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

Thematic Monitoring Review of the Conference of the Parties to CETS No.198 on Article 6 (“Management of Frozen or Seized Property”)¹

¹ Adopted by the Conference of the Parties to CETS No. 198 at its 14th meeting, Strasbourg, 15-16 November 2022.

TABLE OF CONTENTS

INTRODUCTION	4
SCOPE OF ARTICLE 6.....	4
METHODOLOGY	6
SUMMARY	8
EFFECTIVE IMPLEMENTATION	8
RECOMMENDATIONS AND FOLLOW-UP	9
COUNTRY REVIEW	10
Albania	10
Armenia.....	11
Austria.....	12
Azerbaijan	13
Belgium	14
Bosnia and Herzegovina	15
Bulgaria.....	16
Croatia.....	17
Cyprus.....	18
Denmark.....	19
France.....	20
Georgia	21
Germany	21
Greece	22
Hungary.....	23
Italy	24
Latvia	25
Lithuania.....	26
Malta	27
Republic of Moldova	28
Monaco	29
Montenegro	30
The Netherlands.....	31
North Macedonia	32
Poland.....	32
Portugal.....	33
Romania.....	34

Russian Federation	36
San Marino	37
Serbia.....	37
Slovak Republic.....	38
Slovenia	39
Spain.....	40
Sweden	41
Türkiye	42
Ukraine.....	43
United Kingdom.....	44

INTRODUCTION

1. The Conference of the Parties (hereinafter: “the COP”), at its 9th meeting held in Strasbourg from 21 to 22 November 2017, decided to initiate the application of a horizontal thematic monitoring mechanism for an initial period of two years. The 11th meeting of the COP (held in October 2019) decided to prolong the application of a horizontal monitoring for the next five years (i.e., until 2024). Such review looks at the manner in which all States Parties implement selected provisions 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, hereinafter: “the Warsaw Convention”). To that effect, the COP adopted a new Rule 19*bis* to the Rules of Procedures.

2. The COP Plenary, at its 13th meeting, decided that the fifth thematic monitoring would focus on Article 6 of the Warsaw Convention.

3. Subsequently, in December 2021, a questionnaire was circulated, and the States Parties were asked to reply by the 11th of March 2021. The responses received were analysed by the Rapporteurs Ms. Claudia Elion (Netherlands) and Mr. Mehman Aliyev (Azerbaijan), together with the COP Secretariat. A final draft analysis was circulated amongst the COP States Parties to provide comments and further information. The main findings drawn from these responses are set out in the summary section of the report.

4. This report seeks to establish the extent to which States Parties have legislative or other measures in place necessary to ensure that proper management of frozen or seized property are in place.

5. The report commences with laying out the scope of Article 6 of the Warsaw Convention and the methodology applied for the review. It then draws conclusions on legislative provisions and their effective implementation and proposes recommendations. States Parties’ submissions are individually analysed, and recommendations are made for the respective State Party when applicable.

SCOPE OF ARTICLE 6

6. Article 6 of the CETS N°198 addresses the issue of the management of the frozen and seized property. In particular, Article 6 states that ‘*Each Party shall adopt such legislative and other measures as may be necessary to ensure proper management of frozen or seized property in accordance with Article 4 (Investigative and provisional measures) and 5 (Freezing, seizure or confiscation).*’

7. Article 6 of CETS N° 198 makes a reference to Articles 4 and 5 of the Convention. These two articles cover: (i) measures as may be necessary to enable identification, tracing seizing and freezing of property which is liable to confiscation, as well as (ii) types of property subject to seizing/freezing and confiscation, including a) the property into which the proceeds have been transformed or converted; b) property acquired from legitimate sources, if proceeds have been intermingled, in whole or in part, with such property, up to the assessed value of the intermingled proceeds; and c) income or other benefits derived from proceeds, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled, up to the assessed value of the intermingled proceeds, in the same manner and to the same extent as proceeds. Some of the previous COP country specific reports (i.e. Albania) discuss the relationship between Article 6 and Article 4 of the Convention, where the latter specifies the property subject to freezing or seizure - this property can originate from money laundering or from the category offences in

the Appendix to the Convention. However, the majority of country specific reports² (Romania, Poland, Republic of Moldova, Malta, Bosnia and Herzegovina, Belgium, Armenia) do not examine the scope of offences proceeds of which are subject to management in line with Article 6. In some jurisdictions, the reports indicate that countries took an all crime approach (Croatia, Montenegro). Whilst this may be the case with some other jurisdictions where this scope was not examined, the rapporteurs are of the view that Article 6 should be read in conjunction with Articles 4 and 5, based on the explicit cross-reference therein. This means that the obligation to properly manage frozen or seized property covers, at least, the property “liable to confiscation pursuant to Article 3” - Parties are required to ensure proper management of property liable to confiscation. “Property liable to confiscation” should cover, at a minimum, proceeds deriving from the offences in the Appendix (netted of possible declarations). Article 6, in other terms, could be seen as an ancillary obligation: it applies to the scope of property as defined for the purposes of Articles 4 and 3 and, of course, only insofar as freezing or seizing is executed. Within that scope Article 6 is not derogable. On the other hand, Article 6 cannot be extended to property coming from further crimes, beyond those required under Article 3 (even if they are predicates and trigger confiscation in the country concerned) - this would imply that the obligation to manage seized or frozen property has a broader scope than the obligation to seize or freeze. Consequently, this assessment aims to establish if:

- a) the country has set a scope for confiscation, seizing and freezing in line with Articles 3 and 4 (if not, cascading effects would automatically impact the compliance with Article 6; and
- b) the country has set a scope for “proper management” that covers all property liable to confiscation under the national regime or, at least, property/proceeds deriving from all the offences listed in the Appendix.

8. With regard to point b), it needs to be noted that Article 6 would not be complied with in situations where confiscation does not extend to at least all the offences in the Appendix (in this case Article 3 would not be complied with either).

9. Seizing of assets is an important tool aimed at achieving one of the major goals in criminal proceedings – creating circumstances under which the final confiscation would effectively be possible, and the risks of property dissipation are minimised or almost inexistent. On the other hand, seized assets/frozen funds should be preserved and administrated in a manner that their value, at minimum, do not deter. This equally applies to both tangible (physical objects such as cars, buildings, precious metals, etc.) and intangible assets (intellectual property, virtual assets, etc.). In general, management of any assets (not only those resulting from crime) requires a systematic approach to their governance and realization of their value by an entity entrusted with these responsibilities. Consequently, asset management is a systematic process of developing, maintaining, upgrading, and disposing of assets in the most cost-effective manner. Within the scope of Art.6 this process lasts for a specific period of time, i.e. until the final confiscation order is confirmed by judicial authorities.

10. According to the wording of the Article 6, States Parties are allowed to introduce the most suitable mechanism enabling effective management of frozen and seized assets. In this regard, the Explanatory Report to the Warsaw Convention states that Parties remain free to determine the best way of ensuring an adequate management of the assets and systems exist already in the national laws of many States. For instance, the setting up of a national body in charge of assets management may constitute an appropriate way to implement this provision.

² <https://www.coe.int/en/web/cop198/implementation/reports>

While this step is important in achieving an effective management system, recent FATF, MONEYVAL and other FATF style regional bodies assessment reports show that a number of measures should be in place in order to achieve an effective management of assets. These other measures, which could also constitute a part of the aforementioned national bodies portfolio, include competencies to properly evaluate the value of seized assets, maintaining of reliable and accurate data on the assets seized and their characteristics, as well as having special procedures when managing different type of assets.

11. The management of frozen and seized assets has been embedded in a number of international standards. EU Directive 2014/42/EU in Article 10 regulates management of seized and confiscated property. It requires EU Member States to take necessary measures, for example by establishing centralised offices, a set of specialised offices or equivalent mechanisms, to ensure the adequate management of property frozen with a view to possible subsequent confiscation. In addition, these measures should include the possibility to sell or transfer property where necessary whilst the confiscated property should be used for public interest or social purposes.

12. The FATF Standards and its 2013 Methodology also discuss the management of seized and confiscated property through the Recommendation 4 and Immediate Outcome 8. The Methodology, when examining countries' compliance with Recommendation 4, reviews the mechanisms for managing and, when necessary, disposing of property frozen, seized or confiscated. Further to this, when examining the overall effectiveness of confiscation regimes, the Immediate Outcome 8 notes that one of the characteristics of the effective system is the extent to which a country manages seized and confiscated assets. The FATF has, in this context, developed a paper titled "Best Practices on Confiscation and a Framework for Ongoing Work on Asset Recovery" in 2012. The Part E of this paper discusses the management of frozen, seized and confiscated property, and provides guidance on what the asset management framework should include. Ultimately, the management of seized assets is also a subject of the UN Convention against Corruption (Article 31 (3)).

13. It is noticeable that, unlike Article 6 of the Warsaw Convention, almost all other international instruments oblige States Parties to allow not only the management of frozen and seized assets but also the management of confiscated property. The practice has shown that confiscated property, in a large number of cases, requires proper management. More specifically, depositing proceeds from confiscation orders into the general revenue fund is not always a straightforward stream – confiscated assets might be complex structures and their transfer into state funds require time and high-quality management.

14. For the purposes of this thematic monitoring report, the implementation of Article 6 was assessed through a combination of factors, such as examining the manner in which the provisions of Art.6 were transposed into the respective legislative frameworks, as well as through exploring different practices applied.

METHODOLOGY

15. The 'Questionnaire for the Transversal Monitoring of States Parties' Implementation of Articles 6 of the CETS No. 198' requested responses to the following questions:

- (1) 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?
- (2) If you have introduced the procedure under Article 6 how do you demonstrate effective implementation?

16. Delegations were asked to provide their domestic legislation dealing with these issues. In addition, they were encouraged to support their response with case studies or any other relevant information, including statistics. Rapporteurs and the COP Secretariat have also used the previous country specific reports adopted by the COP 1983 as well as those adopted by MONEYVAL/FATF to prepare the analysis of the States Parties' compliance with Article 6 of the Convention. Given the understanding of links between Article 6 and Articles 3, 4 and 5 of the Convention (please see the previous chapter of this report), the rapporteurs also took into account findings of previous COP country specific reports with regard to Article 3 (Articles 4 and 5 were not a part of previous COP assessments given the fact that they do not differ from the relevant FATF Recommendation – former Recommendation 3 and current Recommendation 4). For those States Parties which have not undergone COP country specific assessment, the findings of the most recent MONEYVAL/FATF reports were used to support the analysis on Articles 4 and 5 of the Warsaw Convention. In particular, countries' compliance with the FATF Recommendation 4 (former Recommendation 3) was used as a benchmark. Specific weighting has been given to eventual shortcomings with regard to countries' compliance with this Recommendation, which, to a large extent, discuss the matter embedded also in Articles 3, 4 and 5 of the Convention⁴.

17. In addition, this report takes into account some well-established good practice discussed and observed by the asset recovery expert community (CARIN Network, UNODC, Star Initiative, etc.) where various aspects of asset management are discussed. In view of that, the rapporteurs examined the extent of the asset management scope in COP States Parties, including possibilities and options provided for managing complex assets. 'Complex assets' is a broad term without a strict definition in any of the existing international legal instruments. However, various criteria are used to consider an asset as being complex: if its value may deteriorate in course of time (such assets range from real estate, cars, art pieces to exotic animals or other natural goods) or if they are businesses and may generate income or loss (such as companies, investments vehicles, securities but also crypto assets). These assets require specific management which needs to be carried out by different professionals with specific set of skills. The good practice experienced in some well-developed jurisdictions have shown that, as an initial step in an asset tracing process, pre-seizure planning is essential for the success of the subsequent steps. The degree and nature of such pre-seizure planning depends, inter alia, on the complexity of the assets which are about to be seized. For example, the pre-seizure planning required for routinely seized assets, such as vehicles or cash, is minimal, while the analysis and formal planning required for the seizure of a group of businesses entail extensive research, evaluation and detailed discussion. Whilst the rapporteurs are aware that these considerations are not explicitly discussed under Article 6 and its Explanatory Memorandum, a modern asset management system needs to provide possibilities and solutions for managing complex assets. Therefore, the States Parties

³ <https://www.coe.int/en/web/cop198/implementation/reports>

⁴ Recommendation 4: '*Countries should adopt measures similar to those set forth in the Vienna Convention, the Palermo Convention, and the Terrorist Financing Convention, including legislative measures, to enable their competent authorities to freeze or seize and confiscate the following, without prejudicing the rights of bona fide third parties: (a) property laundered, (b) proceeds from, or instrumentalities used in or intended for use in money laundering or predicate offences, (c) property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations, or (d) property of corresponding value. Such measures should include the authority to: (a) identify, trace and evaluate property that is subject to confiscation; (b) carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property; (c) take steps that will prevent or void actions that prejudice the country's ability to freeze or seize or recover property that is subject to confiscation; and (d) take any appropriate investigative measures. Countries should consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction (non-conviction based confiscation), or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law.*'

responses to the 2022 Questionnaire were examined against this background. On the other hand, the report only makes 'soft' recommendation on these particular issues, asking States Parties to, if they have not yet done so, have guidelines and practical solutions for managing complex assets. A similar approach was observed in country-by-country reports that the COP adopted between 2011 and 2017.

18. This horizontal review includes information on 37 COP States Parties. The responses provided by the State Parties were fully taken into account and the legal provisions of their domestic legislation quoted therein were analysed and used to support the conclusions on their implementation of Article 6.

SUMMARY

19. The assessment on the implementation and application of Article 6 reveals several general findings. State-specific conclusions are included in the analysis of each State Party.

20. All States Parties have measures in place to deal with assets seized. Whilst majority of States Parties also include concrete measures to manage assets, in some States Parties, measures which are applied only concern storage of assets prior the final decision on their confiscation. Against this background, the report made specific recommendations to these States Parties to extent the measures and include effective management of seized assets as required by Article 6 of the Convention.

21. Furthermore, not all countries have the same level of compliance with Recommendation 4 of the FATF standards from 2012. As noted in the Methodology chapter of this report, shortcomings in relation to application of Recommendation 4 also have a cascading effect on application of Article 6 of the Warsaw Convention.

22. The degree to which different States Parties' systems of asset management are developed varies considerably. The report notes that a number of States Parties have established a well functioning systems of asset management upon their seizure (Belgium, Croatia, France, Hungary, Italy, Malta, the Netherlands, Romania, Spain, UK). In addition to these, many other States Parties generally comply with requirements of Article 6. This compliance is mostly technical and details on the manner these systems function in practice are not available based on inputs provided. Furthermore, several States Parties reported on on-going reforms in the area of asset management and efforts they are currently undertaking to improve the existing systems (Germany, Latvia, Republic of Moldova, Portugal, San Marino, Slovak Republic).

23. Overall, it could be concluded that there is a satisfactory level of implementation of Article 6 across the States Parties. Where there are improvements needed, these are addressed by the country specific and general recommended actions.

EFFECTIVE IMPLEMENTATION

24. States Parties, in their responses to the Questionnaire, included either statistical details on assets seized and managed, or concrete case studies on management of specific assets. Different details by these States Parties which provided statistics (Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Montenegro, North Macedonia, Portugal, Romania, Serbia, Slovak Republic, Spain, Turkey, Ukraine and UK) were included – from the overall amounts of assets seized, to the estimated value of all assets managed by the asset management offices, as well as the types of assets under the management. In general, the statistical information may indicate certain level of effective implementation of Article 6, but the limitation for full effectiveness assessment is the fact that these details do not provide an

opportunity to observe concrete management measures applied and their effectiveness in preserving or increasing the value of assets seized.

25. Concrete cases of successful asset management of assets were presented by Cyprus, France, Georgia, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Republic of Moldova, Romania, the Netherlands and San Marino. These cases include various types of assets managed – from complex legal entities to virtual assets and are presented in the country specific part of the report. For majority of them, the relevant features of asset management confirmed the effective application of Article 6 of the Convention.

RECOMMENDATIONS AND FOLLOW-UP

26. As stated, all States Parties have measures in place which fully or partially satisfy the requirements of Article 6. Consequently, the recommendations set forward to the States Parties are directed towards several key points:

- States Parties which have not yet rectified all deficiencies in relation to the Recommendation 4 of the 2012 FATF Standards are invited to immediately do so;
- States Parties whose systems enable storage of assets and does not include concrete management measures for assets seized, are invited to adopt such measures and apply them in practice;
- States Parties, in which general legal and institutional frameworks have been established but are yet in a developing phase, are invited to strengthen them by adopting and implementing specific guidance on asset management.

27. In addition to these, the report also made several 'soft' recommendations for States Parties considerations. Whereas these recommendations are not a direct requirement of Article 6 strictly technically speaking, they aim at better effectiveness of asset management systems. In this context, States Parties are invited to consider adoption of measures/guidance to manage specific assets (e.g. complex legal entities which generate income) or consider establishing asset management offices which would be in charge of asset management.

28. While country-specific recommendations are included in the individual country-analyses below, both the general and the country-specific recommendations should be considered when adopting measures to further implement Article 6 of the Warsaw Convention.

COUNTRY REVIEW

Albania

1. Albania has undergone the COP assessment in 2011, which noted that legal provision with regard to the management of seized and confiscated property as well as a specialised agency in charge for their management, were in place. Namely, the provisions on the management of both frozen and seized property were set forth by the Criminal Procedure Code, the Law “on Preventing and Striking at Organised Crime and Trafficking through Preventive Measures against Assets”, as well as the Council of Ministers Decision No. 563, dated 14.07.2010 “On the rules and procedures of cooperation of the Agency of Administration of Sequestered and Confiscated Properties and the Bailiff Service”. However, the 2011 report noted that application of asset management was limited to the assets frozen and confiscated from a list of criminal offences which does not cover all the categories of offences set out in the Appendix to the Convention. In addition, authorities were recommended to continue to develop best practice particularly in respect of potentially deteriorating assets.

2. In their response to the 2022 Questionnaire, authorities indicated that in 2019 the new Law on the administration of sequestered and confiscated assets has been adopted, establishing procedures for the management of the seized and confiscated property. It includes management of (i) assets seized and confiscated by a decision of the competent court, according to the provisions of the legislation in force for the prevention and crackdown on organized crime, trafficking and corruption; ii) assets seized, according to the provisions of the legislation in force for measures against the financing of terrorism; iii) assets for which the measure of preventive sequestration has been imposed, according to the provisions of the Criminal Procedure Code, and those confiscated by a decision of the competent court, according to the provisions of the Criminal Code, which are the product of criminal offenses or related to them; iv) assets for which the measure of seizure or confiscation has been imposed, according to normative act no. 1, dated 31.1.2020, of the Council of Ministers, "On preventive measures in the framework of strengthening the fight against terrorism, serious crimes and consolidation of public order and security"; and v) materials, evidence, by definition within the of Criminal Procedure Code, with the exception of those which are kept in the secretariat. The provisions of the new law address some of the shortcoming identified in the 2011 COP assessment report, given that they refer to all confiscation/seizure/freezing measures applied in line with the CPC, which is broader than what was a subject of confiscation in 2011. Although Albania was rated largely compliant with Recommendation 4 for purposes of MONEYVAL mutual evaluation (2018), some issues still remain, such as *if laundered property (i.e. the object or corpus delicti of the ML offence, particularly in cases of third-party ML) is subject to confiscation; that the confiscation of property of corresponding value only applies to proceeds of crime but not to instrumentalities and that confiscation from third party is covered implicitly.*

3. New legislation established a specialised agency competent for the management of the seized and confiscated assets - the Agency for the Administration of Seized and Confiscated Assets. The law states that assets which originate from money laundering, organised crime, terrorism, financing of terrorism as well as other assets seized in accordance with the Criminal Procedure Code are subject to management by the Agency. Authorities made a general statement that there are legal procedures dealing with the placement and management of the assets depending on the type of property. However, no details have been provided how procedures are applied to a different type of property (i.e., management of the seized cars, yachts, securities, legal entities). Nevertheless, the law provides possibility for the sale of perishable movable property, without waiting for the final confiscation.

Effective implementation

4. Authorities provided statistics for 2022 on the estimated value of the seized and confiscated assets administrated by the Agency for the Administration of Seized and Confiscated Assets. While these figures are important, in the rapporteurs' view, it is difficult to draw any conclusion from it, given that no details on how the management is carried out were provided.

Conclusion/Recommendation

5. Albania implements the provisions of Article 6 of the Warsaw Convention, but some concerns still remain whether all property subject to seizure/freezing/confiscation falls within the scope required by relevant provisions of the Convention. Since no details were provided whether necessary procedures are in place to enable effective management of seized property, the assessment on this matter has not been made. Therefore, the authorities are recommended to clearly set up in the legislation that property subject to seizure/freezing/confiscation is in line with requirements of Art.5 of the Convention and then subject to management as provided in Art.6. In addition, the authorities are encouraged to consider enacting procedures for management of the different types of assets, including legal persons, securities and other assets that may generate income.

Armenia

1. Armenia has undergone the COP assessment in 2016, where it was noted that Criminal Procedure Code (article 236) contains provisions dealing with the management of seized property except for real estate and large-sized items. The management of sized property was within the responsibilities of different agencies, depending on the type of property. Rapporteurs concluded that the legal framework did not include sufficient implementing measures for the proper management of seized or frozen property. Assessors have not been provided with the information explaining how the Armenian legal framework prevents the decline of value of seized assets and ensures the management of assets of a complex nature. Overall, it remained unclear whether the system in place was capable to ensure the proper management of frozen or seized property. On the other hand, the 2016 COP report as well as 2015 MONEYVAL mutual evaluation report did not identify any issues with regard to property subject to confiscation (Recommendation 4 was rated largely compliant). On the other hand, the MONEYVAL report states that 'property is not subject to systematic management'.

2. In the responses to the 2022 Questionnaire, the authorities stated that there are different legal bases for the management of the seized assets depending on the type of preventive measures applied.

3. When a seizure order concerns instrumentalities, proceeds of crime or property of equivalent value (except those serving as evidence), management of such assets is done in accordance with the Article 134 of the new CPC. This piece of legislation entered into force in July 2022. The Code provides that certain types of movable assets such as precious metals and stones, foreign currency and securities exceeding a certain value are kept by the authorized body of state finance management, while others are kept by the authority who brought the decision on seizure or are transferred to the representative of the local self-government body. Armenian Dram is paid to the deposit account of the Court that will have jurisdiction over the proceedings. In case of seizure of large-scale property or real estate, those are sealed and kept by the owner (or the possessor of the property or their adult family member) or, if that is not possible, they are handed over to the competent state body, both subject to liability in case of deteriorating, alienation, concealment, or illegal transfer of the property. Furthermore, authorities advised that seized assets serving as evidence are kept within the criminal file (Art. 98 of the CPC). In addition, authorities are empowered to (i) destroy seized assets in case they are damaged or dangerous, (ii) return or sell seized assets if they are perishable goods or the cost of their management is unreasonably high. Although these

provisions provide some indications how the assets are stored, there are no specific rules on their management.

3. Authorities advised that in case when seizure is ordered in the procedure of non-conviction-based confiscation, management of such assets is envisaged by the Law on Civil Forfeiture of Illegal Assets. In case of seizure of the assets in non-conviction based confiscation procedure, they are transferred to the competent authority if the following conditions are met: (1) if it is probable that the value of assets may significantly reduce; (2) if it is probable that the assets may be used for committing a crime; (3) given the specificities of the assets, their further confiscation would be significantly complicated. In addition, the competent authority may engage trust management when needed, due to the specificities of assets concerned. For the civil forfeiture process, the assets that require ongoing professional management can be entrusted to a private entity. The contract that is concluded between the manager and the beneficiary is governed by Articles 954-968 of the Civil Code, which regulate the basic decision-making powers of the manager and the beneficiary. More detailed management arrangements, including the decision-making rules regarding specific types of assets and transactions, can be regulated in ad hoc contracts taking into account specifics of the assets entrusted to a manager. Furthermore, the decision of the Government No. 2066 of December 2020 on “*Establishing the procedure for conducting a competition for trust management of property transferred to state ownership during the proceedings for confiscation of property of illegal origin and the exemplary form of trust management agreement*” provides for the exemplary form of trust management agreement, which may include the unique features of trust management of the property transferred to state taking into account their specifications.

4. As noted above, there is no central authority responsible for the management of the seized assets in Armenia – this competence is placed under different authorities.

Effective implementation

6. Given that the aforementioned legislation (amended CPC and the Law on Civil Forfeiture of Illegal Assets) only recently entered into force, effectiveness in implementing Art.6 of the Convention in Armenia is yet to be seen.

Conclusion/Recommendation

7. Armenian legislation foresees some elements of the management of the seized property as envisaged by Article 6 of the Warsaw Convention, but the system would benefit from additional provisions aimed at managing assets that generate income. Authorities are therefore recommended to establish more detailed procedures for asset management. They are also invited to consider a possibility to establish authority(es) or unit(s) in charge of management of all seized assets, regardless if these are considered as evidence or assets subject to confiscation.

Austria

1. In Austria, management of frozen and seized assets is regulated by the Code of Criminal Procedure as well as by the operational guidelines issued in 2014 and amended in 2020.

2. In their responses to the 2022 Questionnaire, authorities advised on different types of assets and their management: seized cash is kept in the depository of the regional or higher court, depending on its amount, storage of vehicles is carried out by external custodian and legislation envisages the possibility to sell them if the cost of storage is disproportionate of its value (§ 377 Code of Criminal Procedure). In addition, there is also a possibility to sell other seized assets to avoid problems in their management, or in case of their rapid deterioration. Although the legislation provides the possibility to seize real estate, according to section 109 (2b) of the Code of Criminal Procedure, there are no measures in place for its management - it is envisaged that a note is made in the register that the real estate unit is under seizure.

Authorities indicated that virtual assets cannot be seized, however the medium of the wallet in which the keys for transactions are managed can be seized. In this context, in 2020, the Decree on the Procedure for Seizure, Confiscation and Realization of Virtual Currencies in the Field of Justice was adopted. The system as it appears at the moment seems to mostly foresee measures on effective storage of the seized assets, whilst some elements of asset management are missing, such as how to administrate assets in cost effective way, use and govern them in case they may generate income or are specific in their nature, etc.

3. Authorities designated different structures to perform the function of management of seized and confiscated assets, depending on the phase of criminal procedure. Thus, during investigative stage, criminal investigation authority is responsible for the storage of the seized assets (CCP § 113 para. 2). Subsequently, it becomes the responsibility of the Prosecutor's office and after the indictment is filed, it becomes the responsibility of the court. In addition, given the findings of the FATF mutual evaluation report on Austria (2016), it could be concluded that instrumentalities, proceeds of crime and property of equivalent value are subject to asset management (Recommendation 4 was rated compliant).

Effective implementation

4. Austria has provided statistics on the amount of seized and confiscated assets from 2016 to 2021. Whilst there has been seizure of millions of euros worth assets, those figures cannot serve as a basis for the rapporteurs to form the view on the effective implementation of the management of seized assets in light of Art.6 requirements (e.g. no details on how specific assets were managed and how their value was preserved or increased were provided).

Conclusion/Recommendation

5. Austrian legislation includes measures dealing with the management of seized assets. This notwithstanding, the rapporteurs observed that the system mostly provides for placement/storage of different assets, whereas the management component is yet to be fully developed. Authorities are therefore recommended to consider adopting specific rules and procedures which would include rules on how to manage different assets in a cost-effective manner and, if need be, consider reforming institutional framework for implementation of these rules accordingly.

Azerbaijan

1. In Azerbaijan there are legal provisions enabling management of the seized instrumentalities, proceeds and property of corresponding value. More precisely, Article 251 of the Criminal Procedure Code states that, except for immovable property and large objects, the seized property shall, as a rule, be managed, while immovable property that is seized shall be sealed and given to its owner or holder, or adult members of the family, for safe-keeping, in exchange for a commitment not to misappropriate, damage or destroy it. Persons concerned shall be warned of the statutory liability incurred for doing so. The way this provision is applied in practice was further provided in the responses to the 2022 Questionnaire - the property, once seized by a decision of a competent authority, is immediately sequestered and deposited with the relevant institution. Precious metals and stones, pearls, money in local and foreign currency, securities (shares, bonds, cheques, treasury notes, loan certificates, lottery tickets etc.) are deposited in the State Bank. Other assets are sealed and kept within investigating authority or court and can be handed over to other state authority which is better suited for their management. These provisions indicate that the focus is more on the storage of the assets, whereas there appears to be no procedures for their management. In addition, there is no possibility to sell perishable goods before confiscation is ordered. Azerbaijan has not yet passed the 5th MONEYVAL evaluation round, but the follow up process to its 4th round, it was concluded that confiscation measures apply to instrumentalities, proceeds of crime and

property of equivalent value. Yet without proper asset management provisions this does not bear significant relevance for compliance with Art.6 of the Warsaw Convention.

2. Authorities indicated that there is no specialised agency responsible for the management of seized assets. However, in 2020 the new Department for Coordination of Special Confiscation Issues (DCSCI) has been set up within the Prosecutor's General Office (PGO). The department is responsible for coordination of the activities of different units within the PGO, and for support of identification, tracking, and seizure of assets. It was indicated that through the EU founded project, authorities are taking steps to develop asset recovery and management procedures and strengthen the status of the DCSCI.

Effective implementation

4. Azerbaijani authorities stated that no case example is available to confirm the application of the provisions for the management of seized property.

Conclusion/Recommendation

5. Whilst there are some provisions dealing with the management of frozen and seized assets in Azerbaijan, some gaps in relation to Art.6 implementation still remain. Therefore, the country is recommended to continue undertaking steps to strengthen asset management system, and also consider establishing specialised units and specific rules and procedures enabling comprehensive management of all kinds of assets as envisaged by Article 6 of the Warsaw Convention.

Belgium

1. Belgium underwent the COP assessment in 2016 and its follow-up procedure in 2018. The 2016 report noted that Belgium established the central office for seizure and confiscation (OCSC), but legal provisions offered a minimum basis for the management of frozen and seized assets. In the 2018 follow-up report, it was noted that the new law introduced changes and novelties to the management of seized property. It provided diversity of measures that can be implemented while managing seized assets. Particularly, it: (i) provides the definition of management concepts with constant value management, compulsory management and optional management; (ii) designates the OCSC as "the central office for the management of frozen assets"; (iii) establishes mandatory management by the OCSC of the virtual currencies; (iv) establishes that costs related to the management by the OCSC of the seized property assets are court fees taxed by the Director of the OCSC; (v) introduces a new regulation for the payment of interest in the event of the return of sums of money after the lifting of the criminal seizure is determined; (vi) includes a time limit for the reimbursement of frozen funds and the restitution of seized movable assets; (vii) determines the procedure to be applied in the event of the sale of seized immovable property; (viii) indicates the OCSC as the authority to manage the credit balances of seized bank accounts and introduces a time limit to the procedures thereof; and (ix) simplifies the procedure for making seized assets available to police. It further establishes that the constant-value management rules also apply to assets seized in Belgium pursuant to a MLA request. The Royal Decree of 17 May 2018 executing Articles 8, § 3 and 18, § 1, 2° of the Law of 4 February 2018 determines the foreign currencies, besides the euro, that can be managed by the OCSC. Overall, the new law offers a legal basis for the management of frozen and seized assets, it further clarifies the OCSC's powers, and it establishes continuity on the matter of management of frozen and seized assets.

3. In their responses to the 2020 questionnaire, the authorities reiterated arguments discussed when the 2018 follow-up report was adopted. In addition, in the 2015 FATF Mutual Evaluation Report, Belgium was rated Compliant with Recommendation 4 meaning that instrumentalities, proceeds and property of equivalent value are subject to asset management.

Effective implementation

4. The authorities advised that the OCSC collects, manages and processes all data relating to categories of seized and confiscated assets. A new application (Navision) is currently being developed.

Conclusion/Recommendation

5. The Belgian legal system, as it was concluded in the 2018 follow-up report, provides for management of seized assets ensuring the implementation of the requirements of Art. 6 of the Warsaw Convention. The authorities are encouraged to continue developing effective management of seized and confiscated assets.

Bosnia and Herzegovina

1. Bosnia and Herzegovina was assessed by the COP in 2015. The rapporteurs noted that management of seized assets was envisaged differently at different state levels (Bosnia and Herzegovina (BiH), Federation of Bosnia and Herzegovina (FBiH), Republic of Srpska and Brcko District). At the BiH and Brcko District levels, legal provisions in the Criminal Procedure Code (CPC) establish the place where seized property would be deposited. However, in the Federation, management of seized property was regulated by the Law on Forfeiture of Criminal Proceeds which envisaged establishment of the specialised Agency, which, at the time of the assessment, was not operational. In Republic of Srpska a special law on asset recovery was adopted. The law provided, *inter alia*, for the setting up of an asset management agency, as an administrative unit within the Ministry of Justice, which would have specific procedures for the management of seized property. The 2015 report recommended that BiH and Brcko District adopt legislative or other necessary measures to implement Article 6. Regarding the Federation of BiH, the authorities were encouraged to take further steps to make the specialised agency fully operational.

2. In their responses to the 2022 Questionnaire, authorities reiterated legal provisions applicable in Federation of BiH, indicating that Agency for the management of the seized and confiscated property became operational. Furthermore, they referred to the special procedures in place for management of different types of assets seized. Agency is entrusted with the competence to sell perishable goods as well as those for which there is a danger of value loss. Special procedures are also in place for management of real estate as well as of securities/shares of joint-stock companies.

3. With regard to the Republic of Srpska, authorities indicated that the Law on confiscation of unlawfully acquired property had been adopted in 2018, where its Article 8 states that the special Agency is entrusted with the power to manage seized and confiscated property. However, from the responses provided, the rapporteurs could not conclude whether there is a special procedure which concerns the manner in which different types of seized and confiscated assets are managed.

4. At the state level, the legal provisions did not change since the 2015 assessment. CPC is still applicable, and the court is in charge of the management of confiscated property. In view of this, the rapporteurs can only conclude that, at the state level, there is no effective framework governing the management of seized property.

5. In Brcko District, Law on Seizure of Unlawfully Acquired Property of Brčko District has been adopted in 2016 and it is encompassed by the Rulebook on management of seized property. According to the Article 2 of the Law, a specialised Expert Service of the Judicial Commission was set up, entitled to, *inter alia*, manage seized property. This notwithstanding, in case the property is confiscated, the management is then entrusted to the Office of Public Property of the District. From the responses provided, the rapporteurs could not conclude if there are

specific procedures in place for managing seized property - it appears that procedures concern storage of such property only.

6. BiH has not yet passed the 5th MONEYVAL evaluation round, but the follow up process to its 4th round MER concluded that confiscation measures apply to instrumentalities, proceeds of crime and property of equivalent value.

Effective implementation

7. Authorities provided information of the management of the seized property at the level of FBiH as well as Republic of Srpska indicating the value of the seized property under their management. However, at the state level, court provided only information about confiscated assets, mainly cash and some movable and immovable property. Brcko District did not have any case of management of seized and confiscated property.

Conclusion/Recommendation

8. In Bosnia and Herzegovina, the management of seized assets is regulated differently at different state levels. While in Federation of BiH and Republic of Srpska and Brcko District, there are legislative measures in place ensuring management of seized assets, the same cannot be concluded for the state level and Brcko District. Therefore, authorities are recommended to adopt legislative or other necessary measures to implement Article 6 at state level and, to consider, to the extent possible, harmonising asset management measures between different entities.

Bulgaria

1. In Bulgaria, there are different procedures in place enabling safekeeping and management of seized assets. The way the safekeeping is executed depends on the fact if the assets serve as evidence in criminal proceeding or not. Criminal Procedure Code (CPC) in Art. 72a stipulates that property secured for the purposes of confiscation of objects for the benefit of the state, will be managed according to the procedure laid down in the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act. This Act established the Commission for Anti-Corruption and Illegal Assets Forfeiture (CACIAF) which is a standing independent specialized body established in accordance with the Law for Combating Corruption and Illegal Assets Forfeiture (LCCIAF). The main task of CACIAF is to pursue the policy of combating corruption and illegal assets forfeiture. In line with the CPC, management of illicit assets is carried out by the Commission. Nevertheless, certain categories of movable assets are kept by different state entities (e.g., art and historical assets are kept by museums while precious metals are kept by the National Bank). However, it appears that there are no specific measures in place enabling active management of property beyond safekeeping measures.

2. According to the responses provided in the 2022 Questionnaire, if seized assets serve as evidence in criminal proceedings, CPC (Art. 111) envisages safekeeping measure only. Seized evidence will be kept as part of the criminal file and secured in the way that they cannot be damaged. In this case, safekeeping of the seized assets is carried out by the prosecutor. However, they may be returned to the owner before the termination of criminal proceeding if it will not hinder further criminal proceedings. In case seized evidence represents perishable goods, legislation provides for the possibility to be sold before final confiscation is ordered.

3. From the information provided by the authorities it appears that there are no measures in place which would enable management of seized immovable property or any other complex and income generating assets. Bulgaria have undergone the MONEYVAL 5th round mutual evaluation in 2022. With regard to Recommendation 4, a minor shortcoming was noted in relation to confiscation of instrumentalities - *confiscation of instrumentalities and intended instrumentalities of an intentional crime is generally provided under Art. 53 (1) (a) of the Criminal Code together with a possibility for their value confiscation*. On the other hand,

(intended) instrumentalities can only be confiscated if they belong to the perpetrator and therefore this measure does not apply to third persons. In addition, the MER analysed asset management regime in the country and stated that there is a clear mechanism in place for managing and/or disposing of property subject of security measures in a criminal procedure, with the prosecutor's offices and the CACIAF being in charge of handling such property. This activity, however, does not extend beyond storage and safekeeping measures which has a direct impact on effectiveness, particularly if more complex types of assets must be managed. Furthermore, there is no specific mechanism available for managing and disposing of property that has been confiscated under the CC. Movable property items that constitute material evidence in criminal proceedings are kept by the competent prosecutor's office pursuant to the detailed rules for keeping material evidence. For this purpose, all prosecutor's offices have specific bank accounts (in different currencies), special safety boxes in banks, and special rooms for storage of material evidence, as well as appointed employees who are responsible for that safekeeping. In case a property item subject of security measures is not (or has ceased to be) considered material evidence in the criminal proceeding, it will be managed by the CACIAF upon notification of the prosecutor.

Effective implementation

4. In the responses to the 2022 Questionnaire, authorities provided number of cases and amount of money seized and kept by prosecutors. However, as noted for other countries, these numbers, even though important, may demonstrate proactive approach in seizing assets but not the effectiveness of their management. Moreover, authorities provided information on the management of confiscated assets, nonetheless this is out of scope for the assessment of Article 6 of the Warsaw Convention.

Conclusion/ Recommendation

5. In Bulgaria, there are measures in place enabling safekeeping and management of seized assets. This notwithstanding, the authorities are encouraged to consider adopting procedures for management of the different assets, including real estate, companies and other assets that may generate income.

Croatia

1. Croatia has undergone the COP assessment in 2013 and a follow up procedure in 2016. Both reports noted that Croatia had introduced management of the seized property through different acts and regulations adopted in 2011, setting out the procedures for the management of various types of assets. There was a separate asset management agency responsible for the management of the temporarily seized/frozen monetary funds, submitted property and transferred rights, as well as for the management and disposal of confiscated property. Rapporteurs noted that in order to strengthen the reliability and efficiency of the asset management agency, the Croatian authorities should consider building upon existing regulations and establishing 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.

2. In their responses to the 2022 Questionnaire authorities indicated that management of the seized instrumentalities, proceeds of crime and property of equivalent value is regulated by the Law on State Property Management. There is, also, a special regulation adopted in 2018 dealing with the procedure for the management of different kinds of seized property, including movable and immovable property (vehicles, art, jewellery, real estate etc.). In addition, in the MONEYVAL 5th round MER from 2021⁵ it is stated that authorities have shown *consolidated*

⁵ MER Croatia, December 2021, pg.96

experience in managing a wide range of property, such as precious metals, art and paintings, cars, etc., including the possibility to sell and transfer property, rent or use it for public interest or social purposes, especially vehicles. The only limitation was related to the inability to manage seized and confiscated legal persons.

3. In Croatia, the body tasked with the management of seized and confiscated property is the Ministry of Physical Planning, Construction and State Assets (MPPCSA). There is a mechanism in place allowing the Ministry to sell seized assets if the storage is dangerous, if its cost is disproportionate to the value of the seized property, or if an imminent danger of deterioration/significant loss of value exists.

Effective implementation

4. In order to show effectiveness of the system for managing seized assets, authorities provided statistics for the period 2015-2020 on the value of seized assets managed by the Ministry, which includes both movable and immovable goods. As it is the case with other States Parties which provided statistics on the value of assets managed, it has to be reiterated that this data does not provide sufficient basis for conclusion on how Art.6 is effectively applied in practice, i.e. how assets are managed in practice and how their value is preserved or increased.

Conclusion/Recommendation

5. The Croatian legal framework provides measures for the proper management of the seized assets in line with the requirements of the Article 6 of the Warsaw Convention. Therefore, authorities are encouraged to continue implementing existing legal provisions and consider introducing the possibility to manage legal persons.

Cyprus

1. The Cypriot AML/CFT Law in its Art. 14 (7) and (8) provides the legal basis for the management of the seized and confiscated property. In line with this law, seized property is managed by receivers appointed by the court. Receivers may decide to place seized property under their custody or to choose any other suitable way of management, in accordance with the directions received from the court. Receivers are assigned to:

(a) take possession and place under his/her custody any realizable property or property or assets which are the subject of an order to register a restraint order or a freezing order, in accordance with the provisions of Parts IV and IVA of the Law;

(b) manage or otherwise deal with the said property, in accordance with the directions of the court. The court may also appoint the Official Receiver, who may apply, the relevant provisions and procedures provided for in the Bankruptcy Law and the relevant Regulations issued in accordance with that Law, as well as the Company Law and the Company (Liquidation) Regulations."

(8) "The court may, on appointing a receiver, impose such conditions as it considers necessary and may direct any person in possession of the property in respect of which the receiver was appointed to give possession of it to the receiver."

Further to this, Cyprus was rated compliant with Recommendation 4 in its MONEYVAL 5th round MER from 2019, meaning that its legislation covers the management of the seized instrumentalities, proceeds and property of corresponding value deriving from criminal offences.

2. Whilst there is no dedicated Agency responsible for the management of seized property. In addition, the court's role in managing seized assets is executed by receivers, as explained above. Specifically, in case the Official Receiver is appointed, the law provides that he/she/it

may also apply the relevant provisions and procedures provided for in the Bankruptcy Law, as well as the Company law. Furthermore, under the Cypriot AML/CFT Law art.18 there are specific provisions for the sale of bonds and shares in a company, although the provision for the sale of bonds applies after the issuance of the Confiscation Order, for the purposes of executing a confiscation Order, which has been issued and not in the interim stage before a Confiscation Order is issued.

3. Although not explicitly stated in the law, the receiver may sell the assets seized in case there is potential for it to be destroyed or to lose its values. Wording used in the law ('to manage or otherwise deal with the said property, in accordance with the directions of the court'), as interpreted by the authorities, include a possibility to sell assets.

Effective implementation

4. Authorities advised that, above-referred provisions were successfully applied in a number of cases of movable property (motor vehicles, watches, jewellery). The Police has been appointed by the Court as a Receiver so as to take possession and take under its custody the frozen property.

Authorities also referred to a recent case where the Attorney General was appointed as a receiver of funds held in a frozen account in the bank which was placed under Resolution Measures by the Central Bank. As a result, the authorities stated that the funds were preserved.

Conclusion/Recommendation

5. Cypriot authorities have measures in place regarding management of frozen and seized assets. This notwithstanding, the authorities are encouraged to consider establishing specialised authority dedicated to the management of frozen and seized assets.

Denmark

1. In Denmark, The Administration of Justice Act (Part 74) governs the seizure of assets. Assets are seized to secure: 1) evidence, 2) claims by the state for legal costs, confiscation and fines, 3) execution of the claim of a victim for recovery or compensation, 4) assets when a defendant has absconded from further prosecution of the case, and 5) claims under recovery by the authority responsible for recovering arrears.

The police carry out the seizure according to section 807 (1) of the Administration of Justice Act. The objects that are taken into police custody as a consequence of seizure or a surrender order are recorded and marked by police, which issue a confirmation on seizure upon request, (Section 807 (5)).

The police manage the seized property in accordance with circular no. 94 of 13 May 1952 on the police's management of seized or deposited sums of money or securities. However, little information is provided on actual asset management and whether and to what extent it has evolved since the afore-mentioned Circular was adopted. The FATF 4th round MER on Denmark from 2017 also noted, under the Recommendation 4 that '*there are no specific mechanisms for managing and, when necessary, disposing of property seized or confiscated. In terms of process, objects that have been seized, including any that are subsequently confiscated, are handled in accordance with instructions from the Commissioner of the Danish National Police. There are no specific mechanisms to manage property that requires active management, although general law enforcement powers and usually sufficient. The police noted that they have difficulties in such cases.*' Whilst the confiscation measures apply to instrumentalities, proceeds and property of equivalent value, this does not bear significant relevance for compliance with Article 6 of the Warsaw Convention since there are no asset management provisions in place.

Effective implementation

2. Authorities did not provide any example of the management of seized assets.

Conclusion/ Recommendation

3. While some general provision dealing with management of seized assets in Denmark are in place, some deficiencies in relation to implementation of Art. 6 of the Convention remain. Therefore, the country is recommended to undertake legislative or other necessary measures enabling comprehensive management of all kinds of seized assets as envisaged by Article 6 of the Warsaw Convention.

France

1. French legislation and more precisely the Law 768/2010 of 9 July 2010 (known as Warsmann Law) provides for management of the seized and confiscated assets. Based on the responses provided in the 2022 Questionnaire, the legislation provides for management of seized instrumentalities, proceeds and property of equivalent value, as required by Article 6.

2. A special entity has been created dealing with the management of seized and confiscated property (AGRASC). This entity is an administrative agency, supervised by the Ministry of Justice and Ministry of Economy and Finance. In addition, AGRASC assists and guides judges and investigative bodies regarding the execution of nationally and internationally initiated seizures and confiscations.

3. Authorities indicated that AGRASC manages all cash and bank accounts, as well as other assets, including intangible movable property (crypto-assets, financial instruments etc.). According to the responses provided, the Agency is entrusted with the possibility to sell seized movable property and real estate.

4. France has undergone the FATF 4th round mutual evaluation, and the report was adopted in 2022. The MER noted that AGRASC has shown its ability to manage seized assets effectively and to adapt to developments in the field, which has enabled, for example, the pre-judgment sale of new types of proceeds products, such as virtual assets. In addition, France was found compliant with Recommendation 4.

Effective implementation

5. In the 2022 Questionnaire, authorities indicated that AGRASC publishes an annual report with the view on management of seized and confiscated property with proposals for legislative and practical improvements. Also, authorities provided statistics on the value of confiscated assets and numbers of confiscated real estate units. In addition, in order to assess effectiveness of the implementation of Article 6 of the Warsaw Convention, the rapporteurs also took into consideration a case example provided in the FATF 4th round MER on France from 2022. It was explained therein that authorities seized cryptocurrencies used in ML scheme. The investigating judge assigned 609.7 BTC to the AGRASC for the purpose of disposal. Bitcoins were sold before the judgement was issued in March 2021. This was the first sale of crypto assets prior to judgement being released in France. This sale raised a total of over EUR 23 million, which was deposited into the AGRASC's account.

Conclusion/Recommendation

6. The French legal framework provides a good basis for an effective management of seized assets. There is also a case example demonstrating the ability of the authorities to deal with complex assets such as cryptocurrency. France fully applies Art.6 of the Warsaw Convention and authorities are encouraged to continue with good practice in this area.

Georgia

1. Georgian legislation provides measures which enable management of frozen or seized proceeds, as well as of the property of equivalent value. These provisions are set forth in the Criminal Procedure Code (Art. 79 and 80). Georgia was rated Largely Compliant with Recommendation 4 in its MONEYVAL 5th round MER from 2020 , as it was noted that confiscation of the property of corresponding value does not apply to the instrumentalities of crime.

2. Management of seized proceeds is carried out differently, depending on the type of property. This task falls under the competences of the investigative body or investigator. In case the bank account or other financial assets are frozen, these are secured on the account until the confiscation order is final. Cash, precious metals and luxury items are kept in the safe boxes of the National Bank of Georgia, while vehicles are kept in the secured parking lot. Yet, there are no specific procedure in place which would guide the management of assets in general. The system as it stands at the moment rather provides for storage of assets, with the exception which provides for possibility to sell perishable goods. In case of freezing of real estate, notification and corresponding court order is sent to the National Agency of Public Registry, which is the only registry of real estate in Georgia. Once such notification is received, the owner cannot dispose this real estate. Whereas selling a real estate before final confiscation is not allowed, the authorities advised that in most cases when real estate is frozen the owner can still use and take care of it until the final decision. The idea of sending court order to the National Agency of Public Registry is that the responsible Agency is informed, and it will not allow further change of ownership until such final decision. In some cases, investigative bodies can of course restrict the owner to use his/her/its real estate property. In addition, if there are special maintenance needed for particular real estate, then these measures would be discussed with the aim to secure that a real estate which is seized does not lose its value pending final confiscation. In cases frozen/seized property stays in a possession of third parties, they are notified that they may be criminally liable in case they carry out any operation with these assets (Art. 377 of the Criminal Code).

Effective implementation

3. Georgia provided several case examples of seizure of assets, including some complex assets. There is also a case when virtual currencies have been seized. In addition, authorities indicated that they have frozen shares of a bank. The cases presented confirm that the country effectively applies asset management mechanism available in its legislation.

Conclusion/Recommendation

4. In Georgia, there are some legislative measures for the management of the frozen and seized assets as required by Art. 6 of the Warsaw Convention. However, some deficiencies are still in place and authorities should undertake measures to rectify deficiencies noted in the MONEYVAL 5th round MER from 2020 (described above in the text). In addition, the authorities should consider adopting guidance for active management of more complex types of property. Georgia should take into consideration establishing specialised team/unit dedicated to management of frozen and seized assets.

Germany

1. In Germany, management of seized assets is set forth in Code of Criminal Procedure (CCP) in Article 111b-f. Germany was rated compliant with R.4 in its FATF 4th round MER from 2022, meaning that instrumentalities, proceeds of crime and property of equivalent value are subject to confiscation. Different rules are applicable for asset management, depending on the type of the seized assets. In case the moveable property is seized, they are placed in custody, marked with the seal or in some other manner. CCP does not specify under which custody the

assets are – it only states that “the seizure of movable property shall be enforced by way of taking the property into custody. It may also be indicated by marking with a seal or in some other manner.” This notwithstanding, there are no specific procedures envisaged for the management of seized property aiming at preserving or increasing its value. However, the seized property may be returned to the owner if he/she/it pays the sum of money equivalent to the value of the asset. In addition, CCP also provides the possibility for sale of seized assets in case they are perishable, or its maintenance raises significant cost or difficulties. The public prosecution office may delegate this task to its investigators responsible for conducting the sale. As a consequence, the proceeds of sale take the place of the object sold.

In case the provisional measures are imposed on immovable property, it is registered in the Land register, with the prohibition of disposal. There are, however, no other restrictions that could be imposed to the owner of the seized immovable assets in order to preserve its value until final decision on confiscation is brought.

2. Authorities designated an existing structure to perform the function of management of the seized property in Germany. According to the Art. 111m of the CCP, the prosecutors’ office is responsible for management of seized property. Those competencies can be further delegated to an investigator, court bailiff or private companies with the special knowledge and equipment to manage specific types of assets. However, based on the responses provided, the rapporteurs could not conclude whether there is a list of criteria based on which management of seized assets is to be carried out by prosecutor or other competent authorities.

Effective implementation

4. In the responses to the 2022 Questionnaire, the authorities specified that they could not yet provide statistics or a case example which demonstrates the effectiveness of the system. On the other hand, the authorities advised on ongoing reforms in the area - the Federal State of Bavaria had started a pilot project in 2019 to outsource the management of seized assets to specialized service providers. After the positive evaluation of the project and a public tender the contract with a service provider started in September 2021. Currently, it is discussed to extend this model all over Germany.

Conclusion/Recommendation

5. In Germany, the current legal system provides basis for the management of seized assets as set forth in Article 6 of the Warsaw Convention. This notwithstanding, the authorities are invited to develop, through legislative or other measures, management of different types of assets including high value goods, securities, legal persons and their businesses. In addition, authorities are encouraged to continue with the project discussed above and implement good practice at all state levels

Greece

1. In Greece management of seized assets is envisaged in the Criminal Procedure Code (Art. 268). There are different mechanisms to be applied when managing assets, depending on their type. Greece was rated Largely Compliant with Recommendation 4 in its 2019 mutual evaluation whereas no shortcomings were noted with regard to confiscation of instrumentalities and property of equivalent value.

Generally, it is prescribed that seized assets shall be placed under the physical custody of the court administrator. However, if that is not possible due to the characteristics of the assets, investigating authorities shall appoint a competent and trustworthy custodian. Authorities indicated that when money or other valuables are seized, they are deposited with the Deposits and Loans Fund. Also, there is a special procedure for the destruction of the filthy or hazardous items which are seized - 5 years after the seizing order has been issued, assets shall be destroyed if they are useless, valueless, or worthless as well as in cases when the possession

of such items is prohibited by the law. In order to ensure the effective management, legislation enables perishable goods to be sold, through public auction. Whilst authorities indicated some rules which should provide for the effective management of assets (such as pre-sale and destruction of goods), it appears that there are no provisions covering management of immovable property, neither procedures which would allow for the effective management of complex assets such as legal persons, intangible assets, etc.

2. There is as yet no operational centralised office in charge for the management of seized property. As it is explained above, such property is stored in the court or with the appropriate custodian. However, the authorities informed that, based on the provision of Article 6 of the Warsaw Convention and Article 10 of EU Directive 2014/42/EE, an Asset Management Office (AMO) was formally established, and its operational framework is currently under consultation. When it becomes operational, the AMO will be empowered among others to sell or transfer seized assets as to preserve their economic value.

Effective implementation

3. Greek authorities advised that there are no statistics on management of seized assets. However, one case example was provided where 40 million euros have been seized. These funds were made available for educational and health programmes before the final confiscation was ordered.

Conclusion/Recommendation

4. Greece has some measures in place which concern the management of seized assets in line with Article 6 of the Convention. On the other hand, there are no special procedures in place which would ensure the proper management of all types of assets. Therefore, authorities are recommended to consider adopting specific procedures which would allow for the effective management of complex assets (legal persons, intangible assets, etc.) aimed at preserving or increasing their value pending final confiscation. In that regard, the on-going reforms the authorities referred to, should take into account the requirements of Article 6 of the Warsaw Convention.

Hungary

1. In Hungary, in line with their Criminal Procedure Code (CPC), there are two different coercive measures that can be applied in criminal procedure: seizure or sequestration of property liable to confiscation. Based on the responses provided, the rapporteurs are of the view that there are procedures in place for management of seized instrumentalities, proceeds, as well as property of corresponding value. Whilst the rules for asset management may vary depending on the nature of the property and the type of the coercive measure applied, they are all applicable to instrumentalities, direct and indirect proceeds and/or their corresponding value. This is further confirmed by the results of the MONEYVAL 5th round MER from 2017, where Recommendation 4 was assessed as Compliant.

2. In case the seizure of assets is ordered, a special Decree No.11/2003 to be applied. The Decree, issued by the Ministry of Justice/Ministry of Interior/Ministry of Finance, regulates treatment, registration, pre-sale, and destruction of seized assets, as well as the rules of execution of confiscation. However, in case that sequestration is order, assets stay in the possession of the owner, but the notification is made in the public registry. Section 333(2) of CPC stipulates that during the sequestration, it shall be ensured that the value of the criminal assets is not reduced in any way beyond normal depreciation. The given asset remains in possession of those against whom the procedure was initiated, so that he/she/it can continue to manage the asset. Consequently, the activity aimed at preserving value falls on him/her/it and is in his/her/its interest. Nevertheless, if there is no public registry for certain type of assets, the economic operator shall be appointed to ensure sequestration. It seems that there are no

procedures in place which will, in such cases, ensure that there is no loss in value of the property concerned. In addition, the CPC (Section 333), states that in case the assets are seized or sequestered, they should be managed in accordance with what would be their use under 'usual circumstances'. According to Section 319, the institution of the sale of seized items, it is an opportunity to sale perishable goods, goods unsuitable for extended storage, goods with significant handling and storage costs, and at risk of depreciation. In addition to all of this, the institution of redemption can also be used for seizure (Section 318) and sequestration (Section 329), which includes the exchange of monetary collateral on the part of the owner or holder of the original asset, so this opportunity may significantly contribute to the prevention of loss of value of assets subject to coercive measures.

3. The person who is in a possession of the assets concerned is entitled to use them in order to preserve their value. The authorities are entitled to warn the possessor about his/her/its managing-safekeeping duties and check regularly if he/she/it complies with the obligations. The provisions of CPC Section 333 allow the competent authorities to impose the application of their recommendations/instructions on management of assets

4. As indicated above, there is no centralised unit responsible for the management of the seized assets, and this competence is divided between different investigative bodies.

Effective implementation

5. Hungarian authorities provided several cases where different assets were seized such as animal, oil, vehicles, equipment for cigarette manufacture, as well as securities. Examples provided management of seized instrumentalities, as well as proceeds of crime. It is obvious that authorities undertake measures when movable goods are seized, as well as in cases when some of them are perishable or dangerous. It can be concluded that there have been successful case examples of management of such assets. On the other hand, there are instances where court decision did not allow pre-sale which led to destruction of high value vehicles.

Conclusion/Recommendation

6. In Hungary, current legal system allows for management of seized property liable to confiscation in line with Article 6 of the Convention. Measures as described in the analysis above are applicable to legal persons and any complex assets that may be seized. For these, the management would be carried out in good faith and with aim to preserve their value and businesses. Given the system as established in Hungary, case by case management is applied in each seizure, including for complex assets.

Italy

1. In Italy, provisions on the management of seized and confiscated property are set forth by Art. 35 et seq. of the Legislative Decree no. 159, or so-called Anti-Mafia Code and preventive measures. This law forms basis for management of seized and confiscated assets deriving from the criminal offences of organised crime. On the other hand, Art. 104 bis of the Decree (part which concerns the application of criminal procedure code) provides that the provisions referred to in Articles. 35 et seq. of the Anti-Mafia Code are also applicable to cases of seizure and confiscation other than those adopted in the field of organized crime ('1-bis. *The provisions of Book I, title III, of the code referred to in Legislative Decree 6 September 2011, n. 159, and subsequent amendments shall apply in the part that contains the regulation of the appointment and revocation of the administrator, the latter's duties and obligations, and the management of the assets. When seizure is ordered pursuant to article 321, paragraph 2, of code for the purposes of the protection of third parties and in relations with the judicial liquidation procedure, the provisions of Title IV of Book I of the legislative decree above shall also apply.*') As noted in the general part of this report, Article 6 of the Warsaw Convention

makes a reference to Article 4, which specifies that property subject to freezing or seizure shall originate from money laundering or from the category of offences listed in the Appendix to the Convention. To that end, Italy received Compliant rating for Recommendation 4 according to the FATF 4th round MER from 2016.

The provision laid down in Article 110, paragraph 2, letters B-C of the Anti-Mafia Code covers the regime for temporary assignment of assets to local authorities. Whereas paragraph 5-bis of Article 40 sets out the rules for the provisional assignment of property to police, Articles 38 and 48, the latter is referred to in Article 110, assigning the asset management to the National Agency for seized and confiscated assets (ANBSC). At a seizure stage and until second-degree confiscation, the management of assets is carried out by a judicial administrator under the control of a delegated judge. The legislation also establishes that judicial authority may be supported by the ANBSC in order to allow the adoption of necessary measures for the best use of assets in view of their final confiscation. The ANBSC is responsible for the administration of assets after the final confiscation is approved. With regard to the subsequent use of confiscated assets, the legislator privileged the reuse of those assets for the benefit of local communities that experienced the presence of criminal organisations in their territory. Various other measures are foreseen how the confiscated assets are to be used and made available to different public and civil society organisations.

Effective implementation

3. In the responses to the 2022 Questionnaire, the authorities provided extensive examples of management of different types of confiscated property (movable and immovable assets, as well as companies) and tools introduced, such as the Central Database of judicial offices which gathers all data and information relating to the assets seized and confiscated from criminal organisations.

The authorities also presented the initiative undertaken by the Court of Reggio Calabria: the project, called “Banca dati Territoriale” [Territorial Database] which aims at preventing assets subject to *in rem* seizure from deteriorating and turning useless over time.

In addition, the authorities provided details of the ANBSC asset management activities, and in particular the way these assets were used for social, humanitarian and other purposes. Cases of management of complex assets, such as companies, were also presented.

Conclusion/Recommendation

4. Management of seized assets in Italy is in line with the requirements of Article 6 and demonstrated its effective application.

Latvia

1. In Latvia, there are legislative measures in place as laid down in Criminal Procedure Code, enabling management of seized and confiscated property. The authorities advised that seizure of assets is ordered with the aim to ensure confiscation of criminally acquired property, as well as any other property which might have been generated through committing criminal offences. These assets are managed pending decision on confiscation. Latvia received Compliant rating for Recommendation 4 in its MONEYVAL 5th round MER from 2018, meaning that the property as required by Articles 3 and 4 of the Convention is liable to confiscation. As a general rule set in Article 362 of the CPC, seized property remains in possession of the owner or its holder, whereas its further use is prohibited. In case of breach, criminal liability is to be established.

2. Authorities indicated that, in cases when tangible property is seized and, if it cannot be left in the custody of a person(s) in whose possession it is, it should then be deposited with the authorities designated by the Government (Section 365 (2) of the CCP). The procedures for storage of such property are determined in the Regulation No.1025 “Regulations Regarding

Actions with Material Evidence and Seized Property". Applicable rules are different, depending on the type of assets needed to be stored. Therefore, there are rules for storage of items linked to criminal offences, as well as money, materialised financial instruments, bills of exchange, shares, precious metals and stones. Also, authorities informed that new amendments introduced to the Regulations enable disposal of virtual currencies. In addition, there is a possibility to sell or destroy assets whose storage is not possible, or its further storage would cause losses.

3. In the 2022 HR Questionnaire, authorities stated that in case company's shares are seized, all the money which is due shall be transferred to the person from a capital company or co-operative society into the bank account indicated by the person directing the proceedings. Criminal Procedure Code (Section 361.1 Paragraph 4) states that, upon seizing capital shares (stocks) or co-operative shares, the person directing the proceedings may impose a duty on a capital company or co-operative society whose capital shares (stocks) or co-operative shares are seized, to transfer the funds which is due to the person from a capital company or co-operative society into the bank account indicated by the person directing the proceedings. The execution of the seizure may also be assigned to capital company or co-operative society whose capital shares (stocks) or co-operative shares are seized so that it would transfer the funds concerned to the relevant person from a capital company or co-operative society into the bank account indicated by the person directing the proceedings. Current regulation also ensures the impossibility of expropriating seized assets. All the civil yield arising or due from the seized property shall be considered seized (Section 632, para 3(1)).

In addition, it should be noted that according to Section 365 Paragraph 1 of the CPL property which has been seized may be left in storage with the owner or user thereof, his or her family members, or another natural person or legal person to whom the legal responsibility for the preservation of said property is explained. In the view of the rapporteurs, it seems that these measures are related to storage rather than management of seized assets.

Effective implementation

4. The MONEYVAL 5th round MER from 2018 stated that Latvia has a sound asset-management system which, however, need to strengthen its resources with specialised staff trained on management of sophisticated assets (such as, for example, company shares). In addition, the authorities provided a case when virtual assets were frozen and where they were held in a special wallet. In line with the Cabinet of Ministers Regulation No. 1025 "Rules on handling material evidence and seized property", five working days after receiving a permission to sale these virtual assets, market research aimed at evaluating sale options offered by VASPs was carried out and then the most advantageous virtual currency sale offer was chosen. In June 2022, the first sale of seized virtual currency took place, where a total of 327 512 € worth of virtual currency was sold.

Conclusion/Recommendation

5. Latvian legislation introduced measures enabling effective management of seized assets in line with Article 6 of the Convention. Whilst the new regulations on management of assets, especially virtual currencies are welcome, the country is recommended to continue with strengthening its asset management system. The on-going reforms and considerations of introduction of a specific asset management agency are welcome.

Lithuania

1. In Lithuania, the general provision of the Criminal Procedure Code (Art. 151) provides that seized property is transferred to safekeeping where it is held by the representative of the municipal authority, by the owner of that property or his family member(s). No issues with regard to property subject to freezing/seizure/confiscation were noted in the MONEYVAL 5th

round MER of Lithuanian from 2019. On the other hand, the MER was also listing different legal basis for asset management - Gov. Res. No. 634 of 26 May 2004 and Art. 93(4) and (5) and Art. 94(1) CPC. The Resolution regulates the grounds, procedure and accounting of transfer of property and real evidence to the State Tax Inspectorate (Ch.I and II; Ch.III, Sec.I, II, VI, X), issues of realization of the property, sale of property by conducting a tendering procedure, under the agreements concluded on the basis of the tendering procedure, in electronic auctions, in electronic shops (Ch.IV, Sec.I, II, IV, V, VI, VII, VIII), storage of strategic goods, management of property recognized as waste (Ch.VI), return of property (Ch.VII) and distribution of received funds (Ch.VIII).

Authorities, in their responses to the 2022 Questionnaire, indicated that significant part of the frozen or seized assets is managed by the pre-trial investigative authorities. If necessary, due to the specific nature of the seized assets, such property can be deposited with other natural or legal persons – those with experience in management of such assets. In such cases, receivers of the property are warned of their criminal liability in case they transfer, conceal, destruct or damage this property. Authorities also advised that Article 93 of the Criminal Procedure Code provides that items that may rapidly deteriorate, loose value or which storage and maintenance costs would be clearly excessive and which cannot be returned to the owner, should be sold (transferred) in accordance to the provisions laid down in the Code of Civil Procedure (realisation of seized assets). This possibility is often applied in pre-trial investigations related to the unlawful possession of excise goods, smuggling, legalisation of criminal assets, seizure of instrumentalities (i.e., vehicles), etc.

2. There are some procedures in place enabling disposal of perishable goods or whose storage and maintenance would be excessive (Article 93 of the Criminal Procedure Code).

3. There is no centralized agency dedicated for the management of seized assets has been established. Management of seized assets is fragmented between different authorities and number of internal regulations have been adopted guiding their activities.

Effective implementation

4. Lithuania did present two cases where seized items - minibus seized as an instrumentality and then transferred to the State Tax Inspectorate for further use/sale; and a seizure of a single-engine aircraft which was not operational, which then, by a virtue of the Prosecutor's decision, was transferred to the State Tax Inspectorate for sale. Whilst these cases provide that the authorities are using their powers to sell assets in line with the legislation, they do not provide sufficient basis for a firm conclusion on effective application of Article 6 of the Convention.

Conclusion/Recommendation

5. In Lithuania, provisions are in place which regulate storage and disposal of assets seized., However, the rapporteurs are of the view that they do not include active asset management. Therefore, the country is recommended to undertake legislative or other measures which would provide clear procedures for effective management of seized assets and designate authority(ies) to implement them in line with Article 6 of the Warsaw Convention.

Malta

1. Malta has undergone the COP assessment in 2014 and the follow up procedure in 2018. Based on the Criminal Code, the registrar is responsible for holding the property connected with criminal proceedings, until its final conclusion (including the eventual proceedings on appeal). The registrar is responsible for ensuring that all the property is properly catalogued, stored and preserved and kept in a secure place. With the approval of the Minister of Justice, the registrar may appoint another person or persons to hold the property on their behalf. The report also pointed out that there was no formal internal procedure on how the management

of different types of property is to be implemented. The legislator gave discretion to the registrar to determine the adequacy of the actions to be taken. Improvements in the system were noted in the 2018 follow up report which indicated that the Asset Recovery Office has been established, responsible for managing frozen/seized property.

2. Malta was rated Compliant on Recommendation 4 in its MONEYVAL 5th round MER from 2019, consequently there are no issues with regard to property subject to seizure/confiscation. In the responses to the 2022 Questionnaire, the authorities indicated that management of seized assets is laid down in Chapter 621 of the Laws of Malta. These provisions assign the Asset Recovery Office (ARO) with task to manage seized assets.

3. Authorities indicated that there are relevant legal provisions governing management of all types of seized assets deriving from all criminal offences. With the advancement of technology, the ARO is also dealing with virtual assets which are being identified in possession of the accused. To cater for such circumstances, the ARO is in an advanced stage of acquiring its own wallet to hold virtual assets. The Proceeds of Crime Act also caters for the appointment of administrators assigned to manage complex assets. Thus, in order to ensure that companies do not lose their value and would eventually need to shut down, a request may be done by the ARO to the Courts, for appointment of an administrator to manage the company in question. The administrator shall then report to the Court on all transactions and actions taken by the company and may also request the Court assistance in extra-ordinary matters. In certain situations, when deemed fit, the Malta Financial Services Authority (MFSA), appoint an administrator to manage the companies prior to the issuing of a freezing order by the Court which would have acquired a good understanding and knowledge of how the company operates during the period of his/her appointment. Thus, the ARO has reached an agreement with the MFSA, that when an administrator has already been appointed by the MFSA, the latter shall provide the name of the administrator to the ARO. Subsequently, when the ARO files a court application for the appointment of an administrator to manage the frozen company, the MFSA's administrator is recommended as a person to resume with his administration rather than appoint a new individual to carry out this task. ARO is also entrusted to cooperate with police and prosecutors at the early stages of the proceeding - to provide guidance to investigators on how to deal/evaluate the value of certain assets. The Proceeds of Crime Act allows the ARO to cooperate with the said authorities at an early stage of the investigations and not only at arraignment stage. Once assets are seized, comprehensive procedures are in place for their management, including the management of companies. Authorities introduced possibility to sell perishable or rapidly depreciating assets.

Effective implementation

5. The implementation of the provision on management of seized assets are demonstrated through case examples of the management of the seized legal person. Authorities provided a case where a restaurant was seized, and an administrator was appointed to manage it. Eight months after the administrator was appointed, the restaurant has been fully operational and continued to make profits.

Conclusion/Recommendation

6. Malta has a comprehensive legal system enabling management of seized assets, including management of complex and income generating property. Authorities implemented procedures for management of seized assets as laid down in Article 6 of the Warsaw Convention and demonstrated their effective implementation.

Republic of Moldova

1. The Republic of Moldova was assessed by the COP in 2014 whilst the follow up report was adopted in 2017. In the 2014 Report it was stated that legal framework did not envisage

measures for the management of assets subject to temporary measures (seizure). Therefore, it was recommended to take further legislative and institutional measures to ensure an adequate implementation of Article 6 of the Convention. The follow-up analysis noted that the new Law 48 has been passed which regulated management of the seized assets and established Agency for Criminal Assets Recovery within the National Anticorruption Centre. It was concluded that the mechanism was still subject to further development and the effectiveness could not be assessed.

2. In 2019, the Republic of Moldova was assessed by MONEYVAL and Recommendation 4 was rated Compliant, meaning that no issues were identified with regard to property subject to seizing/confiscation.

3. In their responses to the 2022 Questionnaire, authorities indicated that management of seized assets is set forth in Article 229/6 of the Criminal Procedure Code, Law No. 48/2017, and the GD no. 684/2018. There is a wide range of seized assets that can be managed, including crypto currencies, securities, shares. On the other hand, no information was provided which measures, apart from pre-sale of some goods, are envisaged within the asset management framework in the Republic of Moldova. With regard to pre-sale of assets, Moldavian legislation allows application of this measure in cases: (i) the storage and maintenance cost are disproportionate to the value of the goods; (ii) there is danger of rapidly decreasing the price of the seized assets.

4. Criminal Asset Recovery Agency (CARA) has been operational since 2018 as an autonomous institution in charge of managing seized assets. The Agency has a possibility to hire other natural or legal person to manage seized assets in case specific competences are required for this purpose.

Effective implementation

5. Moldavian authorities provided examples of different goods being managed by the Agency. In particular, there is a case example of virtual assets seized in the course of criminal proceedings which are stored in specially arranged virtual space. The authorities informed that further to the parallel financial investigations, CARA has identified and seized cryptocurrency worth about 111 thousand MDL (around 6000 €). These means of payment have been transferred to the electronic wallet managed by CARA and are still under its management.

Conclusion/Recommendation

6. In Moldova, legal provisions are in place enabling management of seized assets in line with Art.6 of the Convention. While from the case examples provided it can be concluded that there is a range of assets under management of CARA, authorities are invited to consider adopting specific procedures directing the management of complex income generating assets.

Monaco

1. The Monegasque legislation envisages (Art. 29 of the Law no 1398) that the Prosecutor General is in charge of managing frozen, seized and confiscated property. In the MONEYVAL 4th round MER, former Recommendation 3 was rated Largely Compliant - technical shortcomings concerned inexplicit coverage of all aspects of the definition of “property” and shortcomings with regard to confiscation of property of an equivalent value – this was only possible in relation to ML.

2. As the current asset management system is concerned, the Prosecutor General is obliged to undertake measures as necessary to preserve the value of seized assets. Authorities informed that in case the money is frozen, the bank will be notified. In case immovable assets are seized then the Registry of immovable property is notified. Nevertheless, there are no legal provisions which would provide for management of other types of assets, such as high value

cars, yachts, securities, etc. In addition, the provisions on management of immovable asset appear not to be broad and comprehensive enough to allow the proper management of these assets aiming at preserving or increasing their value.

Effective implementation

2. In the responses to the 2022 Questionnaire, authorities did not provide specific case examples on successful asset management but indicated that they are considering undertaking measures in order to establish management of the seized and confiscated assets as envisaged by the EU Directive 2014/42/UE.

Conclusion/Recommendation

3. The current legal framework in Monaco, applies Art.6 of the Convention only to some extent. It seems that a proper management of seized assets is not in place. Therefore, Monaco is recommended to ensure that procedures for managing frozen and seized assets are introduced and that they include all property subject to confiscation as envisaged in Articles 4 and 5 of the Warsaw Convention.

Montenegro

1. The 2014 COP Assessment Report on Montenegro noted that the country has taken legislative measures with regard to the management of seized/frozen movable and immovable assets. Montenegro enacted a law on Management of Temporary and Permanently Seized Property which regulates the management of seized and confiscated assets in criminal or misdemeanour proceedings. In addition, there was specialised unit - Property Administration which successfully managed seized property, including real estate, hotels, movable property and funds. Rapporteurs noted that the Property Administrations had sufficient resources.

2. The legal bases for management of seized and confiscated property is outlined in the new Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity ('the Law') from 2015 as amended in 2019. Article 54 of the Law stipulates that management of seized assets should be conducted in a manner which guarantees the highest level of preservation of value at the lowest costs possible. Article 5 (3) of the Law establishes specialised administrative body authorized to manage seized and confiscated property and instrumentalities. The Law also contains provisions for the sale of perishable goods. In case these goods are not sold, they are given to the institutions responsible for social welfare matters or are destroyed. While those measures are important, rapporteurs are of the view that there are no specific provisions which would provide guidance on how to manage different type of assets, such as complex legal structures which generate income. Montenegro has not yet passed its MONEYVAL 5th round mutual evaluation, but the follow up process to its 4th round MER concluded that confiscation measures apply to instrumentalities, proceeds and property of corresponding value. Confiscation from third parties is also possible.

Effective implementation

3. In the responses to the 2022 Questionnaire, authorities provided number and value of seized assets, managed by the Agency, which shows that movable, as well as immovable assets have been frozen. However, there is no information or example which measures are undertaken in order to preserve the value of seized assets pending confiscation.

Conclusion/ Recommendation

4. In Montenegro, there are legislative measures in place enabling management of seized assets in line with Article 6 of the Convention. However, based on the information provided it could not be concluded whether specific procedures are in place to enable management of different type of assets such as companies, securities, virtual currencies or income generating assets. Therefore, the country is recommended, if this has not been done yet, to consider

adopting such procedures/guidance which would foster the management of all types of assets seized.

The Netherlands

1. Dutch legislation has several legal provisions to ensure proper management of frozen or seized property. Articles 116, 117, 118 and 119 of the Dutch Code of Criminal Procedure (WvSv) provide the legal basis for the management of frozen or seized assets. Given the findings of the FATF 4th round MER on the Netherlands from 2022 (Recommendation 4 is rated Compliant) it can be concluded that instrumentalities, proceeds of crime or property of equivalent value deriving from all criminal offences are subject to asset management.

2. There are several ways how to manage seized assets: (i) return of assets to the legitimate owner; (ii) interlocutory sales and (iii) safekeeping. The seized objects may be sold, destroyed, relinquished, or used for a purpose other than the investigation only with authorisation of prosecutor. However, in case assets are sold, profit obtained is also subject to seizure.

3. The Asset Management Office (AMO), which is a part of National Authority for Seized Goods (LBA), within the Public Prosecutor's Office, is responsible for coordinating seized property. It is the centralised authority which, besides coordinating, also functions as advisory and expertise body in all stages of the seizure process, including the pre-planning stage. Authorities advised that there is a Decree on Seized Objects (BIV) which further elaborates application of the provisions of the Criminal Procedure Code regarding management of seized assets.

4. Upon decision of the AMO, seized assets are deposited in one of the national storages, such as the Movable Property Agency (DRZ). DRZ stores all seized domestic assets, such as vehicles, jewellery and vessels, except for specialised or complex items such as weapons and munition, counterfeit money or fake travel documents, the latter being managed by the police, the Netherlands Central Bank (DNB) and the Royal Marechaussee respectively. DRZ stores the assets in accordance with the decision of the prosecutor and Organizational Regulations and State Movable Goods Material Management Regulations.

5. The AMO also manages and aids in the pre-planning stage of complex assets. In the case of virtual assets, there is no need to store them as they are directly sold after seizure was executed. Under the management and supervision of the AMO, a third party sells the virtual assets. In the case of shares, the shareholder is notified that its shares are registered as no longer usable for trading. The shares remain in the financial institution for as long as the seizure lasts. Value shifts or sudden reduction of value is at the risk of the shareholder. In case of foreign seized assets, again, AMO manages and decides on the process.

Effective implementation

4. Dutch authorities provided the number of seized assets which are under the management of Movable Property Agency. Moreover, in a recent case, the Netherlands police seized NFTs (<https://www.politie-nl.translate.google.nl/translate?sl=auto&tl=en&hl=en-US&pto=wapp>) and the Fiscal Intelligence and Investigations Service (FIOD) seized significant amounts of virtual assets (<https://www.om.nl/actueel/nieuws/2021/11/08/fiod-en-om-leggen-beslag-op-meer-dan-25-miljoen-euro-aan-cryptovaluta-in-witwasonderzoek>).

These examples demonstrate that this Article of the Convention is applied in practice in the Netherlands.

Conclusion/Recommendation

5. The Netherlands has measures in place to ensuring management of frozen and seized assets as laid down in Article 6. The authorities are encouraged to continue with their efforts and further develop good practice in applying Article 6 of the Convention.

North Macedonia

1. In North Macedonia, legal provisions for the management of seized and frozen property are set up in the Law on Managing Confiscated Property, Property Benefit and Ceased Objects in Criminal and Misdemeanour Proceedings. North Macedonia has not yet passed the 5th round mutual evaluation, but in the MONEYVAL 4th round MER from 2014, Recommendation 3 (confiscation measures) was rated largely compliant. Shortcoming included the fact that confiscation of corresponding value does not apply to instrumentalities. In their responses to the 2022 Questionnaire, the North Macedonian authorities advised that they are able to manage different categories of seized assets, however, no detailed procedure has been provided in this regard. The responses indicated that there is a possibility to sell seized assets, but there is no information under which circumstances this can be done.

2. A specialised agency for the management of seized and confiscated property has been established in 2009. Based on the examples provided, agency is authorised to destroy some specific goods such as drugs, weapons and alcohol products. From the explanations provided by the authorities, it appears that seizures include goods which are subject of a particular crime (such as drugs or smuggled goods) but it remains unclear what exactly happens with direct or indirect proceeds of crime. In addition, the authorities did not provide specific regulations concerning relevant asset management procedures, neither an information if such management is available out only when the judgment on final confiscation is brought.

Effective implementation

3. In the responses to the 2022 Questionnaire, authorities indicated number and value of assets under management. The statistics relate to confiscated assets only. Therefore, the rapporteurs cannot form a view on the effective implementation of measures in place.

Conclusion/Recommendation

4. While the legislation provides some measures on management of seized assets, concerns still remain whether all necessary tools are available with regard to management of proceeds of crime and not only specific goods/assets seized in the course of investigation. In addition, it is unclear if the property of corresponding value and the instrumentalities of crime could be subject to asset management. Therefore, the country is recommended to ensure that there are appropriate provisions in the legislation which would enable management of assets resulting from seizures as envisaged by the Convention, as laid down in Article 6.

Poland

1. Poland has undergone the COP assessment in 2013 and was reassessed three times under the follow-up procedure (in 2015, 2016 and 2017). These assessments found that there was no legal framework regarding the proper management of frozen and seized assets which would respond to the requirements of Article 6 of the Convention. Some procedures were in place but they covered only funds from bank accounts, as well as objects discovered or surrendered during police search. Movable property was stored in warehouses of the Police or other LEAs. In addition, procedure was in place for sale of seized assets if they represent perishable goods or if there was an unreasonable expense of their storage. The report recommended Poland to *introduce a comprehensive procedure for managing seized assets of all sorts (e.g., including all those assets varying in type, nature and value).*

2. In their responses to the 2022 Questionnaire, the authorities indicated that provision on the management of seized property are contained in the Criminal Procedure Code (Art. 238-235). In the MONEYVAL 5th round MER from 2021 Poland was rated Partially Compliant with Recommendation 4 as a shortcoming was identified with regard to the lack of confiscation of intangible assets. Generally, the seized assets are deposited with a trustworthy person who's obliged to present the items whenever that is required (Art. 228 of the CPC). However, in case the seized items may cause danger for life or health (weapons, ammunition, explosives or flammables, radioactive materials, toxic, suffocating or vesicant agents, psychotropic substances, tobacco and alcoholic products) they are stored in warehouses of the Police or other law enforcement agencies. In case of seizure of currency, it is paid in the depositary banking account of the local court. Apart from these legal provision regulating the placement of seized assets, there is no established system or procedures to be followed to manage assets.

3. Based on the responses provided, there is no centralised authority responsible for the management of the seized assets. This is also reaffirmed by the findings of MONEYVAL 5th round MER from 2021.

Effective implementation

4. Authorities did not provide examples of the effective management of seized assets.

Conclusion/Recommendation

5. While there are some measures in place dealing with the management of seized property, Polish legislation did not introduce specific asset management procedures that are in line with Article 6 of the Warsaw Convention. Therefore, authorities are recommended to undertake legislative or other measures which will establish a proper mechanism for managing of different assets including those which are complex and income generating.

Portugal

1. Portuguese authorities indicated that the provisions on management of frozen and seized assets are mainly envisaged in the Law 45/2011. Given the findings of the FATF 4th round MER on Portugal from 2017 on its compliance with Recommendation 4, it could be concluded that instrumentalities, proceeds of crime and property of equivalent value are subject to asset management. Asset management rules are applicable for assets independently of the offence they derive from, on an "all crime approach" basis. As long as assets have been seized or frozen, there is an obligation on the State to manage them through the Asset Management Office (Article 10(1) of Law 45/2011), or through proceedings ordered by the judicial authority in charge of the respective procedural stage (during the investigation stage by the Public Prosecutor's Office, during the trial stage by the judge). Asset Management Office (GAB) is mandated by judicial authorities or the Asset Recovery Office (GRA) to manage seized assets with value of 5.100 Euros and above, and, independently of such value, it manages assets such as cars, ships and aircrafts. With regard to specific rules on asset management, the authorities advised that, apart from general rules provided for in the Code of Criminal Procedure (i.e. management of perishable and deteriorating assets), there are several other pieces of legislation on this matter: (i) Decree-Law n. 11/2007, which regulates evaluation, use and disposal of assets seized by criminal police agencies; (ii) Decree-Law n. 31/85 on the use by the State of motor vehicles seized in criminal or administrative offence proceedings, as well as those that are confiscated or abandoned; and (iii) Decree-Law n. 170/2008, establishing the legal system for the State's vehicle fleet. There is also the possibility to sell or re-use perishable or depreciated assets for public or social purposes in justified cases.

3. Since 2017 Article 11-A of Law 45/2011 introduced the possibility of the GAB to request the cooperation of entities with competence and expertise when managing complex assets. Article

11-A specifies that this may happen whenever the management of the assets proves to be of special complexity or requires special knowledge. Article 11-A also determines that, whenever possible, public entities with competence and expertise in asset management should be prioritised when such requests are to be made, and that the GAB can promote the signing of protocols with the relevant entities for such purposes.

Effective implementation

4. While authorities presented statistics on types and value of seized assets, the rapporteurs are of the opinion that this data does not provide a basis for a firm conclusion on how Art. 6 is effectively applied in practice. Moreover, in 2017 FATF MER it was stated that the Asset Management Office was understaffed and lacking the necessary IT infrastructure to effectively perform its functions. Authorities advised that during the last year, GAB has strengthened its team, currently with 7 senior technicians employed. They also reported that the implementation of a platform for the management of seized assets is underway, to be operated only at the GAB level. This is an internal management tool of the GAB, which will also serve as a pilot project for an integrated platform for seized assets to be shared with other stakeholders.

Conclusion/Recommendation

5. The Portuguese legal and institutional frameworks transmit the requirements of Article 6 of the Warsaw Convention. Whilst noting this fact, the rapporteurs encouraged the authorities to continue with their reforms and thus further strengthen the system in place.

Romania

1. Romania has undergone the COP assessment in 2013. The rapporteurs noted that there were measures in place for managing seized assets. Management was carried out by the Romanian Police, which would be assisted, in case of selling confiscated assets, by the National Agency for Fiscal Administration (ANAF). At the time of the assessment, the Asset Recovery Office was established, but not yet assigned with the task of managing seized and confiscated assets. Romania has not yet passed the MONEYVAL 5th round mutual evaluation. However, in its 4th round MER it was concluded that confiscation measures apply to instrumentalities, proceeds of crime and property of equivalent value. Whilst in the previous round it was concluded that the confiscation from third parties were missing, Articles 112 and 112¹ of the Criminal Code appear to rectify this deficiency.

2. In their responses to the 2022 Questionnaire, the authorities indicated that management is envisaged for assets seized in special or extended confiscation proceedings or for the purpose of execution of a criminal fine, legal costs or compensation for the damage caused by the crime.

3. Legal provisions enabling management of these assets are set forth by the Criminal Procedure Code as amended in 2022. In 2015, the law was adopted setting up the National Agency for the Management of Seized Assets (NAMSA). Whilst NAMSA has broader scope of competencies than just being in charge for asset management, Article 3, para. 2 and 3 of the Law no. 318/2015, states that one of its key functions is to: (i) secure management, in the cases specified by this law, of movable assets seized in criminal proceedings; (ii) sale, in the cases established by law, movable and immovable assets subject to seizure in criminal proceedings.

4. In this respect, NAMSA, at the request of the prosecutor or of the court, temporarily stores and manages seized movable assets whose individual value exceeds, at the moment when the seizing measure is ordered, the equivalent in of EUR 15,000 and stocks of assets whose

individual value exceeds, at the moment when the seizing measure is ordered, the equivalent of EUR 300,000; for this purpose, the Agency is appointed as custodian of this property. In addition, Art. 252¹ of the Criminal Procedure Code - Special cases of sale of seized movable assets provides that (i) *During the criminal trial, before return of a final judgment, the prosecutor or the court ordering the distraint may immediately decide to have the seized movable assets sold, at the property owner's request or when the latter's agreement is secured;* (ii) *During the criminal trial, before return of a final judgment, when agreement from the goods' owner cannot be secured, movables assets upon which distraint was established can be sold, exceptionally, in the following situations:*

a) when, within one year from the distraint ordering date, the value of the seized goods has decreased significantly, i.e. by at least 40% compared to the time of enforcing the asset freezing. Art. 252 par. (1) shall apply accordingly in this case, too;

b) where there is the risk of expiry of the guarantee or when the distraint was applied against live stock or birds;

c) when the distraint was enforced against flammable or petroleum products;

d) when the distraint was enforced against goods the storage or maintenance of which involves expenses disproportionate to the value of the property.

(3) During the trial, before return of a final judgment, when the following conditions are cumulatively met: the owner could not be identified and the sale cannot be performed according to par. (2), motor vehicles subject to distraint may be sold in the following cases:

a) when they were used, in any manner, in the commission of the offense;

b) if a time period of one year or more has passed since the date of ordering asset freezing against such goods.

(iv) The sums of money resulting from the capitalization of movable assets performed pursuant to par. (1) and (2) shall be deposited in the name of the suspect, the defendant or the person with civil liability, at the disposal of the judicial body having ordered the distraint. Art. 252 par. (8) on filing the deposit receipt shall apply accordingly.

5. The authorities also advised that types of assets listed in the Romanian legislation, which are subject to management, are not exhaustive.

6. While there is a procedure for how to manage assets, it is not clear if the NAMSA has asset management guidance or general instructions on management of different types of assets.

Effective implementation

7. The implementation of the provisions on management of seized assets was demonstrated through the numbers and value of seized assets under the competences of the Agency for the Management of Seized Assets. In addition, several cases on asset management were provided confirming that the Agency has successfully managed different types of assets (luxury cars, real estate/enterprise, virtual assets) confirming the effective application of Article 6 in practice.

Conclusion/ Recommendation

8. In Romania, there are legislative measures in place enabling management of movable assets. Whilst noting the positive developments in the country on asset management, the authorities are recommended to consider developing internal guidance to NAMSA which would facilitate their management of seized assets.

Russian Federation

1. Russian legal system allows for management of seized and confiscated property. Provisions of the Criminal Procedure Code (CCP, Art. 81 (1)) provide for the management of seized: (i) instruments, equipment or other means used for committing a crime; (ii) money and other property obtained as a result of a crime; (iii) other objects and documents that can serve as means for detecting a crime and establishing the circumstances of a criminal case. When those assets are seized, they are recognised as evidence. While these provisions are broad enough, it does not cover management of property of equivalent value as required by Article 6. Furthermore, the FATF 4th round MER on Russia from 2019, under Recommendation 4 which was rated as Largely Compliant, noted that CPC does not allow confiscation of property of equivalent value. The Russian authorities, however, advised that Article 104.2 of the Criminal Code establishes the power of the court to decide, in the event when it is impossible to confiscate a particular item, to confiscate either the amount of money that corresponds to the value of that item or other property which value corresponds to the value of the item to be confiscated or is comparable to the value of that item.

2. Authorities indicated that when instrumentalities are seized, a special procedure is established for their storage (Art. 81 and 82 of the CCP). However, some material evidence are stored in accordance with the Decree No. 449 "On the conditions for storage, accounting and transfer of material evidence in criminal cases". For the proceeds of crime that are recognised as material evidence (such as money, valuables, and other property) there are several ways how they can be stored: (i) at the discretion of the person who performed the seizure; or (ii) to the owner of the property or to another person, with the notification on the responsibility for its safety (CCP Art. 115 (5)). In accordance with Part 4 of the CCP, assets seized during pre-trial proceedings, but not recognized as material evidence, shall stay with persons from whom they were seized. In addition, the seized property may be transferred, at the discretion of the competent officer who carried out the seizure, for storage, to the owner of this property or any other person who must be informed about the limitations that the seized property is subject to and the responsibility for its preservation.

3. While there are a variety of measures in place enabling storage of seized assets, it appears that there is no clear procedure for management of seized assets, especially when complex and income generating assets are seized.

4. In Russia there is no centralised office for management of seized assets. LEAs manage most of the assets they seize during the course of investigation. However, once confiscated, the assets are handed over to the Federal Property Management Agency, which appraises and auctions them with the assistance of approved contractors.

Effective implementation

5. In the responses to the 2022 Questionnaire, Russian federation, did not provide any information on the effective management of seized assets.

Conclusion/Recommendation

6. In Russia, legal system provides measure for storage of seized instrumentalities and proceeds of crime, which, to some extent, corresponds to requirements of Article 6. There is no procedure enabling effective management of different types of assets, including complex assets such as securities, companies, virtual currencies, etc. In addition, since there is no possibility to confiscate property of corresponding value, it has a cascading effect on implementation of the Article 6 of the Warsaw Convention. Therefore, authorities are recommended to undertake legislative measures enabling management of seized assets as required by the Article 6 of the Warsaw Convention, and to include among them the assets seized as a property of equivalent value.

San Marino

1. In San Marino, there are legislative measures in place enabling seizure of instrumentalities, proceeds of crime and property of equivalent value in order to secure further confiscation. In addition, no issues with regard to property subject to seizure and confiscation were noted in the MONEYVAL 5th round MER from 2020, – Recommendation 4 was rated compliant. Once assets are seized, authorities advised that there are measures in place enabling their proper management. Authorities advised that the legal provisions dealing with the management of seized/confiscated assets are the following: (i) Article 147 of the Criminal Code (Confiscation); (ii) Art. 58 quarter of the criminal procedure code (Preservation order and advance registration of the lien); (iii) Art. 58 quinquies of the criminal procedure code (Preventive seizure) and (iv) Art. 58 sexies of the criminal procedure code (Preventive seizure for the purpose of confiscation and confiscation in case of extinction of the crime). These Articles, however, mostly refer to the evidence preservation as necessary for ascertaining the facts and the truth in the criminal proceedings. On the other hand, the rules and principles that allow the judge to make use of experts and custodians are relevant for the management of assets.

2. Given the small size of the country, there is no specialised authority dedicated only to the management of seized and confiscated assets. The investigative judge manages seized and confiscated assets. In order to preserve the value of these assets, the judge may appoint an expert who is entrusted with assets management. Experts are appointed primarily in cases of non-monetary movable assets (e.g., real estate) or for management of seized or confiscated company's shares. When money is frozen, investigative judge decides on case-by-case basis, whether the money will be held on the existing bank account, or the funds will be transferred in a new bank account opened at the Central Bank. In the decree, the judge specifies the terms and methods of the assignment. The expert is required to report all his/her actions to the judge and to request authorization for how to act. There are no specific rules guiding the management of different assets, neither the specific rules providing a possibility to sell seized assets before confiscation is ordered.

3. In the 5th round MER of San Marino it was noted that existing asset management works well with minor cases, however, it could quickly reach its limits in complex cases with multiple seizures of proceeds (such as cars, boats, real estate with multiple tenants, shares and bonds). Moneyval report encourages *San Marino to consider creating a more dedicated structure for asset management – while this might not necessarily have to be a single-purpose authority, and could be hosted within another institution, a unit of asset management specialists would increase the efficiency of the system while i.a. alleviating the members of the judiciary from a task that comes in addition their normal functions.*

Effective implementation

4. The authorities provided a case example involving a company that owns many properties, which was seized and then entrusted to an expert, demonstrating that the legal framework, as described above, is applied in practice.

Conclusion/Recommendation

5. In San Marino, there are measure in place enabling management of the frozen and seized assets as required by Article 6. Given the findings and recommendations of the MONEYVAL 5th round MER on San Marino which concern asset management, the authorities are encouraged to follow up on them.

Serbia

1. Serbian legislation envisages management of seized and confiscated property originating from criminal offences as listed in the Law on confiscation of property derived from criminal

activity (Art. 3). Furthermore, the law provides definition of the property deriving from criminal activity and it covers property that is manifestly disproportionate to the lawful income of the accused person. Serbia was rated Largely Compliant for Recommendation 4 in its MONEYVAL 5th round MER from 2015, where only shortcoming was identified with regard to confiscation of some instrumentalities.

2. In their responses to the 2022 Questionnaire, the authorities indicated that a special directorate within Ministry of Justice is entrusted with the task of managing seized and confiscated property (Article 8 of the Law). Management of assets can be dealt by in one of the following manners: (i) leaving the property in the possession of the owner; (ii) entrusting another natural or legal person with the management of temporarily seized assets; (iii) depositing assets to be safeguarded by specialized institutions (historical, artistic and scientific goods); and (iv) depositing seized foreign currency, precious metals, precious and semi-precious stones and pearls to the National Bank of Serbia for safekeeping. In all cases the Directorate manages seized assets with due diligence and/or due and reasonable professional care. In order to ensure the value of temporarily seized assets, the Directorate may sell movables assets. While those measures are important when managing assets, authorities did not indicate any other measures available for managing assets (e.g., procedures for managing immovable property, legal entities/companies, etc.).

Effective implementation

3. Authorities submitted statistics on different types of seized property which was manifestly disproportionate to the lawful income of the accused person, for the period 2019-2021. From these submissions it can be observed that the Directorate has managed different types of assets such as houses, business premises, vehicles. Whilst these cases prove that some aspects of asset management system are effective, no information was provided on the mechanisms of preserving the value of seized or confiscated assets.

Conclusion/Recommendation

4. In Serbia, there are legislative measures in place enabling management of seized property which is manifestly disproportionate to the lawful income of the accused person. The existing framework largely addresses the requirements of Article 6. Given the shortcoming noted with regard to some types of instrumentalities, the authorities are recommended to add this component as a part of property subject to seizure and thus subject to management as required by Article 6 of the Convention. In addition, the authorities should consider developing procedures for management of different type of assets including those which are complex.

Slovak Republic

1. In Slovakia, there are different legislative measures enabling management of seized assets. Competency over assets' management depends on whether they are used as evidence in criminal proceedings or not. In case seized assets are not presented as evidence, they are managed in accordance with the legal provisions laid down in Act No. 312/2020 (Section 10-15).

2. Slovakia has been rated Largely Compliant on Recommendation 4 in the MONEYVAL 5th round MER from 2020, where shortcomings have been identified in relation to confiscation of laundered property and third-party confiscation.

3. According to the Act No. 312/2020, seized assets should be prevented from unreasonable devaluation. In addition, it should be ensured that their value increases. The law further clarifies all the possibilities when managing different type of assets, including ownership interest. Some of the management tools include right to claim for compensation for damage, regularly monitor debtors' payments, claim invalidity of a legal act or contest a legal act taken by a third person which results in fraudulent conveyance with respect to the seized property.

There is also a procedure in place for advanced sale of the seized property prior to confiscation.

4. In August 2021, authorities set up a specialised agency – Office for the Management of Seized Property, which is in charge for management of the above-mentioned assets. In cases when specific expertise is needed, the Office may assign the management of assets to an authorised person or a contracted trustee.

5. In their responses to the 2022 Questionnaire, the authorities indicated that there are different rules applied when managing assets that are necessary for evidentiary purposes. Moreover, in that case, assets are managed by the rules stipulated in the Regulation of the Minister of Interior no. 175/2010. Such assets are kept by the police, prosecutor's office or court that ordered seizure. If specificities of seized assets require special safekeeping, they may be provided to another public authority or natural or legal person. While there is a procedure for destruction and advanced sale of such assets, there are no other procedures which concern their management as long as they are used as evidence in criminal proceedings. Authorities confirmed that in case when these assets are no longer used for evidentiary purposes, they would be handed over to the Office or other receiver as per articles 94(2) and 98(a) of the CPC.

Effective implementation

6. Since the establishment of the Office for the Management of Seized Property, authorities informed that they are managing large volumes of seized property including real estate, vehicles, businesses/companies and financial assets in the form of securities and funds on different bank accounts. While rapporteurs acknowledge the results achieved by this newly established institution, for the purpose of assessing effectiveness, examples of exact actions undertaken when managing income generating assets would be needed.

Conclusion/ Recommendations

7. Slovakia undertook legislative and other measures in order to manage seized assets which are largely in line with Article 6 of the Convention. While establishing a specialised unit for asset management and developing particular rules are a positive step forward, a shortcoming noted with regard to the confiscation and thus management of laundered property and property seized from third-party still remains. In addition, the country should consider enhancing the management of seized assets which serve as evidence. Therefore, authorities are recommended to ensure that legislation includes laundered property and confiscation from third parties as property subject to seizure/confiscation. It is also recommended to consider if dedicating all asset management tasks to newly established Office for management of seized property would be an appropriate way forward.

Slovenia

1. In Slovenia, measures enabling management of seized and confiscated assets (instrumentalities, proceeds and property of equivalent value) are in place. Slovenia was rated Largely Compliant with Recommendation 4 in its 2017 mutual evaluation, whereas no shortcomings were identified with regard to confiscation of instrumentalities, proceeds and property of corresponding value. Procedures for the management of seized assets are different depending on whether the provisional measure of seizure is ordered in criminal proceeding or in the proceeding of non-conviction-based confiscation. While management of assets in criminal procedure is set forth in the Criminal Procedure Code, the management of seized assets in a non-conviction-based confiscation is envisaged in Forfeiture of Assets of Illegal Origin Act.

2. In criminal proceedings movable assets are kept by the court while seized money is kept on the courts' deposit sub-account. The court can decide that assets are to be kept by

enforcement agents or external contractors depending on the specificities and nature of these assets. The storage of assets is supervised by a commission established by the Ministry of Justice. However, these measures only regard storage of assets, rather than their management. Also, there is no procedure for management of immovable property or any complex assets.

3. For non-conviction-based confiscation the Forfeiture of Assets of Illegal Origin Act envisages different agencies competent for securing and managing of assets. The Capital Asset Management Agency is entrusted with management of equity securities, the Ministry of Finance - for other financial assets, the Financial Administration - for movable property, the Farmland and Forest Fund - for agricultural lands and forests and the Public Real Estate Fund - for other real estate. The central record of seized property is kept by the Financial Administration. However, authorities did not indicate whether the special procedure is in place when managing different assets by different authorities.

4. Authorities also indicated that when managing assets regardless of whether they were seized in criminal or non-conviction based confiscation, there is a possibility for these assets to be sold, if the cost of storage is disproportionate or the value of asset is decreasing. However, authorities indicated that since numerous authorities are involved in asset management, they are facing problems especially when the value of seized asset is changing rapidly.

Effective implementation

5. Slovenia did not provide any example of the management of seized property. However, authorities indicated that they initiated process of assessing the existing system of management of assets and that they will adopt measures for making the system more effective and expedient.

Conclusion/Recommendation

6. In Slovenia, there are measures in place enabling management of seized assets. Whilst acknowledging that those measures are important, it appears that some elements are still missing. Therefore, the authorities are recommended to continue with the reforms in order to enable management of different assets ensuring preservation of their value pending final confiscation. Besides, procedures should be in place for governing the management of complex assets, including legal persons, securities and those which generate income.

Spain

1. In Spain, there are legislative measures in place enabling management of the seized and confiscated assets. Authorities indicated that in 2015, the new Organic Law 1/2015 was passed, based on which the Asset Recovery and Management Office (ORGA) was set up. Whilst being competent for identification and recovering of assets, the ORGA is also entrusted with asset management. Whilst the authorities also advised that asset management is applicable to assets seized from any criminal offence, ORGA is competent to manage only those assets deriving from offenses for which the extended confiscation is applicable as per the Criminal Code (CC).

2. Spain was rated Compliant with Recommendation 4 in its FATF 4th round MER from 2014 whereas no issues have been identified regarding confiscation of instrumentalities, proceeds and property of equivalent value. Further to this finding, the authorities confirmed that the legislation includes management of assets deriving from each of the specific seizure/freezing/confiscation measures applied as per FATF Rec.4.

3. From the responses provided in the 2022 Questionnaire, it could be concluded that judicial authorities (i.e., an individual judge) are those who decide whether or not to entrust the

management of the assets to any agency. The only criterion that must be taken into account - if the asset(s) is(are) to be entrusted to ORGA - is that the assets were generated through commission of crimes for which the CC establishes the possibility for extended confiscation (i.e. the most serious offences with greater economic content). In addition, and depending on circumstances of the case, assets may be: (i) sold (even in advance), (ii) delivered for provisional use, (iii) delivered to certain organizations (if the economic value is minimal), (iv) destroyed and (v) retained.

ORGA can take any of these paths, except when it comes to managing companies or similar entities. In such cases ORGA is excluded and the judge must appoint an administrator on a case-by-case basis.

Effective implementation

4. From the statistics provided by the authorities it can be concluded that there are different types of assets managed by different authorities. Nevertheless, there are no explanations on specific measures undertaken throughout the management process. The information was not specific enough to conclude if the statistics provided concern seized or confiscated property.

Conclusion/Recommendation

5. Spain introduced management of seized property which features the requirements of Article 6. The system, as it stands, provides for different measures to be applied by different authorities when managing criminal assets. Whilst noting this factor, the rapporteurs encourage the authorities to consider extending the competencies of the Asset Recovery and Management Office.

Sweden

1. Sweden has introduced legislative measures, which, to some extent, enable management of frozen and seized assets. According to the Chapter 26 Section 3 and Chapter 27 Section 10 of the Swedish Code of Judicial Procedure, read in conjunction with Section 12 and 13 of the Act on penalties for money laundering offences (2014:307), property that has been taken into custody or is subject to seizure shall be kept with good care and under close supervision. The Swedish Police are assigned as responsible authority to manage seized property (Government Bill, prop. 2007/08:68). Organisational structure for managing frozen/seized property within Police was subject to reform in 2017. Since then, the organisation consists of a network of national, regional and local coordinators that support the local police organisation in managing frozen/seized property. In 2018 a mandatory educational module was introduced to provide all police employees with knowledge of the overall management of frozen/seized property.

2. In accordance with Chapter 26 Section 3 b and Chapter 27 Section 13 of the Swedish Code of Judicial Procedure, records are to be kept on property that is subject to custody or seizure. The records shall accurately state which property is subject to the measure, where and when the measure was taken, the purpose of the measure and who was present when it was taken. If the person whose property is subject to the measure is not present when the measure is taken, he or she shall be informed of it and of what has happened to the property, without delay. The person whose property is subject to such a measure shall, upon request, receive evidence of the measure. The evidence shall also contain details of the offence suspected.

3. In cases when cash or bank accounts are seized, they are deposited in an interest-bearing account, except when cash serves as evidence. Seized financial instruments (such as cashier's checks, money orders, certificates of deposit, securities, bonds, and brokerage

accounts) shall be deposited by using procedures that preserve or redeem their value. Moreover, the Swedish Police Authority have guidelines for the management of assets. These guidelines, which were provided by the authorities, assist in seizing and managing cash, securities and vehicles. No other assets are included in these guidelines. Sweden has undergone FATF 4th round mutual evaluation in 2017. Whilst under Recommendation 4 no issues were noted with regard to type of property and parties from which it can be confiscated, it was noted that there were no established mechanisms or procedures for managing all seized or confiscated assets, including (potentially) income-generating or perishable assets.

Effective implementation

4. In their responses to the Questionnaire, authorities advised that a revised handbook was produced in 2022 by the Economic Crimes Authority and the Prosecution Authority. The content of the handbook is based on the relevant regulations and general guidelines on seizure and management of assets. Moreover, the handbook includes descriptions of relevant court cases. In addition, the Police are currently finalising a handbook focusing on their specific responsibilities in the process of managing frozen/seized property. The handbook is to be published early in 2023. Further to this, no cases of specific management of assets were provided, thus making it difficult for the rapporteurs to conclude on effective implementation of asset management measures.

Conclusion/Recommendation

5. There are measures in place in Swedish legislation regarding inter alia storage of assets, which satisfy some of the requirements of Article 6. On the other hand, measures for managing assets other than cash, securities and vehicles, as well as the possibility of selling perishable goods are yet to be introduced. Consequently, the authorities are recommended to include these measures in their asset management framework.

Türkiye

1. Turkish legislation, in particular the Regulation on Property of Offense which entered into force in 2016, envisages procedures and principles for preservation, seizure, transfer, disposal, return, confiscation and destruction of assets. Türkiye has been rated Compliant with Recommendation 4 in its FATF 4th round MER from 2019, consequently, there are no issues with regard to assets subject to seizure/confiscation. In addition, the report states that *Türkiye has mechanisms to manage and, as necessary, dispose of frozen, seized and confiscated property, according to the Regulation on Property of Crime. When there is a likelihood that a seized item will be damaged or suffer a substantial loss of value, the item in question may be liquidated before final judgment (CPL, Art.132). In other cases when there are strong grounds of suspicion that the crime is being committed, within the activities of a firm, and it is necessary to reveal the true state of affairs, the judge or the court is entitled to appoint a trustee for the administration of the firm.*

2. As it can be observed from the information above and the responses received from the country, the existing structure of the Public Prosecutor's Office is entrusted with the task of managing seized assets. Specifically, depository officials are responsible to carry out this task.

3. Authorities indicated that seized movable assets can derive from any criminal offence and are eligible for management according to the above-mentioned Regulation. Therefore, when electronic devices or storage devices keeping the records of sound and images, and chemical and biological properties are seized, they are preserved in appropriate separate places. Seized weapons, explosive or bullets are kept in specialised and safe offices, while seized funds are kept in bank accounts. Beside this and other measures foreseen by Art.132 of the CPL, there are measures foreseen under the Law No.5271, applicable in cases where there are strong grounds of suspicion that the crime is being committed within the activities of a

company. In these situations, the judge or the court is entitled to appoint a trustee for the administration of the company to run its business, for the duration of an investigation or prosecution.

4. Although management of seized movable assets is in place, for immovable goods, rights and credits, the afore-mentioned Regulation applies only to specific criminal offences. Whilst the offences included some of those listed in the Appendix of the Convention, not all of them are covered. This particular feature of the Regulations appears not to be in line with Article 6 of the Convention which requires management for assets deriving from all the offences listed in the Appendix.

Effective implementation

5. Turkish authorities provided two case examples. However, none of them describe management of assets seized as a part of criminal proceeding. On the other hand, the authorities provided relevant statistical data: excluding the numbers in the Judicial Depositories at other Chief Public Prosecutor's Offices, there are approximately 240,000 seized properties in the Judicial Depository of the Ankara Chief Public Prosecutor's Office, for which the seizure decision is active. Among the properties subject to the seizure decision are firearms, money, gold, bullets/cartridge cases, electronic goods, negotiable instruments, sharp and piercing tools, license plates, official documents, mobile phones, etc. The total number of properties acquired from offense that were registered in Judicial Depositories across the country was determined as 3.983.052 between January 1, 2017 and December 31, 2021.

Conclusion/Recommendation

6. In Türkiye, there are legislative measures in place dealing with the storage of the seized assets and advanced sale of depreciating goods. However, issues are noted with regard to the application of the relevant Regulation to assets deriving from some and not all criminal offences from the Appendix to the Convention. Therefore, the country is recommended to undertake legislative measures to allow management of seized assets deriving from all offences listed in the Appendix of the Convention.

Ukraine

1. Ukraine was rated Largely Compliant in its 5th round evaluation by MONEVAL – the report noted that value confiscation does not apply to instrumentalities, and that, at the time of the onsite visit, there were no mechanisms for systematic management of restrained property by pre-trial investigative authorities. It also needs to be noted that the mutual evaluation report was adopted in 2017 – four years before the new legislation entered into force. In Ukraine, since 2021, the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes» (hereinafter – ARMA) is a central executive authority with a special status, which ensures the implementation of the state policy in the field of tracing and management of assets.

2. According to Article 19 Para 1 of the Law, the ARMA shall manage assets seized in criminal proceedings. These assets are managed on the basis of the decision of an investigative judge, the court or on the basis of decision which is made with the consent of the assets' owner, the copies of which shall be sent to the National Agency no later than the next working day after issuing (providing) them with an appropriate application from the prosecutor.3. The Criminal Procedural Code of Ukraine (Articles 100, 170) also provides general provisions on procedural actions concerning assets. However, details on exact measures when managing assets seized in criminal procedure were not provided. Instead, the authorities put forward a list of assets under the management of the ARMA which includes cash, securities, real estate, machines used for agriculture, vehicles, etc. Given the inputs from the authorities, it appears

that ARMA is mostly focused on selling assets and then transferring the funds to the state budget.

Effective implementation

4. Authorities provided detailed statistics on assets seized and managed so far. On the other hand, no concrete examples on application of any measures while managing assets were made available.

Conclusion/Recommendation

5. Ukraine introduced asset management agency in charge for management of assets seized. However, the information provided did not include scope of the offence which fall under the competencies of the ARMA, making it difficult to conclude if all offences from the Appendix are covered. In addition, it is unknown if any procedures are in place to manage different types of assets. Therefore, the authorities are recommended to ensure that both of the shortcomings – coverage of all offences from the Appendix and introduction of specific procedures for asset manager (if not yet in place) - are rectified.

United Kingdom

1. In UK, there are legislative measures in place for the management of seized property as set forth in Section 47 of the Proceeds of Crime Act 2002 (POCA) for England and Wales and by Part 3 and 4 of POCA for Northern Ireland and Scotland. According to the responses provided in the 2022 Questionnaire, authorities can manage seized instrumentalities, proceeds and property of equivalent value. To support this finding, the rapporteurs noted that the UK was rated Compliant with Recommendation 4 in its FATF 4th round MER from 2018.

2. Different procedures are applied depending on the type of assets seized. When cash is seized, it must be paid into an interest-bearing account (Art. 294-297 of POCA). However, when any other property is seized, it often remains in the possession of defendant. The receiver is then appointed and he/she/it oversees and manages such property. No information was provided if receivers are bound by any procedures that would allow them to prevent depreciation and dissipation of the value of seized property. This might be very important in case of seizure of perishable goods and income generating assets.

3. The existing legal framework does not envisage the establishment of the specialised authority dedicated to the management of seized assets.

Effective implementation

4. Authorities advised that demonstration of the effective management of frozen or seized property is the amount that is recovered as the proceeds of crime, with £219 million being confiscated from Confiscation Orders, Forfeiture Orders and Civil Recovery Orders in the financial year 2020 to 2021. While the amount of recovered proceeds is considerable, it concerns the confiscation orders and not the management of seized assets. Therefore, the rapporteurs are not in a position to conclude on effective application of Article 6 in the UK.

Conclusion/Recommendation

5. The UK introduced management of frozen and seized property which features requirements of Art. 6. Some ambiguities appear to be in place, such as if there are clear procedures to be followed by the receivers of the seized property with regard to its management. In addition, the country is encouraged to consider if establishing of a specialised unit in charge for management of frozen, seized and confiscated property would be beneficial.