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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)

First Assessment Report of the Conference of the Parties to CETS No. 198 on Croatia[1]

[1] Adopted by the Conference of the Parties at its 5th meeting, Strasbourg, 12-14 June 2013

Croatia 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 February 2009. This assessment of the implementation of the Convention in Croatia followed the decision of the 4th meeting of the Conference of the Parties (C198-COP) in 2012. This Assessment Report was adopted at its 5th meeting (Strasbourg, 12-14 June 2013).

TABLE OF CONTENTS

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 (referred hereinafter as CETS No. 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 its fourth meeting, it agreed that Croatia and Poland would be the next countries to be assessed under this mechanism.

4. The template questionnaire was sent for completion to the Croatian authorities in July 2012, and the response, which was coordinated by the Ministry of Finance (Anti-Money Laundering Office) was received in October 2012. The draft report was prepared by the rapporteurs, namely Mr. Juan José Fernández Garzón (Spain) on the issues of the functioning of FIU, Ms Katerina Buhayets (Ukraine) on new legal aspects under the CETS 198 and Ms Ana Boskovic (Montenegro) on international co-operation. This monitoring report by the COP is based primarily on a desk review of the replies by Croatia to the monitoring questionnaire and information gathered through participation to the MONEYVAL's onsite visit under the 4th round. 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.

5. Croatia signed the Convention on 29 April 2008 and ratified it on 10 October 2008. It entered into force in respect of Croatia on 1 February 2009. Croatia has deposited a series of declarations (see annex IV)[3] in connection with the ratification.

6. The draft report was discussed at a pre-meeting on 15 and 16 April 2013 and submitted for discussion and adoption by the COP in June 2013**.**

7. Croatia is a member of MONEYVAL and has been the subject of three evaluations by MONEYVAL. A fourth round assessment will be discussed by MONEYVAL in September 2013. The adopted third round evaluation report and related progress reports are available on MONEYVAL's website (www.coe.int/moneyval). The first and second progress reports were adopted in March 2009 and respectively April 2011. The

[2] Countries that ratified on the same day the Convention are in principle assessed in alphabetical order.
[3] A list of declarations and reservations to CETS No. 198 is kept up-to date on the website of the Treaty Office of the Council of Europe at http://www.conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=198&CM=8&DF=27/03/2012&CL=ENG&VL=1 .

latter contains information on recent developments which have occurred in Croatia after the last evaluation report, including:

- the adoption in 2008 of an Action Plan on the Fight Against Money Laundering and Financing Terrorism and of a National Strategy for Prevention and Suppression of Terrorism.
- a new Anti-Money Laundering and Financing of Terrorism Law (AML/CFT Act) was adopted on 15th July 2008 and came into force on 1st January 2009, which also aimed at achieve a higher degree of harmonisation with the EU Directive 2005/60/EC and the FATF Recommendations. Following its entry into force, several sector-specific rulebooks and guidelines have been adopted to assist the relevant competent authorities, financial institutions and DNFBPs to implement the requirements under the AML/CFT Act as well as various training and awareness-raising initiatives.
- With regard to criminal legislation, several new acts are particularly relevant. A new Criminal Code[4] was adopted in October 2011 and came into force on 1st January 2013[5]. The Law on Criminal Proceedings[6] became fully applicable starting the 1st of September 2011. The Act on Proceedings for the Confiscation of Pecuniary Benefit Resulting from Criminal Offences and Misdemeanours[7], which regulates the procedure of establishing pecuniary gain from crime, was adopted in 2010 and entered into force from 1st January 2011. The Act on the Legal Consequences of Conviction, Criminal Records and Rehabilitation sets out provisions regarding the international exchange of data from the criminal records between European Union member States, and it entered into force on 1st of January 2013. The Law on Police Activities and Powers (in force since the 1st of July 2009) defines the police duties and powers in respect to tracing illegally obtained pecuniary gain and confiscation of objects and means resulting from criminal offences. The Act on Act on the responsibility of legal persons for the criminal offences was also amended in 2007 and 2012[8].
- A new system for collection of statistics and reporting of data on a regular basis to the Anti-Money Laundering Office (AMLO) by various institutions was also formally put in place as of 2009.
- A number of other legislative and institutional measures were adopted which impact on the AML/CFT regime and its effective implementation, several of them addressing the deficiencies identified in the context of MONEYVAL's third round evaluation process.

[4] Official Gazette no. 125/11, 144/12.
[5] It should be noted that for the purpose of this report, the new criminal legislation will be considered for assessing the implementation by Croatia of the Convention's requirements, despite the fact that at the time when the questionnaire was completed by the authorities the previous criminal legislation was in force.
[6] Criminal Procedure Code , OG 152/08, OG 76/09, OG 80/11 (in force partly as of 1st of July 2008 and fully from 1st of September 2011)
[7] Official Gazette no. 145/2010 (Act dated December 2010 and which entered into force on 1st January 2011).
[8] OG 151/03 as amended OG 110/07 and OG 143/2012.

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)].

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

Description and analysis

9. The money laundering offence is criminalised under Article 265 of the Criminal Code (hereinafter: CC), which reads as follows:

> *(1) Whoever invests, takes over, converts, transfers or replaces a pecuniary advantage derived from criminal activity for the purpose of concealing or disguising its illicit origin shall be sentenced to imprisonment for a term of between six months and five years.*
> *(2) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever conceals or disguises the true nature, source, location, disposition, movement, rights with respect to, or ownership of a pecuniary advantage derived by another from criminal activity.*
> *(3) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever acquires, possesses or uses the pecuniary advantage derived by another from criminal activity.*
> *(4) Whoever commits the offence referred to in paragraph 1 or 2 of this Article in financial or other dealings or where the perpetrator engages professionally in money laundering or the pecuniary advantage referred to in paragraph 1, 2 or 3 of this Article is of considerable value, shall be sentenced to imprisonment for a term of between one and eight years.*
> *(5) Whoever commits the offence referred to in paragraph 1, 2 or 4 of this Article through negligence with respect to the circumstance that the pecuniary advantage is derived from criminal activity shall be sentenced to imprisonment for a term of up to three years.*
> *(6) If the pecuniary advantage referred to in paragraphs 1 through 5 of this Article is derived from criminal activity carried out in a foreign country, the perpetrator shall be punished when the activity is a criminal offence also under the domestic law of the country where it is committed.*
> *(7) The perpetrator referred to in paragraphs 1 through 5 of this Article who contributes of his/her own free will to the discovery of the criminal activity from which a pecuniary advantage has been derived may have his/her punishment remitted.*

10. The compliance of the new money laundering offence with relevant international standards will be fully examined by MONEYVAL in its fourth follow-up evaluation

report[9]. The comments below will focus exclusively on the areas where it is considered that the Convention adds value to the money laundering criminalisation and which are not necessarily covered by MONEYVAL.

11. Article 9 paragraph 3 of CETS No. 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. The Croatian legislation allows establishing the offence of money laundering where the person ought to have assumed that the property was proceeds. Pursuant to article 265[5] of the CC, committing the ML offence by negligence is also punishable up to three years. The "negligence" defined in the new criminal code covers *"reckless conduct*" and "unconscious negligence". Article 29 of the CC defines "acting recklessly" as being "aware that he/she can realise the elements of a criminal offence but foolishly believes that this will not occur or that he/she will be able to prevent this from occurring, and "unconscious negligence" as "being not aware that he/she can realise the elements of a criminal offence, although under the circumstances he/she ought to and, by reason of his/her personal characteristics, could have been aware of this possibility"*.* However, the lesser subjective mental element covering the case where the person suspected that the property was proceeds is not criminalised under Croatian Law. In the light of these provisions, it is concluded that Croatia has considered and implemented the requirement under Article 9 paragraph 3-b of the Convention.

12. Concerning the requirements of Article 9, paragraph 4 of the Convention, the criminalization of money laundering is based on an "*all crimes approach*", as the money laundering offence does not refer to specific offences but to "pecuniary benefit from criminal activity". As it is shown in the table below, all the categories of offences listed in the Appendix to the CETS No. 198 are criminalised in the Criminal Code of Croatia.

Designated categories of offences in the Appendix to the CETS No. 198	**Offences in domestic legislation**
	Criminal Code as of 1.1.2013. Article(s)
a. participation in an organised criminal group and racketeering;	328, 329, 243
b. terrorism, including financing of terrorism;	97, 98
c. trafficking in human beings and migration smuggling;	106
d. sexual exploitation, including sexual exploitation of children;	106
e. illicit trafficking in narcotic drugs and psychotropic substances;	190
f. illicit arms trafficking;	331
g. illicit trafficking in stolen and other goods;	244
h. corruption and bribery;	252, 254,293,294,296
i. fraud;	236
j. counterfeiting currency;	274
k. counterfeiting and piracy of products;	261
l. environmental crime;	193, 214
m. murder, grievous bodily injury;	110, 111, 118-120
n. kidnapping, illegal restraint and hostage-taking;	137, 136
o. robbery or theft;	228-230
p. smuggling	256, 257
q. extortion	243
r. forgery	275– 279
s. piracy; and	223
t. insider trading and market manipulation	259, 260

[9] Croatia's evaluation report under the fourth evaluation round will be considered for adoption by MONEYVAL in September 2013.

13. As for the requirements of Article 9 paragraph 5 of the Convention, the ML offence does not require a prior or simultaneous conviction for a predicate offence to establish the link between money laundering and the predicate offence, and more to the point refers broadly to "a pecuniary advantage derived *from criminal activity"*. During the on-site visit conducted by MONEYVAL, the prosecutors and judges whom the evaluation team has met indicated that this issue had not yet been tested in practice. The authorities pointed out that a final conviction was obtained in 2012 for autonomous money laundering with confiscation of material benefits gained from the perpetrator for approximately 770.000 Euros. In the absence of a translation into English of the full text of this decision, it cannot be firmly clarified that this court decision was indeed related to an autonomous ML case.

14. Concerning Article 9 paragraph 6 of the Convention, the Croatian authorities also indicated that, 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. The authorities provided a summary of a case in support of this view, though the elements provided do not necessary clarify the level of evidence required in this case for the predicate offence.

Effective implementation

15. Considering that the new Criminal Code has entered very recently into force, it is too early to consider examining the effective implementation of the new ML offence, as many of the on-going cases relate to the previous ML offence. As for the latter, concerns were already expressed by MONEYVAL in its previous reports[10], though was it also acknowledged at that time that one of the possible explanations laid in the enormous backlog in money laundering cases pending at courts, together with the lack of experience and education of judges and limited expertise among the judiciary on economic crimes, for which MONEYVAL had already concluded that there already were effectiveness concerns. The replies to the questionnaire, and information gathered during the MONEYVAL on-site visit, indicate that there is still no well-established practice of investigations and thus achieving convictions for money laundering without establishing precisely the predicate offence(s). Consequently, it does appear that the system is still predominantly targeting the predicate offence and related money laundering. It is assumed that this is likely to change when the new offence will be applied.

Recommendations and comments

16. In the light of the above, it is thus recommended:

- That the authorities make efforts to develop jurisprudence on autonomous money laundering so as to give the courts the opportunity to clarify that money laundering can be sanctioned in the absence of a conviction for the predicate offence and in cases involving autonomous ML, how specific evidence should be with respect to the predicate offence.

- To criminalise the lesser subjective mental element provided under Article 9 paragraph 3(a) of CETS No. 198, namely the case where a person suspected that the property was proceeds.
- To ensure that judges and prosecutors are familiarised with the mandatory provisions of Article 9 paragraphs 5 and 6 of the Convention, in particular through further trainings or other means.

[10] See MONEYVAL's third round evaluation report on Croatia at www.coe.int/moneyval.

2. Corporate 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

17. Croatia has taken measures to ensure that legal persons can be held liable for money laundering offences. Corporate criminal liability was introduced with the adoption of the Act on Responsibility of Legal Persons for Criminal Offences which came into force on 24 March 2004 and was subsequently amended in 2007[11] and 2012[12].

18. Corporate criminal liability is applicable in connection with any conduct criminalised under the Criminal Code or other laws prescribing criminal offences. It thus applies also to money laundering, as defined in Article 265 of the CC and to the financing of terrorism, as defined in Article 98 of the CC. The Act applies both to foreign and Croatian legal persons (Article 1 of the Act) and are exempted specifically the Republic of Croatia as a legal person and units of local and regional self-government, if they've committed a criminal offence in their execution of public authority (Article 6 of the Act).

19. The Act sets out the following prerequisites of punishability:

Article 3 – Foundation of responsibility of legal persons

[11] MONEYVAL's third round evaluation report on Croatia analyses the corporate criminal liability regime in force at the time of the evaluation visit (September 2006) and thus does not include the changes introduced in 2007. See: http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL(2008)03Rep-HR3_en.pdf.

[12] Article 382 CC requires the Croatian Government to initiate a process of alignment of the relevant provisions of the Act on the Liability of Legal Persons for Criminal Offences with the new CC provisions (as well as of other relevant acts containing criminal and other provisions relevant to the application of the CC). These changes have been adopted on 12 December 2012 and published in the OG 143/2012.

(1) *The legal person shall be punished for a criminal offence of a responsible person if such offence violates any of the duties of the legal person or if the legal person has derived or should have derived illegal gain for itself or third person.*
(2) Under the conditions referred to in paragraph 1 of this Article, the legal person shall be punished for the criminal offences prescribed by the Criminal Code and other laws prescribing the criminal offences.

Article 4 – Responsible person
The responsible person within the meaning of this Act is a natural person in charge of the operations of the legal person or entrusted with the tasks from the scope of operation of the legal person.

Article 5 – Attributing the guilt of a responsible person to the legal person
(1) Responsibility of legal person is based on the guilt of the responsible person.
(2) The legal person shall be punished for the criminal offence of the responsible person also in cases when the existence of legal or actual obstacles for establishing of responsibility of responsible person is determined."

20. Two alternative conditions have to be met to hold a legal person criminally liable: a) the committed offence violates any of the duties of the legal person or b) the legal person has derived or should have derived illegal benefit for itself or a third person.

21. As set out above, the Act defines in Article 4 the notion of "responsible person" and the definition includes any natural person who is in charge of the operations of the legal person or who has been entrusted with the tasks from the scope of operation of the legal entity. These situations could encompass the situations envisaged by the Convention to cover acts of any category of persons acting on behalf of the legal person though this is not addressed explicitly by the Act. However it should be mentioned that Article 87(6) of the new CC also defines a "responsible person" as a "physical person conducting the affairs of a legal person or a physical person to whom the running of affairs from the legal person's sphere of activity has expressly or effectively been confided", and as such, the latter definition appears to be more comprehensive than the one set out previously under the Act.

22. There is no explicit requirement ensuring that a legal person can be liable where the lack of supervision or control by a natural person has made possible the commission of the criminal offences for the benefit of that legal person by a natural person under its authority (Article 10 paragraph 2 of the Convention), but the authorities have referred in this context to the provisions of the CC related to negligent ML as well as to Article 5 paragraph 2 set out above. It is also noted that the Act usefully includes provisions covering the responsibility of the legal person in cases of change of the status of a legal person.

23. Pursuant to Article 8 of the Act on the Responsibilities of Legal persons for Criminal Offences, legal persons may be imposed penalties, and pronounced suspended sentences and security measures. The main penalty applicable to a legal person is a fine between 5.000 and 8.000.000 kuna [between 660 and 1.055.938 Euros]. According to Article 121, a legal person that has been established for the purpose of committing criminal offences or has used its activities primarily to commit criminal offences is subject to the penalty of termination. Banning on performance of certain activities or transactions, banning on obtaining of licenses, authorizations, concessions or subventions, banning on transaction with beneficiaries of the national or local budgets, and confiscation may also be imposed to legal persons by the court as security measures in accordance with Article 15 of the Act.

Effective implementation

24. The statistics received from the authorities on the application of the Act on Responsibility of Legal Persons for Criminal Offences show that since 2008 to date there is a growing number of reports against legal persons received by the Attorney's Office from Police, other State authorities or physical or legal persons (statistics related to all criminal offences – 2008: 1043; 2009: 1406; 2010: 1549; 2011: 1816; 2012: 1071). Statistics were also provided regarding the outcome of these reports in 2011 and 2012: it is noted that the majority are dismissed for various grounds[13]. The number of convictions of legal persons is on the rise[14].

25. As regards the police statistics on the numbers of legal persons against which the Police sent criminal reports to the State Prosecutor's Office concerning ML, there are 6 reports in total (2007: 1; 2008: 1; 2010: 2; 2011: 2). In a non-final decision[15], the authorities indicated that after the investigation was conducted, the indictment was preferred against several natural persons (for abuse of power and position – Article 337 para 1 and 4 of the CC and ML – Article 279 para 1 of the CC) and also against a legal person for committing ML as set out in Article 279 para 1 of the CC in connection with Article 3 para 1 and 2 of the Act on Responsibility of Legal Persons for Criminal Offences.

26. While the general statistics regarding corporate criminal liability for other offences might appear commensurate with the types of crime involving legal entities in Croatia, the very low number of investigations, indictments and convictions in ML cases raises questions and serious concern as regards the effective implementation of corporate criminal liability, some of which may perhaps also be related to the application of the ML offence more generally. Already in 2006, at the time of MONEYVAL's third round evaluation, which took place two years after the entry into force of the Act on Responsibility of Legal Persons, the evaluators had expressed their concerns. It is surprising that that almost ten years after the entry into force of this Act, there has been no substantive change and that criminal proceedings against legal persons are not common practice.

Recommendations and comments

27. In the light of the explanations provided by Croatia, it would appear that the corporate liability regime is broadly in line with the requirements of the Convention although it does not address explicitly all its core elements. Considering however the results achieved in criminal proceedings against legal persons, the Croatian authorities, are advised:

[13] In 2011, the state attorney's offices received 1816 new reports against legal persons. In 2011, 1955 reports were solved, 78 reports were merged or solved in other way (merging of reports against same legal persons so as to conduct single proceeding), while 448 reports remained unsolved, six of which in state attorney's office. In 2011, of 1955 solved reports, 1081 reports were dismissed, i.e. 55%. 34 persons were indicted by means of direct indictment, while investigative request was submitted in regard to 520 persons. 299 indictments were preferred upon finishing the investigation, 68 investigations were discontinued. In 2012, the state attorney's offices received 1071 new reports against legal persons. 522 criminal reports were dismissed, i.e. 77%, in regard to 9 reports, investigation was initiated, i.e. 1%, while 522 legal persons were indicted by means of direct indictment, i.e. 22% of reports.

[14] In 2011, 354 judgements were rendered (in 2010, 226 judgements), of which 231 convictions, 39 acquittals, and 47 rejections. Of 231 convictions, there are four sanctions rendering the termination of legal person, 227 fines, of which 14 are suspended sentences. In 17 cases, proceeds for crime were confiscated from a legal person. Majority of judgements were rendered due to fraud in economic business operations.

[15] County State Attorney's Office in Osijek, number K-DO-17/11, of 26 January 2012.

- to ensure that the provisions of the Act on Responsibility of Legal Persons for Criminal Offences are harmonised with the provisions of the new Criminal Code in particular as regards the definition of "responsible person" and use that opportunity to clarify that the term encompasses all the categories of persons set out under Article 10 paragraph 1 of the Convention;
- to conduct a review of the legal and procedural obstacles that may hinder law enforcement and prosecutors to successfully investigate and prosecute legal persons for money laundering and take steps, as appropriate, to eliminate them;
- to undertake, as appropriate, additional training activities and raising-awareness measures (additional guidance, documents, instructions, etc.) to familiarise the police and the judiciary on the implementation of the provisions of the Act on Responsibility of Legal Persons for Criminal Offences in relation to ML and other relevant criminal offences pertaining to the categories of offences listed in the Appendix to the CETS No. 198, clarifying also the circumstances envisaged by Article 10 of the Convention.

3. Previous decisions – Article 11

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

28. The Croatian Criminal Code does not address explicitly the issue of international recidivism. The authorities indicated that certain measures have been taken to ensure that final convictions pronounced in other States are being taken into account in criminal proceedings. They have referred in this context to Article 47 of the CC which requires the courts, when determining the type and measure of punishment, to assess all the circumstances affecting the severity of punishment. They also indicated that the verification of the existence of previous criminal records and convictions, whether in Croatia or abroad, is an integral part of the criminal proceedings both at the level of the prosecution and of the judges upon finalisation of their decision.

29. The Republic of Croatia is also Party to several bilateral agreements which regulate the exchange of data from criminal records, and in particular with the countries of the former Yugoslavia. Specific arrangements have also been made in the context of Croatia's accession to the European Union and will be implemented fully in the near future[16].

[16] Courts and state attorney's offices may request the data from criminal records for the citizens of the member states who are convicted in another member state through the ECRIS system, European Criminal Records Information System, based on the Decisions number 315 and 316 of the Council of the European Union. The Republic of Croatia is currently in the phase of a pilot project of exchange, through ECRIS, with the Republic of

Recommendations and Comments

30. Croatia has taken several measures which aim at implementing Article 11 of the Convention, though it remains unclear whether the circumstances have enabled to apply this principle in the ML convictions that have been achieved so far. Croatia should consider taking additional steps as may be required to ensure that prosecutors are familiar with the procedures to bring foreign convictions against both natural and legal persons taken in another Party in relation to offences established in accordance with CETS No. 198. Additionally, the Croatian authorities may consider incorporating measures implementing the international recidivism standard in the Act on Responsibility of Legal Persons for Criminal Offences.

4. Confiscation - Article 3 paragraph 1, 2, 3, 4

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

31. The compliance of the provisional measures and confiscation regime with relevant international standards will be fully examined by MONEYVAL in its fourth round follow-up evaluation report[17]. The comments below will focus exclusively on the areas where it is considered that the Convention adds value to the international standards.

Austria and the Kingdom of Belgium. The full exchange will be ready on the day of the accession of the Republic of Croatia to the European Union, on 1 July 2013. The Act on the Legal Consequences of Conviction, Criminal Records and Rehabilitation entered into force in the Republic of Croatia on 1 January 2013. The mentioned Act, in its provisions relating to the international exchange of data from the criminal records between the European Union member states, implements the above-mentioned decisions of the Council of the European Union and it is intended to enable the exchange of data on the citizens of the European Union convicted in another member state through the ECRIS system.

[17] Croatia's evaluation report under the fourth evaluation round will be considered for adoption by MONEYVAL in September 2013.

32. Croatia has enacted the following legislation governing the principles and procedures applicable for the implementation of provisional measures and confiscation:
    - Criminal Code (particularly articles 5 , 77-80 under Title VI - Confiscation of Pecuniary advantage, Seizure of Objects and Public Announcement of Judgment, article 87(21) – definition of pecuniary advantage)
    - Criminal Procedure Code (Articles 261 to 271- Chapter XVIII, Evidence Collecting Actions, Section 2 Temporary Seizure of Objects)
    - The Act on Proceedings for the Confiscation of Pecuniary Benefit Resulting from Criminal Offences and Misdemeanours[18] regulates the confiscation procedure.
    - Act on the Office for the Suppression of corruption and organised crime (articles 50-61 – Chapter IV – securing the seizure of instruments, income or assets which are proceeds of crime)
    - Act on Act on the responsibility of legal persons for the criminal offences (Article 19 - Confiscation and Article 20 - Confiscation of illegally gained benefit).

33. The Criminal Code sets out in Article 5 the principle of confiscation of pecuniary advantage: "No one may retain pecuniary advantage acquired through illegal means".

34. **Pecuniary advantage** is further defined in Article 87 paragraph 21 as "*a direct pecuniary advantage obtained from a criminal offence consisting of any increase or prevention of decrease in the property which came about as a result of the commission of a criminal offence, the property into which the direct pecuniary advantage obtained by a criminal offence has been changed or turned into as well as any other advantage gained from the direct pecuniary advantage obtained by a criminal offence or from property into which the direct pecuniary advantage gained by a criminal offence has been changed or turned into, irrespective of whether it is located inside or outside the territory of the Republic of Croatia*". Indirectly obtained proceeds are covered in the definition of article 87(21), but does not explicitly cover incorporeal assets and legal documents or instruments evidencing title to, or interest in such assets.

35. It should also be mentioned that the definitions of "pecuniary advantage" under the Criminal Code and the Act on Proceedings for the Confiscation of Pecuniary Benefit Resulting from Criminal Offences and Misdemeanours differ, the latter being shorter and defining pecuniary benefit as "each increase or prevention of the reduction of assets resulting from criminal offences". As the Act precedes the adoption of the Criminal Code, it can only be deduced that the harmonization process foreseen under article 382 of the CC with the new provisions of the CC has not yet been completed.

36. Property is not specifically defined under the CC. The confiscation act does include in article 3 (2) a definition of assets applicable in the context of the confiscation procedures clarifying that "*assets represent property and rights acquired by the perpetrator of a criminal offence and misdemeanour or their related party, and it refers to all property and rights which can be the object of enforcement, <u>especially</u> real estate and movables, claims, business interests, shares, money, precious metals and jewels in the ownership, possession or under the control of the criminal perpetrator or their related party*".

[18] Given that the provisions on the confiscation of pecuniary gain acquired by a criminal offence are included in some other acts (Criminal Procedure Act, Act on USKOK, Misdemeanour Act, Act, Act on the Responsibility of Legal Persons for Criminal Offences), Article 1, paragraph 2 of the Act regulates the relation between the mentioned acts and this Act. The mentioned provision prescribes that the Act is *lex specialis* in relation to the other acts regulating the determination, security of confiscation and enforcement of decisions on the confiscation of pecuniary gain acquired by a criminal offence or misdemeanour (e.g. Enforcement Act, Bankruptcy Act etc.).

37. Pursuant to the Article 557 of the Criminal Procedure Code "*pecuniary gain acquired by criminal offence is determined during the proceedings by proposal of a prosecutor* and *the court and other authorities before which criminal proceedings are conducted are obliged to obtain evidence and investigate circumstances which are relevant for the determination of pecuniary benefit"*. In application of Article 77(1) of the Criminal Code, pecuniary advantage shall be confiscated on the basis of a court decision establishing the commission of an unlawful act. As a general rule, the confiscation regime is conviction based. Pecuniary advantage shall also be confiscated from the person to whom it was transferred if it was not acquired in good faith. . Article 455^2 subparagraph 4 of the Criminal Procedure Act (CPA) as "*in a judgment of conviction the court shall state (…) the decision on security measures and the confiscation of pecuniary benefit.* However, doubts remain with regard to the consistency between the definition of "pecuniary advantage" provided under the Criminal Code and the definition provided under the Act on Proceedings for the Confiscation of Pecuniary Benefit Resulting from Criminal Offences and Misdemeanors.

38. Confiscation is available for ML and the categories of offences in the appendix to CETS No. 198. The new Criminal Code distinguishes the confiscation of pecuniary gain in general (Article 77) and those relating to the criminal offences under the competence of USKOK (Article 78). Article 77 of the CC applies in respect of proceeds (pecuniary advantage) from any unlawful acts provided under the criminal code or other laws. Croatia has not made any 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 confiscation measures can be applied according to the set procedures.

39. The Criminal Code regulates the confiscation of objects as a special measure (not as a security measure since it is not imposed according to the danger of the perpetrator, and often neither according to the danger of the object). According to article 79 of the CC the objects and means that were either used in or intended for use in the commission of a criminal offence shall be confiscated if there is a risk that they will be reused for the purpose of committing a criminal offence. The court may also confiscate objects and means also in cases where this is necessary in order to ensure general safety, public order or for moral reasons. If the mentioned legal preconditions are fulfilled, the court may confiscate the objects and resources also when the perpetrator of the illegal act is not guilty. The confiscated objects and resources shall become the property of the Republic of Croatia. It is also prescribed that the court may order the destruction of the object or resource.

40. There seems to be no provision in the general codes that would prescribe mandatory confiscation of instrumentalities used in or intended for use in the commission of a money laundering offence.

41. Specific provisions related to provisional measures and confiscation are applicable in the context of the offences investigated by USKOK, both under the Criminal Code and the USKOK Act.

42. The Criminal Code regulates also the extended confiscation of pecuniary gain. It relates to pecuniary gain acquired by some criminal offences under the competence of USKOK, where the mentioned gain is usually enormously large. In this case, if the perpetrator had or has property which is disproportionate with the his/her incomes (this disproportion between the incomes and property shall be shown by the State Attorney's Office) it will be presumed that all the property of the perpetrator derives form criminal offences, unless the perpetrator makes it credible that its origin is legal (Article 78 CC). Thus, the burden of proof is divided between the state attorney and the perpetrator. In fact, when the State Attorney's Office proves that the property of the perpetrator of the criminal

offence under the competence of USKOK is not proportionate with his/her incomes, the burden of proof of the credibility of legal origin of the property is transferred to the perpetrator. The entire property of the perpetrator is taken into consideration, the one s/he has and the one s/he has ever had and it is compared with his/her incomes in order to determine whether there is proportion between the property and incomes. Moreover, it is also envisaged the confiscation in cases of mixed legal and illegal acquisition of property. Pecuniary gain may be confiscated from a member of the family regardless the legal basis by which it is in his/her possession and regardless of whether s/he lives in the same household with the perpetrator. Pecuniary gain may be confiscated from the person who acquired pecuniary gain in good faith if s/he does not make credible that s/he has acquired it at a reasonable price.

43. The USKOK Act cover procedures for the mandatory seizure of instruments, income or assets resulting from the list of offences which fall within USKOK's competence (including the listed forms of ML offences and other offences which fall within the category of offences listed in the appendix to the Convention). Seizure of instruments, income or assets which are proceeds of crime are prescribed by the court upon USKOK's proposal if it is determined that: 1) there are grounds for suspicion that the natural or legal person has committed a criminal offence which falls within USKOK's competence; 2) that there are grounds for suspicion that the total instruments, income and assets of that person are the proceeds of crime, and that their value exceeds the total amount of HRK 100,000. (13.130 Euros).

44. The specific confiscation regime for ML cases does not allow for value confiscation. The general value confiscation regime is restricted to "money, securities or objects" and does not cover any other sorts of property, like real estate or property rights[19].

45. General temporary measures are established under the Criminal Procedure Act. According to Article 261[1] *objects which have to be confiscated pursuant to the Penal Code or which may be used to determine facts in proceedings shall be temporarily seized and deposited for safekeeping*. It can be concluded from its restrictive language that Article 261[1] covers only "objects" and not "proceeds" in a broader sense (or "pecuniary benefit" as it is generally used). The assets in the form of bank account money could be also subject to a freezing order in accordance with Article 266 of the CPA:

> (1) *Upon the motion with a statement of reasons of the State Attorney the court may order by a ruling a legal entity or a physical person to suspend temporarily the execution of a financial transaction if the suspicion exists that it represents an offence or that it serves to conceal an offence or to conceal the benefit obtained in consequence of the commission of an offence.*
> *(2) By the ruling referred to in paragraph 1 of this Article the court shall order that the*
> *financial means assigned for the transaction referred to in paragraph 1 of this Article and cash amounts of domestic and foreign currency temporarily seized pursuant to Article 266 paragraph 2 of this Act shall be deposited in a special account and be kept safe until the termination of the proceedings, or until the conditions are met for their recovery, but not longer than two years.*

46. There are also specific provisions related to the application of confiscation to legal entities having committed a criminal offence.

[19]This paragraph reaffirms one of the conclusions of the fourth round MONEYVAL Mutual Evaluation Report from September 2013. The Secretariat added this paragraph upon instruction of the COP to CETS No. 198 Plenary in order to clarify to what extent the concept of value confiscation is provided for under Croatian law (COP 5th meeting report, paragraph 28).

Effective implementation

47. The replies to the questionnaire included statistics to demonstrate the effectiveness of provisional measures and confiscation in general and particularly regarding corruption cases and organised crimes, including details on the decisions taken by the courts to temporarily dispose and alienate a large number of real estates (buildings, houses, apartments, vineyards, meadows), to freeze movable property (paintings, vehicles etc.). The statistics received do not enable to determine the extent of practice and to form a substantiated judgment about the overall effectiveness of the application of provisional measures and of the confiscation regime in ML cases specifically, where results achieved appear to be rather modest.

Recommendations and comments

48. The Croatian legal framework on confiscation is broadly in line with the requirements under review of Article 3 of the Convention. As it can be seen the legal framework setting out provisional measures and confiscation is rather complex, given the parallel regimes both in terms of criminal substantive and procedural law. There remain some consistency issues, for instance the absence of explicit cover of incorporeal assets and legal documents or instruments evidencing title to, or interest in such assets under the definition of pecuniary advantage, the lack of mandatory confiscation of instrumentalities used in or intended for use in the commission of a money laundering offence, some concerns regarding the possible non-alignment of the special laws with the newly adopted CC at the time of this assessment.

49. As concerns confiscation, the Croatian authorities should provide further clarifications to ensure the consistency between the definition of "pecuniary advantage" provided under the Criminal Code and the definition provided under the Act on Proceedings for the Confiscation of Pecuniary Benefit Resulting from Criminal Offences and Misdemeanours.

50. The authorities are thus invited to review the current regime, aligning the relevant laws with the new CC provisions where applicable, and to satisfy themselves that the competent authorities have the necessary tools to clarify the application of the relevant provisions and regimes and ensure that they can make full use of the existing legal framework to avoid any legal gaps as regards the possibility to confiscate instrumentalities and proceeds and laundered property within the full sense of article 3 of the Convention.

51. The Croatian authorities should introduce value confiscation regime which is not restricted to "money, securities or objects" and also covers any other sorts of property like real estate or property rights.

52. Croatia should also ensure, in the context of follow up by the COP, that it is in a position to bring forward elements demonstrating the effective application of the existing legal framework implementing Article 3 by all relevant authorities.

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

53. Croatia has taken several measures related to the management and preservation of seized assets. The relevant legislation and provisions covering these aspects include:
- The Act on the procedure of confiscating pecuniary gain acquired through a criminal offence and misdemeanour: Articles 20-22 set out which body manages the temporarily and permanently confiscated assets and its competencies.
- The Act on State property management (Articles 30-36 and 39-46) which entered into force on 1 January 2011.
- Several acts and regulations adopted in 2011 and setting out the procedures for the management of various types of assets under the scope of the Agency.[20]

54. The Government asset management agency (hereinafter: GAMA) was established on the 1st of April 2011 in application of the Act on the State Property Management[21]. Pursuant to Articles 20 and 22 of the Act on the procedure of confiscating pecuniary gain acquired through a criminal offence and misdemeanour, GAMA is responsible, for the management of the temporarily confiscated monetary funds, submitted property and transferred rights as well as for the management and disposal of confiscated property. The competence of the Agency is separate from the competence of authorities that investigate, detect and confiscate proceeds of crime. GAMA acts exclusively on the basis of court decisions which solve issues surrounding the proceeds of crime as well as the assets that Agency will manage.

55. These functions are implemented by a specific sector of the agency: the Sector of the Confiscation of Pecuniary Gain, which was established in 2011 and is staffed with 9 posts (head of sector, 3 senior counselling specialists, senior officer, 2 independent bailiffs and 2 independent officers). GAMA is also required by law to keep records of the temporarily confiscated funds, property and transferred rights. Pursuant to Article 20 of the Act on Confiscation of Proceeds of Crime acquired by criminal or misdemeanour offence and the Rule Book on keeping records of temporary seized property in the procedure of confiscation of property acquired by criminal and misdemeanour[22], GAMA keeps records, that is, registers on temporary seized assets, i.e., register of real-estates, register of movable assets, register of cash and securities, register of stocks, shares or business share in companies, as well as registers of permanently confiscated assets and records on financial means paid into the state budget. The latter ones are published on the web site of the Agency

56. Pursuant to Article 21 of the Act on the procedure of confiscating pecuniary gain acquired through a criminal offence and misdemeanour), GAMA can decide to sell temporarily confiscated movables without a public tender if their keeping is dangerous or if there is an immediate danger from their deterioration or significant loss of value. The authorities advised that this was frequently applied for the vehicles under the management of the Agency. GAMA may also decide to rent or lease temporarily

[20] Ordinance on the sale of stocks and business shares in companies owned by the Republic of Croatia, institutes and other legal entities founded by the Republic of Croatia (Official Gazette 64/11), Ordinance on the disposal of real-estates given to the use of state administration authorities or other bodies on the state budget and other persons (Official Gazette 80/11), Ordinance on disposal of real-estates owned by the Republic of Croatia (Official Gazette 55/11), Ordinance on donation of real-estates owned by the Republic of Croatia (Official Gazette 123/11), Ordinance on establishing the right to build on and use real-estates owned by the Republic of (Official Gazette 78/11) and Act on the Lease and Purchase of business premises (Official Gazette 125/11).
[21] Official Gazette No. 145/2010; 70/2012.
[22] Official Gazette" 44/11

confiscated objects. Confiscated money as well as funds obtained through the sale of confiscated property are paid to the state budget.

57. The authorities have provided information and data on the activity of the GAMA, and more specifically on the assets managed by the Sector of the Confiscation of Pecuniary Gain. By 12 November 2012, the Agency had at its disposal a total of 2896 seized movables and real estates (temporarily and permanently) and the total value of confiscated assets amounted to HRK 163 million (approximately 21.6 million Euros).

Table - Analytics of the documents in the Sector of the Confiscation of Pecuniary Gain of the Agency

Pecuniary gain / type of case	**processed cases**	**completed cases**	**total**
Money	69	30	99
Movable property - temporary	10	1	11
Movable property - permanent	3	3	6
Immovable property - temporary	7	0	7
Immovable property - permanent	5	0	5
Various inquiries – records etc.	13	1	14
Total	**107**	**35**	**142**

Table - Temporarily and permanently confiscated movable and immovable property:

type of property	**temporarily confiscated**	**permanently confiscated**
movable property	498	3
immovable property	622	9
stocks/ partners shares	1776	0
TOTAL	2896	12

58. Individual measures have been taken for certain types of assets -ie. for the storage of a temporarily confiscated yacht, or storage of works of art (paintings and sculptures) at the Museum of Modern Art (involving also the monthly payment by GAMA of the expenditure related to the storage of these items). Based on the Ordinance on the disposal of real-estates given to the use of state administration authorities or other bodies on the state budget and other persons, the rights to manage and use, among others, 6 flats owned by the Republic of Croatia, that were permanently confiscated from a defendant in criminal proceedings, were also transferred to the Ministry of Social Policy and Youth[23]. The authorities stressed that this action was a novelty in the proceedings.

59. The report of the Confiscated Asset Management Sector included the following data as of 10 April 2013 (which is also publicly available on the website of the agency):

REGISTER OF PERMANENTLY CONFISCATED REAL ESTATES

TYPE OF REAL ESTATES	**TOTAL SURFACE AREA OF REAL ESTATES**	**TOTAL ESTIMATED VALUE**
2 appartements	120,68 m^2	no assessment
1 house and yard	457,2 m2	

[23] GAMA decision, class:024-04/12-03/5, number:360-1000/08-2012-22 of 10 December 2012

REGISTER OF PERMANENTLY CONFISCATED MOVABLE PROPERTY

TYPE OF MOVABLE PROPERTY	ESTIMATED VALUE
1 passenger car	HRK 112,708.31
1 truck	
2 passenger car	no assessment
1 motorcycle	

CASH PAID TO THE STATE BUDGET

INCOME FROM THE SALE OF REAL ESTATES	INCOME FROM THE SALE OF MOVABLE PROPERTY	INCOME FROM THE LEASE OF REAL ESTATE	INCOME FROM THE PAYMENT OF CONFISCATED PECUNIARY GAIN	TOTAL
HRK 0.00	HRK 60,101.50	HRK 37,240.12	HRK 1,890,569.17	HRK 1,987,910.79

Effective implementation

60. Croatia has various measures in place that allow for the management and handling of seized and confiscated property and the system in place appears to be gradually consolidating its performance. GAMA is a recent agency and the measures taken so far appear to have enabled it to undertake its functions, as evidenced by the statistics set out above and a willingness to approach pragmatically the management of certain categories of confiscated assets. A number of issues may arise in the future as regards the management of certain categories of assets dealt with in the context of a major crime or money laundering cases which would involve for instance assets comprising financial products the value of which may be fluctuating (modalities to ensure a proper balance between the need to target criminal proceeds on the one hand, and the interests of the suspect at the time of confiscation on the other hand) and other movable or immovable property requiring administration and maintenance (remuneration of the custodian and financing of maintenance-related expenditures) etc. It is unclear whether adequate premises are available for the storage of expensive or large property, whether funding is available to finance maintenance and other expenditures inherent to the application of temporary measures pending the final confiscation (insurance etc.).

Recommendations and comments

61. In order to strengthen the reliability and efficiency of GAMA, the Croatian authorities should consider to build upon existing regulations and establish efficient protocols and management mechanisms covering all types of assets under the responsibility of the Sector of the Confiscation of Pecuniary Gain, including any procedures for the estimation of value of seized assets and other relevant capacity building and training measures.

62. It is also recommended to the Croatian authorities to carry out an assessment of the adequacy of the current legal and practical arrangements in place for the management of the various types of movable and immovable property likely to be subject to

temporary measures in the context of serious crime cases and to take any additional measures required in the light of such an assessment.

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

63. Pursuant to Article 206(5) of the Criminal Procedure Code, unless the information representing a lawfully protected secret, upon the request of the State Attorney, the police authorities, the ministry responsible for finance, the State Audit Office and other state authorities, organizations, bank and other legal entities shall deliver to the State Attorney required information. The State Attorney may request from the aforesaid authorities to control the operations, to seize, inter alia, objects and documentation that may serve as evidence temporarily, until a judgement is rendered, and request information on collected, processed and stored data regarding unusual and suspicious monetary transactions.

64. In accordance with Article 265(2) of Criminal Procedure Code, if access to data is denied on grounds of bank secrecy the court may issue a ruling on disclosure of data representing a bank secret upon request of the State Attorney. Similarly, if a certain person receives, holds or disposes in any other way of income arising from a criminal offence on his bank account and this income is important for the investigation of that criminal offence or it underlies forceful seizure, the State Attorney shall, propose to the court to order the bank to hand over data on that account and income to the State Attorney.

65. The Act on the Office for the Suppression of Corruption and Organised Crime[24] (hereinafter USKOK Act) also includes specific provisions for the investigation of the criminal offences for which the Office is competent. According to Article 49, as soon as the Office becomes aware of the likelihood that a person has in their bank accounts, holds, or otherwise is doing business with the income earned by the offenses for which the Office is competent, and these revenues are important to search out and investigate these crimes or subject to seizure under the provisions of the Criminal Code, the Criminal Procedure Act and the Act on the Liability of legal persons for criminal offenses, the Office will request the bank to request the submission of data on these accounts. The bank is responsible for the requested data contained in the request of the Office, delivered within a given application. If a bank fails to comply with the request, the Office will request that the judge decides on the request an investigation.

66. Pursuant to Article 169 of Credit Institutions Act, members of the credit institution's bodies, its shareholders or employees and other persons who, due to the nature of their business with or for the credit institution have access to confidential information, are bound by the obligation of banking secrecy and their boundary remain after termination of their employment. However, bank secrecy can be lifted on the basis of paragraph 3 of the same article. Namely, obligation of banking secrecy shall not include, inter alia, if secret data are communicated to the Croatian National Bank, Finance Inspectorate of the Republic of Croatia or other monitoring authority for the needs of supervision or monitoring, and in the framework of their competence; if secret data are communicated to the Office for Suppression of Money Laundering, and on the basis of the law which regulates suppression of corruption and organized crime and if secret data are necessary for tax authority in procedure which they carry out in the framework of their legal authorities, and are communicated upon their written request.

67. Financial information can also be obtained in inter-institutional cooperation with Anti-Money Laundering Office (AMLO) as intelligence and only for AML/CFT purposes. It is indicated in Article 64 of AML/CFT Act that at the request of the Office, the bodies referred to in this Article are obliged to supply information, data and documentation pointing to the suspicion of money laundering or terrorist financing. Moreover, AMLO has direct access to police database, border police database, tax administration database and FINA single register of accounts that is central database of accounts of natural and legal persons in all banks in Croatia.

Paragraph 2 a)

68. Croatia is among the few countries having a central database for domestic bank accounts. Within the Financial Agency (FINA), the single registry of accounts of natural and legal persons was established and became fully operational on 1st January 2011. The content of the single registry of accounts, data coverage, data delivery deadlines,

[24] Adopted on 30 June 2009, OG 76/09

use and disclosure of data and access to the data from the single registry of accounts are laid down in the Rules on Single Registry of Accounts adopted by the Ministry of Finance (dated 3 August 2010, OG 96/2010) based on the provisions of the Distress Act over Funds (OG 91/2010). The single registry of accounts is an electronic data base containing account information of business entities, citizens, local and regional self-government bodies, and the tax payers in banks, housing savings and credit unions in Croatia. The data in the single registry is divided into two categories. The first category is publicly available data that contains data on the accounts of legal persons for which FINA is obliged on the request of each person to disclose data on the number of the account, bank, date of the opening of the account, authorised person as well as whether the account is blocked or not, and the second category covers non publicly available data (ie. data on the accounts of natural persons, available only on the basis of a written request of the court or other authority as well as of the surveillance authorities and citizens to which the data refer). This database is a commercial database and access to information is subject to the payment of the fee. AMLO has direct access to this database free of charge.

69. Prosecutors, law enforcement agencies and other competent authorities may access the information in this single registry of accounts for confiscation purposes or in order to adopt provisional measures by means of inter-institutional cooperation or through the FIU (AMLO). Besides, the FIU also submits information, upon receipt of a written request of the competent court or state attorney.

70. It should be pointed out in this context that the requirements in place should ensure that information stored in the database is available as regards both the customer and the beneficial owner (as defined in the anti-money laundering legislation) and is regularly updated.

Paragraph 2 b)

71. According to Article 78 of the AML/CFT Act all the reporting entities prescribed in the law other than lawyers, law firms, public notaries, auditing firms, independent auditors, tax advisory services and natural and legal persons performing accountancy are obliged to keep data collected on the basis of this Law and regulations passed on the basis of this Law and the accompanying documentation for the period of ten years after a transaction execution, the termination of a business relationship, entry of a customer into a casino or approaching a safe deposit box. Croatian FIU (AMLO) has also the authority on the basis of Article 59 of AML/CFT Act to commence the analytical processing of transactions or to request additional information and documentation that the reporting entities had gathered or keep on the basis of AMLTF Law from reporting entities when suspicion of money laundering or terrorist financing exist,

72. In accordance with the Article 41 of the Capital Market Act, for the reporting entities under the supervision of HANFA, there is the obligation to keep and safeguard records and business documentation of all investment services and activities, as well as transactions of investment firms for a minimum period of 5 years from the end of the year in which a transaction is entered into. However, these provisions do not cover all the reporting entities.

73. The above provisions seem to ensure that obtaining the data specified in Article 7 paragraph 2b of the CETS No. 198 is possible domestically by competent authorities. However, it is not 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.

Paragraph 2 c)

74. Competent authorities have the right to request on-going monitoring of bank accounts in the view of respective provisions. Article 265(5) of the Criminal Procedure Code prescribes that the investigating judge, upon the request of the State Attorney, may order the bank or any other legal entity to follow up on money transfer and transactions on the account of a certain person and to regularly inform the State Attorney during the term stipulated in the ruling for a year at longest.

75. Similarly, Article 49(4) of the USKOK Act states that upon the request of the State Attorney, the investigating judge may oblige the bank to provide to the Office data on the state of accounts of the person, to monitor the transactions of a particular person, and to regularly report the transactions on the monitored account to the Office during the time specified in the order.

76. Moreover, according to Article 62 of the AML/CFT Act if there is a suspicion of money laundering or terrorist financing, the Croatian FIU may give a written order to a reporting entity to exercise ongoing monitoring of financial operations and to regularly report the Office on transactions or arrangements of a person in relation to the written order. Implementation of the measures may last for up to three months and may be prolonged each time for an additional month up to for a maximum of six months.

77. These legislative provisions appear to provide a sufficient basis for monitoring of accounts as it stipulated in Article 7 paragraph 2c of the Convention.

Paragraph 2 d)

78. The replies to the questionnaire indicate that actions in the course of the investigation are considered as secret and revealing of the secret is a criminal offence under general principle of Croatian legal system. Disclosure of information envisaged by Article 7 paragraph 2 of the Convention to the bank customer concerned or to other third persons or the fact of investigation is prohibited by law. Article 265(7) of the Criminal Procedure Code clearly prescribes that the bank or any other legal entity shall refrain from disclosure of information or data on the proceedings. Furthermore, Article 75 of AML/CFT Act also indicates that the reporting entities and their employees, including members of management and supervisory boards and other managerial bodies and other persons who have any type of access and availability of data are not allowed to disclose the information to a customer or a third person.

79. It appears that the measures taken by Croatia to implement Article 7 paragraph 2d of the Convention are satisfactory and appropriate.

80. The provisions of the Criminal Procedure Act apply both to banks and other financial institutions, as Article 202(26) clarifies that the term “bank” shall be understood as “banks and other financial institutions”. Thus, the procedures set out for banks are equally applicable to non-bank financial institutions.

Effective implementation

81. The authorities appear to have made use of their power to monitor financial operations. In the period from 2009 to 2012, the FIU (AMLO) has sent 67 orders to banks for monitoring of financial operations regarding 64 persons. No other information was available to substantiate the effective application of the above arrangements in practice to banks, nor their extended application to non-bank financial institutions, by other competent authorities. As regards the use of the other investigative powers and

techniques, the rapporteurs are not in a position to assess the adequacy of the measures currently in place to allow for access to banking and other relevant information in the context of criminal proceedings for the various offences contemplated under the Convention.

Recommendations and comments

82. The Croatian legislation appears to have implemented broadly the requirements set out in article 7 paragraphs 1, 2a, 2b, 2c, 2d. Croatia should ensure, in the context of follow up by the COP, that it is in a position to bring forward elements demonstrating the effective application of the existing legal framework implementing Article 7 by all relevant authorities in the investigations for the various offences contemplated under the Convention.

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

83. Pursuant to Article 141 of the Constitution of the Republic of Croatia[25], the main principles applicable in the field of international cooperation in criminal matters are the precedence of international treaties over national law and the direct applicability of the conventions. Pursuant to that article, "international agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and shall have primacy over domestic law. Their provisions may be altered or repealed only under the conditions and in the manner specified therein or in accordance with the general rules of international law."

[25] http://www.sabor.hr/Default.aspx?art=2412.

84. As a consequence, relevant provisions of the Mutual Legal Assistance Act[26] are applicable only in non-treaty based cooperation or for the regulation of issues not covered by the otherwise applicable treaty. To the extent in which the said Act contains no special procedural rules, the provisions of the Criminal Procedure Act, the Law on USKOK and other laws are to be applied accordingly. It should also be noted in this context that the Act on Judicial Co-operation in Criminal Matters with Member States of the European Union includes detailed provisions related to judicial cooperation in respect of freezing property or evidence, confiscation orders and recognition and enforcement of judgments upon entry into force in July 2013.

85. As far as confiscation is concerned, there are no detailed articles in the MLA Act to regulate the recognition and enforcement of foreign confiscation orders – at least, not in the sense the taking over and enforcement of foreign verdicts. Chapter V of the MLA Act refers to the enforcement of sanctions imposed by a final verdict of a foreign court. Foreign confiscation orders are treated as requests for mutual legal assistance, and are enforced pursuant to domestic law (including the MLA Act, in particular Articles 28 and 29, and the Criminal Procedure Act).

86. The Croatian authorities clarified that they can co-operate with Parties requesting 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.

87. The possibility to return confiscated property to the requesting party is prescribed in Articles 28 and 29 of the Law on Mutual Legal Assistance. The scope of the property that can be returned to the requesting party is broadly defined in the Law. Of course, there are specific requirements needed to be fulfilled in order to return confiscated property to the requesting state.

88. Articles 26 and 27 of the Act on the Proceeding for the Confiscation of the Pecuniary Benefit Resulting from the Criminal Offence and Misdemeanours stipulate that the decisions of foreign bodies, are recognized and enforced on the territory of the Republic of Croatian, in conformity with the international agreements it has entered into. The afore-mentioned decision concern temporary or similar measures that have been imposed, or any pecuniary benefit resulting from a criminal offence that has been confiscated from the defendant or related parties. This also applies, if specific conditions are fulfilled, to cases when no international agreement is in force.

89. Except in connection with requests from EU States, and when this act on judicial cooperation wills entry into force, there are no specific provisions in relation to returning or sharing confiscated property to/with requesting parties so that the latter can ensure compensation of victims. However, in application of Article 141 of the Constitution, it can be considered that the provisions are an integral part of the domestic legislation.

90. Croatia has not indicated having concluded agreements regarding giving special consideration to sharing confiscated property with the requesting party

Effective implementation

91. There is no practice so far on either of these articles.

[26] Based on the information received from Croatia, it is inferred that the MLA Act as analysed in MONEYVAL's third round evaluation report has remained unchanged and any comments related are relevant in the context of this assessment.

Recommendations and comments

92. Having in mind that for this question the relevant provisions are contained in the Act on the Proceeding for the Confiscation of the Pecuniary Benefit Resulting from the Criminal Offence and Misdemeanours, which regulates procedure for confiscation of the property gained from the criminal offence, there is a necessity to clarify some of the linguistic question about the name and content of the Act, especially for the word *"pecuniary"*, because it may raise some concerns. The word "pecuniary" used in the translation of this Act is the word that represents all the property and not only the one that comes from the money, as it may be understood reading only the name of the Act. This conclusion comes from the reading the text of the Law as well as reading the text and the title of the Law in Croatian language. Thus, the translation of the title of this act may bring the concern, and from the reviewers' point of view needs this clarification.

93. Croatia has not adopted specific measures to implement Article 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. Though nothing in the legislation prevents the country from enforcing foreign requests based on a non-criminal court decision and Croatia may be able to repatriate and/or share assets with other contracting Parties, in the absence of any practice confirming this, it is nevertheless recommended that Croatia:
    - clarifies the extent to which it 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 it 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

94. As it is described above, the mutual legal assistance in the Republic of Croatia is provided according to the ratified conventions and treaties as well as based on the Law on mutual legal assistance.

95. The Law on Mutual Legal Assistance, as it is stated in its Article 3, is applicable in all situations when there is a need for leading criminal proceeding, except if otherwise is prescribed by the international treaties. Article 3 provides broad base for the mutual legal assistance in criminal matters. Thus, the requesting state may ask for the information on the bank accounts as it is specified in the specific paragraphs of Articles 17, 18 and 19 of the Convention, that are under the evaluation.

96. However, the question on MLA in this field should be read in conjunction with the relevant provision of the Criminal Procedure Code of Croatia regarding the bank accounts, history of the bank accounts and monitoring of bank accounts (see in particular Article 206 paragraphs 5 and 6, Article 265), Article 49 of the USKOK Act as well as with the relevant paragraphs of this report. All these provisions can be applied in the context of mutual legal assistance.

97. The Criminal Procedure Code provides for the possibility for prosecutors to collect necessary data from banks, other state bodies and other legal entities, except the information representing a lawfully protected secret. In situations when the bank refuses to communicate the information to the prosecutor, prosecutors can ask the judge to issue an order.

98. Also, in the Croatian legislation there is possibility to follow up on money transfer and the transaction of a certain person. This measure can last a year at longest and it is extended to all other legal entities.

99. The provisions of the Criminal Procedure Act apply both to banks and other financial institutions, as Article 202(26) clarifies that the term "bank" shall be understood as "banks and other financial institutions". Thus, the procedures set out for banks are equally applicable to non-bank financial institutions.

Effective implementation

100. Croatia does not keep detailed statistics which would enable to have a clear picture on the extent to which MLA provisions are implemented. The statistics provided relate to MLA based on both CETS No. 141 and 198. The authorities indicated that all received and sent requests contained investigatory actions, requests concerning bank accounts of suspects, including seizure of assets.

Year	Total of received requests	Total of sent requests
2006	1	6
2007	0	0
2008	0	0
2009	5	8
2010	4	8
2011	0	7
2012	0	0

Recommendations and comments

101. The Croatian authorities should ensure that they are in position to provide meaningful statistical information on the practice of international co-operation in these areas. In particular, Croatia should ensure, in the context of follow-up by the COP, that it is in a position to bring forward elements demonstrating the effective application of the existing legal framework implementing Article 17 paragraphs 1, 4, 6, Article 18 paragraphs 1 and 5, and Article 19 paragraphs 1 and 5.

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

102. The Croatian authorities indicated that direct communication is possible with a requesting party on the basis of the MLA Act or if some international agreement includes provisions to that effect. The direct communication is possible based on reciprocity.

103. There is no provision in the Law on MLA for sending the draft requests prior to the formal request. The Croatian authorities, during the meeting explained however that preliminary contacts are a common practice in their work and that they are communicating directly with the foreign colleagues in order to clarify relevant question before the formal request for MLA is sent.

104. This is done with all countries Parties to the relevant conventions that prescribe this possibility as well as with the other where through their practice they have established it. It is worth mentioning that the Croatian authorities have signed several MoUs with the neighbouring countries as well as with some overseas countries that can serve as a base for direct communication in the field of MLA. On the basis of bilateral Memoranda or Protocols, public prosecution services can obtain and exchange information, reports and documents, obtain statements from suspects and other persons, exchange laws and other pieces of legislation, as well as all other data contributing to the investigation and prosecution of cross border organized crime. Croatia also participates in a number of networks, both at regional and European Union level (ex. Eurojust, European Judicial Network contact points) which provide for opportunities for direct contacts and exchanges of information.

Effective implementation

105. As noted above, Croatian authorities have confirmed using very often direct communication prior to formal requests.

Recommendations and comments

106. CETS No. 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. Croatia 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

107. Croatia was rated largely compliant (LC) in the third round MONEYVAL mutual evaluation report for the purposes of the assessment of Recommendation 26, in connection with the establishment of an FIU and for Recommendation 40, regarding international co-operation.

Article 46 paragraphs 1, 2 and 3

108. The Anti-Money Laundering Office (AMLO) was established at the beginning of 1998 as an administrative type of FIU, within the structure of the Ministry of Finance. As a financial intelligence unit and the central national unit, the Office is responsible for the collection, storage, analysis and submission of data, information and documentation on suspicious transactions to competent government bodies for further proceeding for the purpose of ML and TF prevention and detection. The FIU consists of two services: the Service for Financial Intelligence Analytics and the service for the Prevention and Supervision of reporting Entities.

109. The functions of the FIU are detailed in Article 57 of the law, which includes in paragraph 1 item 6 specifically the exchange of data, information and documentation with foreign FIUs and other international bodies competent for ML and TF prevention matters. Sub-section 2 of the AML/CFT act covers in detail the aspects related to international cooperation by the FIU (Articles 67-72).

110. Exchange of information is possible upon request or spontaneously. The exchange of information is not subject to the conclusion of a MoU. Nonetheless, the AMLO has signed MoUs with 36 states and jurisdictions for the purpose of strengthening bilateral cooperation with certain FIUs.

111. There is no restriction in the Croatian legislation or in AMLO's policies related to the nature of the foreign FIU. Therefore AMLO can co-operate with all types of FIU, regardless of whether they are administrative, law enforcement or judicial.

112. The statistics provided by the Croatian authorities do not include any breakdown in terms of cooperation with the different types of FIUs. Requests for information are received and processed regardless of whether they emanate from administrative, judicial or law-enforcement type of FIUs.

Number of requests for information, between 2008 and 2013:

2008	No of requests	No. of States
Requests sent	174	43
Requests received	87	33

2009	**No of requests**	**No. of states**
Requests sent	235	48
Requests received	120	34

2010	**No of requests**	**No. of states**
Requests sent	420	113
Requests received	101	31

2011	**No of requests**	**No. of states**
Requests sent	277	111
Requests received	87	36

2012	**No of requests**	**No. of states**
Requests sent	238	57
Requests received	77	33

2013– 31/03/2013	**No of requests**	**No. of states**
Requests sent	74	32
Requests received	19	13

113. As it is seen in the statistics above, a total of 1106 requests have been sent and 395 received in a period of four years. The authorities also indicated that 225 cases have been opened on the request of foreign FIUs between 2009 and 30 June 2012 and AMLO on the daily basis exchange information through Egmont Secure Web with foreign FIUs.

Article 46 paragraph 4

114. The Croatian authorities stated that, when replying the requests made under this article, the AMLO always sends a brief statement of the relevant facts. And, in those cases, AMLO specifies in the request how the information sought will be used.

115. It is also worth mentioning that there were no cases where a foreign FIU refused to provide information following a request for information made by the AMLO on the basis of insufficient information being provided by the AMLO on the relevant facts or on the manner in which the information sought would be used. It appears that, therefore, in practice the level of detail being provided by the AMLO in its requests for information has generally satisfied the requirements of the requested FIUs.

Article 46 paragraph 5

116. The authorities indicated that when a request is made in accordance with this article, AMLO, within the framework of international cooperation in the exchange of data, searches databases to which it has direct or indirect access (which includes police databases, public databases, administrative databases and commercially available databases), requests additional financial information from reporting entities and provides all relevant information, including accessible financial information and requested law enforcement data, sought in the request, without the need for a formal letter, under applicable conventions or agreements between the Parties. The information exchanged can only be used as intelligence, for AML/CTF purposes.

Article 46 paragraph 6

117. Pursuant to Article 69(2) of the AML/CFT Act the AMLO may refuse the satisfaction of the request of the foreign FIU in two cases: a) if AMLO considers, on the basis of the information and conditions indicated in the request, that the reasons for suspicion of money laundering or terrorist financing have not been supplied; or b) if the exchange of information would endanger or could put at risk the carrying out of a criminal procedure in the Republic of Croatia, i.e. if it could in any way damage the national interests of the Republic of Croatia. In these cases, the AMLO has to notify the foreign FIU explaining the reasons for which the request issued by the foreign FIU was not satisfied.

Article 46 paragraph 7

118. The Croatian authorities indicated that AMLO is not authorized to disclose to the public information, data and documentation connected to the cases that are currently being investigated within the AMLO or were referred to the competent authorities or foreign FIUs. Article 68(3) of the AML/CFT Act also prescribes that the information and documents obtained by AMLO cannot be disseminated to a third Party or used for any other purpose than analysis or present them for examination by a third person, natural or legal (i.e. to other body) or to use them for purposes contrary to the circumstances

and limits set by the foreign FIU to which the request was extended without prior consent of the supplying FIU, and shall be obliged to apply the confidentiality classification to such data at least to the extent applied by the body which supplied such data.

Article 46 paragraph 8

119. The Croatian authorities reported that, when transmitting information or documents within the framework of international cooperation in data exchange, AMLO transmits information or documents to be used only as intelligence, and for AMLTF purposes. Article 69(4) enables the AMLO to set additional conditions and limitations under which the foreign financial intelligence unit shall be allowed to use data provided by AMLO. However, the authorities advised that they have not applied any other restriction in practice.

Article 46 paragraph 9

120. The requirements set out under Article 46(9) of the CETS No. 198 in the Croatian legislation are being implemented by the provisions set out in Articles 68 (Data Supply Requests Extended to Foreign Financial Intelligence Units) and 69 **(**Supply of Data at Request Extended by a Foreign Financial Intelligence Unit) of the AML/CFT Act, which prescribes the rules applicable to the international exchange of data, information and documentation needed for Money Laundering or Terrorist Financing prevention and detection purposes, and besides defines the purpose of the use of the information exchanged.

121. As it can be inferred from the above information and from the earlier paragraphs, the Croatian FIU is allowed to use data, information and documentation obtained solely for the needs of its analytical-intelligence work and for the money laundering and terrorist financing prevention and detection purposes.

Article 46 paragraph 10

122. The Croatian authorities states that AMLO only exchanges data with other state bodies on the basis of the AML/CFT Act (Articles 58, 65, and others). In order to ensure that the information submitted under this article is not accessible by any other authorities, agencies or departments AMLO has implemented different measures such as technical protection (burglar alarms, fire alarms, cameras), physical security (guards), and hiring competent personnel. The employees of AMLO must pass a security clearance. A certain number of employees of AMLO require a certificate to access to classified data “RESTRICTED”, CONFIDENTIAL”, “SECRET” and “TOP SECRET” classification.

123. AMLO has also issued the following instructions and procedures covering aspects regarding the protection of information:

- Internal interim guidance on confidentiality of the AML/CFT Act, in force from 14 October 2008 to 3rd October 2012.

- Instruction on the protection of confidential information, the procedure with documents, protective measures for workspace and documents and maintain order at the AMLO, in force from 18 December 1998 to 1st October 2012.

- Instruction on the use and on obligatory measures of protection of intelligent information system of AMLO, effective from 19 January 2001 to 1st October 2012.

- Instruction on confidentiality of the AMLO information, in force from 1st October 2012.

- Instruction on measures and procedures for access, handling and storage of classified and unclassified information of the AMLO, in force from 1st October 2012.

- Work procedures of AMLO, in force from 1 October 2012.

124. It should be mentioned in this context that according to Article 20 of the Instruction on confidentiality of the AMLO information (in force from 1st October 2012) internationally exchangeable data are data that are sent to the foreign financial intelligence unit and other foreign authority or international organisation on the basis of international agreement or the law, and the data that are received from foreign financial intelligence unit and other foreign authority or international organisation on the basis of international agreement or the law. Following warning must follow data that are internationally exchanged: "This data, information and documents are classified and shall not be disseminated to third parties without a prior approval of the Croatian Financial Intelligence Unit respectively Anti-Money Laundering Office. The addressee shall limit the use if this data, information and documents only for analytical and intelligence purposes related to prevention and detection of money laundering and terrorism financing." Data and documents received from foreign financial intelligence unit and other foreign authority or international organisation are marked with obligatory degree of secrecy concerning the content of the document and data and on the basis of degree of secrecy with which it is marked (classified) by the owner of the document. According to Article 25 of the Instruction on confidentiality of the AMLO information, violation of secrecy and data protection of classified data received from foreign financial intelligence unit and other foreign authority or international organisation occurs when such data are destroyed, stolen, lost, or made available to unauthorised person. In the case of violation of secrecy of classified data, AMLO Director immediately informs National Security Authority (the Office of the National Security Council) in line with Article 27 of Data Secrecy Act and initiates the procedure to determine the responsibility for violation of secrecy.

Article 46 paragraph 11

125. Croatia is a party to CETS No. 108 since 2005. Chapter V of the AML/CFT Act sets out the general data protection rules and related procedures regarding the use of data, the period of data keeping, the declassification of data and exclusion from data secrecy observance. Furthermore, without the prior consent of the foreign FIU, AMLO is not allowed to submit the received data, information and documentation to or present them for examination by a third party, natural or legal or to use them for purposes contrary to the conditions and limitations set out by the foreign FIU to which the request was extended, and shall be obliged to apply the confidentiality classification to such data at least to the extent applied by the body which supplied the data (Article 68(3)).

Article 46 paragraph 12

126. The AMLO has made enquiries as to the use of transmitted information and received as appropriate feedback on transmitted information. It is also providing feedback for incoming requests.

Effective implementation

127. The Croatian FIU appears to be actively cooperating with its foreign counterparts and as there has been no case where the AMLO has refused to submit information to a

foreign FIU. The AMLO 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. There were also no cases where a foreign FIU refused to provide information following a request for information made by the AMLO on the basis of insufficient information being provided by the AMLO on the relevant facts or on the manner in which the information sought would be used. The data made available by the Croatian authorities also show that feedback is used both ways between the FIU and foreign counterparts.

128. From the information made available by the Croatian authorities, the reviewers were satisfied that adequate measures are taken by the AMLO to ensure that information submitted by foreign FIUs is not accessible to third parties.

Recommendations and comments

129. It seems that the measures adopted by Croatia to build up, improve and strengthen its capacity on international cooperation satisfactorily comply with the CETS No. 198 principles.

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

130. Croatia has taken measures enabling the postponement of domestic suspicious transactions. Article 60 of the AML/CFT law enables the FIU to issue an order to a reporting entity to temporarily suspend the execution of a suspicious transaction in two cases: 1) if there is necessary to take urgent action to verify data on a suspicious transaction or a person or 2) when the Office shall judge that there are grounded reasons that a transaction or a person is linked with ML or TF. Orders are to be issued in written form, except for instances where this is not possible due to the nature or manner of the transaction execution, in which case an oral order may exceptionally be issued which should be confirmed by a written order immediately and no later than 24 hours. A transaction can be suspended for up to 72 hours. Orders issued by the FIU under this provision have to be notified to the State Attorney's Office and /or the competent branch of the State Attorney's Office and after the expiration of the 72 hours period, the transaction may only be suspended on the basis of a court decision in application of the criminal procedure provisions. This provision is not restricted to cases where a suspicious transaction report had been submitted.

Postponement of suspicious transactions issued by AMLO between 2009 and 2012

AMLO	**2009**	**2010**	**2011**	**2012**	**2013 (up to 31/03)**
Orders	3	2	4	6	15
Persons	3	2	3	3	8
Total amount	1.956.525,00 HRK (app. 261.000,00 EUR)	2.707.018,00 HRK (app. 362.000,00 EUR)	8.142.887,00 HRK (app. 1.093.005,00 EUR)	12.669.006,00 HRK	22.302.553,00 HRK

Effective implementation

131. In the light of the information made available it is clear that the Croatian 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 on a regular basis.

Recommendations and comments

132. Croatia has taken measures to implement Article 14 of CETS No. 198.

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

133. According to Article 71 of AML/CFT Act the Croatian FIU may, upon a substantiated written proposal given by a foreign FIU, under the conditions set out by the law and on the basis of effective reciprocity, issue a written order to instruct a reporting entity to temporarily suspend the execution of a suspicious transaction for up to 72 hours. The FIU shall take such a course of action should it be satisfied on the basis of reasons for suspicion indicated in the request that 1) the transaction is connected to ML or TF and 2) the transaction would have been suspended had the transaction been the subject matter of a domestic suspicious transaction report. The FIU can refuse non substantiated requests with a motivated response.

Effective implementation

134. To date, Croatia has not received any request from foreign FIUs for the suspension of transactions and did not have the opportunity to apply Article 71 in this context. It has however sent two requests to other Parties to CETS which are summarised below:

Case 1
AMLO received information from the Police that foreign legal entity V Ltd, registered in one financial centre in Europe, on the basis of forged invoice initiated an execution procedure on the funds on the account of legal entity R d.o.o. from Croatia. In the information it is stated that on the basis of the order of notary public, the execution was done in the amount of 182.203,76 HRK and the funds were transferred from the bank in Croatia to the account of the legal entity V Ltd opened in a bank in one State Party to the Convention. Because of the suspicion on ML and since the transaction was conducted on the basis of forged documentation, Police requested from AMLO to, on the basis of its international cooperation, consider sending a request to FIU in the State Party to the Convention 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, in line with Article 47 (1) of the Convention. AMLO on the basis of received information conducted additional analysis of the transaction and established that on 25th October 2012 funds were

transfered from the account of legal entity R d.o.o. to the account of legal entity V Ltd opened in a bank in one State Party to the Convention in total amount of 23.942,68 EUR. In line with results of the analysis of initial information received from Police and additional information requested and received from reporting entity, and on the basis of Article 72 of AMLFT Law, and also on the basis of Article 47 (1) of the Convention, AMLO on 26th October 2012 sent a request to FIU in the State Party to the Convention 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. The FIU in the State Party to the Convention issued an order to the bank to temporarily suspend transactions on the account of V. Ltd, on which there were total amount of funds 23.901,93 EUR. The order was valid until 2nd November 2012 until which date it was necessary to send/receive a request for MLA so the competent court could issue a freezing order.

Case 2
AMLO received from County State Attorney's Office in Zagreb information on criminal offence of fraud in conducting business operations (Article 293 CC) and ML (Article 279 CC). From the documentation received from County State Attorney's Office in Zagreb, it is evident that on the 7th December 2011 from the account of legal entity S d.o.o. from Croatia, on the basis of non-original bianco loan document, a funds in the amount of 1.000.000,00 HRK were transferred to the account of legal entity T. d.o.o. from the State Party to the Convention. On the basis of the initial information AMLO received from County State Attorney's Office, and on the basis of Article 72 of AMLFT Law, and also on the basis of Article 47 (1) of the Convention, AMLO on 8th December 2011 sent a request to FIU in the State Party to the Convention to suspend or withhold consent to a transaction in amount of 1.000.000,00 HRK going ahead for such periods and depending on the same conditions as apply in its domestic law in respect of the postponement of transactions, and stated that possible predicate offence is criminal offence of fraud in conducting business operations (Article 293 CC). FIU from the State Party to the Convention informed AMLO that from the documentation it received form bank it is evident that the company T. d.o.o. on it account opened in the bank in the State Party to the Convention 198 received funds from the company S. d.o.o. from Croatia in total amount of 995.214,39 HRK (from bank account opened with one bank in Croatia) and after that on 13th December 2011 funds in amount of 4.277,32 EUR (from bank account opened with another bank in Croatia). First amount was returned to Croatian bank from the bank from the State Party to the Convention. Another amount was partially spent on payment services and partially withdrawn in cash.

Recommendations and comments

135. The reviewers are pleased to see that legislative measures adopted by the Croatian authorities in respect to the postponement of transactions at the request of foreign FIUS, are in line with CETS No. 198.

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 paragraph 1e, 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 according to Article 28 paragraph 1d).

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

136. The grounds for refusal of the international cooperation are prescribed in Article 12 of the Croatian Law on MLA. However, as it was explained earlier, this Act applies in all situations where there is no international agreement or standard in place, thus in principle, for cooperation with Parties to CETS No. 198, the Convention's provisions shall prevail.

137. Therefore, co-operation cannot be refused on the grounds that the request relates to a fiscal offence, where the offence also relates to financing of terrorism nor can it be refused on the grounds that the offence was a political one, especially if the offence constitutes a crime against humanity (including terrorism financing offences).

138. The Croatian authorities also pointed out that co-operation is 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.

Effective implementation

139. No information has been provided as to whether any cooperation has been granted in such cases.

Recommendation and comments

140. The Croatian authorities should ensure that they are in position to provide meaningful statistical information on the practice of international co-operation in such cases.

II. Overall Conclusions on implementation of the Convention

141. The information provided by the Croatian authorities responding to the COP questionnaire is satisfactory in many cases and the observance of the Convention by the Croatian authorities may be considered adequate. However, there are some deficiencies, described in the report, regarding some aspects of implementing requirements of 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).

142. The Croatian legal provisions are mostly in line with the requirements of the CETS No. 198. The New Criminal Code, came into force in January 2013, is a good testimony of the commitment of the Croatian authorities to comply with the international standards on the prevention, search and tracking down of the Money Laundering and the Terrorism Financing. Including the criminalisation of money laundering, the provisional measures adopted to assure the properties and benefits related to these offences. The AML/CFT Act and the Croatian CPA also regulate the developing and improving of investigative powers and techniques, the international cooperation, and the adoption of urgent actions as the postponement of domestic suspicious transactions. Therefore, reviewers welcome the good effort carried out by the Croatian authorities to develop and put in practice the measures and procedures established in the CETS No. 198.

143. The Republic of Croatia has, when reading the relevant provisions of the legal acts, in the field of international cooperation, mostly implemented provisions of the Convention CETS No. 198. The Croatian FIU is an active member of the Egmont Group and appears to provide generally timely and helpful assistance to other FIUs and has the capacity to exchange information with all types of FIU.

144. 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).

145. The following recommendations are thus addressed to Croatia:

- to make efforts to develop jurisprudence on autonomous money laundering so as to give the courts the opportunity to clarify that money laundering can be sanctioned in the absence of a conviction for the predicate offence and in cases involving autonomous ML, how specific evidence should be with respect to the predicate offence.
- to ensure through multidisciplinary training of judges and prosecutors that these are familiarised with the mandatory provisions of Article 9 paragraphs 5 and 6 of the Convention.
- to ensure that the provisions of the Act on Responsibility of Legal Persons for Criminal Offences are harmonised with the provisions of the new Criminal Code in particular as regards the definition of “responsible person” and use that opportunity to clarify that the term encompasses all the categories of persons set out under Article 10 paragraph 1 of the Convention;
- to conduct a review of the legal and procedural obstacles that may hinder law enforcement and prosecutors to successfully investigate and prosecute legal persons for money laundering and take steps, as appropriate, to eliminate them;

- to undertake, as appropriate, additional training activities and raising-awareness measures (additional guidance, documents, instructions, etc.) to familiarise the police and the judiciary on the implementation of the provisions of the Act on Responsibility of Legal Persons for Criminal Offences in relation to ML and other relevant criminal offences pertaining to the categories of offences listed in the Appendix to the CETS 198, clarifying also the circumstances envisaged by Article 10 of the Convention.
- to consider taking additional steps as may be required to ensure that prosecutors are familiar with the procedures to bring foreign convictions against both natural and legal persons taken in another Party in relation to offences established in accordance with CETS 198. Additionally, the Croatian authorities may consider incorporating measures implementing the international recidivism standard in the Act on Responsibility of Legal Persons for Criminal Offences.
- to review the current regime, aligning the relevant laws with the new CC provisions where applicable and eliminating any inconsistencies so as to satisfy themselves that the competent authorities have the necessary tools to clarify the application of the relevant provisions and regimes and ensure that they can make full use of the existing legal framework to avoid any legal gaps as regards the possibility to confiscate instrumentalities and proceeds and laundered property within the full sense of article 3 of the Convention.
- to ensure, in the context of follow up by the COP, that it is in a position to bring forward elements demonstrating the effective application of the existing legal framework implementing Article 3 by all relevant authorities.
- In order to strengthen the reliability and efficiency of GAMA, to consider building upon existing regulations to establish efficient protocols and management mechanisms covering all types of assets under the responsibility of the Sector of the Confiscation of Pecuniary Gain, including any procedures for the estimation of value of seized assets and taking other relevant capacity building and training measures.
- it is also recommended to carry out an assessment of the adequacy of the current legal and practical arrangements in place for the management of the various types of movable and immovable property likely to be subject to temporary measures in the context of serious crime cases and to take any additional measures required in the light of such an assessment.
- to ensure, in the context of follow up by the COP, that it is in a position to bring forward elements demonstrating the effective application of the existing legal framework implementing Article 7 by all relevant authorities in the investigations for the various offences contemplated under the Convention.
- to clarify the extent to which Croatia 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 Croatia 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.
- to ensure that meaningful statistical information is available on the practice of international co-operation and in the context of follow up by the COP, to bring forward elements demonstrating the effective application of the existing legal framework implementing the Article 17 paragraphs 1, 4, 6; the Article 18 paragraphs 1 and 5; Article 19 paragraphs 1 and 5 and article 28 paragraphs 1d, 1e, 8c
- To criminalise the lesser subjective mental element provided under Article 9 paragraph 3(a) of CETS No. 198.
- To provide further clarifications to ensure the consistency between the definition of “pecuniary advantage” provided under the Criminal Code and the definition provided under the Act on Proceedings for the Confiscation of Pecuniary Benefit Resulting from Criminal Offences and Misdemeanours.

- To introduce value confiscation regime which is not restricted to "money, securities or objects" and also covers any other sorts of property like real estate or property rights.

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

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 Croatia – situation as of 3 June 2013

Declaration contained in the instrument of ratification deposited on 10 October 2008 – Or. Engl.

In accordance with Article 24, paragraph 3, of the Convention, the Republic of Croatia declares that Article 24, paragraph 2 of the Convention, applies only subject to the constitutional principles and the basic concepts of the Republic of Croatia's legal system.
Period covered: 1/2/2009 -

The preceding statement concerns Article(s) : 24

Declaration contained in the instrument of ratification deposited on 10 October 2008 – Or. Engl.

In accordance with Article 35, paragraph 3, of the Convention, the Republic of Croatia declares that requests and documents supporting such requests should be accompanied by a translation into the Croatian language or, if this is not possible, into the English language.
Period covered: 1/2/2009 -

The preceding statement concerns Article(s) : 35

Declaration contained in the instrument of ratification deposited on 10 October 2008 – Or. Engl.

In accordance with Article 42, paragraph 2, of the Convention, the Republic of Croatia declares that, without its prior consent, information or evidence may not be used or transmitted by the authorities of the requesting Party in investigations or proceedings other than those specified in the request.
Period covered: 1/2/2009 -

The preceding statement concerns Article(s) : 42

Declaration contained in the instrument of ratification deposited on 10 October 2008 – Or. Engl.

In accordance with Article 33, paragraph 2, of the Convention, the Republic of Croatia declares that the central authorities designated in pursuance of paragraph 1 of Article 33 of the Convention are the Ministry of the Interior, Police Directorate, Criminal Police Department, Ilica 335, Zagreb, and State Attorney's Office of the Republic of Croatia, Gajeva 30a, Zagreb.
Period covered: 1/2/2009 -

The preceding statement concerns Article(s) : 33