United Nations CAC/COSP/IRG/2022/8

Conference of the States Parties to the United Nations Convention against Corruption

Distr.: General
30 August 2022

Original: English

Implementation Review Group
Second resumed thirteenth session
Vienna, 7–11 November 2022
Agenda item 4
State of implementation of the United Nations Convention against Corruption

Implementation of provisions of a cross-cutting nature in chapters II and V of the United Nations Convention against Corruption

Thematic report prepared by the Secretariat

Summary

The present report contains a compilation of the information available as of August 2022 on successes, good practices, challenges and observations identified during the second cycle of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, focusing on cross-cutting issues with regard to the implementation of chapters II (Preventive measures) and V (Asset recovery) of the Convention. The report also endeavours to draw correlations with the findings of the first review cycle.

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I. Scope and structure of the report

1. The present thematic report contains a compilation of the most relevant information on successes, good practices, challenges and observations contained in the executive summaries and country review reports emanating from the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, in accordance with paragraphs 35 and 44 of the terms of reference of the Mechanism.

2. For the purposes of providing more detailed information on the implementation of the Convention by States parties, this report contains information on the implementation of cross-cutting issues with regard to chapters II (Preventive measures) and V (Asset recovery) of the Convention. The information is complemented by the thematic reports on the implementation of chapters II (CAC/COSP/IRG/2022/3) and V (CAC/COSP/IRG/2022/7), which focus on the other topics and provisions under review in the second cycle. Because the thematic report on chapter II was submitted to the Implementation Review Group in June 2022, the number of reviews analysed in the report was smaller.[1] Therefore, the conclusions of the different reports may vary depending on the information available at the time of drafting.

3. The present report is based on the information included in the 62 executive summaries and country review reports that had been completed as at 12 August 2022.[2] The report focuses on existing trends in and examples of implementation and includes cumulative tables and figures depicting the most common challenges and good practices.[3] Regional differences have been reflected as appropriate.

4. The structure of the report mirrors the structure of the executive summaries by clustering closely linked articles and topics. More specifically, the report analyses asset declarations, financial disclosure systems and prevention of conflicts of interest (art. 7, para. 4; art. 8, para. 5; and art. 52, paras. 5 and 6); beneficial ownership identification (art. 12, para. 2 (c); art. 14, para. 1 (a); and art. 52, para. 1); and measures to prevent money-laundering, the prevention and detection of transfers of proceeds of crime, and financial intelligence units (arts. 14, 52 and 58).

5. As the number of executive summaries and country review reports finalized under the second review cycle has grown and thus become more representative, this report also endeavours to provide information about the correlation between certain provisions under review in the first review cycle (chapters III and IV) and the second review cycle (chapters II and V) and builds upon the previous thematic reports.

II. General observations on challenges and good practices in the implementation of cross-cutting provisions in selected articles of chapters II and V of the Convention

6. The figures and tables below provide an overview of the most prevalent challenges and good practices identified in the implementation of the selected articles

[1] The thematic report on chapter II submitted to the Implementation Review Group in June 2022 (CAC/COSP/IRG/2022/3) contains an analysis of executive summaries and country review reports of 58 reviews.

[2] The present report builds on 19 completed reviews for the Group of African States, 20 for the Group of Asia-Pacific States, 10 for the Group of Western European and Other States, 7 for the Group of Latin American and Caribbean States and 6 for the Group of Eastern European States. Thus, the number of recommendations and good practices identified may not be as representative for some regional groups as it is for others.

[3] In line with the outcome of the discussions of the Implementation Review Group, the thematic reports and the reports on implementation at the regional level are no longer anonymized; countries featured as illustrative examples of good practices have been identified throughout the report. A full list of the good practices identified in relation to the examined articles will be made available to the Implementation Review Group in a conference room paper.

of chapters II and V, organized by article of the Convention. For a better comparison among provisions, figures I and III contain information on articles analysed in their entirety, while figures II and IV contain information on provisions of which some subparagraphs were analysed separately.

Figure I
Challenges identified in the implementation of articles 14, 52 and 58 of the Convention, by article

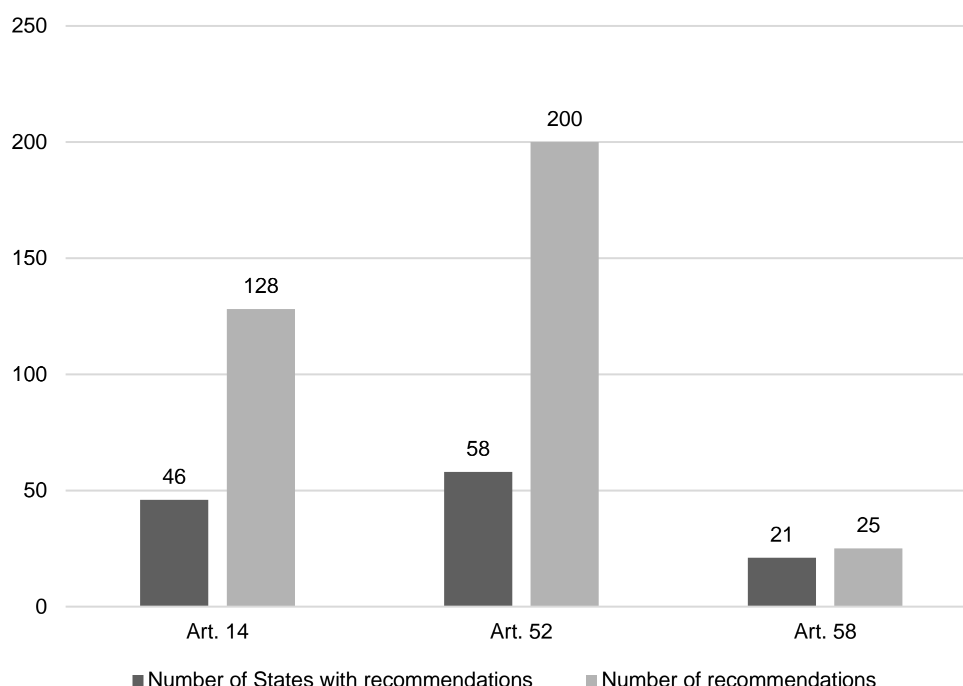

Figure II
Challenges identified in the implementation of article 7, paragraph 4; article 8, paragraph 5; article 12, paragraph 2 (c); article 14, paragraph 1 (a); and article 52, paragraphs 1, 5 and 6, of the Convention, by article

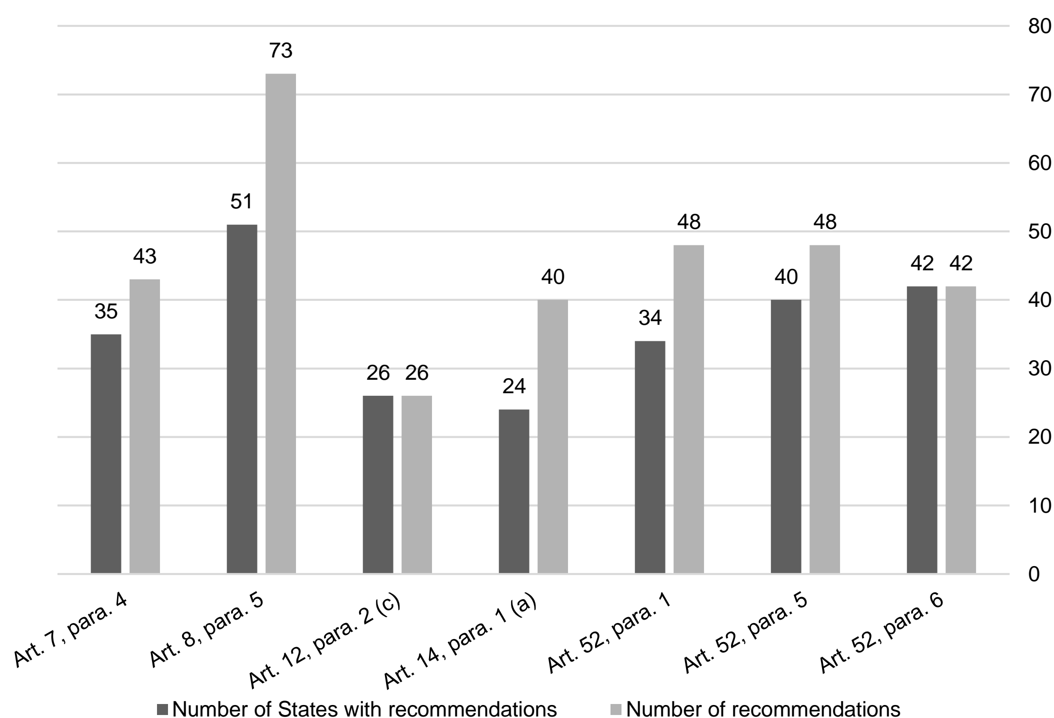

Table 1
Most prevalent challenges in the implementation of selected provisions of the Convention

Article of the Convention	*Most prevalent challenges in implementation (in order of article of the Convention)*
Art. 7, para. 4	Adoption or strengthening of systems to prevent conflicts of interest
Art. 8, para. 5	Declaration of outside activities, employment, investments, assets and substantial gifts or benefits; verification of declarations
Art. 12, para. 2 (c)	Enhancement of transparency regarding the owners and managers of private entities
Art. 14, para. 1 (a)	Institutional weaknesses in financial supervision; lack or inefficient identification of beneficial owners; lack of implementation of a risk-based approach
Art. 14, paras. 1 (b)–5	Country-specific gaps in the regulatory and supervisory frameworks aimed at countering money-laundering and the financing of terrorism; incomplete implementation of standards and recommendations issued by other international monitoring bodies such as the Financial Action Task Force and Financial Action Task Force-style regional bodies; inadequate measures to detect and monitor the cross-border transfer of cash and bearer negotiable instruments; and insufficient supervision of money or value transfer services
Art. 52, para. 1	Identification of foreign and domestic politically exposed persons and beneficial owners; deficiencies in the scope of politically exposed persons
Art. 52, paras. 2–4	Inadequate issuance of advisories; prohibition of shell banks; lack of resources of competent authorities
Art. 52, para. 5	Ineffective financial disclosure system
Art. 52, para. 6	Reporting of interest in, signature or other authority over foreign accounts
Art. 58	Lack of emergency freezing powers for financial intelligence units; inadequate allocation of resources, inadequate independence and insufficient capacity of financial intelligence units, including in the area of inter-agency and international cooperation

Figure III
Good practices identified in the implementation of articles 14, 52 and 58 of the Convention, by article

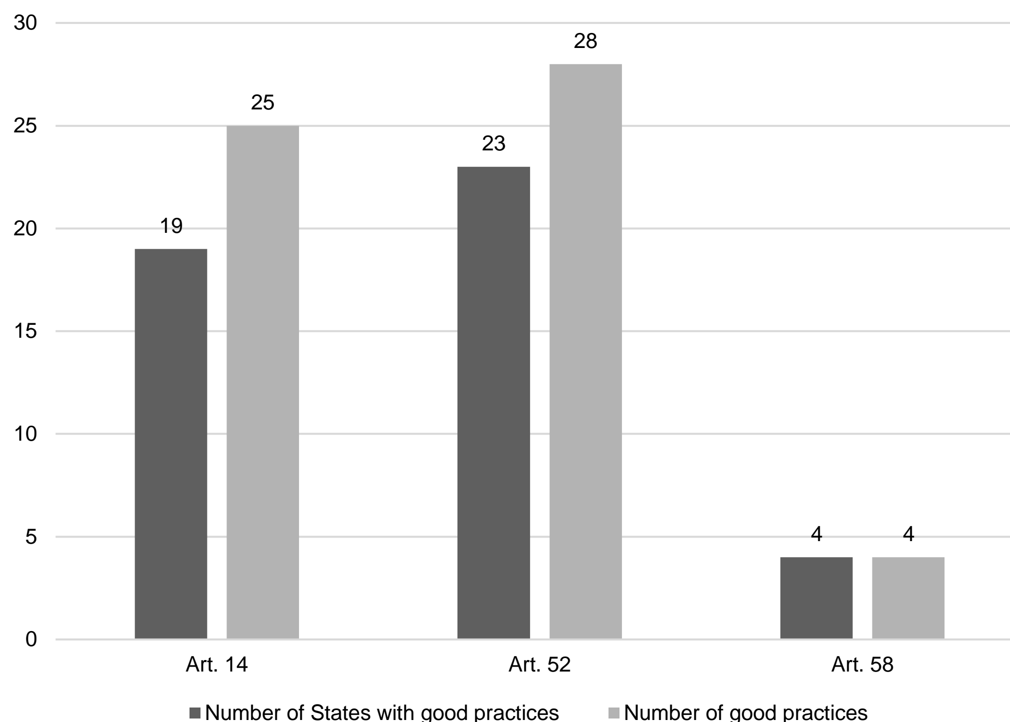

Figure IV
Good practices identified in the implementation of article 7, paragraph 4; article 8, paragraph 5; article 12, paragraph 2 (c); article 14, paragraph 1 (a); and article 52, paragraphs 1, 5 and 6, of the Convention, by article

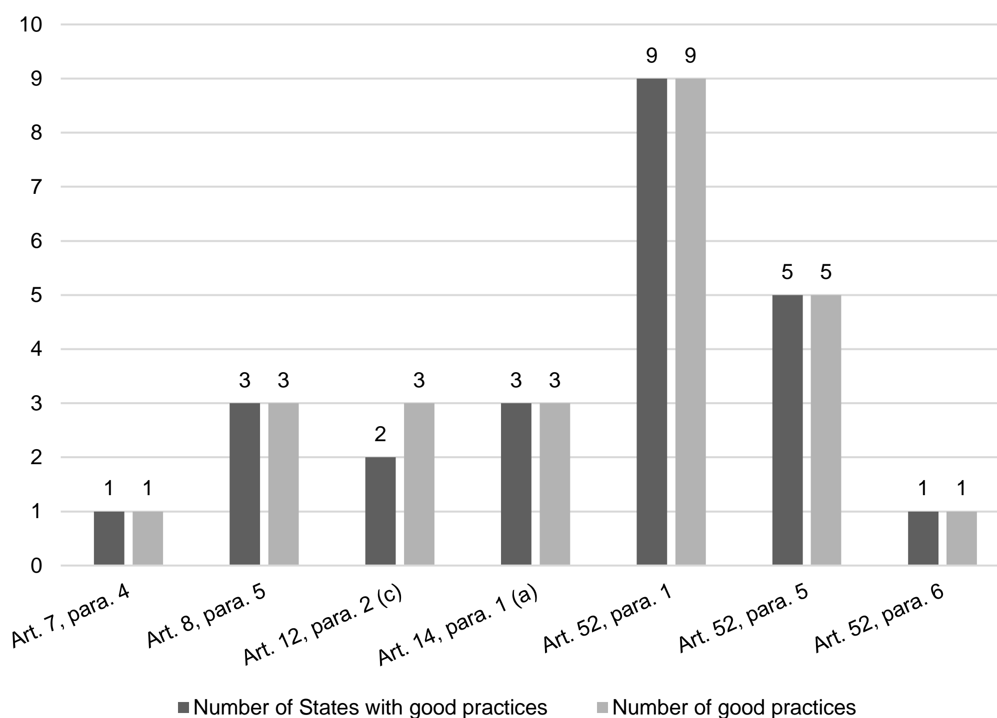

Table 2
Most prevalent good practices in the implementation of selected provisions of the Convention

Article of the Convention	*Most prevalent good practices (in order of article of the Convention)*
Art. 7, para. 4	Structured approach to promoting transparency and preventing and managing conflicts of interest
Art. 8, para. 5	Efforts in establishing or reinforcing the asset declaration system
Art. 12, para. 2 (c)	Establishment of corporation registries; publication of beneficial ownership information
Art. 14, para. 1 (a)	Well-established national regime for preventing money-laundering and the financing of terrorism; establishment of public beneficial ownership registries; outreach activities for financial institutions
Art. 14, paras. 1 (b)–5	Sound inter-agency coordination; promotion of regional and international cooperation on countering money-laundering
Art. 52, para. 1	Definition of politically exposed persons includes domestic politically exposed persons; establishment of beneficial ownership information
Art. 52, paras. 2–4	Establishment of registry of bank accounts or of beneficial owners; sharing of financial intelligence with other States
Art. 52, para. 5	Effective asset declaration system; verification of declarations
Art. 52, para. 6	Efforts in reinforcing asset declaration systems
Art. 58	Close cooperation with foreign financial intelligence units; report issued by the financial intelligence unit can be incorporated into a judicial proceeding as evidence

7. A total of 453 challenges were identified in relation to articles 14, 52 and 58. Despite this high number, the sample size of States with completed reviews continued to remain limited to one third of the States parties, which, as in the previous analysis, means that it is still too early to provide a wider analysis. However, it is possible to further identify preliminary trends analysed at the previous sessions of the Implementation Review Group.

8. The interlinkages between the two chapters reviewed in the second cycle of the Implementation Review Mechanism remained noticeable in terms of both the challenges and the good practices identified. For example, both articles 8 and 52 include provisions related to the declaration of assets; one third of the States that had identified technical needs cited needs in this regard, with half of those States citing needs in relation to each respective article. Articles 14 and 58 provide another such interlinkage, in cases where capacity-building for financial investigations was identified in relation to both chapters.

III. Analysis of cross-cutting issues in chapters II and V of the Convention

A. Prevention of conflicts of interest in the public sector, asset declarations, and financial disclosure systems (art. 7, para. 4; art. 8, para. 5; and art. 52, paras. 5 and 6)

9. Article 7, paragraph 4, of the Convention requires States parties to endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest. This article complements article 8, paragraph 5, of the Convention, pursuant to which States parties are to endeavour to establish measures and systems requiring public officials to make declarations regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result. Furthermore, in implementing these articles, States parties could consider establishing effective financial disclosure systems for appropriate public officials, which could also include the disclosure of interests in or signature or other authority over foreign financial accounts, as prescribed by article 52, paragraphs 5 and 6, of the Convention.

10. Almost all States parties had put in place rules on the prevention of conflicts of interest (relating to art. 7, para. 4, and art. 8, para. 5, of the Convention), but the scope and content of the applicable frameworks and the types of prohibited interests varied significantly. Countries had reported a range of measures, such as prohibiting or restricting secondary employment or outside activities, imposing limitations on gifts and requiring financial disclosure for certain public officials. In two instances, although the acceptance of gifts was prohibited in all circumstances, reviewers found conflicting legislation providing for exceptions and issued recommendations to clarify those regulations.

11. Moreover, many States had adopted systems and procedures for public officials to declare their existing or potential conflicts of interest. For example, Nauru had established a mandatory register of interest declarations for parliamentarians, while South Africa had taken a structured approach to preventing and managing conflicts of interest among different categories of public officials, including detailed disclosure requirements for public officials in high-risk areas, training and guidelines. In contrast, the Constitutional Court in another State party had deemed unconstitutional the mandatory declaration of professional activities of children, parents and other family members of a public official.

12. Restrictions and sanctions for non-compliance were widely imposed, including criminal sanctions in a few countries. However, a small number of States reported that they did not have procedures in place to implement those restrictions and sanctions. Although several States had defined conflicts of interest in their legislation, the difficulty in deciding what constituted a conflict of interest was reported as a challenge in some other States.

13. Most States parties had in place requirements for the regular submission of asset declarations by public officials at certain levels (relating to art. 8, para. 5) and a financial disclosure system for appropriate public officials (art. 52, para. 5). However, the specific practices in that regard differed significantly among States. For instance, with regard to the personal scope of application of the declarations, some countries extended the disclosure obligation to all public officials, while several others confined it to high-level officials or persons holding public positions vulnerable to corruption. Also, some States had included family members of selected public officials in the same financial disclosure category as the officials themselves or required selected public officials to declare the assets of their close family members, such as spouses and children. However, the excessively broad personal scope of application in one State party, which covered, inter alia, grandfathers, grandmothers, mothers and fathers-in-law, was considered an obstacle for the effectiveness of the financial disclosure system and a recommendation was issued in that regard.

14. Regarding the scope of the declarations, several States required a wide range of assets to be declared, including financial interests, directorships, shareholdings, investment property, public appointments, income and liabilities. However, only a limited number of States had measures in place to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts (art. 52, para. 6), therefore most of the analysed States parties received recommendations in that regard. Although some States had legislation requiring such reporting, its implementation was found to be rather difficult. As an alternative to fulfilling this provision, Liechtenstein and Slovenia required their public officials to declare their worldwide income, assets and accounts in their tax declaration, while three States prohibited public officials from opening, operating or controlling a foreign bank account without the approval of relevant authorities. The Philippines made no distinction between assets, liabilities and interests to be declared at the domestic level and those to be declared overseas. In the case of two States, reviewers noted that the implementation of a system that complied with article 52, paragraph 6, of the Convention had been considered but not implemented.

15. In addition, the frequency of submission required of officials obliged to declare their assets varied significantly, with some countries requiring periodic reporting and others requiring such reporting upon assuming and leaving office, when the income surpassed a specified threshold or whenever a substantial change occurred. Nevertheless, one country reported that “substantial change” was not defined in its legislation, which gave rise to difficulties in implementation. For one State, reviewers found that the efficiency and effectiveness of the financial disclosure system was significantly diminished, given that, among other circumstances, public officials were not required to submit an updated statement of property at the end of service. In that regard, a recommendation was issued.

Box 1

Example of implementation of article 52, paragraph 5, of the Convention

Public officials in Kenya must submit financial disclosures every two years and at the beginning and end of their service. The disclosures must include information on the income, assets and liabilities of the public officials, their spouse or spouses and their dependent children under the age of 18 years. Lack of compliance with this obligation could lead to sanctions such as fines or imprisonment.

16. The lack of verification has generally been identified as a gap in implementation, due either to a lack of verification processes or a lack of adequate human resources. Some States parties designated a central agency to verify all declarations, while a number of others authorized different bodies to verify declarations submitted by different categories of public officials. Moreover, while some States could use electronic tools to conduct periodic verification, many others reported that verification was performed only when there was a complaint or investigation. More than one third of the States parties analysed in this report received recommendations to establish or enhance systems to verify asset declarations or financial disclosures. Moreover, for 10 of those States, the recommendations also mentioned the importance of using automated or electronic filing tools.

17. Only 17 of the States parties analysed reported on the use of information and communication technologies for the submission, management, verification or publication of the declarations. As an example, for the verification of the completeness and accuracy of declarations, France reported on the use of specialized software (Artemis) that operated by scanning the list of declarants daily and collecting new, relevant, publicly available information. By contrast, 11 States specifically indicated that the submission of declarations was paper-based or performed manually by persons obliged to do so, which was identified as an obstacle for the efficiency of

the declaration systems. Some States also required declarations to remain sealed unless a criminal investigation was opened.

18. A small number of States provided asset declarations to the public in part, in summary form or through a public register or a dedicated website, while other States granted access to the declarations only to law enforcement authorities, or made the declarations accessible only upon request or consultation or subject to approval. The use of information and communications technologies for the publication of asset declarations was also reported.

19. At the regional level, all States in the Group of Latin American and Caribbean States and the vast majority of States in the other regional groups were found to have challenges in their implementation of article 52, paragraphs 5 and 6.

B. Beneficial ownership identification (art. 12, para. 2 (c); art. 14, para. 1 (a); and art. 52, para. 1, of the Convention)

20. Beneficial ownership identification is a crucial tool in countering corruption, enabling information to be gathered on the persons that ultimately have effective control over an institution and thus hindering the ability of criminals to use corporate vehicles to hide the ownership and control of assets. In this regard, article 12, paragraph 1 (c), of the Convention requires States parties to promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities. Identifying the beneficial owner of transactions and funds is also a key measure in the prevention of money-laundering and in preventing and detecting transfers of proceeds of crime. Article 14, paragraph 1 (a), of the Convention requires States parties to institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions that emphasizes, inter alia, beneficial owner identification. Moreover, article 52, paragraph 1, of the Convention, complements that provision in that it obliges States parties to require financial institutions to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts.

21. Many States had adopted business registration requirements and maintained publicly accessible registers for companies (art. 12, para. 2 (c)). A number of States, in particular European Union member States, had also established special registers for beneficial owners or made information about beneficial owners available, which was identified as a good practice. Non-compliance with the registration obligation of the entity could lead to administrative or even criminal sanctions in certain States. Nevertheless, certain legal arrangements, such as trusts, were not fully covered by the registration provisions in some countries.

Box 2

Example of good practice in relation to article 14, paragraph 1 (a), and article 52, paragraph 1, of the Convention

The United Kingdom of Great Britain and Northern Ireland had concluded bilateral arrangements with relevant overseas territories and Crown dependencies to establish central registers of beneficial ownership information or similar effective systems. Those territories and dependencies had also committed to providing law enforcement and tax authorities of the United Kingdom with access to beneficial ownership information on corporate and legal entities incorporated in their jurisdictions.

22. With regard to article 14, paragraph 1 (a), and article 52, paragraph 1, of the Convention, all States reported on their domestic regulatory regimes, and many States referred to their dedicated laws on countering money-laundering and the financing of terrorism, as well as supplementary sector-specific laws and regulations that generally contained provisions on customer due diligence, the identification of beneficial owners, record-keeping and the reporting of suspicious transactions. In many States,

such legislation also provided for administrative or even criminal sanctions in cases of non-compliance with anti-money-laundering obligations. Furthermore, reviewers identified supranational regional legislation such as European Union directives or West African Economic and Monetary Union directives as applicable. In that regard, all but two States had measures in place for the determination of the identity of beneficial owners. In one State, although the identification of beneficial owners was generally required, an exception existed in the case of customers in respect of which beneficial owner information was publicly available or the existence of a beneficial owner was impossible for objective reasons.

23. Some States had encountered challenges in the identification of beneficial owners in practice, in particular in relation to complex legal structures. For example, in the case of one State party, although reviewers noted the existence of regulations for the identification of beneficial owners, they also highlighted that the regulations were not sufficient to actually identify the natural person in control. Moreover, two States parties received recommendations to systematically identify beneficial owners and not only when in doubt.

24. Although article 52, paragraph 1, only refers to the identification of beneficial owners of funds deposited into high-value accounts, this element does not seem to impose an obstacle, as States have reported on general obligations to identify beneficial ownership. Moreover, some of the States specifically reported that such an obligation was imposed irrespective of the value of the account. In only two cases did reviewers recommend that the State party define what was considered as a high-value account in order to identify the beneficial owners of the funds.

25. Although the verification of the identity of beneficial owners is not a requirement under the Convention, in view of its importance, reviewers issued recommendations where it was found that such verification had not been carried out. At the same time, some States parties went beyond the Convention and required enhanced due diligence in relation to beneficial owners that were identified as politically exposed persons.

C. Measures to prevent money-laundering, and customer due diligence (art. 14)

26. Article 14, paragraph 1 (a), of the Convention requires States parties to institute domestic regulatory and supervisory regimes for banks and non-bank financial institutions, as well as other bodies particularly susceptible to money-laundering. States parties should institute a domestic regulatory and supervisory regime, such as customer due diligence obligations and other supervisory procedures, to protect the integrity of financial institutions and non-bank financial institutions. In this regard, States parties are required under article 14, paragraph 1 (a), of the Convention, as well as other international and regional instruments, such as the recommendations of the Financial Action Task Force, the fifth European Union anti-money-laundering directive and the Basel Core Principles for Effective Banking Supervision, to establish, at a minimum, regulations in three areas: (a) beneficial ownership and effective customer identification;[4] (b) accurate record-keeping; and (c) a procedure for concerned institutions and professionals to report suspicious transactions. States parties are required to implement a know-your-client and customer due diligence regime that obliges institutions subject to the regime to declare suspicious transactions to the financial intelligence unit or other designated institution on the basis of clearly established criteria that are periodically reviewed. The requirements under article 14, paragraph 1 (a), are closely related to the requirements under article 52, paragraph 1, on the prevention of transfer of proceeds of crime. Moreover, under article 14, paragraph 1 (b), States parties are encouraged to set up a financial intelligence unit mandated to collect and analyse such declarations, hence, article 14,

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[4] Further information regarding beneficial ownership can be found in section III.B of the present report.

paragraph 1 (b), should be read in connection with article 58, on financial intelligence units. Domestic provisions on the prevention of money-laundering have their origin in the principles set out in a number of international conventions and instruments, such as the Convention against Corruption and the United Nations Convention against Transnational Organized Crime, further reinforced by the Financial Action Task Force, as well as the evaluations of other similar bodies at the regional level.

27. In the vast majority of States parties, measures had been taken to prevent money-laundering, as a criminal offence, through dedicated laws against money-laundering. There was remarkable uniformity among States parties with regard to the issuance of domestic regulatory and supervisory regimes for banks and non-bank financial institutions, as well as other bodies particularly susceptible to money-laundering.

Box 3

Example of implementation of article 14 of the Convention

Thailand performed significant outreach activities and conducted seminars for financial institutions, as well as some designated non-financial businesses and professions. Liechtenstein complemented its anti-money-laundering regime with an annual audit of financial institutions.

28. Most States parties had implemented internal supervisory regulations such as customer due diligence obligations and other supervisory procedures to protect the integrity of financial institutions and non-bank financial institutions.

29. Most States parties used a risk-based approach, requiring that the levels of due diligence applied to customers, transactions and activities be commensurate with the respective money-laundering risks. Although some States had not articulated such an approach in their legislation, they had issued guidance to realize it in practice. Most States parties had completed or were in the process of completing their national risk assessments on money-laundering, with many of them publishing the results of the assessments. On the basis of the findings of the national risk assessments, several States had also developed national anti-money-laundering strategies and implementation plans.

30. Regarding the designation of their supervisory authorities for banks and non-bank financial institutions, there was some variance among the reviewed States parties. Some States had designated respective authorities to supervise different sectors, while one State had established a financial market authority as the sole, integrated and independent supervisory authority.

31. Entities that were subject to anti-money-laundering obligations generally included banks and non-bank financial institutions. In many countries, reporting entities also included designated non-financial businesses and professions. However, some States had not listed all relevant businesses and professions in accordance with the recommendations of the Financial Action Task Force.

32. In accordance with article 14, paragraph 2, and article 52, paragraph 3, States parties kept records, as well as the relevant documentation obtained when conducting customer due diligence measures and during operations, for a specified minimum period of time.

33. Most States of the Group of African States, the Group of Asia-Pacific States and the Group of Western European and Other States were issued recommendations regarding their implementation of article 14 of the Convention.

34. The most common challenges in respect of article 14 were the country-specific gaps in the legislation and regulations aimed at countering money-laundering and the financing of terrorism. Moreover, many countries reported an incomplete implementation of standards and recommendations issued by other international monitoring bodies.

35. Apart from those common challenges, the major challenges appeared to be of an operational nature. Even in countries where the effectiveness of legislation against money-laundering had been demonstrated in practice, as described above, the prevention of money-laundering and financial aspects of criminal activity, particularly in corruption cases, remained challenging. Furthermore, in several countries, the practical capabilities of competent authorities needed to be enhanced by resolving problems relating to lack of coordination among those authorities. For instance, in several States, the specialized authorities and law enforcement agencies were not able to detect such offences and reported that investigators and prosecutors needed better training and greater information-gathering discretionary powers.

36. States parties had reported that anti-money-laundering supervisory and law enforcement authorities cooperated and exchanged information actively at both the national and international levels and had been commended for their sound inter-agency coordination and promotion of regional and international cooperation on countering money-laundering. Coordination meetings, platforms or steering committees to facilitate cooperation among various supervisory authorities had been set up by several States, which was viewed as good practice. Several States had contributed to the development and strengthening of national, regional and international cooperation in the fight against money-laundering, including by providing series of training programmes to other countries, which was also identified as a good practice. The extent of cooperation between national authorities and civil society groups to prevent money-laundering was also considered good practice.

37. With regard to global, regional, subregional and bilateral cooperation among different authorities for the purposes of combating money-laundering, many States parties had referred to the possibility for their financial intelligence units to share information proactively or upon request with both national authorities and foreign counterparts. In addition, several States could provide assistance on the basis of bilateral agreements or through multilateral forums, such as the Egmont Group of Financial Intelligence Units, the Financial Action Task Force and the International Criminal Police Organization (INTERPOL).

38. All States parties cited the adoption of rules or measures to monitor the cross-border movement of cash and appropriate bearer negotiable instruments. Such monitoring, conducted mainly by customs authorities, was usually based on disclosures, with a typical reporting threshold equivalent to 10,000 United States dollars or 10,000 euros. Sanctions such as fines, imprisonment, seizure and confiscation could be applied in many countries for failure to declare or making false declarations. However, the implementation of relevant rules was reported as a challenge in some countries.

Box 4

Example of good practice in the implementation of article 14, paragraph 2, of the Convention

In the Bahamas, in addition to the declaration of cross-border transfers of substantial quantities of cash and negotiable instruments, there was also a requirement to declare the cross-border movement of precious metals and stones.

39. Almost all States reported on their requirements for electronic funds transfers, including measures regarding money remitters. However, in some countries, financial institutions were not always required to maintain information throughout the payment chain or to apply enhanced scrutiny to wire transfers containing incomplete information on the originator, and in a few other countries, money or value transfer services were not adequately regulated. Recommendations were issued accordingly.

40. With regard to global, regional, subregional and bilateral cooperation among different authorities for the purposes of preventing and combating money-laundering, many States parties referred to the possibility for their financial intelligence units to share information proactively or upon request with both national authorities and foreign

counterparts. Reference was made by many States to their membership in the Financial Action Task Force or a Financial Action Task Force-style regional body, such as the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, the Asia/Pacific Group on Money Laundering or the Intergovernmental Action Group against Money-Laundering in West Africa. Many recommendations were issued pertaining to follow-up measures to address gaps or challenges previously identified in other evaluations, especially those conducted by the Financial Action Task Force. The mutual evaluations carried out by Financial Action Task Force and Financial Action Task Force-style regional bodies appeared to have ensured a high level of compliance.

D. Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

1. Prevention and detection of transfers of proceeds of crime (art. 52)[5]

41. In accordance with article 52, paragraph 1, States parties are to require financial institutions to verify the identity of customers, take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and conduct enhanced scrutiny of accounts sought or maintained by politically exposed persons. The article also focuses on the issuance of advisories inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering (art. 52, para. 2 (a)). Moreover, it was considered important to determine whether there was a system that permitted the State party to communicate the identity of high-risk clients identified, and to receive such information from other States parties (art. 52, para. 2 (b)). In accordance with article 52, paragraph 3, States parties should have defined requirements for record-keeping and specific requirements for high-risk accounts and transactions, such as those involving politically exposed persons. The prohibition of the establishment of shell banks and the criteria established for such prohibition are set out in article 52, paragraph 4.

42. All States parties had taken a variety of measures for the prevention and detection of transfers of proceeds of crime. States parties must ensure that their notion of what constituted “proceeds of crime” corresponded to the definition contained in article 2, subparagraph (e), of the Convention, and included any property derived from or obtained, directly or indirectly, through the commission of an offence. Most States had adopted similar or equivalent definitions.

43. Similarly, in other cases, it was noted as a good practice that the laundering of proceeds of crime was criminalized not only when the alleged offender had actual knowledge, but also when he or she ought reasonably to have known, that the assets laundered had resulted from a crime, or when he or she acted contrary to a duty to know or a rational assumption, or on the basis of inexcusable ignorance of such fact. Several States applied similar standards in their domestic legislation.

44. A risk-based approach was widely used by States in their anti-money-laundering regimes. Almost all States had, to varying degrees, requirements in their anti-money-laundering laws or other financial legislation to conduct customer due diligence (art. 52, para. 1). The Convention requires, at a minimum, that financial institutions be subject to customer due diligence requirements. Sanctions could be applied in several States for non-compliance with those requirements.

45. Almost all States had measures in place for conducting enhanced scrutiny of accounts sought or maintained by or on behalf of politically exposed persons and their family members and close associates. Some States had also provided screening tools

[5] As mentioned above, given the close links between article 52 and article 14 (on measures to prevent money-laundering), as well as article 8, paragraph 5 (in relation to financial disclosure systems), readers may wish to refer to the relevant information in the thematic report prepared by the Secretariat on the implementation of chapter II (Preventive measures) of the Convention (CAC/COSP/IRG/2022/3).

for reporting entities to identify such persons. However, States differed in defining the scope of politically exposed persons: some applied the same standards for both domestic and foreign politically exposed persons, while others distinguished between foreign and domestic politically exposed persons by only including one or the other category in their definition of politically exposed persons. In addition, the scope of family members and close associates subject to enhanced scrutiny was not clear in several States, and some States did not include family members and close associates in the ambit of such scrutiny.

46. The majority of States had issued advisories or guidelines for reporting entities, including financial institutions, to apply enhanced scrutiny (art. 52, para. 2). Those advisories or guidelines were generally issued by the financial supervisory authorities, financial intelligence units or law enforcement bodies. In addition, a number of States obliged their financial institutions to exercise enhanced due diligence with regard to business relations and transactions with persons from high-risk jurisdictions. In Portugal, authorities went beyond the minimum requirements of the Convention and provided guidance on how to detect the criminal activity of politically exposed persons, which included a set of indicators on how to identify such persons after they were no longer politically exposed. Approximately half of the States in the different regional groups except the Group of Western European and Other States received recommendations with regard to their implementation of that provision.

47. All States had legislation that provided for the maintenance of adequate records of accounts and transactions by financial institutions (art. 52, para. 3). The maintenance period varied among States; 5, 7, 10 or 15 years, or even up to 25 years. Some States also prescribed different maintenance periods for various records, depending on the sensitivity of the information. The maintenance requirement always started from the date of termination of the business relationship or the date of completion of the transaction. Such records also had to include information on beneficial owners and the method used for verification by reporting persons. In Senegal, the establishment of a registry of bank accounts at the level of the Central Bank, which listed all the bank cards and chequing accounts of the customers of the reporting institutions, was considered as a good practice. Only a few African and Asia-Pacific States received recommendations in relation to the implementation of that provision.

48. Most States had measures in place intended to prevent the establishment of banks that had no physical presence and were not affiliated with a regulated financial group (shell banks), in line with article 52, paragraph 4, of the Convention. In many States, financial institutions were obliged to refuse entering into relationships with such shell banks. In Zimbabwe, that prohibition was extended to any person, while in the Marshall Islands, it referred also to cash dealers. More than two thirds of States parties also reported measures to prohibit the continuation of correspondent banking relationships with such institutions, or with other foreign financial institutions that permitted their accounts to be used by shell banks. Half of the States in the Group of Latin American and Caribbean States and approximately one third of the States in the Group of Asia-Pacific States received recommendations in that regard.

2. Financial intelligence unit (arts. 14, para. 1 (b), and 58)

49. In article 14, paragraph 1 (b), of the Convention, States parties are encouraged to set up a financial intelligence unit mandated to collect and analyse suspicious transaction reports. In accordance with article 58 of the Convention, States parties should cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with the Convention. For that purpose, they should consider establishing a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of reports of suspicious financial transactions to the competent authorities. States parties could implement these provisions by different means: creating a new financial intelligence unit, establishing a specialized branch for an existing unit or using an existing unit.

Article 58 of the Convention should be interpreted in a manner consistent with article 14, paragraph 1 (b), of the Convention.

50. Almost all States had financial intelligence units responsible for receiving, analysing and disseminating to competent authorities reports of suspicious financial transactions. Those financial intelligence units were generally autonomous or independent, although some units had deficiencies in maintaining their independent status or operational capacity. In most of the States, the financial intelligence units were members of the Egmont Group. Some were also members or observers of regional groups of financial intelligence units. Half of the States that had not acquired membership in the Egmont Group for their national financial intelligence unit were in Africa.

51. In most States, the national financial intelligence unit also had the authority to access financial accounts and banking records under the legislation and framework against money-laundering and the financing of terrorism in the context of money-laundering investigations. Banking secrecy regimes could not be invoked as grounds for refusing to submit information. Furthermore, those measures were sometimes carried out not only through the usual prosecutorial and law enforcement channels but also by specialized authorities, such as asset recovery offices, adding considerably to their practical effectiveness.

52. The reporting entities specified in anti-money-laundering legislation had the obligation to take due diligence measures, inform the respective financial intelligence unit (or, in some cases, the public prosecutor) of any suspicious fact or transaction, for the purposes of detecting criminal offences, and to provide information and documents to authorized officers upon request.

53. Some variation existed regarding the functions of the financial intelligence units. Some units mainly performed administrative functions, while others had additional investigative mandates. Moreover, the financial intelligence units in some States parties had the power to take interim measures in emergency cases, such as freezing assets or suspending transactions for up to 48 or 72 hours, or even 7 or 14 days in urgent situations. In Peru, the financial intelligence unit was obliged to inform a judge of such interim measures within 24 hours.

54. The financial intelligence units appeared to have adequate human, financial and technical resources to conduct their work properly. Although there were no formal coordination mechanisms with other law enforcement offices, most of the units noted that there was an exchange of information.

Box 5

Examples of implementation of article 58 of the Convention

In the Bahamas, the financial intelligence unit organized public events to share information on its role and responsibilities. In Morocco, any information sent directly to the financial intelligence unit by foreign counterparts was considered a suspicious transaction report and referred to the competent authorities. In Panama, the large number of memorandums of understanding signed by the financial intelligence unit was considered as a success, even though no such memorandum was needed to exchange information. Peru reported that, at the request of the public prosecutor, the financial intelligence unit could produce a report on the basis of verifiable information contained in financial intelligence reports that could be incorporated into a judicial proceeding as evidence, and the unit could be called upon to participate in the oral trial as an informing expert.

55. With regard to regional trends, a range of challenges were identified, in particular in the States of the Group of African States. The States of the Group of Asia-Pacific States followed, while less than half of the challenges were identified in the States of the Group of Eastern European States and the Group of Latin American and Caribbean States. The Group of Western European and Other States had identified only one challenge in that regard.

IV. Correlation with the first cycle of the Implementation Review Mechanism

56. As the number of finalized executive summaries and country review reports for the second cycle of the Implementation Review Mechanism grows, it becomes possible to draw some correlations among the provisions reviewed in the first and second cycles of the Mechanism. Nevertheless, as mentioned above, the number of country reviews finalized under the second review cycle remains limited and the analysis must be updated as more reviews are finalized.

57. The provisions of the Convention regarding the reporting of suspicious transactions and the establishment of a financial intelligence unit (arts. 14 and 58) were considered milestones in removing obstacles to domestic criminal investigations posed by bank secrecy (art. 40). Those provisions complement article 40 by introducing a wider obligation to ensure that laws and regulations protecting banking information are amended for the purpose of effectively implementing anti-corruption measures.

58. Similarly, with respect to the spontaneous transmission of information (art. 46, paras. 4 and 5) and the establishment of financial intelligence units (art. 58), in some States parties, national authorities specifically referred to the cooperation and exchange of information being undertaken between such units by, for example, regularly providing bank and financial records in response to requests for mutual legal assistance, and even providing early notifications to reporting institutions to alert them to an upcoming request in order to ensure a timely response. In one State party, requests related to money-laundering could be transmitted directly through financial intelligence units.

59. Moreover, most States parties reported that, in urgent circumstances, requests under article 46 of the Convention that were made through INTERPOL were acceptable, even though in some cases subsequent submission through official channels was required. Such exchanges of information appeared to be widespread among financial intelligence units, and more than half of the States parties indicated current or developing interaction between their units and foreign units, mainly through the conclusion of memorandums of understanding. Concerning cooperation in transnational anti-money-laundering investigations and prosecutions, an international forum focused on stimulating cooperation through the sharing of expertise, information exchange and capacity-building had been organized. Several countries noted that they had taken steps to join the Egmont Group. Those practices were relevant for the implementation of the mentioned provisions under review in the first and second review cycles.

60. In addition to the correlation with articles 14, 40 and 46, it was found that article 58 also had a strong correlation with article 36, which dealt with the establishment of specialized authorities to combat corruption through law enforcement. A common finding with regard to both articles was the independence of those authorities, as well as the adequacy of their capacities and resources. With regard to article 36, challenges in relation to operational measures to enhance effectiveness, such as information-sharing, inter-agency coordination, the collection and use of relevant data and clear policy guidance, were highlighted during the first review cycle.

61. A challenge that persisted with regard to the implementation of the provisions under review in the first and second review cycles was the allocation of adequate resources to further strengthen the efficiency and capacity of international cooperation mechanisms. Furthermore, regarding the general recommendations for both cycles, the need to continue to devote adequate resources and attention to building the capacity of authorities responsible for combating corruption and conducting financial investigations, including by undertaking a comprehensive assessment of technical assistance needs, was underscored. Regarding the prevention of money-laundering, the need to strengthen enforcement and address issues of

overlapping mandates, as well as the challenges in coordination among the competent authorities responsible for money-laundering cases related to the proceeds of offences established in accordance with the Convention, was underscored.

62. An additional correlation could be drawn between the establishment of asset declarations and financial disclosure systems (art. 8, para. 5, and art. 52, paras. 5 and 6) and the criminalization of illicit enrichment (art. 20). Asset and financial declarations had been highlighted as a key measure to prevent and detect illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

63. In the first review cycle, with respect to the implementation of article 20, reviewers issued recommendations to 20 States parties to consider establishing not only interest declaration systems but also asset declaration systems, at least for high-ranking officials and members of parliament, and in general to take measures to improve the effectiveness of existing systems, reduce operational weaknesses and provide for more effective sanctions in relation to incorrect declarations. Moreover, in one case, a recommendation issued in the second review cycle referred to the strengthening of the financial disclosure system to allow for the verification and use of information provided to detect cases of conflict of interest and illicit enrichment in the absence of any criminal investigation.

64. The following good practices were underscored in the first cycle and were relevant for the implementation of the above-mentioned articles under review in the second cycle: the active participation in international and regional networks, platforms and forums aimed at promoting international cooperation; the efficient use of electronic databases to track, monitor and follow up on requests for international cooperation; the application for membership of the Egmont Group; and the conclusion of a large number of agreements between national financial intelligence units and foreign jurisdictions.

V. Outlook

65. As more data become available from completed country reviews, a more comprehensive analysis of trends will be provided and additional nuances will be identified in future iterations of the thematic reports, with a view to keeping the Implementation Review Group informed of successes and challenges identified in the course of the reviews.