

9 October 2024

English only

**Twelfth session**

Vienna, 14–18 October 2024

Item 2 of the provisional agenda\*

**Review of the implementation of the United Nations  
Convention against Transnational Organized Crime  
and the Protocols thereto****Lists of observations for the country review of Estonia<sup>1</sup>****Conference room paper**

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\* CTOC/COP/2024/1.

<sup>1</sup> This document has not been formally edited.



Review by Bosnia and Herzegovina and Turkmenistan of the implementation by Estonia of Articles 2, 5, 6, 8, 9, 10, 15 and 23 [cluster I] of the United Nations Convention against Transnational Organized Crime; Articles 3 and 5 [cluster I] of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; Articles 3, 5 and 6 [cluster I] of the Protocol against the Smuggling of Migrants by Land, Sea and Air and Articles 3 and 5 [cluster I] of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their parts and Components and Ammunition in years 2023–2024 of review phase one of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto.

## **I. Introduction**

1. The Conference of the Parties to the United Nations Convention against Transnational Organized Crime was established in accordance with article 32 of the Convention to, inter alia, promote and review the implementation of the Convention and the Protocols thereto.
2. In accordance with article 32, paragraph 4, of the Convention, the Conference established, at its ninth session, held in Vienna from 15 to 19 October 2018, the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto.
3. The Implementation Review Mechanism is an intergovernmental process, the overall goal of which is to assist States parties in implementing the Convention and the Protocols thereto.
4. The country review is undertaken on the basis of articles 32 and 34 of the Convention, as well as the procedures and rules for the functioning of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (Conference of the Parties resolution 9/1, annex).

## **II. Process**

5. The following review of the implementation by Estonia of the Convention and the three supplementing Protocols is based on the completed responses to the self-assessment questionnaire received from Estonia and any supplementary information provided in accordance with paragraph 19 of the procedures and rules for the functioning of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, as well as the outcome of the constructive dialogue between the governmental experts from Estonia, Bosnia and Herzegovina and Turkmenistan as foreseen in paragraph 35 of the procedures and rules, by means of REVMOD, the SHERLOC knowledge management portal and online meetings arranged by UNODC and involving Mr. Markko Künnapu (focal point of Estonia), Mr. Mevsud Čuprija (focal point of Bosnia and Herzegovina) and Mr. Myrat Annamyradov (focal point of Turkmenistan). The supplementary information provided by the State party under review consisted of the following:

- Constitution of Estonia;
- Penal Code (June/2001);
- Code of Criminal Procedure (February/2003);
- Money Laundering and Terrorist Financing Prevention Act (June/2017);
- Weapons Act (January/2024).

6. Those links and electronic copies of those sources are to be made available on SHERLOC.

### III. Lists of observations for the review of Estonia

7. As described in paragraphs 38 and 39 of the procedures and rules for the functioning of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, the State party under review and the reviewing States parties have agreed on the following list of observations regarding the review of Estonia.

#### A. United Nations Convention against Transnational Organized Crime

##### 1. Gaps and challenges in the implementation of the provisions under review

8. Estonian legislation appears to be largely aligned with the United Nations Convention against Transnational Organized Crime (the Convention).

##### Article 2 (Use of terms)

9. Article 2 of the Convention defines several key terms used in the Convention and Protocols thereto. While article 2 of the Convention does not require States parties to introduce these definitions in their domestic legal frameworks, the self-assessment questionnaire asks States parties under review whether they have in fact included such definitions in their legal frameworks. Estonia claims that the definitions from Article 2 of the Convention do not need to be adopted because they can be applied directly based on Article 123 of the Constitution of Estonia which says “If laws or other acts of Estonia are in conflict with international treaties ratified by the Riigikogu, the provisions of the international treaty shall be applied.”.

##### Article 8 (Criminalization of corruption)

10. The review of Articles 8 and 9 of the Convention applies only to those States Parties that are not also parties to the United Nations Convention against Corruption (UNCAC). Estonia, as a party to UNCAC, has had its legislation reviewed under the framework of the UNCAC Implementation Review Mechanism. Despite this, Estonia has voluntarily opted to complete the questions related to corruption under the UNTOC Review Mechanism. According to the information provided, the form of corruption described in Article 8, paragraph 2 of the Convention (involving a foreign public official or an international civil servant) – a non-mandatory provision under the Convention – is not criminalized in the legal framework of Estonia.

##### 2. Best practices

11. Overall, Estonia was found to comply with the provisions of the Convention on criminalization and jurisdiction. The following good practice was identified:

(a) The offence of obstruction of justice included in Estonian legislation goes beyond the scope set out in article 23 of the Convention.

##### 3. Suggestions

12. The review identified a number of steps that Estonia could consider taking in order to achieve full implementation of the provisions of the Convention under review in the first thematic cluster. In particular:

(a) Article 8: The form of corruption described in Article 8 paragraph 2 of the Convention (involving a foreign public official or an international civil servant) is not criminalized in the legal framework of Estonia. This provision is not mandatory but only optional for States parties. Nonetheless, Estonia may consider criminalizing this form of corruption.

**4. Any technical assistance needs identified to improve the implementation of the Convention**

13. Estonia did not express the need for technical assistance to implement the Convention.

**B. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**

14. As described in paragraphs 38 and 39 of the procedures and rules for the functioning of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, the State party under review and the reviewing States parties have agreed on the following list of observations regarding the review of Estonia.

**1. Gaps and challenges in the implementation of the provisions under review**

15. Estonian legislation appears to be largely aligned with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Protocol).

**Article 3 (Use of terms)**

16. The provisions of Article 133 (Human Trafficking), Article 133-1 (Supporting Human Trafficking), Article 175 (Human Trafficking in Relation to Minors) and Article 138-1 (Forcing a Person to Donate Organs or Tissues) of the Estonian Penal Code largely cover the definition of “trafficking in persons” of the Protocol, however there are some gaps and aspects that may require consideration by Estonia. In more detail.

*Acts*

17. Under Article 133, Estonia criminalizes the “placing” and “keeping” of a person through specific means in a situation where he or she is exploited. While the national legislation uses the term “placing”, it does not explicitly refer to “recruiting”. It is noteworthy that, in criminalizing the “support” of human trafficking (Article 133-1), numerous acts are listed, such as transportation, delivery, escorting, acceptance, concealment, or accommodation without prior authorization of the person.

18. The Trafficking in Persons Protocol makes clear that these elements are disjunctive. Thus, while fulfilling any one of the actions under Article 3, paragraph (a) of the Protocol is sufficient to establish the act component of the offence, States should specify the range of criminal actions that can be undertaken with a view to another person being exploited, so as to ensure the legal offence applies to all those involved in trafficking in persons cases, from recruiters to those who effect exploitation. As Estonia confirmed that the concept of ‘placing’ is interpreted to include “recruitment”, the approach applied by Estonia to have two distinct provisions for the “placer” and the persons supporting trafficking in persons respectively, fulfils the purpose of Article 3 paragraph (a) to ensure that all those who are involved can be punished. However, it would be worthwhile to explicitly include “recruitment” in the national legislation and to further assess whether having two provisions on trafficking in persons (Article 133 and 133-1) instead of one causes any practical benefits or challenges, especially regarding the sentencing practices.

*Means*

19. While Estonia provides for several means as a constituent element of the offence, it does not explicitly include all the means that are contained in the Protocol.

For example, abduction,<sup>2</sup> abuse of power,<sup>3</sup> fraud or the giving or receiving of payments or benefits to achieve the consent of a person having control of another person are not provided for.

20. It is not necessary to prove more than one prohibited means (Article 3 paragraph (a) of the Protocol) to establish this element and national laws should be drafted in a way to reflect this. States are, however, encouraged to draft their national legislation in a manner that captures the various practices captured by the Protocol that are employed by traffickers to achieve their ultimate criminal objectives.

#### *Purpose*

21. Estonia has an extensive list of purposes in Article 133 and Article 138-1 (Forcing a Person to Donate Organs or Tissues). While the national legislation includes “work under unusual conditions”, it does not explicitly criminalize forced labour or services, slavery or practices similar to slavery or servitude in Article 133 of its Penal Code.

22. Article 3 paragraph (a) of the Protocol sets out a non-exhaustive list of examples of what constitutes exploitation in order to cater for the ever-evolving nature of the crime. In national legislation, States Parties are required to address, *at a minimum*, those forms of exploitation that are listed in the Protocol. The State party under review criminalizes “work under unusual condition”, which may, in principle and depending on actual interpretation and implementation, include several forms of exploitative practices as required by the Protocol.

#### *Consent of the person*

23. There is no explicit reference in the national law of Estonia regarding the consent of the trafficked person. According to the Protocol, the consent of a victim of trafficking to the intended exploitation is irrelevant when any of the means set forth are used (Article 3 paragraph (b)). This means that, under existing international legal norms, it is legally impossible to “consent” when one of the means listed in the definition is used. Therefore, including a clause in national legislation addressing trafficking in persons that explicitly states the irrelevance of victim consent would strengthen the legal stance against traffickers who might revert to the consent of victim as defence against criminal liability.

#### **Article 5 (Criminalization)**

24. The Protocol requires States to adopt such legislative and other measures as may be necessary to establish as criminal offence the conduct of trafficking in persons as set forth in article 3. In fulfilment of this requirement, Estonia criminalizes trafficking in persons in Article 133 (Human Trafficking), Article 133-1 (Supporting Human Trafficking), Article 175 (Human Trafficking in Relation to Minors) and Article 138-1 (Forcing a Person to Donate Organs or Tissues) of the Estonian Penal Code.

25. The Protocol does not prescribe how the offences shall be implemented into national law, e.g. in separate offences or in one combined offence. However, the approach chosen by Estonia in relation to child trafficking risks legal uncertainty. Estonia criminalizes child trafficking in a dual approach – as both an aggravating circumstance under the general provision, under Articles 133, 133-1 and 138, and as a separate offence, under Article 175. There are key differences in the different regulations particularly regarding the requirement of means, the variation in sanctions, and the purposes of exploitation.

<sup>2</sup> Noting that “deprivation of liberty” is a term used in the national legislation which could, in principle and depending on actual interpretation and implementation, cover abduction as well.

<sup>3</sup> Noting that “taking advantage of dependence on another person” and as an aggravating circumstance “taking advantage of official position” are terms used in the national legislation which could, in principle and depending on actual interpretation and implementation, cover also the abuse of power.

26. First, for establishing child trafficking under Article 175, unlike for trafficking in persons in general, means are not required to prove the offence. Second the range of punishment is 3 to 15 years when it is an aggravated circumstance under Article 133 paragraph (2), 2 to 10 years under 133-1 paragraph (2) and 138 paragraph (2), and 2 to 10 years under Article 175. Third, the purposes of exploitation overlap partly, but the specific offence of child trafficking also includes additional and specific exploitative purposes that are not explicitly covered under the general provision of Article 133.

*Article 5 paragraph (2) (Ancillary offences)*

27. Organizing or directing other persons for the purpose of trafficking in persons (Article 5 paragraph 2 (c) in conjunction with Article 3) is not recognized as a criminal offence in Estonia. Article 22 of the Penal Code stipulates that only the instigator and accomplice are recognized as accomplices in a crime. This provision does not provide that an accomplice to a crime is also an organizer of a crime who organizes the commission of a crime or directs its execution.

*Principle of non-punishment*

28. Enshrining this principle in legislation is vital to ensure that victims are not penalized for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.<sup>4</sup>

29. Estonia's current legislation does not explicitly incorporate the principle of non-punishment for victims of trafficking. Incorporating this principle, in addition to existing general criminal law provisions related to "duress" or "necessity", would align the legislation with international standards, and ensure better protection and support for victims.

## 2. Best practices

30. Estonia is to be commended for its efforts over a period of time to establish a strong legal framework to prevent and combat trafficking in persons.

31. In addition to the Protocol, several regional instruments apply in or must be implemented by Estonia. These instruments complement the provisions of the Protocol and aim to achieve a strong response against trafficking in persons. They include the Council of Europe Convention on Action against Trafficking in Human Beings,<sup>5</sup> which is further strengthening the prevention of trafficking in persons and the protection and assistance of victims, and the revised European Union Anti-Trafficking Directive<sup>6</sup> introducing stricter criminalization (incl. the online dimension) and ensuring strong assistance and support to victims.

32. The following best practices can be identified in Estonia's national legal framework related to trafficking in persons as it pertains to cluster I of the Review Mechanism:

(a) Article 133 paragraph (1) of the Penal Code: Estonia criminalizes additional exploitative purposes, such as forced marriage, forced begging and the use in criminal activities;

(b) Article 133 paragraph (4) of the Penal Code: For the criminal offence of trafficking in persons, the court may impose extended confiscation of assets or

<sup>4</sup> The Recommended Principles and Guidelines on Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights (E/2002/68/Add.1), Principle 7.

<sup>5</sup> Council of Europe Treaty Series – No. 197 Council of Europe Convention on Action against Trafficking in Human Beings.

<sup>6</sup> Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

property acquired by the criminal offence pursuant to the provisions of § 83<sup>2</sup> of this Code (Extended confiscation of assets acquired through criminal offence);

(c) Article 138-1 of the Penal Code: Estonia does not only criminalize trafficking in persons for organ removal, e.g. kidney, liver, heart, lung, and pancreas as envisaged by the Protocol, but also for the removal of tissues and cells. This approach goes beyond the requirements of the Protocol and permits Estonia to comprehensively regulate the offence of trafficking in persons for the removal of organs, tissues and cells.

### **3. Suggestions**

33. The review identified a number of steps that Estonia could consider taking in order to achieve full implementation of the Protocol's provisions under review in the first thematic cluster. The suggestions are in line with the Protocol and should not prejudice other international or regional obligations of Estonia. In particular:

(a) Align the national law with the Protocol by explicitly criminalizing forced labour or services, slavery and practices similar to slavery or servitude as exploitative purposes for legal certainty;

(b) Ensure that the consent of a victim of trafficking to the intended exploitation is irrelevant when any of the means set forth are used;

(c) Ensure that the national legislation covers the "recruiting" as enshrined in article 3 paragraph (a) of the Protocol;

(d) Unify the definition of and harmonizing the sanctions for child trafficking; and streamline the offences related to child trafficking under the different national provisions to ensure legal certainty;

(e) Amend Article 22 of the Penal Code to ensure that organizing or directing another person for the purpose of trafficking in persons is criminalized in line with the Protocol;

(f) Consider assessing the practical implications of having two distinct offences established under the national law for 'placers' and those who support the trafficking in persons, including the sentencing practice;

(g) Consider amendments to make the national provisions related to the means more detailed, in particular by including fraud or the giving or receiving of payments or benefits to achieve the consent of a person having control of another person as means elements under the respective criminal provisions;

(h) Consider incorporating the principle of non-punishment in national legislation.

### **4. Any technical assistance needs identified to improve the implementation of the Convention**

34. Estonia indicated that it does not require technical assistance to implement the Protocol.

## **C. Protocol against the Smuggling of Migrants by Land, Sea and Air**

35. As described in paragraphs 38 and 39 of the procedures and rules for the functioning of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, the State party under review and the reviewing States parties have agreed on the following list of observations regarding the review of Estonia.

## 1. Gaps and challenges in the implementation of the provisions under review

36. Estonian legislation appears to be largely compliant with the Protocol against the Smuggling of Migrants (the Protocol).

37. In the criminal legislation of Estonia, a distinction is made between the smuggling of migrants, Article 259 “Illegal transportation of foreigners across the state border or temporary border of the Republic of Estonia” and human trafficking – Article 133 “Trafficking in Persons”, Article 133-1 “Supporting Trafficking in Persons”, Article 175 “Trafficking in persons against minors”.

### Article 3 (Use of terms)

38. The definitions in the Penal Code of Estonia largely comply with the use of terms in article 3 of the Protocol. However, the disposition of article 259 “Illegal transportation of foreigners across the state border or temporary border of the Republic of Estonia” of the Penal Code of Estonia does not provide that obtaining financial or other material benefit is an integral element of the crime, as required by paragraph 1 of Article 6 in connection with paragraph (a) Article 3 of the Protocol.

39. The reference to “a financial or other material benefit” was included as an element of the definition of “smuggling of migrants” to the Protocol in order to emphasize that the intention was to include the activities of organized criminal groups acting for profit, but to exclude the activities of those who provide support to migrants for humanitarian reasons or on the basis of close family ties. It was not the intention of the Protocol to criminalize the activities of family members or organizations assisting migrants for humanitarian reasons such as religious or non-governmental organizations.

40. While a broader definition may cover all situations, including when the offence is committed for a financial or other material benefit, this approach i.e. the omission to include a reference to “a financial or other material benefit”, risks the criminalization of family members or humanitarian actors under the national legislation despite the intention of the Protocol. There is also no explicit regulation that would exclude the criminal liability of these actors. In consequence, the current approach could, in principle and depending on actual interpretation and implementation, cover the requirement to obtain directly or indirectly a financial or other material benefits but it is recommended to ensure that this is the case and clarify the definition.

41. In addition, in Article 3 paragraph (a) the Protocol defines the smuggling of migrants as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”; Estonian national legislation refers to the “illegal transportation”, which should be reconsidered as it may result in the actus reus of migrant smuggling being defined narrowly compared to the Protocol, which speaks of “procurement of illegal entry”. It may restrict the prohibited conduct to the cross-border actions at the final stages of the migrant smuggling process, excluding preparatory or facilitative actions, resulting in the prevailing practice in many countries of putting emphasis on drivers of conveyance and other low-level actors, while bigger role players like owners of the means of conveyance, organizers, financial institutions, corrupt and complicit officers are not apprehended.

### Article 6 (Criminalization)

42. The Protocol establishes three separate criminal offences, namely (a) smuggling of migrants and (b) when committed for the purpose of enabling the smuggling of migrants (i) Producing a fraudulent travel or identity document; (ii) procuring, providing or possessing such a document; as well as (c) enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned under (b) or any other illegal means.



43. The smuggling of migrants is recognized as a criminal offense in article 259 of the Estonian Penal Code. The presence of a financial or other material benefit is not required under the national legislation. Further, the Penal Code, criminalizes in article 259-1 the “Facilitating the stay in Estonia without a legal basis”. This offence requires, in turn, proprietary benefits as the purpose for facilitating the stay. For coherence, aligning the language with the Protocol and as suggested for article 259 of the Estonian Penal Code would be recommended; thus, the use of “financial or other material benefit” should be considered.<sup>7</sup>

44. Production, acquisition or provision of a false travel document or identity document as defined in article 3 paragraph (c) or possession for the purpose of smuggling migrants in line with article 6(1)(b), or the related crime or crimes are criminal offenses under Estonian law in articles 344–350 of the Penal Code.

## **2. Best practices**

45. Estonia is to be commended for its efforts over a period of time to establish a strong legal framework to prevent and combat the smuggling of migrants.

## **3. Suggestions**

46. The review identified the following steps that Estonia may wish to consider as amendments to its Penal Code to ensure full compliance with the Protocol’s provisions under review. In particular:

(a) Ensure that “obtaining financial or other material benefit” is an element in article 259, “Illegal transportation of foreigners across the state border or temporary border of the Republic of Estonia” to align the national legislation with the Protocol;

(b) Reconsider the use of the terminology “illegal transportation” in article 259 in order to align with the Protocol, which speaks of “procurement of illegal entry”;

(c) Consider aligning the terminology “proprietary benefits” in article 259-1 with “financial and material benefit” as used in the Protocol for coherence and legal clarity.

## **4. Any technical assistance needs identified to improve the implementation of the Convention**

47. Estonia indicated that it does not require technical assistance to overcome difficulties in implementing the Protocol.

## **D. Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their parts and Components and Ammunition**

48. As described in paragraphs 38 and 39 of the procedures and rules for the functioning of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, the State party under review and the reviewing States parties have agreed on the following list of observations regarding the review of Estonia.

### **1. Gaps and challenges in the implementation of the provisions under review**

49. Estonian legislation appears to be largely compliant with the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components (the Firearms Protocol). No inconsistencies were identified.

#### **Article 3 (Use of terms)**

50. To a large extent, the definitions in the Weapons Act of Estonia comply with the use of terms in article 3 of the Firearms Protocol. Only the definition of

<sup>7</sup> Noting that the difference may come from the translation.

ammunition should be extended to components of ammunition, in accordance with article 3, subsection (c), of the Firearms Protocol. Furthermore, the definition of firearms could be slightly amended to clarify that it also encompasses convertible weapons.

51. According to the information provided through the self-assessment questionnaire, international instruments that have been ratified are part of the legal system and legislative framework of Estonia. Definitions provided by such instruments can be applied directly. However, the Weapons Act further defines the terms firearms, their parts and components and ammunition that are set forth in article 3 of the Firearms Protocol.

*Firearms (article 3, subsection (a))*

52. The definition of the term “firearm” used by Estonia largely complies with article 3, subsection (a), of the Firearms Protocol. However, it could be clarified that weapons, which may be readily converted to expel a shot, bullet or projectile by the action of an explosive fall under the definition of firearms.

53. Pursuant to Section 11(1) of the Weapons Act of Estonia, “a firearm is a weapon or device which is intended or adapted to discharge a directed projectile by the action of gas pressure caused as a result of propellant gases, combustion gases or explosive gases”. Pursuant to section 2(2) of the Weapons Act, the Act does not apply to “firearms which were manufactured before the year 1870 and replicas thereof”, provided that certain types of ammunition, specified in the Act, cannot be fired from them. This exception for antique firearms is in line with article 3(a) of the Firearms Protocol and in fact uses an even earlier cut-off date than the date provided for in the Protocol.

54. In deviation of the Protocol, section 11(1) states that only weapons which are “intended or adapted” to discharge a projectile are considered firearms. The Firearm Protocol, in contrast, also includes weapons that “may be readily converted” into the definition of firearms. Hence, while the Firearms Protocol applies to weapons that could be converted to fire a projectile, the definition of firearms in the Weapons Act of Estonia only includes weapons that are actually adapted to do so. It thus falls back behind the definition in the Protocol. It should be noted, however, that this might not make a factual difference in the case of Estonia because section 87-6 of the Weapons Act states that alarm and signal weapons as well as acoustic weapons “which [are] capable of being adapted to expel a shot, bullet or projectile” are to be handled as if they were restricted weapons (in the case of the prior) or as if they were firearms (in the case of the latter). Nevertheless, the clarification that convertible weapons fall under the definition of firearms might help to address potential vagueness in the interpretation of the definition.

55. Finally, although certain defining terms (“portable”, “barrelled”, “shot” and “bullet”) of the definition of firearms in article 3(a) of the Firearms Protocol are not included into the definition of the Weapons Act, the definition does not fall back behind the regulatory minimum standard set by the Protocol in that regard. The terms “portable” and “barrelled” are intended to limit the scope of application of the definition by excluding larger artillery weaponry as well as barrel-less weapons, such as bows. Similarly, the term “projectile” used by Estonia encompasses “shots” and “bullets”.

*Parts and components (article 3, subsection (b))*

56. The definition of parts and components used by Estonia complies with article 3, subsection (b), of the Firearms Protocol.

57. Section 20-1, subsection 1, of the Weapons Act defines “components of firearms” as “the barrel, frame, receiver, slide, cylinder, bolt, chamber, safety catch, adapter, magazine and other components or spare components of firearms specifically designed for a firearm and essential to its operation”. Furthermore, pursuant to

subsection 2, “silencers, laser sights and night sights, which are firearm accessories, are also deemed components of firearms”. Throughout the Act, reference is made either to “components of firearms” or “essential components of firearms”. The latter are defined in section 21 as “the barrel, the frame, the receiver, including both upper and lower receivers, where applicable, the slide, the cylinder, the bolt, the breech block and the adapter”. None of the definition falls back behind the minimum requirements of the Firearms Protocol.

*Ammunition (article 3, subsection (c))*

58. The definition of the term ammunition used by Estonia partly complies with article 3, subsection (c), of the Firearms Protocol.

59. In accordance with the definition used in the Protocol, the term ammunition “shall mean the complete round or its components”. In contrast, the definition of the term ammunition in section 17 of the Weapons Act of Estonia only refers to “the complete round” of ammunition, “consisting of the following components: (1) combustible propellant or other propellant powder; (2) primers; (3) bullets, shots or other projectiles; (4) cartridge cases”.

60. To fully comply with the definition used in the Firearms Protocol and also regulate ammunition components, Estonia may wish to align its definition of the term ammunition with the definition of article 3, subsection (c), of the Protocol.

**Article 5 (Criminalization)**

61. While the Firearms Protocol establishes three separate criminal offences, namely (1) the illicit manufacturing and (2) the trafficking of firearms, their parts and components and ammunition, as well as (3) the tampering with markings on firearms, the self-assessment questionnaire of Estonia states that these conducts are criminalized in a single offence of “unlawful handling of firearms or essential components thereof or ammunition” (Section 418 of the Penal Code). The offence is complemented by two subtypes: (1) the unlawful handling of firearms prohibited for civilian use or essential components thereof or ammunition and (2) the unlawful handling of military weapons, essential components thereof and military ammunition (Sections 418-1 and 418-2 of the Penal Code). Furthermore, section 420 of the Penal Code of Estonia criminalizes the “unlawful handling of silencers, laser sights or night sights of firearms”.

62. Pursuant to section 1, subsection (2), of the Weapons Act of Estonia, the term “handling” is defined as “the manufacture, sale, acquisition, owning, possession, storage, maintenance, carrying, conveyance, transport, import, export, transfer, succession, finding and destruction of weapons and ammunition, and the repair, conversion, dismantling and rental of weapons and the rendering of weapons inoperable”. What is considered to be “unlawful” handling must be determined in accordance with the Weapons Act.

63. The Firearms Protocol does not prescribe how the offences shall be implemented into national law, e.g. in separate offences or in one combined offence. However, the approach chosen by Estonia risks to not adequately take into account the staggered gravity of different firearms-related conducts and offences, as required by article 11, paragraph 1 of the Convention. In other words, in Estonia, the same criminal offence applies regardless if a person keeps a firearm after a license expired or illicitly traffics or manufacturers a firearm, which typically requires a deeper-rooted criminal motivation.

64. Furthermore, the offence of tampering with markings on firearms does not seem to be covered by the offence of unlawful handling of firearms.

65. Finally, it is not clear in which circumstances the offence of unlawful handling of silencers in section 420 of the Penal Code would apply. Pursuant to Section 20-1, subsection (2) of the Weapons Act, silencers are considered as firearms components – not as essential firearms components. In consequence, the main provisions of the

authorization regime under the Weapons Act (namely, section 66 and others) do not apply as they are limited to “essential components”, raising the question, under which circumstances conducts with silencers would be unlawful.

*Illicit manufacturing (article 5(1)(a), in conjunction with article 3(d) of the Protocol)*

66. The manufacturing offence in the Firearms Protocol consists of three sub-offences: the manufacturing or assembly (1) from illicitly trafficked parts and components, (2) without a license or authorization from the competent authority, or (3) without marking the firearms in accordance with the Firearms Protocol at the time of manufacturing. According to section 66, subsection (1), of the Weapons Act of Estonia, an activity licence is required for engaging in the manufacture of weapons, essential components of firearms or ammunition. Furthermore, pursuant to section 73-1, subsection (1), a person engaging in the manufacture of weapons or essential components of firearms is required to mark the items in accordance with the provisions set forth in the Act. The manufacturing of firearms, their parts and components and ammunition without or in deviation of a license or without marking the firearms at the time of manufacturing hence would be unlawful and therefore fall under the criminal offence of illicit handling, pursuant to section 418 of the Penal Code. The manufacturing or assembly from illicitly trafficked parts and components is not explicitly mentioned in the Weapons Act or the Penal Code. However, the sub-offence might not be of much relevance as, in any case, the possession of trafficked firearm components would most likely be considered as unlawful possession and therefore fall under the offence of unlawful handling.

67. In addition to the three manufacturing offences set forth in article 5(1)(a), in conjunction with article 3(d) of the Protocol, the self-assessment questionnaire inquires whether the country under review criminalizes (1) the reactivation of deactivated firearms or essential parts thereof without a licence or authorization and (2) the conversion of weapons into a firearm without a licence or authorization. According to the responses provided by Estonia, both offences are covered by the offence of “unlawful handling” under section 418 of the Penal Code. The definition of “handling” in section 1, subsection (2), of the Weapons Act contains the terms “conversion” and “rendering of weapons inoperable”.

68. For the conversion of certain weapons, including alarm and signal weapons, section 66, subsection (1), number 6) of the Weapons Act explicitly clearly states that an activity license is required. Hence, the conversion of such weapons into a firearm without a license would be considered as unlawful handling.

69. However, it is not clear under which circumstances conducts related to reactivation would be considered as unlawful. Thus, it is not clear to what extent the criminal offence of unlawful handling would apply. In accordance with section 83-57 of the Weapons Act, a prohibition to reactivate deactivated firearms only seem to apply to deactivated military weapons. A corresponding prohibition for other deactivated weapons could not be identified. In consequence, the explicit prohibition to reactivate deactivated military weapons could be used as a defence argument to claim that, reversely, the reactivation of other weapons is not prohibited and therefore does not constitute a criminal offence.

*Trafficking (article 5(1)(b), in conjunction with article 3(e) of the Protocol)*

70. The trafficking offence in the Firearms Protocol consists of two offences: the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State Party to that of another State Party (1) if any one of the States Parties concerned does not authorize it in accordance with the terms of the Protocol or (2) if the firearms are not marked in accordance with the Protocol.

71. The abovementioned conducts require authorizations in the form of permits or licenses in Estonia: The import and export/permanent conveyance of weapons and ammunition requires prior authorization and/or a special permit (Sections 60(2) and

62-8); the conveyance requires prior authorization (Section 62); the acquisition requires an acquisition permit, and its sale requires a license for the sale of weapons (Section 63) and/or an activity licence (Section 66(1), number 1 of the Weapons Act). To carry out these activities without the required authorization, permit or licence would hence be considered unlawful and constitute the offence of unlawful handling, in accordance with section 418 of the Penal Code of Estonia. However, while the criminal offence in section 418 of the Penal Code explicitly extends to firearms, essential components thereof and ammunition, firearms components are not included into all of the abovementioned provisions of the Weapons Act (namely, essential components are not mentioned in section 62-8 and 63 of the Weapons Act). This might lead to interpretative vagueness when determining if the handling of essential components that were transferred (section 63) or permanently conveyed (section 62-8) was “unlawful” in the sense of the Weapons Act.

72. The second variant of the trafficking offence (import of unmarked firearms) seems to be covered by section 418 of the Penal Code, in conjunction with section 73-1, subsection (1), of the Weapons Act, according to which, a person who has imported an essential component of a weapon or firearm to Estonia is required to mark it in accordance with the Act.

*Tampering with markings (article 5(1)(c) of the Protocol)*

73. According to the self-assessment questionnaire, the act of falsifying or illicitly obliterating, removing or altering the marking(s) on firearms is considered as unlawful handling, in accordance with section 418 of the Penal Code, in conjunction with section 1, subsection (2), of the Weapons Act of Estonia. However, none of the provisions, explicitly includes the term “markings”, neither could the reviewers identify a prohibition to falsify or illicitly obliterate, remove or alter markings in any other provision of the Weapons Act.

74. In accordance with the criminal law principle of “no crime without law” (*nullum crimen sine lege*), conduct is only criminal if found among the behaviour/circumstance combinations of a statute.

*Ancillary offences (article 5(2) of the Protocol)*

75. In accordance with article 5, paragraph (2) of the Firearms Protocol, States Parties shall criminalize (1) acts of attempting to commit or participating as an accomplice in the Protocol’s offences; and (2) organizing, directing, aiding, abetting, facilitating or counselling the commission of the Protocol’s offences.

76. Consistent with the Protocol, Estonia criminalizes these acts in sections 22 and 25 of the Penal Code: pursuant to section 22, subsection 4, of the Criminal Code, a punishment shall be imposed on an accomplice pursuant to the same provision of law which prescribes the liability of the principal offender. The Penal Code clarifies that both the commission and the attempt of a crime is punishable, while attempted misdemeanours are only punishable in the cases provided for in the Criminal Code or another Act. The offence of unlawful handling of firearms in section 418 of the Penal Code is designed as a criminal offence, therefore also establishing criminal liability for act of attempting to commit the crime.

*Additional criminal offences*

77. Estonia did not respond to the (voluntary) question on additional criminal offences that might have been established to enforce the provisions of the Firearms Protocol (art. 34, para. 3, of the Convention, in conjunction with art. 1, para. 2, of the Firearms Protocol). The question was therefore not reviewed.

## 2. Best practices

78. The following best practices can be identified in Estonia’s national legal framework related to firearms as it pertains to cluster I of the Review Mechanism.

79. In addition to the Firearms Protocol, several firearms-related instruments of the European Union apply in or must be implemented by Estonia. These instruments complement the provisions of the Firearms Protocol and aim to achieve strong firearms control standards across the Member States of the European Union. They include the Firearms Directive,<sup>8</sup> defining minimum common rules on the acquisition and possession of firearms in the European Union as well as on the transfer of firearms from one European Union country to another, and the Firearms Regulation, laying down rules on exporting, importing and transporting firearms, their parts and components, and ammunition, thereby implementing article 10 of the Firearms Protocol.

### Article 3 (Use of terms)

#### *Firearms*

80. The Weapons Act of Estonia, pursuant to its Section 1, in conjunction with section 11, goes beyond the scope of application of the Firearms Protocol and applies to a broader group of weapons, including firearms but also certain types of gas- and pneumatic weapons, cut-and-thrust weapons, electric shock weapons, alarms and signal weapons and acoustic weapons. The weapons are then classified in three different categories A–C. This approach permits Estonia to comprehensively regulate various types of weapons in one single piece of legislation and establishing a staggered regulatory framework for them, depending on their potential danger.

81. For the regulation of firearm parts and components, Estonia differentiates between “components of firearms” (Section 20-1 of the Weapons Act) and “essential components of firearms” (Section 21 of the Weapons Act). “Components” are defined as “the barrel, frame, receiver, slide, cylinder, bolt, chamber, safety catch, adapter, magazine and other components or spare components of firearms specifically designed for a firearm and essential to its operation” and include silencers, laser sights and night sights. In contrast, “essential components” only include the barrel, the frame, the receiver, including both upper and lower receivers, where applicable, the slide, the cylinder, the bolt, the breech block and the adapter, which, being separate objects. Essential components are included in the category of the firearm on which they are or are intended to be mounted. This differentiation between all firearm components and essential firearm components permits Estonia to establish a staggered regulatory regime for different firearm components, depending on if they are essential for the operation of a firearm.

82. Furthermore, Estonia also extends the regulatory regime on essential components to “unfinished blanks” of the essential components mentioned above as well as “components which have been rendered inoperable in a non-conforming manner” (Section 21(11) of the Weapons Act). This allows Estonia with the regulatory tools to effectively address semi-finished firearm components, e.g. in so-called “buy, build, shoot”-kits that are used to assemble unregistered “ghost guns”.

83. While the Firearms Protocol does regulate magazines, the Weapons Act of Estonia, in Section 20-1, subsections (6) to (9) contain detailed provisions on magazines that particularly permit to address the issue of high-capacity magazines.

84. In addition to the Firearms Protocol, several firearms-related instruments of the European Union apply in or must be implemented by Estonia. These instruments complement the provisions of the Firearms Protocol and aim to achieve strong firearms control standards across the Member States of the European Union. They include the Firearms Directive,<sup>9</sup> defining minimum common rules on the acquisition and possession of firearms in the European Union as well as on the transfer of firearms

<sup>8</sup> Directive (EU) 2021/555 of the European Parliament and of the Council of 24 March 2021 on control of the acquisition and possession of weapons.

<sup>9</sup> Directive (EU) 2021/555 of the European Parliament and of the Council of 24 March 2021 on control of the acquisition and possession of weapons.

from one European Union country to another, and the Firearms Regulation,<sup>10</sup> laying down rules on exporting, importing and transporting firearms, their parts and components, and ammunition, thereby implementing article 10 of the Firearms Protocol.

### **Article 5 (Criminalization)**

85. Estonia not only criminalizes transnational unauthorized transfers but any, including domestic, unauthorized transfers and any unlawful handling of firearms, their essential components and ammunition, as well as negligent storage of firearms, thus going beyond the requirements of the Firearms Protocol. This creates a quite comprehensive enforcement regime to enforce the national firearms control framework.

86. Firearms-related criminal offences include aggravating circumstances in cases where the (1) same act is committed twice, (2) the object of the act is a large quantity of firearms, essential components thereof or ammunition; or (3) the act is committed by a group. This allows to adequately address criminal conduct with a certain degree of organization or continuity.

### **3. Suggestions**

87. The review identified a number of steps that Estonia may wish to consider as amendments to its Weapons Act to ensure full compliance with the Firearms Protocol's provisions under review. In particular:

(a) Ensure that the regulatory framework of the Weapons Act also applies to ammunition components (not only the complete round of ammunition), by aligning the definition of the term "ammunition" in section 17 of the Weapons Act with the definition set forth in article 2(c) of the Firearms Protocol;

(b) Ensure that the criminal offence of tampering with markings on firearms, is criminalized in Estonia, in accordance with article 5, paragraph (1) (c) of the Firearms Protocol;

(c) Consider including essential components into the definition of "handling" in section 1-1(2) of the Weapons Act to resolve the discrepancy between the criminal offences of "unlawful handling" in sections 418 et sequence of the Penal Code (explicitly applying to firearms, their essential components and ammunition) and the definition of "handling" in section 1-1(2) of the Weapons Act (only defining the "handling of weapons and ammunition" – not their essential components).

### **4. Any technical assistance needs identified to improve the implementation of the Convention**

88. Estonia indicated that it does not require technical assistance to overcome difficulties in implementing the Protocol.

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<sup>10</sup> Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organized Crime (UN Firearms Protocol), and establishing export authorization, and import and transit measures for firearms, their parts and components and ammunition.