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**EUROPEAN COMMITTEE ON CRIME PROBLEMS**  
**COMITE EUROPEEN POUR LES PROBLEMES CRIMINELS**  
**(CDPC)**

**COMMITTEE OF EXPERTS**  
**ON THE OPERATION OF EUROPEAN CONVENTIONS**  
**ON CO-OPERATION IN CRIMINAL MATTERS**

**COMITE D'EXPERTS**  
**SUR LE FONCTIONNEMENT DES CONVENTIONS EUROPEENNES**  
**SUR LA COOPERATION DANS LE DOMAINE PENAL**  
**(PC-OC)**

**Questionnaire on the use and efficiency of CoE instruments as regards international co-operation in the field of seizure and confiscation of proceeds of crime, including the management of confiscated goods and asset sharing.**

**Questionnaire sur l'utilisation et l'efficacité des instruments du CdE dans le domaine de la coopération internationale en matière de saisie et de confiscation des produits du crime, y compris la gestion des biens confisqués et le partage des avoirs**

**REPLIES / REPONSES**

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#### Questionnaire on the use and efficiency of CoE instruments as regards international co-operation in the field of seizure and confiscation of proceeds of crime, including the management of confiscated goods and asset sharing.

1. Do you consider the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its additional protocols as appropriate instruments for co-operation in the fields of:

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. asset sharing?

(Please specify)

Table 1: ETS No 030

State	a.	b.	c.
Andorra	yes	no	no
Azerbaijan	yes	yes	yes
Belgium <sup>1</sup>	only as evidence	no	no
Bulgaria <sup>2</sup>	no	no	no
Finland	yes	yes	yes
Germany	yes	yes	no
Norway	yes	yes	no
Sweden <sup>3</sup>	no	no	no
Switzerland	search only	no	no
Turkey	yes	no	no
Ukraine	yes	yes	no
United Kingdom <sup>4</sup>			

<sup>1</sup> ETS n° 30 – and both Additional Protocols - is a 'traditional' MLA-instrument that applies only to the 'seizure' and the transmission of evidence. As such only the object(s) of crime are targeted and not the proceeds of crime.

<sup>2</sup> Nevertheless the Convention and the protocols are instruments suited very well to serve the demands of the judicial authorities and could be successfully used in cases that could give rise to search and seizure of proceeds of crime or/and confiscation of such assets

<sup>3</sup> Our conclusion is thus that the 1959 Convention is not a very useful tool in the fields of search and seizure of proceeds of crime, confiscation of proceeds of crime and asset sharing. These matters are not mentioned in the Convention or its additional protocol ...If the requested country's domestic legislation does not provide sufficient legal basis to provide the assistance sought it ought to be possible to find a legal basis in the 1959 Convention for at least some measures concerning search and seizures of proceeds of crime.

<sup>4</sup> The UK does not require a treaty basis to provide assistance relating to proceeds of crime and asset sharing. There are frustrations from law enforcement agencies about the timeliness and complicated nature of the mutual legal assistance (MLA) process. The existing arrangements work well with many countries but not others. It is imperative that there is a streamlined system (not necessarily MLA) for international cooperation to identify assets, for example, firstly the supply systems for goods and, secondly, trace the benefits. Law enforcement agencies wonder if a specific provision could be made relating to assistance in asset tracing.

2. When using the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for victims?
- e. asset sharing?

(Please specify)

Table 2: ETS No 141

State	a.	b.	c.	d.	e.
<b>Andorra</b>	yes	yes	no	no	no
<b>Azerbaijan<sup>5</sup></b>					
<b>Belgium<sup>6</sup></b>					
<b>Bulgaria</b>	yes	yes	yes	yes	yes <sup>7</sup>
<b>Finland</b>	yes	yes	yes	no <sup>8</sup>	yes
<b>Germany</b>	yes	yes	yes	yes	yes
<b>Norway<sup>9</sup></b>	yes	yes	yes <sup>10</sup>	yes	yes
<b>Sweden<sup>11</sup></b>					
<b>Switzerland</b>	yes	yes	yes	yes	yes <sup>12</sup>

<sup>5</sup> Article 3.10 (scope of application) of the Law of the Republic of Azerbaijan on Legal Assistance in Criminal Matters concerns the matters of determination of proceeds and property from crime, as well as the means used for commitment of crime.

<sup>6</sup> The classic MLA-approach that is the very foundation of ETS n° 141 is hardly fit for today's needs for cooperation in the field of finding, seizing and confiscating criminal proceeds. By the time the request is written, the money to be searched or seized is gone.

<sup>7</sup> It should be noted that in cases of asset sharing and asset return an agreement is necessary between the Requesting and the Requested party, otherwise the national legislation applies.

<sup>8</sup> A victim's claim for compensation has to be pursued in civil proceedings

<sup>9</sup> For out-going requests, the most practical challenge is to identify the assets from crime. If there is no detailed information of where to find the assets, it is often a challenge to request investigative steps without being on a "fishing expedition".

For incoming requests, the Norwegian legal basis may be used to the same extent as in domestic cases. The requesting country should provide sufficient material/evidence and legal material to enable Norwegian authorities to assess the legal basis and possibilities for the requested measures being executed in Norway, e.g. that the offence is criminalised and that reasonable grounds for suspicion are established.

<sup>10</sup> In Norway there is no central office for management of confiscated assets. This is handled by the police on a case to case basis

<sup>11</sup> The Convention was ratified last fall and we have limited or no practical experience with it. [...] One problem that exists in this area is the lack of opportunity to secure funds for the execution of a decision on damages.

<sup>12</sup> National law will be applied if more favourable. This is particularly the case for sharing of assets which allows also for restitution of funds to another state. The main difficulty lies for the requesting state in demonstrating the link between the facts under investigation in their country and the proceeds of crime located in Switzerland and, subsequently, to obtain the confiscation order establishing the illegal origin of the funds and their attribution.

<b>Turkey<sup>13</sup></b>	yes	yes	yes		yes
<b>Ukraine</b>	yes	yes	no	yes	no
<b>United Kingdom<sup>14</sup></b>					

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<sup>13</sup> • Inability to provide relation between the values of the assets requested to be seized and the offence claimed to have been committed,  
 • Even though it is accepted in Turkish law as an exceptional method to liquidate the value of seized assets without a finalized judgment or manage during the trials by the State authorities, requiring a significant number of the requests to implement these measures,  
 • Experiencing disruptions to provide information concerning judicial process carried out in the requesting State after the assets are seized,  
 • The uncertainty concerning how to share the economic value which has been liquidated.

<sup>14</sup> The Proceeds of Crime Act 2002 ("POCA") sets out the UK legislative scheme for the recovery of the proceeds of crime. This includes a value-based confiscation order following any criminal conviction. There are other means of recovering the proceeds of crime which do not require a conviction, namely civil recovery, cash seizure and taxation powers. UK legislation also provides for a number of financial investigative powers, namely production orders, search and seizure warrants, disclosure orders, customer information orders and account monitoring orders. There are also powers that allow for the "restraint" or "freezing" of assets to prevent dissipation of assets prior to orders being made. All these powers are also available to assist overseas countries in their cases where evidence and property is located in the UK. We have not encountered any legal or practical difficulties which directly relate to this Convention in relation to criminal confiscation; although the number of requests is low.

3. When using the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No.198) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for victims?
- e. asset sharing?

(Please specify)

Table 3: ETS No 198

N.P.: not a Party to this convention

State	a.	b.	c.	d.	e.
<b>Andorra</b>	N.P.				
<b>Azerbaijan</b>	N.P.				
<b>Belgium<sup>15</sup></b>					
<b>Bulgaria</b>	yes	yes	yes	yes	yes <sup>16</sup>
<b>Finland</b>	yes	yes	yes	no <sup>17</sup>	yes
<b>Germany</b>	N.P.				
<b>Norway</b>	N.P.				
<b>Sweden<sup>18</sup></b>					
<b>Switzerland</b>	N.P.				
<b>Turkey</b>	N.P.				
<b>Ukraine</b>	yes	yes	no	yes	no
<b>United Kingdom<sup>19</sup></b>					

<sup>15</sup> CETS n° 198 is rarely used since CETS N° 141 provides for a sufficient basis for the search, seizure, confiscation (and possibly the sharing) of proceeds of crime, regardless of the alleged proven origin of the proceeds

<sup>16</sup> It should be noted that in cases of asset sharing and asset return an agreement is necessary between the Requesting and the Requested party, otherwise the national legislation applies.

<sup>17</sup> A victim's claim for compensation has to be pursued in civil proceedings

<sup>18</sup> There are possibilities under Swedish law to co-operate, however we have limited or no practical experience with the convention

<sup>19</sup> . Note that this Convention has only entered into force for the UK on 1 August 2015. The UK are aware of the advantages that this Convention will provide including making it easier to obtain compliance by other States when making MLA requests request. However, without further experience the UK is unable to provide any further details.

#### 4. Introduction

A problem frequently observed in the case of seizure and/or the transfer of execution of a confiscation order is that member States are not always able to ensure the implementation of a request grounded on a so-called value-based confiscation system. This system is described in both conventions as a system with which it is possible to co-operate besides the so-called object basis confiscation system. In both systems, a criminal conviction is necessary. In the value-based confiscation system, the criminal profits are calculated. Ultimately, on the basis of these calculations, the judge imposes an obligation to pay an amount of money which is equivalent to the criminal profits acquired. The confiscation order can then be executed on all assets belonging to the convicted person. In this regard, it is not required to prove that these assets have been obtained directly from the criminal offence. Question: Could the competences mentioned in question 2 and 3 be exercised in the case of a request grounded on the value-based confiscation system? Please specify your answer as regards to:

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for the victims?
- e. asset sharing?

(Please specify)

Table 4: Value based seizure/confiscation

State	a.	b.	c.	d.	e.
<b>Andorra</b>	yes	yes	yes	yes	no
<b>Azerbaijan</b>	yes	yes		yes	
<b>Belgium</b>	yes	yes			
<b>Bulgaria</b> <sup>20</sup>	no	no	no	no	no
<b>Finland</b>	yes	yes	yes	no <sup>21</sup>	yes
<b>Germany</b>	yes	yes	yes	yes	yes
<b>Norway</b>	yes	yes	yes	yes	yes
<b>Sweden</b>	yes	yes	yes	no	yes
<b>Switzerland</b> <sup>22</sup>					
<b>Turkey</b>	no	no	no	no	no
<b>Ukraine</b>	yes	yes	no	yes	no
<b>United Kingdom</b> <sup>23</sup>	yes	yes	yes	yes	yes

<sup>20</sup> There is no value – based confiscation equivalent in Bulgaria

<sup>21</sup> A victim's claim for compensation has to be pursued in civil proceedings

<sup>22</sup> In Swiss law a link needs to exist between the facts investigated and the funds located in Switzerland. Value based confiscation ignores this link and refers to the notion of "credit". If the "product" does not exist the payment of a compensatory credit can be ordered. MLA related to such credit can be granted.

<sup>23</sup> The lack of identifying actual assets against which a restraint order or confiscation order can be enforced can cause difficulties in providing timely and focused assistance. It can be difficult to provide powers to seize and sell specific assets.

5. Several member States recognise the possibility of seizure and confiscation of assets which belong de facto to the accused/convicted person but are legally considered as belonging to a third person, mostly the so-called Straw man.

Do you have the possibility to execute such a request? If not, for which reasons, and if yes, under which conditions? Please specify your answer as regards to:

- a. Search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for the victims?
- e. asset sharing?

(Please specify)

Table 5: seizure/confiscation of “Straw man’s” property

State	a.	b.	c.	d.	e.
<b>Andorra</b>	yes	yes	yes	yes	no
<b>Azerbaijan</b>	yes	yes		yes	
<b>Belgium</b>	yes				
<b>Bulgaria<sup>24</sup></b>	yes	yes			
<b>Finland<sup>25</sup></b>	yes	yes	yes	no	yes
<b>Germany<sup>26</sup></b>	yes	yes	yes	yes	yes
<b>Norway</b>	yes	yes	yes	yes	yes
<b>Sweden<sup>27</sup></b>	yes	yes	yes	no	yes
<b>Switzerland</b>	yes	yes	yes	yes	yes
<b>Turkey<sup>28</sup></b>	yes	yes	yes	yes	yes
<b>Ukraine</b>	yes	yes	no	yes	no
<b>United Kingdom<sup>29</sup></b>	yes	yes	yes	yes	yes

<sup>24</sup> The competent Bulgarian Authority - CIAF could execute a request, concerning “Straw man”, but only if there is a well explained and evident connection between the convicted person and the Straw man.

<sup>25</sup> Yes, if the property has been transferred to a third party in order to avoid confiscation thereof

<sup>26</sup> Access to assets of uninvolved third parties may be ordered under section 73 (3) and (4) of the German Criminal Code (Strafgesetzbuch, StGB). Section 73 (3) StGB requires that the perpetrator or participant acted for a third person and that the third person acquired something thereby. Section 73 (4) requires that the object belonging to the third person was furnished by the third person to support the act or with knowledge of the circumstances of the act, but that the perpetrator did not become its owner because of the nullity of the transaction by which ownership was transferred.

<sup>27</sup> .A confiscation order can only be directed against the owner of the assets. It is up to the prosecutor to prove that the person subject to the confiscation order in fact owns the property. If it can be proven that a person owns certain property it does not matter that another person is registered as owner. The owner does not necessarily have to be the same person as the offender as third party confiscation is allowed under Swedish law (see Chapter 36 Section 5 of the Penal Code).

<sup>28</sup> Pursuant to Turkish law, it is possible at all times to confiscate property used for committing an offence, or proceeds of an offence, in possession of third parties not acting in good faith

<sup>29</sup> Execution of requests is a matter of application of resources on a case by case basis. This may depend on the proposed value and assessed risk and potential criminality of the subject.



6. Is your State in a position to co-operate with other States on the basis of reciprocity and in the absence of a treaty as regards to:

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. returning the assets for the victims?
- d. asset sharing?

(Please specify)

Table 6: seizure/confiscation on reciprocity basis, without treaty

State	a.	b.	c.	d.
<b>Andorra</b>	yes	yes	yes	no
<b>Azerbaijan</b>	yes	yes		
<b>Belgium</b> <sup>30</sup>	no	no	no	no
<b>Bulgaria</b> <sup>31</sup>	yes	yes	yes	yes
<b>Finland</b>	yes	yes	yes	yes
<b>Germany</b> <sup>32</sup>	yes	yes	yes	yes
<b>Norway</b>	yes	yes	yes	yes
<b>Sweden</b>	yes	yes	no	yes
<b>Switzerland</b>	yes	yes	yes	yes
<b>Turkey</b>	yes	yes	yes	yes
<b>Ukraine</b>	yes	yes	yes	yes
<b>United Kingdom</b>	yes	yes	yes	yes

<sup>30</sup> Apart from search of proceeds – which can be requested or conversely performed under the more general MLA umbrella, the seizure, confiscation and the sharing of assets requires a treaty basis. Under 'Treaty basis', also a subsidiary basis must be understood such as UNTOC. Returning assets to victims can be an entirely different type of cooperation: under MLA it is perfectly possible to return e.g. the stolen television sets.

<sup>31</sup> There is a possibility for Bulgaria to co-operate with other States on the basis of reciprocity. Such requests should be addressed to the Ministry of Justice as it is within the powers of the Minister of Justice to declare reciprocity with another State. It should be noted that the declaration is issued on a case by case basis.

<sup>32</sup> Yes, according to the provisions of the national law, in particular the Act on international cooperation in criminal matters.

7. Is your State in a position to provide mutual legal assistance for the purpose of, or, related to non-conviction based confiscation and other measures (for instance civil forfeiture)? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.

Can you in particular provide the requested information regarding the following phases of the Non Conviction Based (NCB) proceeding:

- a. the information-gathering phase, during which criminal information is often requested for use within a NCB proceeding
- b. seizure of proceeds of crime?
- c. confiscation of proceeds of crime?
- d. management of seized and confiscated assets?
- e. returning the assets for the victims?
- f. asset sharing?

Table 7: MLA and NCBC

State	a.	b.	c.	d.	e.	f.
<b>Andorra</b>	no	no	no	no	no	no
<b>Azerbaijan</b>	no	no	no	no	no	no
<b>Belgium</b> <sup>33</sup>	yes	yes	no	no	no	no
<b>Bulgaria</b> <sup>34</sup>	yes	yes	yes	yes	yes	yes
<b>Finland</b>	no	no	no	no	no	no
<b>Germany</b> <sup>35</sup>	yes	yes	yes	yes	yes	yes
<b>Norway</b> <sup>36</sup>						
<b>Sweden</b> <sup>37</sup>	no	no	no	no	no	no
<b>Switzerland</b>	yes	yes	yes	yes	yes	yes

<sup>33</sup> . MLA allows to provide any evidence on assets located in Belgium, the fact that those assets are subjected to a foreign NCB is irrelevant. Seizure is also possible since it is a provisional measure. NCB is, for the time being, non-existent in Belgian law. EU-instruments however may well offer a solution by recognizing the judicial measure that qualifies as NCB in accordance with the law of the 'emitting' MS.

<sup>34</sup> Mutual legal assistance (MLA) is within the powers of the Prosecutor's Office. Following the receipt through the Prosecutor's Office of a request concerning seizure/confiscation procedures the Commission may provide the requested information regarding all the phases of the Non Conviction Based (NCB) proceedings. There is no difference if it concerns criminal or civil confiscation.

<sup>35</sup> Under German law there are so-called independent proceedings for obtaining an order (also referred to as "objective proceedings"), regulated in sections 76a of the Criminal Code (CC), 440 et seqq. of the Code of Criminal Procedure (CCP). This allows for the confiscation of instrumentalities and the forfeiture of proceeds to take place even where, for certain reasons, no conviction can be obtained. A link to criminal proceedings is a mandatory requirement.

<sup>36</sup> The Norwegian legislation has no specific reference to the above measures, and a foreign request would have to be considered on a case to case basis.

<sup>37</sup> Confiscation without connection to a criminal conviction is generally not allowed. However, if a sanction no longer can be imposed because of e.g. the death of the offender, proceeds or instrumentalities of a crime may under limited circumstances be confiscated without a criminal conviction (it is still necessary to fully establish that a crime has been committed). It is also possible under some limited circumstances to confiscate objects that can be used to commit crimes without a criminal conviction.

<b>Turkey</b> <sup>38</sup>						
<b>Ukraine</b> <sup>39</sup>	yes	yes	yes	no	yes	no
<b>United Kingdom</b> <sup>40</sup>	yes	yes	yes	yes	yes	yes

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<sup>38</sup> In our legal system, confiscation must be based on a court judgment. Confiscation is regulated under the Turkish Criminal Code and the subject matter of confiscation is the material/goods used in commission of a deliberate offence or provided in commission of an offence or those acquired from an offence.

<sup>39</sup> The Criminal Procedure Code envisages the possibility of seizing the property and assets which may originate from crime at the stage of pre-trial investigation as security for a civil claim in the criminal proceedings or property confiscation in accordance with a court judgment.

<sup>40</sup> The UK court has to be satisfied, on the balance of probabilities that the identified property was obtained as a result of crime.

8. Is your State in a position to provide assistance in criminal, civil and administrative proceedings related to the liability of legal entities for the purpose of seizure or confiscation of proceeds of crime? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.

Table 8: MLA and liability of legal entities

State	assistance	Legal basis/conditions
<b>Andorra</b>	yes	National Law, art 71 Criminal Code
<b>Azerbaijan</b>	yes	Art 99 Criminal Code
<b>Belgium</b>	yes <sup>41</sup>	National law
<b>Bulgaria</b>	yes <sup>42</sup>	
<b>Finland</b>	yes	
<b>Germany</b>	yes	Administrative Offences Act "OWiG"
<b>Norway</b>	yes	Penal Code/Extradition Act
<b>Sweden</b>	yes <sup>43</sup>	Penal Code chapter 36, sections 4 and 5
<b>Switzerland</b>	yes	Art. 102 Criminal Code
<b>Turkey</b>	yes	Art 60 Criminal Code
<b>Ukraine</b> <sup>44</sup>	yes	Penal/Civil Code
<b>United Kingdom</b>	yes	Interpretation Act 1978

<sup>41</sup> If a seizure order would originate from another authority than an authority that would qualify as a judicial authority, issues may rise as to the application of criminal seizure and confiscation

<sup>42</sup> CIAF could execute a request and provide assistance, related to the liability of legal entities, but only if there is a well explained and evident connection.

<sup>43</sup> Under Swedish law a confiscation order can be directed against a legal person if the legal person has derived financial advantages as a result of a crime committed in the course of its business.

<sup>44</sup> The possibility of holding legal entities liable for administrative offences is not provided for by the national legislation.

9. Is your State in a position to provide assistance in procedures related to virtual currencies such as bitcoins, especially as regards seizure and confiscation?

Table 9: MLA and virtual currencies

State	assistance	Comment
<b>Andorra</b>	yes	All proceeds of crime
<b>Azerbaijan</b>	no	no
<b>Belgium</b>	yes	in principle
<b>Bulgaria</b>	no	
<b>Finland</b>		unknown
<b>Germany</b>	yes <sup>45</sup>	German law considers bitcoins to be objects which are subject to confiscation (section 73 (1), first sentence, StGB)
<b>Norway</b>	yes <sup>46</sup>	Criminal Procedure Act, chapter 16
<b>Sweden</b>	yes	no experience
<b>Switzerland</b>		no experience
<b>Turkey</b>	yes	
<b>Ukraine</b> <sup>47</sup>	yes	
<b>United Kingdom</b>	yes	order on the value of bitcoin. The UK can also restrain virtual currencies depending on the nature of how they are held

<sup>45</sup> The Federal Court of Justice has not yet issued a final-instance ruling on this issue; however, an appeal on points of law is currently pending before that court, which will clarify this question

<sup>46</sup> The National Criminal Investigation Service possesses the necessary technical abilities to seize and confiscate virtual currencies in "virtual wallets" of people suspected of crimes and possible third parties.

<sup>47</sup> There is no statutory regulation of the procedures for circulation and use of "virtual currencies/crypto-currencies" in Ukraine. Legal assistance in proceedings regarding virtual currencies is possible when it involves conducting procedural actions in the territory of Ukraine unrelated to seizure or confiscation thereof.

10. Is your State in a position to provide assistance, independently from a confiscation decision, for the purpose of restitution to the victim of assets obtained by criminal means? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.

Table 10: Assistance for restitution to victims

State	assistance	Condition/legal basis
<b>Andorra</b>	yes	Exequatur request needed by victim/National Law,
<b>Azerbaijan</b>	yes	Art 99.3 CC
<b>Belgium</b>	yes	If victims are civil parties to the procedure
<b>Bulgaria</b>	yes	Chapter 7a of the Act on Forfeiture in Favour of The State of Illegally Acquired Property.
<b>Finland</b>	no	
<b>Germany</b>	no answer	
<b>Norway</b>	yes	national law
<b>Sweden</b>	yes <sup>48</sup>	
<b>Switzerland</b>	yes	Illegal origin of funds
<b>Turkey</b>	no	New Turkish CC
<b>Ukraine</b>	yes	final and binding decision by a competent court of a foreign jurisdiction
<b>United Kingdom</b>	yes	Compensation order

<sup>48</sup> A State or an individual, who is the victim of a crime, can initiate civil action in Swedish courts to establish title to or ownership of property acquired through the commission of the crime. A Swedish court can also order those who have committed a crime to pay compensation or damages to another State or individual that has been harmed by the crime. If it is specifically prescribed, foreign private law judgments or decisions can also be enforced in Sweden.

11. Do you have any proposals to amend and/or facilitate the application of Council of Europe instruments for international co-operation in the field of search, seizure and confiscation of proceeds of crime, including the management of seized and confiscated property and asset sharing? (Please specify your proposal and the instrument(s) concerned).

State	CoE instrument	Proposal
<b>Andorra</b>		none
<b>Azerbaijan</b>		none
<b>Belgium</b>	Unspecified. The main problem lies in the respective domestic legal framework that appear to impose too much formalities for the execution of foreign request, esp. for the seizure/confiscation of illegal proceeds <sup>49</sup>	1.update to more types of transnational seizure and confiscations 2. possibility to seize & confiscate (just) for the benefit of victims.
<b>Bulgaria</b>		none
<b>Finland</b>		none
<b>Germany</b>		a) Establishment of a database operated by and accessible through a central office, comprised of bank data that may be provided to another state upon request, as an essential step before submitting a request for disclosure of bank information and "freezing" of bank accounts. b) Getting more states to accede to and become involved in international networks for asset recovery (e.g. CARIN), expanding personal contacts.
<b>Norway</b>		It could be useful to have guidelines/model agreements on asset sharing. Or perhaps it should be considered to have a protocol on asset sharing?

<sup>49</sup> Main problems are:

1. The necessity in some systems to provide evidence of the predicate offence(s) having generated the illegal proceeds that were laundered, while in other states money laundering is an autonomous offence.

2. Confiscation is still a 'sentence', imposed by a judge or court. This means that the execution of confiscation orders or decisions remains a primary type of cooperation, i.e. cooperation that requires double criminality in concreto just like any request for the transfer of the execution of sentences. Another negative consequence is that non conviction based types of confiscation cannot be executed.

		Such an instrument could e.g. regulate the sharing of the assets and the priority of liability for compensation for victims.
<b>Sweden</b>		none
<b>Switzerland</b>		Faire figurer le principe de la réciprocité en matière de restitution. Idéalement établir dans un instrument contraignant des standards de coopération obligatoires en matière de saisie et remise de valeurs (modèle de demande d'entraide commun aux Etats parties, de droit civil et de droit anglo-saxon, en limitant le plus possible les possibilités de refus de coopération).
<b>Turkey</b>		none
<b>Ukraine</b>		none
<b>United Kingdom</b>		none <sup>50</sup>

<sup>50</sup> See however UK's reply to question 1 : . It is imperative that there is a streamlined system (not necessarily MLA) for international cooperation to identify assets, for example, firstly the supply systems for goods and, secondly, trace the benefits. Law enforcement agencies wonder if a specific provision could be made relating to assistance in asset tracing.



## QUESTIONNAIRE

1. Do you consider the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its additional protocols as appropriate instruments for co-operation in the fields of:

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. asset sharing?

(Please specify)

2. When using the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for victims?
- e. asset sharing?

(Please specify)

3. When using the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No.198) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for victims?
- e. asset sharing?

(Please specify)

## 4. Introduction

A problem frequently observed in the case of seizure and/or the transfer of execution of a confiscation order is that member States are not always able to ensure the implementation of a request grounded on a so-called value-based confiscation system. This system is described in both conventions as a system with which it is possible to co-operate besides the so-called object basis confiscation system. In both systems, a criminal conviction is necessary. In the value-based confiscation system, the criminal profits are calculated. Ultimately, on the basis of these calculations, the judge imposes an obligation to pay an amount of money which is equivalent to the criminal profits acquired. The confiscation order can then be executed on all assets belonging to the convicted person. In this regard, it is not required to prove that these assets have been obtained directly from the criminal offence.

Question: Could the competences mentioned in question 2 and 3 be exercised in the case of a request grounded on the value-based confiscation system? Please specify your answer as regards to:

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for the victims?
- e. asset sharing?

(Please specify)

5. Several member States recognise the possibility of seizure and confiscation of assets which belong *de facto* to the accused/convicted person but are legally considered as belonging to a third person, mostly the so-called Straw man.

Do you have the possibility to execute such a request? If not, for which reasons, and if yes, under which conditions? Please specify your answer as regards to:

- a. Search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for the victims?
- e. asset sharing?

(Please specify)

6. Is your State in a position to co-operate with other States on the basis of reciprocity and in the absence of a treaty as regards to:

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. returning the assets for the victims?
- d. asset sharing?

(Please specify)

7. Is your State in a position to provide mutual legal assistance for the purpose of, or, related to non-conviction based confiscation and other measures (for instance civil forfeiture)? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.

Can you in particular provide the requested information regarding the following phases of the Non Conviction Based (NCB) proceeding:

- a. the information-gathering phase, during which criminal information is often requested for use within a NCB proceeding
- b. seizure of proceeds of crime?
- c. confiscation of proceeds of crime?
- d. management of seized and confiscated assets?
- e. returning the assets for the victims?
- f. asset sharing?

8. Is your State in a position to provide assistance in criminal, civil and administrative proceedings related to the liability of legal entities for the purpose of seizure or confiscation of proceeds of crime? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.

9. Is your State in a position to provide assistance in procedures related to virtual currencies such as bitcoins, especially as regards seizure and confiscation?

10. Is your State in a position to provide assistance, independently from a confiscation decision, for the purpose of restitution to the victim of assets obtained by criminal means? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.

11. Do you have any proposals to amend and/or facilitate the application of Council of Europe instruments for international co-operation in the field of search, seizure and confiscation of proceeds of crime, including the management of seized and confiscated property and asset sharing? (Please specify your proposal and the instrument(s) concerned).

1. Estimez-vous que la Convention européenne d'entraide judiciaire en matière pénale (STE n° 30) et ses protocoles additionnels sont des instruments adaptés à la coopération dans les domaines suivants :

- a. dépistage et saisie des produits du crime ?
- b. confiscation des produits du crime ?
- c. partage des avoirs ?

(Veuillez préciser)

2. En appliquant la Convention relative au blanchiment, au dépistage, à la saisie et à la confiscation des produits du crime (STE n° 141) comme base de la coopération, quelles sont les modalités d'application au sein de votre système national ? Avez-vous rencontré des difficultés juridiques ou pratiques ? Veuillez préciser votre réponse en ce qui concerne :

- a. le dépistage et la saisie des produits du crime ?
- b. la confiscation des produits du crime ?
- c. la gestion des avoirs saisis et confisqués ?
- d. restitution des avoirs aux victimes ?
- e. le partage des avoirs ?

(Veuillez préciser)

3. En appliquant la Convention relative au blanchiment, au dépistage, à la saisie et à la confiscation des produits du crime et au financement du terrorisme (STCE n°198) comme base de la coopération, quelles sont les modalités d'application au sein de votre système national ? Avez-vous rencontré des difficultés juridiques ou pratiques ? Veuillez préciser votre réponse en ce qui concerne :

- a. le dépistage et la saisie des produits du crime ?
- b. la confiscation des produits du crime ?
- c. la gestion des avoirs saisis et confisqués ?
- d. la restitution des avoirs aux victimes ?
- e. le partage des avoirs ?

(Veuillez préciser)

#### 4. Introduction

Les Etats membres rencontrent souvent un problème dans la saisie et/ou le transfert de l'exécution de l'ordre de confiscation, ils ne sont pas toujours en mesure de s'assurer de l'exécution de la requête établie sur le système de confiscation fondé sur la « valeur ». Dans les deux conventions, ce système est décrit comme permettant une possible coopération à côté du système de confiscation fondé sur les « biens ». Dans les deux systèmes, une condamnation pénale est nécessaire. Dans le système de confiscation fondé sur la « valeur », les profits illicites sont estimés. A la fin, sur la base de ces estimations, le juge impose une obligation de payer une somme équivalente aux profits acquis par l'activité criminelle. L'ordre de confiscation peut ensuite être exécuté sur tous les avoirs appartenant à la personne condamnée. A cet égard, il n'est pas nécessaire de prouver que ces avoirs ont été directement obtenus par les actes délictueux.

Question : Les compétences mentionnées à la question 2 et 3 peuvent-elle être exercées dans le cas d'une requête établie sur le système de confiscation fondé sur la « valeur » ? Veuillez préciser votre réponse en ce qui concerne :

- a. le dépistage et la saisie des produits du crime ?
- b. la confiscation des produits du crime ?
- c. la gestion des avoirs saisis et confisqués ?
- d. la restitution des avoirs aux victimes ?
- e. le partage des avoirs ?

(Veuillez préciser)

5. Plusieurs Etats membres reconnaissent la possibilité d'une saisie et d'une confiscation des avoirs qui appartiennent de facto à la personne accusée/condamnée mais qui légalement appartiennent à une tierce personne, la plupart du temps à des « hommes de paille ».

Avez-vous la possibilité d'exécuter une telle requête ? Si non, pour quelles raisons ? Si oui, sous quelles conditions ? Veuillez préciser votre réponse en ce qui concerne :

- a. le dépistage et la saisie des produits du crime ?
- b. la confiscation des produits du crime ?
- c. la gestion des avoirs saisis et confisqués ?
- d. la restitution des avoirs aux victimes ?
- e. le partage des avoirs ?

(Veuillez préciser)

6. Votre Etat est-il en position de coopérer avec d'autres Etats sur la base de la réciprocité et en l'absence d'un traité dans les domaines suivants :

- a. dépistage et saisie des produits du crime ?
- b. confiscation des produits du crime ?
- c. restitution des avoirs aux victimes ?
- d. partage des avoirs ?

(Veuillez préciser)

7. Votre Etat est-il en position d'apporter une entraide judiciaire aux fins ou dans le cadre de mesures de confiscation ou autres non fondées sur une condamnation (par exemple une confiscation civile) ? Si oui, veuillez préciser les conditions et instrument(s) utilisés comme base juridique. Si non, veuillez indiquer les obstacles juridiques.

Pouvez-vous, en particulier, fournir l'information requise en ce qui concerne les étapes d'une procédure judiciaire non fondée sur une condamnation ? :

- a. l'étape de collecte de données, durant laquelle l'information pénale est souvent requise à des fins d'une procédure judiciaire non fondée sur une condamnation
- b. saisie des produits du crime ?
- c. confiscation des produits du crime ?
- d. gestions des avoirs saisis et confisqués ?
- e. restitution des avoirs aux victimes ?
- f. partage des avoirs ?

8. Votre Etat est-il en position d'apporter une assistance dans le cadre de procédures pénales, civiles ou administratives liées à la responsabilité des personnes morales aux fins de la saisie ou de la confiscation des produits du crime ? Si oui, veuillez préciser les conditions et instrument(s) utilisés comme base juridique. Si non, veuillez indiquer les obstacles juridiques.
9. Votre Etat est-il en position d'apporter une assistance dans le cadre de procédures liées à des monnaies virtuelles comme le « bitcoin », notamment en matière de saisie et de confiscation ?
10. Votre Etat est-il en position d'apporter une assistance, indépendamment d'une décision de confiscation, aux fins de restituer à la victime des avoirs obtenus par des moyens illicites ? Si oui, veuillez préciser les conditions et les instrument(s) utilisés comme base juridique. Si non, veuillez indiquer les obstacles juridiques.
11. Avez-vous des propositions à faire pour modifier et/ou faciliter l'application des instruments du Conseil de l'Europe dans le domaine de la coopération internationale en matière de dépistage, de saisie et de confiscation des produits du crime, y compris la gestion des biens saisis et confisqués et le partage des avoirs ? (Veuillez préciser votre proposition ainsi que le ou les instrument(s) concerné(s).)

**ANDORRE**

- 1. Estimez-vous que la Convention européenne d'entraide judiciaire en matière pénale (STE n° 30) et ses protocoles additionnels sont des instruments adaptés à la coopération dans les domaines suivants :**

- a. dépistage et saisie des produits du crime ?**
- b. confiscation des produits du crime ?**
- c. partage des avoirs ?**

Pour ce qui est de la Principauté d'Andorre, la réponse est affirmative en ce qui concerne le dépistage et la saisie des produits du crime uniquement.

- 2. En appliquant la Convention relative au blanchiment, au dépistage, à la saisie et à la confiscation des produits du crime (STE n° 141) comme base de la coopération, quelles sont les modalités d'application au sein de votre système national ? Avez-vous rencontré des difficultés juridiques ou pratiques ? Veuillez préciser votre réponse en ce qui concerne :**

- a. le dépistage et la saisie des produits du crime ?**
- b. la confiscation des produits du crime ?**
- c. la gestion des avoirs saisis et confisqués ?**
- d. restitution des avoirs aux victimes ?**
- e. le partage des avoirs ?**

Cette convention s'applique effectivement pour ce qui est du dépistage et saisie des produits du crime, ainsi que pour la confiscation. En revanche, elle n'est pas applicable en matière de gestion et restitution des avoirs confisqués, ni pour le partage.

En effet, la législation andorrane et en particulier l'article 39 de la Loi de coopération pénale internationale et de lutte contre le blanchiment d'argent ou de valeurs produit de la délinquance internationale et contre le financement du terrorisme (LCPI), prévoit que les confiscations s'effectuent toujours au profit de l'État andorran, sauf si une convention ou accord international en prévoyaient autrement.

- 3. En appliquant la Convention relative au blanchiment, au dépistage, à la saisie et à la confiscation des produits du crime et au financement du terrorisme (STCE n°198) comme base de la coopération, quelles sont les modalités d'application au sein de votre système national ? Avez-vous rencontré des difficultés juridiques ou pratiques ? Veuillez préciser votre réponse en ce qui concerne :**

- a. le dépistage et la saisie des produits du crime ?**
- b. la confiscation des produits du crime ?**
- c. la gestion des avoirs saisis et confisqués ?**
- d. la restitution des avoirs aux victimes ?**
- e. le partage des avoirs ?**

L'Andorre n'a pas signé cette convention.

**4. Introduction**

Les Etats membres rencontrent souvent un problème dans la saisie et/ou le transfert de l'exécution de l'ordre de confiscation, ils ne sont pas toujours en mesure de s'assurer de l'exécution de la requête établie sur le système de confiscation fondé sur la « valeur ». Dans les deux conventions, ce système est décrit comme permettant une possible coopération à côté du système de confiscation fondé sur les « biens » . Dans les deux systèmes, une condamnation pénale est nécessaire. Dans le système de confiscation fondé sur la « valeur », les profits illicites sont estimés. A la fin, sur la base de ces estimations, le juge impose une obligation de payer une somme équivalente aux profits acquis par l'activité criminelle. L'ordre de confiscation peut ensuite être exécuté sur tous les avoirs appartenant à la personne condamnée. A cet égard, il n'est pas nécessaire de prouver que ces avoirs ont été directement obtenus par les actes délictueux.

**Question : Les compétences mentionnées à la question 2 et 3 peuvent-elle être exercées dans le cas d'une requête établie sur le système de confiscation fondé sur la « valeur » ? Veuillez préciser votre réponse en ce qui concerne :**

- a. le dépistage et la saisie des produits du crime ?
- b. la confiscation des produits du crime ?
- c. la gestion des avoirs saisis et confisqués ?
- d. la restitution des avoirs aux victimes ?
- e. le partage des avoirs ?

En effet, a), b), c) et d) sont possibles. Cela est prévu expressément dans les articles 70 du Code Pénal, 116 du Code de Procédure Pénale et 38 de la Loi de coopération pénale internationale et de lutte contre le blanchiment d'argent ou de valeurs produit de la délinquance internationale et contre le financement du terrorisme (LCPI).

Cependant, le partage n'est, en principe, pas possible puisque notre loi nationale prévoit que la confiscation des avoirs se fasse toujours en bénéfice de l'État andorran, sauf si une convention ou accord international en prévoyait autrement.

Ainsi, en vertu de l'article 2 de l'Accord signé entre le gouvernement de l'Andorre et le gouvernement des États-Unis d'Amérique relatif à la répartition des avoirs, instruments et produits du délit (BOPA du 5 juin 2013, <https://www.bopa.ad/bopa/025026/Pagines/7F0F2.aspx> ), celui-ci doit permettre « à toutes les parties distribuer les avoirs qui auront été confisqués en relation avec les délits ».

**5. Plusieurs Etats membres reconnaissent la possibilité d'une saisie et d'une confiscation des avoirs qui appartiennent de facto à la personne accusée/condamnée mais qui légalement appartiennent à une tierce personne, la plupart du temps à des « hommes de paille ».**

**Avez-vous la possibilité d'exécuter une telle requête ? Si non, pour quelles raisons ? Si oui, sous quelles conditions ? Veuillez préciser votre réponse en ce qui concerne :**

- a. le dépistage et la saisie des produits du crime ?
- b. la confiscation des produits du crime ?
- c. la gestion des avoirs saisis et confisqués ?
- d. la restitution des avoirs aux victimes ?
- e. le partage des avoirs ?

Comme précédemment, a), b), c) et d) sont possibles et prévus dans l'article 70.3 du Code Pénal, mais pas le partage des avoirs (voir article 39 LCPI), à exception de l'Accord signé entre les gouvernements de l'Andorre et des États-Unis d'Amérique.

**6. Votre Etat est-il en position de coopérer avec d'autres Etats sur la base de la réciprocité et en l'absence d'un traité dans les domaines suivants :**

- a. dépistage et saisie des produits du crime ?**
- b. confiscation des produits du crime ?**
- c. restitution des avoirs aux victimes ?**
- d. partage des avoirs ?**

Effectivement, le dépistage, confiscation et restitution sont possibles puisque prévus dans notre loi nationale (LCPI) mais pas le partage (article 39 LCPI), à exception de l'Accord signé entre les gouvernements de l'Andorre et des États-Unis d'Amérique.

**7. Votre Etat est-il en position d'apporter une entraide judiciaire aux fins ou dans le cadre de mesures de confiscation ou autres non fondées sur une condamnation (par exemple une confiscation civile) ? Si oui, veuillez préciser les conditions et instrument(s) utilisés comme base juridique. Si non, veuillez indiquer les obstacles juridiques.**

**Pouvez-vous, en particulier, fournir l'information requise en ce qui concerne les étapes d'une procédure judiciaire non fondée sur une condamnation ? :**

- a. l'étape de collecte de données, durant laquelle l'information pénale est souvent requise à des fins d'une procédure judiciaire non fondée sur une condamnation**
- b. saisie des produits du crime ?**
- c. confiscation des produits du crime ?**
- d. gestions des avoirs saisis et confisqués ?**
- e. restitution des avoirs aux victimes ?**
- f. partage des avoirs ?**

L'Andorre n'est pas en mesure d'apporter d'entraide judiciaire dans le cadre de mesures non fondées sur une condamnation pénale.

**8. Votre Etat est-il en position d'apporter une assistance dans le cadre de procédures pénales, civiles ou administratives liées à la responsabilité des personnes morales aux fins de la saisie ou de la confiscation des produits du crime ? Si oui, veuillez préciser les conditions et instrument(s) utilisés comme base juridique. Si non, veuillez indiquer les obstacles juridiques.**

La réponse est affirmative, puisque prévue dans notre loi nationale et en particulier dans l'article 71 du Code Pénal.

**9. Votre Etat est-il en position d'apporter une assistance dans le cadre de procédures liées à des monnaies virtuelles comme le « bitcoin », notamment en matière de saisie et de confiscation ?**

Effectivement, ce serait possible puisque le concept de « produit du crime » est très large et peut donc englober la monnaie virtuelle.



- 10. Votre Etat est-il en position d'apporter une assistance, indépendamment d'une décision de confiscation, aux fins de restituer à la victime des avoirs obtenus par des moyens illicites ? Si oui, veuillez préciser les conditions et les instrument(s) utilisés comme base juridique. Si non, veuillez indiquer les obstacles juridiques.**

Oui. La voie serait que la victime présente, devant la Salle Civile du Tribunal Supérieur d'Andorre, une demande d'exequatur pour obtenir que la décision de confiscation soit exécutoire en Andorre (articles 19 de la Loi Qualifiée de la Justice et 47 à 51 de la Loi Transitoire de Procédures Judiciaires).

- 11. Avez-vous des propositions à faire pour modifier et/ou faciliter l'application des instruments du Conseil de l'Europe dans le domaine de la coopération internationale en matière de dépistage, de saisie et de confiscation des produits du crime, y compris la gestion des biens saisis et confisqués et le partage des avoirs ? (Veuillez préciser votre proposition ainsi que le ou les instrument(s) concerné(s).)**

Non.

**AZERBAIJAN**

**1. Do you consider the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its additional protocols as appropriate instruments for co-operation in the fields of:**

- a. search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. asset sharing?**

**(Please specify)**

Since the European Convention on Mutual Legal Assistance in Criminal Matters and its Additional Protocols do not classify crimes and provide wide legal assistance, we believe that these abovementioned international instruments can be used as the reference point.

**2. When using the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:**

- a. search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. management of seized and confiscated assets?**
- d. returning the assets for victims?**
- e. asset sharing?**

**(Please specify)**

Article 3.10 (scope of application) of the Law of the Republic of Azerbaijan on Legal Assistance in Criminal Matters concerns the matters of determination of proceeds and property from crime, as well as the means used for commitment of crime.

**3. When using the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No.198) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:**

- f. search and seizure of proceeds of crime?**
- g. confiscation of proceeds of crime?**
- h. management of seized and confiscated assets?**
- i. returning the assets for victims?**
- j. asset sharing?**

**(Please specify)**

The Republic of Azerbaijan is not party to the Warsaw Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. However, internal procedures are being carried out in the Republic of Azerbaijan for the purpose of joining that document.

#### **4. Introduction**

**A problem frequently observed in the case of seizure and/or the transfer of execution of a confiscation order is that member States are not always able to ensure the implementation of a**

request grounded on a so-called value-based confiscation system. This system is described in both conventions as a system with which it is possible to co-operate besides the so-called object basis confiscation system. In both systems, a criminal conviction is necessary. In the value-based confiscation system, the criminal profits are calculated. Ultimately, on the basis of these calculations, the judge imposes an obligation to pay an amount of money which is equivalent to the criminal profits acquired. The confiscation order can then be executed on all assets belonging to the convicted person. In this regard, it is not required to prove that these assets have been obtained directly from the criminal offence.

**Question:** Could the competences mentioned in question 2 and 3 be exercised in the case of a request grounded on the value-based confiscation system? Please specify your answer as regards to:

- f. search and seizure of proceeds of crime?
- g. confiscation of proceeds of crime?
- h. management of seized and confiscated assets?
- i. returning the assets for the victims?
- j. asset sharing?

**(Please specify)**

Article 99-1 of the Criminal Code of the Republic of Azerbaijan envisages special confiscation:

*99-1.1. Criminal-legal measure in a form of special confiscation represents the enforced and uncompensated taking of following property in favor of the government:*

*99-1.1.1. instruments and means used by convicted person for committing a crime (excluding instruments and mean that should be returned to the legal owner);*

*99-1.1.2. funds or other property obtained by convicted person in a criminal way, as well as incomes received on the account of these funds or other property (with the exception of monetary funds or other property and the profits received from them, which shall be returned to the legal owner);*

*99-1.1.3. other property or its respective part, into which, by the conclusion of civil-legal transactions or otherwise fully or partially were converted illegally obtained funds or other property;*

*99-1.1.4. the property stipulated or used for financing of terrorism, armed formations or groups not stipulated by the legislation , organized groups or criminal communities (criminal organizations);*

*99-1.2. The court decides the issue of the availability or absence of property which is subject to confiscation, stipulated by article 99-1 .1 of the present Code, regarding each criminal case. Special confiscation May, be applied to both physical and legal persons.*

*99-1.3. Property stipulated under the article 99-1 .1 of the present Code, that had been alienated or transferred in any manner to other persons from the side of convicted person, to be confiscated in case, if the person who acquired this property, knew or should have known about obtaining of property by illegal means and accepted it.*

*Article 99-2. Confiscation on the cost of the property*

If the property subject to confiscation stipulated for by the Articles 99-1.1.2-99-1.1.4 of the Code cannot be confiscated in the state's favor because of its use, disposal or other reasons, then the other property owned by the convict in an amount of the value of this property is confiscated.

**5. Several member States recognise the possibility of seizure and confiscation of assets which belong *de facto* to the accused/convicted person but are legally considered as belonging to a third person, mostly the so-called Straw man.**

**Do you have the possibility to execute such a request? If not, for which reasons, and if yes, under which conditions? Please specify your answer as regards to:**

- f. Search and seizure of proceeds of crime?**
- g. confiscation of proceeds of crime?**
- h. management of seized and confiscated assets?**
- i. returning the assets for the victims?**
- j. asset sharing?**

**(Please specify)**

The relevant issue is envisaged in Article 99-1.3 of the Criminal Code of the Republic of Azerbaijan.

*99-1.3. Property stipulated under the article 99-1 .1 of the present Code, that had been alienated or transferred in any manner to other persons from the side of convicted person, to be confiscated in case, if the person who acquired this property, knew or should have known about obtaining of property by illegal means and accepted it.*

**6. Is your State in a position to co-operate with other States on the basis of reciprocity and in the absence of a treaty as regards to:**

- e. search and seizure of proceeds of crime?**
- f. confiscation of proceeds of crime?**
- g. returning the assets for the victims?**
- h. asset sharing?**

**(Please specify)**

Requests for legal assistance are not declined based on the absence of a bilateral or multilateral agreement between the Requesting Party and the Republic of Azerbaijan. Thus, in accordance with Article 2.2 of the Law of the Republic of Azerbaijan "on Mutual Legal Assistance in Criminal Matters", in case of absence of a relevant agreement between Azerbaijan and the requesting foreign state the provisions of this Law are applied. Also, Article 3.10 (scope of application) of the Law stipulates the issues of determination of proceeds and property from crime, as well as the means used for commitment of crime.

**7. Is your State in a position to provide mutual legal assistance for the purpose of, or, related to non-conviction based confiscation and other measures (for instance civil forfeiture)? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

**Can you in particular provide the requested information regarding the following phases of the Non Conviction Based (NCB) proceeding:**

- a. the information-gathering phase, during which criminal information is often requested for use within a NCB proceeding**
- b. seizure of proceeds of crime?**
- c. confiscation of proceeds of crime?**
- d. management of seized and confiscated assets?**
- e. returning the assets for the victims?**
- f. asset sharing?**

N/A

**8. Is your State in a position to provide assistance in criminal, civil and administrative proceedings related to the liability of legal entities for the purpose of seizure or confiscation of proceeds of crime? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

In accordance with Article 99-1.2 of the Criminal Code of the Republic of Azerbaijan the court decides the issue of the availability or absence of property which is subject to confiscation, stipulated by article 99-1 .1 of the present Code, regarding each criminal case. Special confiscation may be applied to both physical and legal persons.

**9. Is your State in a position to provide assistance in procedures related to virtual currencies such as bitcoins, especially as regards seizure and confiscation?**

N/A

**10. Is your State in a position to provide assistance, independently from a confiscation decision, for the purpose of restitution to the victim of assets obtained by criminal means? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

These rules and procedures are stipulated in Article 99-3 of the Criminal Code of the Republic of Azerbaijan.

*99-3.1. In deciding the confiscation issue harm caused by the offense to the rightful owner of the property has to be repaid first of all.*

*99-3.2. If a person that committed a crime has no other assets to secure repayment of harm other than the confiscated property, the harm caused to the rightful owner of the property as a result of the crime has to be repaid at the expense of the confiscated property, and then the rest of the property is excepted in the state's favor.*

**BELGIUM**

**1. Do you consider the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its additional protocols as appropriate instruments for co-operation in the fields of:**

**a. search and seizure of proceeds of crime?**

No

**b. confiscation of proceeds of crime?**

No

**c. asset sharing?**

No

(Please specify)

ETS n° 30 – and both Additional Protocols - is a 'traditional' MLA-instrument that applies only to the 'seizure' and the transmission of evidence. As such only the object(s) of crime are targeted and not the proceeds of crime. In my view the Convention perfectly allows to request and to obtain evidence about, e.g. the location of proceeds, but not the seizure or the confiscation of those proceeds.

As to the request for evidence that may be used to locate proceeds, such as bank accounts, there is of course a (potential) overlap with the 'search' (of proceeds) portion of ETS n° 141, since that specific instrument is wholly dedicated to proceeds of crime and covers all aspects of – chronologically – the location (search), the (provisional) seizure or freezing, the execution, i.e. the confiscation or forfeiture and finally the eventual sharing of the confiscated assets or proceeds of crime.

**2. When using the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:**

**a. search and seizure of proceeds of crime?**

**b. confiscation of proceeds of crime?**

**c. management of seized and confiscated assets?**

**d. returning the assets for victims?**

**e. asset sharing?**

In all, ETS n° 141 or any other (UN) instrument dedicated or containing provisions to search, seize, confiscate and share proceeds of crime are much less used than 'evidence' related instruments. The proceeds approach of the fight against crime, including even terrorism offences, is largely underdeveloped and, I am afraid, even victim of a certain level of lack of interest. To some extent, the inherent complexity of this portion of the fight against serious and organised crime and terrorism is both unsettling and discouraging. Arresting a (fugitive) suspect or wiretapping his or her telephone conversations is indeed much easier than finding, seizing and confiscating his or her criminal assets. Money moves faster than people or a smoking gun and it is much easier to hide behind legal constructions that are incomprehensible to any layman, i.e. to anyone who is not a very highly specialized lawyer or banker.

The classic MLA-approach that is the very foundation of ETS n° 141 is hardly fit for today's needs for cooperation in the field of finding, seizing and confiscating criminal proceeds. By the time the request is written, the money to be searched or seized is gone.

**3. When using the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No.198) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:**

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for victims?
- e. asset sharing?

**(Please specify)**

CETS n° 198 is rarely used since CETS N° 141 provides for a sufficient basis for the search, seizure, confiscation (end possibly the sharing) of proceeds of crime, regardless of the alleged proven origin of the proceeds.

#### **4. Introduction**

A problem frequently observed in the case of seizure and/or the transfer of execution of a confiscation order is that member States are not always able to ensure the implementation of a request grounded on a so-called value-based confiscation system. This system is described in both conventions as a system with which it is possible to co-operate besides the so-called object basis confiscation system. In both systems, a criminal conviction is necessary. In the value-based confiscation system, the criminal profits are calculated. Ultimately, on the basis of these calculations, the judge imposes an obligation to pay an amount of money which is equivalent to the criminal profits acquired. The confiscation order can then be executed on all assets belonging to the convicted person. In this regard, it is not required to prove that these assets have been obtained directly from the criminal offence.

**Question: Could the competences mentioned in question 2 and 3 be exercised in the case of a request grounded on the value-based confiscation system? Please specify your answer as regards to:**

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for the victims?
- e. asset sharing?

**(Please specify)**

Value based confiscation is one of the types of confiscation that is provided for by Belgian criminal law. Consequently, Belgium is capable to search, seize and confiscate illegal proceeds on a value-basis, conversely, such requests are made to other States.

**5. Several member States recognize the possibility of seizure and confiscation of assets which belong *de facto* to the accused/convicted person but are legally considered as belonging to a third person, mostly the so-called Straw man.**

**Do you have the possibility to execute such a request? If not, for which reasons, and if yes, under which conditions? Please specify your answer as regards to:**

- a. Search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?

- d. **returning the assets for the victims?**
- e. **asset sharing?**

Insofar the straw-man is properly identified, specified and linked to the money laundering process / the individuals behind the laundering construction(s), assets can be searched (usually the identification of fronts is part of the search for the proceeds that are linked to the suspects that generated the proceeds and had them laundered via other individuals).

**6. Is your State in a position to co-operate with other States on the basis of reciprocity and in the absence of a treaty as regards to:**

- a. **search and seizure of proceeds of crime?**
- b. **confiscation of proceeds of crime?**
- c. **returning the assets for the victims?**
- d. **asset sharing?**

**(Please specify)**

Apart from search of proceeds – which can be requested or conversely performed under the more general MLA umbrella, the seizure, confiscation and the sharing of assets requires a treaty basis. Under ‘Treaty basis’, also a subsidiary basis must be understood such as UNTOC.

Returning assets to victims can be an entirely different type of cooperation: under MLA it is perfectly possible to return e.g. the stolen television sets. These are primarily the object of the offence, i.e. (aggravated) theft and to a second degree also assets. The same goes for the money that was defrauded from the victims, although one may qualify the money rather as criminal proceeds that just the mere object of the offence (fraud), even more so since fraud cases tend to comprise money laundering as well: the defrauded money is usually transferred through various bank accounts and (shell) companies as well.

Even though seizure or confiscation – solely – for the benefit of the victims is hardly mentioned in the available instruments, including those dedicated to traditional MLA, in practise methods were found to effectively compensate the victims. In some cases a civil forfeiture was applied to allow a certain return of money to compensate the victim.

**7. Is your State in a position to provide mutual legal assistance for the purpose of, or, related to non-conviction based confiscation and other measures (for instance civil forfeiture)? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

Belgian still only provides for confiscation as a penalty, i.e. a pecuniary sanction that is imposed by the criminal court convicting and sentencing the persons (also legal persons) for the offences they have committed. NCB is, for the time being, non-existent in Belgian law.

EU-instruments however may well offer a solution by recognizing the judicial measure that qualifies as NCB in accordance with the law of the ‘emitting’ MS. Since mutual recognition overcomes (or rather tries to ignore) the differences between the MS systems, the mere legal fact that a judicial authority decided to confiscate proceeds without a preceding criminal conviction, and then issues a confiscation certificate on the basis of the NCB order, requires the executing MS to entertain the certificate if all conditions are fulfilled and no ground for refusal applies. France recently did execute an Italian confiscation certificate, although the Italian confiscation order was essentially an NCB confiscation order on the basis of specific anti-mafia legislation that allows proceeds of alleged mafia members to be confiscated. In this case, the asset was a villa located in the better parts of the south of France.

**Can you in particular provide the requested information regarding the following phases of the Non Conviction Based (NCB) proceeding:**



- a. the information-gathering phase, during which criminal information is often requested for use within a NCB proceeding
- b. seizure of proceeds of crime?
- c. confiscation of proceeds of crime?
- d. management of seized and confiscated assets?
- e. returning the assets for the victims?
- f. asset sharing?

MLA allows to provide any evidence on assets located in Belgium, the fact that those assets are or would be subjected to a foreign NCB confiscation, is irrelevant.

The seizure stage is in my also not problematic, since seizure is a provisional measure and has as such no effect on the future type of confiscation procedure.

**8. Is your State in a position to provide assistance in criminal, civil and administrative proceedings related to the liability of legal entities for the purpose of seizure or confiscation of proceeds of crime? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

Legal persons are criminally liable under Belgian criminal law, consequently legal persons can be subjected to sanctions such as confiscation and the preceding seizure of proceeds etc.

However, criminal liability of legal persons remains a matter for the judiciary. If a seizure order would originate from another authority than an authority that would qualify as a judicial authority, issues may rise as to the application of criminal seizure and confiscation.

**9. Is your State in a position to provide assistance in procedures related to virtual currencies such as bitcoins, especially as regards seizure and confiscation?**

There should be no legal exclusion of 'virtual seizure & confiscation. More information to follow after consulting our cybercrime specialist.

**10. Is your State in a position to provide assistance, independently from a confiscation decision, for the purpose of restitution to the victim of assets obtained by criminal means? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

Victims can be civil parties to any criminal procedure, both during the pre-trial and the trial stages. This specific legal position allows victims to be a party to the criminal proceedings, which also implies a reinforced position in terms of being allocated moral and material compensations, as such it is possible to divert part of shared confiscated assets (abroad) for the benefit of the victims.

**11. Do you have any proposals to amend and/or facilitate the application of Council of Europe instruments for international co-operation in the field of search, seizure and confiscation of proceeds of crime, including the management of seized and confiscated property and asset sharing? (Please specify your proposal and the instrument(s) concerned).**

The instruments in the field are as such still relevant although an update to more types of transnational seizure and confiscations are lacking. Also the current instruments do not contain a possibility to seize & confiscate (just) for the benefit of victims.

The main problem lies in the respective domestic legal framework than appear to impose too much formalities for the execution of foreign request, esp. for the seizure of illegal proceeds and esp. the confiscation of illegal proceeds.

Main problems are:

1. The necessity in some systems to provide evidence of the *predicate offence(s)* having generated the illegal proceeds that were laundered, while in other states money laundering is an autonomous offence.
2. Confiscation is still a 'sentence', imposed by a judge or court. This means that the execution of confiscation orders or decisions remains a primary type of cooperation, i.e. cooperation that requires double criminality *in concreto* just like any request for the transfer of the execution of sentences. Another negative consequence is that non conviction based types of confiscation cannot be executed.

## BULGARIA

**1. Do you consider the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its additional protocols as appropriate instruments for co-operation in the fields of:**

- a. search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. asset sharing?**

The European Convention on Mutual Assistance in Criminal Matters and its additional protocols concern specific forms of mutual assistance therefore they are not suited to give rise and to serve as basis for any of the fields cited above.

Nevertheless the Convention and the protocols are instruments suited very well to serve the demands of the judicial authorities and could be successfully used in cases that could give rise to search and seizure of proceeds of crime or/and confiscation of such assets.

**2. When using the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:**

- a. search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. management of seized and confiscated assets?**
- d. returning the assets for victims?**
- e. asset sharing?**

The CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime is in force for the Republic of Bulgaria and its national legislation is in conformity with the requirements of the Convention. Therefore it is possible to co-operate in any of the fields above. It should be noted that in cases of asset sharing and asset return an agreement is necessary between the Requesting and the Requested party, otherwise the national legislation applies.

**3. When using the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No.198) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:**

- a. search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. management of seized and confiscated assets?**
- d. returning the assets for victims?**
- e. asset sharing?**

The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism is in force for the Republic of Bulgaria and its national legislation is in conformity with the requirements of the Convention. Therefore it is possible to co-operate in any of the fields above. It should be noted that in cases of asset sharing and asset return it is necessary an agreement between the Requesting and the Requested party to be made, otherwise our national legislation applies.

## 4. Introduction

**A problem frequently observed in the case of seizure and/or the transfer of execution of a confiscation order is that member States are not always able to ensure the implementation of a request grounded on a so-called value-based confiscation system. This system is described in**

both conventions as a system with which it is possible to co-operate besides the so-called object basis confiscation system. In both systems, a criminal conviction is necessary. In the value-based confiscation system, the criminal profits are calculated. Ultimately, on the basis of these calculations, the judge imposes an obligation to pay an amount of money which is equivalent to the criminal profits acquired. The confiscation order can then be executed on all assets belonging to the convicted person. In this regard, it is not required to prove that these assets have been obtained directly from the criminal offence.

**Question:** Could the competences mentioned in question 2 and 3 be exercised in the case of a request grounded on the value-based confiscation system? Please specify your answer as regards to:

- f. search and seizure of proceeds of crime?
- g. confiscation of proceeds of crime?
- h. management of seized and confiscated assets?
- i. returning the assets for the victims?
- j. asset sharing?

There is no value – based confiscation equivalent in Bulgaria – ACT ON DEPRIVATION IN FAVOUR OF THE STATE OF ILLEGALLY ACQUIRED PROPERTY (suppl. SG. 22/24 Mar 2015):

### Section III. Subject of Deprivation

*Art. 62. Under this act illegally acquired property shall be deprived of in favour of the state.*

*Art. 63. (1) Where it is not possible a differentiated property under Art. 62 to be deprived of, its money equivalence, calculated at market price at the moment the deprivation claim is made, shall be deprived.*

*(2) The property under Art. 62 shall include:*

- 1. the personal property of the checked person;*
- 2. the property, acquired generally by the two spouses or by the persons in factual cohabitation;*
- 3. the property of children, who have not reached full age, and*
- 4. the property of the spouse of the checked person, notwithstanding of the chosen regime of property relations between the spouses;*
- 5. the property of the person, with which the checked person is in factual cohabitation.*

*Art. 64. The deals, realized with illegally acquired property shall be invalid in relation to the state and shall be subject to deprivation, where they are:*

- 1. free deals with natural or legal persons;*
- 2. paid deals with third persons, if they have known or could suppose that the property has been illegally acquired or they have acquired the property in view to covering its illegal origin or the real rights, related to it.*

*Art. 65. Subject to deprivation shall be also the illegally acquired property, which the person has transferred during the checked period to a spouse, to a person, with whom he/she is in factual cohabitation, to a former spouse, to relatives on direct line with not restriction of the grades, to relatives on indirect line – to fourth grade including and to in-laws – to second grade including.*

*Art. 66. (1) Subject to deprivation shall be property, which the checked person has transferred or has contributed as non-money or money deposit to the capital of a legal person, if the persons, who manage or control the legal person have known or from the circumstances may suppose that the property has been illegally acquired*

*(2) Subject to deprivation shall also be illegally acquired property from a legal person, who is controlled by the checked persons or the related with him/her persons independently or jointly.*

*(3) The property shall be deprived of also if the legal person is assignee.*

*Art. 67. Subject to deprivation shall also be property, which has been acquired by a third person on the account of the checked person, in order to avoid deprivation or to hide its origin or the real rights over it.*

*Art. 68. Until proving the opposite, for movable items and money means of the checked person shall be considered those, found with him/her, in his/her house or in other own or hired premises, vehicles, cash boxes or safes.*

*Art. 69. (1) The illegally acquired property shall be evaluated on its real value at the moment of its acquiring or expropriation.*

*(2) If it is found that the price, indicated in the document for ownership is not the real negotiated price or in the property document there is no price, the property shall be evaluated at the moment of its acquiring or expropriation, as follows:*

- 1. the immovable property and the limited property rights over them – on market value,*
- 2. the foreign currency and ores and white metals – on the central rate of the BNB;*
- 3. securities – on the market value;*
- 4. the vehicles – on the market value;*
- 5. the remaining movable items and rights – on the market value;*
- 6. undertakings or share participation in trade companies or cooperation – on the market value, and where it cannot be defined – on accountancy data.*

*Art. 70. In the cases, where the illegally acquired property has been partially or totally reformed in other property, subject to deprivation shall be the reformed property.*

*Art. 71. Illegally acquired property shall be deprived of also from inheritors or successors to the amount, received by them.*

*Art. 72. In case that the property is not available or has been expropriated, its money equivalence shall be deprived of.*

*Art. 73. (declared unconstitutional in its part "15- year prescription" CCD No 13/2012 – SG 82/12) (1) (amend. – SG 103/12) The state rights under this act shall be paid with the expiry of 10- year prescription.*

*(2) The prescription starts to run from the date of acquiring the property.*

**5. Several member States recognise the possibility of seizure and confiscation of assets which belong *de facto* to the accused/convicted person but are legally considered as belonging to a third person, mostly the so-called Straw man.**

**Do you have the possibility to execute such a request? If not, for which reasons, and if yes, under which conditions? Please specify your answer as regards to:**

- a. Search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. management of seized and confiscated assets?**
- d. returning the assets for the victims?**
- e. asset sharing?**

The competent Bulgarian Authority - CIAF could execute a request, concerning "Straw man", but only if there is a well explained and evident connection between the convicted person and the Straw man. The Commission is entitled to act against third persons but only if they knew or it was impossible not to know that the property which they have acquired has an illegal origin. It is foreseen that property that has been transferred to relatives or third persons can also be subject of forfeiture. Those persons shall have the possibility to prove at court that they didn't know about the illicit origin of the acquired property.

**6. Is your State in a position to co-operate with other States on the basis of reciprocity and in the absence of a treaty as regards to:**

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. returning the assets for the victims?
- d. asset sharing?

There is a possibility for Bulgaria to co-operate with other States on the basis of reciprocity. Such requests should be addressed to the Ministry of Justice as it is within the powers of the Minister of Justice to declare reciprocity with another State. It should be noted that the declaration is issued on a case by case basis.

**7. Is your State in a position to provide mutual legal assistance for the purpose of, or, related to non-conviction based confiscation and other measures (for instance civil forfeiture)? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

**Can you in particular provide the requested information regarding the following phases of the Non Conviction Based (NCB) proceeding:**

- a. the information-gathering phase, during which criminal information is often requested for use within a NCB proceeding
- b. seizure of proceeds of crime?
- c. confiscation of proceeds of crime?
- d. management of seized and confiscated assets?
- e. returning the assets for the victims?
- f. asset sharing?

Mutual legal assistance (MLA) is within the powers of the Prosecutor's Office. Following the receipt through the Prosecutor's Office of a request concerning seizure/confiscation procedures the Commission may provide the requested information regarding all the phases of the Non Conviction Based (NCB) proceedings. There is no difference if it concerns criminal or civil confiscation.

**8. Is your State in a position to provide assistance in criminal, civil and administrative proceedings related to the liability of legal entities for the purpose of seizure or confiscation of proceeds of crime? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

CIAC could execute a request and provide assistance, related to the liability of legal entities, but only if there is a well explained and evident connection.

**9. Is your State in a position to provide assistance in procedures related to virtual currencies such as bitcoins, especially as regards seizure and confiscation?**

Bulgarian authorities cannot provide assistance in relation to seizure/confiscation of virtual currencies.

**10. Is your State in a position to provide assistance, independently from a confiscation decision, for the purpose of restitution to the victim of assets obtained by criminal means? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

The possibility to compensate the victims of crime is established in Chapter 7a of the Act on Forfeiture in Favour of The State of Illegally Acquired Property. The law provides that up to the cost of the property, deprived by an enforced decision, the state shall enter into and shall pay the acknowledged in a court procedure monetary liabilities to the victims of the offence, covered by the list of offences to which the law applies.

Such compensation is possible if an international treaty to which Bulgaria is party provides for as well as on the basis of reciprocity (on a case by case basis).

**11. Do you have any proposals to amend and/or facilitate the application of Council of Europe instruments for international co-operation in the field of search, seizure and confiscation of proceeds of crime, including the management of seized and confiscated property and asset sharing? (Please specify your proposal and the instrument(s) concerned).**

We consider the instruments cited above to form a very good base for cooperation in the field of search, seizure and confiscation of proceeds of crime.

**FINLAND**

**1. Do you consider the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its additional protocols as appropriate instruments for co-operation in the fields of:**

- a. search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. asset sharing?**

Yes, since the above measures are not excluded from the scope of application of the Convention. Article 1.2 refers to enforcement of verdicts which we understand to encompass only sentences passed on an individual for an offence. Hence, any court judgment relating to confiscation would be included in the scope of application of the Convention.

**2. When using the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:**

- a. search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. management of seized and confiscated assets?**
- d. returning the assets for victims?**
- e. asset sharing?**

All the above measures, except point d, are covered in our law with a view to cooperation under ETS 141. Coersive measures are not possible in securing a victim's claim for compensation. A victim's claim for compensation has to be pursued in civil proceedings. However, if the assets have been requested frozen and subsequently confiscated to the state we can return even the whole amount to the requesting state under the asset sharing scheme. What happens to the money afterwards is no concern of ours.

**3. When using the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No.198) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:**

- a. search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. management of seized and confiscated assets?**
- d. returning the assets for victims?**
- e. asset sharing?**

See the above.

**4. Introduction**

A problem frequently observed in the case of seizure and/or the transfer of execution of a confiscation order is that member States are not always able to ensure the implementation of a request grounded on a so-called value-based confiscation system. This system is described in both conventions as a system with which it is possible to co-operate besides the so-called object basis confiscation system. In both systems, a criminal conviction is necessary. In the value-based confiscation system, the criminal profits are calculated. Ultimately, on the basis of these calculations, the judge imposes an obligation to pay an amount of money which is equivalent to the criminal profits acquired. The confiscation order can then be executed on all assets belonging to the convicted person. In this regard, it is not required to prove that these assets have been obtained directly from the criminal offence.



**Question: Could the competences mentioned in question 2 and 3 be exercised in the case of a request grounded on the value-based confiscation system? Please specify your answer as regards to:**

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for the victims?
- e. asset sharing?

Value-based confiscation is a regular tool at our disposal. Same rules apply as in object-based confiscation.

**5. Several member States recognise the possibility of seizure and confiscation of assets which belong *de facto* to the accused/convicted person but are legally considered as belonging to a third person, mostly the so-called Straw man.**

**Do you have the possibility to execute such a request? If not, for which reasons, and if yes, under which conditions? Please specify your answer as regards to:**

- a. Search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for the victims?
- e. asset sharing?

Yes, if the property has been transferred to a third party in order to avoid confiscation thereof.

**6. Is your State in a position to co-operate with other States on the basis of reciprocity and in the absence of a treaty as regards to:**

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. returning the assets for the victims?
- d. asset sharing?

Yes.

**7. Is your State in a position to provide mutual legal assistance for the purpose of, or, related to non-conviction based confiscation and other measures (for instance civil forfeiture)? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

Non-conviction based confiscation is not provided for in our law.

**Can you in particular provide the requested information regarding the following phases of the Non Conviction Based (NCB) proceeding:**

- a. the information-gathering phase, during which criminal information is often requested for use within a NCB proceeding
- b. seizure of proceeds of crime?
- c. confiscation of proceeds of crime?
- d. management of seized and confiscated assets?
- e. returning the assets for the victims?
- f. asset sharing?

**8. Is your State in a position to provide assistance in criminal, civil and administrative proceedings related to the liability of legal entities for the purpose of seizure or confiscation of proceeds of crime?**

**If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

Assistance in criminal proceedings is possible under the same rules that apply to natural persons.

**9. Is your State in a position to provide assistance in procedures related to virtual currencies such as bitcoins, especially as regards seizure and confiscation?**

No idea, really.

**10. Is your State in a position to provide assistance, independently from a confiscation decision, for the purpose of restitution to the victim of assets obtained by criminal means? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

There are no provisions in our law to that effect.

**11. Do you have any proposals to amend and/or facilitate the application of Council of Europe instruments for international co-operation in the field of search, seizure and confiscation of proceeds of crime, including the management of seized and confiscated property and asset sharing? (Please specify your proposal and the instrument(s) concerned).**

## GERMANY

1. Do you consider the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its additional protocols as appropriate instruments for co-operation in the fields of:

a. search and seizure of proceeds of crime?

Yes

b. confiscation of proceeds of crime?

Yes

c. asset sharing?

No, but there is a sufficient basis in other multilateral conventions and in the national law.

(Please specify)

2. When using the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:

a. search and seizure of proceeds of crime?

Requests to search and seize proceeds can be complied. Provisional measures are counted among in order to ensure property which is liable to confiscation.

b. confiscation of proceeds of crime?

Requests concerning the confiscation of proceeds derived from or obtained from criminal offences can be complied. The confiscation of the property into which the proceeds have been transformed or converted is possible.

c. management of seized and confiscated assets?

Relating to search and seizure the authorities shall ensure the proper management of frozen or seized property. They have to safeguard this property against becoming worse or getting lost by appropriate measures of storage and maintenance.

d. returning the assets for victims?

In principle, asset recovery should not endanger the settlement of claims which victims are entitled to. In order to enable and supply legal assistance, the treasury compensates victims for sentential claims pursuant to the relevant provisions, if the victims have lost their chance on the property of the perpetrator.

e. asset sharing?

In the framework of co-operation an agreement can be made by the authorities of the involved states to share the receipt of the confiscated assets (as well as in particular cases).

3. When using the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No.198) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:

a. search and seizure of proceeds of crime?

b. confiscation of proceeds of crime?

c. management of seized and confiscated assets?

d. returning the assets for victims?

e. asset sharing?

Germany has not ratified this convention yet. Therefore no experience was gained in international co-operation, based on the convention CETS 198.

#### 4. Introduction

A problem frequently observed in the case of seizure and/or the transfer of execution of a confiscation order is that member States are not always able to ensure the implementation of a request grounded on a so-called value-based confiscation system. This system is described in both conventions as a system with which it is possible to co-operate besides the so-called object basis confiscation system. In both systems, a criminal conviction is necessary. In the value-based confiscation system, the criminal profits are calculated. Ultimately, on the basis of these calculations, the judge imposes an obligation to pay an amount of money which is equivalent to the criminal profits acquired. The confiscation order can then be executed on all assets belonging to the convicted person. In this regard, it is not required to prove that these assets have been obtained directly from the criminal offence.

**Question:** Could the competences mentioned in question 2 and 3 be exercised in the case of a request grounded on the value-based confiscation system? Please specify your answer as regards to:

**a. search and seizure of proceeds of crime?**

Requests concerning search and seizure proceeds of the perpetrator can be complied, based on a confiscation order consisting of a requirement to pay a sum of money.

**b. confiscation of proceeds of crime?**

Requests grounded on the value-based confiscation can be complied by confiscating property of the perpetrator. If payment is not obtained, the claim will be realized through other property available for that purpose.

**c. management of seized and confiscated assets?**

No specifics

**d. returning the assets for the victims?**

No specifics

**e. asset sharing?**

No specifics

**5. Several member States recognise the possibility of seizure and confiscation of assets which belong *de facto* to the accused/convicted person but are legally considered as belonging to a third person, mostly the so-called Straw man.**

**Do you have the possibility to execute such a request? If not, for which reasons, and if yes, under which conditions? Please specify your answer as regards to:**

**a. Search and seizure of proceeds of crime?**

**b. confiscation of proceeds of crime?**

**c. management of seized and confiscated assets?**

**d. returning the assets for the victims?**

**e. asset sharing?**

Access to assets of uninvolved third parties may be ordered under section 73 (3) and (4) of the German Criminal Code (Strafgesetzbuch, StGB). Section 73 (3) StGB requires that the perpetrator or participant acted for a third person and that the third person acquired something thereby. Section 73 (4) requires that the object belonging to the third person was furnished by the third person to support the act or with knowledge of the circumstances of the act, but that the perpetrator did not become its owner because of the nullity of the transaction by which ownership was transferred.

**6. Is your State in a position to co-operate with other States on the basis of reciprocity and in the absence of a treaty as regards to:**

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. returning the assets for the victims?
- d. asset sharing?

Yes, according to the provisions of the national law, in particular the Act on international cooperation in criminal matters.

**7. Is your State in a position to provide mutual legal assistance for the purpose of, or, related to non-conviction based confiscation and other measures (for instance civil forfeiture)? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

**Can you in particular provide the requested information regarding the following phases of the Non Conviction Based (NCB) proceeding:**

- a. the information-gathering phase, during which criminal information is often requested for use within a NCB proceeding
- b. seizure of proceeds of crime?
- c. confiscation of proceeds of crime?
- d. management of seized and confiscated assets?
- e. returning the assets for the victims?
- f. asset sharing?

Under German law there are so-called independent proceedings for obtaining an order (also referred to as "objective proceedings"), regulated in sections 76a of the Criminal Code (CC), 440 et seqq. of the Code of Criminal Procedure (CCP). This allows for the confiscation of instrumentalities and the forfeiture of proceeds to take place even where, for certain reasons, no conviction can be obtained.

A link to criminal proceedings is a mandatory requirement because independent proceedings for obtaining an order do presuppose the commission of a criminal offence notwithstanding the fact that prosecution or conviction of any specific person is not possible. This may happen when an individual offender cannot be identified, or when the identity of the offender is known but that person cannot be convicted for certain reasons. This correspondingly applies in cases where the court, in spite of finding the defendant guilty of committing a crime, dispenses with prosecution, or in cases where the court or the public prosecution office have dispensed with further prosecution of the criminal offence (e.g. when the offence was of only negligible significance): see section 76a subsection (3) CC.

The independent order can be made in completely separate proceedings relating solely to the asset in question (e.g. when the offender's identity is not known); this most probably corresponds to the conception of "*in rem*" proceedings. But it is also possible to switch over from subjective criminal proceedings to the objective, independent proceedings for obtaining an order. For instance, this might happen where criminal proceedings have been instituted against a certain person but where the defendant has to be acquitted for lack of criminal responsibility. So in these cases the proceedings for obtaining an order relate to the particular person concerned ("*in personam*").

As Civil forfeiture is actually not known in German law, mutual legal assistance cannot be granted at the moment.

**8. Is your State in a position to provide assistance in criminal, civil and administrative proceedings related to the liability of legal entities for the purpose of seizure or confiscation of proceeds of crime? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

Germany establishes the liability of legal persons, including liability for criminal offences, under the Administrative Offences Act (hereinafter, "OWiG"). Pursuant to section 30 OWiG, the liability of legal

persons is triggered where any “responsible person” (which includes a broad range of senior managerial stakeholders and not only an authorized representative or manager), acting for the management of the entity commits i) a criminal offence, or ii) an administrative offence including a violation of supervisory duties which either violates duties of the legal entity, or by which the legal entity gained or was supposed to gain a “profit”. In other words: Germany enables corporations to be imputed with offences i) by senior managers, and, ii) with offences by lower level personnel which result from a failure by a senior corporate figure to faithfully discharge his/her duties of supervision.

Under sections 30 and 130 OWiG, where a person in a leadership position commits a crime or commits the administrative offence of breach of supervisory duties, by failing to take the measures necessary to prevent the commission of a crime by a lower level employee, the maximum amount of the administrative fine incurred by the legal person is 10 million Euros.

Section 17(4) OWiG provides that the administrative fine ordered against a legal person must exceed the financial benefit gained from the underlying offence. An administrative fine has two components, a punitive one and a confiscatory one (the fine in respect of the benefit, also referred to as “skimming-off of profits”). If the financial benefit is higher than the statutory maximum fine (i.e. 10 million Euros), the total amount of the administrative fine must include an amount equal to the benefit gained (the confiscatory component of the fine), and be increased by an amount that may be a maximum of 10 million Euros (the punitive component of the fine).

**9. Is your State in a position to provide assistance in procedures related to virtual currencies such as bitcoins, especially as regards seizure and confiscation?**

German law considers bitcoins to be objects which are subject to confiscation within the meaning of section 73 (1), first sentence, StGB. Pursuant to section 111b (1) in conjunction with section 111c of the German Code of Criminal Procedure (Strafprozessordnung, StPO), they may be seized in order to secure confiscation by court order. The Federal Court of Justice has not yet issued a final-instance ruling on this issue; however, an appeal on points of law is currently pending before that court, which will clarify this question (and others).

**10. Is your State in a position to provide assistance, independently from a confiscation decision, for the purpose of restitution to the victim of assets obtained by criminal means? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

**11. Do you have any proposals to amend and/or facilitate the application of Council of Europe instruments for international co-operation in the field of search, seizure and confiscation of proceeds of crime, including the management of seized and confiscated property and asset sharing? (Please specify your proposal and the instrument(s) concerned).**

a) Establishment of a database operated by and accessible through a central office, comprised of bank data that may be provided to another state upon request, as an essential step before submitting a request for disclosure of bank information and “freezing” of bank accounts.

b) Getting more states to accede to and become involved in international networks for asset recovery (e.g. CARIN), expanding personal contacts.

## NORWAY

**1. Do you consider the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its additional protocols as appropriate instruments for co-operation in the fields of:**

- a. search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. asset sharing?**

**(Please specify)**

In general, Norway considers the European Convention on Mutual Assistance in Criminal Matters and its protocols to be important legal tools for mutual assistance in criminal matters. We also consider the Convention to be an appropriate instrument in the fields of search, seizure and confiscation.

**2. When using the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:**

According to Norwegian prosecutors, the two conventions (ETS 30 and ETS 141) are often used together. In general Norway is able to cooperate and contribute regarding measures mentioned in question 3 letter a. to e, within its national system.

- a. search and seizure of proceeds of crime and b. confiscation of proceeds of crime?**

For out-going requests, the most practical challenge is to identify the assets from crime. If there is no detailed information of where to find the assets, it is often a challenge to request investigative steps without being on a "fishing expedition".

For incoming requests, the Norwegian legal basis may be used to the same extent as in domestic cases. The requesting country should provide sufficient material/evidence and legal material to enable Norwegian authorities to assess the legal basis and possibilities for the requested measures being executed in Norway, e.g. that the offence is criminalised and that reasonable grounds for suspicion are established.

- b. Confiscation of proceeds of crime**

See answer under letter a.

- c. management of seized and confiscated assets?**

In Norway there is no central office for management of confiscated assets. This is handled by the police on a case to case basis.

- d. returning the assets for victims?**

This is a frequently used practice in Norway, and does normally not cause any problems.

- e. asset sharing?**

Norway has limited experience with asset sharing, cf article 15 of the Convention, but has the necessary domestic legal tools to enter into such agreements.

**(Please specify)**

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

a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for victims?
- e. asset sharing?

(Please specify)

Norway has not ratified this Convention. However, please note that for most requests, Norway may provide assistance irrespective of the existence or applicability of a treaty.

#### 4. Introduction

A problem frequently observed in the case of seizure and/or the transfer of execution of a confiscation order is that member States are not always able to ensure the implementation of a request grounded on a so-called value-based confiscation system. This system is described in both conventions as a system with which it is possible to co-operate besides the so-called object basis confiscation system. In both systems, a criminal conviction is necessary. In the value-based confiscation system, the criminal profits are calculated. Ultimately, on the basis of these calculations, the judge imposes an obligation to pay an amount of money which is equivalent to the criminal profits acquired. The confiscation order can then be executed on all assets belonging to the convicted person. In this regard, it is not required to prove that these assets have been obtained directly from the criminal offence.

Question: Could the competences mentioned in question 2 and 3 be exercised in the case of a request grounded on the value-based confiscation system? Please specify your answer as regards to:

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for the victims?
- e. asset sharing?

(Please specify)

According to the Extradition Act section 24, coercive measures may be used in the same manner as in cases of offences of a similar nature when prosecuted in Norway.

The Norwegian legislation operate with both the value-based and the object basis confiscation system. Thus, we may carry out requests based on the value-based confiscation system for the different types of assistance mentioned.

The requesting country should provide sufficient material to enable Norwegian authorities to assess the legal basis and possibilities for the requested measures being executed in Norway.

**5. Several member States recognise the possibility of seizure and confiscation of assets which belong *de facto* to the accused/convicted person but are legally considered as belonging to a third person, mostly the so-called Straw man.**

Do you have the possibility to execute such a request? If not, for which reasons, and if yes, under which conditions? Please specify your answer as regards to:

Yes, assets which *de facto* belongs to the accused/convicted person may be seized and confiscated, regardless of the formal ownership, provided that it is proven that the assets *de facto* belongs to the accused/convicted person. In such cases we may carry out requests for assistance.



The principles of the present legislation will also follow in the new Norwegian criminal code, the Penal Code of 20. May 2005 No. 28, section 72, which will enter into force on 1. October 2015.

- a. Search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for the victims?
- e. asset sharing?

(Please specify)

**6. Is your State in a position to co-operate with other States on the basis of reciprocity and in the absence of a treaty as regards to:**

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. returning the assets for the victims?
- d. asset sharing?

(Please specify)

Yes, Norwegian legislation does not require a treaty basis, and as a main rule we may co-operate with other States with regards to the different types of assistance mentioned above.

**7. Is your State in a position to provide mutual legal assistance for the purpose of, or, related to non-conviction based confiscation and other measures (for instance civil forfeiture)? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

The Norwegian legislation has no specific reference to the above measures, and a foreign request would have to be considered on a case to case basis.

**Can you in particular provide the requested information regarding the following phases of the Non Conviction Based (NCB) proceeding:**

- a. the information-gathering phase, during which criminal information is often requested for use within a NCB proceeding
- b. seizure of proceeds of crime?
- c. confiscation of proceeds of crime?
- d. management of seized and confiscated assets?
- e. returning the assets for the victims?
- f. asset sharing?

**8. Is your State in a position to provide assistance in criminal, civil and administrative proceedings related to the liability of legal entities for the purpose of seizure or confiscation of proceeds of crime? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

Regarding assistance in criminal matters, legal entities are subject to criminal liability according to the Penal Code of 22.05.1902 No. 10 sections 48 a and 48 b and, for crime committed after 1. October 2015, the Penal Code of 20.05.2005 No. 28 sections 27 and 28. Legal entities are subjects to seizure/confiscation of proceeds of crime on the same conditions as persons who are charged/convicted. Norway may assist other States when requested in conducting seizure/confiscation on the same conditions as apply in domestic cases according to the Extradition Act of 13.06.1975 No. 39 section 24 first paragraph.

**9. Is your State in a position to provide assistance in procedures related to virtual currencies such as bitcoins, especially as regards seizure and confiscation?**

Norway has the legal tools to provide other states with assistance in relation to seizure and confiscation of virtual currencies. This must be done in compliance with the framework of the Norwegian Criminal Procedure Act, chapter 16. The National Criminal Investigation Service possesses the necessary technical abilities to seize and confiscate virtual currencies in "virtual wallets" of people suspected of crimes and possible third parties.

**10. Is your State in a position to provide assistance, independently from a confiscation decision, for the purpose of restitution to the victim of assets obtained by criminal means? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

Norway has the legal basis to transfer seized or confiscated goods to a foreign state for the purpose of returning it to the rightful owner. Similarly, it may be determined that objects which have been temporarily handed over to the foreign state shall be relinquished.

**11. Do you have any proposals to amend and/or facilitate the application of Council of Europe instruments for international co-operation in the field of search, seizure and confiscation of proceeds of crime, including the management of seized and confiscated property and asset sharing? (Please specify your proposal and the instrument(s) concerned).**

It could be useful to have guidelines/model agreements on asset sharing. Or perhaps it should be considered to have a protocol on asset sharing? Such an instrument could e.g. regulate the sharing of the assets and the priority of liability for compensation for victims.

**SWEDEN**

**1. Do you consider the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its additional protocols as appropriate instruments for co-operation in the fields of:**

- a. search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. asset sharing?**

**1 a**

No, not particularly.

If the requested country's domestic legislation does not provide sufficient legal basis to provide the assistance sought it ought to be possible to find a legal basis in the 1959 Convention for at least some measures concerning search and seizures of proceeds of crime. Obviously, confiscation and seizure of proceeds of crimes was not as prioritised in 1959 as it is now. Furthermore, value-based confiscation, NCB-confiscation or virtual currencies etc. did not exist or were at least not wide spread.

It could therefore be argued (by an unhelpful jurisdiction) that the 1959 Convention was only intended to encompass search and seizure of proceeds of crime in cash or in the form of an object if the reason for the seizure is the foreseen forfeiture of these assets in their capacity as the direct gain of crime.

Our conclusion is thus that the 1959 Convention is not a very useful tool in the fields of search and seizure of proceeds of crime, confiscation of proceeds of crime and asset sharing.

These matters are not mentioned in the Convention or its additional protocol. The same considerations as stated above applies here as well

**1 b**

No, not particularly.

These matters are not mentioned in the Convention or its additional protocol. The same considerations as stated above applies here as well

**1 c**

No, not with regards to a request for confiscation at the request of another State. However asset sharing can be arranged with regards to a Swedish decision on confiscation.

These matters are not mentioned in the Convention or its additional protocol. The same considerations as stated above applies here as well

**2. When using the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:**

- a. search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. management of seized and confiscated assets?**
- d. returning the assets for victims?**
- e. asset sharing?**

2 a-e

The Convention was ratified last fall and we have limited or no practical experience with it. In our capacity as requested state the same considerations as set forth above applies.

With regards to the opposite situation (requesting state) in theory the arguments made above also applies with the exception that this convention does contains provisions that actually could be used as a legal basis to both provide and demand assistance within the fields in question.

One problem that exists in this area is the lack of opportunity to secure funds for the execution of a decision on damages.

**3. When using the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No.198) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:**

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for victims?
- e. asset sharing?

3 a-e

There are possibilities under Swedish law to co-operate, however we have limited or no practical experience with the convention.

#### **4. Introduction**

A problem frequently observed in the case of seizure and/or the transfer of execution of a confiscation order is that member States are not always able to ensure the implementation of a request grounded on a so-called value-based confiscation system. This system is described in both conventions as a system with which it is possible to co-operate besides the so-called object basis confiscation system. In both systems, a criminal conviction is necessary. In the value-based confiscation system, the criminal profits are calculated. Ultimately, on the basis of these calculations, the judge imposes an obligation to pay an amount of money which is equivalent to the criminal profits acquired. The confiscation order can then be executed on all assets belonging to the convicted person. In this regard, it is not required to prove that these assets have been obtained directly from the criminal offence.

**Question: Could the competences mentioned in question 2 and 3 be exercised in the case of a request grounded on the value-based confiscation system? Please specify your answer as regards to:**

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for the victims?
- e. asset sharing?

4 a-c and e

Yes, a value-based confiscation order can be made under Swedish law.

4 d

No, under Swedish law confiscated assets accrue to the State.

**5. Several member States recognise the possibility of seizure and confiscation of assets which belong *de facto* to the accused/convicted person but are legally considered as belonging to a third person, mostly the so-called Straw man.**

**Do you have the possibility to execute such a request? If not, for which reasons, and if yes, under which conditions? Please specify your answer as regards to:**

- a. Search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for the victims?
- e. asset sharing?

A confiscation order can only be directed against the owner of the assets. It is up to the prosecutor to prove that the person subject to the confiscation order in fact owns the property. If it can be proven that a person owns certain property it does not matter that another person is registered as owner. The owner does not necessarily have to be the same person as the offender as third party confiscation is allowed under Swedish law (see Chapter 36 Section 5 of the Penal Code).

#### Section 5

*Forfeiture of property or its worth in consequence of crime as provided in Sections 1 and 2–4 may, unless otherwise stated, be exacted of:*

- a) the offender or an accomplice in the crime,*
- b) the person whose position was occupied by the offender or an accomplice,*
- c) the person who profited from the crime or the entrepreneur described in Section 4,*
- d) any person who after the crime acquired the property through the division of jointly held marital property, or through inheritance, will or gift, or who after the crime acquired the property in some other manner and, in so doing, knew or had reasonable grounds to suspect that the property was connected with the crime.*

*If the property did not belong to any of the persons in the categories a)-c) in the first paragraph, it may not be declared forfeited. Property that according to Section 1 c shall be regarded as proceeds of crime may be declared forfeited if the property, which the forfeited property has replaced, belonged to any of the categories a)-c) in the first paragraph.*

**6. Is your State in a position to co-operate with other States on the basis of reciprocity and in the absence of a treaty as regards to:**

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. returning the assets for the victims?
- d. asset sharing?

6 a-b and d

Yes.

6 d

No, under Swedish law confiscated assets accrue to the State.

**7. Is your State in a position to provide mutual legal assistance for the purpose of, or, related to non-conviction based confiscation and other measures (for instance civil forfeiture)? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

**Can you in particular provide the requested information regarding the following phases of the Non Conviction Based (NCB) proceeding:**

- a. the information-gathering phase, during which criminal information is often requested for use within a NCB proceeding
- b. seizure of proceeds of crime?
- c. confiscation of proceeds of crime?
- d. management of seized and confiscated assets?
- e. returning the assets for the victims?
- f. asset sharing?

7 a-f

Under Swedish law, confiscation is considered as a special legal consequence of a crime. This means that confiscation without connection to a criminal conviction is generally not allowed. However, if a sanction no longer can be imposed because of e.g. the death of the offender, proceeds or instrumentalities of a crime may under limited circumstances be confiscated (see Section 14 below) without a criminal conviction (it is still necessary to fully establish that a crime has been committed). It is also possible under some limited circumstances to confiscate objects that can be used to commit crimes without a criminal conviction (see Section 3 below).

### Section 3

*Forfeiture may also be decided on in cases other than those described in Section 2 in respect of objects which:*

1. *by reason of their special nature and other circumstances, give rise to a fear that they may be put to criminal use,*
2. *are intended for use as a weapon in a crime against human life or health and which have been discovered in circumstances which give rise to a fear that they would be put to such use, or*
3. *are intended for use as an auxiliary aid in a crime entailing damage to property and have been discovered in circumstances which clearly give rise to a fear that they would be put to such use.*

### Section 14

*If a sanction can no longer be imposed because of the death of the offender or for other cause, property may be declared forfeited or a corporate fine imposed by reason of the crime or a measure be prescribed to avert misuse only if, in proceedings pertaining thereto, a summons has been served within five years from the time when the crime was committed. In such a case the prosecutor may institute proceedings only if called for in the public interest.*

*In a case falling under the present description the provisions of Chapter 35, Section 3 shall be correspondingly applicable.*

**8. Is your State in a position to provide assistance in criminal, civil and administrative proceedings related to the liability of legal entities for the purpose of seizure or confiscation of proceeds of crime? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

Under Swedish law a confiscation order can be directed against a legal person if the legal person has derived financial advantages as a result of a crime committed in the course of its business (see Chapter 36, Sections 4 and 5 of the Swedish Penal Code below). Such confiscation orders are decided in criminal proceedings.

### Section 4

*If, as a result of a crime committed in the course of business, the entrepreneur has derived financial advantages, the value thereof shall be declared forfeited, even if this is not so provided for in Section 1 or 2 or otherwise specially provided for.*

*The provisions of the first paragraph shall not apply if forfeiture is unreasonable. In assessing whether such is the case, consideration shall be given inter alia to whether there is reason to believe that*

*some other obligation to pay a sum corresponding to the financial gain derived from the crime will be imposed upon the entrepreneur or will be otherwise discharged by him.*

*If proof of what is to be declared forfeited cannot, or can only with difficulty, be presented, the value may be estimated to be an amount that is reasonable in view of the circumstances.*

## Section 5

*Forfeiture of property or its worth in consequence of crime as provided in Sections 1 and 2–4 may, unless otherwise stated, be exacted of:*

- a) the offender or an accomplice in the crime,*
- b) the person whose position was occupied by the offender or an accomplice,*
- c) the person who profited from the crime or the entrepreneur described in Section 4,*
- d) any person who after the crime acquired the property through the division of jointly held marital property, or through inheritance, will or gift, or who after the crime acquired the property in some other manner and, in so doing, knew or had reasonable grounds to suspect that the property was connected with the crime.*

*If the property did not belong to any of the persons in the categories a)-c) in the first paragraph, it may not be declared forfeited. Property that according to Section 1 c shall be regarded as proceeds of crime may be declared forfeited if the property, which the forfeited property has replaced, belonged to any of the categories a)-c) in the first paragraph.*

## **9. Is your State in a position to provide assistance in procedures related to virtual currencies such as bitcoins, especially as regards seizure and confiscation?**

Yes, in theory. We have yet to receive such a request. There are examples where a Swedish court has confiscated virtual wallets for bitcoin, and it should be possible to confiscate the equivalent value of a bitcoin in Swedish krona. However, there are some issues left to resolve with regards to confiscation of virtual currencies, e.g. the procedure itself.

## **10. Is your State in a position to provide assistance, independently from a confiscation decision, for the purpose of restitution to the victim of assets obtained by criminal means? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

A State or an individual, who is the victim of a crime, can initiate civil action in Swedish courts to establish title to or ownership of property acquired through the commission of the crime. A Swedish court can also order those who have committed a crime to pay compensation or damages to another State or individual that has been harmed by the crime.

If it is specifically prescribed, foreign private law judgments or decisions can also be enforced in Sweden. Specific provisions on recognition and enforceability of such judgments and decisions can be found in for example The EU Brussels I-regulation and the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

## **11. Do you have any proposals to amend and/or facilitate the application of Council of Europe instruments for international co-operation in the field of search, seizure and confiscation of proceeds of crime, including the management of seized and confiscated property and asset sharing? (Please specify your proposal and the instrument(s) concerned).**

No, not at this time.

**SUISSE**

- 1. Estimez-vous que la Convention européenne d'entraide judiciaire en matière pénale (STE n°30) et ses protocoles additionnels sont des instruments adaptés à la coopération dans les domaines suivants :**

- a. dépistage et saisie des produits du crime ?**
- b. confiscation des produits du crime ?**
- c. partage des avoirs ?**

La Convention STE n°30/le Protocole additionnel STE n°182 posent les bases de la coopération judiciaire en matière de dépistage (moyens de preuve). Ces instruments ne prévoient par contre aucune disposition en matière de saisie, confiscation ou encore de partage des avoirs. Par conséquent, ils ne nous semblent pas être des instruments suffisants en la matière.

- 2. En appliquant la Convention relative au blanchiment, au dépistage, à la saisie et à la confiscation des produits du crime (STE n°141) comme base de la coopération, quelles sont les modalités d'application au sein de votre système national ? Avez-vous rencontré des difficultés juridiques ou pratiques ? Veuillez préciser votre réponse en ce qui concerne :**

- a. le dépistage et la saisie des produits du crime ?**
- b. la confiscation des produits du crime ?**
- c. la gestion des avoirs saisis et confisqués ?**
- d. restitution des avoirs aux victimes ?**
- e. le partage des avoirs ?**

La Loi fédérale sur l'entraide internationale en matière pénale (EIMP) constitue la base légale suisse en matière de coopération internationale. Par ailleurs, lorsque le droit conventionnel ne prévoit pas expressément un certain mode de collaboration, cela n'empêche pas la Suisse de l'accorder en vertu des dispositions de son droit interne (EIMP). La jurisprudence constante permet en effet l'application du droit interne lorsque celui-ci apparaît plus favorable (principe de faveur) à la coopération que le droit conventionnel.

Elle prévoit les mesures figurant sous lettre a – d. Quant au partage des avoirs, il est régi par la Loi fédérale sur le partage des valeurs patrimoniales confisquées (LVPC).

Il convient de relever que le droit suisse va plus loin que la Convention STE n°141 dans le sens où il prévoit également, contrairement à ladite Convention, la restitution des fonds (art. 74a EIMP) et le partage des avoirs (LVPC).

La difficulté principale réside dans l'obtention des autorités étrangères d'un état de faits suffisant pour faire le lien entre les faits sous enquête à l'étranger avec les fonds situés en Suisse (produits du crime), et, par la suite, d'obtenir une décision de confiscation étrangère établissant l'origine illicite des fonds et leur attribution.

- 3. En appliquant la Convention relative au blanchiment, au dépistage, à la saisie et à la confiscation des produits du crime et au financement du terrorisme (STCE n°198) comme base de la coopération, quelles sont les modalités d'application au sein de votre système national ? Avez-vous rencontré des difficultés juridiques ou pratiques ? Veuillez préciser votre réponse en ce qui concerne :**



- a. le dépistage et la saisie des produits du crime ?
- b. la confiscation des produits du crime ?
- c. la gestion des avoirs saisis et confisqués ?
- d. la restitution des avoirs aux victimes ?
- e. le partage des avoirs ?

La Suisse n'est pas partie à la Convention.

#### 4. Introduction

Les Etats membres rencontrent souvent un problème dans la saisie et/ou le transfert de l'exécution de l'ordre de confiscation, ils ne sont pas toujours en mesure de s'assurer de l'exécution de la requête établie sur le système de confiscation fondé sur la « valeur ». Dans les deux conventions, ce système est décrit comme permettant une possible coopération à côté du système de confiscation fondé sur les « biens » . Dans les deux systèmes, une condamnation pénale est nécessaire. Dans le système de confiscation fondé sur la « valeur », les profits illicites sont estimés. A la fin, sur la base de ces estimations, le juge impose une obligation de payer une somme équivalente aux profits acquis par l'activité criminelle. L'ordre de confiscation peut ensuite être exécuté sur tous les avoirs appartenant à la personne condamnée. A cet égard, il n'est pas nécessaire de prouver que ces avoirs ont été directement obtenus par les actes délictueux.

**Question :** Les compétences mentionnées à la question 2 et 3 peuvent-elle être exercées dans le cas d'une requête établie sur le système de confiscation fondé sur la « valeur » ? Veuillez préciser votre réponse en ce qui concerne :

- a. le dépistage et la saisie des produits du crime ?
- b. la confiscation des produits du crime ?
- c. la gestion des avoirs saisis et confisqués ?
- d. la restitution des avoirs aux victimes ?
- e. le partage des avoirs ?

En droit suisse, le lien entre les faits sous enquête et les fonds en Suisse, inhérent à la notion de produit, doit exister. Une confiscation fondée sur la valeur ne tient pas compte de ce lien, le système fondé sur la valeur renvoie à la notion de créance. En droit suisse, si le « produit » n'existe plus, le paiement d'une créance compensatrice peut être ordonné. L'entraide s'agissant d'une telle créance peut être accordée.

#### 5. Plusieurs Etats membres reconnaissent la possibilité d'une saisie et d'une confiscation des avoirs qui appartiennent de facto à la personne accusée/condamnée mais qui légalement appartiennent à une tierce personne, la plupart du temps à des « hommes de paille ».

**Avez-vous la possibilité d'exécuter une telle requête ? Si non, pour quelles raisons ? Si oui, sous quelles conditions ? Veuillez préciser votre réponse en ce qui concerne :**

- a. le dépistage et la saisie des produits du crime ?
- b. la confiscation des produits du crime ?
- c. la gestion des avoirs saisis et confisqués ?
- d. la restitution des avoirs aux victimes ?
- e. le partage des avoirs ?

Grâce aux obligations de diligence des banques, les ayants droits économiques de valeurs détenues par de tierces personnes (sociétés écran) sont identifiables. Dans la mesure où les exigences légales en matière d'entraide sont remplies, ces valeurs peuvent faire l'objet de mesures d'entraide telles que celles figurant ci-dessus.

**6. Votre Etat est-il en position de coopérer avec d'autres Etats sur la base de la réciprocité et en l'absence d'un traité dans les domaines suivants :**

- a. dépistage et saisie des produits du crime ?**
- b. confiscation des produits du crime ?**
- c. restitution des avoirs aux victimes ?**
- d. partage des avoirs ?**

Oui, cf. chiffre 2. L'article 8 de la Loi fédérale sur l'entraide internationale en matière pénale (EIMP) pose la base de la réciprocité. Cette loi contient les dispositions idoines pour procéder à la saisie (art 18 EIMP) et à la remise de valeurs (art 74a EIMP). L'exécution de décisions étrangères (art 94 ss EIMP).

**7. Votre Etat est-il en position d'apporter une entraide judiciaire aux fins ou dans le cadre de mesures de confiscation ou autres non fondées sur une condamnation (par exemple une confiscation civile) ? Si oui, veuillez préciser les conditions et instrument(s) utilisés comme base juridique. Si non, veuillez indiquer les obstacles juridiques.**

**Pouvez-vous, en particulier, fournir l'information requise en ce qui concerne les étapes d'une procédure judiciaire non fondée sur une condamnation ? :**

- a. l'étape de collecte de données, durant laquelle l'information pénale est souvent requise à des fins d'une procédure judiciaire non fondée sur une condamnation**
- b. saisie des produits du crime ?**
- c. confiscation des produits du crime ?**
- d. gestions des avoirs saisis et confisqués ?**
- e. restitution des avoirs aux victimes ?**
- f. partage des avoirs ?**

En droit suisse, même si en principe elle est corollaire à une condamnation pénale et est prononcée dans le cadre de la poursuite pénale conduite contre l'auteur de l'infraction, la décision de confiscation ou de restitution à l'ayant droit peut aussi être indépendante de toute condamnation pénale. Dans tous les cas, cette confiscation suppose réunis les éléments constitutifs objectifs et subjectifs d'une infraction et un lien entre celle-ci et les valeurs à confisquer. Pour une telle confiscation à l'étranger, la Suisse pourrait accorder l'entraide. Elle pourrait aussi accorder l'entraide pour une confiscation civile étrangère connexe (lien entre infraction et valeurs) à une procédure pénale.

**8. Votre Etat est-il en position d'apporter une assistance dans le cadre de procédures pénales, civiles ou administratives liées à la responsabilité des personnes morales aux fins de la saisie ou de la confiscation des produits du crime ? Si oui, veuillez préciser les conditions et instrument(s) utilisés comme base juridique. Si non, veuillez indiquer les obstacles juridiques.**

Le droit suisse prévoit la punissabilité de l'entreprise, même, dans certains cas, indépendamment de la punissabilité d'une personne physique (art. 102 Code pénal suisse).

Entre autres conditions, lorsqu'il y a double incrimination et qu'il existe un lien entre l'infraction et les fonds en Suisse, l'entraide peut être accordée par la Suisse.

- 9. Votre Etat est-il en position d'apporter une assistance dans le cadre de procédures liées à des monnaies virtuelles comme le « bitcoin », notamment en matière de saisie et de confiscation ?**

La Suisse n'a pas d'expérience concernant l'entraide dans le cadre de procédures liées à des monnaies virtuelles.

- 10. Votre Etat est-il en position d'apporter une assistance, indépendamment d'une décision de confiscation, aux fins de restituer à la victime des avoirs obtenus par des moyens illicites ? Si oui, veuillez préciser les conditions et les instrument(s) utilisés comme base juridique. Si non, veuillez indiquer les obstacles juridiques.**

Oui, la Suisse peut accorder l'entraide aux fins de restitution ou en vue de confiscation indépendamment d'une décision de confiscation, si la provenance illicite des valeurs sises en Suisse est hautement vraisemblable.

- 11. Avez-vous des propositions à faire pour modifier et/ou faciliter l'application des instruments du Conseil de l'Europe dans le domaine de la coopération internationale en matière de dépistage, de saisie et de confiscation des produits du crime, y compris la gestion des biens saisis et confisqués et le partage des avoirs ? (Veuillez préciser votre proposition ainsi que le ou les instrument(s) concerné(s).)**

Faire figurer le principe de la réciprocité en matière de restitution. Idéalement établir dans un instrument contraignant des standards de coopération obligatoires en matière de saisie et remise de valeurs (modèle de demande d'entraide commun aux Etats parties, de droit civil et de droit anglo-saxon, en limitant le plus possible les possibilités de refus de coopération).

## TURKEY

**1. Do you consider the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its additional protocols as appropriate instruments for co-operation in the fields of:**

- a. search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. asset sharing?**

**(Please specify)**

This Convention provides effective and sufficient opportunities for search and seizure. In addition, the following issues decreased the efficiency of the Convention:

- The differences resulting from legal culture such as requesting from the suspect/accused to prove that the proceeds of crime is legal by inverting the burden of proof concerning the offences of money laundering in different legal systems, requesting the confiscation of not only the proceeds of crime but also the assets not resulting from the offence, not providing sufficient evidence accompanied with the request
- Following the seizure, the fact that the requesting State does not usually inform the requested State concerning the investigation/prosecution situation and requested State cannot control the proportionality of the measure because of long lasting proceedings,
- The uncertainty concerning which party will undertake the losses occurred and the compensation to be paid because of revealing that these measures have been undue if implemented,
- Because the states are not parties to all of the additional protocols of the Convention, being obliged to implement some other international regulations, such as United Nations Conventions, when considering the requests.

**2. When using the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:**

- a. search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. management of seized and confiscated assets?**
- d. returning the assets for victims?**
- e. asset sharing?**

- Inability to provide relation between the values of the assets requested to be seized and the offence claimed to have been committed,
- Even though it is accepted in Turkish law as an exceptional method to liquidate the value of seized assets without a finalized judgment or manage during the trials by the State authorities, requiring a significant number of the requests to implement these measures,
- Experiencing disruptions to provide information concerning judicial process carried out in the requesting State after the assets are seized,
- The uncertainty concerning how to share the economic value which has been liquidated.

**3. When using the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No.198) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:**

- a. search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**

- c. management of seized and confiscated assets?
- d. returning the assets for victims?
- e. asset sharing?

(Please specify)

Our Country is not party to this Convention.

#### 4. Introduction

A problem frequently observed in the case of seizure and/or the transfer of execution of a confiscation order is that member States are not always able to ensure the implementation of a request grounded on a so-called value-based confiscation system. This system is described in both conventions as a system with which it is possible to co-operate besides the so-called object basis confiscation system. In both systems, a criminal conviction is necessary. In the value-based confiscation system, the criminal profits are calculated. Ultimately, on the basis of these calculations, the judge imposes an obligation to pay an amount of money which is equivalent to the criminal profits acquired. The confiscation order can then be executed on all assets belonging to the convicted person. In this regard, it is not required to prove that these assets have been obtained directly from the criminal offence.

Question: Could the competences mentioned in question 2 and 3 be exercised in the case of a request grounded on the value-based confiscation system? Please specify your answer as regards to:

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for the victims?
- e. asset sharing?

In our legal system, there is no value-based confiscation.

5. Several member States recognise the possibility of seizure and confiscation of assets which belong *de facto* to the accused/convicted person but are legally considered as belonging to a third person, mostly the so-called Strawman.

Do you have the possibility to execute such a request? If not, for which reasons, and if yes, under which conditions? Please specify your answer as regards to:

- a. Search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for the victims?
- e. asset sharing?

Pursuant to Turkish law, it is possible at all times to confiscate property used for committing an offence, or proceeds of an offence, in possession of third parties not acting in good faith.

6. Is your State in a position to co-operate with other States on the basis of reciprocity and in the absence of a treaty as regards to:

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. returning the assets for the victims?
- d. asset sharing?

(Please specify)

In theory, it is possible to enforce such requests only in virtue of the principle of reciprocity in the event that the requesting State gives the guarantee that such requests of our country will be enforce, the requested legal assistance is not contrary to Turkish public order, the enforcement of the request complies with our legislation, the central authorities agree in advance on the commitment of the requesting State for the cases of compensation which may be experienced if the measure occurs to be undue and on how the assets will be liquidated.

In addition, if such a request is received, enforceability of the request is considered within the scope of the conditions of each concrete fact.

**7. Is your State in a position to provide mutual legal assistance for the purpose of, or, related to non-conviction based confiscation and other measures (for instance civil forfeiture)? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

**Can you in particular provide the requested information regarding the following phases of the Non Conviction Based (NCB) proceeding:**

- a. the information-gathering phase, during which criminal information is often requested for use within a NCB proceeding
- b. seizure of proceeds of crime?
- c. confiscation of proceeds of crime?
- d. management of seized and confiscated assets?
- e. returning the assets for the victims?
- f. asset sharing?

In our legal system, confiscation must be based on a court judgment. Confiscation is regulated under the Turkish Criminal Code and the subject matter of confiscation is the material/goods used in commission of a deliberate offence or provided in commission of an offence or those acquired from an offence.

**8. Is your State in a position to provide assistance in criminal, civil and administrative proceedings related to the liability of legal entities for the purpose of seizure or confiscation of proceeds of crime? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

Turkish Criminal Code and other laws which includes criminal provisions accepts the criminal liability both real persona and legal persons. Article 60 of Turkish Criminal Code, as general rule on this issue, is as follows:

*“Security Precaution For The Legal Entities*

*ARTICLE 60-(1) In case of conviction of a crime through participation of the organs or representatives of a legal entity subject to special law and operating under the license granted by a public institution or misuse of authorization conferred upon by this license, the court may decide cancellation of this license.*

*(2) The provisions relating to confiscation are applied also for the legal entities involved in commission of offense.*

*(3) In cases where application of the provisions of the afore subsections is likely to create heavier consequences, the judge may refrain from imposition of such precautions.*

*(4) The provisions of this article are applicable for the cases specifically defined by the law.”*

*Our legislation, in addition to this general provision, governs separately the security measures which can be implemented concerning legal persons with regard to many offences. If such regulations are available, these are implemented, if not available, it is possible to implement article 60 of Turkish Criminal Code.*

**9. Is your State in a position to provide assistance in procedures related to virtual currencies such as bitcoins, especially as regards seizure and confiscation?**

According to Turkish law, it is possible to confiscate anything with monetary value or economic value which may be requested to be confiscated then or the property in the nature of evidence. Therefore there is not any obstacle to implement such measures concerning economic values in virtual nature such as "bitcoin" if the other procedural rules are fulfilled.

**10. Is your State in a position to provide assistance, independently from a confiscation decision, for the purpose of restitution to the victim of assets obtained by criminal means? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

It was possible, in accordance with our legislation, until 2005 to initiate cases of compensation together with criminal case and to rule on compensation of the losses of the victim while sentencing the accused. New Turkish Criminal Code which entered into force after this date separates criminal case and any claim and case intending to compensate the losses of the victim. Therefore it is not possible to execute such requests which only bear "compensation or restitution" nature.

**11. Do you have any proposals to amend and/or facilitate the application of Council of Europe instruments for international co-operation in the field of search, seizure and confiscation of proceeds of crime, including the management of seized and confiscated property and asset sharing? (Please specify your proposal and the instrument(s) concerned).**

No.

**UKRAINE**

**1. Do you consider the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its additional protocols as appropriate instruments for co-operation in the fields of:**

- a. search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. asset sharing?**

The European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its additional protocols are the appropriate instruments for co-operation in the fields of search and seizure of proceeds of crime (a). Taking into consideration the provisions of the national legislation of Ukraine, the application of the Convention with a view to the confiscation of the proceeds of crime (b) is possible for the purpose of enforcement of the foreign courts judgements on the Ukrainian territory, which envisages the confiscation of the said proceeds. Also the national legislation of Ukraine does not provides for legal procedure for asset sharing.

**2. When using the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:**

- a. search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. management of seized and confiscated assets?**
- d. returning the assets for victims?**
- e. asset sharing?**

The provisions of the Criminal Procedure Code of Ukraine regulating the procedure for carrying out the pre-trial investigation and court consideration of criminal proceedings, provides for the opportunities of carrying out the procedural actions aimed at search and seizure of proceeds from crime (a). According to the national legislation of Ukraine, the confiscation of the proceeds from crime (b) and returning the assets for victims (d) are rendered possible by the court decision which became effective. Also returning the assets for victims (d) is rendered possible by the court decision upon the results of consideration of civil lawsuit.

The legal procedures for management of seized and confiscated assets (c) and asset sharing (e) are not envisaged by the national legislation of Ukraine.

**3. When using the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:**

- a. search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. management of seized and confiscated assets?**
- d. returning the assets for victims?**
- e. asset sharing?**



The implementation of measures aimed at search and seizure of proceeds of crime (a) is possible within the limits of the national legislation of Ukraine. The confiscation of the proceeds from crime (b) and returning the assets for victims (d), in accordance with the national legislation of Ukraine, is rendered possible by the court decision which became effective. Also returning the assets for victims (d) is rendered possible by the court decision upon the results of consideration of civil lawsuit.

The procedures for management of seized and confiscated (c) and asset sharing (e) are not envisaged by the national legislation of Ukraine.

There is also a special procedure for seizure of assets which are connected with the terrorism financing and related to the financial operations which were stopped by the decision made in pursuance of the UN Security Council resolution, as well as the procedure for lifting the seizure of such assets and granting access thereto.

The above procedure is regulated by the following Laws:

*Article 11-1 of the Law of Ukraine On Fight against Terrorism. Stopping of any financial operations with the assets which are connected with terrorism financing and related to the financial operations stopped by the decision made in pursuance of the UN Security Council resolution, as well as the seizure of such assets.*

*A financial operation, the participant or beneficiary of which is a person who was included to the list of those connected to terrorism or against whom international sanctions were imposed, shall be stopped pursuant to the Law of Ukraine On Prevention and Counteraction to Legalisation (Laundering) of Proceeds of Crime, or Terrorism Financing.*

*Where the subjects directly conducting the fight against terrorism and/or are engaged in the fight against terrorism detect any financial operations or assets of the persons who were included to the list of those connected with terrorism or with respect of whom international sanctions were imposed, such subjects shall immediately report to the Security Service of Ukraine on any detected financial operations of terrorist assets.*

*Seizure of terrorist-related assets which are linked to financial operations stopped by the decision made in pursuance of the UN Security Council resolution, as well as lifting the seizure of such assets, shall be conducted by the court.*

*Article 183-4 of the Code of Administrative Court Procedure of Ukraine. The peculiarities of proceedings in the cases upon request of the Security Service of Ukraine for seizure of assets which are connected with terrorism financing and related to the financial operations stopped by the decision made in pursuance of the UN Security Council resolution, lifting the seizure of such assets and granting access thereto.*

*1. The court procedure in the cases relating to the seizure of assets which are connected with terrorism financing and related to the financial operations stopped by the decision made in pursuance of the UN Security Council resolution, lifting the seizure of such assets and granting access thereto shall be conducted under the administrative lawsuit of the Head of the Security Service of Ukraine and his Deputy.*

*2. Administrative lawsuit shall be filed with court of first instance in accordance with the judicial jurisdiction established by this Code, in writing, and shall contain:*

- 1) name of the administrative court;*
- 2) name, postal address and contact number of the plaintiff;*
- 3) reasons to file the lawsuit, circumstances confirmed by evidence and claims of the plaintiff.*
- 4) list of enclosed documents and other materials;*

*5) signature of authorized person of the authority which should be affixed by the seal.*

*3. In case where the requirements of Paragraph 2 of this Article are violated, the court shall notify the plaintiff thereof and shall determine the time limit for removal of shortcomings.*

*The failure to fulfill the requirements of the court within the time limit it established thereof shall entail the returning of the lawsuit to the plaintiff and enclosures thereof.*

*The returning of a lawsuit shall not be an obstacle to its re-filing with the court upon the removal of shortcomings which accounted for such filing.*

*4. The court shall by its decision deny to the acceptance of the lawsuit where a demand which is not provided for by Paragraph 1 of this Article is claimed. The denial to accept the lawsuit renders impossible the plaintiff's re-filing of the same lawsuit.*

*5. The ruling on the merits of the claimed demands shall be rendered by the court not later than the next working day from the day of receipt of the lawsuit, which shall be considered in the closed court session with participation of the plaintiff only. The owner of the assets which are connected with the terrorism financing and related to the financial operations which were stopped by the decision made in pursuance of the UN Security Council resolution, with respect to which the seizure is lifted or imposed, or with respect to which the access is granted, shall not be notified of the consideration of the case by the court.*

*6. The ruling shall contain:*

- 1) date such ruling was rendered on;*
- 2) name of the court and the judge's second name and initials;*
- 3) motives and conclusion of the court on the merits of the claimed demands with references made to the Law;*
- 4) procedure for carrying out the actions envisaged by the ruling.*

*7. The decision to deny the acceptance of the lawsuit may be appealed against. The court of appeal shall during three days from the day of the receipt of the appellate claim verify the legality of the decision of the court of first instance and shall render a decision on the merits.*

*8. The effective court decisions on the seizure of assets which are connected with the terrorism financing and related to the financial operations which were stopped by the decision made in pursuance of the UN Security Council resolution, or on the lifting of seizure from such assets and granting access thereto, shall be final and shall have immediate effect.*

#### **4. Introduction**

**A problem frequently observed in the case of seizure and/or the transfer of execution of a confiscation order is that member States are not always able to ensure the implementation of a request grounded on a so-called value-based confiscation system. This system is described in both conventions as a system with which it is possible to co-operate besides the so-called object basis confiscation system. In both systems, a criminal conviction is necessary. In the value-based confiscation system, the criminal profits are calculated. Ultimately, on the basis of these calculations, the judge imposes an obligation to pay an amount of money which is equivalent to the criminal profits acquired. The confiscation order can then be executed on all assets belonging to the convicted person. In this regard, it is not required to prove that these assets have been obtained directly from the criminal offence.**

**Question: Could the competences mentioned in question 2 and 3 be exercised in the case of a request grounded on the value-based confiscation system? Please specify your answer as regards to:**

- a. search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. management of seized and confiscated assets?**

**d. returning the assets for the victims?**  
**e. asset sharing?**

The provisions of the Criminal Procedure Code of Ukraine which governs the procedure for conducting the pre-trial investigations and court hearings in criminal proceedings envisage procedural actions aimed at the search and seizure of proceeds of crime (a). At the same time the Ukrainian legislation does not limit the possibility of taking such steps in case the request for mutual legal assistance is based on the value-based confiscation system.

The confiscation of proceeds of crime (b) and returning the assets for the victims (d) pursuant to the Ukrainian national legislation is possible based on the final and binding court judgment. Additionally, returning the assets for the victims (d) is possible based on the court decision following the consideration of a civil lawsuit.

Following are the provisions of the Ukrainian legislation governing the general procedure for recognition and enforcing judgments of courts of foreign states in the territory of Ukraine.

*Article 602. Grounds and procedure for enforcement of judgments of courts of foreign states*

*1. A sentence delivered by a court of a foreign state may be recognised and enforced in the territory of Ukraine in cases and in the scope prescribed in the international treaty of Ukraine to which the Verkhovna Rada of Ukraine has given its consent to be bound by.*

*2. In absence of an international treaty, provisions of this Chapter may be applied in deciding on an issue of the transfer of a sentenced person for further serving of punishment.*

*3. Request on execution of foreign state's court sentence, except a request to transfer a sentenced, person, shall be considered by the Ministry of Justice of Ukraine within thirty days after receipt of the request. If the request and additional materials has been received in a foreign language, this time limit shall be extended to three months.*

*4. When considering a request for the enforcement of a sentence delivered by a foreign court in accordance with part three of this Article, the Ministry of Justice of Ukraine shall determine whether grounds for granting request for the enforcement of a sentence exist under the appropriate international treaty of Ukraine. For this purpose, the Ministry of Justice of Ukraine may demand and obtain the necessary materials and information in Ukraine or from the competent authority of the foreign state concerned.*

*5. Having established that the request for recognition and enforcement is consistent with the provisions of the international treaty of Ukraine, the Ministry of Justice of Ukraine shall forward request for recognition and enforcement of the sentence of the court of foreign State to a court of first instance and transfer the obtained materials thereto.*

*6. If the request is refused, the Ministry of justice of Ukraine shall inform the requesting foreign authority thereon, with explanation of reasons for refusal.*

*7. Sentences delivered in absentia, i.e. without participation of the person concerned in criminal proceedings, by courts of foreign states, except when the sentenced person was served a copy of the sentence and given the possibility to challenge the sentence, shall not be enforced in Ukraine. A request for execution of a sentence imposed by a foreign court may be refused if such execution contradicts any obligations of Ukraine under her international treaties.*

*8. The issue of recognition and enforcement of a sentence delivered by a court of foreign State in part of a civil claim shall be disposed as prescribed in the Code of Civil Procedure of Ukraine.*

*9. In cases provided for by the international treaty of Ukraine to which the Verkhovna Rada of Ukraine has given its consent to be bound by, if a sentence of foreign court decreed a punishment in the form of imprisonment, the Ministry of Justice of Ukraine shall send a certified copy of the request*

*as specified in this Article, to a public prosecutor to request an investigating judge to impose a restraint measure until the execution of the sentence of a foreign court is decided.*

Legal procedures for management of seized and confiscated assets (c) and asset sharing (e) are absent from the national legislation of Ukraine.

**5. Several member States recognise the possibility of seizure and confiscation of assets which belong *de facto* to the accused/convicted person but are legally considered as belonging to a third person, mostly the so-called Straw man.**

**Do you have the possibility to execute such a request? If not, for which reasons, and if yes, under which conditions? Please specify your answer as regards to:**

- a. Search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. management of seized and confiscated assets?**
- d. returning the assets for the victims?**
- e. asset sharing?**

The provisions of the Criminal Procedure Code of Ukraine which governs the procedure for conducting the pre-trial investigations and court hearings in criminal proceedings envisage procedural actions aimed at the search and seizure of proceeds of crime (a).

At the same time the seizure of proceeds of crime (a) is executed based on the decision by a Ukrainian court, which can be taken given the circumstances provided for by the Ukrainian legislation. Legal grounds for seizure of assets pursuant to the Ukrainian legislation are laid out in the following legal norm:

*Article 170. Grounds for seizure of property*

*1. Seizure of property means temporary deprivation of the suspect, accused person or persons who are civilly liable by law for the damage caused through actions of the suspect, accused person or an insane person who has committed a socially dangerous act, of the possibility to dispose of certain property by a ruling of the investigating judge or court, until revocation of such seizure of property, according to the procedure established by this Code. Pursuant to the requirements of this Code, seizure of property may also envisage the prohibition for person whose property has been seized or another person holding property, to dispose in any way of such property and to use it.*

*2. Investigating judge or court during trial shall order the seizure of property of the suspect, accused in the form of objects if there are sufficient grounds for the belief that such objects meet the criteria specified in paragraph two of Article 167 of this Code. Furthermore, where a civil action is granted, the court on a motion of the public prosecutor or civil plaintiff may decide on seizure of property for the purpose of securing the civil claim pending validity date of the decision, unless such measures have not been taken before.*

*3. Seizure may be ordered against movable and immovable property, intellectual property rights, money in any currency in cash or non-cash form, securities, corporate rights which are owned by the suspect, accused or other person who are civilly liable by law for the damage caused through actions of the suspect, accused person or an insane person who has committed a socially dangerous act and stay with him or with other physical or legal persons to secure possible confiscation of property or civil action.*

*4. Ban on use of property as well as ban of disposal of such property may be applied only in cases where non-application thereof may entail disappearance, loss of or damage to the property concerned, or other consequences that may obstruct criminal proceedings.*

*5. Ban on use of living quarters where any persons reside on legitimate grounds is prohibited.*

The confiscation of proceeds of crime (b) and returning the assets for the victims (d) pursuant to the Ukrainian national legislation is possible based on the final and binding court judgment. Additionally, returning the assets for the victims (d) is possible based on the court decision following the consideration of a civil lawsuit.

Legal procedures for management of seized and confiscated assets (c) and asset sharing (e) are absent from the national legislation of Ukraine.

**6. Is your State in a position to co-operate with other States on the basis of reciprocity and in the absence of a treaty as regards to:**

- a. search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. returning the assets for the victims?**
- d. asset sharing?**

The national Ukrainian legislation (the Criminal Procedure Code of Ukraine) envisages the possibility of providing legal assistance in the criminal proceedings on the basis of reciprocity if the written guarantee is given by the requesting state to accept and consider a Ukrainian request under the same terms in the future.

**7. Is your State in a position to provide mutual legal assistance for the purpose of, or, related to non-conviction based confiscation and other measures (for instance civil forfeiture)? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

The national Ukrainian legislation (the Criminal Procedure Code of Ukraine) envisages the possibility of providing legal assistance in the criminal proceedings to foreign states by conducting any procedural actions envisaged by the said Code or an International Agreement of Ukraine.

The provisions of the said Code envisage the possibility of seizing the property and assets which may originate from crime at the stage of pre-trial investigation as security for a civil claim in the criminal proceedings or property confiscation in accordance with a court judgment.

**Can you in particular provide the requested information regarding the following phases of the Non Conviction Based (NCB) proceeding:**

- a. the information-gathering phase, during which criminal information is often requested for use within a NCB proceeding**
- b. seizure of proceeds of crime?**
- c. confiscation of proceeds of crime?**
- d. management of seized and confiscated assets?**
- e. returning the assets for the victims?**
- f. asset sharing?**

The national Ukrainian legislation (the Criminal Procedure Code of Ukraine) envisages the possibility of providing legal assistance in the criminal proceedings to foreign states by conducting any procedural actions envisaged by the said Code or an International Agreement of Ukraine.

Specifically the prosecution can gather evidence at the stage of pre-trial investigation by conducting detective actions and covert detective actions, by requesting and obtaining objects, documents, information, expert opinions, audit findings, inspection certificates from bodies of public authority and local government, enterprises, institutions, organisations, officials and private individuals (a); initiate seizure of proceeds of crime (b).

The confiscation of proceeds of crime (c) and returning the assets for the victims (e) pursuant to the Ukrainian national legislation is possible based on the final and binding court judgment. Additionally, returning the assets for the victims (d) is possible based on the court decision following the consideration of a civil lawsuit.

Legal procedures for management of seized and confiscated assets (d) and asset sharing (f) are absent from the national legislation of Ukraine.

**8. Is your State in a position to provide assistance in criminal, civil and administrative proceedings related to the liability of legal entities for the purpose of seizure or confiscation of proceeds of crime? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

The national Ukrainian legislation (the Criminal Code of Ukraine and the Civil Code of Ukraine) envisages the possibility of criminal and civil liability for legal entities.

In view of the above legal grounds exist in Ukraine to seize and confiscate the proceeds of crime from legal entities and to provide mutual legal assistance in criminal proceedings of the said category. Additionally, assistance regarding seizure and recovery of assets from a legal entity is possible within the scope of assistance in civil matters.

The possibility of holding legal entities liable for administrative offences is not provided for by the national legislation.

The key international legal tools for such actions in criminal investigations are the European Convention on Mutual Assistance in Criminal Matters (ETS No. 030), Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141), Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) etc.

**9. Is your State in a position to provide assistance in procedures related to virtual currencies such as bitcoins, especially as regards seizure and confiscation?**

According to the Ukrainian legislation the National Bank of Ukraine is the central authority for the state monetary policy.

For instance, the National Bank of Ukraine specified in its letter dated 10.11.2014 that "virtual currencies/crypto-currencies" shall be regarded as surrogate money, that is not backed by real value and cannot be used as means of payment by individuals or legal entities in Ukraine, because it is contrary to the provisions of Ukrainian legislation.

There is no statutory regulation of the procedures for circulation and use of “virtual currencies/crypto-currencies” in Ukraine.

In view of the above, legal assistance in proceedings regarding virtual currencies is possible when it involves conducting procedural actions in the territory of Ukraine unrelated to seizure or confiscation thereof.

**10. Is your State in a position to provide assistance, independently from a confiscation decision, for the purpose of restitution to the victim of assets obtained by criminal means? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

Pursuant to the Criminal Procedure Code of Ukraine the issue of restitution of damages done to the victim of the crime shall be decided by the court through hearing and passing a decision in a civil lawsuit within the criminal proceedings.

Therefore, taking measures aimed at the restitution to the victim of assets obtained by criminal means is possible with a final and binding decision by a competent court of a foreign jurisdiction at hand.

**11. Do you have any proposals to amend and/or facilitate the application of Council of Europe instruments for international co-operation in the field of search, seizure and confiscation of proceeds of crime, including the management of seized and confiscated property and asset sharing? (Please specify your proposal and the instrument(s) concerned).**

There are no proposals to amend and/or facilitate the application of Council of Europe instruments for international co-operation in the field of search, seizure and confiscation of proceeds of crime. There are also no proposals to amend and/or facilitate the application of Council of Europe instruments for including the management of seized and confiscated property and asset sharing, because the said procedures are absent from the Ukrainian legislation.

**UNITED KINGDOM**

**1. Do you consider the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its additional protocols as appropriate instruments for co-operation in the fields of:**

- a. search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. asset sharing?**

**(Please specify)**

The UK does not require a treaty basis to provide assistance relating to proceeds of crime and asset sharing.

There are frustrations from law enforcement agencies about the timeliness and complicated nature of the mutual legal assistance (MLA) process in general.

The existing arrangements work well with many countries but not others. It is imperative that there is a streamlined system (not necessarily MLA) for international cooperation to identify assets, for example, firstly the supply systems for goods and, secondly, trace the benefits. Law enforcement agencies wonder if a specific provision could be made relating to assistance in asset tracing.

**2. When using the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:**

- a. search and seizure of proceeds of crime?**
- b. confiscation of proceeds of crime?**
- c. management of seized and confiscated assets?**
- d. returning the assets for victims?**
- e. asset sharing?**

**(Please specify)**

The UK does not require a treaty basis to provide assistance relating to proceeds of crime and asset sharing.

The Proceeds of Crime Act 2002 ("POCA") sets out the UK legislative scheme for the recovery of the proceeds of crime. This includes a value-based confiscation order following any criminal conviction. There are other means of recovering the proceeds of crime which do not require a conviction, namely civil recovery, cash seizure and taxation powers.

UK legislation also provides for a number of financial investigative powers, namely production orders, search and seizure warrants, disclosure orders, customer information orders and account monitoring orders. There are also powers that allow for the "restraint" or "freezing" of assets to prevent dissipation of assets prior to orders being made. All these powers are also available to assist overseas countries in their cases where evidence and property is located in the UK.

We have not encountered any legal or practical difficulties which directly relate to this Convention in relation to criminal confiscation; although the number of requests is low.

However, the position of seeking assistance in non-conviction based confiscation (known as civil recovery in the UK) has raised certain issues as some partners have difficulties recognising the concept and whether the Convention provides for this.

There are difficulties in this time of diminishing resources, agencies can find it more difficult to provide assistance. Capacity rather than capability is an issue, in particular the lower values and impact the



crime. There is also frustration that the modern financial world is able to transfer money instantaneously, but formal mutual legal assistance is an onerous and slow process. There are also difficulties where there is intelligence suggesting a subject has a presence in a jurisdiction but specific financial or asset details are unknown – it makes it difficult/impossible to frame a request under the Convention.

In respect of returning assets to victims, the primary purpose of a request under the Convention must be related to the proceeds of crime. If the purpose of a request for assistance is for the return of assets to victims, the UK does not apply the Convention. A side effect of providing assistance in the recovery of the proceeds of crime may be the return of assets to victims; and the UK is happy to provide cooperation in such cases.

**3. When using the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No.198) as a basis for co-operation, what are the possibilities within your national system? Have you encountered any legal or practical difficulties? Please specify your answer as regards to:**

- f. search and seizure of proceeds of crime?
- g. confiscation of proceeds of crime?
- h. management of seized and confiscated assets?
- i. returning the assets for victims?
- j. asset sharing?

**(Please specify)**

The UK does not require a treaty basis to provide assistance relating to proceeds of crime and asset sharing. Note that this Convention has only entered into force for the UK on 1 August 2015.

The UK are aware of the advantages that this Convention will provide including making it easier to obtain compliance by other States when making MLA requests request. However, without further experience the UK is unable to provide any further details.

#### **4. Introduction**

A problem frequently observed in the case of seizure and/or the transfer of execution of a confiscation order is that member States are not always able to ensure the implementation of a request grounded on a so-called value-based confiscation system. This system is described in both conventions as a system with which it is possible to co-operate besides the so-called object basis confiscation system. In both systems, a criminal conviction is necessary. In the value-based confiscation system, the criminal profits are calculated. Ultimately, on the basis of these calculations, the judge imposes an obligation to pay an amount of money which is equivalent to the criminal profits acquired. The confiscation order can then be executed on all assets belonging to the convicted person. In this regard, it is not required to prove that these assets have been obtained directly from the criminal offence.

**Question: Could the competences mentioned in question 2 and 3 be exercised in the case of a request grounded on the value-based confiscation system? Please specify your answer as regards to:**

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for the victims?
- e. asset sharing?

**(Please specify)**

Yes.

The UK operates a value based confiscation system, but domestic legislation provides that assistance in both property-based and value-based confiscation orders is possible.

In the UK a confiscation order does not provide for the confiscation of particular property, but rather orders the defendant to pay a set amount out of whatever resources are available to him or her. The defendant is given a set time to pay the order after which he or she is liable for interest and may be subject to a default sentence for failing to pay.

Domestic law provides for restraint orders, which prevent a person subject to a criminal investigation or criminal proceedings dealing with any realisable property to prevent the dissipation of assets that may be subject to a confiscation order. The concept of realisable property can be made against any of a defendant's property (legitimate or illegitimate) that can be used to pay towards the value of a confiscation order. Domestic law also allows for the appointment of a receiver to manage restrained assets or to enforce a confiscation order.

The lack of identifying actual assets against which a restraint order or confiscation order can be enforced can cause difficulties in providing timely and focused assistance. It can be difficult to provide powers to seize and sell specific assets.

**5. Several member States recognize the possibility of seizure and confiscation of assets which belong *de facto* to the accused/convicted person but are legally considered as belonging to a third person, mostly the so-called Straw man.**

**Do you have the possibility to execute such a request? If not, for which reasons, and if yes, under which conditions? Please specify your answer as regards to:**

- a. Search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. management of seized and confiscated assets?
- d. returning the assets for the victims?
- e. asset sharing?

**(Please specify)**

As the UK operates a value-based system, the identification of particular property is not required and so this issue is not a barrier. In calculating the benefit of crime, the value of assets that have been passed to others can be calculated into the amount set on the confiscation order. This matter is referred to as a "tainted gift". The defendant makes a gift if he transfers assets to another for significantly less consideration than its value at the time he obtained it.

Execution of requests is a matter of application of resources on a case by case basis. This may depend on the proposed value and assessed risk and potential criminality of the subject.

**6. Is your State in a position to co-operate with other States on the basis of reciprocity and in the absence of a treaty as regards to:**

- a. search and seizure of proceeds of crime?
- b. confiscation of proceeds of crime?
- c. returning the assets for the victims?
- d. asset sharing?

**(Please specify)**

The UK does not require a treaty basis to provide assistance relating to proceeds of crime and asset sharing.

**7. Is your State in a position to provide mutual legal assistance for the purpose of, or, related to non-conviction based confiscation and other measures (for instance civil forfeiture)? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

**Can you in particular provide the requested information regarding the following phases of the Non Conviction Based (NCB) proceeding:**

- a. the information-gathering phase, during which criminal information is often requested for use within a NCB proceeding**
- b. seizure of proceeds of crime?**
- c. confiscation of proceeds of crime?**
- d. management of seized and confiscated assets?**
- e. returning the assets for the victims?**
- f. asset sharing?**

Yes, the UK is able to provide MLA for the purpose of, or, related to non-conviction based confiscation. Domestic legislation provide for investigative, freezing and recovery assistance to overseas countries. The UK court has to be satisfied, on the balance of probabilities that the identified property was obtained as a result of crime.

**8. Is your State in a position to provide assistance in criminal, civil and administrative proceedings related to the liability of legal entities for the purpose of seizure or confiscation of proceeds of crime? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

Yes. References to person in UK law includes a body of persons corporate or incorporate (see the Interpretation Act 1978)

**9. Is your State in a position to provide assistance in procedures related to virtual currencies such as bitcoins, especially as regards seizure and confiscation?**

The UK would conduct proceedings based on the value of the bitcoins, i.e. the courts would specify a confiscation order on the defendant which would reflect the value of the bitcoin. The UK can also restrain virtual currencies depending on the nature of how they are held.

**10. Is your State in a position to provide assistance, independently from a confiscation decision, for the purpose of restitution to the victim of assets obtained by criminal means? If so, please specify the conditions and the instrument(s) used as a legal basis. If not, please specify the legal obstacles.**

Domestic law makes it clear that, where there is both a confiscation order and a compensation order, and the defendant does not have the means to pay both, monies collected under the confiscation order should be used first to settle any outstanding compensation to victims. Compensation orders are made under other legislation.

**11. Do you have any proposals to amend and/or facilitate the application of Council of Europe instruments for international co-operation in the field of search, seizure and confiscation of proceeds of crime, including the management of seized and confiscated property and asset sharing? (Please specify your proposal and the instrument(s) concerned).**

None at present.