



Strasbourg, 16 April 2010

C198-COP(2010)REP2

## **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)**

#### **2<sup>nd</sup> MEETING**

**Strasbourg, 15-23 April 2010**

#### **MEETING REPORT**

Memorandum prepared by the Secretariat  
Directorate General of Human Rights and Legal Affairs

## **SUMMARY ACCOUNT OF THE PROCEEDINGS**

### **Items 1 and 2 – Election of the President, the Vice-President and the Bureau of the Conference of the Parties, and Adoption of the Agenda**

1. The Secretariat opened the meeting. Due to the unavoidable absence of the two candidates for the Chairmanship of the Conference of the Parties the latter decided to postpone the election until its next meeting. The Secretariat proposed that Dr. Silvio Camilieri should take the chair as interim presidency. The Conference agreed.
2. The Conference of the Parties proceeded to the election of the Bureau. There were three candidates. The Conference elected Mrs Hasmik MUSIKYAN (Armenia), Mrs Oxana GISCA (Moldova), and Mr Sorin Tanase (Romania) as Members of the Bureau of the Conference of the Parties.
3. The agenda, as adopted by the Conference of the Parties, is set out in Appendix I.

### **Item 3 – Discussion and Adoption of the Questionnaire prepared by the Drafting Group on the implementation of the CETS No. 198**

4. The Questionnaire prepared by the Drafting Group at its meeting in Paris on 8 and 9 February 2010 was adopted by the Conference after a wide-ranging discussion and relevant amendments. The adopted Questionnaire is appended (Appendix II).

In the course of the discussion it was proposed the process should only start for an FATF country after an FATF 3<sup>rd</sup> round evaluation. There was no consensus to accept this proposal or to be bound by decisions in another group or body. It was agreed that in planning assessments account should be taken of the schedule of evaluations in MONEYVAL and FATF to avoid as far as possible too much pressure of evaluations on a state at approximately the same time.

### **Item 4 – Discussion of the opinion of the Jurisconsult of the Council of Europe on the issue of the voting rights of the European Community after its ratification of the CETS No. 198**

5. The item was postponed until the next meeting of the Conference of the Parties.

### **Item 5 – Progress made by States in signing/ratifying the CETS No. 198**

6. The Chair invited countries to make interventions if they were able to do so on the progress of their countries in signing and ratifying the Convention. The representatives of Azerbaijan, Greece and San Marino indicated that their respective authorities expected that ratification should take place before the next meeting of the Conference. The representatives of Portugal and Slovenia indicated that the internal procedures for ratification had been completed and that the instruments of ratification would be deposited in the near future with the Secretary General of the Council of Europe. The representatives of the Russian Federation and Ukraine indicated that their respective authorities were preparing the submission of the Convention to the Parliament for ratification.

**Item 6 – Discussion of the document prepared by the Secretariat on how the Conference of the Parties will operate in respect of its responsibilities under Article 48 (4) of the CETS No. 198.**

7. The Conference discussed and adopted the document as appended (Appendix III).

**Item 7 – Discussion of the document prepared by the Secretariat on the next steps of the COP monitoring activities as to the implementation by the Parties of the CETS No. 198 provisions – order of evaluation, training of rapporteurs, first evaluation report.**

8. The Conference discussed and adopted the amended Secretariat document as appended (Appendix IV). It was agreed that the Conference would assess the countries in the order that they ratified the Convention. If there is a number of countries that ratified on the same day, they would be assessed in alphabetical order. It was agreed that Albania would be the first country to be assessed.

**Item 8 – Discussion of the document prepared by the Secretariat on the procedures for the formation and operation of any evaluation team that may be required by the Conference of the Parties under Rule 19 of the Rules of Procedure.**

9. The Conference discussed and adopted the amended Secretariat document as appended (Appendix V). A Secretariat document on the Template for the draft reports was circulated for information. The Conference took note of this document. (Appendix VI).

**Item 9 – Financing of the forthcoming work of the Conference of the Parties**

10. The Director of Monitoring (DGHL) Mr Christos GIAKOUMOPOULOS explained the current financial situation of the Council of Europe. He indicated that there would be a strengthening of the material resources of MONEYVAL, which could impact on the provision for the Conference of the Parties.

**Item 10 – Any other business**

11. There was a discussion on the need for the appointment of at least one scientific expert to the Conference of the Parties. Under Rule 12 the Conference invited the Executive Secretary to commission the services of one or more scientific experts to the Conference of the Parties.
12. It was decided that the next meeting of the Conference will be held in January 2011, when the Albania report should be discussed

## **ANNEX I**

Strasbourg, 25 March / mars 2010

C198-COP(2010)OJ1prov2

### **AGENDA / ORDRE DU JOUR**

#### **Second Conference of the Parties (CETS 198)**

*Deuxième Conférence des Parties à la Convention (STCE 198)*

**Strasbourg, 15-16 April / avril 2010**

**Palais de l'Europe, room / salle 5**

1. **Election of the President, the Vice-President and the Bureau of the Conference of the Parties** / *Election du Président, du Vice-président et du Bureau de la Conférence des Parties*
2. **Adoption of the Agenda** / *Adoption de l'ordre du jour*
3. **Discussion and Adoption of the Questionnaire prepared by the Drafting Group on the implementation of the CETS No. 198** / *Discussion et adoption du questionnaire préparé par le groupe de rédaction sur la mise en oeuvre la STCE No. 198*  
(Documents : CETC198-COP(2010)QSTprov3 and/et CETC198-COP(2010)QSTprov3-bis)
4. **Discussion of the opinion of the Jurisconsult of the Council of Europe on the issue of the voting rights of the European Community after its ratification of the CETS No. 198** / *Discussion de l'opinion du Conseiller Juridique du Conseil de l'Europe quant au droit de vote de la Communauté européenne suite à sa ratification de la STCE No. 198*  
(Document: CETC198-COP2(2010)INF-5)
5. **Progress made by States in signing/ratifying the CETS No. 198** / *Développements relatifs à la signature/ratification par les Etats de la STCE No. 198*
6. **Discussion of the document prepared by the Secretariat on how the Conference of the Parties will operate in respect of its responsibilities under Article 48 (4) of the CETS No. 198 for the settlement of disputes between the Parties** / *Discussion du document préparé par le Secrétariat sur la manière de procéder pour la CdP quant à sa responsabilité au regard de l'article 48 (4) de la STCE No.198 quant au règlement des différends entre les Parties.*  
(Document : C198-COP(2010)1-PROP)
7. **Discussion of the document prepared by the Secretariat on the next steps of the COP monitoring activities as to the implementation by the Parties of the CETS No. 198 provisions – order of evaluations, training of rapporteurs, first evaluation report** / *Discussion du document préparé par le Secrétariat sur les prochaines étapes des activités de suivi de la CdP quant à la mise en oeuvre par les Parties des dispositions de la STCE No. 198 – ordre des évaluations, formation des rapporteurs, premier rapport d'évaluation*  
(Document : C198-COP(2010)3-PROP)
8. **Discussion of document prepared by the Secretariat on the procedures for the formation and operation of any evaluation team that may be required by the Conference of the Parties under Rule 19 of the Rules of Procédure** / *Discussion du document préparé par le Secrétariat sur la procédure, la composition et l'opération d'éventuelles équipes qui pourraient être mandatées par le Conférence des Parties conformément à la règle 19 du Règlement*  
(Document : C198-COP(2010)2-PROP)
9. **Financing of the forthcoming work of the committee/ Financement des futures travaux du comité**
10. **Any other business** / *Divers.*

## **ANNEX II**



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE

Strasbourg, 16 April 2010

C198-COP(2010)QST

## **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)**

## **QUESTIONNAIRE**

Directorate of Monitoring  
Directorate General of Human Rights and Legal Affairs – DG-HL

## Introduction

This questionnaire has been drawn up by the Conference of the Parties (COP) to seek information on those areas of the CETS No. 198 which add value to the current international standards, notably the 40 Recommendations of the FATF and the FATF's 9 Special Recommendations. It is not the intention of the COP monitoring mechanism to duplicate work being undertaken by the FATF, MONEYVAL and other relevant assessment bodies. The questionnaire was adopted at the Second meeting of the COP (15 and 16 April 2010).

Please answer all the questions in the questionnaire and provide, where possible, evidence which demonstrates that the requirements or principles established by the CETS No. 198 have been effectively applied in practice. It is recognised that some CETS No. 198 provisions are mandatory and some are not. Where a question relates to a non-mandatory provision it has been marked with an asterisk. The monitoring report which is drawn up will note in respect of such provisions, that a State Party is permitted but not obliged to implement the relevant provision.

## General background information

If possible, please indicate which Authority co-ordinated the responses to the questionnaire

## The AML/CFT situation in your jurisdiction

Please provide a brief update on the AML/CFT situation in your jurisdiction including statistical and descriptive information on the offences which generate significant proceeds in your jurisdiction. For these purposes a country may refer to relevant published information in the most recent FATF or MONEYVAL adopted evaluation reports or adopted MONEYVAL progress reports, together with any further relevant information.

Where relevant up-to-date legislation is already available in publicly available information from FATF and MONEYVAL it need not be provided to the COP. If there is recent relevant legislation which is otherwise not publicly available, and which demonstrates the application of CETS No. 198, then it should be provided for consideration by the COP in its report.

## Specific questions

### ***A. Measures to be taken at national level***

#### **I. General provisions**

##### **Article 3 - Confiscation measures**

**(1)** How does your legislation and other measures enable your jurisdiction to confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds and laundered property in accordance with Article 3 (1). Please, include the legislative and other measures<sup>1</sup> for confiscation of laundered property in a "stand alone" money laundering case.

<sup>1</sup> Where information is requested to be provided in this questionnaire includes reference to "legislative and/or other measures" this can be provided in the form of legislation, regulations, or court rulings.

**(2)** Does confiscation apply to all categories of offences set out in the Appendix to the CETS No. 198 ? Please provide relevant legal provisions.

*How do you demonstrate effective implementation ? If there are statistics, please provide.*

**\*(3)** Have you made confiscation mandatory in respect of any offences which are subject to your confiscation regime? Please provide relevant legal provisions.

*If you have done so, can you demonstrate effective implementation ? If there are statistics, please provide.*

**(4)** Are there legislative or other measures in place in respect of a serious offence or offences as defined by national law requiring an offender to demonstrate the origin of alleged proceeds or other property liable to confiscation (to the extent that such a requirement is consistent with the principles of domestic law) ?

If your country has entered a declaration in respect of Article 3 (4) under Article 53 (4) a, b or c please provide the terms of the declaration made.

*If you have introduced the procedure under Article 3 (4) how do you demonstrate effective implementation ? If there are statistics which show this requirement in practice in cases in your jurisdiction, please provide.*

#### **Article 6 - Management of frozen or seized property**

Have legislative or other measures been taken to ensure proper management of frozen or seized property in accordance with Articles 4 and 5 of the CETS No. 198 ?

*If you have introduced the procedure under Article 6 how do you demonstrate effective implementation ?*

**Article 7 - Investigative powers and techniques**

**(1)** Are your courts or other competent authorities empowered to order bank, financial or commercial records to be made available or be seized in order to carry out the actions referred to in Articles 3, 4, and 5 ? Can your jurisdiction decline to act under this provision on the grounds of banking secrecy ?

**(2a)** Are there legislative and other measures in your jurisdiction to enable your country to determine whether a natural or legal person is a holder or beneficial owner of one or more accounts in any bank located in your territory and to obtain the details of identified account(s)? Please provide relevant legislative and other measures.

**(2b)** Are there legislative and other measures available 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 ? Please provide relevant legislative and other measures.

**(2c)** Are there legislative and other measures in place to monitor during a specified period the banking operations that are being carried out through one or more identified accounts? Please provide relevant legislative and other measures.

**(2d)** Are there legislative and other measures in place 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 of Article 7 (2) or that an investigation is being carried out? Please provide relevant legislative and other measures.



What consideration has been given to extending these provisions to accounts held in non-bank financial institutions? If these provisions have been so extended, please provide relevant legislative provisions and explain to which financial institutions these provisions have been applied.

*In respect of Article 7 (1 and 2) please demonstrate effective implementation. If there are statistics, please provide.*

#### **Article 9 - Laundering offences**

**\*(3)** Does legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds?

Does your legislation and other measures allow for money laundering offence to be established where the person ought to have assumed that the property was proceeds ?

*Can you demonstrate effective implementation ? If there are examples of statistics which demonstrate the principles in cases in your jurisdiction, please provide.*

**(4)** How has Article 9 (4) been provided for in your jurisdiction ?

Have all the categories of predicate offences listed in the Appendix to the CETS No. 198 been criminalised in your jurisdiction ?

*Please complete the attached annex showing the range of predicate offences covered in your Criminal Code for each category of predicate offence in the Appendix to the CETS No. 198.*

**(5)** Can a conviction for money laundering be obtained without a requirement for a prior or simultaneous conviction for the predicate offence?

*How do you demonstrate effective implementation of this requirement? If there are examples of statistics which demonstrate the requirement set out in Article 9 (5) of the CETS No. 198 in cases in your jurisdiction, please provide.*

**(6)** Is a conviction for money laundering possible where it is proved that the property the object of paragraph 1a or b of Article 9 originated from a predicate offence, without it being necessary to establish precisely which offence?

*How do you demonstrate effective implementation of this requirement? If there are examples of statistics or other information which demonstrate this principle in cases in your jurisdiction, please provide.*

#### **Article 10 - Corporate liability**

**(1)** How are legal persons held liable for criminal offences of money laundering in respect of criminal offences of money laundering established in accordance with the CETS No. 198 committed for their benefit by any natural person, acting either individually or as a 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) How is the notion of corporate liability applied to legal persons in instances where lack of supervision or control by natural person who has a leading position in the legal person has made possible the commission of the criminal offences in paragraph 1 for the benefit of that legal person by a natural person under its authority ?

*How do you demonstrate effective implementation ? If there are statistics or other relevant information which show this principle in cases in your jurisdiction please provide together with examples of criminal, administrative or civil sanctions imposed.*

**Article 11 - Previous decisions**

What legislative and other measures in your jurisdiction provide for the possibility of taking into account, when determining the penalty, final decisions against natural or legal persons taken in another Party in relation to offences established in accordance with the CETS No. 198 ?

## **II. Financial Intelligence Unit (FIU) and prevention**

**Article 14 - Postponement of domestic suspicious transactions**

Has your country adopted legislative and other measures permitting urgent actions to be taken by the FIU or, as appropriate by any other competent authorities or body when there is a suspicion that a transaction is related to money laundering, to suspend or withhold consent to a transaction going ahead in order to analyse the transaction and confirm the suspicion ? Please provide the provisions of your domestic legislation, regulations or other measures in this respect.

Does your country restrict such measures to cases where a suspicious transaction report had been submitted ?

What is the maximum duration of a suspension or withholding of consent to a transaction according to your domestic legislation ?

*How do you demonstrate effective implementation of this Article? If there are statistics, please provide.*

## ***B. International co-operation***

### **I. Investigative assistance**

#### **Article 17 - Requests for information on bank accounts**

**(1)** Have you taken the measures necessary to determine, in answer to a request sent by another Party, whether a natural or legal person that is subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in your territory ? Please provide relevant legislative provisions or describe the process/procedure.

**\*(4)** Do you make the execution of such a request dependant on the same conditions you applied in respect of requests for search and seizure ? Please provide relevant legislative provisions or describe the process/procedure.

**\*(6)** Have you extended this Article to non-bank financial institutions ? If yes, please explain to which financial institutions these provisions have been applied. Please provide relevant legislative provisions or describe the process/procedure.

*In respect of Article 17 please demonstrate effective implementation. If there are statistics, please provide.*

**Article 18 - Requests for information on banking transactions**

**(1)** What legislative measures have you taken to ensure that on request of another Party you shall provide the particulars of specified bank accounts and of banking operations which have been carried out during the specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account ? Please provide the provisions of your domestic legislation, regulations or other measures.

**\*(5)** Have you extended this Article to non-bank financial institutions ? If yes, please explain to which financial institutions these provisions have been applied.

*In respect of Article 18 please demonstrate effective implementation. If there are statistics, please provide.*

**Article 19 - Requests for the monitoring of banking transactions**

**(1)** Do you have the power, at the request of another Party, 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 ?

**\*(5)** Have you extended this Article to non-bank financial institutions ? If yes, please explain to which financial institutions these provisions have been applied.

*How do you demonstrate effective implementation ? If there are statistics, please provide.*

## **II. Confiscation**

### **Article 23 - Obligation to confiscate**

**(5)** Can you co-operate under your domestic law 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? Have you provided any international assistance on this basis ?

### **Article 25 - Confiscated property**

**(2)** When acting on the request made by another Party in accordance with Articles 23 and 24 of the CETS No. 198, do your authorities, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated property to the requesting Party so it can give compensation to the victims of the crime or return such property to their legitimate owners ?

How is this achieved in practice ? Please provide relevant legal provisions if any.

**\*(3)** Are there agreements or arrangements in place giving special consideration to sharing confiscated property with other Parties, on a regular or case-by-case basis?

*In respect of Article 25 please demonstrate effective implementation ? If there are statistics, please provide.*

## **III. Refusal and postponement of co-operation**

### **Article 28 - Grounds for refusal**

**(1d)** Can co-operation be refused on the grounds that the request relates to a fiscal offence, where the offence also relates to financing of terrorism? If yes, please provide reasons.

**(1e)** Can co-operation be refused on the grounds that the request relates to a political offence, where the offence also relates to financing of terrorism? If yes, please provide reasons.

**(8c)** Is co-operation still 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? If co-operation is not granted in this situation, please explain.

#### **IV. Procedural and other general rules**

##### **Article 34 - Direct communication**

**(2)** What are the legislative provisions allowing your judicial authorities, including public prosecutors, in the event of urgency to send requests and communications under this chapter directly to such authorities of another Party ? Is it also possible to send at the same time a copy of the request or communication to the central authority of the requested Party through your central authority ?

**\* (6)** Are the authorities of the requesting Party able to contact your domestic authorities directly prior to a formal request, to ensure that it can be dealt with efficiently upon receipt and that it contains sufficient information and supporting documentation to meet your legislative requirements? *How do you demonstrate effective implementation ? If there are statistics, please provide.*

#### **V. Co-operation between Financial Intelligence Units**

##### **Article 46 - Co-operation between FIUs**

**(3)** Can your FIU co-operate with all types of FIU, regardless of whether they are administrative, law enforcement or judicial ? What measures are in place to ensure that your FIU is able to co-operate with other FIUs whatever their internal status ?

**(4)** Are requests made under this article accompanied by a brief statement of the relevant facts known to your FIU?

Does your FIU specify in the request how the information sought will be used?

**(5)** When a request is made in accordance with this article, does your FIU 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? Please describe the process and procedures in place for fulfilling these obligations in a timely and comprehensive manner.

**(6)** Does your FIU refuse to divulge information ? On which bases, as provided for in this Article would or does your FIU refuse to divulge information?

Are any refusals appropriately explained to the FIU requesting the information ?

**(7)** Does your legislation or other measures clearly determine and limit the use of information and documents obtained by your FIU so that they cannot be disseminated to a 3<sup>rd</sup> party or used for any other purpose than analysis without prior consent of the supplying FIU?

**(8)** When transmitting information or documents pursuant to this Article, does your FIU impose restrictions and conditions on the use of information by the receiving FIU for purposes other than those stipulated in paragraph 7 ?



**(9)** How is Article 46 (9) implemented in your legislation or procedures? Please explain the basis on which the transmitting FIU would refuse to allow transmitted information to be used for criminal investigations or prosecutions ?

**(10)** What necessary measures, including security measures, does your FIU undertake, to ensure that the information submitted under this article is not accessible by any other authorities, agencies or departments?

**(11)** How is Article 46 (11) implemented in your legislation or practice as to the confidentiality and the protection of personal data?

**(12)** Does your FIU make enquiries as to the use of transmitted information and receive feedback on transmitted information or where you are the receiving FIU, provide feedback?

*Please demonstrate the practical implementation of all the relevant provisions of Article 46 giving as far as possible examples and statistical data if available. (e.g. requests sent and received, requests refused or granted and other relevant information).*

**Article 47 - International co-operation for postponement of suspicious transactions**

Are legislative or other measures in place 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 ?

*How do you demonstrate effective implementation ?*

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### Annex to the Questionnaire

Designated categories of offences in the Appendix to the CETS 198	Offences in domestic legislation
a. participation in an organised criminal group and racketeering;	
b. terrorism, including financing of terrorism;	
c. trafficking in human beings and migration smuggling;	
d. sexual exploitation, including sexual exploitation of children;	
e. illicit trafficking in narcotic drugs and psychotropic substances;	
f. illicit arms trafficking;	
g. illicit trafficking in stolen and other goods;	
h. corruption and bribery;	
i. fraud;	
j. counterfeiting currency;	
k. counterfeiting and piracy of products;	
l. environmental crime;	
m. murder, grievous bodily injury;	
n. kidnapping, illegal restraint and hostage-taking;	
o. robbery or theft;	
p. smuggling	
q. extortion	
r. forgery	
s. piracy; and	
t. insider trading and market manipulation	

Strasbourg, 16 April 2010

**C198-COP(2010)1**

## **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 198)**

#### **2nd MEETING**

**Strasbourg, 15 – 16 April 2010**

**Procedure regarding the operation  
of the Conference of the Parties in respect  
of its responsibilities for the settlement of disputes between Parties  
regarding the interpretation and application of the Convention**

#### **DECISION**

Directorate of Monitoring  
Directorate General of Human Rights and Legal Affairs (DG-HL)

**Decision**  
**on the Procedure regarding the operation of the Conference of the Parties**  
**in respect of Its responsibilities for the settlement of disputes between Parties**  
**regarding the interpretation and application of the Convention CETS 198**

**Background**

1. According to Article 48 paragraph 4 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198):

“In case of a dispute between Parties as to the interpretation or application of the Convention, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the COP, to an arbitral tribunal whose decisions shall be binding upon the Parties, or to the International Court of Justice, as agreed upon by the Parties concerned.”

2. At its first meeting, held in Strasbourg from 22 to 23 April 2009, the Conference of the Parties (COP) to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism requested the Secretariat to prepare a paper for the next meeting of the Conference of the Parties on how the Conference of the Parties will operate in respect of its responsibilities under the above mentioned article of the Convention as to the settlement of disputes.

3. At its 2nd meeting (15 and 16 April 2010) the COP discussed the draft document on the Procedure regarding the operation of the Conference of the Parties in respect of Its responsibilities for the settlement of disputes between Parties regarding the interpretation and application of the Convention and adopted the following decisions:

**Decisions:**

1. **Negotiation** - In the event of a dispute, the COP Secretariat, acting at the request of one of the Parties, could consult the Parties on the desired methods of **negotiation** and help to ensure that everything runs smoothly. Referral to the COP could be suggested to the Parties on the basis of Article 48 (4) if this appears necessary.
2. **Submission of the dispute to the COP** - The guidelines established in the Annex to Recommendation N° R (99) 20 should form the procedural basis for handling by the COP of any dispute submitted to it regarding the interpretation and application of the CETS 198, with the substitution of the COP for the CDPC.
3. **Arbitral settlement of disputes** - The guidelines established by the Recommendation N° R (91) 12 should be applied *mutatis mutandis* by the States Parties to the CETS 198 when seeking arbitration as to disputes on the interpretation of the Convention or its application.
4. **International Court of Justice** - If in the case of disputes as to the interpretation and application of the Convention, the Parties decide to have recourse to the International Court of Justice (ICJ) then this implies that the states concerned accept the ICJ's jurisdiction and its rules and procedures.

# **COUNCIL OF EUROPE**

## **COMMITTEE OF MINISTERS**

### **RECOMMENDATION No. R (91) 12**

#### **OF THE COMMITTEE OF MINISTERS TO MEMBER STATES**

#### **CONCERNING THE SETTING UP AND FUNCTIONING OF ARBITRAL TRIBUNALS**

#### **UNDER ARTICLE 42, PARAGRAPH 2, OF THE CONVENTION OF 8 NOVEMBER 1990 ON LAUNDERING, SEARCH, SEIZURE AND CONFISCATION OF THE PROCEEDS FROM CRIME**

(Adopted by the Committee of Ministers on 9 September 1991  
at the 461st meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, concluded at Strasbourg on 8 November 1990 (European Treaty Series, No. 141);

Considering that Article 42, paragraph 2, of that convention dealing with the settlement of disputes between Parties as to its interpretation or application, envisages, as an alternative to negotiation, submission of the dispute to the European Committee on Crime Problems or to the International Court of Justice, the setting up and functioning of arbitral tribunals whose decisions shall be binding upon the Parties to such disputes;

Considering the absence in the convention of any provisions as to the specific procedures to be followed by Parties concerned for the establishment of such arbitral tribunals, or any rules of procedure to be observed in the course of such arbitration;

Considering that such provisions might appropriately be reflected in a recommendation of the Committee of Ministers of the Council of Europe to the governments of the states signatories or parties to the convention;

Considering that reference to the European Convention for the Peaceful Settlement of Disputes of 29 April 1957 (European Treaty Series, No. 23) would not be appropriate for this purpose, in view of its limited number of Contracting Parties and the fact that it does not apply to states which are not members of the Council;

Desirous to present a single set of recommendations for the governments of all states, whether member states of the Council of Europe or not, which may be or become bound by the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime,

Recommends the governments of such states to be guided, when seeking arbitration in accordance with Article 42, paragraph 2, of the aforementioned convention, by the following rules:

1. The Party to the convention requesting arbitration pursuant to Article 42, paragraph 2, shall inform the other Party in writing of the claim and of the grounds on which its claim is based.
2. Upon acceptance of the request for arbitration, the two Parties concerned shall establish an arbitral tribunal.
3. The arbitral tribunal shall consist of three members. Each Party shall nominate an arbitrator. Both Parties shall, by common accord, appoint the presiding arbitrator.
4. Failing such nomination or such appointment by common accord within four months from the date on which the arbitration was requested, the necessary nomination or appointment shall be entrusted to the Secretary General of the Permanent Court of Arbitration.
5. The Parties shall draw up a special agreement determining the subject of the dispute and the details of the procedure. Failing the conclusion of a special agreement within a period of six months from the date on which arbitration was requested, the dispute may be brought before the arbitral tribunal upon application of either Party. In the latter case, the tribunal shall establish its own procedure.
6. Unless otherwise agreed between the Parties, the tribunal shall decide on the basis of the applicable rules of international law; in the absence of such rules, it shall decide *ex aequo et bono*.
7. If the dispute concerns the amount of compensation due to one Party as a result of its being held liable for damages in accordance with Article 35, paragraph 1, of the convention, the tribunal may establish the sum of such compensation or the apportionment of such sum.
8. Any third state which considers that its legitimate interests are involved in the dispute, may submit to the arbitral tribunal a request to intervene as a third party. It is for the tribunal to decide on this request.

**COUNCIL OF EUROPE**  
**COMMITTEE OF MINISTERS**  
**RECOMMENDATION No. R (99) 20**  
**OF THE COMMITTEE OF MINISTERS TO MEMBER STATES**  
**CONCERNING THE FRIENDLY SETTLEMENT OF ANY DIFFICULTY**  
**THAT MAY ARISE OUT OF THE APPLICATION**  
**OF THE COUNCIL OF EUROPE CONVENTIONS IN THE PENAL FIELD**

*(Adopted by the Committee of Ministers on 15 September 1999  
at the 679<sup>th</sup> meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b. of the Statute of the Council of Europe,

Having regard to the Council of Europe Conventions in the penal field;

Recognising that through such Conventions it pursues the goals notably of:

- upholding the rule of law;
- promoting human rights;
- fighting for democratic stability in Europe;
- strengthening European legal co-operation in criminal matters
- supporting victims and redressing their rights;
- pursuing the ends of justice by bringing before a court of law those who are accused of having committed a crime;
- promoting the social rehabilitation of offenders.

Desirous of strengthening its ability to pursue such goals in a comprehensive and harmonious fashion;

Convinced that to that effect it is proper to facilitate, in accordance with the guidelines appended, the friendly settlement of any difficulty arising out of the application of any one or more of the Council of Europe Conventions in the penal field;

Recommends the governments of member States:

*a.* To continue to keep the European Committee on Crime Problems (CDPC) informed through the PC-OC about the application of all the Conventions in the Penal Field and of any difficulty that may arise thereof;

*b.* Pending the entry into force of provisions formally extending the CDPC's role in this area to the European Convention on Extradition and the European Convention on Mutual Assistance in Criminal Matters, to accept that the CDPC be called upon to do whatever is necessary to facilitate a friendly settlement of difficulties arising out of the application of those Conventions;

c. when experiencing difficulties that may be seen as concerning two or more Conventions simultaneously, to assign them jointly to the CDPC;

2. Instructs the Secretary General of the Council of Europe to transmit this Recommendation to the governments of the non-member States which are a Party to any of the above-mentioned Conventions and to the governments of States invited to accede to any such Convention.

## **Appendix to Recommendation No. R (99) 20**

### **Procedural guidelines for the friendly settlement of difficulties arising out of the application of conventions in the penal field**

1. Any request for a friendly settlement should be forwarded in writing to the Secretariat.
2. The Secretariat shall transmit the requests to the Bureau for consideration at the earliest meeting, whether a Bureau meeting or a CDPC plenary session.
3. Where the request is urgent, the Secretariat, in consultation with the Bureau of the CDPC, shall put into motion an urgent procedure.
4. Whenever friendly settlements coincide in time with plenary sessions of the CDPC, they shall be sought within an open-ended working party of the CDPC.
5. Whenever they do not coincide in time with plenary sessions of the CDPC, friendly settlements shall be sought within an *ad hoc* working party of the CDPC set up and convened to that effect.
6. The members of such an *ad hoc* working party shall then be:
  - a. persons appointed by the States involved in the difficulties or disputes under review;
  - b. persons designated by the Bureau of the CDPC, amongst:
    - the Heads of Delegation to the CDPC, or their substitutes designated to that effect;
    - persons appointed to that effect by States not members of the Council of Europe yet a Party to one or more of the Conventions in respect of which the difficulties or disputes have arisen;
7. All Heads of Delegation shall be informed of the request and the procedure followed; they shall be allowed to submit written comments;
8. The Chair of the CDPC, or a member of the Bureau, should assume responsibility for and preside over any meetings that might be held in the context of friendly settlements;
9. The number of persons appointed by the States involved, as well as the number of persons appointed by the Bureau of the CDPC, shall be measured against the nature of the difficulties involved and the need to proceed both effectively and efficiently.



10. The State that sets the procedure in motion should put into writing the facts of the case, the difficulties that it is faced with, whether or not it considers the request to be urgent, as well as the aim that it seeks to achieve.

11. The respondent State should likewise put into writing its point of view or any comments that it deems fit.

12. At the end of the procedure, a paper must emerge, stating the facts, the difficulties encountered, as well as suggestions that the CDPC, or in urgent situations the *ad hoc* working party, wishes to submit to the States involved.

13. Finally, States involved in friendly settlements may be invited to feed back information on what happened as a consequence of the procedures, or following the procedures, in particular where such information might be of relevance to the interests of other States.

Strasbourg, 16 April 2010

C198-COP(2010)3

## **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)**

#### **2<sup>nd</sup> MEETING**

**Strasbourg, 15 – 16 April 2010**

#### **Decision on the Next steps of the COP monitoring activities as to the implementation by the Parties of the CETS 198 provisions – order of evaluations, training of rapporteurs, first evaluation report**

Directorate of Monitoring  
Directorate General of Human Rights and Legal Affairs (DG-HL)

## A. Introduction

This Secretariat paper should be read in conjunction with the paper on procedures for the formation and operation of evaluation teams, and the decision on the draft questionnaire. It is prepared on the basis that the draft Questionnaire is adopted.

## B. Next steps

1. A draft questionnaire has been drawn by the drafting group and submitted to the COP for adoption. The questionnaire is aimed at gathering information on those areas of the CETS 198 which add value to the current international standards, notably the 40 Recommendations of the FATF and the FATF's 9 Special Recommendations.

2. According to the Rule 19 (5) of the Rules of Procedure, the COP should decide the order of assessment of individual Parties, taking into account the dates on which the Convention came into force in State Parties and the state of assessments of individual Parties concerning MONEYVAL and/or FATF evaluations. For Albania, Bosnia and Herzegovina, Malta, Moldova, Poland and Romania the Convention entered into force on the same date – 1 May 2008. Therefore, it is suggested that one of these countries could volunteer to be the first Party assessed. If not, the plenary could decide which country should be the first to be assessed.

The general rule is that when deciding on a state to be assessed, the COP considers developments in the monitoring procedures under FATF and MONEYVAL in respect of this state and defines the most appropriate period in order to avoid overlap and duplication of information.

3. According to Rule 19 (8), after the decision is taken on the Party to be assessed, the questionnaire will be sent to the latter. According to Rule 19 (9) the assessed Party should return the completed Questionnaire to the Secretariat within **twelve weeks** of receipt, together with texts of relevant legislation, regulations, guidelines or other documentation which will assist the COP in its monitoring function.

4. The COP at its 2<sup>nd</sup> meeting (15-16 April 2010) should also appoint the rapporteurs for the first report. The rapporteurs should be nationals of the Parties which have ratified the CETS 198. One rapporteur would deal with the new legal requirements of the CETS 198, a second one with the assessment of new judicial international co-operation issues and a third one with issues relating to the functioning of FIUs. If the identities can not be resolved in the meeting it is proposed that the three rapporteur countries shall be established and the individual rapporteur could be identified later (see paragraph 5 and 6 beneath).

5. It is proposed to hold a two day training seminar for potential rapporteurs in June in Strasbourg. The Council of Europe will bear the travel and subsistence expenses of **three** rapporteurs from each of the Parties which have ratified CETS 198 and a list of rapporteurs eligible to carry out assessments will be established.

6. After the training, if it is necessary, the Secretariat in conjunction with the Heads of Delegations concerned will identify the three rapporteurs who will assess the Party designated by the COP at its April 2010 meeting. As indicated in Rule 19 (11) the draft report will be prepared by the Secretariat in conjunction with the rapporteurs, based on the replies to the Questionnaire and any further clarifications as provided for by Rule 19 (15) and will be then sent to the Party being assessed for comments. The Party should have at least **six weeks** to provide comments. Finally, the draft report, amended in the light of the Party's comments, will be circulated to the COP at least **four weeks** in advance of the meeting at which it is to be discussed. A tentative timetable is suggested:

### TIMETABLE for the first evaluation procedure

15 – 16 April 2010	COP decided on the Party to be assessed at first and appoints three Rapporteur Countries (rapporteurs).
26 April 2010	The Questionnaire is sent to the authorities of the Party to be assessed
16 – 17 June 2010	Training seminar for rapporteurs in Strasbourg
21 - 25 June 2010	Identification of individual rapporteurs (as necessary)
19 July 2010	The replies to the Questionnaire by the authorities of the Party being assessed should be sent to the Secretariat
26 July 2010	The replies to the Questionnaire are sent to the rapporteurs
27 July – 27 September 2010	Rapporteurs and Secretariat prepare the Draft report
27 September 2010	The draft report is sent to the Party being assessed for comments
8 November 2010	The Party being assessed comments on the draft report are sent to the Secretariat
29 November 2011	The amended report in the light of the Party's comments is sent to all other Parties
19 – 20 January 2011	3 <sup>rd</sup> Conference of the Parties to consider/adopt the draft report and proceed with the assessment of other Parties

Strasbourg, 16 April 2010

C198-COP(2010)2

## **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)**

#### **2<sup>nd</sup> MEETING**

**Strasbourg, 15 – 16 April 2010**

#### **Decision on the Procedure for the formation and operation of any evaluation teams that may be required by the Conference of the Parties under Rule 19 of the Rules of Procedure**

Directorate of Monitoring  
Directorate General of Human Rights and Legal Affairs (DG-HL)

## **I. Introduction**

1. At its first meeting, held in Strasbourg from 22 to 23 April 2009, the Conference of the Parties (COP) to the CETS No. 198 requested the Secretariat to prepare a paper for the next meeting of the COP on the procedure for the formation and operation of any evaluation teams that may be required by the COP under Rule 19 of the Rules of Procedure.

## **II. Background**

2. It is worth revisiting and amplifying the agreed process under the Rules of Procedure before the issue of an onsite evaluation arises.

3. According to paragraph 9 of Rule 19 (Rules of Procedure), the COP first appoints one or more rapporteur(s) from among the Parties to assist the COP in monitoring the proper implementation of the Convention by the Party being assessed.

4. Taking into account the issues now covered by the draft questionnaire, it is suggested that three rapporteurs should be appointed – one responsible for the assessment of the implementation of the new legal requirements of the Convention (CETS No. 198 Articles 3, 6, 7, 9, 10, 11, 14; one for the assessment of new judicial international co-operation issues (CETS No. 198 Articles , 17, 18, 19, 23, 25, 34,28) and another rapporteur covering the functioning of FIUs (CETS No. 198 Articles 46, 47). The rapporteurs will be assisted by the COP Secretariat in the preparation of the draft report.

5. The identity of the rapporteurs of the team will be decided by the plenary initially from a list of volunteers (who should ideally then participate in a training seminar proposed in document C198-COP (2010) 03). A list of “trained” rapporteurs should be created and kept updated to ensure a pool of rapporteurs. The Head of Delegation of each State Party should propose three rapporteurs from his/her country for initial training.

6. If the plenary fails to appoint the rapporteurs during the meeting, then the Secretariat in conjunction with the Heads of Delegations concerned will identify the three rapporteurs who will assess the Party designated by the COP. If a State Party to be assessed has major concerns as to a/the rapporteur(s) it can raise them with the President.

## **III. Draft report and in-depth assessment**

7. The draft report is, as the Rules of Procedure indicate, a desk review. Based on the replies of the assessed Party, the team will prepare a draft report to be submitted to the plenary, in accordance with the Rules of Procedure.

8. If there are significant concerns raised about *the sufficiency of the information provided* in the draft report, or about *the implementation of the Convention’s provisions* by the Party concerned,

a. the Conference of the Parties may conclude that further information is required in the discharge of its functions;

b. if further information is required, the COP shall liaise with the Party concerned, taking advantage, if so required, of the procedure and mechanism of MONEYVAL;

c. the Party concerned shall then report back to the COP;

d. on the basis of the information provided by the State, the COP shall decide on whether or not to carry out a more in-depth assessment of the position of the Party concerned (Rule 19, paragraph 24).

9. A more in-depth assessment may, but need not necessarily, involve an onsite visit by an evaluation team. The COP will need to decide what further steps should be taken in respect of an assessed Party where a draft report is not adopted on a case by case basis (Rule 19 paragraph 25). A more detailed set of written responses and statistics may perhaps be needed in the first instance from the country being evaluated.

#### **IV. On-site visits**

10. The COP can also decide, on a case by case basis, to carry out an onsite visit as another option for more in depth assessment. If, the main issue of concern is effectiveness of implementation of the novel parts of the Convention, a brief on-site visit may provide the best solution as this would allow for in-depth discussions of the problems with the practitioners in the country.

11. It is proposed that any visits should be short (no more than three days). The costs of the visit will be covered by the budget of the COP.

12. The team should be composed of the three rapporteurs. The team will be assisted by the COP Secretariat.

13. The Secretariat, in conjunction with the rapporteurs and the country concerned, will decide on the programme of the visit and the institutions to be met, according to the requirements of the individual case.

14. A team going on-site shall look primarily at the issues which were of concern to the COP, as expressed in the Plenary, but shall have the flexibility to address any other issues which arise out of the information received which is relevant to the review based on the adopted questionnaire.

15. The revised draft report shall be submitted to the plenary for discussion and adoption at the next COP plenary, after further consultations with country concerned on the revised draft according to the timescales in Rules 19 (15) and (17).

16. At the plenary where the revised report is discussed, the rapporteurs should orally present their findings and the country should comment, after which the revised report will be subject to peer review in accordance with the agreed Rules of Procedure.

## **ANNEX VI**



Strasbourg, 16 April 2010

C198-COP(2010)RASS-Template

### **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)**

## **Template for the Draft Report under CETS N° 198**

**Document prepared by the Secretariat after agreement on the questionnaire  
16 April 2010**

Directorate of Monitoring  
Directorate General of Human Rights and Legal Affairs – DG-HL



### **(Note for Rapporteurs)**

The monitoring procedure under this Convention will not constitute a duplication of the existing monitoring procedures such as FATF, MONEYVAL and others. Therefore, when assessing a country the Conference of the Parties (COP) will use as far as possible all public information available such as FATF or MONEYVAL adopted evaluation reports or adopted MONEYVAL progress reports, together with any further relevant information.

Recommendations will be reserved for mandatory provisions. The Rapporteurs may make comments in respect of non-mandatory provisions which do not amount to Recommendations.)

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**A. Introduction** – Background information and general information on the implementation of the Convention.

### **B. Assessment of specific areas on which the Convention adds value**

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

- Description and analysis
- Effective implementation
- Recommendations and comments

#### **2. Corporate liability – Article 10 paragraphs 1 and 2**

- Description and analysis
- Effective implementation
- Recommendations

#### **3. Previous decisions – Article 11**

- Description and analysis
- Recommendations

#### **4. Confiscation and provisional measures – Article 3 paragraphs 1, 2, 3, 4**

- Description and analysis
- Effective implementation
- Recommendations and comments

#### **5. Management of frozen and seized property – Article 6**

- Description and analysis
- Effective implementation
- Recommendations

6. Investigative powers and techniques – **Article 7** paragraphs 1, 2a, 2b, 2c, 2d

- Description and analysis
- Effective implementation
- Recommendations and comments

7. International co-operation – **Article 23** paragraph 5; **Article 17** paragraphs 1, 4, 6; **Article 18** paragraphs 1, 5; **Article 19** paragraphs 1, 5; **Article 34** paragraph 2, 6; **Article 25** paragraphs 2, 3

- Description and analysis
- Effective implementation
- Recommendations and comments

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

- Description and analysis
- Effective implementation
- Recommendations and comments

9. Postponement of domestic suspicious transactions – **Article 14**

- Description and analysis
- Effective implementation
- Recommendations

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

- Description and analysis
- Effective implementation
- Recommendations

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

- Description and analysis
- Recommendations

**3. Overall conclusions on implementation of the Convention**

The Rapporteurs will express their preliminary overall conclusions on compliance with and effectiveness of implementation of those parts of the Convention that have been subject to review by the COP.

Where relevant the Rapporteurs will raise any concerns they have about the sufficiency of the information provided in answer to the COP questionnaire or in respect of the progress on implementation of the Convention's provisions under review (for decision by the COP as to whether further steps need to be taken before adoption of the report).

## **ANNEX VII**

Strasbourg, 20.04.2010

C198–COP(2010)LP2

### **LIST OF PARTICIPANTS LISTE DES PARTICIPANTS**

#### **Second Meeting of the Conference of the Parties to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198)**

*Deuxième réunion de la Conférence des Parties  
à la Convention relative au blanchiment, au dépistage,  
à la saisie et à la confiscation des produits du crime et au financement du terrorisme  
(STCE 198)*

**Strasbourg, 15 - 16 April / avril 2010**

**Palais de l'Europe  
Room / Salle 5**

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