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

2nd Assessment Report of the Conference of the Parties to CETS No. 198 on Romania[1]

[1] Adopted by the 4th meeting of the C198-COP, Strasbourg, 12-14 June 2012

Romania is a State Party to 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) since 1 May 2008. This assessment of the implementation of the Convention in Romania followed the decision of the 2nd and 3rd meeting of the Conference of the Parties (C198-COP) in 2010 and 2011. This Assessment Report was adopted at its 4th meeting (Strasbourg, 12-14 June 2012).

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A. Background information and general information on the implementation of the Convention

1. The Council of Europe **Convention on Laundering, Search, Seizure, Confiscation of the Proceeds from Crime and Financing of Terrorism**, which is the treaty number 198 in the Council of Europe Treaty Series (it is therefore referred hereinafter as CETS 198 or "the Convention") establishes under Article 48 a monitoring mechanism which is responsible for following the implementation of the Convention, the Conference of the Parties (COP).

2. The Convention came into force on 1 May 2008, when 6 instruments of ratification were deposited with the Secretary General of the Council of Europe, all of which were Member States of the Council of Europe.

3. The monitoring procedure under this Convention deals with areas covered by the Convention that are not covered by other relevant international standards on which mutual evaluations are carried out by MONEYVAL and the Financial Action TASK Force (FATF). At its second meeting in April 2010, the COP adopted an evaluation questionnaire based on areas where the Convention "adds value" to the current international AML/CFT standards and agreed that the Conference would normally assess the countries in the order that they ratified the Convention[2]. At the third meeting, it was confirmed that Romania would be the second country to be assessed under this mechanism.

4. The monitoring questionnaire was sent to the Romanian authorities in March 2011, who sent their replies in June 2011. The responses to the questionnaire were coordinated by the Romanian Ministry of Justice.

5. In June 2010, a training seminar for potential reviewers took place and three reviewers were subsequently identified to assess the implementation of the Convention by Romania.

6. A draft report was prepared by the reviewers, namely, Mr Manfred Galdes (Malta) on the issues of the functioning of FIU, Ms Anna Ondrejova (Slovak Republic) on new legal aspects under the CETS 198 and Ms Henriett Nagy (Hungary) on international co-operation. This second monitoring report by the COP is based primarily on a desk review of the replies by Romania to the monitoring questionnaire. Public information available in MONEYVAL adopted evaluation or progress reports have been considered and taken into account. This report is not intended to duplicate but complement the work of other assessment bodies.

7. Romania signed the Convention on 16 May 2005 and ratified it on 21 February 2007. It entered into force in respect of Romania on 1 May 2008. Romania has deposited a series of declarations (see annex IV)[3] in connection with the ratification.

8. The draft report was discussed at a pre-meeting on 7 and 9 May, and on 11 June, and subsequently discussed and adopted by the COP in June 2012 (for the purposes of the present report, the exchange rate of **1€ = 4,46 lei** was used)**.**

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[2] If there is a number of countries that ratified on the same day, they would be assessed in alphabetical order.

[3] A list of declarations and reservations to CETS 198 is kept up to date on the website of the Treaty Office of the Council of Europe (link)

9. Romania is a founding member of MONEYVAL and has been the subject of three evaluations by MONEYVAL. A fourth round assessment will be discussed by MONEYVAL in 2013. The adopted third round report and third round progress reports are available on MONEYVAL's website (www.coe.int/MONEYVAL). The first and second progress reports were adopted in September 2009 and December 2011, respectively. The latter contains information on recent developments which have occurred in Romania in the last two years, including :

- amendments to the AML/CFT Law N° 656/2002 - adopted by the Parliament in November 2011 and which entered into force on 7 December 2011 - provide both simplified and enhanced customer due diligence (CDD) measures to address various levels of risks, including stricter measures for the identification of beneficial owners and record keeping;

- a new Civil Code was adopted in 2009 and came into force in October 2011. Furthermore, the new Criminal Code, adopted in July 2009, the new Criminal Procedure Code and the new Civil Procedure Code, both adopted in July 2010, are expected to enter into force in 2013;

- additional regulatory measures were taken by the supervisory and control authorities in order to implement the various requirements of the primary legislation related to AML/CFT;

- adoption, in June 2010, of the National strategy for prevention and combating ML and FT including an action plan, enhancing, optimising and consolidating the national capacity for prevention and combating of ML and FT;

- new legislative measures were adopted in respect to the power of the financial intelligence unit to postpone transactions at the request of a foreign FIU providing harmonisation with the Warsaw Convention (ratified in 2007);

- amendments where passed to achieve a higher degree of harmonisation with the EU Directive 2005/60/EC and the FATF Recommendations;

- various additional measures to address deficiencies identified in the context of the MONEYVAL evaluation process.

B. Measures to be taken at national level

I. General provisions

1. Criminalisation of money laundering – Article 9 paragraphs 3, 4, 5, 6

The areas where it is considered that the Convention adds value on money laundering criminalisation are as follows:

- The predicate offences to money laundering have to, as a minimum, include the categories of offence in the Appendix to the Convention (which puts the FATF requirements on this issue into an international legal treaty [article 9(4)]).
- As to proof of predicate offence, paragraphs 5 and 6 establish new legally binding standards to better facilitate the prevention of money laundering: clarification that a prior or simultaneous conviction for the predicate offence is not required [article 9(5)], and to clarify that a prosecutor does not have to establish a particularised predicate offence on a particular date [article 9(6)].
- To allow for lesser mental elements for money laundering of suspicion (and negligence, the latter of which was to be found also in ETS141) [article 9(3)].

10. The relevant Convention provisions are set out in Annex I.

Description and analysis

11. Money laundering is criminalised under Article 23 of Law No. 656/2002 (the law appears in Annex V) *on the prevention and sanctioning of money laundering and on setting up of certain measures for the prevention and combating terrorism financing* (hereinafter: the AML/CFT Law), which makes liable to imprisonment from 3 to 12 years, the following criminal acts*:*

(1) (…)
a) the conversion or transfer of property, knowing that such property is derived from criminal activity, for the purpose of concealing or disguising the illicit origin of property or of assisting any person who is involved in the committing of such activity to evade the prosecution, trial and punishment execution;

b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity;

c) the acquisition, possession or use of property, knowing, that such property is derived from any criminal activity;

*(2) *** Repealed*
(3) The attempt is punishable.
(4) If the deed was committed by a legal person, one or more of the complementary penalties referred to in article 53 index 1, para (3) (a) –(c) of the Criminal Code is applied, by case, in addition to the fine penalty.
(5) Knowledge, intent or purpose required as an element of the activities mentioned in paragraphs (1) may be inferred from objective factual circumstances.

12. The reviewers note that, as indicated in MONEYVAL's second 3rd Round progress report of 16 December 2011 (paragraph 9), a new Criminal Code (CC) was adopted in

July 2009 and is expected to enter into force in 2013 according to the Romanian authorities. The reviewers note also that Article 121 of the draft law *on the implementation of the new CC and on certain legislative changes* provides for some amendments to the above article 23 of Law No. 656/2002[4]: a) the upper maximum penalty applicable is slightly lowered (3 to 10 years, instead of 3 to 12 years); b) self-laundering is abolished in respect of acquisition, possession or use (but not in respect of the other elements); the reviewers were not entirely clear as to the purpose of this amendment but they have some concern bout suppressing a material element of the offence which would limit prosecutorial discretion in money laundering cases; c) knowledge and purpose would – still – be inferable from objective factual circumstances, but not "intention" as is currently the case under article 23 paragraph 5 of the AML/CFT Law; d) the provisions on corporate liability of paragraph 4 would disappear (the general applicability of corporate liability is foreseen by the CC and it applies in connection with any other separate piece of criminal legislation) and be replaced by a provision to the effect that the laundering offence is constituted also where the predicate offence was committed abroad. The Romanian authorities explain that doctrine and case law recognise that intention can be inferred from objective factual circumstances and that keeping such a reference in respect of the ML offence specifically would constitute an unnecessary redundancy. They also indicate that the main reason for abolishing self-laundering in respect of acquisition, possession or use is motivated by the need (following opinions from practitioners) to avoid confusions with the offence of concealment (of stolen goods). They finally informed the reviewers that the content of the draft law *on the implementation of the new CC and on certain legislative changes* is still under discussion in the Romanian Parliament.

13. Concerning the requirements of Article 9, paragraph 4 of the Convention, and as indicated in MONEYVAL's 3rd Round Report of July 2008, Romania has now an "all-crimes" approach, evidenced by the words "criminal activity" used in article 23 of Law No. 656/2002, which do not refer to specific offences (as was the case in the past); all the categories of offences listed in the Appendix to CETS Nº 198 are therefore predicate offences for the purposes of the incrimination of money laundering. The Romanian authorities provided a table with the corresponding domestic incriminations.

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[4] "Law no. 656/2002 on preventing and sanctioning money laundering and to establish measures to prevent and combat terrorist financing, published in the Official Gazette, Part I, no. 904 of 12 December 2002, as amended and supplemented, is hereby amended as follows:

A. Article 23 reads as follows:

"*Art 23 - (1) Constitute money laundering and shall be punished with imprisonment from 3 to 10 years:*

a) the conversion or transfer of property, knowing that such property is derived from criminal activity, for the purpose of concealing or disguising the illicit origin of property or of assisting any person who is involved in the committing of such activity to evade the prosecution, trial and punishment execution;

b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity;

c) the acquisition, possession or use of property, knowing such property is derived from any criminal activity.

(2) The act referred to in paragraph. (1) c) is not a crime when it was committed by the author or by a participant in the commission of the offense, provided as such under criminal law, from which the property originated.

(3) The attempt is punishable.

(4) Knowledge of the wealth or purpose may be inferred from objective factual circumstances.

(5) The provisions of paragraphs. (1) - (4) above applies whether the offense in which the property has been committed in Romania or abroad."

All the offences listed in the Appendix to CETS Nº 198 are criminal offences under the Criminal Code of Romania or other criminal law provisions contained in other Codes (the Customs Code, for instance) or special laws (for instance Law 39/2003 on preventing and countering organised crime, Law 535 / 2004 on preventing and countering terrorism, Law 678/2001 on preventing and countering human trafficking).

14. As for the requirements of Article 9, paragraph 5 of the Convention, Romania has not taken explicit legislative measures to address these provisions. The Romanian authorities recall that in principle, Romanian legislation: a) does not require any prior or simultaneous conviction for a predicate offence in order to obtain a conviction for money laundering (the latter is an autonomous or "stand alone" offence). This was already underlined in MONEYVAL's 3rd Round Report. The latter also pointed out that judicial practice shows, however, that most money laundering indictments are brought jointly for the predicate offence and the money laundering act(s).

15. Concerning article 9 paragraph 6 of the Convention, the Romanian authorities also indicate that theoretically, it is possible to convict an offender for money laundering where the accusation substantiates successfully that the property addressed under article 9(1) paragraph a and b of CETS Nº 198, originated from a predicate offence without it being necessary to establish precisely which offence. They stress that until recently, there had been no prosecutorial nor court practice to support this.

16. Article 9 paragraph 3 of CETS N°198 makes it possible for countries to allow in legislation or through other measures for a money laundering offence to be established where the person suspected or ought to have assumed that the property was proceeds – (it is recalled that the Convention provides that countries may take either measure or both). The replies to the questionnaire only indicate that money laundering committed by negligence does not constitute a criminal offence under Romanian law. The reviewers recall that the various criminal actions contemplated under the money laundering incrimination (conversion or transfer; concealment or disguise, acquisition, possession or use [of property]) must be accomplished with the mental element of "knowledge" of the illicit origin of assets in order to constitute a criminal offence (in accordance with article 9 paragraph 1 of CETS N° 198). The wording does not refer to a lesser mental element. The reviewers also note that Romanian criminal law provides for a distinction between intentional and negligent offences under article 19 CC[5]. The latter is applicable only where the law specifically provides it, which is not the case of article 23 of Law No. 656/2002. Intention includes, in accordance with article 19 CC both 1st degree intent (*dolus directus*) but also conditional intention where it is sufficient for the offender to accept the possible realisation of the offence as a consequence of his/her actions (*dolus eventualis*). In conclusion, although it is clear that Romania has

[5] Art. 19. – "(1) Guiltiness occurs when the deed, which constitutes social threat, is committed with intention or by negligence.
1. The deed is committed intentionally when the offender:
a) predicts and intends the result of his deed through the perpetration of this action;
b) predicts the result of his deed and even if he does not intend it, accepts the possibility of its occurrence.
2. The deed is committed by negligence when the offender:
a) predicts the result of his deed but does not accept it with groundless consideration that the result will not occur;
b) does not predict the result of the action, although the person should have and could have predicted it.
(2) The deed representing an action committed by negligence constitutes an offence only if the law specifically provides it.
(3) The deed representing a non-action represents an offence, no matter if committed intentionally or committed by negligence, except for the case in which the law specifically provides sanctions for deliberate perpetration."

not taken measures to implement article 9 paragraph 3 of CETS N°198, there is probably room for practitioners to develop new case law on the basis of the general rule applicable to intent. Especially since the money laundering incrimination also provides for the possibility that knowledge, intent or purpose may be inferred from objective factual circumstances, which reflects the requirements of article 9 paragraph 2c of the Convention (this provision falls outside the scope of the present review).

Effective implementation

17. The MONEYVAL 3rd Round Report already pointed out that most cases taken to court have been cases of self-laundering and that overall, the low number of convictions compared to prosecution was putting in question the effectiveness of the money laundering incrimination. MONEYVAL's Second progress report of December 2011 provides some figures which would indicate a slight improvement, with an average of 8 cases with convictions per year, over the last few years, as a result of 40 to 50 charges for ML brought on average every year according to the information provided by Romania for the present report.

18. The replies to the questionnaire indicate that there is still no relevant practice of judicial institutions as regards convictions for money laundering without establishing precisely the predicate offence(s). A number of cases were pointed to, as examples for the autonomy of the ML offence but the reviewers noted that these actually involved a conviction also for the underlying predicate offence. The Romanian authorities confirmed during the preparation of this report that the possibility of prosecuting money laundering as an autonomous crime is still controversial among practitioners, due to a restrictive interpretation of the legal provisions, as confirmed in recent jurisprudence of the Constitutional Court. It would appear, however, that a "pioneering" prosecution was brought in 2010, in which ML was dealt with as a truly autonomous crime; the case is still ongoing in court. The case concerns various members of an organised crime group, consisting of a network of thieves who operated abroad and transferred the proceeds to the group leaders in Romania. The prosecutors concluded that part of the movements of funds in which the group was involved constituted money laundering acts, for which members of the group where indicted.

19. The reviewers also noted with particular interest that in order to change the current jurisprudence, the General Prosecutor recently issued a legal opinion, to be distributed to all prosecutors, in which it is concluded that Romanian legislation does allow to convict a person for money laundering as an autonomous crime (i.e. without prior or simultaneous conviction for the predicate offence and without a precise determination of the predicate offence or of its author). It recommends that the criminal origin of assets involved in a money laundering scheme should be established on the basis of indirect evidence (the accused was involved in criminal activity or had connections with people involved in such activities, s/he carried out economic operations concerning assets which significantly exceed the actual legitimate income, use of operations of atypical nature and/or aiming to the distortion of their origin, absence of legal justification for the amounts used in the transactions). It was explained that although this legal opinion is not binding for the prosecutors, it encourages them to bring further pertinent cases and this is currently supported by continuous training for prosecutors which has been organised in cooperation with foreign authorities since 2010. The reviewers welcome these developments and strongly urge that more prosecutions are brought on the basis of this opinion.

Recommendations and comments

20. Romania has not fully taken advantage of article 9 of the Convention. In the process of drafting the present report, the Romanian authorities explained that the reason for not

having already included in the draft legislation mentioned in paragraph 12 above, an explicit reference to the autonomous nature of the ML offence was to avoid interpretation *a contrario* by the courts that it is currently not an autonomous offence. In the reviewers' view, if there is no final ruling confirming the current "pioneering" case referred to above, the Romanian authorities would be well advised to consider making explicit reference in statutory form to the provisions of article 9 paragraph 5 of the Convention. In light of the considerations contained in the above paragraphs, **it is recommended:**

- **to consider introducing in Article 23 of Law No. 656/2002, an incrimination of some of the acts referred to in paragraph 1 of Article 9 of the CETS N° 198, in either or both of the following cases where the offender:**
  - **suspected that the property was proceeds;**
  - **ought to have assumed that the property was proceeds;**

- **to consider - in the light of the outcome of the on-going autonomous money laundering case outlined above - whether to provide for an explicit provision ruling out the necessity of the prior or simultaneous conviction for the predicate offence for rendering a conviction for money laundering, and to bring prosecutions in serious cases where there is no prior or simultaneous convictions for predicate offences;**

- **to issue, as necessary, further prosecutorial guidance in money laundering cases, to familiarise prosecutors and investigators with the mandatory provisions of Article 9 paragraph 5 and 6 of the Convention, and to develop prosecutorial practice based on these provisions of the Convention**.

21. Finally, given the concerns expressed earlier on a possible suppression of certain material elements from the incrimination of self-laundering, the Conference of the Parties would welcome follow-up on this matter.

2. Corporate criminal liability – Article 10 paragraphs 1 and 2

The areas where it is considered that the Convention adds value are as follows:

- Some form of liability by legal persons has become a mandatory legal requirement (criminal, administrative or civil liability possible) where a natural person commits a criminal offence of money laundering committed for the benefit of the legal person, acting individually who has a leading position within the legal person (to limit the potential scope of the liability). The leading position can be assumed to exist in the three situations described in the provisions (see Annex II).

- According to Article 10 paragraph 1:

  "*Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:*

  a. a power of representation of the legal person; or

  b. an authority to take decisions on behalf of the legal person; or

  c. an authority to exercise control within the legal person,

  as well as for involvement of such a natural person as accessory or instigator in the

above-mentioned offences."

- The Convention expressly covers lack of supervision (article 10 paragraph 2 makes it a separate, additional requirement).

Description and analysis

22. Criminal liability of legal entities was introduced in Romania in 2006 and is provided for under Article 19[1] of the Romanian Criminal Code:

> *" (1) Legal persons, except the State, public authorities and public institutions which carry out an activity that cannot form the object of private sector, are criminally responsible for the crimes committed in achieving the aim of their activity, or for the crimes committed in the interest or on behalf of that legal person, if the crime was committed with the form of guilt required under criminal law.*
>
> *(2) The criminal liability of a legal person shall not exclude the criminal liability of the natural person which contributed, in every way, in committing the same crime."*

23. The replies indicate that two cumulative conditions have to be met in order to hold a legal person criminally liable: a) the crime must have been committed by a natural person who has certain factual relations with the legal person; b) the crime was committed in achieving the aim of the activity, on behalf or in the interest of that legal person. The Romanian authorities explain that the drafters of the corporate liability mechanism have used a broad approach by using the words "*crimes committed in achieving the aim of their activity, or for the crimes committed in the interest or on behalf of that legal person*" and that the definition covers the acts committed by any category of person acting on behalf of the legal person i.e. an employee or representative although the law itself is not addressing this more explicitly. Given the variety of situations involving corporate dealings that are likely to occur in practice (especially in a context of globalised markets), the reviewers inquired whether any guidance was available for practitioners on this matter, in the form of an explanatory report or "travaux préparatoires" related to the 2006 amendments. The Romanian authorities indicated that there are no such sources but according to legal doctrine, the Romanian liability model is meant to be broad and the legislator would have followed the model existing in the Netherlands, Denmark and Belgium. It is accepted that corporations are liable for acts committed by: a) any person having a leading position within the legal person; b) any person who is under the authority of the legal person including any employee; c) any person having a legal or factual relationship with the legal entity (for example, a trustee). Article 19 paragraph 2 provides that the liability of the legal person and of the natural person are not exclusive of each other and the Romanian authorities stressed that establishing the guilt of a natural person is not a pre-condition for holding a legal person criminally liable.

24. Corporate criminal liability is applicable in connection with any conduct criminalised under the provisions of the Criminal Code or other penal laws (thus including also money laundering as defined in article 23 of the AML/CFT law and financing of terrorism as defined in article 36 of Law 535/2004 on preventing and combating terrorism).

25. In accordance with article 53[1] CC, the main penalty applicable to a legal person is a fine between 2.500 and 2.000.000 lei [between 560 and 450,000 Euros]. Article 23 paragraph 4 of the AML/CFT law, in combination with article 53[1] CC, provides that money laundering offences committed by legal persons are liable to one or more of the

following additional penalties: a) dissolution of the legal entity, b) interruption/suspension of its entire activity for a period between 3 months and one year or interruption of the sector of its activity in the context of which the criminal act was committed, c) exclusion from public tenders for a period of one to 3 years; d) publication of the decision.

26. It would appear that the corporate liability machinery is broad enough to cover all elements of article 10 paragraph 1 of the Convention, in particular whether this form of liability applies where the illegal act is committed by any person addressed under paragraph 1 (for instance a person acting on the basis of a power of representation without being an employee or formal manager of the entity). The legislation does not explicitly foresee that corporate liability is provided for where the criminal conduct is the result of a lack of supervision (article 10 paragraph 2 of the Convention) but the Romanian authorities stress that this is a natural pre-condition for holding a legal person liable under criminal law.

Effective implementation

27. The Romanian authorities point out that the number of proceedings involving a legal person and leading to a conviction is increasing year after year although, as the reviewers noted, this cannot be substantiated in the context of AML/CFT (so far, there have been two final convictions: one for copyright violations in 2009, and one for fraud in 2012). For instance the second progress report of December 2011 to the last MONEYVAL evaluation report refers only to 4 indictments of legal persons for ML in the year 2008 but not a single conviction is reported for the various years under consideration. According to the Romanian authorities, one other legal person was indicted in 2010 for money laundering by the Directorate for Investigating Organised Crime and Terrorism. An order of sequester was issued in respect of an amount of one million Euro. Here again, the reviewers note that no information is available on the outcome of this case.

Recommendations and comments

28. In the light of the explanations provided by Romania, it would appear that the criminal law definition of corporate liability is broadly in line with the requirements of the Convention although it does not address explicitly all its core elements. Given the characteristics of criminal activity in Romania (see the MONEYVAL 3rd Round evaluation report of 2008[6]) and – in comparison, the very limited use of the provisions on corporate criminal liability almost 6 years after their introduction, including the fact that no final conviction has so far been pronounced in respect of a money laundering or terrorist financing offence – questions arise regarding the effective implementation of Article 19[1] of the Romanian Criminal Code.

29. In light of the above, **it is recommended to the Romanian authorities to take the necessary steps to facilitate the use of corporate liability mechanisms by judicial authorities (guidance documents, instructions etc.) also in money laundering and terrorist financing cases in the various circumstances envisaged by article 10 of the Convention (including in case of lack of supervision)**.

[6] Paragraphs 83 et seq. refer to a variety of criminal activities which actually involve (or would, in principle, involve) corporate entities including businesses: tax evasion and fraud in the field of oil business, illegal reimbursement of VAT based on illegal or fictitious transactions and involving commercial companies, use of fictitious commercial contracts, use of commercial companies for tax evasion purposes, offences in the context of public procurement, trafficking in persons etc.

3. Previous decisions – Article 11

30. Article 11 is a new standard dealing with international recidivism. It recognises that money laundering and financing of terrorism are often carried out transnationally by criminal organisations whose members may have been tried and convicted in more than one country. Article 11 provides for a mandatory requirement for the State to take certain measures but does not place any positive obligation on courts or prosecution services to take steps to find out about the existence of final convictions pronounced in another State-Party; its wording is as follows:

"Each Party shall adopt such legislative and other measures as may be necessary to provide for the possibility of taking into account, when determining the penalty, final decisions against a natural or legal person taken in another Party in relation to offences established in accordance with this Convention."

Description and analysis

31. The repetition of a crime constitutes an aggravating circumstance under Romanian criminal law. In accordance with Article 37 paragraph 3 CC a conviction rendered abroad against a person is to be taken into account[7] when determining the penalty if it has been recognised domestically by a Romanian court according to the relevant provisions of title V, chapter 1 of Law 302/2004 on international judicial cooperation in criminal matters. In particular, the Romanian court dealing with the matter needs to check the following: the right to a fair trial has been observed; the decision was issued by the competent court and the conviction does not concern a political or military offence; the decision is in line with the public order of the Romanian State; there has been no violation of the principle *ne bis in idem*; and an international agreement exists between Romania and the third country, or the condition of reciprocity is met. Specific arrangements exist in the context of the European Union[8].

Recommendations and Comments

32. The Romanian courts and prosecution services are in a position to take into account final decisions rendered in another Party in relation to offences established in accordance with CETS N° 198. The Romanian authorities have pointed out that this is actually done on an on-going basis since 1969 (date of entry into force of the current Criminal Code).

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[7] The wording of article 37 paragraph 3 CC is the following: "*the conviction decision by a foreign country regarding a deed provided also by the Romanian law will be taken into account if the conviction decision was recognised in accordance with the provisions of Romanian law within the meaning of provisions of domestic legislation*".

[8] Romanian courts may use European legal instruments, such as Council Decision 2005/876/JHA of 21 November 2005 on the exchange of information extracted from the criminal record and Council Framework Decision 2009/315/JHA *of 29 February 2009 on the organisation and content of the exchange of information extracted from the criminal records between the Member States*, to find out information regarding previous convictions issued by other Member States' courts. Even if a conviction in another State shall not be taken into account as recidivism, it may be taken into account while deciding upon the severity of a sentence. In the same context, according to relevant bilateral and multilateral conventions (e.g. European Convention on judicial cooperation in criminal matters, Strasbourg, 20 April 1959), it is provided that signatory states shall periodically communicate information regarding convictions issued against their own citizens.

4. Confiscation - Article 3 paragraph 1, 2, 3, 4 of the CETS 198

The confiscation and provisional measures set out in the Convention which are considered to add value to the international standards are in the following areas:

- Article 3 paragraph 1 introduces a new notion to avoid any legal gaps between the definitions of proceeds and instrumentalities as, according to it, *"Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds* ***and laundered property****."*
- Confiscation has to be available for ML **and to the categories of offences in the Appendix** (and no reservation is possible) (Article 3 paragraph 2).
- Mandatory confiscation for some major proceeds-generating offences is contemplated under this Convention (Article 3 paragraph 3 [Annex III]). Though not a mandatory provision, the drafters sent a signal that, given the essential discretionary character of criminal confiscation in some countries, it may be advisable for confiscation to be mandatory in particularly serious offences, and for offences where there is no victim claiming to be compensated.
- Reverse burdens are possible (after conviction for the criminal offence) to establish the lawful or other origin of alleged proceeds liable to confiscation – Article 3 paragraph 4 [subject to a declaration procedure in whole or in part].

Description and analysis

a) General confiscation (and temporary measures)

33. The general confiscation measures are contained in the Criminal Code. They apply to all offences (provided either in the Code itself or in separate special laws which establish further criminal offences). The Romanian authorities indicate that "there is no legal limitation in this respect." The relevant CC provisions are contained in article 118:

Article 118 - "Special confiscation. The following are subject to special confiscation:

a) the property resulting from the commission of a deed provided in the criminal law;
b) the property which was used, in any manner, for committing an offence, if they belong to the offender or if, belonging to another person who knew the purpose of their use. This measure cannot be ordered in case of offences committed through press;
c) the property produced, modified or adapted for the purpose of committing an offence, if it has been used to commit the criminal act they belong to the offender. Where the property belongs to another person, confiscation is applied if the production, modification or adaptation has been performed by the owner or by the offender, with the owner's understanding (knowledge).
d) the property which was given in order to determine the commission of a deed or for rewarding the perpetrator;
e) the property obtained through the commission of the deed provided by criminal law, if it is not returned to the injured person and to the extent to which they do not serve for compensation of the injured person;
f) the property whose possession is prohibited by the law.

In the case provided in paragraph 1 letter b), if the value of the property subject to confiscation is disproportionate in comparison to the nature and seriousness of the offence, confiscation is applied in part, in respect of an equivalent amount of money, taking into

consideration the consequences of the offence and the contribution of the object to the commission of the offence.

In the cases provided in paragraph 1 letters b) and c), if the property cannot be confiscated due to the fact that it does not belong to the offender and the person to whom it belongs did not know the purpose of its use, an equivalent amount of money shall be confiscated.

If the property subject to confiscation is not found, confiscation applies to money and goods up to the value of the property.

Shall also be confiscated, property and money obtained from the exploitation or use of property subject to confiscation, except the property provided in paragraph 1, letter b) and c).

The Court may not pronounce the confiscation of property which constitutes means of existence, for every day use or for exercising the offender's profession or of the person upon whom the measure of special confiscation can be applied."

34. General temporary measures are established under article 163 of the Criminal Procedure Code. They have been described in detail in the context of the MONEYVAL evaluations. It is worth mentioning that the legal provisions provide explicitly that temporary measures can be applied to secure a future fine or confiscation (or compensation of damage incurred by a third person), which avoids any discrepancies between the regimes of final and of temporary measures.

b) Confiscation (and temporary measures) in the context of money laundering and terrorist financing

35. The AML/CFT law, article 25, provides for the applicability of confiscation under article 118 CC and provisional measures under the Criminal Procedure Code, specifically in the case of money laundering and terrorist financing.

***Art. 25** - (1) In case of money laundering and terrorism financing offences, the provisions of Art. 118 of the Criminal Code shall be applied with respect to confiscation of the property.*
(2) If the property , subject to confiscation, are not found, their equivalent value in money or the property acquired in exchange shall be confiscated.
(3) The income or other valuable benefits obtained from the property referred to in para (2) shall be confiscated.
(4) If the property subject to confiscation cannot be singled out from the licit property, there shall be confiscated the property up to the value of the property subject to confiscation
(5) The provisions of para (4) shall also be applied to the income or other valuable benefits obtained from the property subject to confiscation, which cannot be singled out from the licit property.
(6) In order to guarantee the execution of confiscation of property, the application of provisional measures provided for in the Criminal Procedure Code shall be mandatory.

36. Article 25 (paragraphs 1 to 5) of the AML/CFT law refers back to the general confiscation mechanism of the CC but it also foresees specific measures in the context of money laundering and terrorist financing. Paragraph 6 refers to the applicability of the general temporary measures contained in the Criminal Procedure Code, i.e. Article 163 which was mentioned earlier. The reviewers enquired about the interrelations between the two sets of rules as they understand that the CC and CPC provisions are applicable anyway to all acts criminalised in the general provisions of the CC but also in other pieces of legislation (such as the AML/CFT Law). The Romanian authorities explained that art. 118 CC provides the general mechanism of confiscation, while art. 25 of the AML/CFT Law contains some specific provisions like para. 4 and 5 which are absent in art. 118 of CC. On the other hand, the Romanian legislator intended to

emphasise the necessity and importance of seizure and confiscation in relation to ML/FT cases[9].

37. Provisions on confiscation also exist in further specific laws. Law 39/2003 *on preventing and countering organised crime* provides that in case of offences stipulated in article 7 (initiation or constitution of an organised crime group, or joining or supporting such a group in any manner), in article 10 (concealment of goods if these are a result of a serious offence committed by one or more of the members of an organised crime group), the provisions of Article 118 CC shall be applied for the deprivation of assets. Similarly, article 17 of the Law 143/2000 *on preventing and countering trafficking and illicit consumption of drugs* provides – without making a reference to Article 118 CC - for the mandatory confiscation of drugs and other assets that constitute the subjects of the offences, as well as their equivalent in money; it also provides for the mandatory confiscation of money, values and any other goods obtained from the "capitalisation of the drugs and other goods" which constitute the subject of the offence.

38. As can be seen from the above provisions, Romanian legislation allows for the confiscation of instruments of crime (under article 118 CC), proceeds of crime / their equivalent value / assets generated by those proceeds (both under Article 118 CC and Article 25 of the AML/CFT law), as well as proceeds held by third persons under certain circumstances (at least under Article 118 CC; Article 25 of the AML/CFT law does not mention it). The Romanian authorities explained that the CC provisions on confiscation remain applicable in all cases which fall also under special laws on AML/CFT, corruption, organised crime etc. However, confiscation of criminal proceeds which have been intermingled with legitimate assets (for instance for the acquisition of real estate property or investment in an existing business activity) can only be applied under the AML/CFT Law, i.e. in case of a conviction for money laundering.

39. The Romanian authorities explain that the concept of property ("bunuri") used both in article 118 CC and article 25 of the AML/CFT is meant to embrace the broadest range of criminal assets, including laundered property in a stand-alone ML case and the direct and indirect proceeds of underlying predicate offences. In the context of confiscation of laundered property, there has been no practice as yet as there has been no conviction in a stand-alone ML case.

40. Article 118 CC applies in respect of proceeds from any offence provided under criminal law, and Romania has made no declaration pursuant to paragraph 2 a) or 2b) of Article 3 of the Convention. All categories of offences included in the Appendix to the Convention are criminalised and may therefore result in criminal confiscation.

41. Confiscation and temporary measures are mandatory under the general provisions of the Criminal Code and Criminal Procedure Code respectively, as well as under the specific provisions of the AML/CFT law and those of Law 39/2003 *on preventing and countering organised crime* and Law 143/2000 *on preventing and countering trafficking and illicit consumption of drugs;* Romania has thus measures in place that meet the principles of article 3 paragraph 3 of the Convention.

42. As regards the apportionment of the burden of proof for the purposes of confiscation post-conviction, it seems that the situation has recently evolved. In their initial

[9] The Romanian authorities also indicated that in light of the latest decisions rendered by the Bucharest Court of Appeal and Bucharest Tribunal, legal theory considers that art. 25 of the AML/CFT has to be interpreted also in consideration of the finality and purposes of the AML/CFT Law; as a result, confiscation under the AML/CFT Law can be applied also in relation to assets of persons who are involved in a ML case involving various offenders but who are not personally guilty for ML.

comments, the Romanian authorities recalled the existence of a specific provision in article 44 (paragraph 8) of the Constitution of 21 November 1991, which states that "*Legally acquired assets shall not be confiscated. Legality of acquirement shall be presumed".* For this reason, any requirement for the perpetrator of a crime to prove the origin of assets of an alleged criminal origin would be contrary to the constitutional order of Romania. The burden of proof as regards the possible illicit character of assets rests, in principle, with the judicial bodies. Therefore, Romania has made a declaration with respect to article 3 paragraph 4 of the Convention (see appendix 1): "In accordance with Article 53, paragraph 4, of the Convention, the provisions of Article 3, paragraph 4 shall apply only partially, in conformity with the principles of the domestic law." The replies to the questionnaire do not contain an indication about the precise objective of the reservation and how Romania accepts to implement "partly" article 3 paragraph 4 of the Convention, which is one of three options foreseen by article 53 paragraph 4; countries can refuse to apply article 3 paragraph 4 a) as a whole, b) partly or c) in a specific manner to be determined by the country itself.

43. At a later stage of the preparation of the present report, the Romanian authorities then referred to the recent introduction, in April 2012, of the mechanism of extended confiscation[10] which provides for the mandatory confiscation of assets with an apportionment of the burden of proof, under certain conditions: a) the person is found guilty for having committed an act punishable with 5 years' imprisonment or more which falls under the 21 categories of offences designated in the new legislation (including procuring, drug trafficking, corruption, money laundering, terrorism, tax evasion, fraudulent bankruptcy); b) the accused has, over the last 5 years preceding the criminal act, accumulated property which exceeds what s/he has earned in a legitimate manner (confiscation is applicable to those additional assets); b) the Court is convinced that the property in question derives from one or more of the designated offences. This new mechanism includes third-party and value-based confiscation, and it allows for the confiscation of assets derived from the criminal proceeds.

Effective implementation

44. The replies to the questionnaire describe some cases to demonstrate the effectiveness of confiscation in general, and that confiscation is mandatory. In fact, information on confiscation in a money laundering case is available only for one case (an organised crime case involving 27 persons, in which the High Court of Cassation ordered the confiscation of a house and some land property as well as one car, which had been subject to temporary measures during criminal investigation). The Romanian authorities also provided figures on confiscation specifically in the context of corruption (cases dealt with by the National Anticorruption Directorate[11] - DNA). In the opinion of the reviewers, this is not sufficient to demonstrate the effective use of confiscation measures and it remains unclear how widespread is their use in respect of all major proceeds generating offences subject to the ordinary processes of prosecution.

[10] Law 63/2012 *on amending and completing the Criminal Code and law no. 286/2009 on the Criminal Code* (published in the Official Gazette no. 258 of 19 April 2012) aims at transposing art. 3 of the Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property (as published in the Official Journal of the European Union L 68 from March 15, 2005).

[11] a) in 2008, the trial courts, through final decisions, ruled the confiscation of the following sums and goods: 160,715.97 lei (approximately 44,000 Euro); 39,316.50 Euro; 13,720 USD; 4,000 DM; 25,000 Forints; 320 packages of cigarettes; b) in 2009, the sums and goods confiscated by the courts were as follows: 1,415,903.88 lei (approximately 334,000 Euro); 51,084.50 Euro; 3,664 USD; a „Toyo" air conditioner; two sets of glasses; one set of furniture; a „Hugo Boss" suit; one „Vitopend" central heating; 40 litres of diesel oil and two Nokia telephones; c) In 2010, the sums and goods confiscated by the courts were as follows: 324,878.40 lei (approximately 77,000 Euros); 39,386.76 Euros; 106,800 DM (approximately 53,400 Euros); 6,700 USD; a Mercedes car; a pair of golden earrings.

45. The Romanian authorities also provided an overview of the total volume of assets subject to provisional measures, over the period of 2008 to 2010 in relation to the 20 categories of offences listed in the appendix to the Convention; it shows that measures have been applied in respect of half of these categories, and on a regular basis in respect of 7 of these. No information is available concerning the volume of assets subject to confiscation measures, which is the core subject of article 3.

Recommendations and comments

46. Based on the information made available, the Romanian legal framework on confiscation is broadly in line with the requirements under review of article 3 of the Convention. Some consistency issues remain: for instance, confiscation is not applicable in to all categories of offences designated in the Annex to the Convention in respect of criminal assets which have been intermingled with legitimate property. This situation is not in line with article 5 items b and c of the Convention. Furthermore, Romanian law does not allow for the confiscation of instruments belonging to bona fide third Parties. The Romanian authorities may wish to further look into these matters, which fall outside the scope of the present review. The reviewers note with interest the new provisions on extended confiscation, introduced earlier this year, which allow for an apportionment of the burden of proof in certain situations. Romania has not, as a result of this, withdrawn its declaration by which it avails itself of the right to apply "partially" article 3 paragraph 4. The new provisions introduce an important mechanism which pursues a similar objective as article 3 paragraph 4 of the Convention and gets very close to it; the article in question leaves some freedom to the countries as to how to implement the reversed burden of proof for confiscation purposes and the fact that this new Romanian confiscation mechanism is applicable only in respect of the proceeds accumulated over the last 5 years and only in respect of certain offences (which are not necessarily the same as those in the Appendix to the Convention) is not in contradiction with the Convention. The reviewers look forward to the way in which this new confiscation mechanism will be applied in future. This being said, in the context of the 3rd Evaluation Round Report adopted by MONEYVAL in 2008, it was concluded that "While the confiscation system in Romania appears to meet most of the standards, it has produced limited results" and it was indicated that in the frequent absence of a conviction, most assets subject to temporary measures are actually released. From the rather general and disparate information on the practice in respect of confiscation measures provided for the purposes of the present report, it is equally difficult to draw positive conclusions about the actual effectiveness, in the last 3 or 4 years, of the provisions subject to this desk review. In order to give a meaningful statistical illustration of the mandatory nature of confiscation for instance, it would have been helpful to have been provided with figures both on cases leading to convictions and on the occurrence of confiscation in such cases, accompanied by appropriate explanations. A large part of the statistical information provided refers only to temporary measures and confiscation related to the narrow field of activity of the anti-corruption bodies. The Romanian authorities are encouraged to maintain consolidated and sufficiently detailed statistics on the confiscation (and temporary) measures applied in practice.

47. In the absence of sufficient information showing that confiscation is actually applied in respect of a broad range of relevant offences, and bearing in mind the crime situation in the country as described in the context of MONEYVAL evaluations, **it is recommended to improve the quality and scope of statistics (so as to assess the actual effectiveness of confiscation measures in practice) and to ensure that the provisions on confiscation and provisional measures are properly and effectively applied.**

5. Management of frozen and seized property – Article 6

The Convention introduces a new standard which relates to the requirement of proper management of the frozen and seized property enshrined in Article 6 which reads as follows:

"Each Party shall adopt such legislative or other measures as may be necessary to ensure proper management of frozen or seized property in accordance with Articles 4 and 5 of this Convention."

Description and analysis

48. The Romanian authorities refer to Article 165 CPC, according to which the authority which enforces a seizure order is obliged to identify and evaluate the seized assets. In accordance with this article: a) perishable goods are sent to State-controlled commercial units, which are bound to receive and liquidate them at once; b) precious metals or stones or artefacts containing precious metals or stones, as well as foreign means of payment must be deposited with the closest competent banking institution. The profit/interests resulting from these measures are recorded (as appropriate in the name of the defendant or of the person civilly liable); a receipt mentioning the amounts concerned is issued within a maximum of 3 days from the enforcement of the measure; c) securities ("*titlu de valoare*"), items of artistic or historical value and precious collections are sent for preservation to specialised institutions.

49. Other movable assets seized, if there is a risk of alienation, are to be put under seal or transferred under the responsibility of a specially appointed custodian, as necessary. The freezing order can be repealed if it is successfully challenged by legal means, or if a prosecutor or court revokes *ex officio* the provisional measure, considering that it is no longer necessary. Immovable property subject to temporary measures (prohibition of disposal or transfer of property, recorded in the real estate property registers) is left under the custody of the suspect who is him/herself responsible for the management of the assets. With Law 28/2012, published in the Official Gazette of 22 March 2012, amendments to the CC and the Government Ordinance no. 14/2007 *on the modalities and disposal of assets which have become private property of the State*, a new system was introduced for the disposal of movable assets by the State. Assets subject to temporary measures can be sold at any time at the request or – where the authorities take the initiative – with the consent of the owner, and without his/her consent in the following circumstances: a) if within one year after the imposition of temporary measures, the assets have lost at least 40% of their value; b) if there is a risk that the guarantee term expires or if the seizure was applied on living animals or poultry; c) if the seizure was applied in respect of inflammable or oil products; d) if the seizure was applied to assets which require disproportionate expenditures in comparison to their value. The Romanian authorities explain that once such assets have been sold by the State, the corresponding sums must be deposited on an account producing interests, in accordance with article 168^1 CPC.

50. The replies to the questionnaire indicate that usually, the task of managing movable assets subject to temporary measures is carried out by the authority which applies the seizure, traditionally the Romanian Police. In other cases, the Police may require the assistance of the National Agency for Fiscal Administration (ANAF), which is the authority responsible for the disposing (selling) of confiscated assets, according to the law. During their discussions with the reviewers, the Romanian authorities also mentioned the recent Government Decision no. 32/2011, through which the *Unit for Crime Prevention and Cooperation with EU Assets Recovery Offices* was established

within the Ministry of Justice, and designated as the national asset recovery office (see also Chapter VII of the present report). However, the reviewers observed that the Office is dealing with such matters as international exchange of information and financial investigations, but not with the management of assets, which constitutes the topic of the present Chapter.

Effective implementation

51. The replies to the questionnaire do not provide information that would allow the reviewers to gauge the effectiveness of measures for the management of assets subject to temporary measures. It is pointed out that the authorities do not keep statistics on the management of assets seized and they refer to the general data already mentioned on temporary measures, appended to their replies (see also paragraph 45 above). The data in question, showing only the total value of items subject to temporary measures, is – in the opinion of the reviewers – of limited use in this context.

Recommendations and comments

52. It appears that Romania has various measures in place that allow for the management and handling of both movable and immovable assets subjected to provisional measures. Overall, the reviewers are satisfied by these arrangements.

6. Investigative powers and techniques required at the national level – Article 7 paragraphs 1, 2a, 2b, 2c, 2d

The areas where the Convention is considered to add value are as follows:

- The provisions of article 7 introduce powers to make available or seize bank, financial or commercial records for assistance in actions for freezing, seizure or confiscation. In particular: Article 7 paragraph 1 provides that "Each Party shall adopt *such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in articles 3, 4 and 5. A Party shall not decline to act under the provisions of this article on grounds of bank secrecy*."

- Article 7 paragraph (2a) provides for power to determine who are account holders: "*To determine whether a natural or legal person is a holder or beneficial owner of one or more accounts, of whatever nature, in any bank located in its territory and, if so obtain all of the details of the identified accounts*;"

- Article 7 paragraph (2b) provides for the power to obtain "historic" banking information *"To obtain the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more specified accounts, including the particulars of any sending or recipient account*;"

- Article 7 paragraph (2c) [subject to declaration under article 53] provides for the power to conduct "prospective" monitoring of accounts as it provides for "*To monitor, during a specified period, the banking operations that are being carried out through one or more identified accounts;*"

- Article 7 paragraph (2d) provides for the power to ensure non-disclosure

"To ensure that banks do not disclose to the bank customer concerned or to other third

persons that information has been sought or obtained in accordance with sub-paragraphs a, b, or c, or that an investigation is being carried out."

- States should also consider extending these powers to non-banking financial institutions (article 7 paragraph (2d))

Description and analysis

Paragraph 1

53. Articles 96, 97 and 99 of the Romanian Criminal Procedure Code (CPC) respectively regulate the mandatory confiscation, delivery and confiscation by force of objects and documents which might serve as evidence in criminal proceedings (unless they are handed over on a voluntary basis). Such measures are applied by the investigation body or the court in the pre-trial phase; mandatory confiscation of documents which can be used as evidence is also applicable during the trial phase under Article 99 CPC, in which case it is ordered by the Court and executed by the prosecutor through the criminal investigation body. The Romanian authorities explained that these provisions are not limited to the context of securing evidence during searches and that they can be used to obtain any piece of information held by any person or entity whether or not they are themselves suspected of a crime. The only secrecy rules that can be opposed to investigators are reportedly those applicable to credit and payment institutions and investigators must use other provisions to obtain information from this kind of businesses (see the following paragraph). The Romanian authorities explained that the expression "credit and payment institutions" *stricto sensu* does not include, besides the banks, such financial institutions as insurance businesses, securities brokers etc.; information held by the latter is therefore accessible through the above general CPC provisions. The reviewers noted, however, that financial legislation is sometimes in contradiction with the CPC provision as interpreted by the Romanian authorities: pursuant to article 12 of Law 93/2009 *on non-banking financial institutions,* which provides that these institutions have the obligation to provide information (upon a written request of the prosecutor or the court or, as the case may be, of the criminal investigation bodies with the prosecutor's approval), is limited to situations where a criminal investigation concerns the client. In the opinion of the reviewers, this could create unnecessary difficulties in the context of investigations aimed at reconstituting money flows and gathering financial information also from persons who are not directly suspected (especially where the offenders have taken deliberate measures to disguise the origin or destination of assets).

54. Bank secrecy can be lifted on the basis of article 114 of Government Emergency Ordinance (GEO) 99/2006 *on credit institutions and adequacy of capital*, upon a written motion/application by a prosecutor or court, or as the case may be, of the criminal investigation bodies with the prosecutor's consent: any credit and payment institution has the obligation to provide information - including data covered by bank secrecy rules - after the commencement of a criminal investigation; the Romanian authorities have assured the reviewers that this applies both to the trial and to the pre-trial stage of the investigation.

55. Special arrangements are also provided in separate pieces of legislation. According to article 14 of Law 39/2003 *on preventing and combating organised crime*, if there is reliable information about commission of serious criminal offences (stipulated in article 7 of the Law, i.e. organised crime, production of/trafficking in narcotic drugs, trafficking in human beings and migrants, money laundering or corruption), the prosecutor may order the handing over of any bank, financial and accounting documents and records can be ordered. Article 15 allows for the monitoring of bank and other accounts for a

period of 30 days (renewable for a similar term; the relevant provisions of the criminal procedure code apply accordingly). Such arrangements are also made in Law 508/2004 on the Directorate for the Investigation of Infractions of organised Crime and Terrorism (DIICOT), in which access to information and the monitoring of bank accounts are regulated under article 19 and 16, respectively.

56. Similar provisions are included in Article 26 of Law 656/2002 (the AML/CFT Law) which enables to obtain the delivery of financial, accounting and other documents. Article 26 provides that in case of money laundering and terrorism financing offences, bank secrecy is not opposable to the prosecutor or the court. Information is provided on the basis of a written request from the court, the prosecutor or the investigator, depending on the case. Article 27 provides for the interception and recording of communications, access to information systems and the supervised delivery of amounts of money. Information may be provided only for the purpose of collecting evidence or identification of perpetrator. Article 27 regulates also the monitoring of bank accounts, which may not exceed 30 days (it may be extended several times for the same duration, up to a total period of 4 months).

57. Under Article 26 of Law 78/2000 *on preventing, discovering and sanctioning of corruptions acts*, similar measures (communication of banking, financial, accounting and other documents; surveillance and interception of communications; access to information systems) may be applied for the purpose of collecting evidence and identifying of a perpetrator. Monitoring of bank accounts is regulated under article 27. The above measures are applicable for a period of 30 days, renewable up to a total duration of 4 months.

58. The Romanian authorities explained that the provisions contained in special laws are complementary to those contained in the CC and they have reassured the reviewers that the rules of the CC are applicable in respect of all offences which do not fall under the above-mentioned special legislation.

Paragraph 2 a)

59. Romania has a central database of domestic bank accounts, kept by the National Agency of Fiscal Administration; it is updated automatically every 24 to 48 hours. Authorities such as the Assets Recovery Office, the FIU and DIICOT have direct access to it. The Romanian authorities indicated that Prosecutors who are dealing with categories of offences listed in the Annex to the Convention but have no access to the database can always turn to their colleagues from bodies which do (especially the Assets Recovery Office), in order to obtain information from the central database. It takes a few minutes to interrogate the database and the information is accessible to foreign criminal justice bodies through the EU-specific cooperation schemes, like the network of assets recovery agencies, or through the classical channel of mutual legal assistance.

60. Article 16 of Government decision N° 594/2008 provides that credit institutions and financial institutions more generally must have internal procedures in place to ensure the storage and availability of information, and to have systems that allow for the timely access to all the information by the financial intelligence unit (for analytical purposes) or the prosecution bodies.

61. Therefore, formal requirements are in place to ensure the information is normally available in practice as regards the customer but also the beneficial owner, given the general customer due diligence measures in place for all financial institutions and designated non-financial businesses and professions. In this context, it should be pointed out that following the findings and recommendations for improvement of

MONEYVAL's 3rd round evaluation report, article 2[2] of the AML/CFT Law provides at present for a thorough definition of "beneficial owner" in relation to both natural persons and legal entities, which requires CDD measures also in respect of ultimate beneficial ownership. Finally, credit institutions and financial institutions more generally are not allowed to open or operate anonymous accounts.

Paragraph 2 b)

62. In accordance with the AML/CFT Law (article 13 paragraph 1 and 2), obliged entities must retain customer information pertaining to the CDD process including identification information and data on all financial operations for a period of minimum 5 years following the establishment of a business relationship as well as minimum 5 years after the termination of the business relationship or the carrying out of occasional transactions.(similar rules are provided in article 14 of Government Decision N° 594/2008, and article 22 of Regulation N° 9/2008 of the National Bank of Romania. As indicated earlier, Government decision N° 594/2008 and Article 12 of Law 93/2009 *on non-banking financial institutions* provide for the existence of data and information storage arrangement to facilitate the retrieval of information by investigative bodies. These arrangements are globally in line with article 7 paragraph 2b of the Convention. It is still not entirely clear whether the information stored must include any particulars of the sending or recipient account, as required by Article 7 paragraph 2b) of the Convention. The Romanian authorities probably need to ascertain that this is the case.

Paragraph 2 c)

63. As mentioned earlier in respect of measures taken to implement article 27 paragraph 1 of the Convention, the monitoring of accounts is permitted pursuant to article 27 of the AML/CFT law in respect of banks and financial institutions, in a case where there is a suspicion of money laundering or terrorist financing. Monitoring of accounts is also permissible under article 27 of Law 78/2000 *on preventing, discovering and sanctioning of corruption* acts, as well as under article 27 of Law 39/2003 *on preventing and combating organised crime*, in case of a serious criminal offence as listed in article 7 of the Law i.e. organised crime, production of/trafficking in narcotic drugs, trafficking in human beings and migrants, money laundering, corruption (Law 508/2004 on the DIICOT provides for the same).

64. The Romanian authorities confirmed that the monitoring of bank accounts is a matter per se and that it needs to be provided specifically. It would appear that outside the context of investigations for money laundering, terrorist financing, organised crime and various corruption-related offences listed in the special laws listed above, there is no possibility to monitor bank accounts as required by article 7 paragraph 2 c) of the Convention.

Paragraph 2 d)

65. The replies to the questionnaire refer to the general professional secrecy and discretion duties enshrined in articles 111, 112 and 116 of GEO 99/2006 *on credit institutions and capital adequacy.* Similarly, pursuant to Article 9 of the Law 93/2009 *on non-banking financial institutions* these institutions have the same obligation to keep the confidentiality of all information available concerning their customers. Although these rules do protect the information on a customer *vis a vis* a third person, they do not, however, address a duty of confidentiality of the financial institution *vis a vis* the customer himself and his/her own business in the interest of an investigation or financial enquiry – which is a different matter.

66. The only explicit prohibition of tipping-off is provided in Article 18 of the Law 656/2002 (the AML/CFT law), according to which financial institutions, their employees and administrators "must not transmit information related to money laundering and terrorism financing and must not warn the customers about information sent to the Office [the financial intelligence unit]". The scope of this requirement is narrower than the requirements of article 7 paragraph 2d of the Convention which are much broader and not limited to information related to money laundering and terrorist financing.

67. It appears that Romania has not taken appropriate measures to implement article 7 paragraph 2d) of the Convention.

Effective implementation

68. Between 2008 and 2010, the specialised prosecution unit on countering organised crime and terrorism (DIICOT) handled 7 cases in which bank accounts were monitored. No other information is available in the replies to the questionnaire as to how Romania can demonstrate effectiveness of the above arrangements in practice, for instance the number of instances in which investigative/prosecutorial authorities have managed to obtain the information requested, the completeness and accuracy / reliability of the information supplied, the average time needed to obtain a response etc.

69. Given the limited information available, the reviewers are not in a position to assess the adequacy in practice of the measures currently in place to allow for access to banking and other relevant information in the context of criminal investigations for the various offences contemplated under the Convention and its annex, as well as all the other criminal offences provided under Romanian criminal law, and in confiscation investigations.

Recommendations and comments

70. Romanian legislation appears not to have fully transposed article 7 of the Convention when it comes to the prohibition of tipping off and the monitoring of bank accounts. Some uncertainties also remain as regards access to information (in particular where it is held by non-bank financial institutions) concerning persons or intermediary structures who are not (yet) a suspect of a criminal investigation.

71. Given the insufficiencies identified earlier, it is recommended to Romania **to take the necessary measures to fully implement article 7 of the Convention CETS N°198, in particular to ensure that a) prosecutorial or law enforcement bodies have adequate access to information (especially non-bank financial information not related to a direct suspect) for the purposes of tracing, identifying, confiscating and securing criminal assets; b) monitoring of accounts is permissible with respect to the broadest range of criminal offences; c) adequate provisions prevent financial institutions from informing their customers and third persons of any investigative step or enquiry.**

7. International co-operation

7.1. Confiscation – Articles 23 paragraph 5, Article 25 paragraphs 2 and 3

The Convention is considered to add value in the following areas:

The Convention introduces a new obligation to confiscate that extends to "*in rem*" procedures. Hence, Article 23 paragraph 5 reads as follows:

> "*The Parties shall co-operate to the widest extent possible under their domestic law with those Parties which request the execution of measures* ***equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions****, in so far as such measures are ordered by a judicial authority of the requesting Party in relation to a criminal offence, provided that it has been established that the property constitutes proceeds or other property in the meaning of Article 5 of this Convention*." (i.e. transformed or converted etc)

Asset sharing (though Article 25(1) retains the basic concept that assets remain in the country where found, the new provisions in Article 25(2) and (3) require priority consideration to returning assets, where requested, and concluding agreements).

Description and analysis

72. The main provisions on cooperation for confiscation purposes are contained in Law 302/2004 *concerning international judicial cooperation in criminal matters* (as republished in May 2011), where Art. 185 refers as follows to confiscation in general: "*Property emerging from the offence on which a request for letters rogatory is based shall be confiscated under the legal provisions in force.* This matter was discussed at length with the Romanian authorities but it would appear that the only domestic provisions in force in this respect are article 250 and 265 of the same law, which regulate in detail cooperation within the EU[12] only (the two articles deal with the question of the competent domestic authorities for execution purposes and the disposal of confiscated assets - which can be shared on the basis of 50% with the requesting State in certain circumstances).

73. In their initial replies to the questionnaire, the Romanian authorities indicated that they cannot grant international assistance in respect of the measures and principles addressed in article 23 paragraph 5 of the Convention No CETS 198, i.e. in the context of the enforcement of so-called civil confiscation orders, which have been issued abroad. During the informal discussions held in May, the Romanian authorities stressed that Law 302/2004 does not prevent explicitly the enforcement of foreign, non-conviction based, confiscation orders. For the time being, Romania has no practice in this respect as the country has never received such a request. Theoretically, should the Ministry of Justice receive such a foreign request, it would be forwarded to a district court judge and it would be up to him/her to make a decision on the matter; but no information is available as to how and under which conditions the order would be enforced.

[12] They are part of Section V which implements Framework Decision FD 2006/783/JAI

74. As indicated above and except in connection with requests from other EU countries, Romania has no domestic legal provision in relation to returning or sharing of confiscated property to/with the requesting Party so that the latter could ensure compensation of victims of the crime concerned or return such property to their legitimate owners. In principle, confiscated property is turned into revenue for the general state budget of Romania. However, the Romanian authorities take the view that domestic law has to be interpreted also *lato sensu,* as including the provisions of relevant international instruments that once ratified are becoming part of internal law and consequently self-executing, in particular CETS 198 itself, but also the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, the UN Conventions on corruption and on transnational organised crime (UNCAC or UNTOC), as well as bilateral treaties. These constitute a legal basis for cooperation with non-EU countries in the area of repatriation or sharing of assets. In order to assure a more coherent interpretation of Law 302/2004, a Draft Bill amending the law has been prepared and is currently being discussed. The current wording of the draft reportedly aims to align to a large extent the arrangements on cooperation with non-EU countries on those applicable within the EU.

Effective implementation

75. The Romanian authorities indicated that there is no practice so far on either of these articles (and overall, the number of foreign requests for confiscation remains low).

Recommendations and comments

76. Romania has not adopted specific measures to implement articles 23 paragraph 5 of the Convention; the same goes for its article 25 paragraphs 2 and 3, except in relation to cooperation with other EU countries. Romania takes the view that nothing in the legislation prevents the country from enforcing foreign requests based on a non-criminal court decision and that, at the same time, the existing international conventions ratified by Romania offer a sufficient framework for the repatriation and/or sharing of assets with other contracting Parties. However, there is no practice confirming this and the reviewers were left with several doubts as to the actual possibilities of cooperation of Romania in these areas. In this context, the draft proposals for legal amendments concerning matters addressed under article 25 of the Convention appear to be timely. Romania is encouraged to proceed with these amendments and to take on board matters related to the execution of foreign civil confiscation orders. **It is therefore recommended to Romania:**

- **to clarify the extent to which Romania can cooperate with States Parties in the execution of foreign non-conviction based confiscation orders, in accordance with article 23 paragraph 5 of the Convention;**
- **to ensure, in respect of cooperation with non-EU countries, that Romania is able to cooperate for the purposes of sharing or repatriating criminal assets so as to give full effect to article 25 of the Convention, as it is intended.**

7.2. Investigative assistance – Article 17 paragraphs 1, 4, 6; Article 18 paragraphs 1 and 5; Monitoring of transactions – Article 19 paragraphs 1 and 5

The areas where the Convention is considered to add value here are the following:

- The Convention introduces the power to provide international assistance in respect of requests for information on whether subjects of criminal investigations abroad hold or control accounts in the requested State Party. Indeed, Article 17 paragraph 1 reads as follows: *"Each Party shall, under the conditions set out in this article, take the measures necessary to determine, in answer to a request sent by another Party, whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in its territory and, if so, provide the particulars of the identified accounts."* This provision may be extended to accounts held in non-bank financial institutions and such an extension may be subject to the principle of reciprocity.

- The Convention also introduces power to provide international assistance in respect of requests for historic information on banking transactions in the requested Party (which may also be extended to non bank financial institutions and such extension may also be subject to the principle of reciprocity). Article 18 paragraph 1 provides that *"On request by another Party, the requested Party shall provide the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account*."

- The Convention is considered to add also value as it establishes the power to provide international assistance on requests for prospective monitoring of banking transactions in the requested Party (and may be extended to non bank financial institutions). Article 19 paragraph 1 reads as follows:

  "Each Party shall ensure that, at the request of another Party, it is able to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicate the results thereof to the requesting Party."

Description and analysis

Article 17 paragraphs 1, 4, 6; Article 18 paragraphs 1 and 5; Article 19 paragraphs 1 and 5

77. The situation in the field of investigative assistance is similar to the situation of international cooperation for confiscation purposes, examined earlier. It is not regulated *expressis verbis* by Law 302/2004, except in relation with EU member States.

78. There was some uncertainty as to the domestic legal basis for investigative assistance under articles 17, 18 and 19 of the Convention. The Romanian authorities finally indicated that the main provision for obtaining information from Romania on bank accounts held by a given person, on historic information on banking transactions and in the context of monitoring of bank accounts, both at pre-trial and trial phase, is article 171 of Law 302/2004 *concerning international judicial cooperation in criminal matters* (as amended and republished in May 2011). Article 171 entitled "Object of legal

assistance"[13], allows providing for "other forms of legal assistance" in addition to the execution of letters rogatory, organising hearings by videoconference, the service of trial documents etc. The information addressed under articles 17, 18 and 19 may therefore be obtained by a foreign country from domestic authorities but still, as the reviewers understand, under the general conditions governing the execution of foreign requests[14]. The Romanian authorities point to the fact that with the ratification of CETS198, the provisions of article 17, 18 and 19 have become part of domestic law and that they can accordingly be applied directly by domestic authorities and they reassured the reviewers that on the basis of article 171 letter f, all kind of information that is available in the context of domestic investigations is also available in the same manner in the context of mutual legal assistance, including: the list of accounts controlled by a suspect (as natural or legal person), the particulars of the identified account(s), and the information accumulated in the context of the monitoring of accounts. The strengths and weaknesses identified earlier, in particular in respect of article 7 of the Convention (see paragraphs 53 to 71) apply accordingly. For instance, access to information is provided – under certain conditions – in respect of a broad range of businesses and not just limited to bank accounts (which is in line with article 17 paragraph 6, article 18 paragraph 5 and article 19 paragraph 5 of the Convention), monitoring of accounts is permissible in respect of a range of criminal offences which is narrower than the one of the Appendix to the Convention.

79. Article 17 Paragraph 4 of the Convention states that the requested Party may make the execution of such request dependant on the same conditions as it applies in respect of requests for search and seizure. The Romanian authorities underlined that since article 17 is self-executing, it depends on the domestic competent judicial authority to assess whether it can make the granting of the request dependable on the conditions related

[13] Article 171 - Object of legal assistance.
Under this Chapter, international legal assistance applies to the following :
a) international letters rogatory;
b) hearings by videoconference;
c) appearance, in the Requesting State, of witnesses, experts and other persons concerned;
d) the service of documents that are prepared or are deposited in a criminal trial;
e) criminal record;
f) other forms of legal assistance.

[14] As a general rule, a request for judicial assistance must specify:
a) the name of the requesting judicial authority and the name of the requested judicial authority;
b) the object of and the reasons for the request;
c) the legal classification of the acts;
d) the data for identifying the accused, the defendant or the sentenced person, or the witness or expert, as appropriate;
e) the legal classification and the summary of the facts.
Depending on the nature and the object of the request, supporting documents shall be attached to it, as appropriate. The documents attached to a request for judicial assistance need to be certified by the requesting judicial authority, and shall be exempt of any other formalities of super legalisation.
Letters rogatory for search or seizure of property and documents shall be subject to the following conditions: a) that the offence motivating the letters rogatory is an extraditable offence where Romania is the requested State; b) that execution of the letters rogatory is consistent with the law of Romania.
The above mentioned conditions may entail application of the rule of reciprocity.
When the international instrument applicable allows, the request and accompanying documents may be transmitted directly to the executing authority. In other cases, the request shall be transmitted via the central authorities (the Ministry of Justice, in the trial stage and the Prosecutor of the High Court of Cassation and Justice, in the pre-trial stage). Upon request of the foreign State, Romania shall state the date and place of execution of the letters rogatory. Officials and interested persons mentioned by the requesting State may assist and collaborate in the execution of letters rogatory, within the limits allowed by Romanian law.

to search and seizure. In accordance with the provisions of Art. 176 paragraph 1 of Law 302/2004 (which refers to requests pertaining to search and seizure) the offence which motivates the request has to be an extraditable offence[15] and the fulfilment of the request needs to be compatible with the Romanian law. The two conditions may entail the reciprocity rule (to be determined on a case by case basis). These limits are not applied in relation with States which are Parties to the Schengen Convention (Art. 206 of Law 302/2004 paragraph 1).

80. In relation to the Member States of the European Union specifically, Romania applies the provision of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and of the additional protocol (16 October 2001). The relevant implementing provisions of Law 302/2004 (articles 206, 211 and 212 in particular) contain specific rules and conditions for the communication of banking information[16], including that the data shall be provided only if the criminal investigation concerns, as appropriate an offence punishable by a custodial penalty or a warrant of service of imprisonment for a maximum period of at least 4 years in the requesting state, and at least 2 years in the requested state. The monitoring of bank accounts is explicitly foreseen[17] and such a request is subject to the following conditions: a) its compatibility with Romanian law; b) the act which is under criminal investigation must be an offence according to Romanian law.

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[15] The following conditions - the double criminality requirement is met (no need for formal similarities, it suffices that the deed is considered as an offence by the Requesting and Requested State);
-the offence is not a political or military offence
-the punishment provided by the Soliciting and Solicited State is of at least 1 year of imprisonment
-for the offence committed in a third state, the Romanian law confers jurisdiction for prosecution and judging similar offences committed outside the Romanian territory to the Romanian judicial authorities, should the Soliciting State prove that the third state where the offence has been committed shall not require assistance for the mentioned offence.

[16] "The implementing rules provide that at the request of the authorities of a Member State of the EU, the Romanian authorities shall order the requisite steps in view of identifying bank accounts, whatever their nature, which are controlled or held in a bank unit in Romania, by a natural or legal person who is under criminal investigation, and shall provide to them the numbers of the bank accounts, as well as any other details. The information shall include also data on the accounts for which the person under investigation has a mandate, to the extent that such information was expressly requested and may be provided within a reasonable time. The data shall be provided only to the extent that the information is available to the bank where the accounts are. Also, the data shall be provided only if the criminal investigations concerns, as appropriate: a) an offence punishable by a custodial penalty or a warrant for service of imprisonment for a maximum period of at least 4 years, in the requesting State, and at least 2 years in the requested State, or b) an offence mentioned in Article 2 of the Convention on the establishment of a European Police Office (*the Europol Convention*) of 1995 or the annex thereto, or c) to the extent that the offence is not provided in the Europol Convention, an offence provided in the Convention of 1995 on the Protection of the European Communities' Financial Interests, in the Additional Protocol of 1996 or in the Second Additional Protocol of 1997.
The requesting authority shall mention the following in its request: a) the reasons for which the information requested is believed to have substantial value in the investigation of that offence; b) the elements based on which it was established that banks in Romanian territory have or control those bank accounts and, to the extent of availability, the names of the banks involved; c) any other available data that may facilitate the execution of the request."

[17] "Upon request, the Romanian authorities shall provide details on the bank accounts specified by the requesting foreign authorities, as well as on the bank transactions that passed, during a certain period, through one or more of the bank accounts specified in the request, including details on any sender or recipient of account. The data shall be provided only to the extent that it is available to the bank holding those accounts. The requesting authority shall demonstrate in its request the reasons for which the information requested is considered to have substantial value in the investigation of that offence."

81. The situation and the rules are essentially the same as those indicated above in respect of Article 17. The general provisions on mutual legal assistance contained in Law 302/2004 *concerning international judicial cooperation in criminal matters* are applicable in respect of all countries to obtain also information on banking transactions and to permit the monitoring of banking transactions (Article 18 paragraph 1, Article 19 paragraph 1). This is reportedly permitted by the general expression "other forms of legal assistance".

Effective implementation

82. During 2008-2010, the Prosecutors Office, attached to the High Court of Cassation and Justice, received 19 letters rogatory, through which information on bank accounts and monitoring specified bank accounts were requested. Romania also referred, at a later stage, to the fact that there are three units responsible for international judicial cooperation within the Prosecutor's Office attached to the High Court of Cassation and Justice, two of which are competent to receive and transmit requests on financial information: the DNA (National Anticorruption Directorate) and DIICOT (Directorate for the Investigation and Combating of Organised Crime and Terrorism); the following data was provided concerning cooperation both with EU and non EU countries, under the existing treaties of the Council of Europe, the EU and the United Nations, :

- DNA: for the period 2008-2011: 41 requests for information (13 outgoing, 28 incoming)
- DIICOT: for the period 2010-2011: incoming requests: 59 requests for information on bank accounts (50 requests solved, 9 in the course of execution); 40 requests for information on bank transactions (34 solved, 6 in the course of execution); outgoing requests: 61 requests for information on bank accounts (20 requests solved, 41 not executed); 62 requests on bank transactions (28 requests solved, 34 not executed).

83. Measures have been taken to specifically support exchange of financial information with other EU countries: through the Government Decision no. 32/2011, the Unit for Crime Prevention and Cooperation with EU Assets Recovery Offices within the MoJ was designated as the national asset recovery office (implementing EU Council Decision 2007/845/JHA of 6 December 2007). The Office has a multidisciplinary structure. At present, it has 7 employees including also the CARIN contact point. Starting with 2012, the Office will also be the Secretariat of the new National Anticorruption Strategy. It covers 3 levels: a) the operative exchange of data and information with other asset recovery offices or authorities with similar responsibilities from other EU and CARIN Member States; b) the identification and dissemination of best practices in the field of tracing and identification of proceeds from, or other property related to, crime; c) the promotion of public policies in the criminal field with accent on the strategic measures which shall lead to an energetic and strong response against organised crime and corruption. Moreover, the Office is currently in the process of creating its own database of judicial statistics relevant in the field of confiscation and disposal (sale) of proceeds of crime.

Recommendations and comments

84. One of the added values of the Convention is the provision of international assistance in respect of requests for information – in the requested Party – on bank accounts, historic information on banking transactions, and the monitoring of accounts. Romania can reportedly provide such information through the channels of mutual legal assistance with another Party to the Convention on the basis of general rules on mutual legal assistance (Law 302/2004 *concerning international judicial cooperation in*

criminal matters), which are drafted in very broad terms and allow for "other forms of legal assistance" (article 171). The special rules applicable to relations with EU countries appear to be particularly detailed and they reflect to a large extent the requirements of the provisions under consideration. The Romanian authorities explained that this was necessary since the provisions of the EU Convention and Protocol were not self-executing and needed to be implemented in domestic law[18], whereas article 171 of Law 302/2004 should be read in conjunction with Convention CETS 198 (which was ratified at a later stage) and is self executing.

85. The reviewers accept the above explanations and, bearing in mind the data provided in paragraph 82, they conclude that Romania is in a position to provide the assistance expected by the provisions under review of articles 17, 18 and 19 of CETS 198 (on the basis of arrangements for domestic investigations and with the same limitations, e.g. consistency of legislation as regards access to non-bank financial institutions and monitoring of bank accounts). The reviewers also took note of certain consistency issues as regards the rules applicable to EU cooperation: in particular, assistance in obtaining information on bank accounts (but not for obtaining information on transactions and monitoring of accounts) is subject to a requirement that the offence under investigation be punishable by imprisonment for a maximum period of at least 4 years in the requesting state, and at least 2 years in the requested State. Furthermore, this requirement appears to be excessive from the perspective of the objectives of Convention CETS 198. The Romanian authorities indicate that they could always turn to the general rules of mutual legal assistance in Law 302/2004. The reviewers doubt that this is a fully satisfactory alternative from the point of view of legal certainty.

7.3. Procedural and other rules (Direct communication) – Article 34 paragraphs 2 and 6

The Convention is considered to add value in that it introduces the possibility for direct communication prior to formal requests. According to article 34 paragraph 6:

> *"Draft requests or communications under this chapter may be sent directly by the judicial authorities of the requesting Party to such authorities of the requested Party prior to a formal request to ensure that it can be dealt with efficiently upon receipt and contains sufficient information and supporting documentation for it to meet the requirements of the legislation of the requested Party."*

Description and analysis

86. The Romanian authorities indicate that informal exchanges to prepare for the adequate formulation of a request is acknowledged in Romania as a common practice both for incoming and outgoing requests related to international judicial cooperation in criminal matters. It is applied on the basis of best practices (for instance for complex cases). This practice does not require specific legal arrangements or bi- or multilateral agreements other than article 34 of CETS 198, which provides already for a directly applicable framework. In the EU context, contacts are also possible with the assistance of the European Judicial Network contact points or through the national members of Eurojust.

[18] Romania was not an EU member until 2007 and it became a Party to the EU Convention and Protocol (Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and additional protocol of 16 October 2001) through accession to the EU, not through ratification of these instruments.

Effective implementation

87. As indicated above, preliminary contacts are a common practice according to the Romanian authorities.

Recommendations and comments

88. It is recalled that in principle, Convention N°198 provides in itself for an operative framework for cooperation between the Parties and there is thus no need to require another agreement to deal with the above matter. Romania confirmed that assistance in criminal matters is available in accordance with article 34 paragraphs 2 and 6 of the Convention.

8. International co-operation – Financial Intelligence Units - Article 46 paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

It is considered that the added value of the Convention in A.46 is that it sets out a *"detailed machinery for FIU to FIU cooperation, which is not subject to the same formalities as judicial legal cooperation."* The relevant provisions are set out in full.

Paragraph 1 *Parties shall ensure that FIUs, as defined in this Convention, shall cooperate for the purpose of combating money laundering, to assemble and analyse, or, if appropriate, investigate within the FIU relevant information on any fact which might be an indication of money laundering in accordance with their national powers.*

Paragraph 2 *For the purposes of paragraph 1, each Party shall ensure that FIUs exchange, spontaneously or on request and either in accordance with this Convention or in accordance with existing or future memoranda of understanding compatible with this Convention, any accessible information that may be relevant to the processing or analysis of information or, if appropriate, to investigation by the FIU regarding financial transactions related to money laundering and the natural or legal persons involved.*

Paragraph 3 *Each Party shall ensure that the performance of the functions of the FIUs under this article shall not be affected by their internal status, regardless of whether they are administrative, law enforcement or judicial authorities.*

Paragraph 4 *Each request made under this article shall be accompanied by a brief statement of the relevant facts known to the requesting FIU. The FIU shall specify in the request how the information sought will be used.*

Paragraph 5 *When a request is made in accordance with this article, the requested FIU shall provide all relevant information, including accessible financial information and requested law enforcement data, sought in the request, without the need for a formal letter of request under applicable conventions or agreements between the Parties.*

Paragraph 6 *An FIU may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Party or, in exceptional circumstances, where divulging the information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Party concerned or would otherwise not be in accordance with fundamental principles of national law of the requested Party. Any such refusal shall be appropriately explained to the FIU requesting the information.*

Paragraph 7 *Information or documents obtained under this article shall only be used for the purposes laid down in paragraph 1. Information supplied by a counterpart FIU shall not be disseminated to a third party, nor be used by the receiving FIU for purposes other than analysis, without prior consent of the supplying FIU.*

Paragraph 8 *When transmitting information or documents pursuant to this article, the transmitting FIU may impose restrictions and conditions on the use of information for purposes other than those stipulated in paragraph 7. The receiving FIU shall comply with any such restrictions and conditions.*

Paragraph 9 *Where a Party wishes to use transmitted information or documents for criminal investigations or prosecutions for the purposes laid down in paragraph 7, the transmitting FIU may not refuse its consent to such use unless it does so on the basis of restrictions under its national law or conditions referred to in paragraph 6. Any refusal to grant consent shall be appropriately explained.*

Paragraph 10 *FIUs shall undertake all necessary measures, including security measures, to ensure that information submitted under this article is not accessible by any other authorities, agencies or departments.*

Paragraph 11 *The information submitted shall be protected, in conformity with the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and taking account of Recommendation No R(87)15 of 15 September 1987 of the Committee of Ministers of the Council of Europe Regulating the Use of Personal Data in the Police Sector, by at least the same rules of confidentiality and protection of personal data as those that apply under the national legislation applicable to the requesting FIU.*

Paragraph 12 *The transmitting FIU may make reasonable enquiries as to the use made of information provided and the receiving FIU shall, whenever practicable, provide such feedback.*

Description and analysis

89. In the 3rd round MONEYVAL mutual evaluation report Romania was rated largely compliant (LC) for the purposes of the assessment of Recommendation 26, relative to the establishment of an FIU, and compliant (C) for Recommendation 40, about international co-operation.

Article 46 paragraphs 1, 2 and 3

90. The Financial Intelligence Unit of Romania is the National Office for the Prevention and Control of Money Laundering (NOPCML), which was set up in 1999 by Law no. 21/1999 on the Prevention and Sanctioning of Money Laundering and functioning at present in accordance with Law no. 656/2002 on the Prevention and Sanctioning of Money Laundering as well as on setting up certain Measures for Prevention and Combating Terrorism Financing, consequently amended and completed.

91. According to the provisions of article 19 of the Law no. 656/2002 (hereinafter the AML/CFT Law) the NOPCML has been established as a specialised body and legal entity subordinated to the Government of Romania, being set up for preventing and combating money laundering and terrorism financing. For those purposes it receives, analyses and requests information related to suspicious transactions, or natural or legal

persons involved within this type of criminal activities, having access to financial, administrative and law enforcement information. In accordance with article 6 of the Law, the NOPCML notifies the following entities:

a) the General Prosecutor's Office by the High Court of Cassation and Justice (GPOHCCJ) where a grounded suspicion (the Law refers to "serious grounds") of money laundering exists;
b) both the GPOHCCJ and the Romanian Intelligence Service, in case of suspicion of a terrorist financing activity.

92. The NOPCML is an administrative type of FIU and is permitted, by article 5 paragraph 4 of the AML/CFT Law, to "*exchange information, based on reciprocity, with foreign institutions having similar functions and which are equally obliged to secrecy, if such information exchange is made with the purpose of preventing and combating money laundering and terrorism financing."*

93. Even though the law does not require the existence of a Memorandum of Understanding for the exchange of information to take place, the NOPCML, from its establishment until the present, has concluded 49 international agreements for the purpose of strengthening bilateral cooperation with FIUs in other jurisdictions. As a member of the European Union, Romania is also subject to the provisions of Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information, which sets out directly applicable rules concerning the FIU-to-FIU exchange of information. Article 46 of the Convention broadly reflects the principles set out in the above Decision.

94. Neither the wording of the Romanian legislation nor the NOPCML's policies restrict exchange of information to any particular type of FIU; this is in line with article 46 paragraph 3 of the Convention. In fact, the statistics provided by the Romanian authorities – and reproduced in the table below – confirm that requests for information are received and processed regardless of whether they emanate from administrative, judicial or law-enforcement type of FIUs. Similarly, requests for information made to foreign FIUs are made to all three types of FIUs.

Number of requests for information, years 2008-2010:

	2008		2009		2010		**Total**
	Received	Sent	Received	Sent	Received	Sent	
Administrative	71	269	109	228	128	85	890
Judicial	6	35	15	41	23	17	137
Law-enforcement	23	113	58	68	37	43	342

95. The majority of requests made to and from foreign FIUs have been made to or by administrative FIUs. However, it is likely that this situation arises from the fact that the number of administrative FIUs operative in different states exceeds the number of law-enforcement and judicial types of FIUs rather than from the existence of any restriction or policy limitation which would be in conflict with this sub-article of the Convention. Moreover, a review of the list of countries with which NOPCML has signed MoUs or Declarations of Cooperation reveals that no distinction is being made with regard to the status of the FIU.

Article 46 paragraph 4

96. The Romanian FIU typically seeks the assistance of a foreign counterpart when there is a foreign element in a given case, e.g. the natural person involved is a citizen or resident of the country to which the request is made, s/he is known for performing financial activities in that country; the suspicious activity is related to commercial transactions or relations of a natural/legal person from that country or that country is the ultimate destination of the suspicious funds etc. Theoretically, the request by NOPCML contains also a brief statement of the relevant facts already known to it[19]. The NOPCML has a standard form for performing exchange of information, Part VII of which requires specifically the provision *inter alia* of a "Description of the underlying facts of the case under investigation" including information as to whether formal investigations or judicial procedures are underway domestically. Furthermore, Part II of the standard form requires the requesting FIU to state the purpose for which the requested information will be used while Part I limits the use of the information to the purpose stated on this form. Where the information is to be disseminated to a third party, the NOPCML makes a specific reference to this and provides information about the competent authority to whom the information is to be submitted, asking for a prior consent for dissemination. Each outgoing request is given an individual number and sent out after a double (quality) check is performed by the President of the Office and the International Relations Department.

97. Furthermore, it should be noted that it was confirmed by the Romanian authorities that there were no cases where a foreign FIU refused to provide information following a request for information made by the NOPCML on the basis of insufficient information being provided by the NOPCML on the relevant facts or on the manner in which the information sought would be used. Therefore, in practice, it seems that the level of detail being provided by the NOPCML in its requests for information has generally satisfied the requirements of the requested FIUs.

Article 46 paragraph 5

98. In accordance with art. 5 para. 1 of the AML/CFT Law *"The Office may ask the persons mentioned in art. 8, as well as the competent institutions, to provide the data and information necessary to fulfill the attributions provided by the law."* This is the legal basis for the FIU to obtain information from all the entities subjected to the AML/CFT law and all state bodies without the need for a formal letter of request. Such information is shared with other FIUs on the basis of art. 5 para.4 of the same law. It was also confirmed that the NOPCML can approach domestic obliged entities and national state authorities upon a request from a foreign FIU. When a request for information is received by the NOPCML, checks are made primarily in the FIU's own database and in those databases to which the FIU has direct on-line access. According to the Romanian authorities, the Internal Procedure for performing exchange of information on AML/CFT has a confidentiality regime which is contained in the Manual of Procedures within the NOPCML, which has been approved by the President of the FIU

[19] Each request includes both the identification data of the person involved and any analytical information already gathered including the number of the account concerned, the bank at which the account is opened, possible connections between natural and legal persons involved in the case etc. The request contains a short description of the facts which constitute a possible money laundering / terrorist financing case, as well as information on the predicate offence (where it is available). The request mentions the kind of information required and how it will be used. In case of urgency, the request indicates a deadline for the answer and why there is a situation of urgency (for example in case a transaction is under way and/or the NOPCML is likely to ask for its postponement).

by means of Order no. 14/03.03.2008. The Reviewers had an opportunity to examine a copy of these procedures in English.

99. The NOPCML is empowered to obtain information from other national authorities or institutions after it has received the prior consent for dissemination of information from the foreign FIU. Following the receipt of a request submitted by a foreign FIU, a standard form set out in the Internal Procedure for performing exchange of information on AML/CFT is completed by the International Relations Department of the NOPCML.

Article 46 paragraph 6

100. In principle, the Romanian FIU may refuse to disseminate information in the circumstances established a) by the Convention (in accordance with Law no. 420 of 22 November 2006 *on the ratification of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of crime and terrorist financing* – ETS 141, and Law no. 263 of 15 May 2002 *on the ratification of the European Convention on Laundering, Search, Seizure and Confiscation of crime* – CETS 198): assistance can be denied in cases where the exchange of information may be prejudicial to the sovereignty, security or national public policies, public order or major interest of the country; b) in the Internal Procedure for performing exchange of information on AML/CFT (under item 1.4 of Chapter V): *"The FIU performing the exchange of information has no obligation to ensure the necessary assistance if this could lead to impairment of a criminal investigation* [concerning the same facts]*, would be clearly disproportionate to the legitimate interests of a natural or legal person or the State of the FIU solicited, or would otherwise not be in accordance with fundamental principles of its national law"* which is a reproduction of the wording of article 46 paragraph 6 of the Convention. In these cases, the FIU has to specify the reasons for the refusals. In addition, the Romanian authorities have pointed out that such refusals are indeed extremely rare. In fact, during its 13 years of operation, there has been no case where the NOPCML refused to submit information on these grounds in any of the requests for information it received. Being a member of the Egmont Group, the NOPCML applies the principles of exchange of information agreed upon by member FIUs.

Article 46 paragraph 7

101. The use of information and documents obtained by the FIU is clearly determined and limited, so these cannot be disseminated to a third party and used for any purpose other than analysis, without prior consent of the supplying FIU. According to the Romanian authorities, Section 1.4 of Chapter V of the Internal Procedure for performing exchange of information on AML/CFT specifies that the use or release of any information or documents obtained via exchange between FIUs shall not be disseminated to third parties (e.g. criminal investigators), without the prior consent of the disclosing FIU; in any event, the information can only be used for analytical purposes. The situations specified in the Internal Procedures include the following:

    i. for internal intelligence purposes: in accordance with article 5 para. 4 of the AML/CFT Law, information provided by the requested FIU is used only inside the NOPCML in the course of the performance of financial analysis. A reference to this, according to the Romanian authorities, is made to the requesting FIU;

    ii. for use of information by third parties, only for intelligence purposes: The Romanian authorities reported that all information provided by the Romanian FIU to the General Prosecutor's Office of the High Court of Cassation and Justice is used for intelligence purposes only. The prosecutor dealing with the case collects evidence for the prosecution on the basis of information provided

by the Office. Where there is the need to include in the notification also the information provided by the requested FIU, this information is disseminated to the GPOHCCJ only upon receipt of prior consent for dissemination granted by the requested FIU. The information is provided for intelligence use only and the requested FIU is informed accordingly. If the prior consent is not granted, the information from the FIU is not disseminated to the GPOHCCJ;

iii. use of information for intelligence purposes based on letters rogatory received: based on the provisions of art. 6 para 5 of the AML/CFT Law, "*the Office is obliged to put at the disposal of the General Prosecutor's Office by the High Court of Cassation, or the structures within Public Ministry, competent by law, at their request, the data and information obtained according to the provisions of the AML/CFT law".* Therefore, if the GPOHCCJ receives a letter rogatory from a foreign counterpart, the Office, upon a request from the Romanian Prosecutor's Office, has to provide all information available for that case, including information from the requested FIU. This information is to be disseminated to the GPOHCCJ based on the prior consent of the requested FIU, and it shall be used, for intelligence purposes, in order to obtain evidence related to the request in the letter rogatory. This reference is mentioned to the requested FIU. If the prior consent is not granted, the information from the FIU is not disseminated to the GPOHCCJ.

102. Section 1.4 deals with both situations, where the NOPCML is the requesting Party and where it is the requested Party. As a requesting Party, the Romanian FIU includes in practice in all its own requests a request for permission to disclose the information to be supplied. When the NOPCML is as a requested Party, the decision as to whether the information is to be provided is taken by the Head of the Office in consultation with the Analytical Department in order to ensure that the provision of information would not jeopardise an on-going domestic case.

Article 46 paragraph 8

103. The Romanian authorities indicated that the Internal Procedure mentioned above does not impose restrictions and conditions on the use of information (to be) provided to foreign counterparts of the Romanian FIU, nor does the latter impose such restrictions in practice. The general principle mentioned earlier applies, according to which the information provided should be used by the requesting FIU for the purposes of supporting its analytical work in cases of suspicions of money laundering or terrorism financing. The information may be supplied as intelligence to a third party provided that the consent of the FIU providing the information is obtained. Where the Romanian FIU is the requested Party, compliance with any possible specific condition imposed by the requesting Party is checked by the Board of the NOPCML**;**

Article 46 paragraph 9

104. As one can deduce from the above information and from the earlier paragraphs, the Internal Procedure of the Romanian FIU prevents it generally from authorising a foreign requesting Party to use the information for purposes other than intelligence, even when the NOPCML gives its consent for dissemination to criminal justice bodies (the same applies to information communicated to the NOPCML by a foreign counterpart). In addition, the NOPCML can refuse – on an ad hoc basis – to supply information given the specific circumstances of the case ("*if this could lead to impairment of a criminal investigation* [concerning the same facts]*, would be clearly disproportionate to the legitimate interests of a natural or legal person or the State of the FIU solicited, or would otherwise not be in accordance with fundamental principles of its national law"*

see paragraph 100 above). In such cases, Section 1.4 of chapter V of the FIU's Internal Procedure provides that the decision shall be communicated to the requesting FIU at the earliest, explaining the reasons for the refusal. The Romanian authorities underline that until now, the NOPCML has always granted the authorisation for dissemination of data and information to the competent law enforcement authorities of the requesting FIUs' country (for instance, in the year 2011, it received 200 requests for information, 40 of which contained a request for dissemination of information to law enforcement authorities and in all these 40 cases, consent for dissemination was granted to the foreign FIU).

Article 46 paragraph 10

105. Article 6 of the AML/CFT Law, as amended and completed, spells out how the information received and analysed within the Office can be disseminated[20]. Rules on the conduct expected from the personnel of the Office are provided in Article 18 of the Law no. 656/2002[21]. Also, in accordance with the provisions of Article 23 of the

[20] "*The Office shall analyse and process the information, and if the existence of solid grounds of money laundering or financing of terrorist activities is ascertained, it shall immediately notify the General Prosecutor's Office by the High Court of Cassation and Justice. In case in which it is ascertained the terrorism financing, it shall immediately notify the Romanian Intelligence Service with respect to the transactions that are suspected to be terrorism financing. The Office is obliged to put at the disposal of the General Prosecutor's Office by the High Court of Cassation and Justice or the structures within Public Ministry, competent by law, at their request, the data and information obtained according to the provisions of the present law. After receiving the suspicious transactions reports, in case there are solid grounds of committing other offences than money laundering or terrorism financing, the Office shall immediately notify the competent body".*

[21] (1) *The personnel of the Office must not disseminate the information received during the activity other than under the conditions of the law. This obligation is also valid after the cessation of the function within the Office, for a five-year period. (2) The persons referred to in the Art. 8 and their employees must not transmit, except as provided by the law, the information related to money laundering and terrorism financing and, must not warn the customers about the notification sent to the Office. (3) Using the received information in personal interest by the employees of the Office and of the persons provided for in the Art. 8, both during the activity and after ceasing it, is forbidden. (4) The following deeds performed while exercising job attributions shall not be deemed as breaches of the obligation provided for in para (2): i. providing information to competent authorities referred to in article 17 and providing information in the situations deliberately provided by the law; ii. providing information between credit and financial institutions from European Union's Member States or European Economic Area or from third states, that belong to the same group and apply customer due diligence and record keeping procedures equivalent with those provided for by the present Law and are supervised for their application in a manner similar with the one regulated by the present law; iii. providing information between persons referred to in article 8 (e) and (f), from European Union's Member States or European Economic Area, or from third states which impose equivalent requirements, similar to those provided for by the present Law, persons that carry on their professional activity within the framework of the same legal entity or the same structure in which the shareholders, management or compliance control are in common. Iv. providing information between the persons referred to in article 8 (a), (b), (e) and (f), situated in European Union's Member States or European Economic Area, or from third states which impose equivalent requirements, similar to those provided for by the present Law, in the situations related to the same client and same transaction carried out through two or more of the above mentioned persons, provided that these persons are within the same professional category and are subject to equivalent requirements regarding professional secrecy and the protection of personal data;*

(5) When the European Commission adopts a decision stating that a third state does not fulfil the requirements provided for by the para. (4) (b) (c) and (d), the persons referred to in article 8 and their employees are obliged not to transmit to this state or to institutions or persons from this state, the information held related to money laundering and terrorism financing. (6) It is not deemed as a breach of the obligations provided for in para. 2, the deed of the persons referred to in article 8 (e) and (f)

Regulations for the Organisation and Functioning of the National Office for Prevention and Control of Money Laundering, approved by Government Decision no. 1599/2008, it is required that "*as of the date of employment, the personnel of the Office shall sign an agreement regarding the liability of not disclosing the information received during his/her activity, but in case of a judicial procedure including a five years period after ending of the employment period*."

106. Information which has a certain level of classification is managed in accordance with specific legislation, i.e. the Law no. 182/2002 on protection of classified information, Governmental Decision no. 585/2002 for the approval of the National standard for protection of classified information in Romania and Governmental Decision no. 781/2002 on protection of secret service information. The personnel of the Office are authorised to have access to classified information, on classes and levels of classification, on a need-to-know basis. In applying the above-mentioned national standards at the level of the Office, in accordance with Article 11(5) of the Regulations for the Organisation and Functioning of the National Office for Prevention and Control of Money Laundering, "the Director of the Directorate for Information Technology and Statistics performs the security officer position within the institution, according to the provisions of the Law no.182/2002, on protection of the classified information, with the subsequent modifications as well as the other legal provisions in the field."

107. The Romanian authorities reported that in fulfilment of this function, the security officer develops norms for protection of national classified information and norms on protection of EU classified information, in continuous cooperation with National Authority of Security in this area.

108. According to the above mentioned legal provisions, together with the provisions of Article 18 (1) of the AML/CFT Law, as amended and completed, the only beneficiary of the information received (in respect of solid grounds of money laundering and financing of terrorism), analysed and processed by the NOPCM is the GPOHCCJ and/or the Romanian Intelligence Service. For this purpose, the personnel of the Office is obliged to keep confidential all the information gathered by the FIU and to disclose it only under the conditions stipulated by law.

109. In accordance with art. 5 para. 1 item 2 of the AML/CFT Law, the information gathered in connection with the suspicious transaction reports received under articles 3 and 4 is processed and used within the Office under the regime of confidentiality. The same regime applies to information included in the requests for information received by the Office.

110. The exchange of information between the NOPCML and foreign FIUs is performed through one of the following channels: a) The Egmont Secured Web; b) FIU.NET network; c) in written form, through diplomatic channels, signed in original and sealed into a closed envelope until the document's arrival at its destination. Alternatively, other channels mutually agreed upon may be used where the above mentioned channels are not available.

111. Finally, practical arrangements are in place to secure the information also from a physical point of view; these include the following: a) access rights to the FIU's IT system and databases are not afforded indiscriminately to all members of staff but only on a "need-to-know" basis (for instance, the staff within the international department does not have access to the same databases as the operative analysts); b) the IT

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which, according with the provisions of their statute, tries to prevent a client from engaging in criminal activity."

system including servers, databases etc. is run independently from all other state institutions; c) all access to the database and reprinting of documents, as well as access to the FIU's premises is recorded; d) access to the premises is secured (the FIU is a separate agency, under the Government of Romania, with its own budget and premises).

Article 46 paragraph 11

112. The Romanian authorities have reported that the protection of persons with regards to the processing of personal data is covered under Romanian rules in the Law no. 682/2001 which ratified the Council of Europe Convention for Protection of Individuals with regard to the Automatic Processing of Personal Data of 28th January 1981 (ETS No.108). It has also been reported that in fulfilling its duties, the NOPCML respects the core principles for protection of mentioned data as required by Chapter II of the latter Convention. In accordance with the provisions of Law no. 677/2001 for the protection of persons with regard to the processing of personal data and free movement of such data, the Office is included in the Registry of processors of personal data. Accordingly, the NOPCML is supervised in this regard by the competent national authority, the National Authority for Supervision of Processing of Personal Data. It is therefore obliged by law not to collect and process data unless the strict conditions of the law are adhered to, the rules of confidentiality are applied and security measures are followed.

113. Reference was also made by the Romanian authorities to article 5 para. 4 of the AML/CFT Law, according to which the NOPCML may exchange information with foreign institutions performing similar functions only insofar as these are equally Law subjected to confidentiality rules. In addition, art. 18 para. 1 and 3 of the AML/CFT prevents the personnel of the Office from disseminating the information received during the activity except under the conditions provided in the law (this obligation also applies after the cessation of functions within the Office, for a five-years period) and from using the information for personal interests. The reviewers observe that although the AML/CFT law does not deal specifically with the issue of data protection, the general rules applicable in this context allow Romania to meet the requirements of article 46 para.11; all information, whether gathered domestically or obtained from a foreign FIU, is subject to the same rules.

Article 46 paragraph 12

114. As a general rule, the Romanian FIU is able to request feedback on the use of information transmitted. It is also in a position to provide feedback on a case by case basis to foreign FIUs; this concerns the outcome of the use of information, the outcome of an investigation, the temporary and other measures applied, the usefulness of information received and other similar information. The only limitation concerns information on concrete operative steps which would be underway and which fall under the general rules concerning the secrecy applicable to criminal investigations which preclude the sharing of sensitive information with foreign counterparts. The following statistical information was provided by the Romanian authorities for the year 2011, a) following requests sent by the Romanian FIU, the NOPCML sent 13 feedback replies; replies were only sent to those FIUs which specifically requested feedback; in the same time span, and based on reciprocity, the NOPCML received 7 feedback replies from other FIUs; b) following requests from foreign FIUs, the NOPCML received feedback in 4 cases including positive remarks on the quality of the information submitted; in one case, feedback included the results of the analyses carried out by the foreign FIU.

Effective implementation

115. The information provided by the Romanian authorities in the questionnaire and during the course of the meeting held with the reviewers covered the legislative provisions currently in force and the mandatory procedures regulating the operations of the NOPCML. The internal procedures of the NOPCML were explained and information was provided on the policies in force within the organisation. Statistics have also been provided in support of several items under review. The figures in paragraphs 94 and 114 show that the Romanian FIU actively cooperates with its foreign counterparts and as indicated earlier, during its 13 years of operation, there has been no case where the NOPCML has refused to submit information to a foreign FIU. Nor has it been established that the possibility or willingness to exchange information is affected by the NOPCML's internal status as an administrative FIU. It was also noted that the NOPCML has never refused to grant authorisation for the dissemination of information provided to the competent law enforcement authorities of the State of the requesting FIU.

116. Furthermore, it should be noted that there were no cases where a foreign FIU refused to provide information following a request for information made by the NOPCML on the basis of insufficient information being provided by the NOPCML on the relevant facts or on the manner in which the information sought would be used. During the year 2011, in fact, from the 199 outgoing requests for information made to foreign FIUs, there was no case where a request was refused (for lack of information or other gaps in the Romanian request). Only in one case did a foreign FIU refuse to supply the information requested but the reason provided was the absence of a Memorandum of Understanding. In the same year, the Romanian FIU requested the consent for dissemination of information contained in the requests sent by foreign FIUs in 9 cases. A positive answer was received in 5 cases (3 for the law enforcement authorities and 2 for financial institutions), and in only one case, a foreign FIU refused to grant the consent for dissemination of information to the law enforcement authorities (although it enquired about the status of the investigation in a penal case given that it could affect the on-going investigation of that FIU). Also, the Romanian FIU received the *ex officio* consent in 8 cases, through the request for information, for the purpose of obtaining additional data from the law enforcement authorities in Romania. The data made available by the Romanian authorities also show that feedback is used both ways between the FIU and foreign counterparts.

117. From the information made available by the Romanian authorities, the reviewers were satisfied that adequate measures are taken by the NOPCML to ensure that information submitted by foreign FIUs is not accessible to third parties. It was also confirmed that in practice the same level of protection for confidentiality and in relation to personal data that is afforded domestically is also being afforded to the information provided by foreign FIUs.

Recommendations and comments

118. It would appear that, overall, the rules and manner in which the Romanian FIU operates meet the various requirements of article 46 of the Convention.

9. Postponement of domestic suspicious transactions – Article 14

The Convention is considered to provide added value by requiring State Parties to take measures to permit urgent action in appropriate cases to suspend or withhold consent to a transaction going ahead in order to analyse the transaction and confirm the suspicion.

Description and analysis

119. Law no. 656/2002, on the prevention and sanctioning of money laundering and on the setting up of certain measures for the prevention of money laundering and combating terrorism financing provides an administrative procedure by which the NOPCML may suspend a transaction where there is a suspicion of Money laundering or terrorist financing. The relevant provision is Article 3 (2-5), which provides as follows: (1) *If the Office considers it necessary, it may dispose, based on a reason, the suspension of performing the transaction, for a period of 48 hours. When the 48-hour period ends in a non-working day, the deadline extends for the first working day. (2) If the Office considers that the period mentioned in para 2 is not enough, it may require to the General Prosecutor's Office by the High Court of Cassation and Justice, based on a reason, before the expiring of this period, the extension of the suspension of the operation for another period up to 72 hours. When the 72-hour period ends in a non-working day, the deadline extends for the first working day. The General Prosecutor's Office by the High Court of Cassation and Justice may authorize only once the required prolongation or, as the case may be, may order the cessation of the suspension of the operation. The decision of the General Prosecutor's Office by the High Court of Cassation and Justice is notified immediately to the Office. (3) The Office must communicate to the persons provided under Art. 8, within 24 hours, the decision of suspending the carrying out of the operation or, as the case may be, the prolongation of suspension, ordered by the General Prosecutor's Office by the High Court of Cassation and Justice. (4) If the Office did not make the communication within the term provided under para 4, the persons referred to in the Art. 8 shall be allowed to carry out the operation."*

120. The legal provision currently in force (article 3(1) of Law no. 656/2002) provides that the suspension of transactions may take place only in cases in which a suspicious transaction report was formally submitted. By not extending the suspension to situations where no formal report has yet been filed, Romania has thus made use of the possibility provided for in article 14, second sentence, of the Convention. The maximum duration of the suspension of the transaction imposed by the Office is of 48 hours. If this period is not considered to be sufficient, the Office may request the GPOHCCJ to extend the transaction by a further period of up to 72 hours. Besides, as indicated in the Second Progress report related to MONEYVAL's Third Evaluation Round report, an amendment effective as of 10 December 2011 has introduced a new paragraph (article 19 paragraph 2^2) allowing also the suspension of transactions *inter alia* at the request of domestic judicial authorities.

Effective implementation

121. The Romanian authorities reported that in 2008 the Office received three suspicious transaction reports containing references to pending transactions. In these cases the Romanian FIU decided to suspend the three transactions suspected to be linked to money laundering. The total amounts involved in these three cases amounted to 198.420 Euros. From this total amount, 87.000 Euros were then frozen by the General

Prosecutor's Office attached to the High Court of Cassation and Justice – GPOHCCJ (the total amount of assets frozen in the same year by the prosecutorial authorities was 3.769.192 Euros). The absence of information kept systematically on the outcome of cases generated by the Romanian FIU does not allow a determination as to whether the prosecutions in these cases were successful or whether there was any confiscation of assets after such convictions.

122. In 2009, the NOPCML received five suspicious transactions reports containing references to unperformed transactions. The Office suspended all these five transactions on the basis of a suspicion of money laundering. The transactions were subject to postponement and temporary measures subsequently ordered by the Prosecutor's Office amounted in total to 1.290.077 Euro and 42.622 USD. In 2010, following the receipt by the Office of twelve suspicious transactions reports related to unperformed transactions, the Romanian FIU suspended six of these transactions (total value of transactions suspended - 829.171 Euros and 234.104 lei). In two of these cases, the GPOHCCJ was requested by the Office to extend the suspension of the operations. From the total amount of assets involved in transactions suspended by the FIU, the prosecutors imposed provisional measures in respect of 654.000 Euro and 234.104 lei, and the National Agency for Tax Administration applied such measures to the amount of 170.871 Euros. In the six other cases, the transactions were not suspended in the first place. In 2011, the NOPCML received 10 suspicious transaction reports involving non-performed / non-completed transactions; suspension was applied in 4 cases on transactions amounting in total to 5.102.128 Euros. One of these involved a transaction for an amount of 3.5 million Euros for which the prosecutor then issued a seizure order. For these cases in 2009 and 2010, it is not clear whether the postponement of transactions led to prosecutions or whether charges were brought against any persons.

123. Provisions are being used, albeit moderately, and amounts involved have reportedly increased in recent times. According to information available in the second MONEYVAL progress report compiled in relation to the third round evaluation report, in 2008, the sums blocked by the FIU amounted to approximately 5% of funds seized/frozen by the prosecutors. By contrast, in 2011, the sums blocked by the FIU represented 98% of funds seized/frozen by the prosecutors. Thus, the overall impact of the FIU's postponement powers on asset recovery generally appears to be increasing. The use of this mechanism is still low, impinging upon the effectiveness of the measure (figures reported were of between 3 and 12 annual requests for postponement on the 3,000 to 4,000 suspicious transaction reports). The reason for this seems to be the low number of occurrences where obliged entities report non-performed/non-completed transactions. Given that the Third EU Directive applies in Romania, it would appear that the number of reports to the FIU before a transaction takes place is too low. Greater emphasis on *ex ante* reporting would be likely to result in more funds being blocked with the consequential positive impact on asset recovery.

Recommendations and comments

124. The Romanian FIU is in a position to order the postponement of a transaction following the receiving of a suspicious transaction report and it does make use of this power, to the extent that it receives notifications of unperformed/uncompleted transactions (which are quite rare in Romania). Although some questions are still open concerning the actual outcome of such transactions in particular, Romanian rules and regulations are in compliance with article 14 of the Convention. The reviewers see the recent extension of the power of the FIU to suspend transactions also upon request of a foreign FIU (see below) or of domestic judicial authorities as a positive development. Romania is encouraged to make greater use of the possibility for postponement of transactions and

the NOPCML is to continue closely coordinating its actions with those of the prosecution to ensure a more effective impact on overall asset recovery. In order to support this, Romania may wish to take further measures to raise awareness on the early reporting of suspicions so that the mechanism of postponement of transactions, and possibly further temporary measures to secure a future confiscation, can be used more fruitfully.

10. Postponement of transactions on behalf of foreign FIUs – Article 47

Article 47 establishes a new international standard, namely:

"1 Each Party shall adopt such legislative or other measures as may be necessary to permit urgent action to be initiated by a FIU, at the request of a foreign FIU, to suspend or withhold consent to a transaction going ahead for such periods and depending on the same conditions as apply in its domestic law in respect of the postponement of transactions.

2 The action referred to in paragraph 1 shall be taken where the requested FIU is satisfied, upon justification by the requesting FIU, that:

a the transaction is related to money laundering; and

b the transaction would have been suspended, or consent to the transaction going ahead would have been withheld, if the transaction had been the subject of a domestic suspicious transaction report."

Description and analysis

125. The amendment of December 2011 mentioned earlier (see paragraph 120) has introduced a new paragraph (article 19 paragraph 2^2) making it possible to suspend transactions also at the request of a foreign FIU. The new provision reads as follows: "*The Office may order, at the request of the Romanian judicial authorities or of the foreign institutions with similar attributions and with the obligation of keeping the secrecy in similar conditions, the suspension of the performance of a transaction, which has – as its purpose – money laundering or terrorism financing acts, art. 3 para. (2) – (5) being applied accordingly, taking into consideration the motivations presented by the requesting institution, as well as the fact that the transaction could have been suspended if it would have been the subject of a suspicious transaction report submitted by one of the natural and legal persons provided at art. 8.*

Effective implementation

126. Due to the recent introduction of the amendments to article 19 para. 2^2 of the AML/CFT Law and to the fact that no foreign request for a suspension has been received to date, it is undoubtedly too early to measure the effectiveness of this measure.

Recommendations and comments

127. The reviewers are pleased to see that recent amendments have been adopted that allow for the suspension of transactions also upon a request from a foreign FIU, in case of possible money laundering or terrorist financing- related transaction.

11. Refusal and postponement of co-operation – Article 28 paragraphs 1d, 1e, 8c.

The Convention is considered to add value here as, according to article 28 (1e) and article 28 (1d), the political offence ground for refusal of judicial international cooperation can never be applied to financing of terrorism (it is the same in respect of the fiscal excuse)

Provision is made in article 28(8c) to prevent refusal of international cooperation by States (which do not recognise self laundering domestically) on the grounds that, in the internal law of the requesting Party, the subject is the author of both the predicate offence and the ML offence.

Description and analysis

128. In Romania the fact that the request relates to a fiscal offence is not a ground for refusal. As regards mutual legal assistance requests, the limits of cooperation in criminal matters are the general limits contained in Article 5 of Law 302/2004 *on international judicial cooperation in criminal matters* seen earlier in this report. The application of this law is subject to Romania's prevailing interests concerning sovereignty, security, public policy and others, as defined by the Constitution.

129. The Romanian authorities reported that cooperation is generally not granted when the request relates to a political offence. The execution of requests for mutual legal assistance does not imply the verification of double criminality, except in those cases when the request concerns a search or seizure. In these cases, the offences have to be extraditable ones.

130. Extradition, however, cannot be granted in cases where the offence underlying the request is a political one. The exceptions are indicated in Article 21 of Law 302/2004, which states that the following shall not be deemed to be political offences:

- attempts against the life of the leader of a State or against that of a member of his family;
- crimes against mankind as provided by the Convention for the prevention and punishment of crimes of genocide, adopted on 9 December 1948 by the General Assembly of the United Nations;
- offences provided in Art. 50 of the Geneva Convention of 1949 for the Amelioration of the Condition of the Wounded and Sick in. Armed Forces in the Field, in Art. 51 of the Geneva Convention of 1949 for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, in Art. 129 of the Geneva Convention of 1949 Relative to the Treatment of Prisoners of War and in Art. 147 of the Geneva Convention of 1949 Relative to the Protection of Civilian Persons in Time of War;
- any similar violations of war laws, which are not provided in the Geneva Conventions mentioned in c);
- the offences mentioned in Article 1 of the European Convention on the Suppression of Terrorism, adopted in Strasbourg on 27 January 1977 and in other relevant international instruments;
- offences mentioned in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 17 December 1984 by the General Assembly of the United Nations;
- any other offence the political nature of which has been removed by the

international treaties, conventions or agreements to which Romania is a Party.

131. Co-operation may still be granted even if the person under investigation or subjected to a confiscation order by the authorities of the requesting Party is mentioned in the request both as the author of the underlying criminal offence and of the offence of money laundering.

Recommendation and comments

132. It is clear that international cooperation is not hindered by grounds based on the question of "self-laundering".

133. It is also clear that under Romanian legislation, international cooperation is always permissible in cases concerning terrorist financing which also involve fiscal offences since the latter never constitutes a ground for refusal. The exception of "political offences" is still – theoretically – opposable, but the reviewers note with interest that exceptions to this exist where cooperation concerns i.a. "*offences mentioned in Article 1 of the European Convention on the Suppression of Terrorism, adopted in Strasbourg on 27 January 1977 and in other relevant international instruments*". It is not entirely clear whether terrorist financing offences would be captured: the offences listed in article 1 of the Convention of 1977 do not refer explicitly to these[22] and the reference to "other relevant international instruments" is certainly too vague. The Romanian authorities have reassured the reviewers that these are theoretical considerations which are without practical implications, bearing in mind the ratification by Romania of the United Nations Convention on the suppression of financing of terrorism of 1999 and the fact that assistance was already provided in the context of terrorist financing.

II. Overall Conclusions on implementation of the Convention

134. Romania has a number of good tools in place to deal with serious forms of crime and to target the proceeds of crime, whether in the context of the prevention of money laundering or in the context of criminal investigations insofar as the latter aim also at identifying the profit of crime and not just establishing the guilt of suspects. These efforts are supported by a Financial Intelligence Unit whose tasks, powers and functioning, especially in the context of international cooperation, are largely in line with the relevant standards reviewed in the context of this report.

135. Overall, however, the Romanian criminal law framework appears to be fragmented and many relevant provisions concerning, for instance, investigative powers and access to information, mutual legal assistance, as well as confiscation and provisional measures, are scattered around in general laws (Criminal Code and Criminal procedure Code) and special laws etc. As a result, this does not offer the adequate consistent coverage

[22] **"Article 1 -** For the purposes of extradition between Contracting States, none of the following offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives: a) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970; b) an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971; c) a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents; d) an offence involving kidnapping, the taking of a hostage or serious unlawful detention; e) an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons; f) an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence."

of such measures for the broadest range of serious criminal offences. Moreover, the Romanian legal framework is characterised, on the one hand, by redundancies (partly because of the multiplicity of pieces of legislation) and a high degree of detail sometimes justified by the Romanian authorities as having been necessary steps to make things clear, whereas on the other hand, some general provisions are reportedly to be interpreted very broadly and equivalent to several specific paragraphs on the same subject but with a specific geographic coverage (e.g. exchange of information with EU and non-EU countries). This made it often difficult for the reviewers to apprehend the logic of the Romanian legislation.

136. In the context of a desk review process, the present report has taken into account the information made available by Romania. These consisted mostly of references to legislation, with additional explanations or clarification provided during informal meetings. Romania has made available some empirical information (mostly statistics) concerning the implementation of the money laundering incrimination in practice, as well as confiscation and temporary measures, international cooperation and the functioning of the financial intelligence unit.

137. The present report has identified a series of improvements which are desirable in order to ensure a higher degree of compliance with 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), in areas where this treaty adds value to the Recommendations of the Financial Action Task Force (FATF).

138. The following recommendations were addressed to Romania:

- **to consider introducing in Article 23 of Law No. 656/2002, an incrimination of some of the acts referred to in paragraph 1 of Article 9 of the CETS N° 198, in either or both of the following cases where the offender:**
  - **suspected that the property was proceeds;**
  - **ought to have assumed that the property was proceeds; (paragraph 20)**

- **to consider - in the light of the outcome of the on-going autonomous money laundering case outlined above - whether to provide for an explicit provision ruling out the necessity of the prior or simultaneous conviction for the predicate offence for rendering a conviction for money laundering, and to bring prosecutions in serious cases where there is no prior or simultaneous convictions for predicate offences; (paragraph 20)**

- **to issue, as necessary, further prosecutorial guidance in money laundering cases, to familiarise prosecutors and investigators with the mandatory provisions of Article 9 paragraph 5 and 6 of the Convention, and to develop prosecutorial practice based on these provisions of the Convention**; **(paragraph 20)**

- **to take the necessary steps to facilitate the use of corporate liability mechanisms by judicial authorities (guidance documents, instructions etc.) also in money laundering and terrorist financing cases in the various circumstances envisaged by article 10 of the Convention (including in case of lack of supervision)**; **(paragraph 29)**

- **to improve the quality and scope of statistics (so as to assess the actual effectiveness of confiscation measures in practice) and to ensure that the**

provisions on confiscation and provisional measures are properly and effectively applied ; (paragraph47)

- **to take the necessary measures to fully implement article 7 of the Convention CETS N°198, in particular to ensure that a) prosecutorial or law enforcement bodies have adequate access to information (especially non-bank financial information not related to a direct suspect) for the purposes of tracing, identifying, confiscating and securing criminal assets; b) monitoring of accounts is permissible with respect to the broadest range of criminal offences; c) adequate provisions prevent financial institutions from informing their customers and third persons of any investigative step or enquiry ; (paragraph 71)**

- **to clarify the extent to which Romania can cooperate with States Parties in the execution of foreign non-conviction based confiscation orders, in accordance with article 23 paragraph 5 of the Convention; (paragraph 76)**

- **to ensure, in respect of cooperation with non-EU countries, that Romania is able to cooperate for the purposes of sharing or repatriating criminal assets so as to give full effect to article 25 of the Convention, as it is intended (paragraph 76)**

139. The Conference of the Parties invites Romania to implement the findings contained in the present evaluation report and to report back by 31 December 2014 at the latest.

* * * *

III. Annexes

ANNEX I

Article 9 of the Convention – Laundering offences

3. Each Party may adopt such legislative and other measures as may be necessary to establish as an offence under its domestic law all or some of the acts referred to in paragraph 1 of this Article, in either or both of the following cases where the offender

    a) suspected that the property was proceeds,

    b) ought to have assumed that the property was proceeds.

4. Provided that paragraph 1 of this article applies to the categories of predicate offences in the appendix to the Convention, each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 1 of this article applies:

    a) only in so far as the predicate offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year, or for those Parties that have a minimum threshold for offences in their legal system, in so far as the offence is punishable by deprivation of liberty or a detention order for a minimum of more than six months; and/or

    b) only to a list of specified predicate offences; and/or

    c) to a category of serious offences in the national law of the Party.

5. Each Party shall ensure that a prior or simultaneous conviction for the predicate offence is not a prerequisite for a conviction for money laundering.

6. Each Party shall ensure that a conviction for money laundering under this Article is possible where it is proved that the property, the object of paragraph 1.a or b of this article, originated from a predicate offence, without it being necessary to establish precisely which offence.

ANNEX II

Article 10 of the Convention – Corporate liability

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

    a) a power of representation of the legal person; or

    b) an authority to take decisions on behalf of the legal person; or

    c) an authority to exercise control within the legal person,

    as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences.

2. Apart from the cases already provided for in paragraph 1, each Party shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of the criminal offences mentioned in paragraph 1 for the benefit of that legal person by a natural person under its authority.

ANNEX III

Article 3 of the Convention – Confiscation measures

3. Parties may provide for mandatory confiscation in respect of offences which are subject to the confiscation regime. Parties may in particular include in this provision the offences of money laundering, drug trafficking, trafficking in human beings and any other serious offence.

4. Each Party shall adopt such legislative or other measures as may be necessary to require that, in respect of a serious offence or offences as defined by national law, an offender demonstrates the origin of alleged proceeds or other property liable to confiscation to the extent that such a requirement is consistent with the principles of its domestic law.

ANNEX IV

Declarations deposited by Romania – situation on 27 March 2012

Declaration contained in the instrument of ratification deposited on 21 February 2007 and supplemented by a letter from the Permanent Representative of Romania, dated 16 April 2007, registered by the Secretariat General on 16 April 2007 – Or. Engl.

In accordance with Article 24, paragraph 3, of the Convention, the provisions of Article 24, paragraph 2 shall apply only subject to the constitutional principles and the basic concepts of the Romanian legal system.
Period covered: 1/5/2008 -
The preceding statement concerns Article(s) : 24

Declaration contained in the instrument of ratification deposited on 21 February 2007 and supplemented by a letter from the Permanent Representative of Romania, dated 16 April 2007, registered by the Secretariat General on 16 April 2007 – Or. Engl.

In accordance with Article 31, paragraph 2, of the Convention,

a) the requests of judicial assistance formulated in the stage of criminal investigations and criminal pursuit shall be addressed to the Prosecutor's Office attached to the High Court of Cassation and Justice;
b) the requests of judicial assistance formulated during the trial stage and the execution of punishment stage shall be addressed to the Ministry of Justice.
Period covered: 1/5/2008 -
The preceding statement concerns Article(s) : 31

Declaration contained in the instrument of ratification deposited on 21 February 2007 and supplemented by a letter from the Permanent Representative of Romania, dated 16 April 2007, registered by the Secretariat General on 16 April 2007 – Or. Engl.

In accordance with Article 35, paragraphs 1 and 3, of the Convention, the requests and the documents supporting such requests addressed to Romanian authorities shall be accompanied by a translation in Romanian language or in one of the official languages of the Council of Europe.
Period covered: 1/5/2008 -
The preceding statement concerns Article(s) : 35

Declaration contained in the instrument of ratification deposited on 21 February 2007 and supplemented by a letter from the Permanent Representative of Romania, dated 16 April 2007, registered by the Secretariat General on 16 April 2007 – Or. Engl.

In accordance with Article 42, paragraph 2, of the Convention, the information or evidence provided under the provisions of Chapter IV of the Convention may not be used or transmitted without its prior consent by the authorities of the requesting Party in

investigations or proceedings other than those specified in the request.
Period covered: 1/5/2008 -
The preceding statement concerns Article(s) : 42

Declaration contained in the instrument of ratification deposited on 21 February 2007 and supplemented by a letter from the Permanent Representative of Romania, dated 16 April 2007, registered by the Secretariat General on 16 April 2007 – Or. Engl.

In accordance with Article 53, paragraph 4, of the Convention, the provisions of Article 3, paragraph 4 shall apply only partially, in conformity with the principles of the domestic law.
Period covered: 1/5/2008 -
The preceding statement concerns Article(s) : 53

Declaration contained in the instrument of ratification deposited on 21 February 2007 and supplemented by a letter from the Permanent Representative of Romania, dated 16 April 2007, registered by the Secretariat General on 16 April 2007 – Or. Engl.

In accordance with Article 33, paragraph 2, of the Convention, the Romanian central authorities designated for the application of the provisions of Chapter IV of the Convention are :

- National Office for Prevention and Combating of Money Laundering
Str. Splaiul Independentei nr. 202A, sectorul 6
Bucuresti, România

- Ministry of Justice
Str. Apolodor nr. 17, sectorul 5
Bucuresti, România

- Prosecutor's Office attached to the High Court of Cassation and Justice
Bd. Libertatii nr. 14, sectorul 5
Bucuresti, România

- Ministry of Administration and Interior
Piata Revolutiei nr. 1A, sectorul 1
Bucuresti, România

- Ministry of Public Finance
Str. Apolodor nr. 17, sectorul 5
Bucuresti, România.
Period covered: 1/5/2008 -
The preceding statement concerns Article(s) : 33

ANNEX V

Law No. 656*) of December 7th, 2002 on prevention and sanctioning money laundering, as well as for setting up some measures for prevention and combating terrorism financing

*) Note:
It contains the changes to the initial document, including the provisions:
E.G.O. Nr. 53/21.04.2008 published in the "Official Gazette of Romania" No. 53/30.04.2008
Law No. 238/05.12.2011 published in the "Official Gazette of Romania" No. 861/07.12.2011

The Parliament of Romania adopts the present law.

Chapter I
General Provisions

Art. 1 - This law establishes measures for the prevention and combating of money laundering and certain measures concerning the prevention and combating the terrorism financing.

Art. 2 - For purposes of the present law:

a) ***money laundering*** means the offence provided for in the Art. 23;

a[1]) ***terrorism financing*** means the offence referred to in the Art. 36 of the Law no. 535/2004 on the prevention and combating terrorism;

b) ***property*** means the corporal or non-corporal, movable or immovable assets, as well as the juridical acts or documents that certify a title or a right regarding them;

(c) ***suspicious transaction*** means the operation which apparently has no economical or legal purpose or the one that, by its nature and/or its unusual character in relation with the activities of the client of one of the persons referred to in Article 8, raises suspicions of money laundering or terrorist financing;

(d) ***external transfers in and from accounts*** means cross-border transfers, the way they are defined by the national regulations in the field, as well as payment and receipt operations carried out between resident and non-resident persons on the Romanian territory;

„e) ***credit institution*** means the entity defined in art. 7 paragraph (1) point 10 of Emergency Governmental Ordinance no. 99/2006 on credit institutions and capital adequacy, approved with amendments by Law no. 227/2007, with subsequent modifications and completions;";

(f) ***financial institution*** means any entity, with or without legal capacity, other than credit institution, which carries out one or more of the activities referred to in Article 18, para (1), points (b)-(l) and (n) of Government Emergency Ordinance no.99/2006 on credit institutions and capital adequacy, approved with modifications and completions by Law no. 227/2007, including postal offices and other specialized entities that provide fund transfer services and those that carry out currency exchange. Within this category there are also:

1. Insurance and reinsurance companies and insurance/reinsurance brokers, authorized according with the provisions of Law no. 32/2000 on the insurance and insurance supervision activity, with subsequent modifications and completions, as well as the branches on the Romanian territory of the insurance and reinsurance companies and insurance and/or reinsurance intermediaries, which were authorized in other member states.

2. Financial investments service companies, investment consultancy, investment management companies, investment companies, market operators, system operators as they are defined under the provisions of Law no. 297/2004 on capital market, with subsequent modifications and completions, and of the regulations issued for its application;

(g) ***business relationship*** means the professional or commercial relationship that is connected with the professional activities of the institutions and persons covered by article 8 and which is expected, at the time when the contact is established, to have an element of duration;

(h) ***operations that seem to be linked to each other*** means the transactions afferent to a single transaction, developed from a single commercial contract or from an agreement of any nature between the same parties, whose value is fragmented in portions smaller than 15.000EURO or equivalent RON, when these operations are carried out during the same banking day for the purpose of avoiding legal requirements;

(i) ***shell bank*** means a credit institution, or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence, respectively the leadership and management activity and institution's records are not in that jurisdiction, and which is unaffiliated with a regulated financial group.

(j) ***service providers for legal persons and other entities or legal arrangements*** means any natural or legal person which by way of business, provides any of the following services for third parties:

1. Forming companies or other legal persons;

2.Acting as or arranging for another person to act as a director or manager of a company, or acting as associate in relation with a company with sleeping partners or a similar quality in relation to other legal persons;

3. Providing a registered office, administrative address or any other related services for a company, a company with sleeping partners or any other legal person or arrangement;

4. Acting as or arranging for another person to act as a trustee of an express trust activity or a similar legal operation;

5. Acting as or arranging for another person to act as a shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in conformity with Community legislation or subject to equivalent international standards;

(k) ***group*** means a group of entities, as it is defined by article 2 para (1) point 13 of Governmental Emergency Ordinance no. 98/2006 on enhanced supervision of credit institutions, insurance and/or reinsurance companies, financial investment services companies and of investment management companies all part of a financial mixture, approved with modifications and completions by Law no. 152/2007.

Art. 2[1] - (1) In accordance with the provisions of the present law, *politically exposed persons* are individuals who work or have worked with important public functions, their families and persons publicly known to be close associates of individuals acting in an important public functions.

(2) Natural persons, which are entrusted, for the purposes of the present law, with prominent public functions are:

a) Heads of state, heads of government, members of parliament, European commissioners, members of government, presidential councilors, state councilors, state secretaries;

b) Members of constitutional courts, members of supreme courts, as well as members of the courts whose decisions are not subject to further appeal, except in exceptional circumstances;

c)Members of account courts or similar bodies, members of the boards of central banks;

d) Ambassadors, charges d'affaires and high-ranking officers in the armed forces;

e) Managers of the public institutions and authorities;

f) Members of the administrative, supervisory and management bodies of State-owned enterprises.

(3) None of the categories set out in points (a) to (f) of para (2) shall include middle ranking or more junior officials. The categories set out in points (a) to (f) of para (2) shall, where applicable, include positions at Community and international level.

(4) Family members of the persons exercising important public functions are, in accordance with this law:

a) The spouse;

b) The children and their spouses;

c) The parents

(5) Persons publicly known as close associates of individuals acting in an important public functions are:

a) any natural person who is found to be the real beneficiary of a legal person or legal entity together with any of the persons referred to in para. (2) or having any other privileged business relationship with such a person;

b) any natural person who is the only real beneficiary of a legal person or legal entity known as established for the benefit of any person referred to in para. (2).

(6) Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function within the meaning of paragraph (2) for a period of at least one year, institutions and persons referred to in Article 8 shall not consider such a person as politically exposed.

Art. 2^2 – (1) For the purposes of the present law, ***beneficial owner*** means any natural person who ultimately owns or controls the customer and/or the natural person on whose behalf or interest a transaction or activity is being conducted, directly or indirectly.

(2) The beneficial owner shall at least include:

a) in the case of corporate entities:

1. the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership over a sufficient percentage of the shares or voting rights sufficient to ensure control in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards. 2. A percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;

2. the natural person(s) who otherwise exercises control over the management of a legal entity;

b) in the case of legal entities, other than those referred to in para (a), and other entities or legal arrangements, which administer and distribute funds:

1. The natural person who is the beneficiary of 25 % or more of the property of a legal person or other entities or legal arrangements, where the future beneficiaries have already been determined;

2. Where the natural persons that benefit from the legal person or entity have yet to be determined, the group of persons in whose main interest the legal person, entity or legal arrangement is set up or operates;

3.The natural person(s) who exercises control over 25 % or more of the property of a legal person, entity or legal arrangement.

Chapter II
Customers Identification Procedures and Processing Procedures of the Information Referring to Money Laundering

Art. 3 – (1) As soon as an employee of a legal or natural person of those stipulated in article 8, or one of the natural person referred to in art. 8 has suspicions that a transaction, which is on the way to be performed, has the purpose of money laundering or terrorism financing, he shall inform the person appointed according to art. 14 para (1), which shall notify immediately the National Office for Preventing and Combating Money Laundering, hereinafter referred to as the *Office*. The appointed person shall analyze the received information and shall notify the Office about the reasonably motivated suspicions. The Office shall confirm the receipt of the notification. For the natural and legal persons referred to in art. 8 letter. k) notification is

sent by the person who has suspicions that the transaction, which is on the way to be performed, has the purpose of money laundering or terrorism financing.

(1^1) The National Bank of Romania, National Securities Commission, Insurance Supervision Commission or the Supervision Commission for the Private Pension System shall immediately inform the Office with respect to the authorization or refusal of the transactions referred to in article 28 of the Law no. 535/2004 on the prevention and combating terrorism, also notifying the reason for which such solution was given.

(2) If the Office considers as necessary, it may dispose, based on a reason, the suspension of performing the transaction, for a period of 48 hours. When the 48-hour period ends in a non-working day, the deadline extends for the first working day. The amount, in respect of which instructions of suspension were given, shall remain blocked on the account of the holder until the expiring of the period for which the suspension was ordered or, as appropriate, until the General Prosecutor's Office by the High Court of Cessation and Justice gives new instructions, accordingly with the law.

(3) If the Office that the period mentioned in para (2) is not enough, it may require to the General Prosecutor's Office by the High Court of Cassation and Justice, based on a reason, before the expiring of this period, the extension of the suspension of the operation for another period up to 72 hours. When the 72-hour period ends in a non-working day, the deadline extends for the first working day. The General Prosecutor's Office by the High Court of Cassation and Justice may authorize only once the required prolongation or, as the case may be, may order the cessation of the suspension of the operation. The decision of the General Prosecutor's Office by the High Court of Cassation and Justice is notified immediately to the Office.

(4) The Office must communicate to the persons provided under Art. 8, within 24 hours, the decision of suspending the carrying o of the operation or, as the case may be, the measure of its prolongation, ordered by the General Prosecutor's Office by the High Court of Cassation and Justice.

(5) If the Office did not make the communication within the term provided under para (4), the persons referred to in the Art. 8 shall be allowed to carry out the operation.

(6) The persons provided in the article 8 or the persons designated accordingly to the article 14 para (1) shall report to the Office, within 10 working days, the carrying out of the operations with sums in cash, in RON or foreign currency, whose minimum threshold represents the equivalent in RON of 15,000EUR, indifferent if the transaction is performed through one or more operations that seem to be linked to each other.

(7) The provisions of the para (6) shall apply also to external transfers in and from accounts for amounts of money whose minimum limit is the equivalent in RON of 15,000EUR.

(8) The persons referred to in article 8 para (1) letters e) and f) have no obligation to report to the Office the information they receive or obtain from one of their customers during the process of determining the customer's legal status or during its defending or representation in certain legal procedures or in connection with therewith, including while providing consultancy with respect to the initiation of certain legal procedures, according to the law, regardless of whether such information has been received or obtained before, during, or after the closure of the procedures.

(9) The form and contents of the report for the operations provided for in the para (1), (6) and (7) shall be established by decision of the Office's Board, within 30 days from the date of coming into force of the present law. The reports provided for in articles (6) and (7) are forwarded to the Office, in maximum 10 working days, based on a working methodology set up by the Office.

(10) In the case of persons referred to in article 8 para (e) and (f), the reports are forwarded to person designate by the leading structures of the independent legal profession, which have the obligation to transmit them to the Office within three days from reception, at most. The information is sent to the Office unmodified.

(11) National Customs Authority communicates to the Office, on a monthly basis, all the information it holds, according with the law, in relation with the declarations of natural

persons regarding cash in foreign currency and/or national one, which is equal or above the limit set forth by the Regulation (CE) no. 1889/2005 of European Parliament and Council on the controls of cash entering or leaving the Community, held by these persons while entering or leaving the Community. National Customs Authority shall transmit to the Office immediately, but no later than 24 hours, all the information related to suspicions on money laundering or terrorism financing which is identified during its specific activity.

(12) The following operations, carried out in his own behalf, are excluded from the reporting obligations provided by para (6): between credit institution, between credit institutions and the National Bank of Romania, between credit institutions and the state treasury, between National Bank of Romania and state treasury. Other exclusions, from the reporting obligations provided by para (6), may be established for a determined period, by Governmental Decision, subsequent to the Office's Board proposal.

Art. 4 - (1) The persons provided for in the Art. 8, which know that an operation that is to be carried out has as purpose money laundering, may carry out the operation without previously announcing the Office, if the transaction must be carried out immediately or if by not performing it, the efforts to trace the beneficiaries of such money laundering suspect operation could be hampered. These persons shall compulsorily inform the Office immediately, but not later than 24 hours, about the transaction performed, also specifying the reason why they did not inform the Office, according to the Art. 3.

(2) The persons referred to in the Art. 8, which ascertain that a transaction or several transactions carried out on the account of a customer are atypical for the activity of such customer or for the type of the transaction in question, shall immediately notify the Office if there are suspicions that the deviations from normality have as purpose money laundering or terrorist financing.

(3) Persons referred to in art. 8 shall immediately notify the Office, when they finds out that regarding to an operation or several operations which were carried out on behalf of a customer there are suspicions that the funds have as purpose money laundering or terrorism financing.

Art. 5 - (1) The Office may require to the persons mentioned in the Art. 8, as well as to the competent institutions to provide the data and information necessary to fulfil the attributions provided by the law. The information connected to the notifications received under Articles 3 and 4 are processed and used within the Office under confidential regime.

(2) The persons provided for in the Art. 8 shall send to the Office the required data and information, within 30 days after the date of receiving the request.

(3) The professional and banking secrecy where the persons provided for in article 8 are kept is not opposable to the Office.

(4) The Office may exchange information, based on reciprocity, with foreign institutions having similar functions and which are equally obliged to secrecy, if such information exchange is made with the purpose of preventing and combating money laundering and terrorism financing.

Art. 6 - (1) The Office shall analyze and process the information, and if the existence of solid grounds of money laundering or financing of terrorist activities is ascertained, it shall immediately notify the General Prosecution's Office by the High Court of Cassation and Justice. In case in which it is ascertain the terrorism financing, it shall immediately notify the Romanian Intelligence Service with respect to the transactions that are suspected to be terrorism financing.

(1^1) The identity of the natural person designated in accordance with Art. 14 para. (1) and of the natural person which, in accordance with Art. 14 para (1), notified the Office may not be disclosed in the content of the notification.

(2) If following the analyzing and processing of the information received by the Office the existence of solid grounds of money laundering or terrorism financing is not ascertained, the Office shall keep records of such information.

(3) If the information referred to in the para (2) is not completed over a 10-year period, it shall be filed within the Office.

(4) Following the receipt of notifications, based on a reason, General Prosecutor's Office by the High Court of Cassation and Justice or the structures within Public Ministry, competent by law, may require the Office to complete such notifications.

(5) The Office is obliged to put at the disposal of the General Prosecutor's Office by the High Court of Cassation and Justice or the structures within Public Ministry, competent by law, at their request, the data and information obtained according to the provisions of the present law.

(6) The General Prosecutor's Office by the High Court of Cassation and Justice or the structures within Public Ministry, competent by law, that formulated requests in accordance with the provisions of para (4), shall notify to the Office, quarterly, the progress in the settlement of the notifications submitted, as well as the amounts on the accounts of the natural or legal persons for which blocking is ordered following the suspension carried out or the provisional measures imposed.

(7) The Office shall provide to the natural and legal persons referred to in the Art. 8, as well as, to the authorities having financial control attributions and to the prudential supervision authorities, through a procedure considered adequate, with general information concerning the suspected transactions and the typologies of money laundering and terrorism financing.

(7^1) The Office provides the persons referred to in article (8) para (a) and (b), whenever possible, under a confidentiality regime and through a secured way of communication, with information about clients, natural and/or legal persons which are exposed to risk of money laundering and terrorism financing.

(8) Following the receipt of the suspicious transactions reports, if there are found solid grounds of committing other offences than that of money laundering or terrorism financing, the Office shall immediately notify the competent body.

Art. 7 - (1) The application in good faith, by the natural and/or legal persons, of the provisions of articles (3)-(5) may not attract their disciplinary, civil or penal responsibility.

(2) Suspension and extension of the suspension made in violation of the law and in bad faith or made as a result of committing an unlawful deed under the conditions of delictual liability and cause damage, by the Office and by the General Prosecutor near by the High Court of Cassation Justice attract the responsibility of the State for damage caused.

Art. 8 – The provisions of this law shall be applied to the following natural or legal persons:

a) credit institution and branches in Romania of the foreign credit institutions;

b) financial institutions, as well as branches in Romania of the foreign financial institutions;

c) private pension funds administrators, in their own behalf and for the private pension funds they manage, marketing agents authorized for the system of private pensions;

d) casinos;

e) auditors, natural and legal persons providing tax and accounting consultancy;

f) public notaries, lawyers and other persons exercising independent legal profession, when they assist in planning or executing transactions for their customers concerning the purchase or sale of immovable assets, shares or interests or good will elements, managing of financial instruments or other assets of customers, opening or management of bank, savings, accounts or of financial instruments, organization of contributions necessary for the creation, operation, or management of a company, creation, operation, or management of companies, undertakings for collective investments in transferable securities, other trust activities or when they act on behalf of and their clients in any financial or real estate transactions;

g) service providers for companies or other entities, other than those mentioned in para (e) or (f), as are defined in art. 2 letter j);

h) persons with attributions in the privatization process;

i) real estate agents;

j) associations and foundations;

k) other natural or legal persons that trade goods and/or services, provided that the operations are based on cash transactions, in RON or foreign currency, whose minimum value represents the equivalent in RON of 15000EUR, indifferent if the transaction is performed through one or several linked operations.

Art. 8[1] – In performing their activity, the persons referred to in article 8 are obliged to adopt adequate measures on prevention of money laundering and terrorism financing and, for this purpose, on a risk base, apply standard, simplified or enhanced customer due diligence measures, which allow them to identify, where applicable, the beneficial owner.

Art. 8[2] – Credit institutions shall not enter into or continue a correspondent banking relationship with a shell bank or with a bank that is known to permit its accounts to be used by a shell bank.

Art. 9 – (1) The persons referred to in the article 8 are obliged to apply standard customer due diligence measures in the following situations:

a) when establishing a business relationship;

b) when carrying out occasional transactions amounting to EUR 15 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

c) when there are suspicions that the transaction is intended for money laundering or terrorist financing, regardless of the derogation on the obligation to apply standard customer due diligence measures, provided by the present law, and the amount involved in the transaction;

d) when there are doubts about the veracity or adequacy of previously obtained customer identification data.

e) when purchasing or exchanging casino chips with a minimum value, in equivalent RON, of 2000 EUR.

(2) When the sum is not known in the moment of accepting the transaction , the natural or legal person obliged to establish the identity of the customers shall proceed to their rapid identification, when it is informed about the value of the transaction and when it established that the minimum limit provided for in para (1) (b) was reached.

(3) The persons referred to in the article 8 are obliged to ensure the application of the provisions of the present law to external activities or the ones carried about by agents.

(4) Credit institutions and financial institutions must apply customer due diligence and record keeping measures to all their branches from third countries, and these must be equivalent at least with those provided for in the present law.

Art. 9[1] - The persons referred to in the article 8 shall apply standard customer due diligence measures to all new customers. The same measures shall be applied, on a risk base, as soon as possible, to the existing clients.

Art. 9[2] – (1) Credit institutions and financial institutions shall not open and operate anonymous accounts, respectively accounts for which the identity of the holder or owner is not known and documented accordingly.

(2) When applying the provisions of article 9 index 1, the persons referred to in the article 8 shall apply standard customer due diligence measures to all the owners and beneficiaries of existing anonymous accounts as soon as possible and in any event before such accounts or are used in any way.

Art. 10 - (1) The identification data of the customers shall contain:

a) in the situation of the natural persons - the data of civil status mentioned in the documents of identity provided by the law;

b) in the situation of the legal persons - the data mentioned in the documents of registration provided by the law, as well as the proof that the natural person who manages the transaction, legally represents the legal person.

(2) In the situation of the foreign legal persons, at the opening of bank accounts those documents shall be required from which to result the identity of the company, the headquarters, the type of the company, the place of registration, the power of attorney who represents the company in the transaction, as well as, a translation in Romanian language of the documents authenticated by an office of the public notary.

Art. 11 - *** *Repealed by E.O. No. 135/2005*

Art. 12 - The persons referred to in the article 8 shall apply simplified customer due diligence measures for the following situations:

a) for life insurance policies, if the insurance premium or the annual installments are lower or equal to the equivalent in RON of the sum of 1000EUR or if the single insurance premium paid is up to 2500EUR, the equivalent in RON. If the periodic premium installments or the annual sums to pay are or are to be increased in such a way as to be over the limit of the sum of 1000EUR, respectively of 2500EUR, the equivalent in RON, standard customer due diligence measures shall be applied;

b) for the situation of the subscription to pension funds;

c) for the situation of electronic currency defined accordingly with the Law, for the situations and conditions provided by the regulations on the present law;

d) when a customer is a credit or financial institution, according with article 8, from a Member State of European Union or of European Economic Area or, as appropriate, a credit or financial institution in a third country, which has similar requirements with those laid down by the present law and are supervised for their application;

e) for other situations, regarding clients, transactions or products, that pose a low risk for money laundering and terrorism financing, provided by the regulations on the application of the present law.

Art. 12[1] – (1) In addition to the standard customer due diligence measures, the persons referred to in the article 8 shall apply enhanced due diligence measures for the following situations which, by their nature, may pose a higher risk for money laundering and terrorism financing:

a) for the situation of persons that are not physically present when performing the transactions;

b) for the situation of correspondent relationships with credit institutions from states that are not European Union's Member States or do not belong to the European Economic Area;

c) for the transactions or business relationships with politically exposed persons, which are resident in another European Union Member State or European Economic Area member state, or a third country.

(2) The persons referred to in the article 8 shall apply enhanced due diligence measures for other cases than the ones provided by para (1), which, by their nature, pose a higher risk of money laundering or terrorism financing.

Art. 13 - (1) In every situation in which the identity is required according to the provisions of the present law, the legal or natural person provided for in the Art. 8, who has the obligation to identify the customer, shall keep a copy of the document, as an identity proof, or identity references, for a minimum of five-year period, starting with the date when the relationship with the client comes to an end.

(2) The persons provided for in the Art. 8 shall keep the secondary or operative records and the registrations of all financial operations arising from the conduct of a business relationship or occasional transaction, for a minimum of five-year period, starting with the

date when the business relationship comes to an end, respectively from the performance of the occasional transaction, in an adequate form, in order to be used as evidence in justice.

Art. 14 - (1) The legal persons provided for in the Art. 8 shall design one or several persons with responsibilities in applying the present law, whose names shall be communicated to the Office, together with the nature and the limits of the mentioned responsibilities.

(1^1) The persons referred to in the article 8 (a)-(d), (g)-(j), as well as the leading structures of the independent legal professions mentioned by article 8 (e) and (f) shall designate one or several persons with responsibilities in applying the present law, whose names shall be communicated to the Office, together with the nature and the limits of the mentioned responsibilities, and shall establish adequate policies and procedures on customer due diligence, reporting, secondary and operative record keeping, internal control, risk assessment and management, compliance and communication management, in order to prevent and stop money laundering and terrorism financing operations, ensuring the proper training of the employees. Credit institutions and financial institutions are obliged to designate a compliance officer, subordinated to the executive body, who coordinates the implementation of the internal policies and procedures, for the application of the present law.

(2) The persons designated according to para (1) and (1^1) shall be responsible for fulfilling the tasks established for the enforcement of this Law.

(3) The provisions of para (1), (1 index 1) and (2) are not applicable for the natural and legal persons provided by article 8 para (k).

(4) Credit and financial institutions must inform all their branches in third states about the policies and procedures established accordingly with para (1^1).

(5) The persons designated in accordance with para. (1) and (1^1) shall have direct and timely access to the relevant data and information necessary to fulfill their obligations under this law.

Art. 15 - The persons designated according to the Art. 14 para (1) and the persons provided for in the Art. 8 shall draw up a written report for each suspicious transaction, in the pattern established by the Office, which shall be immediately sent to it.

Art. 16 – **** Repealed by E.O. No. 53/2008*

(1^1) The management bodies of the independent legal professions shall conclude cooperation protocols with the Office, within 60 days of the entry into force of this Law.

(2) The Office shall organize, at least once per year, training seminars in the field of money laundering and terrorism financing. On request, the Office and the supervision authorities may take part in the special training programs of the representatives of the persons referred to in article 8.

Art. 16^1. — (1) Licensing and / or registration of the entities performing foreign exchange in Romania, other than those subject to the supervision of the National Bank of Romania, in accordance with the provisions of the present law, shall be made by the Ministry of Public Finance, through the Commission for authorization of foreign exchange activity, hereinafter referred to as the *Commission*.

(2) The legal provisions regarding the tacit approval procedure shall not apply to the authorization procedure and/or registration of the entities referred to in para. (1).

(3) The composition of the Commission provided for in paragraph. (1) shall be determined by joint order of the Minister of Public Finance, of the Minister of Administration and Interior and of the President of the Office, part of its structure shall be at least one representative of the Ministry of Public Finance, Ministry of Administration and Interior and of the Office.

(4) The procedure for licensing and / or registration of entities referred to in para. (1) shall be established by order of the Minister of Public Finance.

Art. 17 – (1) The implementation modality of the provisions of the present law is verified and controlled, within the professional attributions, by the following authorities and structures:

a) the prudential supervision authorities, for the persons that are subject to this supervision, in accordance with the provisions of the present law, including for the branches of foreign legal persons that are subject to a similar supervision in their country of origin;

b) Financial Guard, as well as any other authorities with tax and financial control attributions, according with the law; Financial Guard has responsibilities for the entities performing foreign exchange, except of those supervised by authorities provided for in letter. a);

c) The leading structures of the independent legal professions, for the persons referred to in article 8 (e) and (f);

d) The Office, for all the persons mentioned in article 8, except those for which the implementation modality of the provisions of the present Law is verified and controlled by the authorities and structures provided by para (a).

(2) When the data obtained indicates suspicions of money laundering, terrorism financing or other violations of the provisions of this Law, the authorities and structures provided for in para (1) (a) – (c) shall immediately inform the Office.

(3) The Office may perform joint checks and controls, together with the authorities provided for in the para (1) (b) and (c).

(4) In exercising the powers of verification and control, the appropriate representatives of the Office may consult the documents prepared or held by persons subject to its control and may retain their copies to determine the circumstances of suspected money laundering and terrorism financing.

Art. 18 - (1) The personnel of the Office must not disseminate the information received during the activity other than under the conditions of the law. This obligation is also valid after the cessation of the function within the Office, for a five-years period.

(2) The persons referred to in the Art. 8 and their employees must not transmit, except as provided by the law, the information related to money laundering and terrorism financing and, must not warn the customers about the notification sent to the Office.

(3) Using the received information in personal interest by the employees of the Office and of the persons provided for in the Art. 8, both during the activity and after ceasing it, is forbidden.

(4) The following deeds performed while exercising job attributions shall not be deemed as breaches of the obligation provided for in para (2):

a) providing information to competent authorities referred to in article 17 and providing information in the situations deliberately provided by the law;

b) providing information between credit and financial institutions from European Union's Member States or European Economic Area or from third states, that belong to the same group and apply customer due diligence and record keeping procedures equivalent with those provided for by the present Law and are supervised for their application in a manner similar with the one regulated by the present law;

c) providing information between persons referred to in article 8 (e) and (f), from European Union's Member States or European Economic Area, or from third states which impose equivalent requirements, similar to those provided for by the present Law, persons that carry on their professional activity within the framework of the same legal entity or the same structure in which the shareholders, management or compliance control are in common.

d) providing information between the persons referred to in article 8 (a), (b), (e) and (f), situated in European Union's Member States or European Economic Area, or from third states which impose equivalent requirements, similar to those provided for by the present Law, in the situations related to the same client and same transaction carried out through two or more of the above mentioned persons, provided that these persons are within the same professional category and are subject to equivalent requirements regarding professional secrecy and the protection of personal data;

(5) When the European Commission adopts a decision stating that a third state do not fulfill the requirements provided for by the para (4) (b) (c) and (d), the persons referred to in article 8 and their employees are obliged not to transmit to this state or to institutions or persons from this state, the information held related to money laundering and terrorism financing.

(6) It is not deemed as a breach of the obligations provided for in para 2, the deed of the persons referred to in article 8 (e) and (f) which, according with the provisions of their statute, tries to prevent a client from engaging in criminal activity.

Chapter III
The National Office for Prevention and Control of Money Laundering

Art. 19 - (1) The National Office for the Prevention and Control of Money Laundering is established as a specialised body and legal entity subordinated to the Government of Romania, having the premises in Bucharest.

(2) The activity object of the Office is the prevention and combating of money laundering and terrorism financing, for which purpose it shall receive, analyse, process information and notify, according to the provisions of the art.6 para (1), the General Prosecutor's Office by the High Court of Cassation and Justice.

(2^1) The Office carries out the analysis of suspicious transactions:

a) when notified by any of the persons referred to in article 8;

b) ex officio, when finds out, in any way, of a suspicious transaction.

(2^2) Office may dispose, at the request of the Romanian judicial authorities or to the request of foreign institutions which have similar functions and which have the obligation of keeping the secrecy under similar conditions, the suspension of carrying out a transaction which has the purpose of money laundering or terrorism financing, art. 3. (2) - (5) shall be apply accordingly, taking into consideration the justifications presented by the requesting institution, as well as, the fact that the transaction could be suspended if he had been subject of a report of a suspicious transaction sent by one of the natural and legal persons provided for in art. 8.

(3) In order to exercise its competences, the Office shall establish its own structure at central level, whose organisation chart is approved through Government's Decision.

(4) The Office is managed by a President, appointed by the Government, from among the Members of the Board of the Office, who shall also act as credit release Authority.

(5) The Office's Board is the deliberative and decisional structure, being made of one representative of each of the following institutions: the Ministry of Public Finances, the Ministry of Justice, the Ministry of Administration and Interior, the General Prosecutor's Office by the High Court of Cassation and Justice, the National Bank of Romania, the Court of Accounts and the Romanian Banks Association, appointed for a five-year period, by Government decision.

(5^1) The deliberative and decisional activity provided for in para (5) refers to the specific cases analyzed by the Office's Board. The Office's Board decides over the economic and administrative matters, only when requested by the President.

(6) In exercising its attributions, the Office's Board adopts decisions with the vote of the majority of its members.

(7) The members of the Office's Board must fulfill, at the date of the appointment, the following conditions:

a) to have a university degree and to have at least 10 years of experience in a legal or economic position;
b) to have the domicile in Romania;
c) to have only the Romanian citizenship;
d) to have the exercise of the civil and political rights;
e) to have a high professional and an intact moral reputation.

(8) The members of the Office Plenum are forbidden to belong to political parties or to carry out public activities with political character.

(9) The function of member of the Office's Board is incompatible with any other public or private function, except for the didactic positions, in the university learning.

(10) The members of the Office's Board must communicate immediately, in writing, to the Office's president, the occurring of any incompatible situation.

(11) In the period of occupying the function, the members of the Office's Board shall be detached, respectively their work report shall be suspended. At the cessation of the mandate, they shall return to the function held previously.

(12) In case of vacancy of a position in the Office's Board, the leader of the competent authority shall propose to the Government a new person, within 30 days after the date when the position became vacant.

(13) The mandate of member of the Office's Board ceases in the following situations:

a) at the expiration of the term for which he was appointed;
b) by resignation;
c) by death;
d) by the impossibility of exercising the mandate for a period longer than six months;
e) at the appearance of an incompatibility;
f) by revocation by the authority that appointed him.

(14) The employees of the Office may not hold any position or fulfil any other function in any of the institutions provided in the article 8, while working for the Office.

(15) For the functioning of the Office, the Government shall transfer in its administration the necessary real estates – land and buildings – belonging to the public or private domain, within 60 days from the registration date of the application.

(16) The Office may participate in the activities organized by international organizations in the field and may be member of these organization.

Art. 20 - (1) The payment of the Board's members and of the Office's personnel, the functions nomenclature, the seniority and studies requirements for the appointment and promotion of the personnel are laid down in the Annex which is part of this Law.

(2) The Board's members and the personnel of the Office shall have all the rights and obligations laid down in the legal regulations mentioned in the Annex to this Law.

(3) The persons that, according to the law, handle classified information shall benefit from a 25% pay increment in respect of the management of classified data and information.

Chapter IV
Responsibilities and Sanctions

Art. 21 - The violation of the provisions of the present law brings about, as appropriate, the civil, disciplinary, contravention or penal responsibility.

Art. 22 - (1) The following acts constitute contraventions (minor offence), if not committed under such circumstances as to constitute offenses:

a) failure to comply with the obligations referred to in the Art. 3 para (1), (6), and (7) and Art. 4;

b) non-compliance with the provisions stipulated in Art. 3. (2), third sentence, Art. 5. para. (2), Art. 8^1, 8^2, 9, 9^1, 9^2, Art. 12^1 para. (1), Art. 13—15 and Art. 17.

(2) The contraventions provided in para (1) a) shall be sanctioned by a fine ranging from 100,000,000 ROL to 300,000,000 ROL, and the contraventions provided in para (1) b) shall be sanctioned by a fine ranging from 150.000.000 ROL to 500.000.000 ROL.

(3) The sanctions provided under par. (2) are applied to the legal persons, too.

(3^1)Besides the sanctions provided for in the para (3) for the legal person it could be applied one or more of the following additional sanctions:

(a) confiscation of the goods designed, used or resulted from the violation;

(b) suspending the note, license or authorization to carry out an activity or, by case, suspending the economic agent's activity, for a period of one month up to 6 month;

(c) taking away the license or the authorization for some operations or for international commerce activities, for a period of one month up to 6 month or definitively;

(d) blocking the banking account for a period of 10 days up to one month;

(e) cancellation of the note, license or authorization for carrying out an activity;

(f) closing the facility.

(4) The infringements are ascertained and the sanctions, referred to in para (2), are applied by the representatives, authorized by case, by the Office or other authority competent by law to carry out the control. When the supervision authorities carry out the control, the infringements are ascertained and the sanctions are applied by the representatives, authorized and specifically designated by those authorities."

(4^1) In addition to the infringement sanctions, specific sanctioning measures may be applied by the supervision authorities, according with their competencies, for the deeds provided for by para (1).

(5) The provisions of the present law referring to contraventions are completed in accordance with the provisions of the Government Ordinance No. 2/2001 regarding the legal regime of contraventions, approved with changes and completions by the Law No. 180/2002, with the subsequent changes, except the Articles. 28 and 29.

Art. 23 - (1) The following deeds represent offence of money laundering and it is punished with prison from 3 to 12 years:

a) the conversion or transfer of property, knowing that such property is derived from criminal activity, for the purpose of concealing or disguising the illicit origin of property or of assisting any person who is involved in the committing of such activity to evade the prosecution, trial and punishment execution;

b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity;

c) the acquisition, possession or use of property, knowing, that such property is derived from any criminal activity;

(2) *** Repealed by L. No. 39/2003

(3) The attempt is punished.

(4) If the deed was committed by a legal person, in addition to the fine penalty, the court shall apply, as appropriate, one or more of complementary penalties provided for in article 53^1, para (3) let. (a) –(c) of the Penal Code.

(5) Knowledge, intent or purpose required as an element of the activities mentioned in paragraphs (1) may be inferred from objective factual circumstances.

Art. 23^1 – The offender for the crime referred to in article 23, that during the criminal procedure denounces and facilitates the identification and prosecution of other participants in the offence, shall benefit of a half reduction of the penalty limits provided for by law.

Art. 24 - The non-observance of the obligations provided for in the Art. 18 represents offence and it is punished with prison from 2 to 7 years.

Art. 24^1 – The provisional measures shall be mandatory where a money laundering or terrorism financing offence has been committed.

Art. 25 - (1) In the case of the money laundering and terrorism financing offences, the provisions of Art. 118 of the Penal Code shall be applied with respect to the confiscation of the proceeds of crime.

(2) If the proceeds of crime, subject to confiscation, are not found, their equivalent value in money or the property acquired in exchange shall be confiscated.

(3) The income or other valuable benefits obtained from the proceeds of crime referred to in para (2) shall be confiscated.

(4) If the proceeds of crime subject to confiscation cannot be singled out from the licit property, there shall be confiscated the property up to the value of the proceeds of crime subject to confiscation.

(5) The provisions of para (4) shall be also applied to the income or other valuable benefits obtained from the proceeds of crime subject to confiscation, which cannot be singled out from the licit property.

(6) In order to guarantee the carrying out of the confiscation of the property, the provisional measures shall be mandatory as provided by the Criminal Procedure Code.

Art. 26 – In the case of the offences referred to in articles 23 and 24 and the terrorism financing offences, the banking secrecy and professional secrecy shall not be opposable to the prosecution bodies nor to the courts of law. The data and information are transmitted upon written request to the prosecutor or to the criminal investigation bodies, if their request has previously been authorized by the prosecutor, or to the courts of law.

Art. 27 - (1) Where there are solid grounds of committing an offence involving money laundering or terrorism financing, for the purposes of gathering evidence or of identifying the perpetrator, the following measures may be disposed:

a) monitoring of bank account and similar accounts;

b) monitoring, interception or recording of communications;

c) access to information systems.
d) supervised delivery of money amounts.

(2) The measure referred to in para (1) letter a) may be disposed by the prosecutor for no longer than 30 days. For well-founded reasons, such measure may be extended by the prosecutor by reasoned ordinance, provided each extension does not exceed 30 days. The maximum duration of the disposed measure is four months.

(3) The measures referred to in para (1) letters b) and c) may be ordered by the judge, according to the provisions of Articles 91^1 to 91^6 of the Criminal Procedure Code, which shall be applied accordingly.

(4) The prosecutor may dispose that texts, banking, financial, or accounting documents to be communicated to him, under the terms laid down in para (1).

(5) The measure referred to in para (1) (d) may be disposed by the prosecutor and authorized by reasoned ordinance which, in addition to the mentions referred to in article 2003 of Criminal Procedure Code, should comprise the following:
a) the solid ground that justify the measure and the motives for which the measure is necessary;
b) details regarding the money that are subject of the supervision;
c) time and place of the delivery or, upon case, the itinerary that shall be followed in order to carry out the delivery, provided these data are known;
d) the identification data of the persons authorized to supervise the delivery.

Art. 27^1 - Where there are solid and concrete indications that money laundering or terrorism financing offence has been or is to be committed and where other means could not help uncover the offence or identify the authors, undercover investigators may be employed in order to gather evidence concerning the existence of the offence and identification of authors, under the terms of the Criminal Procedure Code.

Art. 27^2 – (1) The General Prosecutor's Office by the High Court of Cassation and Justice transmits to the Office, on a quarterly bases, copies of the definitive court decisions related to the offence provided for in article 23.

(2) The Office holds the statistical account of the persons convicted for the offence provided for in article 23.

Chapter V
Final Provisions

Art. 28 - The customers' identification, according to Art. 9, shall be done after the date of coming into force of the present law.

Art. 29 - Repealed.

Art. 30 - Within 30 days after the date of coming into force of the present law, the Office shall present its regulations of organization and functioning to the Government for approval.

Art. 31 - The Law No. 21/1999 for the prevention and sanctioning of money laundering, published in the Official Gazette of Romania, Part I, No. 18 of January 21st, 1999, with the subsequent changes, is abrogated.

By the present law, the provisions of articles 1 para (5), article 2 para (1), article 3 points 1,2 and 6-10, article 4, 5, 6, 7, article 8 para 2, article 9 para (1), (5) and (6), article 10

para (1), article 11 para (1)-(3) and (5), article 13, 14, 17, 20, 21, 22, 23, 25, 26, 27, article 28 para (2)-(7), article 29, article 31 para (1) and (3), article 32, article 33 para (1) and (2), article 34, article 35 para (1) and (3), article 37 para (1)-(3) and (5) as well as article 39 of the Directive 2005/60/EC of the European Parliament and of the Council, of 26th October 2005, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, published in the Official Journal of the European Union, series L no. 309 of 25th November 2005 and article 2 of the Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of "politically exposed person" and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of financial activity conducted on an occasional or very limited basis, published in the Official Journal of the European Union, series L no. 214 of 04th August 2006, have been transposed.

This law was adopted by the Senate in the session of November 21st, 2002, with the observance of the provisions under Art. 74 para 1 from the Constitution of Romania.

for the President of the Senate,
Doru Ioan Taracila

This law was adopted by the Chamber of Deputies in the session of November 26th, 2002, with observance of the provisions stipulated in the Art. 74 para (1) from the Constitution of Romania.

for the President of the Deputy Chamber
Viorel Hrebenciuc