal acts committed within the territory of Cyprus and acts committed abroad by a national of Cyprus “whilst in service of the Republic”. The requirement of dual criminality in all other cases of jurisdiction based on the active personality principle was abolished by the Criminal Code (Amendment) Law 95(I) of 2012. Article 5 of the Ratification Law of the United Nations Convention on Corruption (Rat. Law 25(III)/2008), the Cypriot courts were accorded jurisdiction to try any offence under the Convention, in all instances referred to in article 42 of the Convention.

Section 5 CC further establishes jurisdiction over certain offences committed in any foreign country by any person, including a citizen of the Republic, such as treason or an offence against the security of the Republic or the constitutional order.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Law No. 12(I)/2012 domesticated Directive 2004/18/EC of 31 March 2004 on the coordination of procedures for the award of public service contracts. Any candidate or tenderer who has been the subject of a conviction for participation in a criminal organization, corruption, fraud or money-laundering shall be excluded from the procedure of award of a contract. If, after signing of the contract, the contractor is convicted, the contract can be terminated. There is a rotation system for public procurement officers every five years. The Competent Authority for Public Procurement is the single body dedicated to public procurement supervision.

According to section 4 of the Civil Law Convention on Corruption (Ratification) Law of 2004, any physical or legal person who suffered damage as a result of an act of corruption has the right to initiate legal proceedings against those responsible for that damage, in order to obtain compensation.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Cyprus' institutional framework to address corruption includes different bodies with both law enforcement and preventive mandates. The Constitution and other legislation provide for independent officers, such as the Attorney-General; the Auditor General heading the Internal Audit Service; the Accountant General; the Commissioner for Administration and Human Rights (Ombudsman); the Commissioner for the Protection of Personal Data; the Office of the Independent Authority for the Investigation of Allegations and Complaints against the Police (also in relation to corruption, bribery or unlawful enrichment); and the Governor of the Issuing Bank of the Republic.

The Unit for Combating Money Laundering (MOKAS) was established by the AML Law (section 53) as the FIU of Cyprus. It is a multi-agency unit, which consists of representatives from the Attorney-General, the Chief of Police and the Director of the Department of Customs. MOKAS is responsible for the gathering of information and the investigation of money-laundering cases and cooperates closely with law enforcement authorities at the investigation stage.

The reviewing experts encouraged the competent national authorities to continue efforts for more streamlined coordination in anti-corruption work both among themselves and with the private sector. This may include the strengthening of the structure, role and functions of the Coordination Body against Corruption.

2.2. Successes and good practices

- The fact that there is no statute of limitations for any offence in the domestic criminal justice system (article 29);
- The possibility, under certain conditions for in rem confiscation without conviction (article 31);
- The rotation of public procurement officers every five years (article 34);

- The existence of independent offices with both law enforcement and preventive mandates to address corruption, on the understanding that adequate resources for their function are guaranteed (article 36).

2.3. Challenges in implementation

- Consider removing the qualification of an arbitrary act being “prejudicial to the rights of another” in section 105 (Abuse of office) CC (article 19);
- Keep and collate comprehensive and up-to-date statistics on money-laundering (article 23);
- Explore the possibility of giving more precise description in the domestic legislation of the criminal conduct of concealment and its differentiation, as appropriate, from the offence of money-laundering (article 24);
- Continue efforts to enact legislation ensuring that sanctions in place against legal persons are effective, proportionate and dissuasive (article 26);
- Elaborate sanctioning guidelines for corruption-related offences, including on mitigating circumstances (article 30(1) and, to the extent applicable, 37(2));
- Ensure that the domestic confiscation regime is implemented consistently to prevent any negative impact on the effectiveness of relevant legislation (article 31);
- Ensure effective enforcement of the domestic legislation on the protection of witnesses (article 32);
- Consider entering, where necessary, into agreements with other States for purposes of witness protection and cooperation with collaborators of justice (articles 32 and 37);
- Continue ongoing efforts to enact supplementary provisions on the protection of persons reporting acts of corruption both in the public and the private sectors and, in doing so, further ensure the comprehensiveness of such legislative standards (article 33);
- Ensure sufficient resources for law enforcement authorities responsible for the investigation of corruption offences (article 36);
- Continue efforts for more streamlined coordination in anti-corruption work, both among competent national authorities and with the private sector. This may include more effective and efficient case management and information-sharing systems, as well as the strengthening of the structure, role and functions of the Coordination Body against Corruption (articles 38 and 39);
- Consider the introduction of a central bank account registry to prevent potential delays in getting access to bank information that may be related to suspicions of criminal offences (article 40);
- Consider the adoption of legislative or other measures to enable taking into consideration convictions in countries other than the EU Member States of alleged offenders for the purpose of using such information in domestic criminal proceedings relating to corruption offences (article 41).

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition, transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Extradition is mainly governed by the Law on the Extradition of Fugitive Offenders L.97/1970, as amended by L.154(I)/2011 and L.175(I)/2013, and several bilateral and multilateral treaties. Cyprus makes extradition conditional on the existence of a treaty, but can also extradite on the basis of reciprocity.

With regard to other EU Member States, the surrender of fugitives is carried out in line with the European Council Framework Decision of 13 June 2002 on the European Arrest Warrant (EAW), which was implemented through L.133(I)/2004, as amended by L.112(I)/2006 and L.30(I)/2014.

Within the context of the Council of Europe, extradition is carried out under the European Convention on Extradition of 1957 (Ratification Law L.95/1970, as amended) and three of its Additional Protocols.

Cyprus recognizes the Convention as a legal basis for extradition and has notified the Secretary-General of the United Nations accordingly, but has not used it to make or receive extradition requests.

Cyprus applies the dual criminality principle, which is interpreted on the basis of the “underlying conduct” approach. To be extraditable, the offence must be punishable in both the requested and the requesting States by imprisonment for a maximum period of at least twelve months or, if there has been a conviction in the requesting State, if the period of imprisonment is at least four months (article 7 of L.133(I)/2004 and article 5(1) of L.97/1970).

Exceptionally, when executing an EAW, the double criminality requirement is not needed for specific offences, including corruption offences, if the relevant offence is punishable by the requesting State by imprisonment of at least three years (article 12 (2) of L.133(I)/2004).

In contrast to the European Convention on Extradition and UNCAC, L.97/1970 does not include a provision for accessory extradition.

Articles 13 and 14 of L.133(I)/2004 and article 6 of L.97/1970 establish the grounds for refusal of extradition. Cyprus does not extradite a person if the request concerns a political offence. Corruption offences are not regarded as political crimes.

The evidentiary standards in extradition proceedings are specified in article 9(5)(a) of L.97/1970. The extradition court should be satisfied that, where the person sought is accused of an offence, the evidence would provide probable cause to warrant his/her committal for trial if the offence had been committed in Cyprus. For purposes of extradition under the European Convention on Extradition, the supporting documents specified in article 12 of that Convention suffice (article 13(3) of L.97/1970).

The timeframe needed to grant an extradition request varies depending, among others, on the complexity of the case. The EAW provides for expedited surrender procedures of fugitives to other EU Member States. By virtue of the

Third Additional Protocol to the European Convention on Extradition, there is also the possibility of a simplified extradition process.

Since the 7th Amendment to the Constitution in 2013 (L.68(I)/2013), Cyprus may extradite nationals on the basis of an EAW or an applicable international treaty, on the condition that such a treaty is also applied by the cooperating State.

Extradition cannot be refused solely based on the fiscal nature of the offence (article 12 of L.133(I)/2004 and Second Additional Protocol to the European Convention on Extradition (Ratification Law L.17/1984)).

Cyprus is a party to several bilateral treaties on the transfer of prisoners, as well as the Council of Europe Convention on the Transfer of Sentenced Persons (1983) and its Additional Protocol (1997). Cyprus is also a party to the European Convention on the Transfer of Proceedings in Criminal Matters (1972). No examples of implementation of these Conventions were provided.

Mutual legal assistance (art. 46)

Mutual legal assistance (MLA) is afforded according to the Law Providing for International Cooperation in Criminal Matters (L.23(I)/2001) as well as MLA treaties. In the absence of a treaty, assistance can be based on reciprocity.

MLA can be afforded for all purposes stipulated in article 46(3) of the Convention, including in cases where legal persons may be held liable. Bank secrecy is not a ground for refusal of MLA requests.

Dual criminality is only a requirement according to article 9(3) of L.23(I)/2001 in regard to the early investigative stages of offences of a financial nature. Cyprus may render MLA in the absence of dual criminality, but there is no specific regulation in the domestic legislation.

The central authority to deal with MLA (but also extradition) requests is the Ministry of Justice and Public Order.

MLA requests can be transmitted either directly or through diplomatic channels (article 7 of L.23(I)/2001) or, in urgent circumstances, through INTERPOL.

The execution of MLA requests can be carried out in accordance with the procedure prescribed in the request, unless that procedure is contrary to the Constitution or other international conventions on human rights to which Cyprus is a party (article 9(2) of L.23(I)/2001). The timeframe for execution of MLA requests depends on the request itself and the particular circumstances of each case.

Cyprus is a party to the European Convention on Mutual Assistance in Criminal Matters (1959) and its two Additional Protocols of 1978 and 2001 (the ratification of the Second Additional Protocol took place after the country visit). Cyprus is also bound by the 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union. Cyprus has concluded, as reported, thirteen bilateral treaties on legal cooperation in criminal matters.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Law enforcement authorities in Cyprus can provide assistance to their counterparts in foreign countries on the basis of an applicable treaty. Cyprus has concluded bilateral agreements with 28 States. The Convention could be considered as legal basis, but has not been used so far.

As a member of INTERPOL, Eurojust and Europol, Cyprus can engage in information exchange through their respective databases. Cooperation and exchange of information are further facilitated via police liaison officers at INTERPOL, Europol and other EU Member States.

The establishment of joint investigation teams (JTIs) is possible subject to ad hoc arrangements. The European Union Convention on Mutual Assistance in Criminal Matters and the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters contain relevant provisions (articles 13 and 20 respectively). Cyprus can also use the UNCAC as basis for JTIs. Further, JTIs are regulated by the Joint Investigation Teams Laws (L.244(I)/2004 and L.98(I)/2011).

Cyprus referred to special investigative techniques that can be undertaken under the EU Convention on Mutual Assistance and Cooperation between Customs Administrations (“Naples II” Convention), including surveillance and controlled delivery. The UNCAC can be used as legal basis for controlled delivery outside the European Union and if there is no bilateral treaty, but no relevant practice was reported. The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters contains relevant provisions (article 18 on controlled delivery and article 19 on covert investigations). The Cypriot authorities explained that there would be domestic legislation on controlled delivery and other special investigative techniques to supplement the CPC and the Evidence Act. However, no further information was provided by the national authorities on the latter domestic legislation, including its provisions on admissibility of evidence.

3.2. Successes and good practices

- The interpretation of dual criminality focusing on the underlying conduct and not the legal denomination of the offence (article 43(2));
- The extradition/surrender of nationals based on the framework prescribed in L.68(I)2013 on the 7th Amendment to the Constitution (article 44(11));
- The execution of MLA requests in accordance with the manner prescribed in the request (if it is not contrary to the Constitution or other international conventions on human rights to which Cyprus is a party) and not necessarily in accordance with the domestic law of the requested State (article 46(17)).

3.3. Challenges in implementation

- Consider allowing extradition in the absence of dual criminality in cases of offences established in accordance with the Convention that go beyond those relating to the execution of EAWs (article 44(2));

- Consider the inclusion in the domestic legislation of a provision on accessory extradition, notwithstanding the fact that Cyprus can apply the Convention directly (article 44(3));
- Further strengthen data collection on, and monitoring of, the duration of extradition proceedings outside of the EAW scheme (article 44(9));
- Consider easing the evidentiary standards applicable in extradition proceedings, as set forth in the domestic legislation, particularly with a view to overcoming potential challenges encountered in extradition relations with civil law countries outside the Council of Europe (article 44(9));
- Clarify, for legal certainty and notwithstanding the fact that Cyprus can apply the Convention directly, in the domestic law the possibility to render MLA in the absence of dual criminality (article 46(9));
- Collect data on the implementation of applicable instruments on transfer of sentenced persons and criminal proceedings, and further strengthen and systematize data collection on MLA practice to enhance its effectiveness (articles 45-47);
- Continue efforts to improve law enforcement cooperation, including through the use in practice of the Convention as legal basis (article 48);
- Continue efforts at the domestic level to enact legislation on controlled delivery and other special investigative techniques, including on the admissibility in court of evidence derived from such techniques (article 50).