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CONSEIL DE L'EUROPE

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CONFERENCE OF THE PARTIES

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

FOLLOW UP COUNTRY REPORT: ROMANIA[1]

[1] Adopted by the Conference of the Parties to CETS 198 at their 6th meeting, Strasbourg, 29 September – 1 October 2014

Introduction

This questionnaire for the biennial update has been drawn up by the Conference of the Parties to seek the progress made by the Party in meeting the deficiencies identified in the report adopted in the last meeting.

Note: where no recommendation or comment was formulated in the approved report, the relevant section of this template should be disregarded.

Please answer all the questions in the questionnaire and provide a succinct update describing the new measures that have been adopted and implemented to meet the **specific recommendations** formulated by the Conference of the Parties. In addition, provide, where possible, evidence which demonstrate that the recommendations have been adopted and have been effectively applied in practice.

Specific questions

A. Measures to be taken at national level

I. General provisions

Article 3 – Confiscation measures

Recommendations:

1. Improve the quality and scope of statistics (so as to assess the actual effectiveness of confiscation measures in practice).
2. Ensure that the provisions on confiscation and provisional measures are properly and effectively applied.

Measures adopted and implemented:

Please, provide a brief update on the legislation adopted to meet the recommendations in relation to confiscation measures. Please provide statistics and any information which demonstrates effective implementation.

1. The national anti-corruption legislation developed over the last decade contains a comprehensive set of preventive measures meant to ensure to ensure a high level of integrity in the Romanian public administration. In this context, the National Anticorruption Strategy (SNA) 2012-2015 represents the strategic planning document having as goal to reduce and prevent corruption through the rigorous application of legal and institutional framework and to maximize the impact of anti-corruption measures. The NAS has a multidisciplinary character and is open to all public institutions representing the executive, legislative, judicial, local government, business and civil society.

Under these circumstances, the SNA sets several objectives, all having strategic importance for the reduction of the corruption phenomenon in Romania. One of the objectives is Combating corruption through administrative and criminal measures, which presumes several directions for action. Especially considering the financial crisis and the budgetary constraints, the direction for action of "increasing the rate of assets recovery by using the best practices existent at EU level and through consolidation of the jurisprudence" has a special importance

To this end, the SNA provides for one specific measure referring to the efficient management of seized and confiscated assets, respectively the development of an integrated mechanism for monitoring the precautionary measures and the confiscations ordered in serious offences, including in corruption cases, as well as the situation of the capitalization of confiscated assets.

The Romanian Assets Recovery Office, structure within the Ministry of Justice, is intending to create a national integrated IT reporting system which will provide in timely manner accurate information about assets included in the assets recovery "chain". Every asset which is identified and potentially seized, confiscated and eventually sold, will be included and monitored using the IT tool.

In the Romanian legal system, there are several actors involved in the procedures for seizing and confiscating the assets resulting from criminal activity. The interim measures are issued by the prosecutor, during the criminal investigation phase and by the judge during the trial. Further on, the confiscation orders are issued by the court or, in specific cases and conditions, by the prosecutor. The institution dealing with the selling of confiscated assets is the National Agency for Fiscal Administration (ANAF).

In order to create an integrated system, all the institutional actors will be involved in the automatic upload of statistical data regarding the precautionary measures, confiscation and capitalization (the courts, ANAF, Ministry of Interior and prosecutors' offices).

For ensuring the adequate financing of creating and implementing the IT tool, the Romanian Ministry of Justice did send an application to the Security Thematic Fund – Bilateral Agreement between the Governments of Romania and Swiss Federal Council regarding the implementation of Cooperation Swiss-Romanian Programme.

Hopefully the project will be formally approved in April 2014, it will last for 30 months and it is scheduled to start in the 2nd semester of 2014.
2. In April 2012, the extended confiscation was introduced in the Criminal Code and also in the New Criminal Code, the latter entering into force on the 1st of February 2014.

The mechanism of extended confiscation 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.

The extended confiscation had been used by the prosecution between 1 January and 1 September 2013 in 34 cases to order interim measures, with a view to applying the extended confiscation. The cases concerned for example corruption offences and/or offences assimilated to corruption, fiscal fraud, smuggling and money laundering. For extended confiscation, there need to be reasonable motives to believe that the assets are linked to crime. There has to be at least one open criminal procedure.

The first Court decision involving extended confiscation (since the introduction of the relevant provisions in the Criminal Code in April 2012) was given in March 2013 by the Tribunal of Timiş in a corruption case. The case is currently on appeal at the High Court of Cassation and Justice.

In June 2013, the High Court ruled, by final decision, the extended confiscation of two apartments which were purchased by the defendant, a police officer, convicted for trafficking in influence.

The provisional measures are applied on a regular basis since 2009 by the Public Ministry, as it may be observed from the following table – the figures are for all offences and are determined in LEI, in brackets in EURO:

Indicator	**2010**	**2011**	**2012**	**2013**
Amount of **damages** caused by the crime	2.445.158.577 *(580.811.557)*	3.227.646.119 *(761.614.506)*	3.426.362.917 *(768.932.432)*	8.670.225.067 *(1.962.033.280)*
Value of **seized** assets	371.646.024 *(88.279.062)*	1.024.979.707 *(241.860.286)*	1.869.681.989 *(419.587.519)*	1.920.392.286 *(434.576.213)*

Article 6 – Management of frozen or seized property

Recommendations:

Comment: This provision appears to be implemented.

Article 7 – Investigative powers and techniques

Recommendations:

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;

Measures adopted and implemented:

Please, provide a brief update on the relevant legislative and other measures adopted in relation to investigative powers and techniques. Please provide relevant legal provisions and statistics which demonstrate effective implementation.

The new Criminal Procedure Code provides in the art. 138 - art. 153 the special investigation or surveillance techniques. One of these techniques is the gathering of data regarding the financial transactions of a person, which means the knowledge of content of financial and other types of transactions, already carried out or on the way to be carried out through a credit institution or other financial entity, as well as the receipt from a credit or other financial institution of documents or information regarding the transactions or operations made by a person. This measure may be ordered in the case of any offence. There are also other provisions in the specific legislation of non-bank financial institutions, such as art. 12 from Law 93/2009 on non-bank financial institutions which provides as follows: The non-banking financial institutions are bound to provide information similar to those provided under article 9 paragraph 1, upon the written request of the prosecutor or the court or, as the case may be, of the criminal investigation bodies, with the prosecutor's authorization, only if, in any of these situations, the criminal investigation against the respective client was initiated. Art. 9 (1) The non-banking financial institution shall be under the obligation to keep the confidentiality of all information available to it, which concern the person, the patrimony, the activity, the private or business relations of the clients, the contracts concluded with the clients or the services provided for them.

(2) For the purposes of this section, any person with which the non-banking financial institution has, while carrying out the activities provided in Article 14, negotiated a transaction, even if such transaction has not been finalized, as well as any person who benefits or has benefitted by the services of the non-banking financial institution shall be considered a client of the non-banking financial institution.

On the other hand, there is a relevant provision in the GEO no. 99/2006 on credit institutions and adequacy of capital, namely art. 114: The credit institutions are bound to provide banking secrecy information, after the beginning of the criminal investigation against a client, upon the written request of the prosecutor or the court or, as the case may be, of the criminal investigation bodies, with the prosecutor's authorization. According to this provision, the credit institutions cannot refuse to answer to an investigative body or court, on the ground of the banking secrecy.

b) monitoring of accounts is permissible with respect to the broadest range of criminal offences;

Measures adopted and implemented:

Please, provide a brief update on the relevant legislative and other measures adopted in relation to investigative powers and techniques. Please provide relevant legal provisions and statistics which demonstrate effective implementation.

Please consider the previous answer regarding the gathering of data related to the financial transactions of a person, a special measure which can be used by the investigative bodies in all cases, not only in organized crime and corruption files.

c) adequate provisions prevent financial institutions from informing their customers and third persons of any investigative step or enquiry.

Measures adopted and implemented:

Please, provide a brief update on the relevant legislative and other measures adopted in relation to investigative powers and techniques. Please provide relevant legal provisions and statistics which demonstrate effective implementation.

According to the provisions of art. 25 para 2, 3 from the Law no. 656/2002, republished, as amended and completed: "(2) The persons referred to in the Art. 10 (*REPORTING ENTITIES*) 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. 10, both during the activity and after ceasing it, is forbidden."

According to art. 31 from Law no. 656/2002, the non-observance of the obligations provided in Article 25 shall constitute an offence and shall be punished with imprisonment from 6 months to 3 years or with a fine, if the activity does not constitute a more serious offence. If the offence was committed by negligence, it shall be punished with imprisonment from 3 months to 2 years.

Also relevant provisions are provided in GEO 99/2006 on credit institutions and capital adequacy:

Art. 111

(1) The credit institution shall preserve the confidentiality of all facts, data and information on the activity performed, as well as of any fact, data or information at its disposal, regarding the person, property, activity, business, personal or business relationships of clients, or any information related to the clients' accounts - balances, flows, operations -, to services or contracts concluded with its clients.
(2) For the purposes of this Chapter, the client of a credit institution is any person with whom the credit institution has negotiated a transaction - in carrying out the activities set forth under Article 18 and Article 20 - even if the respective transaction has not been concluded yet, including the persons who benefit or benefited in the past from the services of a credit institution.

Art. 112

(1) Any individual who exercises administration and/or management responsibilities or who participates in the credit institution's activity shall preserve professional secrecy about any fact, data or information referred to in Article 111, which they acknowledged while discharging their duties related to the credit institution.
(2) The persons referred to in paragraph (1) shall not be entitled, either during or after their term of service, to use or disclose facts or data, which, in the event they became publicly known, would damage the interest or prestige of the credit institution or of any of its clients.
(3) The provisions of paragraphs (1) and (2) shall also apply to the persons who obtain information of the nature referred to above, from reports or other documents of the credit institution.

Art. 116

The persons entitled to request and/or to receive information subject to banking secrecy pursuant to this Chapter shall be bound to preserve confidentiality and may only use it for the purpose for which it was requested or provided, according to the law.

The previous provisions are provided in the Law no. 93/2009 which regulates the non-bank financial sector, as well:

ART. 10

(1) The persons who participate, under any form, in the administration, management or activity of the non-banking financial institution shall be bound to keep the confidentiality on any fact, any data or information referred to in Article 9 (1), of which they took note during the exercise of their attributions within the non-banking financial institution, and they shall not have the right to use them for their personal benefit or for the benefit of another, directly or indirectly.
(2) The obligations provided in paragraph (1) shall continue to exist after the activity has ceased within the non-banking financial institution.

ART. 11

The obligation to keep the professional secrecy, imposed by the provisions of Article 9 and 10, may not be opposed to an authority with supervisory powers at individual level of the non-banking financial institution or, as applicable, at consolidated level of the group to which it belongs, while exercising such competences.

ART. 13

Information of the nature of those provided in Article 9 (1) shall be supplied, in so far as it is justified by the purpose for which they are requested or supplied:
a) to the client, heirs or their legal/statutory representatives or with their express consent;
b) in case the non-banking financial institution justifies a legitimate interest;
c) the structures established as the Credit Information Bureau, organized under the law;
d) the financial auditor of the non-banking financial institution;
e) the entities belonging to the group to which the non-banking financial institution belongs, for the organization of supervision on a consolidated basis and of fighting against money laundering and terrorist financing;
f) at the written request of other authorities or institutions or ex officio, if, according to the legal regulations, such authorities or institutions are entitled, for the purpose of carrying out their specific attributions, to request and/or receive such information and the information that may be supplied to this end are clearly identified.

Article 9 – Laundering offences

Recommendations:

1. 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;

2. 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.

3. 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.

4. Provide updated information about the status of the legislative amendments analysed under para. 12 of the report and scope which, in the reviewers' view, raised concern about suppression of a material element of the offence which would limit prosecutorial discretion in money laundering cases.

Measures adopted and implemented:

Please, provide a brief update on the relevant legislative and other measures adopted in relation to the money laundering offence. Please provide relevant legal provisions and examples, cases or statistics which demonstrate effective implementation.

Currently, the Law No. 656/2002 on the prevention and sanctioning of money laundering and on setting up certain measures for the prevention and combating terrorist financing, with the subsequent amendments is aligned to the three European AML Directives and promotes "all crimes approach", this meaning that in principle, any criminal offence provided by the Criminal Code or other special law, could be considered as predicate for ML offence.

After 1st of February 2014 (the date of entering into force of Criminal Code and Criminal Procedure Code), the ML offence was not substantially amended, with 2 exceptions:

1. A special provision will be in force, according to which ML offence shall be apply, irrespective of the fact that the predicate offence was committed in Romanian or abroad;

2. The intention was eliminated from the provision stating that the intention, knowledge and purpose of ML offence may be proved through objective factual circumstances, because in this case both legal practice and doctrine agree that the intention (both direct and indirect) is to be proved through external objective circumstances.

ML offence definition (from 1st of February 2014) is the following:
Art. 29

(1) The following deeds represent offence of money laundering and it is punished with prison 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, that such property is derived from any criminal activity;

(2) The attempt is punished.

(3) 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 Criminal Code.

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

(5) Provisions of para (1) - (4) shall be applied, irrespective of the fact that the predicate offence was committed on Romanian territory or abroad.

ML offence legal definition (art. 29 from AML Law) does not require any previous or simultaneous conviction for the predicate offence.

This statement is also proved by the last few years practice of prosecution units and courts.

In this respect, the High Court of Cassation and Justice[2], in a decision of cassation preserved the decision of the 1st instance regarding the conviction for ML offence, has convicted the defendants for ML – art. 29 para let. b from AML Law – and ordered the confiscation of amounts of money (approx. 800.000 USD) and several movable and immovable assets, money as well.

The assets and the money were gathered by the defendants from criminal activities committed in UK (ATM frauds and frauds with credit cards). For these activities there was not any decision issued of a court from UK. The High Court and the court of appeal considered as enough the following indirect evidence, in order to prove that the money are proceeds of crime:

- documents for money transfers made through a tourism agency and Western Union, resulting also that one of the defendants used the fake identity of a citizen from Norway;
- the accounts recipes of the defendants, showing between 1999 and 2004 transfers of large amounts of money from UK to Romania;
- the results of checking fingerprints of some of the defendants, for proving that they are investigated in UK for ATM frauds and frauds with credit cards;
- witness statements, in which one of the defendants, together with other 2 persons, was caught in the act in 2002, withdrawing with a forged credit card from an ATM 1800 pounds;
- the money sent to Romania to close relatives of the defendants were used to buy immovable assets (44), which were later re-sold under evaluated, in order to hide the illicit origin of money;
- wiretapping documentation is proving the illicit activities carried aut in UK and also the intention of the defendants to hide the illicit origin of the money;
- the rogatory letter through it was ascertained that the documents attached by the defendants, trying to prove that the money were gathered through artistic activities carried out in London and in a restaurant or by selling second hand vehicles, are forged.

The defendants were convicted also for setting up a organized crime group, offence provided by art. 7 from Law no. 39/2003 on preventing and countering organized crime, but the amounts of money were not proceeds of this offence, but the OCG was set up in order to „clean" the money.

In another recent case, the High Court of Cassation and Justice decided[3] that it is not necessary to indicate the predicate offence, as long as it was proved that the money were proceeds of crimes committed by the defendants.

[2] High Court of Cassation and Justice, Criminal Section, Decision no. 3711/2011, issued in the file no. 656/110/2007.

[3] The High Court of Cassation and Justice, Criminal Section, Decision no. 2270/2012, published on www.scj.ro.

Article 10 – Corporate liability

Recommendations:

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).

Measures adopted and implemented:

Please, provide a brief update on the relevant legislative and other measures adopted for the corporate liability of legal persons. Please provide relevant legal provisions and statistics or other relevant information which demonstrate effective implementation together with examples of criminal, administrative or civil sanctions imposed.

The corporate liability was introduced in the Romanian Criminal Code in 2006. Since then, the prosecution unit practice and jurisprudence developed step by step, and in 2011, 29 legal persons were sent to trial for ML; in 2012, 24 legal persons were indicted for ML. In 2012, in a criminal case[4] investigated by the National Anticorruption Directorate – DNA, Targu Mures Court of Appeal finally convicted 3 legal persons for the offence provided by art. 18^1 from Law no. 78/2000 on preventing and combating corruption – offence included in the chapter dedicated to offences committed against financial interests of European communities. In 2010, a DIICOT territorial service indicted a legal person for ML offence, instituting also an order of sequester of 1 million euro. The case is not yet finalized in court.

Article 11 – Previous decisions

Recommendations:

Comment: This provision appears to be implemented effectively.

II. Financial Intelligence Unit (FIU)

Article 14 – Postponement of domestic suspicious transactions

Recommendations:

1. 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 prosecutions to ensure a more effective impact on overall asset recovery. 2. Consider taking 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.

[4] Decision no. 79 A of Targu Mures Court of Appeal, issued in the file no. 2520/96/2011

Measures adopted and implemented:

Please, provide a brief update on the legislation, regulations or other measures adopted to meet the recommendations in relation to postponement of domestic suspicious transactions. Please provide statistics and any information which demonstrates effective implementation.

In Romania, the procedure for suspending a suspect transaction is regulated by the art. 5 para 3 and para 4 of the Law no. 656/2002 on prevention and sanctioning money laundering, as well as on setting up certain measures for prevention and combating terrorism financing, republished, respectively:

„(3) 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.
(4) If the Office considers that the period mentioned in para (3) 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."
Also, the provisions of art.9 para (1) and (2) of the Law no. 656/2002 republished, mention the following: "The application in good faith, by the natural and/or legal persons, of the provisions of articles (5)-(7) 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 penal 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 the damage caused."

On the same time, the art.26 para (4) of the Law no. 656/2002 republished, provide the following: "The Office may dispose, at the request of the Romanian judicial authorities or at 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. 5. (3) - (6) 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 it had been subject of a report of a suspicious transaction sent by one of the natural and legal persons provided for in art. 10."

Statistical data provided for the period 01.07.2012 – 01.02.2014:
- total number of the STRs received by the NOPCML: 6.864
- total number of the STRs having as object unperformed suspicious transactions: 53
- number of postponed transactions: 17

- the value of the blocked amounts: 13.847.850 euro, 7.745.574 USD and 40.565.028 lei (Romanian currency)
- the value of the amounts for which provisional measures were issued: 13.653.150 euro, 7.672.824 USD and 40.525.448 RON.

Please note that in the reference period (01.07.2012 – 01.02.2014) were organised 26 training sessions for the representatives of the reporting entities, to which participated a total number of 1.013 persons.

B. International co-operation

I. Investigative assistance

Article 17 – Requests for information on bank accounts

Recommendations:

Consider eliminating consistency issues as regards the rules applicable to cooperation with EU member states regarding obtaining information on bank accounts, as it 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, which seems excessive as a requirement from the perspective of the objectives of Convention CETS 198.

Measures adopted and implemented:

Please, provide a brief update on the legislation, regulations or other measures adopted to meet the recommendations in relation to requests for information on bank accounts. Please provide relevant legislative provisions or describe the process/procedure together with statistics which demonstrates effective implementation.

The provisions of art. 210 from Law no. 302/2004 which comprise these thresholds are implementing the EU Protocol of 16 October 2001 to the Convention on mutual assistance in criminal matters between the Member States of the European Union, including the relevant thresholds mentioned there(please see Art. 1 of the Additional Protocol). In any case, such limits do not prove to constitute an impediment in the execution of the requests for information on bank accounts especially as regards the offences are inserted in the annex list of the Convention and which represent very serious offences.

This is also proved by the statistics in this area.

According to the information provided by the 3 different structures of the Prosecutor's Office of the High Court of Cassation and Justice (DIICOT, DNA and the Division for international judicial cooperation, international relations and programs - AJI):

DIICOT issued in 2013, 22 requests and executed 13 (countries involved: Bulgaria, Cyprus, Italy, Latvia, Netherlands, UK, Spain, Croatia, Hungary, France, Moldova, USA, China, Germany, and Lithuania).

DNA issued 20 requests and received for execution 8 requests(countries involved: Austria, Bulgaria, Cyprus,, Italy, Israel, Latvia, Liechtenstein, Lebanon, UK, Slovak Republic, Spain, Hungary, Czech Republic, Germany, Netherlands).

AJI transmitted 6 requests abroad and received 15 requests from other States (countries involved: Czech Republic, Switzerland, Finland, France, Germany, Italy, Spain, Sweden and Poland).

Also no difficulties were reported with regards to the execution of bank information requests from the perspective of the thresholds established under 210 para 3. The Conventions that had applicability most were UE Convention 2000 and its 2011 Additional Protocol and Council of Europe Convention 1959. The Council of Europe 2005 and 1990 Conventions were used only in some isolated case. Other international treaties applied were bilateral treaties and UN Convention (UNCAC and UNTOC).

Article 18 – Requests for information on banking transactions

Recommendations:

Comment: This provision appears to be implemented effectively.

Article 19 – Requests for the monitoring of banking transactions

Recommendations:

Comment: This provision appears to be implemented effectively.

II. Confiscation

Article 23 – Obligation to confiscate

Recommendations:

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.

Measures adopted and implemented:

Please, provide a brief update on the legislation or other measures adopted for the co-operation or assistance on the execution of measures equivalent to confiscation.

The Law 302/2004 in the form discussed during the evaluation process did not impede *expressis verbis* the enforcement of non-conviction based confiscation orders, which would have made, at least theoretically, possible to allow such cooperation should the competent Romanian judicial authority so decide.

Nevertheless, in order to meet the possible challenges determined by possible requests to execute foreign non-conviction based confiscation orders, a new article have been introduced, namely art. 140 (recognition and execution of foreign confiscation judgments).

According to art. 140 paragraph 1 of Law 302/2004 on international judicial cooperation in criminal matters, the recognition and execution of confiscation orders issued by third countries takes place in accordance with the provisions of the treaty applicable between Romania and the issuing foreign state (the 2005 Convention included) or if such treaty does not exist, bearing in mind the conditions stipulated by Law 302/2004 and the Romanian Criminal Procedural Code, if the reciprocity rule is fulfilled. Through confiscation judgment, it is understood in the sense of the afore-mentioned article a punishment or a final measure disposed by a competent judicial authority belonging to the issuing state in connection with one or more offences, having as a consequence the final dispossession of the good.

Another provision which presents relevance from the perspective of the non-conviction based confiscation is represented by art. 140 paragraph 3 which establish some limitative conditions under the recognition and execution of judgments through which there were disposed measures equivalent to confiscation.

The recognition and the execution of the judgments through which there were disposed measures equivalent to the confiscation, which, in accordance with the Romanian law do not constitute criminal law sanctions can be disposed only if:

1. the measures have as a result the final dispossession of the goods

2. the measures have been disposed by a competent judicial authority of the issuing state in connection with one or more criminal deeds

3. the goods are proceeds or instrumentalities in connection to these.

It has to be also underlined the fact that such judgments can be executed only if they are final and enforceable and if none of the grounds of refusal established under Art. 136 paragraph 2 a), b), c), k) and Art. 262 paragraph 1) b)-h) and paragraph 4) is applicable in the specific case.

Art. 136
(...)
(2) The foreign criminal judgment shall not be recognized and enforces when:
a) the recognition and execution on the Romanian territory of the foreign criminal judgment would be contrary to the fundamental principles of the rule of law in Romania;
b) the criminal judgment is referring to an offence of political nature or an offence related to political offence or to a military offence which is not an offence of ordinary law
c) the punishment has been applied for reasons of race, religion, sex, nationality, language, political or ideological opinion or belonging to a certain social group

(…)

k) there are objective hints that the criminal judgment has been issued while breaching the fundamental rights and freedoms, especially that the punishment has been applied in order to sanction the sentenced person for reasons of race, religion, ethnic origin, nationality, language, political beliefs or sexual orientation, and the sentenced person had no possibility to appeal these circumstances in front of the European Court of Human Rights or other international court.

Art. 262

Reasons for non-recognition and non-execution
(1) Save for the case referred to in Article 251 (2), recognition and execution of the confiscation order may be refused if:

(...)

b) the execution of the confiscation order would be contrary to the principle of non bis in idem;

c) the Romanian law provides immunity or privilege rendering execution of the confiscation order impossible;

d) the rights of any interested party, including the rights of good-faith third parties, make it impossible to execute the confiscation order, including where this is a consequence of the application of the provisions stipulated for the legal protection of rights in accordance with Article 267;

e) the certificate attached to the confiscation order reveals that the person against whom the confiscation was imposed did not appear personally and was not represented by a legal counsel in the proceedings resulting in the confiscation order, unless the certificate states that the person was informed personally or via his/her representative, competent according to national law, of the court proceedings, in accordance with the law of the issuing State, or that the person has indicated that he or she does not challenge the confiscation order;

f) the confiscation order is based on criminal proceedings in respect of offences which:

– under the Romanian law, are regarded as having been committed, wholly or partly, within the territory of the Romanian State; or

– were committed outside the territory of the issuing State, and the Romanian law does not permit legal proceedings to be taken in respect of such offences where they are committed outside the Romanian territory;

g) the execution of the confiscation order may infringe the principles of the Constitution;

h) the execution of the confiscation order is barred by statutory time limitations under the Romanian law, provided that the acts fall within the jurisdiction of Romanian authorities under the domestic criminal law.

(...)
(4) If, in practice, it is impossible to execute the confiscation order for the reason that the property to be confiscated has disappeared, has been destroyed, cannot be found in the location indicated in the certificate or the location of the property has not been indicated in a sufficiently precise manner, even after consultation with the issuing State, the court shall immediately inform the competent authority of the issuing State in such respect.

These changes were brought through Law 300/2013 which modified the framework Law no. 302/2004 on international judicial cooperation in criminal matters.

Law 300/2013 entered into force on December 26, 2013, consequently there is premature to make an assessment of the actual usage of these provisions. Also, it has to be noticed the fact that the provisions of art. 140 have been introduced while considering the hypothesis when RO is Executing State, therefore an effective application of these provisions in the future will also depend on the propensity of other states to send such requests to Romania.

Until now no such requests have been sent to our knowledge to a Romanian judicial authority for proper execution.

Article 25 – Confiscated property

Recommendations:

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.

Measures adopted and implemented:

Please, provide a brief update on the legislation, or other measures adopted to meet the recommendations in relation to confiscated property. Please provide relevant legislative provisions or statistics which demonstrates effective implementation.

In accordance with the Romanian law, the international treaties once ratified are part of the internal law and consequently self-executing.

Nevertheless, in order to follow the lines of the recommendations brought by the experts during the evaluation process and bearing in mind the fact that some international treaties do not stipulate in details such aspects, through art. 140 paragraph 9), a new legal text has been introduced. This paragraph is sending to art. 265 of Law 302/2004, including the thresholds stipulated there. The afore-mentioned article regulates the sharing of assets as a transposition of the 2006 FD on Confiscation.

According to art. 140 paragraph 9 second thesis, the provisions of art. 265 paragraphs 1-3 are applied if there is not stipulated otherwise through the Treaty between Romania and the issuing State or, when the treaty does not comprise provisions in this respect, if there is no other agreement between the competent Romanian and foreign authorities. As regards Romania, the competent authority is the Romanian Ministry of Justice.

Art. 265
Disposal of confiscated property

(1) The Romanian State, through its competent bodies, shall dispose of the money obtained from the execution of a confiscation orders as follows:

a) if the amount of money obtained from the execution of a confiscation order is below EUR 10,000 euro or the RON equivalent of that amount, the amount shall accrue to the State budget;

b) in all other cases, 50% of the amount which has been obtained from the execution of a confiscation order shall be transferred to the issuing State.

(2) For property other than money, confiscation shall be executed in one of the following methods:

a) the confiscated property may be sold, in accordance with the legal provisions, and in this case, the proceeds of the sale shall be disposed of in accordance with the provisions of paragraph (1); or

b) the confiscated property may be transferred to the issuing State. If the confiscation order covers a part of the value of the order, the property may only be transferred to the issuing State, if the competent authority of such State gives its consent in this respect;

c) when it is not possible to apply the provisions of letters (a) or (b), the confiscated property may be disposed of in any other way, in accordance with the provisions of Romanian law.

(3) Cultural objects forming part of the national cultural heritage subject to confiscation may not be sold or transferred.

(4) The provisions of paragraph (1)–(3) shall apply unless otherwise agreed between the Romanian State and the issuing State.

III. Refusal and postponement of co-operation

Article 28 – Grounds for refusal

Recommendations:

Comment: This provision appears to be implemented.

IV. Procedural and other general rules

Article 34 – Direct communication

Recommendations:

Comment: This provision appears to be implemented effectively.

V. Co-operation between Financial Intelligence Units

Article 46 – Co-operation between FIUs

Recommendations:

Comment: This provision appears to be implemented effectively.

Article 47 – Internal co-operation for postponement of suspicious transactions

Recommendations:

Comment: This provision appears to be implemented.