

Strasbourg, 12 April 2021

C198-COP

## **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)**

### **Convention and Conference in Brief**

Memorandum prepared by the Secretariat  
Directorate General Human Rights and Rule of Law (DGI)

## Introduction

Money laundering directly threatens the rule of law. It provides criminal organisations with cash flow and investment capital, and the incentive to commit more proceeds-generating crime. The Council of Europe's action against money laundering is thus central to the fight against organised crime and complements the Organisation's work against corruption, human trafficking, cybercrime and economic crime in general. The Council of Europe was the first international organisation to address the importance of taking measures to combat the threats posed by money laundering to democracy and the rule of law. The Council of Europe's engagement with this issue led to the negotiation and adoption, in 1990, of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS No. 141, the "Strasbourg Convention"). Building on the Strasbourg Convention, a new convention which includes another important element – the fight against financing of terrorism – was adopted in Warsaw in 2005. The full title of the 2005 convention reads as the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. This Convention, commonly known as '[the Warsaw Convention](#)', is the only internationally binding treaty worldwide specifically devoted to money laundering (ML) and the financing of terrorism (FT). That is what makes it unique.

At the moment, the Warsaw Convention has been ratified by 37 member states of the Council of Europe and signed by 6 signatories, including the European Union. It is also open for accession to states which are not members of the Council of Europe.

The Warsaw Convention significantly reinforces the international AML/CFT standards as they stood after the adoption of the 2003 [Financial Action Task Force](#) (FATF) recommendations. Even after the adoption of the revised FATF standards of 2012, the Convention remains ahead of current international AML/CFT standards in several respects. More about these elements of the Convention is provided below (see '[Overview of areas in which the Warsaw Convention has strengthened current international standards](#)').

## Conference of the Parties – who we are?

The Convention provides for a monitoring mechanism through a [Conference of Parties](#) ("COP") to ensure that its provisions are being effectively implemented. The monitoring procedure under the convention is particularly careful not to duplicate the work of the relevant bodies which monitor the implementation of the 2012 FATF standards – namely the [Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism](#) MONEYVAL and the FATF. COP thereby focuses on those parts of the Convention that add value to the 2012 FATF standards. COP plenary meetings are held once per year. Up until 2017 COP discussed and adopted country specific reports – each member state was assessed against the provisions of the Convention which are not the part of the FATF standards. In 2017 the Conference decided to change its monitoring methodology; instead of country specific reports a new methodology, which seeks to evaluate all member states on their implementation of strategically important provisions of the Convention, was approved. The background to this change (i.e. from country specific to horizontal reviews) was that the overall evaluation cycle for all current 37 member states was unfeasible. Through horizontal reviews all member states are assessed at the same time against the provisions the Conference considers as the most relevant in light of actual developments. Up until now, four horizontal reviews/assessment reports were adopted and concern the following provisions of the Convention: *criminalisation of negligent money laundering* (Article 9(3)); *postponement of domestic suspicious transactions* (Article 14); *international recidivism* (Article 11) and *the sharing of confiscated property between the State Parties* (Article 25 (paragraphs 2 and 3)). The 2020 horizontal reviews will discuss States Parties' implementation of Article 3, paragraph 4 (*reverse burden of proof – i.e. when an offender needs to demonstrate the origin of proceeds liable to confiscation*) and Article 7, paragraph 2 c (*legislative measures allowing*

*the authorities to monitor, during a specific period, the banking operation that are being carried out through one of more accounts).*

It is important to note that the countries which acceded to the Convention after the introduction of the horizontal monitoring methodology (i.e. after 2017), will be assessed against all the provisions which were subject to horizontal monitoring by the date of their accession. Apart from monitoring, COP also facilitates the application of the Convention at the domestic level and has thus adopted a number of interpretative notes of selected provisions of the Convention. To further foster international cooperation, the Conference developed a template on national procedures for mutual legal assistance and cooperation amongst financial intelligence units. The information held therein is made available to all States Parties through its restricted website. COP also applies synergies between the activities of various other Council of Europe bodies, such as MONEYVAL or the Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC).

#### Accession by non-member states of the Council of Europe

At its plenary meetings the Conference discussed the invitation for accession to the Convention of states which are not members of the Council of Europe. To that effect, COP instructed the Secretariat to reach out to the jurisdictions which expressed interest in joining the Warsaw Convention. So far, the Conference of the Parties has communicated with several non-members of the Council of Europe, either within the framework of the large projects that the Council was implementing in these jurisdictions or through other fora and bilateral communication.

#### Overview of areas in which the Warsaw Convention has strengthened relevant international standards

##### Criminalisation of money laundering (Article 9 of the Convention)

- The Convention introduces a concept of negligent money laundering – i.e. criminalisation of money laundering in cases where the offender suspected and/or ought to have assumed that the property was proceeds from crime, thus allowing for lesser levels of the mental element (*mens rea*). *Article 9(3)*
- It clarifies that prosecutors do not have to establish a particular underlying predicate offence on a specific time and date in a prosecution for autonomous money laundering. This is important when seeking to prosecute stand-alone money laundering offences by those who launder on behalf of organised criminals and on behalf of other third parties. *Article 9(6)*

##### Corporate liability (Article 10 of the Convention)

- Some form of liability for money laundering (whether criminal, administrative or civil) is a mandatory requirement if committed for the benefit of the legal person by any natural person, acting either individually or as part of an organ of that legal person, who has a leading position within the legal person. The Convention adds value to the existing standards by clarifying that the leading position can be assumed to exist in three alternative situations, i.e. based on a power of representation of the legal person; an authority to take decisions on behalf of the legal person; or an authority to exercise control within the legal person. *Article 10 (1)*
- The Convention expressly covers the legal person's liability for money laundering in cases where lack of supervision or control by the natural person (referred to above) has made it possible to commit the offence. *Article 10(2)*

#### International recidivism (Article 11 of the Convention)

- The Convention requires the state to ensure that there is the possibility, when determining the penalty, to take into account final decisions taken in another State Party against a natural or legal person.

#### Confiscation (Articles 3 and 25 of the Convention)

- Mandatory confiscation for some major proceeds-generating offences is contemplated. *Article 3(3)*
- Reverse burden of proof is made possible for confiscation purposes. After a conviction for a serious offence, offenders are required to demonstrate the origin of alleged proceeds or other property liable to confiscation (to the extent that such a requirement is consistent with domestic law principles). *Article 3(4)*
- There is a requirement that priority consideration should be given to returning assets to the requesting party for purposes of victims' compensation and concluding agreements between parties on assets sharing. *Article 25(2 and 3)*

#### Investigative powers or techniques (Article 7 of the Convention)

The provisions of the Convention require that:

- States Parties ensure their competent authorities have the power to obtain "historical" banking information; *Article 7 (2 b)*
- competent authorities have the power to conduct prospective monitoring of accounts; *Article 7(2 c)*
- States Parties ensure that their competent authorities consider extending these powers to non-banking financial institutions. *Article 7(2)*

#### International co-operation (Articles 18, 19 and 34)

- States Parties are required to:
  - i) 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; *Article 18(1)*
  - ii) provide international assistance in respect of requests for historical information on banking transactions in the requested party (may be extended to non-bank financial institutions); *Article 18(1)*
  - iii) provide international assistance in relation to requests for prospective monitoring of banking transactions in the requested party (may be extended to non-bank financial institutions); *Article 19(1)*
- Provision is made to prevent the refusal of international judicial co-operation on grounds that the request relates to a political offence or to a fiscal offence when the request relates to financing of terrorism. *Article 28 (1 d and 1 e)*
- Provision is made to prevent refusal of international co-operation by States Parties 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 money laundering offence. *Article 28 (8 c)*
- State Parties are required to provide for the possibility of direct communication prior to a formal request being sent. *Article 34*

#### International co-operation between financial intelligence units (Articles 28, 46 and 47)

- The Convention includes detailed provisions on FIU co-operation, which is not subject to the same formalities as judicial co-operation. *Article 46 (1 to 5)*
- The Convention requires States 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. *Article 47 (1)*
- States Parties are required to adopt measures to permit urgent action to be initiated by a financial intelligence unit, at the request of a foreign financial intelligence unit, to suspend or withhold consent to a transaction going ahead. *Article 47(2 b)*