

Strasbourg, 10 November 2023

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

C198-COP(2023)12

## **CONFERENCE OF THE PARTIES**

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

#### **Thematic Monitoring Review of the Conference of the Parties to CETS No.198 on Article 25 §2 - 3 (“Confiscated Property”) <sup>1</sup>**

---

<sup>1</sup> Examined and adopted by the Conference of the Parties to CETS No. 198 at their 10<sup>th</sup> meeting, Strasbourg, 30-31 October 2018. Amended following the ratification of the Convention by Monaco in 2020, Lithuania in 2021 and Estonia in 2023 and selected follow up procedure by Sweden (2020) and the Russian Federation (2021).

## TABLE OF CONTENTS

INTRODUCTION .....	3
SCOPE OF ARTICLE 25.....	3
METHODOLOGY .....	5
SUMMARY .....	6
EFFECTIVE IMPLEMENTATION.....	8
RECOMMENDATIONS AND FOLLOW-UP .....	9
COUNTRY REVIEW .....	11
ANNEX I.A – TABULAR OVERVIEW OF STATE SUBMISSIONS (ART. 25(2)) .....	48
ANNEX I.B – TABULAR OVERVIEW OF STATE SUBMISSIONS (ART. 25(3)).....	50
ANNEX II – THE QUESTIONNAIRE IN ENGLISH .....	53
ANNEX III – RULES OF PROCEDURE: 19 <i>BIS</i> .....	56
ANNEX IV.A – STATE SUBMISSIONS: ARTICLE 25(2).....	57
ANNEX IV.B – STATE SUBMISSIONS: ARTICLE 25(3) .....	95

## Introduction

1. The Conference of the Parties (hereinafter: “the COP”), at its 9<sup>th</sup> 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. Such review would look 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 Convention”). To that effect, the COP adopted a new Rule 19*bis* of the Rules of Procedures.
2. The COP Plenary decided that the first thematic monitoring report should deal with Article 11 as well as with Article 25(2) and 25(3) of the Convention.
3. Subsequently, in January 2018, a questionnaire (which can be found in Annex II to this document) was circulated to which the States Parties replied by the end of March 2018. The responses were subsequently analysed by the Rapporteur team (Ms Ana Boskovic and Mr Azer Abbasov), together with the Secretariat. The COP scientific expert supported the process within the merits of his role, as embedded in the COP Rules of Procedure. 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 asset sharing, particularly for the purposes of victim compensation and return of property to the legitimate owner, as well as the possibility to negotiate relevant agreements, is taken into account by COP States Parties. As the answers to the questionnaire differed, it is somewhat difficult to draw a general conclusion applicable for all COP States Parties. However, several general remarks and recommendations are made in the summary of this report.
5. The report commences with laying out the scope of Article 25 of the Convention (“confiscated property”, hereinafter: “Article 25”) and the methodology applied for the review. Then it draws conclusions on legislative provisions and their effective implementation and proposes recommendations. States Parties’ submissions are individually analysed and individual recommendations are made for each State Party. Their submissions are annexed to this report, together with all States Parties’ responses, as well as a relevant excerpt of the Rules of Procedure as amended in 2017.

## Scope of Article 25

6. Article 25 addresses the issue of sharing of confiscated property among States Parties. In particular, it establishes ‘priority consideration’ for asset sharing for the purposes of victim compensation or return of property to the legitimate owners (paragraph 2), as well as ‘special consideration’ for the possibility of concluding

arrangements or agreements with other States Parties so as to facilitate asset sharing (paragraph 3). The provisions provide the following:

(2) *“When acting on the request made by another Party in accordance with Article 23 and 24 of this Convention, Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated property to the requesting Party so that it can give compensation to the victims of the crime or return such property to their legitimate owners.*

(3) *When acting on the request made by another Party in accordance with Articles 23 and 24 of this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such property, in accordance with its domestic law or administrative procedures.”*

7. Paragraph 1 of Article 25 and its interpretative note provide that the proceeds of the confiscation of illegally obtained profits or assets in a criminal case in the requesting State remain in the hands of a State Party to the extent that those proceeds are found in that State Party. It is up to that State Party to decide whether it is willing to transfer (all or part of) those proceeds to another Party. In particular, paragraph 1 establishes that transposal of confiscated goods shall take place in conformity with the requested Party’s internal law and its administrative procedures.
8. A first indication on the method of distribution of the confiscated property is provided in paragraph 2, as it requires that priority consideration should be given to returning confiscated property to the requesting Party for the purpose of compensation of victims or return of such property to the legitimate owner. The paragraph therefore also aims to strengthen the co-operation between States Parties. Furthermore, it might provide an additional (pecuniary) motivation for the exchange of information among States Parties. At the very least, paragraph 2 requires States Parties to have in place any kind of measure to oblige the competent authorities, to consider, as a matter of priority, returning the confiscated property to the legitimate owner or to compensate the victim(s) of crime. It is important to note that the assets are not provided directly to the victims in another Party, but to the requesting Party which itself needs to have provisions and procedures in place to make sure that “repatriated” assets are destined to the victims.
9. Both Article 25, paragraph 2 and 3 do not require States Parties to have framework agreements with other States Parties in place, but provide for the possibility to negotiate such arrangements or agreements on either a case-by-case or on a regular basis. Paragraph 3 specifically provides for the possibility of States Parties to conclude agreements or arrangements to share confiscated properties with other States Parties when the request is made in accordance with Articles 23 and 24 of the Convention. Although States Parties are not required to conclude arrangements or agreements on asset sharing, they are - through Article 25, paragraph 3 - encouraged to give special consideration thereto. The drafters of the Convention considered that an agreement

in the particular field of asset sharing may have advantages. As the sharing of confiscated property usually concerns large sums of money, a general agreement would provide a more solid basis than the conclusion of an *ad-hoc* arrangement.

10. It should be noted that Article 25, paragraph 2 and 3 should also be regarded in the context of EU Council Directive 2006/783/JHA on the mutual recognition of confiscation orders, which regulates asset sharing between EU Member States. The Directive establishes that, if the amount obtained from the execution of a foreign confiscation order is below EUR 10,000, or the equivalent to that amount, the amount shall accrue to the executing State. In all other cases, 50% of the amount which has been obtained from the execution of the confiscation order shall be transferred by the executing State to the issuing State.
11. The effective implementation of the Article 25, paragraphs 2 and 3 was assessed in this report through a combination of factors, such as examining the manner in which the provision was transposed into the respective legislative framework, as well as exploring case studies and related statistics. States Parties may decide to apply legislative or other measures (such as memoranda of understanding with COP States Parties) on international co-operation on seizure and confiscation. They may also introduce into their domestic legislation the power for the judge or other competent authorities to transfer the confiscated property to the requesting State and to negotiate/conclude agreements on a case-by-case or regular basis. The States Parties were also asked to substantiate their arguments with case studies, i.e. by providing one or more case(s) of asset sharing or asset returning to the legitimate owner or to compensate the victim.

## Methodology

12. The “COP questionnaire for the Transversal Monitoring of States Parties’ Implementation of Article 11 and Article 25(2) and 25(3) of the CETS no. 198” contained the following question with regard to Article 25(2):  
*When acting on the request made by another Party in accordance with Articles 23 and 24 of the CETS No. 198, do your authorities, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated property to the requesting Party so it can give compensation to the victims of the crime or return such property to their legitimate owners?*
13. The questionnaire contained the following question with regard to Article 25(3):  
*Are there agreements or arrangements in place giving special consideration to sharing confiscated property with other Parties, on a regular or case-by-case basis?*
14. Delegations were asked to provide provisions of their domestic legislation dealing with this issue, e.g. from their criminal code, criminal procedure code, or other laws. In addition, they were asked to support their responses with a list of agreements signed or arrangements in place, case examples and/or statistical data. States Parties were

also encouraged to support their response with any other relevant information demonstrating implementation of this provision of the Convention.

15. This horizontal review includes information on 38 COP States Parties. Ten countries have undergone both a COP individual country assessment and submitted a response to the questionnaire.<sup>2</sup> With regard to the latter countries, both the data stemming from their country assessment or subsequent follow-up report as well as their responses to the questionnaire have been used for the purposes of this report.

## Summary

16. From the assessment on the implementation and application of Article 25, several general findings can be drawn. Pursuant to the relevant domestic provisions as well as additional information provided on statistics, regular state practice or examples, these findings are aimed at contributing to enhanced understanding of Article 25. State-specific conclusions can be found in the respective analysis of each State Party.

## Article 25(2)

17. The Questionnaire inquired whether or not the relevant State Party has put in place such legislative or other measures to provide for the priority consideration of asset sharing for the purpose of victim compensation or return of such property to the legitimate owners. Out of 38 state submissions, 26 States Parties (i.e. 74% of all States Parties) indicated that their authorities indeed give such priority consideration to sharing, whilst two States Parties (Georgia, Slovenia) have not transposed the provision into domestic legislation but argued that ratification of the Convention did create a legally-binding basis for all its provisions. Nine States Parties (Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Estonia, Poland, Portugal, the Russian Federation and Sweden) did not adopt such measures in their legislation. Three States Parties (Austria, The Netherlands, and “the former Yugoslav Republic of Macedonia”) did not respond to whether or not special consideration can be given to victim compensation or return of property to the legitimate owner.
18. Seven States Parties (Albania, Italy, Lithuania, Malta, Monaco, San Marino and Spain) provide for sharing of confiscated property for the purpose of its return to the legitimate owner, although it is not always clear that this includes victim compensation. On the other hand, the domestic laws of Croatia, Germany, Serbia, Ukraine and the United Kingdom do not provide for priority consideration of sharing of confiscated property for the purpose of returning such property to the legitimate owner. Two States Parties (Armenia, Belgium) mention a ‘negative approach’ which does not preclude in domestic law to give priority consideration for the purposes established in Article 25(2), thus in principle enabling the judge, within the merits of his/her role, to decide

---

<sup>2</sup> The countries which have both undergone the COP country assessment and submitted a response to the questionnaire are: Albania, Armenia, Belgium, Bosnia and Herzegovina, Croatia, Malta, Montenegro, Poland, Republic of Moldova and Romania.

upon the issue of asset-sharing. Two EU Member States (Bulgaria and Poland) are giving priority consideration only within the framework of the EU; thus their laws on the matter do not extend to all COP States Parties.

19. What can be seen from the countries' responses is that the exact provisions transposing Article 25(2) into domestic laws differ considerably in their terms of procedure. For example, Latvia requires a judgment confirming the status of victim before property can be shared. Other States Parties (for example, Montenegro and Türkiye) handle requests for compensation when it is submitted by the victims themselves, i.e. not through a request by the requesting Party. In Romania, assets may be shared for the purposes of Art. 25(2) only upon request and after negotiating an agreement on the matter.

### Article 25(3)

20. It is notable from the questionnaire and the analysis that, out of 38 States Parties, only ten (i.e. 23% of all States Parties, notably: Austria, Belgium,<sup>3</sup> Cyprus, France, Latvia, Monaco, Portugal, Spain, Sweden and Ukraine) have legal or other arrangements in place specifically aimed at the sharing of confiscated property with other States Parties. 28 States Parties (including the nine mentioned above) stated that their authorities were in principle in the position to negotiate agreements, which they demonstrated either by stating the applicable legal provision or by other measures adopted.<sup>4</sup>
21. Seven States Parties (i.e. 20% of all States Parties) either mentioned that the domestic law provides for the sharing of confiscated assets (Republic of Moldova, the Russian Federation and Serbia); or that no legal provisions were adopted in respect of Article 25(3) (Azerbaijan, Bosnia and Herzegovina, Denmark and "the former Yugoslav Republic of Macedonia"). None of these seven States Parties indicated whether their authorities had the capability to conclude agreements or arrangements on sharing confiscated property with other States Parties.
22. Thirteen States Parties (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Denmark, Montenegro, Republic of Moldova, the Russian Federation, Serbia, Slovak Republic, "the Former Yugoslav Republic of Macedonia" and the United Kingdom, i.e. 40% of all States Parties) replied that they had no arrangements or agreements in place concerning the matter and on the basis of the Convention. Some of their responses to the questionnaire did not cover the legal provision on asset sharing. Other States Parties which gave negative replies are in fact EU Member States and thus have the legal basis for asset-sharing through the EU Council decision on the issue of asset sharing,<sup>5</sup> but have not expanded on it in their response to the

---

<sup>3</sup> It should be noted that Belgium has not negotiated agreements under the Convention.

<sup>4</sup> In the table in Annex I.B, these countries are listed where either the legislation or the specification indicated the authorities' ability to share assets through agreements.

<sup>5</sup> See Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006F0783>).

questionnaire.<sup>6</sup> The Slovak Republic indicated that its authorities have not obtained the competence to negotiate asset sharing agreements as this competence lies solely with the European Union. Lithuania and Estonia informed that with non-EU member states, an asset sharing agreement may be signed based on relevant international conventions (e.g. UNCAC).

## Effective implementation

### Article 25(2)

23. Overall the provisions of Article 25(2) have been transposed into domestic law in a vast majority of the States Parties. However, they were often not in a position to demonstrate the effective implementation of the provision in practice. Many States Parties responded that implementation could not be measured as no statistics were maintained on the topic, but the absence of statistics was in most cases not compensated by case studies. Some States Parties (Armenia, Malta, Montenegro and Romania) indicated they had not yet received any requests for sharing of confiscated property for the purposes of victim compensation or returning of such property to the legitimate owner; hence they were not in a position to demonstrate the application of the provision in practice. Other States Parties simply replied that they had not yet taken any measures in practice. Only twelve States Parties (Albania, Cyprus, France, Hungary, Italy, Latvia, Monaco, the Republic of Moldova, San Marino, Slovenia, Sweden and Türkiye, i.e. 35% of all States Parties) provided a case example to demonstrate the effective implementation of the provision.

### Article 25(3)

24. In general, many States Parties provide for the possibility to conclude agreements or arrangements specifically devoted to asset sharing with other Parties, but this mostly occurs on a case-by-case or *ad-hoc* basis and not necessarily on the basis of Article 25(3). The examples provided support this conclusion. Only six states (Austria, Monaco, Portugal, the Russian Federation, Slovenia and Spain, i.e. 14% of all States Parties) reported about (on-going negotiations expected to result in) formal agreements with countries which are not States Parties to the Convention (e.g. Switzerland and the United States). However, they did not indicate whether such agreements were also being negotiated with the COP States Parties.

25. Most EU Member States mentioned their obligations with regard to the transposition of EU law into domestic legislation. Particularly relevant in this regard is Council Framework Decision 2006/783/JHA, which concerns the application of the principle of mutual recognition of confiscation orders. The scope of this Decision is limited to EU Member States only. In this regard the Convention provides a possibility to EU

---

<sup>6</sup> Although various EU Member States did not elaborate in their submission on the question whether they had a legal basis for negotiating agreements on asset-sharing in place, their EU Membership may suppose an adequate transposition of the EU regulations which establish comparable requirements within the EU framework.



Member States, which are at the same time States Parties to the Convention) to conclude asset sharing agreements or arrangements outside of the EU framework.

## Recommendations and follow-up

26. A number of general recommendations can be drawn from the summary findings above. States Parties are invited to follow-up and ensure proper implementation of these recommended actions. 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 legislative or other measures to further implement the provisions of the Convention. States Parties should be invited to inform the COP at future Plenaries, as decided by the COP, of any developments and measures taken regarding the issues addressed in this review.
27. With the aim to promote a harmonised approach to sharing of confiscated property, States Parties are recommended, if they have not yet done so, with regard to Article 25(2), to:
- Ensure that their authorities are, to the extent permitted by domestic law and if so requested, in a position to give priority consideration to returning the confiscated property to the requesting Party in order to both compensate the victims or return such property to the legitimate owners (as required by Article 25(2)).
  - Modify their domestic legislation to put in place appropriate legislative measures and the institutional framework as to guarantee that this provision of the Convention can be effectively applied;
  - Introduce provisions in domestic legislation permitting priority consideration for returning the confiscated property to the requesting Party for both victim compensation and return of property to the legitimate owner.
28. For the purposes of the successful implementation and application of Article 25(2), States Parties are invited to consider with regard to Article 25(2) to:
- Include in their training programmes for the judiciary and other relevant authorities the strengthening of the institutional capacities to better understanding and applying in practice the provisions of Article 25 (2 and 3) of the Convention;<sup>7</sup>
  - Maintain statistics on the effective implementation of these provisions.
29. States Parties are also recommended, if they have not yet done so, with regard to Article 25(3), to:
- Provide for the possibility to conclude agreements or arrangements on asset sharing specifically by introducing such provisions into their domestic legislation;
  - Negotiate and conclude asset sharing agreements, in accordance with its domestic law or administrative procedures, either on a case-by-case or on a regular basis, with other COP States Parties, to effectively apply this Convention's provision;

---

<sup>7</sup> As noted, this recommended action applies equally to both paragraphs 2 and 3 of Article 25.

- Extend the possibility to conclude asset-sharing agreements (which may be limited to COP States Parties which are at the same time EU Member States) to all COP States Parties.<sup>8</sup>

30. States Parties are strongly encouraged to implement both the above-mentioned general recommendations and the country-specific recommendations. Respective legislative measures could be implemented by amending either the criminal code or the code of criminal procedure. Non-legislative measures may focus on awareness-raising or trainings for authorities on the possibility of ordering victim compensation or return of property to the legitimate owner, or negotiating agreements for the purpose of confiscation sharing.

31. A follow-up mechanism on the recommendations following from this analysis has been initiated, upon decision by the COP Plenary.

---

<sup>8</sup> However, this would not mean that the same conditions granted to other EU Member States would have to be applied to States Parties which are not EU Member States.

## Country review

### Albania

#### *Article 25(2)*

1. Albania has undergone the COP Assessment in 2011. Whilst noting the absence of practical cases related to Article 25(2), the rapporteurs considered the country compliant with this provision. Indeed, according to Article 23 of the Law on Jurisdictional relations with foreign authorities in criminal matters, Albanian authorities, upon request of the foreign judicial authorities, shall return seized objects to the rightful owner, for the purpose of seizing or returning the property to the lawful owner. This provision was further supported by Article 217 of the Albanian Penal Code.
2. In the response to the questionnaire, Albanian authorities reiterated the above-mentioned Article 23 on confiscated property. They also stated that in some cases seized goods have been returned to foreign requesting authorities in order to be then returned to their legitimate owners. These cases include assets such as motor vehicles and other valuable items.

#### *Article 25(3)*

3. In the 2011 COP assessment report, the rapporteurs noted that Albania had not entered into international agreements or arrangements related specifically to sharing confiscated property with other Parties.
4. In the response to the questionnaire the Albanian authorities also indicated that no further arrangements or agreements in this regard had been made.

#### *Conclusion/Recommendation*

5. The Albanian legislation complies with Article 25(2), but this cannot be said for Article 25(3) since no legislative provision or other measure taken demonstrating the transposition of this provision is in place. The Albanian authorities are therefore recommended to consider concluding agreements or arrangements on assets sharing with other States Parties, on a regular or case-by-case basis, in accordance with its domestic law or administrative procedures, as well as to ensure (through legal or other measures) that victim compensation forms a legitimate purpose for asset sharing.

### Armenia

#### *Article 25(2)*

1. Armenia has undergone the COP assessment in 2016. The rapporteurs found the country not compliant with Article 25(2). In Armenian legislation does not provide

any specific provision aiming at returning the confiscated property. The country however argued that it had non-legislative measures in place. Yet, the rapporteurs recommended Armenia to take adequate steps in order to ensure that effective measures/mechanisms were in place to enable giving priority consideration to returning confiscated property to the requesting party so it can give compensation to the victims of the crime or return such property to their legitimate owners.

2. From the questionnaire, it follows that the situation remains unchanged. The domestic legal framework for the governance of confiscation and seizure of property is set out by Articles 55 and 103(1) of the Criminal Code and by Article 232 of the Criminal Procedure Code, but at present neither legal provisions nor administrative procedures addressing the issue of the sharing of confiscated assets with third parties have been introduced in the Armenian legal system. The Armenian authorities reiterated that there were no prohibitive provisions in place, hence that it could execute confiscation orders upon another Party's request; however, given the absence of such requests, the alleged implementation cannot be further demonstrated through practical case examples.

#### *Article 25(3)*

3. The 2016 COP assessment report, it was noted that no agreements or arrangements were in place to give special consideration to sharing confiscated property with other countries on a regular or case-by-case basis. However, domestic law did not prohibit or obstruct the ability of the authorities to share assets in this way on an ad-hoc basis.
4. Indeed, in the response to the questionnaire, the Armenian authorities indicated the absence of specific arrangements or agreements in this regard. They also reiterated that the sharing of confiscated property with other Parties and the application of priority consideration to return confiscated property to the requesting Party was done on an ad-hoc basis. The Prosecutor General's Office of the Republic of Armenia is in charge to consider such requests.

#### *Conclusion/Recommendation*

5. The Armenian authorities are in a position to negotiate ad-hoc agreements on sharing of confiscated property, but they do not give priority consideration to returning the confiscated property to the requesting Party in order to compensate victims or return property to the legitimate owners. The authorities are therefore recommended to adopt legislative or other measures to address the issue of returning confiscated assets with third parties for the purpose of victim compensation or return of such property to the legitimate owner.

## Austria

### *Article 25(2)*

1. The Austrian authorities advised that the Federal Law on judicial cooperation in criminal matters with the Member States of the European Union (EU-JZG) provides a framework for application of Art.25(2). In addition, they referred to the EU Framework Decision regulates the recognition of confiscation orders issued by a judicial authority in other Member States of the EU without further formalities. The Framework Decision provides also for the sharing of confiscated assets which exceed EUR 10.000 between deciding and executing State.
2. In relation to third countries (not Member States of the EU) Chapter III of the Federal Law of 4 December 1979 on Extradition and Judicial Assistance in Criminal Matters applies with regard to the enforcement of foreign judicial decisions in criminal matters. In their responses to the questionnaire, Austria advised that the Regional Court, under which jurisdiction the assets or property are located, is competent to decide on the enforcement of a confiscation order issued by a foreign judicial authority upon their request. They also advised that in such cases reference to Article 25 of the Convention would be made. However, it is not clear where the priority consideration to returning confiscated property to the victims of crime or legitimate owners is present in the afore-referred framework. According to Section 64 para 7 of the Extradition and Judicial Assistance Law, confiscated assets are assigned to the Federal Government. On the basis of a bilateral treaty such confiscated assets can be shared with the requesting State. It remains unknown if any agreement which would include priority consideration to victims of crime or legitimate owners has been signed.

### *Article 25(3)*

3. Austrian authorities advised that they had entered into agreements and arrangements giving special consideration to sharing confiscated property on regular or case-by-case basis with other Parties to the Convention
4. Three case examples of such agreements were provided, none of which includes COP198 States Parties (Ireland, US and Liechtenstein). The materials provided include details of cases where assets were shared based on these agreements.

### *Conclusions/Recommendations*

5. Austria does not have an appropriate framework for application of the requirements of Article 25(2). With regard to Article 25(3), the country can sign asset sharing agreements, and this possibility can extend to COP States Parties too. Consequently, the country is recommended to introduce such legislative or other measures which would enable the implementation of Articles 25(2), and also to strengthen its framework for assets sharing by signing agreements with the COP States Parties.

## Azerbaijan

### *Article 25(2)*

1. In their response to the questionnaire, the Azerbaijani authorities pointed out that there are no provisions in the Azerbaijan legal system enabling authorities to give priority consideration to the returning of confiscated property to the requesting Party for the purposes indicated in Article 25(2). The authorities nevertheless indicated that the matter is expected to be addressed in 2019, in the framework of the scheduled implementation of the National Action Plan on combating legalisation of criminally obtained funds or other property and financing of terrorism for 2017-2019 (adopted November 2016), particularly of item 2.6 on “Taking measures to improve legislation on forfeiture and recovery of criminally obtained funds or other property”.

### *Article 25(3)*

2. In Azerbaijan there are currently no agreements or arrangements in place which give special consideration to sharing confiscated property with other Parties under Article 25(3). As for Article 25(2), the issue is expected to be addressed through the implementation of the National Action Plan. No further information is provided with regard to the exact measures taken in the framework of item 2.6, nor whether negotiations on agreements or arrangements have commenced.

### *Conclusion/Recommendation*

3. Given that there is no explicit legal provision or existing jurisprudence granting the possibility for the State to share confiscated property or to negotiate special agreements on the sharing of confiscated property, it is recommended to introduce such legislative or other measures which would enable the provisions of Article 25(2) and 25(3) to be applied in practice. Subsequently, the authorities are recommended to raise awareness among the judicial authorities of the procedures for asset sharing and concluding special agreements.

## Belgium

### *Article 25(2)*

1. In the 2016 COP assessment report the rapporteurs noted that there is no provision of the law, nor any evidence produced, to demonstrate that the Belgian authorities consider as a priority sharing of confiscated property with the requesting Parties to enable the latter to compensate the victims of crime or to restore the property to its lawful owner. Yet, the authorities considered that the Law of 20 May 1997 on International Cooperation in the execution of freezing and confiscation in the legal framework would cover the issues raised under Article 25(2). This provision was applied on a case-by-case basis, although uncertainties existed about the effective implementation of the provision.

2. In the response to the questionnaire, the Belgian authorities pointed out that nothing in the Belgian legal system prohibits sharing the proceeds of confiscation in order to compensate the victims of the crime: depending on the request of the foreign state confiscation may take place based on the afore-mentioned law. Following a court order, the complete amount or part of the confiscated assets could be returned to the requesting Party in order for it to give compensation to the victims of the crime. No information was provided regarding returning of property to the legitimate owners.

#### *Article 25(3)*

3. The Belgian authorities in their response to the questionnaire indicated that no agreements or arrangements exist for the specific consideration of sharing of assets, apart from the legislation transposing the Council of Europe Conventions no. 141 and 198. Other agreements, not necessarily resulting from the CoE Conventions, have been negotiated with the United States of America (1988), Canada (1996) and China (2016). Asset sharing mostly depends on the substance of the request, as they are all equally examined, rather than if the request itself originates from a COP State Party.

#### *Conclusion/Recommendation*

4. Belgian legislation only partially complies with Article 25, as there are no principles established in the law for returning of property to the legitimate owners, nor is a framework in place to conclude international agreements on sharing confiscated property. The authorities are strongly encouraged to adopt such legislative or other measures to ensure that legitimate owners are covered in the scope of the domestic law transposing Article 25(2), as well as to put in place a framework for negotiating agreements on an ad-hoc or regular basis for sharing the confiscated property with the COP State Parties.

## **Bosnia and Herzegovina**

#### *Article 25 (2)*

1. The authorities advised that the Court of Bosnia and Herzegovina had taken initiatives on asset sharing with Montenegro on the basis of the Convention, as well as on Article 20 of the Law on Mutual Assistance in Criminal Matters (MLA Law). The latter provides for the possibility of asset seizure on the basis of third states requests' and for returning these assets to the authorised foreign judicial authority, but without making reference to victims or the legitimate owner.

#### *Article 25(3)*

2. Although there are no specific provisions in the legislation referring to negotiating agreements on asset sharing, the authorities indicated that there are, in principle,

no impediments to negotiate and conclude such agreements, according to the Law on Conclusion and Enforcement of International Agreements.

#### *Conclusion/Recommendation*

3. It is recommended to reconsider existing legislation or to adopt other measures which would explicitly permit the return of confiscated property to the requesting Party for the purposes of victim compensation or return of such goods to the legitimate owner. The authorities are invited to consider adopting a specific reference to negotiating agreements on asset sharing. Subsequently, the authorities are recommended to raise awareness among the judicial and other relevant authorities of the procedures for asset sharing and concluding special agreements.

### **Bulgaria**

#### *Article 25(2)*

1. In their response to the questionnaire, the Bulgarian authorities pointed out that priority consideration to returning the confiscated property can be given upon request of a third Party. Besides the general transposal of provisions of signed international agreements into Bulgarian law, no further information on the legal basis or the effective implementation of Article 25(2) has been provided by the Bulgarian authorities.

#### *Article 25(3)*

2. Authorities advised that the possibilities for sharing assets with a requesting country can be discussed on a case-by-case basis. In addition, Bulgaria has adopted an Act regulating in particular the conditions and procedures for recognition, enforcement and transmission of confiscation and seizure orders and decisions imposing financial penalties, but this co-operation can take place only with other EU Member States.
3. Bulgaria has not yet received requests for sharing assets by a COP State Party which is not an EU Member State.

#### *Conclusion/Recommendation*

4. It remains unknown to what extent Bulgaria complies with Article 25(2) as the legal provision transposing agreements into domestic law was not provided, nor is there any specific legislation in place to comply directly with Article 25(2). Bulgaria complies with Article 25(3). It is recommended to adopt specific legislative or other measures to give special consideration for the sharing of assets with requesting Parties for the purpose of victim compensation/return to the legitimate owner, as well as to ensure that all relevant legislative provisions based on the Convention apply for all COP States Parties, irrespective of their membership status with the



EU. Moreover, the authorities are encouraged to give special consideration to negotiating relevant asset sharing agreements.

## Croatia

### *Article 25(2)*

1. Croatia has undergone the COP assessment in 2013. A subsequent follow-up report was published in 2016. The rapporteurs found Croatia not compliant with Article 25(2). Croatian authorities were able to demonstrate an effective system of co-operation with regard to confiscated property, governed by Articles 28 and 29 of the Law on Mutual Legal Assistance. The rapporteurs recommended Croatian authorities to clarify the extent of such co-operation and to ensure, with regard to all COP States Parties, its ability to co-operate in order to give full effect to Article 25(2). Those recommendations were not implemented at the time of publication of the follow-up report.
2. In their response to the questionnaire, Croatian authorities focused on non-EU COP States Parties. They pointed out that the above-mentioned Act on International Legal Assistance in Criminal Matters has not been amended. Instead, domestic law provides for pecuniary advantage for compensation of victims. In particular the Criminal Code establishes awarding a pecuniary claim and possible confiscation for an injured party after proceedings have been finalised; but in such cases where no proceedings have been started the Croatian authorities could instruct the injured party to initiate civil proceedings in the requesting Party, while after a final decision the Croatian authorities could act through MLA in civil matters to compensate the victims. No information is provided regarding returning of property to the legitimate owner.
3. Croatia does not maintain statistics on the practical implementation of this matter.

### *Article 25(3)*

4. In the 2013 COP Assessment report, the rapporteurs noted that the Croatian authorities had not concluded agreements which give special consideration to sharing confiscated property with the requesting Party. No reference had been made to this Article in the 2016 follow-up analysis. Also, in the response to the questionnaire, Croatia stipulated that no arrangements were in place giving special consideration to sharing confiscated property with other Parties. Notably, there are no legislative provisions in domestic law transposing the respective provision of the Convention.

### *Conclusion/Recommendation*

5. Domestic legislation does not give priority consideration to the requesting Party to provide directly for compensation of victims of a crime or returning of property to the legitimate owners. It remains unknown whether the authorities are in power to

negotiate special agreements on sharing of confiscated property. It is therefore recommended to the Croatian authorities to adopt such legislative or other measures necessary to specifically give priority consideration to returning of goods for compensation of the victims and legitimate owners regarding all COP States Parties, as well as to provide for the possibility of giving special consideration to concluding agreements on asset sharing.

## Cyprus

### *Article 25(2)*

1. The Cypriote authorities in their response questionnaire indicated that Article 25(2) is covered by the Law on the Prevention and Suppression of Money Laundering and Terrorist Financing Law, Section 39(3), which states that “where the foreign order concerns the confiscation of proceeds or property, the proceeds or property may, after the enforcement of the said order, be distributed among the competent authorities of the foreign country and the Republic of Cyprus”. The Cypriote authorities also underlined the importance of the transfer of confiscated property to the requesting country with the purpose to be returned to the victims of the crime, without the need to share any of the assets concerned, although this was a matter of practice rather than the legal provision.
2. Cyprus was not able to provide statistics on the matter, but the authorities did present a recent case relating to the return of the whole amount of money confiscated in Cyprus to the United Kingdom in order for it to compensate the victims of crime.

### *Article 25(3)*

3. Cyprus indicated that the issue of sharing confiscated property is established in the AML/CFT Law, which provides for distribution of confiscation of proceeds or property to foreign countries. Moreover, the Council Framework Decision 2006/783/JHA is implemented through the same law, thus regulating sharing of assets with EU Member States. In cases where non-EU Member States are involved, sharing of confiscated property can take place under agreements negotiated on a case-by-case basis with the countries involved. The Cypriote authorities mention sharing of assets with Belgium, the United Kingdom and the United States of America. The provision has been effectively implemented.

### *Conclusion/Recommendation*

4. Cyprus has implemented the provisions laid down in Articles 25(2) and 25(3), yet the authorities may consider amending the law to provide for victim compensation and return to the legitimate owners, rather than maintaining practice on the matter only. Furthermore, it is recommended to the authorities to keep record of the practical implementation of Article 25(2) through maintenance of statistics.

## Denmark

### *Article 25(2)*

1. In their response to the questionnaire, Danish authorities indicated that Article 25(2) of the Convention is considered covered by Section 807d (1) and (2) of the Administration of Justice Act. This section stipulates that the court may give priority consideration to returning the confiscated property to the requesting Party so it can give compensation to the victims of the crime or return such property to their legitimate owners. According to the Danish procedures, confiscated property is first and foremost used to fulfil the injured party's claim for compensation, and eventually for other purposes such as coverage of the costs of proceedings.
2. No further information has been provided by the authorities of Denmark with regard to case studies or practices.

### *Article 25(3)*

3. The Danish authorities have not entered into any agreements or arrangements giving special consideration to sharing confiscated property on regular or case-by-case basis with other Parties to the Convention.

### *Conclusion/Recommendation*

4. The Danish legislation provides adequately for special consideration for sharing of confiscated property for the purposes laid down in Article 25(2), although this has not been demonstrated through statistics or case law. However, Article 25(3) is not implemented. The authorities are therefore recommended to undertake necessary legal and institutional reforms to ensure that the relevant authorities are given the competence to negotiate and conclude agreements in line with Article 25(3), as well as to maintain statistics on the effective implementation of both Article 25(2) and 25(3) if this is not yet the case.

## Estonia

### *Article 25(2)*

1. Estonian authorities reported that, unless agreed otherwise, any confiscated property is entered in their Revenue Account (Article 487 subsection 2 of the Penal Code). According to the authorities, this provision foresees the possibility of making an asset sharing agreement between Parties. Nonetheless, from what has been submitted by the authorities, it could be concluded that the legislation does not provide any specific provisions which require giving priority considerations to another Party's request for the returning of the confiscated property in order to give compensations to the victims of the crime or returning such property to its legitimate owner(s). Consequently, Article 25(2) is not transposed in the Estonian legislation.

### *Article 25(3)*

2. Given the fact that Article 25, paragraph 3 should also be regarded in the context of the EU Regulation 2018/1805, Estonia is in position to apply the said article with EU member states. Further to this, the authorities advised that Estonia has signed bilateral agreements on mutual assistance in criminal matters with United States, Ukraine, China and the Russian Federation, that are also used for asset sharing purposes. In addition, it was also reported that the Office of the Prosecutor General may initiate asset sharing arrangements based on Article 14 of the United Nations Convention Against Transnational Organized Crime and Article 57 of the United Nations Convention Against Corruption. The authorities, however, did not indicate having concluded any specific asset sharing agreements or arrangements with another requesting Party on the basis of Articles 23 and 24 of the Convention.

#### *Effective implementation*

3. No information has been provided on case by case or asset sharing agreements concluded on the basis of Warsaw Convention.

### *Conclusions/Recommendations*

4. Estonia does not have an appropriate framework for application of the requirements of Article 25(2). With regard to Article 25(3), the country can enter into asset sharing arrangements through the mechanisms established by the relevant EU framework (i.e. EU Regulation 2018/1805)
5. Consequently, the country is recommended to introduce legislative or other measures which would enable the implementation of Article 25(2), and also to strengthen its framework for assets sharing by having in place asset sharing agreements with the States Parties to CETS no.198 (i.e. to enable full application of Article 25(3)).

## **France**

### *Article 25(2)*

1. The French authorities indicated that Article 713-40 of the Criminal Procedure Code covers the provisions laid down in Article 25(2) of the Convention. Article 713-40 stipulates that, when executing a foreign decision on confiscation, the French State becomes the owner of confiscated assets, unless an agreement has been concluded with a requesting country.
2. Further to that, Law No 2012-409 establishes the amounts for confiscation: the sum of confiscated assets, after deduction of the expenses of execution of the confiscation request, either remains with the state if the total amount does not exceed EUR 10.000 or is divided in half between the requesting state and France.

Yet this law is applied exclusively in case of absence of an agreement between France and the requesting State.

3. According to the French authorities, sharing of assets is favoured when there are victims of crime to be compensated or when the confiscated assets are to be returned to their legitimate owners. With regard to the victim's rights, it is possible to seize goods for the purposes of restitution to the victim in the absence of any compensation (Art. 131-21(3) Code of Criminal Procedure).
4. The authorities provided a table (as included in the Annex IV to this document), which corresponds to the situation in which confiscated sums were shared between France and another state. Respective states are COP States Parties such as Italy, Denmark, Spain and the United Kingdom, as well as non-COP States Parties, such as Switzerland and the United States of America. The asset-sharing agency (AGRASC) reports on ten instances of asset sharing, since its creation in 2010.

#### *Article 25(3)*

5. As is indicated in the analysis on the French implementation of Article 25(2), the authorities have procedures in place both in case of existing agreements on asset sharing and in their absence. It has not been demonstrated that the authorities used its competences to negotiate agreements under Article 25(3).

#### *Conclusion/Recommendation*

6. Both Article 25(2) and 25(3) are transposed into French domestic law. However, no information is provided demonstrating the effective implementation of Article 25(3). Therefore it is recommended to ensure that the competent authorities are familiarised with the procedures of asset sharing and negotiating agreements, as well as to encourage negotiating such agreements.

## Georgia

#### *Article 25(2)*

1. The Georgian authorities<sup>9</sup> provided that, as a State Party to the Convention, its authorities are directly bound to apply the provisions thereof. Moreover, the content of Article 25(2) is covered in Article 52 of the Law of Georgia on International Cooperation in the Criminal Law (from July 2010), which regulates the procedures for executing MLA requests. In particular, confiscated property may, in case of demand, be transferred to a foreign state, if the latter has a special interest in this property.

---

<sup>9</sup> The authorities also indicated that amendments have been adopted on the Law on international co-operation in criminal matters, which entered into force on 6 August 2018. The amendments introduce enhanced mechanisms of international co-operation in confiscation related matters. However, the Conference of the Parties did not assess these amendments or its compliance to Article 25.

2. The authorities indicated that there were no cases of property confiscation based on a foreign country request.

#### *Article 25(3)*

3. Further to the information provided for Article 25(2), the authorities indicated that the domestic law provides for the possibility of sharing confiscated assets with a foreign country based on ad-hoc agreements, concluded between the relevant competent authorities. This has not been brought into practice yet.

#### *Conclusion/Recommendation*

4. The Georgian authorities are in a position to transfer confiscated property to a requesting state if the latter has special interest thereto, as well as to negotiate agreements on a case-by-case basis. For the purposes laid down in Article 25(2), if not already provided for, it is recommended to the Georgian authorities to take legislative or other measures to ensure that sharing of confiscated property is given special consideration in case of victim compensation or if return of the property to the legitimate owner is envisaged. Moreover, it is recommended to ensure that the competent authorities are familiarised with the procedures of asset sharing and negotiating agreements, as well as to encourage negotiating such agreements.

## Germany

#### *Article 25(2)*

1. The authorities argued that Article 25(2) is reflected in Section 56(a) of the Law on International Assistance in Criminal Matters (IRG), which stipulates that, under the preconditions enumerated and following the application, compensation will be granted to those persons who were injured party as a result of the criminal offence which underlies the foreign decision on confiscation. The notion of the 'injured party' does not differentiate between victims or legitimate owners for the purpose of compensation.
2. Due to the fact that the responsible authorities do not collect or store statistical data concerning the cases related to these provisions, the German authorities were not able to provide statistics or case studies on the effective implementation of Article 25(2).

#### *Article 25(3)*

3. Under the framework of MLA, the German authorities are in a position to share the assets or their equivalent value with requesting States. The relevant authority may conclude ad-hoc agreements on disposal, return or distribution of assets. For requests made by Germany for enforcement of an order of confiscation in another State, similar agreements may be concluded as well.

4. No case examples or statistics are provided to support the German response to the questionnaire, as no statistical data is collected or stored concerning cases related to Article 25(3).

### *Conclusion/Recommendation*

5. It is unknown whether German legislation is compliant with Article 25(2) as the notion of the 'injured party' as victim compensation and legitimate ownership are not differentiated in the law. On the other hand, the legislation is in compliance with Article 25(3). The authorities are therefore recommended to ensure that both victims and legitimate owners are properly covered by the respective legislation. Authorities should also engage themselves further into negotiations on concluding special arrangements. The authorities are also recommended to consider maintaining statistics on international co-operation in the areas governed by Article 25(2) and 25(3), to demonstrate the effective implementation of these provisions.

## Greece

### *Article 25(2)*

1. The Convention has entered into force in Greece only in March 2018. Article 25(2) of the Convention has been transposed into domestic law in the following manner: seized items and funds are returned to their rightful owners according to Article 373 of the Greek Code of Criminal Procedure. Article 76 of the Penal Code provides explicitly for the possibility that confiscated assets are used "for the public interest or for social purposes or for the satisfaction of the victim", meaning that the victim compensation is included in the Greek legislation. Greek judicial authorities are in power to decide on the execution of a confiscation requests in line with the referred Article of the Penal Code, following the previous article as well as general provisions on MLA of the Code of Criminal Procedure. Non-monetary assets, unless these are items belonging to the Greek cultural heritage, are either accrued to the Greek state or sold or transferred to a requesting State.
2. The authorities could not provide statistics or case examples regarding the implementation of Article 25(2).

### *Article 25(3)*

3. Besides its ratification of the relevant Council of Europe Conventions and membership of the Egmont Group and CARIN Network, the authorities did not indicate any measure taken to apply Article 25(3) in practice, such as the legislative transposal of the provision into domestic law or assigning authorities the competence to negotiate agreements specifically for the purpose stipulated in Article 25(3), with the exception of the incorporation of the EU Framework Decision on asset sharing. The Greek Asset Recovery Office is the designated National Office for the Recovery of Capital and Assets which would treat requests and correspondence with foreign counterparts. Yet the authorities indicated that

recovery of funds related to any assets and proceeds derived from criminal activities takes place in the context of judicial assistance, in line with the Code of Criminal Procedure and relevant international instruments. Accordingly, the authorities responsible for the execution of the relevant requests, have a large margin of appreciation, in adherence to the spirit of the international conventions and the principle of reciprocity.

### *Conclusion/Recommendation*

4. The Greek authorities comply with Article 25(2), whereas progress can be made with regard to Article 25(3). Greece is recommended to adopt practical measures to familiarise judges and the prosecution service with the procedures for application of Article 25(2). The authorities should consider including in the domestic law a specific provision relating to Article 25(3), which would allocate particular competence to designated authorities to negotiate and conclude specific agreements or arrangements on asset sharing on a case-by-case or regular basis, a competence applicable to all COP States Parties, and not only EU Member States.

## Hungary

### *Article 25(2)*

1. The Hungarian Prosecutor General's Office indicated that the domestic laws provide for prioritisation of victim compensation. A dualist legal system applies to the issue of asset recovery - the recovered proceeds shall be used either for compensation or shall be confiscated. The two measures exclude each other, as Article 74/5 of the Hungarian Criminal Code states that "confiscation of property may not be ordered in connection with assets reserved to cover any civil claim awarded during the criminal proceedings". As a consequence, the approach of Hungarian authorities on compensation in international victim-crime cases is to apply seizure as a coercive measure to transfer the secured proceeds to the requesting Party, which means that the same procedural actions are performed as if it would concern a domestic case. The authorities argued that this solution facilitates better victim compensation and return of proceeds than through other asset sharing procedures, such as recognising a foreign confiscation judgment/order.
2. The authorities also provided a case study in which a foreign state had first submitted an MLA request for seizing, and later on for the confiscation and repatriation of funds deriving from fraud, in order to compensate the victims. Hungary executed the request by repatriating all of the funds seized to the requesting judicial authority, yet without confiscating the proceeds and, consequently did not need to conclude an asset sharing agreement.



### *Article 25(3)*

3. The Hungarian authorities in their response to the questionnaire indicated that Hungary and a foreign State (whether it is an EU Member State or not) may establish an agreement on a case-by-case basis for sharing the confiscated funds, and might alter from the (EU) model of 50-50% asset sharing. According to Article 5(1) of the Act L of 2005 on the proceedings concerning international treaties, the prime minister shall give an authorisation to conclude an international treaty and appoint a person to negotiate on the basis of the proposal made by the minister together with the minister responsible for foreign policy. Yet, no agreements or arrangements have been concluded between Hungary and other States on sharing confiscated property. The Prosecutor General's Office, in particular, makes note of an absence of "substantial practical knowledge on possible difficulties".
4. In non-victim crime cases, Hungarian authorities are competent to recognise confiscation orders, as well as to confiscate proceeds on the basis of an MLA request submitted by a requesting party. Where EU Member States are concerned, the Hungarian law provides for asset sharing in accordance with the EU Council decisions.

### *Conclusion/Recommendation*

5. Hungary has enacted measures to enable its judicial authorities to share assets for the purposes of victim compensation/returning of property to the legitimate owners, and has granted powers to relevant authorities to negotiate agreements specifically on asset sharing. The authorities are recommended to consider maintaining statistics on the effective implementation of both Article 25(2) and 25(3).

## Italy

### *Article 25(2)*

1. A general principle in the Italian legal system is the protection of the rights of "legitimate owners", provided that they are not involved in the commission of the offence. However, "victims" are not subject to this general principle. Rightful owners can request the return of the confiscated property - even after a final confiscation order. Article 740-*bis* ("Transfer to a foreign State of confiscated properties") and Article 740-*ter* ("Transfer order") represent the legal basis in the Italian legal framework for application of Article 25(2), but the articles do not include victim's compensation.
2. Italy provided several case studies concerning the returning of confiscated property to requesting third Parties. It must be noted that such practice has been put in place by the Italian state even before country's ratification and entry into force of the CETS no. 198.

### *Article 25(3)*

3. Italy has entered into several asset sharing agreements, but only as requesting Party. The agreements were not negotiated under Article 25(3) of the CETS no. 198. However, the Italian domestic legislation does provide for the possibility to consider sharing of confiscated property on a case-by-case basis. There are no specific rules outlined in the law concerning agreements or arrangements with foreign States on the distribution of the confiscated assets, and, from the questionnaire, it follows that the Italian authorities still need to develop common practice on the effective implementation of Article 25(3).

### *Conclusion/Recommendation*

4. Italy has enacted measures to give special consideration for confiscation sharing for the purpose of returning the property to its legitimate owner, but the law does not refer to victim's compensation. Moreover, Italian authorities are given the power negotiate agreements on sharing of confiscated property, but this has not yet been applied in practice under Article 25(3) of the Convention. Therefore, the authorities are recommended to take all necessary measures to include victim compensation as a legitimate purpose for asset sharing, as well as to develop practice on agreements concluded under Article 25(3).

## Latvia

### *Article 25(2)*

1. The Latvian authorities cited Section 357(1) of the Criminal Procedure Law (CPL), which states that "property shall be returned, on the basis of ownership, to the owner or lawful possessor thereof by a decision of the person directing the proceedings or court after storage of such property is no longer necessary for the achievement of the purpose of criminal proceedings".
2. With regard to the possibility for a third Party to request the returning of the confiscated property in order to give compensation to the victims of the crime, Latvian authorities made reference to Section 792 of the CPL ("Conditions in Respect of the Division of Money or Property Acquired as a Result of a Confiscation of Property with Foreign States"). From the wording of Section 792 it emerges that the Ministry of Justice is the authority in charge of deciding upon the request filed by third Parties on a case-by-case basis (Section 792(1)). The proceedings of examination of the request involve also a consideration on the damage caused by the criminal offence and on the location of the victim.
3. However, it should be noted that compensation to the victim is possible only when the victim is recognised as such through a judgment from the requesting State. An exception hereto is formed in proceedings regarding criminally acquired property, for which there are special provisions in place to return criminally acquired property back to the victim(s) if the latter can be determined.

### *Article 25(3)*

4. The authorities noted that the CPL includes a general provision for sharing the confiscated property with other Parties. In some instances, case-by-case agreements can be applied, depending on the assets to be shared. A Cabinet Regulation (No. 431) prescribes the procedure by which the funds or property obtained as a result of confiscation shall be distributed with foreign countries, as well as the criteria how to share these funds/property.
5. Latvia did not provide further information on any existing agreements or arrangements in place giving special consideration to sharing confiscated property with other Parties. However, it supports its response with two case examples of sharing confiscated assets, first one with the United Kingdom, and the second one with the United States of America. In the latter case, the amount requested was returned to the victim.

### *Conclusion/Recommendation*

6. The Latvian authorities give special consideration to asset sharing for the purposes stipulated in Article 25(2). They are also competent to negotiate and conclude agreements in line with Article 25(3). Yet, the authorities are recommended to maintain statistics on the effective implementation of both paragraphs 2 and 3 of Article 25.

## **Lithuania**

### *Article 25(2)*

1. In Lithuania, the confiscation of proceeds of crime is regulated through Article 94 of the Criminal Code. Apart from standard regulation of what presents the proceeds of crime, in its paragraph 5, the article states that on the grounds and in accordance with the procedure provided for in an international agreement of the Republic of Lithuania, when there is a request of a foreign state institution, a court may decide that after the judgment has taken effect, objects and values acquired by criminal means may be transferred to a foreign state institution for return to its rightful owners, if they are identified and if it does not prejudice the legitimate interests of others.
2. From what has been provided by the Lithuanian authorities and the way the aforementioned paragraph reads, it is not clear how the court establishes that rightful owners are identified in the foreign state and if there is a need for a foreign judgement to confirm this. No case law was provided to further clarify this matter.

### *Article 25(3)*

3. Lithuanian authorities advised that their system is twofold with regard to assets sharing. Judgment on confiscation rendered by a court of another member state

of the European Union recognized in accordance with Article 365 of the Criminal Procedure Code, the funds confiscated (except for enforcement and other related costs) are shared in the following way: (i) an amount not exceeding EUR 10,000, shall be transferred to the budget revenue collection account of the Lithuanian State Tax Inspectorate; (ii) in excess of EUR 10,000, the funds shall be distributed as follows: half of these funds is transferred to the account specified by the competent authority of the European Union Member State, whose court rendered a decision to confiscate the property, and another half to the budget income collection account of the State Tax Inspectorate. Furthermore, in cases which concern the execution of a court's decision on confiscation rendered in a non-EU country, the decision on sharing is done on case-by-case basis. Whilst the authorities did not indicate that there is any asset sharing agreement with non-EU member state, they reiterated that Lithuania is a party to the conventions that provide for the sharing of confiscated property, such as United Nations Convention against Corruption. In their view, this provides sufficient legal basis for negotiating and signing assets sharing agreements.

#### *Conclusion/Recommendation*

4. Lithuania has enacted measures to give special consideration for the purpose of returning the property to its legitimate owner, but the law does not refer to victim's compensation. Furthermore, Lithuania has a legislation in place to share assets with other EU member states whilst negotiating and signing agreements with non-EU member states is available through relevant provisions of UNCAC. No information has been provided if any such agreement had ever been signed. Therefore, the authorities are recommended to take all necessary measures to include victim compensation as a legitimate purpose for asset sharing, as well as to develop practice on agreements concluded under Article 25(3).

## Malta

#### *Article 25(2)*

1. The 2014 COP assessment report does not mention neither recommends any specific measure on the issue of asset sharing for the purposes of victim compensation or returning goods to the legitimate owner.
2. In the response to the questionnaire, the Maltese authorities cited Article 23(4) of the Maltese Criminal Code, which stipulates that "[...] where the Attorney General communicates to a magistrate a request by a foreign authority for the return of an article obtained by criminal means for purposes of restitution to its rightful owner, the court may, after hearing the parties and if it deems it proper so to act after taking into consideration all the circumstances of the case, order that the forfeiture of any such article shall not take place and that the article shall be returned to the requesting foreign authority".

3. It does not become clear whether “victim compensation” is considered covered under “restitution to its rightful owner”. The Maltese authorities were not able to provide further information on statistics or case studies due to the fact that circumstances requiring the application of Article 23(4) of the Maltese Criminal Code have not yet arisen.

#### *Article 25(3)*

4. The 2014 COP assessment report does not mention Article 25(3) or the Maltese compliance with the provisions thereof.
5. In the response to the questionnaire, the authorities specified that the Criminal Code, which provides for the recognition and enforcement of foreign confiscation orders, allows Malta to enter into asset sharing agreements on a case-by-case basis. Particularly Article 24D(7) of the Dangerous Drugs Ordinance (generally applicable) is deemed relevant: “the decision by the court ordering the enforcement of a foreign confiscation order shall have the effect of forfeiting in favour of the Government of Malta all things and property whatsoever situated in Malta the confiscation of which had been ordered by the foreign confiscation order subject to any direction which the Government of Malta may give providing for the further disposal of the same things and property so forfeited”. However, it is not stipulated directly that the Maltese authorities have the power to negotiate and conclude agreements, on a regular or case-by-case basis, which consider particularly the sharing of confiscated property. No further examples are provided which could support the Maltese response.
6. The Maltese authorities emphasised that the country applies the EU Decisions on confiscation orders, which provide for the recognition and enforcement of confiscation orders issued with respect of specific offences by the authorities of a number of EU Member States. The Maltese regulations implemented in respect of the EU Decisions make an exception of asset sharing if property concerned forms a part of the national heritage of Malta.

#### *Conclusion/Recommendation*

7. Given that there is no explicit legal provision or jurisprudence transposing Article 25(3) into domestic law, the Maltese authorities are recommended to take all necessary measures to ensure that its authorities are given the explicit competence to negotiate agreements which give special consideration to sharing confiscated property. Moreover, to assess the effective implementation of both Article 25(2) and 25(3), the authorities are recommended to consider maintaining statistics on the use of both paragraphs in future case law.

## Monaco

Monaco ratified the Convention in 2019 whereas its responses to the questionnaire were analysed in 2020.

### *Article 25(2)*

1. Article 8 of Ordinance No. 15.457 of August 9, 2002, on international cooperation in confiscation matters and in the fight against money laundering provides that the Monegasque court upon a decision of a foreign court which is then recognised by Monaco, transfers the ownership of the confiscated property to the Monegasque State unless otherwise agreed with the requesting state. In other words, in case the requesting state requires sharing or full repatriation of the proceeds, the Monegasque authorities would then conclude (with the requesting State) an asset sharing agreement which would regulate this matter.
2. Furthermore, the Monegasque authorities advised that when a compensation to victims is concerned, they are empowered to conclude an agreement which would foresee returning of all proceeds confiscated in a concrete case. To substantiate this statement, the authorities provided a case where, upon a request by Switzerland, the Monegasque judicial authorities signed an agreement which foresaw that all the proceeds confiscated in Monaco would be repatriated for the purpose of victims' compensation.

### *Article 25(3)*

3. The confiscated property is shared with the requesting authority on a case-by-case basis. In accordance with article 8 of the Ordinance n ° 15.457 (referred also under Art.25(2)), once the execution of the foreign confiscation order is authorised, the Monegasque authorities propose an asset sharing agreement. A simple exchange of letters between Ministers of Justice is enough to conclude such an agreement.
4. The way the assets are shared offer varies and is decided on a case-by-case basis. The agreement depends on the amounts confiscated, as well as on any costs incurred by the Monegasque judicial authorities in the execution of the request for confiscation, seizure and eventual management of the assets.
5. Since 2014, the Monegasque authorities have confiscated, at the request of the foreign judicial authorities, funds amounting up to 6,286,651.67 euros. Out of this amount, 5,860,182.41 euros were returned to the requesting authorities, i.e. more than 93% of the assets confiscated on behalf of the requesting states.

### *Conclusion/Recommendation*

6. Asset sharing for the purpose of victim compensation or return to the legitimate owner is possible upon the request of another Party, and as long as the two Parties conclude an agreement on the matter. Assets sharing agreements can be concluded and enforce by Monaco, as demonstrated through the case presented by the jurisdiction. The authorities are therefore recommended to continue with good practice and further develop the jurisprudence in this matter.

## Montenegro

### *Article 25(2)*

1. Montenegro has undergone the COP Assessment in 2014. In the report, the rapporteurs expressed doubts with regard to the possibility to give compensation to the victim of the crimes under domestic law. They considered that Article 114 of the Montenegrin Criminal Code, which merely outlines the request for compensation procedure to be put in place by the victim of crime, did not adequately address the issue of the return of confiscated property to the requesting state. No examples of cases had been provided in relation to the implementation of Article 25(2).
2. The Montenegrin authorities, in their response to questionnaire, mentioned again Article 114 CC and, in addition to that, Article 478 paragraph 8 of the Criminal Procedure Code. The above mentioned provisions ensure individuals' and private entities' claims to prevail over the claims filed by states against the perpetrator of the offences.
3. The Montenegrin authorities give priority consideration to compensation of victims of crimes, irrelevant of whether they are domestic or foreign victim. However, there is no explicit provision in the Montenegrin legal system providing for the sharing of assets with requesting countries for the purpose of compensation of the victims of the crime or returning of such property to the legitimate owners. As a consequence and in the lack of requests originating from third countries, the authorities of Montenegro were not able to provide case studies.

### *Article 25(3)*

4. The authorities in 2014 had not provided evidence of the effective implementation of Article 25(3). It was therefore recommended that the Montenegrin authorities should enter into agreements with other State Parties to enable it to co-operate for the purposes of sharing or repatriating criminal assets.
5. However, in the response to the questionnaire, Montenegro indicated that no further developments had taken place concerning agreements or arrangements to sharing confiscated property with other Parties.

### *Conclusion/Recommendation*

6. Given that there is no particular development noted since the 2014 assessment, the authorities are recommended to introduce provisions and enter into agreements with other States Parties which will enable cooperation for the purposes of sharing or repatriating criminal assets, as well as to give full effect to Article 25(2) and 25(3) of the Convention. Moreover, the authorities are recommended to adopt such measures to ensure that the ability to file a request

for asset sharing for purposes laid down in Article 25(2) is extended from individuals to all COP States Parties.

## The Netherlands

### *Article 25(2)*

1. In their response to their questionnaire, the Dutch authorities pointed out that in the Criminal Procedural Law the possibility of returning of confiscated property to another State is not foreseen. However, in reply to Article 25(3), the authorities distinguished a provision which allows the handing over to a requesting Member State confiscated objects in the context of a confiscation procedure (Article 13c, 'Law on the transfer of the enforcement of judgments in a criminal case', no official English translation was added). It does not become clear whether this provision covers sharing for the purposes outlined in Article 25(2); nor is the scope of 'Member State' explained, hence this could indicate that asset sharing only takes place with EU Member States and might exclude some COP States Parties.
2. Moreover, no further information has been provided by the Dutch authorities on their consideration on the compensation to the victims of crime and on the possibility to return confiscated property to their legitimate owners.

### *Article 25(3)*

3. There is no information provided with regard to the authorities' capability to negotiate arrangements or agreements taking into particular consideration asset sharing with other Parties.

### *Conclusion/Recommendation*

4. Given that there is no explicit legal provision or jurisprudence transposing Article 25 into Dutch domestic law, the Netherlands should introduce within its legal framework the principle of asset sharing for the purposes of victim compensation and returning goods to the legitimate owner. The Netherlands should also empower its authorities to negotiate and conclude agreements giving special consideration to asset sharing. Moreover, the country should ensure that the authorities, particularly judges and prosecutors, are familiar with the procedures for applying the provisions of Article 25.

## Poland

### *Article 25(2)*

1. Poland has undergone the COP assessment in 2013. Two subsequent follow-up reports were published in 2015 and in 2017. The rapporteurs found that Poland had not adopted specific measures to implement Article 25 paragraphs 2 and 3.



2. In the response to the questionnaire, Polish authorities reiterated Article 611fzb of the Criminal Procedure Code which puts in place a mechanism for returning of confiscated property. However, the scope of the provision is limited to EU Member States' requests only. Non-EU Member States are not directly covered by Polish legislation. No amendment was made to the respective article; therefore the recommendations of the previous analyses remain adequate.
3. When asked for further information related to non-EU states, the Polish authorities pointed out that signing of such agreement is not regulated by Polish legislation. They also added that the enforcement of forfeiture orders could be possible on the general terms provided for legal assistance, but these terms have not been further explained. No practical examples or case studies have been provided to support such a statement.

#### *Article 25(3)*

4. In the 2013 Assessment, it was recommended that Poland should consider concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, confiscated property, in accordance with its domestic law or administrative procedures. Neither in the first follow-up analysis, nor in the second one actions to respond to this recommendation were noted.
5. In the response to the questionnaire, the Polish authorities answered 'no' to the question whether special arrangements or agreements were in place. Polish Criminal Procedure Code envisages that the Minister of Justice may conclude an agreement with the relevant authority of the issuing (EU Member) State on the manner of enforcement of the forfeiture, in particular by stipulating in it a different division of the amounts obtained from the execution of the ruling (Art. 611fzb, paragraph 5).

#### *Conclusion/Recommendation*

6. Given that there is no explicit legal provision or jurisprudence granting the possibility for the authorities to share confiscated property for the purposes of victim compensation/return to the legitimate owners or to negotiate agreements giving special consideration to sharing of confiscated property, except when an EU Member State is involved, it is recommended to Poland to take all necessary legal and other measures to ensure that the authorities can give special consideration to asset sharing and negotiating agreements for the purposes established in Article 25.

## Portugal

#### *Article 25(2)*

1. The Portuguese authorities in their response to the questionnaire indicated that Article 25(2) is covered by Article 160(3) of the Law 144/99 (on judicial co-operation

in criminal matters), which follows as “Portuguese judicial authority shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence and return such proceeds to the requesting court”. Once transferred, the Portuguese authorities consider it up to the requesting Party to decide the final destination of the assets (i.e. compensating the victim of crime or returning the assets to their legitimate owner). Legislation does not require the purpose on which the request by a foreign authority is submitted.

2. Within the EU context, Portugal is also bound by the Framework Decision 2006/783/JHA on the principle of mutual recognition to decisions of confiscation, transposed into domestic legislation by Law no. 89/2008, of 31 august and applicable only to EU Member States.
3. No cases have been registered so far in the national courts related to money laundering where priority consideration was given to the returning of the confiscated assets in order to be used by the requesting Party to the compensation of victims of money laundering or to the return of such property to their legitimate owners.

#### *Article 25(3)*

4. The above-mentioned law 144/99 stipulates that international co-operation shall be carried out in accordance with the provisions of international treaties, conventions and agreements which are binding upon Portugal. Therefore, authorities argued that Portugal does not need bilateral agreements for the sharing or returning of confiscated assets. This is also reinforced by the afore-mentioned Article 160(3) of the same law.
5. Still, Portugal has implemented the provisions through an ad-hoc agreement for the sharing of confiscated property with Switzerland and is currently negotiating a formal agreement on this issue with the United States of America.

#### *Conclusion/Recommendation*

6. The Portuguese legislation is in compliance with Article 25(3), but only partially compliant with Article 25(2). Legislation does not clearly prioritise victim compensation or return of assets to legitimate owner, thus it is recommended to ensure that both victims and legitimate owners are well covered by the respective article, by adopting any legislative or other measures as necessary. Since under the current legal framework no cases of asset sharing under Article 25(2) have been registered, the authorities should take measures to familiarise judges and prosecutors with the procedures to apply sharing of assets for the purposes stipulated in Article 25(2).

## Republic of Moldova

### *Article 25(2)*

1. The Republic of Moldova has undergone the initial COP Assessment in 2014 and the Secretariat follow-up analysis in 2017. The rapporteurs found that Moldova could give consideration to returning confiscated property to the requesting Party so that it can give compensation to the victims of the crime or return the property to its legitimate owners.
2. In their response to the questionnaire, Moldovan authorities demonstrated a high commitment towards the returning of the confiscated property to the requesting Party in order to give compensation to the victims of the crime. The provision recalled is Art. 162(1) CCP, of which section (4) provides: “money and other valuables obtained through criminal actions or that were the targets of criminal actions shall be returned to the owners or, as the case may be, shall accrue to the state income. Other objects shall be returned to their owners and if these are not identified, shall be transferred to the state. A conflict about the ownership on these objects shall be settled in line with civil procedures”. The implementation of this Article was demonstrated through a case study.

### *Article 25(3)*

3. In 2014, rapporteurs noted that the existing bilateral agreements concluded with other States did not give special consideration to sharing confiscated property; however some foresaw a procedure for transferring to the requesting Party property, proceeds and instrumentalities of an illicit origin. Such agreements were concluded with Türkiye, Ukraine and Azerbaijan. The rapporteurs recommended that Moldova should ensure that its domestic law or administrative procedures enable the authorities it to give special consideration to concluding agreements or arrangements on asset sharing with other Parties. In the 2017 follow-up analysis, it was noted that the Agency for the Recovery of Criminal Goods had a competence to send and receive information with other Parties on the value and recovery of criminal assets. However, the Moldovan authorities had not provided new information regarding the possibility to give special consideration to concluding agreements or arrangements on asset sharing with other Parties.
4. In the response to the questionnaire, the Moldovan authorities repeated that the existing agreements do not give special consideration to sharing confiscated property, but that they do foresee a procedure for transfer of property, proceeds and instrumentalities of an illicit origin to the requesting Party. Moreover, sharing of confiscated assets with foreign States can take place during the process of examination of such cases with international elements, where confiscation of the property is applicable. The judicial authority may decide thereupon.

5. It is also noted that the Republic of Moldova had not yet received confiscation sharing requests concerning money laundering cases, however in other criminal cases the Moldavian criminal investigation bodies executed confiscation requests and transmitted goods for the compensation of the victims of the crime to a foreign State.

### *Conclusion/Recommendation*

6. With regard to Article 25(2), the conclusion of the 2014 COP Assessment report still applies as Moldovan legislation is in compliance with the Convention. However, concerning Article 25(3), although improvement is made, it remains unknown whether authorities have acquired the competence to negotiate or conclude agreements giving special consideration to sharing confiscated property. It is therefore recommended to the Moldovan authorities to ensure that its domestic law or administrative procedure enable authorities to give special consideration to concluding agreements or arrangements on asset sharing with other Parties.

## Romania

### *Article 25(2)*

7. Romania has undergone the COP assessment in 2012. A subsequent follow-up report was published in 2014. The rapporteurs pointed out that Romania had not adopted specific measures to implement Article 25(2). A deficiency noted was that, apart from EU countries, the Romanian legal system does not provide specific regulations concerning the returning or sharing of confiscated property to/with the requesting Party.
8. The Romanian response to the questionnaire indicated that, within the framework of international co-operation in criminal matters, there is no provision providing a possibility to give special consideration to returning confiscated property to the requesting Party for victim compensation purposes. In principle, the confiscated property becomes property of the State. Victims can be compensated individually during the criminal trial or the victim can introduce a civil action/initiate civil proceedings. The authorities had not received a request for confiscation sharing based on the Warsaw Convention.
9. When courts confiscate assets, the sharing thereof is based on the agreements signed between Romania and the requesting State. Moreover, Romanian authorities pointed out that, when victims are concerned or assets need to be returned to their rightful owner, these aspects will have priority consideration in the definition of the details of the agreement itself, on a case by case basis.

### *Article 25(3)*

10. In the 2012 COP Assessment report on Romania, the rapporteurs noted that Romania had not adopted specific measures to implement Article 25(3). The

authorities stipulated that the existing international conventions ratified by Romania offered a sufficient framework for the repatriation and/or sharing of assets with other contracting Parties. Yet the rapporteurs recommended that Romania should adopt measures to ensure its ability to co-operate with non-EU countries on criminal asset sharing or repatriating.

11. The authorities, in their response to the questionnaire, indicated that no asset sharing agreement had been concluded under CETS no. 198 or any other Council of Europe or EU instruments. The capability to negotiate and facilitate the concluding of bilateral or multilateral agreements for sharing confiscated assets is entrusted to the National Agency for Administering Seized Assets, which is currently negotiating new agreements on sharing of confiscated property on a case-by-case basis. This is done particularly under the European Convention on Laundering, Search, Seizure and Confiscation of the Proceedings from Crime (1990 Strasbourg Convention, ETS no. 141).

### *Conclusion/Recommendation*

12. Asset sharing for the purpose of victim compensation or return to the legitimate owner is possible upon the request of another Party, and as long as the two Parties conclude an agreement on the matter. The authorities are recommended to consider adopting measures to ensure that its authorities are fully competent and knowledgeable to negotiate agreements giving special consideration to asset sharing under Article 25(3).

## **Russian Federation**

### *Article 25(2)*

1. The Russian Legislation Countering Act foresees the transferring of confiscated proceeds of crime or equivalent property in whole or in part to a foreign state whose court has ordered a confiscation on the basis of a relevant international treaty signed by the Russian Federation. Russian courts have acquired the competence to examine requests filed by foreign competent authorities to recognise and enforce foreign court judgments and decisions. From the questionnaire, it follows that transferal or sharing of assets may take place on the basis of an international treaty or on recognition of a foreign judgment taken by a court in civil proceedings.
2. No information is provided as to whether priority consideration is given to sharing assets for the purposes of victim compensation or returning of the property to the legitimate owner, neither on statistics or case examples.

### *Article 25(3)*

3. The Russian Federation informed about the authorities' competence to confiscate, under the judicial procedure. Some agreements are in place with foreign authorities concerning special procedures of sharing of confiscated property.

These agreements regulate the situations where countries provide assistance to each other in repatriation/confiscation of property acquired through crime (including property laundered). Agreements were so far signed with two States Parties of the Convention (e.g. Bulgaria and Georgia). Russian Federation is also in a position to sign ad hoc treaties for the purposes of asset sharing with the Republic of Moldova, in line with the multilateral treaty concluded within the CIS framework.

#### *Conclusion/Recommendation*

4. The Russian Federation does not comply with Article 25(2) and 25(3), as no priority consideration is given to sharing of assets for the purposes laid down in Article 25(2). These corresponding provisions should therefore be included in the legislation. In addition, given that there is no explicit legal provision granting the possibility for the State to negotiate special agreements on the sharing of confiscated property, it is recommended to introduce such legislative measures. Subsequently, the authorities are recommended to raise awareness among the judicial authorities of the procedures for asset sharing and concluding special agreements.

#### **San Marino**

##### *Article 25(2)*

1. From the response to the questionnaire, it becomes clear that the Sammarinese authorities give primary importance to the sharing of the proceeds of confiscated assets with requesting third Parties, but in the questionnaire no mention is made of compensation of victims. Article 15 of Law no. 100 of 29 July 2013 provides that “unless otherwise established in international agreements or conventions, the assets, funds and securities confiscated on the basis of a legal assistance request made by another State shall be allocated to the requested State if their value is lower than EUR 10,000.00. If their value exceeds the above-mentioned amount, half of the value exceeding said amount shall be transferred to the requesting State”.
2. As for case studies, the Court of the Republic of San Marino, which was asked to provide additional information, indicated that some requests for mutual assistance relative to confiscations of proceeds of crime involving the Judicial Authority of the Italian Republic are pending. In particular, measures of precautionary seizure have been adopted. However, no final judgment has yet been issued and consequently no confiscation has yet been ordered. If a judgment is given, the value of the property will be shared based on the provisions of the Convention. Currently, no requests for legal assistance relative to confiscation of proceeds of crime have been made to countries other than Italy.

### *Article 25(3)*

3. The Sammarinese authorities provided that it can conclude agreements on asset sharing following the execution of an MLA request, on the basis of the type of offence for which confiscation was ordered, the relevant legal interests and the degree of involvement of each State in the investigation. This measure, however, only comes in place if a request is made for asset sharing with a value over EUR 10.000. If not, the above mentioned provision of Article 15 of Law no. 100 applies.
4. There is no further information provided with regard to the effective implementation of the matter. However, the authorities emphasise that the state “favours the sharing of the assets confiscated in its territory following an order of a judicial authority of another State in the context of criminal proceedings”. It remains unclear whether special agreements or arrangements have been negotiated with the purpose of asset sharing.

### *Conclusion/Recommendation*

5. San Marino partially complies with Article 25. It is therefore recommended to adopt legislative or other measures to give special consideration for the sharing of assets with requesting Parties for the purpose of victim compensation or return to the legitimate owner, as well as to consider negotiating agreements regulating asset sharing on a regular or case-by-case basis with other COP States Parties.

## **Serbia**

### *Article 25(2)*

1. International co-operation on sharing of assets in which Serbia is involved takes place on the basis of an international agreement. However, when there is no such agreement in place or where certain issues have not been covered by an agreement, the co-operation is realised on the basis of the principle of reciprocity and provisions of the Law on Recovery of the Proceeds of Crime. This law prescribes that the confiscated assets or their equivalent value shall be used to compensate the victims of crime (“for fulfilment of the indemnification claim of the injured party”). After granting the sum for compensation, the remaining pecuniary funds should subsequently be divided between the Republic of Serbia and the requesting State.
2. No further information has been provided by Serbian authorities on the above-mentioned legal instrument or on practices or case studies, nor does it become clear whether return of property to the legitimate owners specifically is awarded priority consideration.

### *Article 25(3)*

3. In their response to the questionnaire, the Serbian authorities indicated that it does not have in place any bilateral agreements on asset sharing with other states.

When confiscation of the proceeds derived from a criminal offence is concerned, on the request of a foreign state, the issue of asset sharing is solved in each individual case and in accordance with multilateral agreements and conventions ratified by the Republic of Serbia. These include UN and CoE Conventions. The authorities indicated that there are no cases of asset sharing with other countries in practice.

#### *Conclusion/Recommendation*

4. Given the lack of details concerning the Serbian implementation of Article 25(3), the authorities should consider concluding agreements or arrangements on sharing confiscated property with other Parties, as well as further clarify the provisions of the Law on the Recovery of the Proceeds of Crime related to the transposition of Article 25(2) and the possibility to compensate victims/return property to the legitimate owners.

### **Slovak Republic**

#### *Article 25(2)*

1. International co-operation takes place either within the EU framework, or, when non-EU Member States are concerned, on the basis of an international treaty. An agreement on sharing of assets can be proposed on an ad-hoc basis. But if no such treaty exists or if no consensus can be found, the Slovak Republic will become the owner of the assets obtained from the execution of a foreign request for confiscation.
2. Upon request of a foreign state, the court, upon motion of the Ministry of Justice, may decide on returning of property to that state for the purposes outlined in Article 25(2). The authorities advised that a legal basis, which was not further specified, exists for the court to consider and decide on asset sharing, in particular cases.

#### *Article 25(3)*

3. The Slovak Republic did not designate a specific authority to negotiate the agreements as stipulated in Article 25(3), as it is believed that such authority lays within the competences of the European Union. However, from the response to Article 25(2), it can be concluded that authorities do have the competence to negotiate agreements on sharing of assets, either upon initiative of a requesting state or upon initiative of the Ministry of Justice of the Slovak Republic.

#### *Conclusion/Recommendation*

4. The Slovak Republic partially complies with Article 25, as its authorities are competent to decide on asset sharing, but not all requirements are fulfilled. The authorities are therefore recommended to consider negotiating agreements



regulating asset sharing on a regular or case-by-case basis with other COP States Parties.

## Slovenia

### *Article 25(2)*

1. In the response to the questionnaire, Slovenian authorities referred to Article 514 of the Criminal Procedural Act which establishes that international assistance in criminal matters shall be pursued according to the provisions of the Convention, which are directly applicable. Slovenian law does not specifically cover Article 25(2) of the Convention, but the Convention is applied even without specific domestic provisions related to Art. 25(2).
2. The authorities provided one case in which the court decided to confiscate assets and return them to the victims of an internet fraud.

### *Article 25(3)*

3. No further information besides the above-mentioned Article 514 is mentioned. . The authorities are of the view that the legal framework provides for sharing of confiscated assets on an ad-hoc basis. This does not necessarily relate to the authorities' special consideration to negotiating agreements on ad-hoc or permanent asset sharing. Two bilateral treaties have been concluded, which regulate mutual co-operation in the field of seizure and confiscation of proceeds of crime. The treaty between Slovenia and Kosovo\*<sup>10</sup> particularly enables the principle of asset sharing.

### *Conclusion/Recommendation*

4. Given that there is no explicit legal provision or jurisprudence transposing Article 25 into Slovenian domestic law but that the Convention directly applies in the country, the authorities are recommended to consider introducing within the national legal framework the principle of asset sharing for the purposes of victim compensation and returning goods to the legitimate owner.

## Spain

### *Article 25(2)*

1. Spain has put in place legislation which establishes the rules regarding the disposal of confiscated property between Spain and other EU Member States. The provisions hereof follow the transposition of the Council Framework Decisions on the relevant subjects. The Additional Provision 4 of the Law 23/2014 on mutual recognition of judicial decisions in criminal matters in the European Union

---

<sup>10</sup> All references to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

establishes that the same rules apply also to non-EU Member States in the absence of an agreement between Spain and the requesting state. However, the legislation does not include victim compensation.

2. Spain shows some consideration for the interests of legitimate owners. Article 803 of the Spanish Law on Criminal Procedure foresees the intervention in the criminal proceedings of such persons that may be affected by confiscation where there is a proof that the confiscated property belongs to a third party other than the accused or that there are third parties holders of rights over the asset whose confiscation is sought, who may be affected by it.
3. The recently established Office of Asset Recovery and Management, and particular its Commission of Adjudication of Goods Proceeds of Crime (still to be created), has as one of its objectives to give support to victims of crime. This may be considered under future assessments.
4. No statistics are available on the matter.

#### *Article 25(3)*

5. The same answer for Article 25(2) applies for 25(3): the rules following from the transposal of the Council Framework Decisions apply to all COP States Parties. Hence, if the amount obtained from enforcement of the confiscation order is lower than EUR 10.000 or the equivalent thereof, it shall remain with the Spanish state whereas any amount higher than EUR 10.000 will be split between the requesting State and Spain.
6. The Spanish authorities have supported their response with an example of two agreements concluded with non-COP State Party (Switzerland), dating from 2011 and 2014. A new agreement is under negotiation.

#### *Conclusion/Recommendation*

7. Spain has enacted measures to give special consideration for confiscation sharing for the purpose to return property to its legitimate owner, but legislation does not provide for asset sharing for the purpose of victim compensation. Therefore, the authorities are recommended to take all necessary measures to ensure that victim compensation becomes a legitimate purpose for asset sharing.

## Sweden

#### *Article 25(2)*

1. Swedish legislation provides that money or other assets which have been confiscated shall as a general rule accrue to the Swedish state (Article 25.1 of the of the Act [1972:260] on international executions). However, the Government may – on request of another state – decide that confiscated property shall be transferred to the requesting state (*Section 36 of the Act [1972:260] on*

*international executions, **Annex A** and Chapter 5 Section 11 International Legal Assistance in Criminal Matters Act [2000:562], **Annex B***. The authorities advised that it is within the discretion of the Government to give priority consideration to victim compensation and the return of property to its rightful owner. However, the laws referred above do not have any provision on this particular matter.

2. Whilst the Swedish government deems that they meet the requirements of Article 25(2), the rapporteur could not agree that the arguments put forward are sufficient to comply with this requirement of the Convention. The authorities also advised that the relevant EU legislation will soon be in place (Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders and supplementary national legislation). Article 30 of the Regulation, **Annex D**, prescribes the procedure when a confiscation order is accompanied by a decision to reconstitute property to the victim or to compensate the victim. This instrument will be limited to the EU member states and will not be applicable to those COP States Parties which are non-EU members.

#### *Article 25(3)*

3. The Government may under its own discretion – on request of another state – decide that confiscated property should be shared (“partially shall be transferred”) with the requesting state (Section 36 of the Act [1972:260] on international executions, **Annex A** and Section 11 of the International Legal Assistance in Criminal Matters Act (2000:562)). As described above, the Government may also consider returning the property to its rightful owner.
4. Sweden has also entered into bilateral agreements on mutual legal assistance with several countries, some of which are COP States Parties. Sweden is also a part and is bound by bilateral agreements entered into by the EU.

#### *Conclusion/Recommendation*

5. Sweden has a general norm in place, which gives a power to the Government to decide on a case by case basis to return the confiscated assets to the requesting state. There is no mechanism which would bound or oblige the authorities to consider returning the confiscated property and at the same time give priority to victims’ compensation. Sweden is therefore recommended to adopt legislative or other measures to introduce the principle of asset sharing for the purposes of victim compensation and returning goods to the legitimate owner, as well as to take legislative or other measures to clarify the competences for authorities to negotiate and conclude agreements giving special consideration to asset sharing with all COP States Parties.

## “The former Yugoslav Republic of Macedonia”

### *Article 25(2)*

1. From the response to the questionnaire, it is not clear whether the authorities give special consideration to victim compensation or return of property to the legitimate owners in the case of potential sharing of confiscated property. It is only provided that international co-operation with a legitimate basis for sharing of assets which originally belonged to the other State ensures that assets are returned to their owners upon completion of the domestic procedures.

### *Article 25(3)*

2. There is no norm in the legislation of “the former Yugoslav Republic of Macedonia” that regulates the sharing of confiscated property. In each specific criminal case involving multiple States Parties co-operating in a joint investigation team, the provisions of the contract for the formation of the team would state the reasons and the consequences for the contracting Parties for sharing assets. However, the authorities have not supported their response with practical examples, thus it remains uncertain whether sharing confiscated property has taken place.

### *Conclusion/Recommendation*

3. It remains unknown whether “the former Yugoslav Republic of Macedonia” has adequately implemented the provisions laid down in Article 25. It is therefore recommended to ensure the proper transposal of Article 25(2) and 25(3) into domestic law or court procedures by taking all necessary means.

## Türkiye

### *Article 25(2)*

1. The Türkiye’s authorities noted foremost that the criminal law system does not encompass the use of confiscated goods for the purpose of victim compensation. Yet under civil law, those who are victims of any crime may bring their compensation claims to the attention of courts of civil jurisdiction. It is possible to return the confiscated goods to its legitimate owners: Article 54(1) of the Türkiye’s Criminal Code (“Confiscation of Goods”) provides “[w]here a third party, acting in good faith, is entitled to any limited real right, confiscation order shall be rendered without any prejudice to such right.” Moreover, the Türkiye’s authorities indicated that Art. 131(2) of the Türkiye’s Criminal Procedure Code disallows the confiscation of property and requires the return of that property to its legitimate owners after it has been seized. None of the wording refers to “priority” consideration.
2. The authorities provided one example of seizure of property for the purpose of return to the legitimate owner, who was based in France.

### *Article 25(3)*

3. In Türkiye Law no. 6706 on International Judicial Co-operation in Criminal Matters regulates that provisions of conventions on judicial co-operation to which Türkiye is a party to, directly apply in domestic law. On the matter of asset sharing, the same law also regulates the powers of the Central Authority, which may determine the conditions and negotiate arrangements for sharing of confiscated property. Thus the Ministry of Justice, as central authority for MLA requests, is the competent authority to enter into agreements. However, the terms and conditions under which asset sharing may take place, are not clearly defined in legislation.
4. There are no agreements or arrangements in place.

### *Conclusion/Recommendation*

5. Türkiye has enacted measures to provide for asset sharing for the purpose of returning property to their legitimate owner(s). However, the authorities are recommended to take legislative or other measures to facilitate asset sharing and to highlight the details of terms and conditions of such assistance.

## Ukraine

### *Article 25(2)*

1. The Ukrainian authorities in their response to the questionnaire indicated that Article 25(2) is covered by Art. 568(3) CPC. Confiscated property shall be transferred to the income of the State Budget of Ukraine, but, under request of a central authority of Ukraine, the court may adopt a decision to transfer the property “to the requesting Party that adopted a decision to confiscate the property as a compensation for damage inflicted on the victims by the crime”. It remains unknown whether this includes priority consideration for returning the property to the legitimate owners.
2. Ukraine has not received any request under Article 25(2).

### *Article 25(3)*

3. The Ukrainian authorities indicated that the co-ordination of measures on confiscation of property is carried out bilaterally on a case-by-case basis. The legal basis for the power to put into place new arrangements and agreements has not been provided.
4. The bilateral consultations were carried out with the Kingdom of the Netherlands, which made a request for confiscation of proceeds from crime located in the territory of Ukraine. The request was deemed enforceable by the Ukrainian authorities and thus its execution was initiated. Finally, according to the Dutch proposal, 50% of the confiscated property or its monetary equivalent would be

transferred to the Netherlands, whereas the remaining 50% would stay in Ukraine. Enforcement of this decision is underway.

#### *Conclusion/Recommendation*

5. The Ukrainian legislation complies with Article 25, yet the authorities are recommended to ensure that the practitioners are familiarised and further trained on practical implementation of the provisions of Article 25(2).

### United Kingdom

#### *Article 25(2)*

1. In their response to the questionnaire, the United Kingdom authorities recalled a general principle on mutual legal assistance according to which the requesting state that carries out the recovery of the proceeds will retain these proceeds. This principle is established in the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014. However, it is possible, in presence of identifiable victims and on a case-by-case basis, that these proceeds will be shared with a third (requesting) party on a 50-50% basis. In such case, the UK adopts a proactive approach and expresses its willingness to grant a larger share to be returned to the requesting state so it can give adequate compensation to the victims of crime. It does not become clear whether return of property to the legitimate owners receive considerable priority too. The United Kingdom does not keep statistics on the application of this legislation.

#### *Article 25(3)*

2. The authorities did not make note of existing agreements or arrangements which give special consideration to asset sharing with another Party. Instead, “the UK cannot demand where a state puts their returned funds”, but this was not further explained. If the UK seeks to negotiate on agreements regarding asset sharing for the compensation of victims, the authorities would expect that those funds would be returned to those victims accordingly. However depending on the case, the United Kingdom is able to return funds to the requesting States Parties.
3. The United Kingdom does not keep statistics on the matter.

#### *Conclusion/Recommendation*

4. The United Kingdom legislation partially complies with Article 25(2), whilst the legislative provision demonstrating the transposition of Article 25(3) into domestic law is lacking. The UK authorities are therefore recommended to take measures as necessary to include in domestic law the possibility of returning the property to the legitimate owner in line with Article 25(2), as well as to adopt legislative or other measures which enable the authorities to conclude agreements or arrangements

on sharing assets with other Parties, on a regular or case-by-case basis in accordance with its domestic law or administrative procedures.

## Annex I.a – Tabular overview of State submissions (Art. 25(2))

Country	Submitted response	Priority consideration	Specification	Effective implementation
Albania	Yes, 02/04/2018	Yes	Victim compensation is lacking	Yes, for legitimate owner
Armenia	Yes, 03/04/2018	No	Sharing is not prohibited in the law	No requests received
Azerbaijan	Yes, 30/04/2018	No	Implementation through the NAP scheduled for 2019	No information
Belgium	Yes, 18/04/2018	No	Return of property to the legitimate owner is lacking	No information
Bosnia and Herzegovina	Yes 26/03/2018	No	No direct legislation, but reported on jurisprudence in asset sharing with State Parties	No information
Bulgaria	Yes, 04/04/2018	No	No direct legislation, strong focus on EU Member States	No information
Croatia	Yes, 29/03/2018	Yes	Return of property to the legitimate owner is lacking	No information
Cyprus	Yes, 30/03/2018	Yes	Covered by AML/CFT Law	Yes, case provided
Denmark	Yes, 01/05/2018	Yes	Covered by Administration of Justice Act	No information
Estonia	Yes, 17/05/2023	No	Victim's compensation not specified in the legislation	No information
France	Yes, 17/04/2018	Yes	Priority consideration for victim compensation/return to legitimate owner is covered by non-legislative measures	Yes, 10 instances
Georgia	Yes, 28/03/2018	Yes, indirectly <sup>1</sup>	Sharing may take place if the requesting State has a "special interest" in the property	No
Germany	Yes, 16/04/2018	Yes	Return of property to the legitimate owner is lacking	No information
Greece	Yes, 30/05/2018	Yes	Covered by Penal Code	No information
Hungary	Yes, 28/03/2018	Yes	Covered by Criminal Code	Yes, case provided
Italy	Yes, 11/04/2018	Yes	Victim compensation is lacking	Yes, case provided
Latvia	Yes, 21/03/2018	Yes	Victim compensation possible only after judgment recognising the victim status	Yes, cases provided
Lithuania	Yes, 12/04/2021		Return of property to the legitimate owner is possible, no reference to victims	No information
Malta	Yes, 12/04/2018	Yes	Victim compensation is lacking	No requests received



Monaco	Yes, 04/05/2020	Yes	Done through specific agreements	Yes
Montenegro	Yes, 26/03/2018	Yes	Only through individual's' claims, not through a Party request	No requests received
Netherlands	Yes, 18/04/2018	No	Not clear whether sharing receives priority consideration for victim compensation/return to legitimate owners	No information
Poland	Yes, 22/03/2018	No	Measures cover EU Member States only	No information
Portugal	Yes, 28/03/2018	No	Covered partly by Law 144/99 on judicial co-operation in criminal matters	No
Republic of Moldova	Yes, 30/03/2018	Yes	Covered by Criminal Procedure Code	Yes, case provided
Romania	Yes, 15/03/2018	Yes	Sharing and compensation/return occurs through agreements	No requests received
Russian Federation	Yes, 10/07/2018	No	Transferring assets may take place, but no notion of priority consideration	No information
San Marino	Yes, 09/04/2018	Yes	Victim compensation is lacking	Yes, case provided
Serbia	Yes, 02/04/2018	Yes	Return of property to the legitimate owner is lacking	No
Slovak Republic	Yes, 12/07/2018	Yes	Upon request transferring of assets may take place	No requests received
Slovenia	Yes, 13/04/2018	Yes, indirectly <sup>1</sup>	No specific legislative provision	Yes, case provided
Spain	Yes, 16/04/2018	Yes	Victim compensation is lacking	No information
Sweden	Yes, 03/04/2018 and reply to the selected follow-up- procedure 25.June 2020	Yes	Legal system provides for priority consideration for victim compensation/return to legitimate owners, but application is subject to discretion of the Government	Yes, case provided
"The former Yugoslav Republic of Macedonia"	Yes, 22/02/2018	No	Not clear whether sharing receives priority consideration for victim compensation/return to legitimate owners	No information
Türkiye	Yes, 30/03/2018	Yes	Transferring assets may take place, but no notion of priority consideration	Yes, case provided
Ukraine	Yes, 30/03/2018	Yes	Return of property to the legitimate owner is lacking	No requests received
United Kingdom	Yes, 13/04/2018	Yes	Return of property to the legitimate owner is lacking	No information

<sup>1</sup> The relevant State indicated that international treaties it is Party to are directly binding, but no legislative provision was provided (in the case of Georgia, please also consider footnote 9 of the analysis above).

## Annex I.b – Tabular overview of State submissions (Art. 25(3))

Country	Submitted response	Arrangements?	Specification	Number of arrangements
Albania	Yes, 02/04/2018	No arrangements		None
Armenia	Yes, 03/04/2018	No arrangements	Ad-hoc basis	None
Azerbaijan	Yes, 30/04/2018	No arrangements		None
Belgium	Yes, 18/04/2018	Legislation	Upon request agreements can be negotiated; no specific legislation in place	None under the respective Convention
Bosnia & Herzegovina	Yes 26/03/2018	No arrangements		None
Bulgaria	Yes, 04/04/2018	Legislation	Case-by-case basis, special legislation for EU Member States	No information
Croatia	Yes, 29/03/2018	No arrangements		None
Cyprus	Yes, 30/03/2018	Yes, including in legislation	Case-by-case basis	3 examples (Belgium, UK, USA)
Denmark	Yes, 01/05/2018	No arrangements		None
Estonia	Yes, 17/05/2023	Yes, including in legislation	Case-by-case basis, special legislation for EU Member States	4 examples (US, China, Ukraine, Russian Federation)
France	Yes, 17/04/2018	Yes, including in legislation	Agreements form the basis for asset sharing; the CPC applies only if there are no agreements.	None
Georgia	Yes, 28/03/2018	Legislation	Ad-hoc basis	None
Germany	Yes, 16/04/2018	Legislation	Domestic legislation provides for asset sharing, authorities can negotiate agreements	No information
Greece	Yes, 30/05/2018	Legislation	In the context of judicial assistance and under EU law	Within the EU framework
Hungary	Yes, 28/03/2018	Legislation	No agreements or arrangements related to Article 25(3)	None
Italy	Yes, 11/04/2018	Legislation	Case-by-case basis, but no specific rules under the domestic law. Entered into several asset sharing agreements, but only as requesting Party and not under Article 25(3)	None
Latvia	Yes, 21/03/2018	Legislation	The Criminal Procedure Law arranges confiscated property sharing	2 examples (UK, USA)

Lithuania	Yes, 12/04/2021	Legislation	Criminal Code arranges confiscated property sharing with EU and non-EU MS; No agreements or arrangements related to Article 25(3)	No information
Malta	Yes, 12/04/2018	Legislation	Law provides for the possibility to conclude agreements	No information
Monaco	Yes, 04/05/2020	Legislation and practice	Law provides for the possibility to conclude agreements	Yes (example with Switzerland)
Montenegro	Yes, 26/03/2018	No arrangements		None
Netherlands	Yes, 18/04/2018	Legislation	Asset sharing may take place during a confiscation procedure, based on a request by a foreign state.	No information
Poland	Yes, 22/03/2018	Legislation	Agreements can be concluded with EU Member States only	None
Portugal	Yes, 28/03/2018	Yes, including in legislation	Agreements with other Parties are in place, but legislation also provides for the possibility of sharing or returning of confiscated assets.	2 examples (Switzerland, USA)
Republic of Moldova	Yes, 30/03/2018	No arrangements	No special consideration of arrangements	None
Romania	Yes, 15/03/2018	Legislation	Case-by-case basis	None
Russian Federation	Yes, 10/07/2018	No arrangements		On-going negotiations
San Marino	Yes, 09/04/2018	Legislation	Law arranges confiscated property sharing	None
Serbia	Yes, 02/04/2018	No arrangements	Case-by-case basis	None
Slovak Republic	Yes, 12/07/2018	No	This competence lays with the EU	No information
Slovenia	Yes, 13/04/2018	Legislation	Law arranges confiscated property sharing	2 treaties
Spain	Yes, 16/04/2018	Yes	Arrangements have been closed	Yes (Switzerland)
Sweden	Yes, 03/04/2018 Including the selected follow-up – procedure 25 June 2020		Bilateral agreements	5 national agreements EU agreement with Japan

“The former Yugoslav Republic of Macedonia”	Yes, 22/02/2018	No arrangements	Depending on joint investigations teams; but legislation does not regulate the sharing of confiscated property.	None
Türkiye	Yes, 30/03/2018	Legislation	Law arranges confiscated property sharing	None
Ukraine	Yes, 30/03/2018	Yes	Case-by-case basis	Yes (Netherlands)
United Kingdom	Yes, 13/04/2018	No arrangements	Case-by-case basis	No information

**Questionnaire  
for the Transversal Monitoring of States Parties’  
Implementation of  
Article 11 and Article 25(2) and 25(3)  
of the CETS no. 198**

**Introduction**

At its 9<sup>th</sup> meeting, held in Strasbourg from 21 to 22 November 2017, the Conference of the Parties to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS no. 198) decided to initiate the application of a horizontal thematic monitoring mechanism, for the initial period of two years. Such review would look at the manner in which all States Parties implement selected provisions of the Convention. It would be documented in a thematic monitoring report, to be adopted by the Conference of the Parties at its next Plenary meeting. To that effect, the Conference of the Parties adopted a new Rule 19*bis* of the Rules of Procedures (which is attached for information to the mail with which this questionnaire was distributed). The Conference of the Parties decided that the first thematic monitoring report should deal with Article 11 as well as with Article 25(2) and 25(3) of the Convention.

Parties are therefore invited to submit information on the implementation of these provisions on the basis of the questionnaire provided below.

**Information submission and deadline**

The questions below reflect the relevant parts of the questionnaire adopted by the Conference of Parties at its 2nd meeting (Strasbourg, 15-16 April 2010). The questionnaire enables Parties to structure the information they provide in view of gathering the necessary information and data on the implementation of the Convention's provisions. Parties are kindly asked to keep their replies as concise and brief as possible.

While filling in the questionnaire, Parties may find the Explanatory Report of the CETS no. 198 helpful in order to structure their replies.<sup>11</sup> Parties are further invited to consider the Interpretative Notes on the implementation of Articles 11 and 25(2), which was adopted by the Conference of Parties at its 9th meeting (Strasbourg 21-22 November 2017).<sup>12</sup>

---

<sup>11</sup> The document can be found on the Council of Europe website under: <https://rm.coe.int/16800d3813>.

<sup>12</sup> The document can be found on the COP website under: <https://rm.coe.int/interpretative-notes-cop198-9th-meeting/168076ce79>. A copy of this document is also attached for information to the mail with which this questionnaire was distributed.

The examples that Parties wish to provide may cover both cases of successful and/or unsuccessful cooperation with other Parties. The reference period to take into account for data collection should be the period starting from January 2015.

Replies to this questionnaire will be treated as confidential. Should Parties provide cases/examples, details (e.g. name(s) of the accused, some other details which may reveal the identity of the accused or even the victim) can be anonymised if they prefers so.

Parties are invited to send replies to the Secretariat, no later than 30 April 2018, to: DGI-COP198@coe.int.

### Contact persons

Please indicate the name and contact numbers of the person(s) within your country who can be contacted in relation to the reply to the questionnaire.

Name	
Job title	
Institution	
e-mail:	

### Article 25 – Confiscated property

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

<i>Answer</i>
---------------

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

*Answer*

### **Information to support the answer**

Article 25 sets a standard with regard to cooperation between the Parties aiming to compensate the victims of crime(s) and/or to return the confiscated property to their legitimate owners.

The Convention is considered to add value in the area of asset sharing: though Article 25(1) retains the basic concept that assets remain in the country where they are found, the new provisions in Article 25(2) and (3) require priority consideration to sharing the assets, when requested, and concluding asset sharing agreements.

Parties are expected at a minimum to provide the relevant **articles of the domestic legislation** dealing with this issue, a **list of agreements** signed or **arrangements in place**, with **case examples** and/or **statistical data**. In addition, Parties may also support their response with any other relevant information demonstrating implementation of this provision of the Convention.

## Annex III – Rules of Procedure: 19 *bis*

### **Rule 19<sup>2</sup> - Procedure for monitoring the implementation of the Convention**

In respect of its function under Article 48 paragraph 1a of the Convention, the Conference of the Parties will apply the following procedures:

#### **Questionnaire**

1. The Conference of the Parties shall prepare, within six months from its first meeting, a Questionnaire for its use in the monitoring of the proper implementation of the Convention (hereinafter “the Questionnaire”).
2. The Questionnaire will seek information on the implementation of provisions in the Convention which are not covered by other relevant international standards on which mutual evaluations are carried out by FATF, MONEYVAL and other equivalent AML/CFT assessment bodies (the FATF style regional bodies, the International Monetary Fund and the World Bank).

*<sup>2</sup> At its 9<sup>th</sup> Plenary the COP decided to suspend the procedure under Rule 19 and to apply a transversal thematic monitoring in line with the newly adopted Rule 19bis for an initial period of two years with a further stocktaking discussion on the matter at its 11<sup>th</sup> Plenary in 2019. The follow up process under Rule 19 will continue at least until further discussion in 2018.*



## Annex IV.a – State submissions: Article 25(2)

Albania

-Albania's domestic law allows that, if the seizure is carried out at the request of a Party, and after its request, the seized items shall be sent to the foreign authorities for the purpose of seizing or returning the rubber to the lawful owner.

-The Law no. 10 193, dated 3.12.2009 "On Jurisdictional Relations with Foreign Authorities in Criminal Matters", Article 23 provides that:

Article 23

Submission of seized items

1. Seized items shall be sent to the foreign judicial authority upon his request, in execution of the letter of order, to be confiscated or to be returned to the rightful owner.

2. These items include:

- a) the items used for the commission of a criminal offense;
- b) items resulting from the commission of a criminal offense or the equivalent value;
- c) gains from a criminal offense or equivalent value;
- ç) other items provided for the purpose of inciting the commission of a criminal offense, as well as rewards for a criminal offense.

3. Items or profits may be kept permanently in Albania if:

- a) their owner has a place of residence or residence in the Republic of Albania;
- b) there are serious allegations by Albanian state authorities regarding items or profits;
- c) a person, who has not participated in the commission of a criminal offense and whose claims are not guaranteed by the requesting State, proves that he has acquired rights over such items and gains in good faith, as well as that the person resides in Albania.

-There have been some cases where items seized on behalf of foreign judicial authorities have been returned to these authorities in order to return their owners e.g. motor vehicles, other valuable items, etc.

Armenia

Articles 55 and 103(1) of the Criminal Code of the Republic of Armenia set out the legal framework for governing confiscation and Article 232 of the Criminal Procedure Code of the Republic of Armenia sets out the legal framework for governing the seizure of property. Armenia has never made or received requests to and from other countries for repatriation or sharing of confiscated assets. At present there are no legal provisions or administrative procedures or processes, which directly address the sharing of confiscated property with third countries. However, no provisions of the law prohibit or obstruct the ability of the authorities to share assets in this way on an ad-hoc basis should the need arise. Provisional measures to prevent the dealing, transfer or disposal of property subject to confiscation are applied on the basis of Article 233(1) (1) of the CPC, which is applicable not only in relation to the suspect or accused person but also to any other person holding the property.

- Azerbaijan Currently there is no legal mechanism permitting authorities to give priority consideration to returning the confiscated property to the requesting Party so it can give compensation to the victims of the crime or return such property to their legitimate owners.  
This matter is expected to be addressed by 2019 in the framework of implementation of item 2.6 "Taking measures to improve legislation on forfeiture and recovery of criminally obtained funds or other property" of the "National Action Plan on combating legalization of criminally obtained funds or other property and financing of terrorism for 2017-2019" adopted in November 2016.
- Belgium La Loi du 20 mai 1997 sur la coopération internationale en ce qui concerne l'exécution de saisies et de confiscations prévoit les principes et la procédure de la confiscation. De plus, en cas de partage, - voir également ci-dessous, le motif du partage dépend de l'état requérant. Rien s'oppose à un partage au bénéfice des victimes. C'est l'Etat requérant qui décide sur le sort ultime des sommes confisqués et partagés. Car la loi ne contient aucune pourcentage (par exemple 50 %) est prévu, voir obligatoire, un partage complet – au bénéfice des victimes est tout à fait possible.
- Bosnia & Herzegovina The legal framework of BiH does not provide for measures equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions.  
International cooperation for confiscation purposes is covered by Article 20 of the Law on Mutual Assistance in Criminal Matters (MLA Law) dealing with confiscation in the framework of MLA. The scope of the property that can be returned to the requesting party is defined in the MLA Law. As defined in the mentioned article the hand-over may be accomplished at any stage of the criminal proceedings, but only on the grounds of a final and binding decision. The MLA Law also defines cases when the proceeds may be retained in Bosnia and Herzegovina.  
Bosnia and Herzegovina is open to the initiatives of other countries but stil there are no agreements or arrangements in place giving special consideration to sharing confiscated property with other countries on a regular or case-by-case basis.  
  
WE EMPHASIZE THAT **IN THE PRACTICE OF THE COURT OF BOSNIA AND HERZEGOVINA THERE ARE CASES OF NOMINATION ON DIRECT IMPLEMENTATION OF THE CONVENTION CONCERNING CONFISCATION AND HANDOVER OF THE PROCEEDS OF CRIME** (example of request with the Republic of Montenegro en R Slovenia)  
ATTACHMENT: LAW ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS
- Bulgaria Yes, priority is given to that possibility, if so requested. The possibilities for sharing of assets under Art. 25, para. 3 of the Convention can be discussed in every particular case with the requesting country as prescribed by the abovementioned provision of the Convention. For more detailed information, please see below the answer to the next question.
- Croatia This answer does not cover cooperation between the EU Member States in framework of judicial cooperation in criminal matters.  
In the Croatian Act on International Legal Assistance in Criminal Matters, there are no provisions on this matter, but other applicable domestic laws give priority to the compensation to the victims of the crime in comparison with pecuniary advantage.

According to Croatian Criminal Code, article 77, If the injured party has been awarded a pecuniary claim which by its nature and contents corresponds to the acquired pecuniary advantage, only the part of pecuniary advantage exceeding the awarded pecuniary claim shall be confiscated.

An important issue are requests where an exact amount of damages has not been established in the judgement related to criminal proceedings. When the amount of the damages is not established in criminal proceedings, Croatian competent authority could instruct requesting state to suggest to injured party/victim to initiate civil proceedings in requesting Party, and when a final decision is rendered, it could be recognized by the provisions which regulate mutual assistance in civil matters. That decision is then convenient for execution in Croatian legal system if other preconditions are met.

In order to supplement already given answer to the question, here is relevant article from the Croatian Act on International Legal Assistance in Criminal Matters:

“Article 29

(1) Articles or monetary gain which have been temporarily seized for security purposes may be delivered to a foreign judicial authority, upon its request, upon completion of the mutual legal assistance proceedings, for the purpose of seizure or return to an authorised person.

(2) Articles and monetary gain referred to in paragraph 1 of this Article encompass:

1. articles used to commit the criminal offence,
2. products of the criminal offence or their counter-value,
3. gain resulting from the criminal offence or their counter-value,
4. presents and other gifts as an incentive and reward to commit a criminal offence or their counter-value.

(3) Delivery may follow in any stage of foreign criminal proceedings, and it may only be executed based on a final and enforceable decision of a foreign judicial authority.

(4) Articles or monetary gain may be permanently detained in the Republic of Croatia if:

1. the injured person is domiciled in the Republic of Croatia, and the objects have to be returned to that person,
2. state authority claims the right of the Republic of Croatia in such objects,
3. person not participating in the offence, whose claims have not been guaranteed through the requesting state, proves that he/she has acquired in good faith the right in such articles or monetary gain either in the Republic of Croatia or abroad, and the person is domiciled in the Republic of Croatia,
4. if the articles or monetary gain are necessary to carry out the criminal proceedings pending in the Republic of Croatia or to apply the seizure measure in the Republic of Croatia.

(5) If an authorised person claims rights in the articles or monetary gain referred to in paragraph 4 of this Article, their delivery to the requesting state shall be postponed until resolution of the legal issues. Disputed articles or monetary gain may be delivered to an authorised person:

1. if the requesting state consents,
2. if the state authority consents, in cases referred to in paragraph 4 point 2 of this Article,
3. if the domestic court has acknowledged authority to claim.”

The Republic of Croatia does not have the required statistics.

This provision of the Convention, as in fact hole Convention, following the provisions of the Constitution of Republic of Croatia on the validity of international treaties, after the ratification of the Convention, shall apply to all other Contracting Parties to the treaty of the Convention.

Cyprus

The AML/CFT law, the Prevention and Suppression of Money Laundering and Terrorist Financing Law, provides in Part IV – International Co-operation, in section 39(3) the following:

*“where the foreign order concerns the confiscation of proceeds or property, the proceeds or property may, after the enforcement of the said order, be distributed among the competent authorities of the foreign country and the Republic of Cyprus.”*

Furthermore, Part IVA of the same law, which deals with the enforcement of confiscation orders of EU Member States on the basis of the Council Framework Decision 2006/783/JHA, provides in section 43.H.A. (4) the following:

*“(4) Money which has been obtained from the execution of a confiscation order shall be disposed of by the Republic as follows:*

*(a) if the amount obtained from the execution of the confiscation order is below EUR10,000 or the equivalent to that amount in a different currency, the amount shall accrue to the Republic;*

*(b) in all other cases, the Republic transfers to the issuing state 50% of the amount and the remaining balance is deposited to the state budget of the Republic.”*

As a matter of practice however, when there are victims and the Cyprus Authorities are informed accordingly, by the issuing authority, then the Cyprus Authorities transfers the confiscated property to the competent authorities of the issuing country in order for the property to be returned to the victims, without sharing any of the assets confiscated.

Unfortunately statistics are not available showing the number of cross border cases where the confiscated proceeds were returned to the requesting party so that it could give compensation to the victims of crime.

Nevertheless, in a recent case in 2017, where a confiscation order, which was issued in the UK and was registered and enforced in Cyprus, the whole amount of the money confiscated was returned to the UK so as to be paid as compensation to the victims of crime. As we were informed by the UK Authorities, in that case there were identified victims and there was a request for the whole of confiscated amount to be returned to the requesting country so as to compensate the victims, thus the Cypriot Authorities gave priority consideration to this request of returning the whole of the confiscated property.

Also, in another case in 2017, following a cross border case in investment fraud in the USA, money traced in Cyprus, the whole amount confiscated in Cyprus as a result of the investment fraud was used for the compensation of the victims in the USA.

Denmark

Under section 807d (1) and (2) of the Administration of Justice Act, the court may give priority consideration to returning the confiscated property to the requesting Party so it

can give compensation to the victims of the crime or return such property to their legitimate owners.

The confiscated property is first used to fulfil the injured party's claim for compensation, then the cost of proceedings, then a claim for confiscation pursuant to section 75 (1), 76a (5) and 77a of the Danish Criminal Code, and then fines.

The court may exceptionally determine a different order for enforcement.

Estonia

The international cooperation in the criminal proceedings is regulated in the Code of Criminal Procedure (CCP), in particular in the chapter 19 of the CCP

Full text of the CCP in English is available here:

<https://www.riigiteataja.ee/en/eli/504042023004/consolide>

The CCP § 487 subsection 2 states that unless the parties have agreed otherwise, any confiscated property is entered in the revenue account of the Estonian state. This means that the parties can always make agreements on asset sharing and that the allocation of confiscated assets can differ from the general rule based on the international instruments.

The § 3 of the Constitution of Estonia states that generally recognised principles and rules of international law are an inseparable part of the Estonian legal system.

Full text of the Constitution of the Republic of Estonia is available here:

<https://www.riigiteataja.ee/en/eli/530122020003/consolide>

The point 2 of the § 2 of the CCP states that the sources of the law of criminal procedure include generally recognised principles and rules of international law as well as international treaties binding for Estonia.

All these provisions in conjunction enable the CEST 198 to have effect on the Estonian authorities in the future, when it comes to the sharing of assets with the victims abroad. Currently there are multiple other international frameworks applicable in Estonia.

Please see the following answer for further information.

(3) Are there agreements or arrangements in place giving special consideration to sharing confiscated property with other Parties, on a regular or case-by-case basis? Confiscated property can be shared with other EU countries based on EU Regulation 2018/1805. Estonia has signed bilateral agreements on mutual assistance in criminal matters with United States, Ukraine, China and Russian Federation, that can be used for asset sharing. In addition, the OPG sharing of assets can be agreed based on Article 14 of the United Nations Convention Against Transnational Organized Crime and Article 57 of the United Nations Convention Against Corruption. The cooperation on this field with Ireland and Denmark is based on the Framework decision FD 2003/577/JHA.

France

Le sort des biens confisqués en exécution d'une décision étrangère est réglé par les dispositions de l'article 713-40 du code de procédure pénale.

Cette dernière disposition pose le principe selon lequel l'exécution d'une décision de confiscation étrangère entraîne transfert à l'Etat français de la propriété des biens confisqués, sauf s'il en est convenu autrement avec l'Etat requérant.

La loi n°2012-409 du 27 mars 2012 a précisé que les sommes d'argent et le produit de la vente des biens confisqués, déduction faite des frais d'exécution, sont dévolus à

l'Etat français lorsque ce montant est inférieur à 10.000 € et dévolus pour moitié à l'Etat français et pour moitié à l'Etat requérant dans les autres cas.  
Les dispositions du code de procédure pénale n'ont cependant vocation à s'appliquer qu'en l'absence d'accord de partage entre la France et l'Etat requérant.  
Un tel partage est privilégié par la France s'il existe des victimes à indemniser ou si une restitution de biens à leurs propriétaires est envisagée.

#### **Article 713-40**

*L'exécution sur le territoire de la République d'une décision de confiscation émanant d'une juridiction étrangère entraîne transfert à l'Etat français de la propriété des biens confisqués, sauf s'il en est convenu autrement avec l'Etat requérant.*

*Les biens ainsi confisqués peuvent être vendus selon les dispositions du code du domaine de l'Etat.*

*Les frais d'exécution de la décision de confiscation sont imputés sur le total des montants recouvrés.*

*Les sommes d'argent recouvrées et le produit de la vente des biens confisqués, déduction faite des frais d'exécution, sont dévolus à l'Etat français lorsque ce montant est inférieur à 10 000 € et dévolus pour moitié à l'Etat français et pour moitié à l'Etat requérant dans les autres cas.*

*Si la décision étrangère prévoit la confiscation en valeur, la décision autorisant son exécution rend l'Etat français créancier de l'obligation de payer la somme d'argent correspondante. A défaut de paiement, l'Etat fait recouvrer sa créance sur tout bien disponible à cette fin. Le montant recouvré, déduction faite de tous les frais, est partagé selon les règles prévues au présent article.*

S'agissant de la préservation des droits des victimes, il est possible de mentionner l'article 131-21 alinéa 3 du code de procédure pénale qui permet d'envisager de réaliser des saisies aux fins de restitution à la victime en l'absence de toute confiscation. Une saisie peut être faite dans une optique de confiscation, mais également, en droit français, dans une optique de restitution aux victimes, voire d'indemnisation depuis l'édiction de l'article 706-164 du code de procédure pénale.

#### **Article 131-21 alinéa 3**

*« Elle (la confiscation) porte également sur tous les biens qui sont l'objet ou le produit direct ou indirect de l'infraction, à l'exception des biens susceptibles de restitution à la victime ».*

Il est également possible d'ajouter aussi qu'il existe un texte au niveau du Conseil de l'Europe qui le prévoit d'ailleurs : l'article 12 du Deuxième Protocole additionnel à la Convention européenne d'entraide judiciaire en matière pénale du 8 novembre 2001.

#### **Deuxième Protocole additionnel à la Convention européenne d'entraide judiciaire en matière pénale**

##### **Strasbourg, 8.XI.2001**

##### **Article 12 – Restitution**

*« 1 La Partie requise peut, sur demande de la Partie requérante et sans préjudice des droits des tiers de bonne foi, mettre des objets obtenus par des moyens illicites à*

*la disposition de la Partie requérante en vue de leur restitution à leur propriétaire légitime.*

*2 Dans le cadre de l'application des articles 3 et 6 de la Convention, la Partie requise peut renoncer, soit avant, soit après leur remise à la Partie requérante, au renvoi des objets qui ont été remis à la Partie requérante si cela peut favoriser la restitution de ces objets à leur propriétaire légitime. Les droits des tiers de bonne foi ne sont pas affectés.*

*3 Au cas où la Partie requise renonce au renvoi des objets avant leur remise à la Partie requérante, elle ne fait valoir aucun droit de gage ni aucun autre droit de recours découlant de la législation fiscale ou douanière sur ces objets.*

*4 Une renonciation conformément au paragraphe 2 n'affecte pas le droit de la Partie requise de percevoir auprès du propriétaire légitime des taxes ou droits de douane. »*

Comment 1 : Il me semble que de tels développements ne figuraient pas dans notre réponse apportée au MEAE. Il faudrait demander au MEAE le document qu'ils ont communiqué pour vérifier ce qui était indiqué.

Comment 2 : En réalité, le tableau fourni dans la réponse de la France correspond aux situations dans lesquelles des sommes confisquées ont été partagées entre la France et un autre pays plutôt dans la logique de l'article 25-2 de la convention. L'Agrasc signale 10 partages intervenus depuis sa création en 2010. *Note of the Secretariat : see table in country's response under Article 25(3).*

Georgia

According to Article 7 of the law on Normative Acts of Georgia, international treaties binding for Georgia are part of the Georgian legislation. According to this regulation authorities are obliged to take into consideration and execute the rules stipulated *inter alia* by the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS no. 198) Until now, there has been no practice of confiscating property based on the request of the foreign country.

With regard to Article 25 of the Convention of the Council of Europe, the content of this article is adapted in the Article 52 of the Law of Georgia on International Cooperation in the Criminal Law (21 July 2010). In particular, the procedure for execution of a judgment of a foreign state court on the territory of Georgia related to deprivation of property and the property deprived in accordance with the procedure prescribed by this article may, in case of demand, be transferred to a foreign state, if it has a special interest in this property.

Germany

Article 25 of the Convention is reflected in German law. When property is confiscated, the interests of the injured party in the return of the items acquired by the offenders or participants, or relevant compensation, are taken into account. Assets that have been secured within the scope of confiscation as a general rule flow to the respectively competent Land justice treasury (section 56 (4) IRG, section 75 StGB). Pursuant to section 57 (1) IRG, these assets are administered by the competent

public prosecutor's office as the enforcing authority under section 50, second sentence IRG.

The recommendation contained in Article 25 (2) of the Convention, which provides for the return of the confiscated property for the purpose of compensating the victims, is taken up by section 56 (a) IRG. Under the preconditions enumerated there, upon application compensation will be granted to those persons who were injured by the criminal offence which underlies the foreign decision on confiscation.

The claims for compensation on the part of these injured persons are paid by public funds in return for the assignment of their claims pursuant to section 56a (1), second sentence IRG.

The competent enforcement authority decides on the claims pursuant to section 56a (4), first sentence IRG as equitable compensation. Section 56a (3) IRG provides that the amount of compensation is limited by the remaining revenue accruing to German public funds from the enforcement of the confiscation order.

To the extent that rights of third parties continue to exist pursuant to section 75 (2), first sentence StGB, compensation is excluded pursuant to section 56a (2) IRG.

As is the case when domestic assets are confiscated, the suspect is informed of his rights and, if appropriate, the possibility of review in the civil courts (section 56a (5) IRG). To secure the rights of third parties and in view of the time limit contained in section 56a (4), second sentence IRG, the enforcement authority must, pursuant to section 57 (7) IRG, inform those persons of their rights under section 56a IRG who might have a claim for damages against the convicted person arising from the offence on which the order was based.

Unfortunately we are not able to provide you with statistics or case examples which support or demonstrate our implementation of Article 25(2) and (3) CETS no. 198.

The German responsible authorities do not collect or store statistical data concerning the cases related to these provisions.

#### Greece

According to art. 373 of the Greek Code of Criminal Procedure (CCP), seized items and monies are as a rule returned to their rightful owners. This provision, in combination with the general mutual legal assistance provisions of the CCP and art. 25 par. 2 of the CETS No. 198 (which claims direct application) are interpreted to mean that the Greek judicial authorities deciding on the execution of a confiscation request made by another Party in accordance with Articles 23 and 24 of this Convention, shall give priority consideration to returning the confiscated property to the requesting Party so that it can give compensation to the victims of the crime or return such property to their legitimate owners. The recovery of funds related to any assets and proceeds derived from criminal activities takes place in the context of judicial assistance, following the prescribed procedure, through the Ministry of Justice, Transparency and Human Rights.

Moreover, with respect to confiscation requests originating from EU Member States, art. 27 L. 4478/2017, which incorporates art. 16 of Framework-Decision 2006/783/ΔΕΥ on the application of the principle of mutual recognition to confiscation orders, regulates the disposal of confiscated assets and provides that – unless otherwise agreed between the public prosecutor of the Court of Appeal (who is the competent authority for the execution of the confiscation order) and the authorities of the requesting State – money which has been obtained from the execution of the confiscation order shall be disposed of as follows:



(a if the amount is below EUR 10.000 it shall accrue to the Greek State, in accordance ) with the provisions of art. 552A CCP.

(b If it exceeds EUR 10.000, 50% of the amount shall accrue to the Greek State and ) the rest shall be transferred to the requesting State.

Non-monetary assets, are either accrued to the Greek State based on art. 552A CCP, sold in accordance with the provisions of the Customs Code, and then disposed of in accordance with the above rules governing the disposal of monetary assets, or they are transferred to the requesting State unless they are items belonging the Greek cultural heritage. The decision on how to dispose non-monetary assets is taken by the competent prosecutor of the Court of Appeal.

Article 25(2) as ratified, is henceforth part of domestic law and claims direct application, in combination with the general provisions of the CCP. Accordingly, Greek law should be considered to provide for the possibility of asset sharing with third parties not only for the return of property to the rightful owners, but also for the purpose of compensation of the victims of crime, given that this is permitted by domestic law. Indeed, Article 76 of the Penal Code on confiscation, as modified by Law 4478/2017, provides explicitly (par. 7) for the possibility that confiscated assets are used “for the public interest or for social purposes or for the satisfaction of the victim”.

The ratification of the Convention is very recent, so it is as yet impossible to speak of statistics or case examples regarding the implementation of Art. 25(2/3).

Greece proposes to be included among the group of States parties whose authorities are in the position to negotiate agreements aimed at the sharing of confiscated property, instead of the group of States parties which “mentioned no legal provisions were adopted related to Article 25(3)”. Indeed, nothing of the sort was mentioned, nor was there a question relating to the possibility of negotiating the above agreements. There is reference in our replies of the fact that recovery of funds related to any assets and proceeds derived from criminal activities takes place in the context of judicial assistance, following the prescribed procedure of the Code of Criminal Procedure and the international instruments which are valid in this regard. This leaves a large margin of appreciation to the authorities responsible for the execution of the relevant requests, in adherence to the spirit of the international conventions and the principle of reciprocity. In addition, there is reference in our replies of the EU framework on asset sharing, which has been incorporated in Greek legislation and provides sufficient basis for asset sharing within the EU.

In view of the above, and to the extent that the EU framework is considered as an arrangement in the context of art. 25(3), we also propose that Greece is removed from the group of 12 States which “replied that they had no arrangements or agreements in place concerning the matter and on the basis of the Convention”.

Further to the above, we also propose that corresponding amendments are made in the text concerning art. 25(3) in p. 18, as well as the Recommendation in p. 19, taking into account the possibility of negotiating agreements and arrangements and the EU framework in place. This been said, we fully agree on the need to adopt practical measures to familiarise judges and the prosecution service with the procedures for application of both art. 25(2) and 25(3).

Hungary

**Ministry of Justice:**

**Articles 72 (6), 75 (3) of CC:** the ownership of a confiscated object or the assets forfeited shall be transferred to the state,

**Articles 320-321 of Act CCXL of 2013:** sharing, delivery, sale and destruction of the confiscated object,

**Articles 60/B-60/E of Act XXXVIII of 1996:** legal assistance on the execution of confiscation or forfeiture of assets,

**Articles 112-119/E, 142-146 of Act CLXXX of 2012:** legal assistance on the execution of the confiscation or forfeiture of assets with the Member States of the European Union,

**Articles 210/C-210/G of the Act LIII of 1994 on judicial enforcement:** Hungarian authorities can give priority consideration to returning the forfeited assets to the requesting Party so that it can give compensation to the victims of the criminal offence or return such assets to their legitimate owners, in accordance with Articles 23 and 24 of the Warsaw Convention.

**National Office for the Judiciary:**

**Articles 46, 60/B-60/C of Act XXXVIII of 1996:** possibility of returning the confiscated property to other Contracting Party,

**Articles 71/E-71/F and Part VI of Act CLXXX of 2012:** possibility of returning the confiscated property regard to the Member States of the European Union.

The possibility of considering primary execution is within the scope of judicial assessment.

**Prosecutor General's Office:**

Yes, our domestic laws absolutely prioritize victim compensation, and judicial practice is following that principle in international cases as well.

Speaking of confiscation and victim compensation, we have a dualist legal system regarding the purpose of asset recovery. Recovered proceeds shall either be used for compensation OR shall be confiscated, but these two measures are excluding each other. In cases, where proceeds are deriving from "victim-crimes" such as fraud, extortion, card skimming, etc., the secured (seized or frozen) assets are given back to the victims as compensation. If the proceeds of crime are not stolen assets, but illegally used, generated property of the offenders like drug trafficking, firearm trafficking, crimes of corruption etc., they shall be confiscated, as there was no civil party to suffer pecuniary injury in course of the commission.

As we had learned, in other jurisdictions (like common law countries) the proceeds of crime might be confiscated before victim compensation, so compensation and confiscation will not exclude each other. We do take this experience into consideration in our everyday practice, and the Prosecutor General's Office had also issued an internal guideline on how these common law in rem, NCBC (non-conviction based confiscation) orders should be treated and executed.

The duality of our system is clearly shown in Article 74/5 of our Criminal Code that states out: "confiscation of property may not be ordered in connection with assets reserved to cover any civil claim awarded during the criminal proceedings".

To briefly summarize how we approach compensation in international victim-crime cases, we apply seizure as a coercive measure to transfer the secured proceeds into the requesting country, instead of recognizing a foreign confiscation judgement / order. This solution – as best practice in Hungary - provides a fast-track, easy and effective

solution for compensating victims in the other country, instead of a lengthy and difficult process of asset sharing. Seizure orders might as well issued by the prosecutor or even the investigating authority, so there is no need for obtaining court orders in these cases. Basically, we perform the exact same procedural actions as if we were acting in a domestic case.

In non-victim crime cases, we are still able to recognize confiscation orders as they are, and confiscate proceeds on the basis of an MLA submitted by another country. Inside the EU, the asset sharing mechanism is really simple, as Hungary had had implemented FWD nr 2006/783/JHA, so asset sharing issues should be dealt with accordingly. Outside the EU, we – so far, to my personal knowledge – had yet to have any asset sharing procedures, so we do not have any substantial practical knowledge on possible difficulties.

In a recently finished repatriation process, a non-EU country was carrying out an investigation in a fraud case. According to the basic facts, the perpetrators has created an internet based investment program, promising extremely high rates of return despite of minimal risk to funds. The investors were instructed to wire money into various accounts held by a network of companies located around the world, which had been created for the mere purpose of clouding the money trail and disguise the destination of transfers (that is to say: for money laundering). One of these companies was located in a neighbouring country, and had a bank account in Hungary, with more than 5.000 incoming wire transfers, crediting a total balance of more than 8 million Euros. The foreign jurisdiction dealing with the predicate crime to the laundering offence had submitted an MLA to Hungary firstly for seizing, and later on for confiscating and repatriating the proceeds deriving from fraud in order to compensate the victims. As explained in the previous questionnaire, Hungary executed the second request by repatriating all of the seized money to the requesting judicial authority by a wire transfer, yet without confiscating the proceeds and – thus – also without the need to contract an asset sharing agreement.

Italy

- A.** The transfer of confiscated assets to a foreign State is provided for by Arts. 740, par. 2, 740 bis and 740 ter of the Italian Code of Criminal Procedure (Special provisions for executing confiscation orders have been adopted in order to implement the Framework Decision 2006/783/JHA on the enforcement of the principle of mutual recognition of confiscation orders (Legislative decree n. 137 of August 7th 2015)., that are worded as follows:

Article 740 - Enforcement of financial penalties and transfer of confiscated objects

1. The sum obtained from the enforcement of a financial penalty shall be paid to the penalty fund. Instead it shall be paid to the sentencing State, at request, when this latter State would do that under same under the same circumstances.

2. The confiscated properties shall be transferred to the State. Instead they shall be transferred to the State where the recognition judgment has been rendered, at request, when the latter Stated would transfer the properties to the Italian State under the same circumstances.

Article 740-bis - Transfer to a foreign State of confiscated properties

1. In the cases provided for by international agreements in force in the State, properties confiscated with a final judgment or another irrevocable order shall be transferred to the foreign State where the confiscation order was issued or adopted.

2. The transfer under paragraph 1 shall be ordered when the following requirements are met:
  - a) The foreign State made an explicit request;
  - b) The judgment or the order under paragraph 1, were recognized in the State under Articles 731, 733 and 734 (See the Appendix, where also other relevant provisions on recognition of confiscation orders are set out.).

#### Article 740-ter - Transfer order

1. The Court of Appeal, when deciding recognition of a foreign judgment or a confiscation order, shall order that confiscated properties under Article 740-bis be transferred.
2. A copy of this order shall be immediately sent to the Minister of Justice, who shall agree on the transfer procedure with the requesting State.
  - B.** The principle set out in Article 25(2) of the Convention is the international legal basis for applying Article 740-bis and Article 740-ter.
  - C.** It's worth noting that, pursuant to these legal provisions, Italy transferred to other States the full amount of confiscated sums or assets in view of compensation for damage of injured parties even before the ratification of the Convention. See the following examples.
    1. Following recognition of a conviction judgment rendered on 16.06.2014 by the Criminal Court of Assizes of Lugano against an Italian citizen for the offence of misappropriation, the Italian judicial authority ordered, as partial compensation for damage of the injured parties, the transfer to the Swiss Confederation of the funds and sums previously seized by the Italian authorities in view of the execution of a letter of requests submitted beforehand. In this case, the provisions applied of Article VIII of the bilateral Agreement between Switzerland and Italy of September 10<sup>th</sup> 1998, additional to the European Convention of mutual assistance, whose par. 1 expressly provide for the possibility to transfer to the requesting State "also the assets deriving from an offence and the product of their transfer which could be object of a seizure according to the law of the requested State", and this "especially with the purpose of their return to the injured party or their confiscation".
    2. In a case of fraud, the Court of Appeal of Trieste transferred to the U.S. the whole amount of sums confiscated in Italy with commitment to transfer them to the injured party, on the basis of the Treaty of mutual assistance in the criminal matters between Italy and the USA undersigned on September 11<sup>th</sup> 1982, as supplemented by the provisions of the Agreement U.S.A.- E.U., included in the legal Instrument undersigned on 3<sup>rd</sup> May 2006. In particular, Article 18, par. 2 of the Treaty, when assuming that "Proceeds or property forfeited to a Contracting Party pursuant to this Article shall be disposed of by that Party according to its domestic law and administrative procedures. Either State may transfer all or part of such proceeds or property, or the proceeds of its sale, to the other State, to the extent permitted by their respective laws, upon such terms as they may agree".
    3. With a judgement of February 28<sup>th</sup> 2013, the Court of Appeal of Genoa ordered that the final judgement rendered on February 12<sup>th</sup> 2008 by the Criminal Court of Assizes of Lugano (CH) against an Italian citizen

for the offence of corporate fraud be recognized. The latter was sentenced to 3 years 6 months' imprisonment, "with confiscation and transfer to the injured party" of a real estate located in Italy. The Court in addition to recognition, ordered Land Registry to register the transfer of ownership of the real estate units in favour of the victim. It is worth noticing that the Italian law system does not provide for the legal instrument named "Allowances to the injured party", which on the contrary is provided for by the Swiss legislation (Article 73 of the Criminal Code). At this regard, in the judgement where the appeal of the defendant was rejected (Sez. VI, 01/10 – November 18<sup>th</sup> 2013, n. 46201, Mosconi), the Court of Cassation excluded that the fundamental principles of our legislation are in conflict with an instrument based on loss of ownership of an asset belonging to the convicted person and its concomitant assignation to the injured party in view of his/her compensation. The Court indeed underlined that such a mechanism is "quite homogenous" with our conservative seizure, that aims at ensuring the subsequent sale of the asset in view of assigning the proceeds to the injured party as compensation.

- D. It's also worth noting that the protection of the rights of "legitimate owners", although not "victim" of the offence and provided that they are not involved in the commission of the offence, is a general principle of our national legal system as well. Indeed, legitimate owners can obtain the return of confiscated assets even after the order of confiscation is final. In this regards, on one side, our national legislation does not make any distinction between domestic and foreign owner, on the other side the protection of the latter is a logic consequence of international relations based on reciprocity.

Latvia

Pursuant to Section 357(1) of the Criminal Procedure Law property shall be returned, on the basis of ownership, to the owner or lawful possessor thereof by a decision of a person directing the proceedings or court after storage of such property is no longer necessary for the achievement of the purpose of criminal proceedings. Action with property which is not removed by its owner or lawful possessor shall take place in accordance with the same procedures as action with property for which an attachment has been revoked. It should be noted that this regulation applies on domestic and foreign cases and it does not matter if the legitimate owner is a Latvian citizen or a foreign citizen.

Section 357 "Returning of Criminally Acquired Property" of the Criminal Procedure Law:

(1) Property shall be returned, on the basis of ownership, to the owner or lawful possessor thereof by a decision of the person directing the proceedings or court after storage of such property is no longer necessary for the achievement of the purpose of criminal proceedings. Action with property which is not removed by its owner or lawful possessor shall take place in accordance with the same procedures as action with property for which an attachment has been revoked.

(2) Property, the circulation of which is prohibited by law and which, as a result of such prohibition, is located in the possession of a person illegally, shall not be returned to such possessor, but rather transferred to the relevant State authority, with a decision of the person directing the proceedings, or to a legal person that is entitled to obtain and use such property.

(3) Property the origin of which is the State resources used for disclosure of a criminal offence shall be returned to the legal possessor or recovered for the benefit of him or her. If such property is alienated, destroyed, concealed or disguised and it is not possible to return it, other property may be subjected for such recovering in the value of the property to be returned.

(4) If a criminally acquired property - immovable property - is returned, on the basis of ownership, to the owner or lawful possessor, lease or rental contracts of the residential premises entered into after committing of criminal offence shall not be in force.

In regard to possibilities returning the confiscated property to the requesting Party so it can give compensation to the victims of the crime or return such property to their legitimate owners Section 792 of the Criminal Procedure Law stipulates conditions in respect of the division of money or property acquired as a result of a confiscation of property with foreign states.

Section 792 "Conditions in Respect of the Division of Money or Property Acquired as a Result of a Confiscation of Property with Foreign States" of the Criminal Procedure Law:

(1) A request regarding the division of money or property acquired as a result of a confiscation of property shall be decided by the Ministry of Justice in each particular case.

(2) In examining a request regarding division of money acquired as a result of a confiscation of property, the amount of money acquired, the harm caused by a criminal offence and location of victims shall be taken into account.

(3) If the money obtained as a result of confiscation of property does not exceed EUR 10 000 (recalculating according to the currency exchange rate used in accounting, which was in effect on the day of the announcement of the ruling on the confiscation of property), the Ministry of Justice shall take a decision to refuse to transfer the money to a foreign state. If the money obtained as a result of confiscation of property exceeds EUR 10 000 (recalculating according to the currency exchange rate used in accounting, which was in effect on the day of the announcement of the ruling on the confiscation of property), the Ministry of Justice, upon consulting with a foreign state, shall take a decision to transfer to the foreign state not more than half of the money or the amounts specified in a request of the foreign state.

(4) The Ministry of Justice, upon consulting with a foreign state, may take a decision on different division of the money, which has not been referred to in Paragraph three of this Section and which does not harm the financial interests of Latvia. The conditions of Paragraph two of this Section shall be taken into account in consultations.

(5) Upon request of a foreign state the Ministry of Justice may take a decision to return the property acquired as a result of a confiscation of property to the foreign state.

(6) The Ministry of Justice shall refuse a request regarding the division of money or property acquired as a result of a confiscation of property, if the request is received after one year from the day of sending of a notification regarding the execution of the ruling on the confiscation of property.

(7) The Cabinet shall determine the procedures by which money or property acquired as a result of a confiscation of property shall be divided with foreign states and the procedures by which money shall be transferred, as well as the criteria for the division of money or property.

Compensation to the victims is possible only after receiving a judgment according to which the person is recognized as a victim. Exclusion of this rule is applied in proceedings regarding criminally acquired property. These are special provisions that

are in place to give the criminally acquired property back to the victims, if the victim can be determined.

In regard to the requested case examples on implementation of Article 25(2) please see the reply provided by the Ministry of Justice in regarding to the implementation of Article 25(3) as it contains two examples of returning of confiscated assets to the requested Party.

Lithuania

The returning of the confiscated property to the requesting Party so it can give compensation to the victims of the crime or return such property to their legitimate owners is foreseen in Article 94 (5) of the Criminal Code of the Republic of Lithuania.

Article 94. Measures Taken with Regard to the Tangible Objects Relevant for Investigation of a Criminal Act and the Trial in the Event of Termination of Proceedings and Rendering a Judgement

1. When making a judgement, or terminating the proceedings the issue of tangible objects relevant for the investigation of a criminal act and the trial should be solved in the following way:

1) property specified in Articles 72 and 723 of the Criminal Code of the Republic of Lithuania shall be confiscated;

2) items the circulation of which is prohibited are transferred to state institutions or destroyed;

3) documents having characteristics indicated in Article 91 of this Code shall be preserved as the material of investigation of a criminal act or shall be transferred to the interested enterprises, agencies, organisations or natural persons at their request; the data storage devices containing data acquired further to the rules set in the article 160 of this Code when conducting secret surveillance shall be returned to the pre-trial investigation institutions, which filled in the covering documents, without their request;

4) tangible objects having no value which cannot be utilised shall be destroyed, or when the interested enterprises, agencies, organisations or natural persons so request may be given over to them.

5) other objects shall be returned to the rightful owners, in case the latter are not established, then shall become a national property. The arguments arising from the ownership of these objects shall be solved according to the civil procedure.

2. The decisions referred to in paragraph 1 of this Article shall be taken during the pre-trial investigation by the prosecutor or the pre-trial investigation judge terminating the pre-trial investigation, and at later stages of the proceedings by the court hearing the case.

3. If the issue of confiscation of property specified in Article 72 or 723 of the Criminal Code of the Republic of Lithuania is to be resolved upon termination of the pre-trial investigation, the pre-trial investigation shall be terminated by a decision of the pre-trial judge confirming the prosecutor's decision to terminate the pre-trial investigation. In the case of confiscation of property or confiscation of extended property, a hearing shall be held to which the prosecutor, the person against whom the confiscation order has been issued, the representative of this person shall be invited. Other persons may be invited to the hearing by the decision of the pre-trial investigation judge. The participation of the prosecutor and the representative of the person against whom the confiscation order has been issued is mandatory for such a hearing. The decision of the pre-trial investigation

judge may be appealed in accordance with the procedure established in Part X of this Code.

4. The court which has made the decision referred to in Paragraph 3 of this Article may transfer it for enforcement in accordance with the procedure established by the Law of the Republic of Lithuania confiscation order may have income or property for the competent authority.

5. On the grounds and in accordance with the procedure provided for in an international agreement of the Republic of Lithuania, when there is a request of a foreign state institution, a court may decide that after the judgment has taken effect, objects and values acquired by criminal means may be transferred to a foreign state institution for return to its rightful owners, if they are identified and if it does not prejudice the legitimate interests of others. Items whose circulation is prohibited shall not be transferred to a foreign state institution.

Malta

Article 23(4) of the Criminal Code allows for the restitution to its rightful owner of articles obtained by criminal means, following a foreign request for the return of such an article. The said provision reads:

(4) Notwithstanding the provisions of subarticles (1) to (3), where the Attorney General communicates to a magistrate a request by a foreign authority for the return of an article obtained by criminal means for purposes of restitution to its rightful owner, the court may after hearing the parties and if it deems it proper so to act after taking into consideration all the circumstances of the case, order that the forfeiture of any such article shall not take place and that the article shall be returned to the requesting foreign authority.

Monaco

(2) Lorsque vos autorités agissent à la demande d'une autre Partie en application des articles 23 et 24 de la STCE n°198, dans la mesure où votre droit interne le leur permet et si la demande leur en est faite, envisagent-elles à titre prioritaire de restituer les biens confisqués à la Partie requérante, afin que cette dernière puisse indemniser les victimes de l'infraction ou restituer ces biens à leur propriétaire légitime ?

**Réponse**

Lorsque la demande leur en est faite par l'autorité requérante, les autorités judiciaires monégasques acceptent la restitution en intégralité des biens confisqués à la Partie requérante, afin que cette dernière puisse indemniser les victimes de l'infraction ou restituer ces biens à leur propriétaire légitime

Aux termes de l'article 8 de l'Ordonnance n° 15.457 du 9 août 2002, relative à la coopération internationale en matière de saisie et de confiscation dans le cadre de la lutte contre le blanchiment, *"la décision autorisant l'exécution de la décision étrangère entraîne transfert à l'État monégasque de la propriété du bien confisqué, sauf s'il en est convenu autrement avec l'État requérant"*.

Ainsi, si la confiscation des biens, entraîne en principe, le transfert de la propriété du bien confisqué à l'Etat monégasque, les autorités monégasques concluent systématiquement avec l'Etat requérant un accord de partage en vue d'y rapatrier la majorité des fonds confisqués.

De plus les autorités monégasques sont disposées, et acceptent, lors de la conclusion d'un accord de partage avec l'Etat requérant, de restituer la totalité des biens confisqués lorsque cette confiscation a pour objet l'indemnisation des victimes, personnes privées, de l'infraction, ou la restitution de ces biens à leur propriétaire légitime.

Récemment, les autorités judiciaires monégasques ont été destinataires d'une demande d'entraide judiciaire internationale en matière pénale délivrée le 16 octobre 2019 par le Ministère Public de la Confédération suisse dans le cadre d'une procédure pénale



ouverte des chefs d'escroquerie par métier, abus de confiance et blanchiment d'argent, aux fins d'exécution d'une décision de confiscation rendue par le Tribunal Pénal Fédéral  
Les victimes de cette escroquerie étant exclusivement des personnes privées, dont la confiscation à Monaco des avoirs, produits de cette escroquerie, ne suffira pas à les indemniser en totalité, les autorités monégasques ont accepté de conclure un accord de partage avec les autorités helvétiques par lequel la totalité des avoirs confisqués à Monaco sera restituée aux victimes.

Montenegro There are several provisions in the domestic legislation which clarify the priority given for compensation to the victims of the crime. First of all article 114 of the Criminal Code states the following

“(1) Where the injured party has been awarded his claim for damages in criminal proceedings, the court shall order the confiscation of pecuniary gain only insofar as such pecuniary gain exceeds the adjudicated claim of the injured party.

(2) The injured party which has been referred by the criminal court to bringing his claim for damages in a civil action may request to be reimbursed from confiscated pecuniary gain, provided that he brings a civil claim within six months from the final decision directing him to bring a civil action and under the further condition that he claims reimbursement from the confiscated pecuniary gain within three months from the final decision awarding his claim.

(3) Any injured party who has not brought his claim for damages in the course of the criminal proceedings may request to be reimbursed from confiscated pecuniary gain provided that he instituted a civil action for the purpose of establishing his claim within three months of the date he learnt of the judgment ordering confiscation of pecuniary gain, but not later than within three years of the date of final decision ordering confiscation of pecuniary gain and provided further that he requests, within three months of the date of decision awarding his claim for damages, to be reimbursed from the confiscated pecuniary gain.”

Furthermore, article 478 paragraph 3 of the Criminal Procedure Code provides that any claims by individuals and legal entities which have been damaged by criminal offence shall prevail over the claims of the state against the perpetrator of the offence.

“... (3) If the injured party submits a property law claim regarding the recovery of items acquired in consequence of the commission of a criminal offence or regarding the amount which corresponds to the value of the items, the property gain shall only be established for the part which exceeds the property law claim.”

The domestic legislation does not make any distinction between a domestic or a foreign owner and the property is always returned to the injured party prior to the confiscation.

Thus, the Montenegrin legislation provides that compensation to the victims is priority.

Regarding your questions, I would like to inform you that there is no explicit legal provision providing for asset sharing with third countries for the purpose of compensation of the victims of the crime or returning of such property to the legitimate owners. Thus, there is no case law that I can provide to you. Also, it is worth mentioning that so far we did not have such requests.

Netherlands The Dutch criminal procedural law does not provide for the possibility of a return of confiscated objects to another state.

Poland

The provisions of the Criminal Procedure Code address the issue of returning the confiscated property in the context of EU Member State's requests to execute the confiscation (forfeiture) order.

The respective provisions of the Criminal Procedure Code read as follows:

Art. 611fu.

§ 1 In the event that a Member State of the European Union, referred to in this chapter as the "issuing State", requests to enforce a final ruling of forfeiture, the ruling shall be enforced by the district court in whose perpetrator owns property or gains income or has permanently or temporarily place of residence.

§ 2. The ruling referred to in § 1 or its certified true copy shall be accompanied by a certificate containing all relevant information enabling its proper performance.

§ 3. The court shall proceed without delay to enforce the judgment of the issuing State.

(...)

Art. 611fzb. § 1. The amount of money obtained from the enforcement of the decision referred to in art. 611fu § 1, not exceeding the equivalent of EUR 10,000, constitutes the state budget income. In other cases, the issuing State shall be transferred half of the amount obtained to a bank account indicated by the competent court or other body of that State.

§ 2. Property other than money, obtained as a result of enforcement of the decision referred to in § 1, is turned into cash according to the provisions on the enforcement of cash benefits in the administrative proceedings. The provision of § 1 shall apply accordingly to the amount obtained from the enforcement.

§ 3. In justified cases, the court may refrain from turning into cash the property referred to in § 2 and transfer it to the competent court or other authority of the issuing State. If the request includes a forfeiture of the money, the transfer may take place only with the consent of that court or body.

§ 4. The court shall refuse to surrender to the issuing State the obtained objects being cultural goods forming part of the national cultural heritage

§ 5. The Minister of Justice may conclude an agreement with the relevant authority of the issuing State on the manner of enforcement of the forfeiture, in particular by stipulating in it a different division of the amounts obtained from the execution of the ruling, than specified in §

§ 6. In the event of concluding the agreement referred to in § 5, the court, upon request of the competent court or other authority of the ruling State, shall transfer all or part of the enforced monetary amount or property other than the money obtained as the result of enforcement of the ruling, in accordance with the agreement.

Non EU states are not directly covered by the Polish legislation. Enforcement of the forfeiture order could be possible on general terms provided for legal assistance.

## Portugal

It should be stated that it is irrelevant for the domestic law the destination of the confiscated property, considering that it is up to the requesting Party to decide that such property should be used for the of compensation for the victims of the crime or to be returned to its rightful owner.

Therefore regarding the sharing or returning of confiscated assets, Article 160 (3) of Law 144/99, of 31 August (\*) states that the Portuguese judicial authority shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence and return such proceeds to the requesting court.

When the foreign authority communicates its intention to request the enforcement of any decision of confiscation, as mentioned in paragraph (3), the Portuguese judicial authority may take such steps, as they are consistent with the Portuguese law, in order to prevent any transaction, transfer or disposal of property which at a later stage shall be, or may be, the subject of that confiscation decision. The provisions of Article 160 also apply to objects and instrumentalities of a crime.

(\*) Law 144/99, of 31 of August, approving the law on international judicial co-operation in criminal matters

Law no. 88/2009, of 31August, approving the legal regime for issuing and executing decisions of confiscation of property, instruments and advantages of a crime, which transpose into national law the Framework Decision 2006/783/JHA, of the Council of 6 October 2006 on the principle of mutual recognition to decisions of confiscation is also into force. However, the Law is only applicable to EU Member States.

The law establishes the legal regime on the issue and transmission of confiscation orders on property or other proceeds from crime by the Portuguese judicial authorities within the scope of a criminal proceeding bearing in mind its recognition and enforcement in another Member State of the European Union.

Also establishes the legal regime on the recognition and execution in Portugal of confiscation orders on property or other proceeds from crime, issued by a judicial authority of another Member State of the European Union, in the framework of a criminal proceeding, in order to collect evidence or to subsequently confiscate property.

Regarding the execution of confiscated property (Article 18) when the property obtained by the execution of the confiscation order is an amount of money, the following rules apply:

- a) If the amount obtained by the execution of the confiscation order is less than or equal to 10000 (euro), it reverts to the Portuguese State;
- b) In the remaining cases, 50% of the amount obtained by the execution of the confiscation order is transferred to the issuing State.

When the property obtained by the execution of the confiscation is sold, its product has the destination specified in the preceding paragraph.

When the property obtained by the execution of the confiscation order is not an amount of money and is not sold under the preceding paragraph, it is transferred to the issuing State, except in the cases provided for in the next paragraph.

When the confiscation order refers to an amount of money, the transfer of property, obtained by execution of the confiscation order, other than an amount of money, depends on the consent of the issuing State.

Whenever it is not possible to apply the provisions of paragraphs 2 to 4, the destination of the property shall be governed by national legislation.

Therefore we consider that Article 25 (2) of the Convention is met.

We consider as well that this provision was implemented through Article 160 of Law 144/99, of 31 August.

However, no cases have been identified in the national courts related to money laundering where priority consideration was given to the returning of the confiscated assets in order to be used by the requesting Party to the compensation of victims of money laundering or of the predicate offence or to the return of such property to their legitimate owners.

In conclusion, we can affirm that the Convention was implemented in the Portuguese legal order, but it has not yet been applied in any case in the national criminal courts.

*According to the explanatory report of C198 (paragraph 194), «...if provisions in a convention are deemed necessary, such a provision should also relate to the method of distribution of the confiscated property. Therefore, the drafters of this Convention gave a first indication in paragraph 2 of Article 25, which provides that priority consideration should be given to returning the confiscated property to the requesting Party, in order to compensate victims or return the property to the legitimate owner».*

It follows from Article 25 (2) that the requested State is under an obligation, on request, only to return the confiscated property as a matter of priority to the requesting Party, not having to be concerned as to whether that Party intends to use such property to compensate the victims of the crime or to return such property to their legitimate owners.

It does not appear to be for the requested State to ascertain whether this is indeed the case, nor does it have to control the use of the property by the requesting State. And if the requesting State does not use the confiscated property for the compensation of the victims or for restitution to its owners, what happens?

So, we conclude that the obligation foreseen in Article 25 (2) is fulfilled when the States return the confiscated property to the requesting Party irrespective of the priority destination of such property. Effectively, the legislation of the States Parties (when requested Parties) should not include any wording related to «... clearly prioritise victim compensation or return of assets to legitimate owner» as recommended to Portugal.

Republic of  
Moldova

When deciding on proceeds, instrumentalities and property, in the meaning set out in the CETS 198, Moldavian competent authorities follow the next legal provisions:

**art. 162. par. (1) CCP:** “Should the prosecutor order the termination of a criminal case or should the case be settled in court, the issue of material evidence shall be decided. In this case: 1) the tools used for the commission of the crime shall be seized and transmitted to the respective institutions or destroyed; 2) objects prohibited from circulation shall be transmitted to the respective institutions or destroyed; 3) goods that have no value and cannot be used shall be destroyed and if requested by interested persons or institutions, such goods shall be transmitted to them; 4) money and other valuables obtained through criminal actions or that were the targets of criminal actions shall be returned to the owners or, as the case may be, shall accrue to the state income.

Other objects shall be returned to their legal owners and if such are not identified, shall be transferred to the state property. A conflict about the ownership on these objects shall be settled in line with civil procedures. Money marked as evidence of a criminal action shall accrue to the state income and its equivalent shall be refunded to the owner from the state budget; 5) documents that are material evidence shall remain in the case file for the entire duration of the case or upon request shall be returned to interested persons; 6) objects seized by a criminal investigative body not acknowledged as material evidence shall be returned to the persons they were seized from." In practice, money and other values obtained through criminal actions or that were the targets of criminal actions, that have been seizure, sequestrated, confiscated are returned first of all to the victims of the crime and after that to the legal owners, to the state (depending on the case). This means that, if the victim of the crime is located in other state (in the requesting state) he benefits of this right, and at the request of the contracting state Moldavian authorities shall give priority to returning of the confiscated property to requesting party. Based on the provision of the art. 219 para. (8) of the Criminal Procedure "the claims of individuals and legal entities damaged directly by an act prohibited by criminal law shall prevail over the claims of the state on the perpetrator". The criminal investigative body and the court shall be obliged to bring to the notice of the person his/her right to initiate civil action. [Art.219 para. (9) amended by Law No. 152 dated 01.07.16, MO245-246 dated 30.07.16 in force as of 01.08.16]

Please refer to the practical example.

#### Practical CASE

On giving priority consideration to returning the confiscated property to the requesting Party so it can give compensation to the victims of the crime or return such property to their legitimate owners.

On 23 of October 2015, the Office received the STRs on suspicious transactions effectuated within a national Moldavian bank according to which the on 22.10.2015, „UAB DS Smith Packaging Lithuania” transferred an amount of 288 000 Euro to the „Euro Capital x” SRL (Moldova). Later on to the account of the company „Euro Capital x” SRL from BC „MAIB” SA, was transferred the amount of 238 000 Euro to the account nr. nr. 6503361010022010261312 of the company „XINJIANG YELIDA x. LTD” from the bank „China Constructxxx” but the amount of de 45,000 Euro was withdrawn in cash. In the same day on 23.10.2015 the account of the company „Euro Capital x” SRL was postponed based on the decision of the Office.

On 26.10.2015 the financial institution informed the Office about the 2 transfers from the company „Euro Capital x” SRL: one transfer in amount of 977 050 euro from the company „Bonar x Kft” (Hungary) and other, in amount of 225 050 Euro from the company ”Mehler x” s.r.o. (Check Republic).

Following the correspondence with BC „Moldova–Agroindbank” SA, was established the fact that all the foreign banks, sender of the transfers on behalf of the indicated persons were forged.

On 27 of October 2015 the Office disseminate the materials to Criminal investigation department of the national Anticorruption Centre, which on 28 of October 2015 initiated the criminal case 2015970549, based of the art.243, para.3) lit. b) Criminal Code.

In the process of dissemination of the information to Criminal Investigation Department of NAC, in the account of the company „Euro Capital x” SRL, postponed based on the postponement decision nr. 13/5-91d from 23.10.2015, were cumulated nearly 1.240.000 Euro, as the result of the effectuation of the forged transaction.

Within the criminal case, the indicated amount was applied a seizure order.

In the same time, on 29 October 2015, were effectuated searches on several legal addresses, used by the members of the criminal group, being established the incorporation documents, seals belonging to 10 Moldavian companies incorporated and 4 non resident companies, inclusively the access keys the accounts of those being used or planed to be used in their forged financial activity.

In the same time, in the result of searching the electronic equipment withdrawn from the searched legal addresses, were identified forged agreements, invoices, scanned stamps, correspondence between the members of the groups, that proves the criminal intentions of those.

In the same time the Office initiated the correspondence with similar FIUs and „Interpol”, with the goal of gathering of the information but as well as prevention of new frauds.

As the result of the criminal investigation effectuated were established the following:

On 22.10.2015 the representatives of the company „UAB DS x” or. Vilnius, Lithuania, were phoned by a person, that identify himself as a representative of the “mother company ” from Grate Britain, requesting in a urgency matter to effectuate the advance of the payment of 288,0 mii Euro in favor of the Moldavian company „Euro Capital x” SRL, in accordance with the banking details presented. On 22.10.2015 „UAB DSx” transferred an amount of 288 000 Euro in favor of the company „Euro Capital x” SRL (Moldova).

Later on was established that the phone call were effectuated by swindlers.

On 23.10.2015 by the Council of Preliminary Investigation of the Criminal Police of Lithuanian was initiated the criminal case nr. 01-1-58799-15 on the fraud case (art. 182 Criminal Case of Lithuania), the case being investigated by the Principal Regional Police department of the Vilnius Police.

On 26 of October 2015, the representative of non resident company Bonar Geosynthetics Kft (Hungary) were phoned by a person, that identify himself as representative of the mother company from the company from Great Britain „Low & Bonar Group”, requesting in an urgency matter to effectuate a payment in total amount of 977,000 Euro favor of the company „Euro Capital Invest Plus” SRL, in accordance with the banking details presented.

Later on was established that the phone call were effectuated by swindlers.

Thus the company, Bonar x Kft became the victim of forged financial transaction in total amount of 977.050,00 Euro.

On the described facts, on 28.10.2015 by the Criminal investigation division of the Department of economic protection of the Police of jurisdiction Borsod-Abauj-Zemplen was initiated the criminal case nr. 05000-18949-2015.

On 26 of October 2015, the representatives of the company ”Mehler Tx” s.r.o. resident of the Check company (Karla Capka 1085, PSC 512 51, sed.Lomnice nad Popelkou) were phoned by a person that identified as the representative of the mother company from Grate Britain „Low & Bonarx”, requesting in a urgent matter to be effectuate a payment for a new procurement in total amount of 225 000 Euro in favor of the Moldavian company „Euro Capital Invest Plus” SRL, in accordance with the banking details presented.

Thus, on 26.10.2015 ”Mehler x” s.r.o. tranfered 225 050 euro from the account of the ING Bank N.V., in favor of „Euro Capital Invest Plus” SRL at its account BC „Moldova-Agroindbank” SA .

Later on, was established that ”Mehler xs” s.r.o. became a victim of criminals.

On those described above the Regional directorate of the Police for the region Liberec, the Police Service of criminal investigation was initiated criminal case nr. , nr. KRPL-

101549-5/TC-2015-180080-MS, based on the provision of the art. art. 209 para. 1, 5 lit. a) Criminal case of the Check Republic.

It should be mentioned , that in the result of the correspondence with foreign FIUs and international police departments from abroad and ion the result of the examination of the correspondence and discussions held between the convicted persons, were identified nearly 11 tentative of fraud of many European companies effectuated during the period May – October 2015, in total amount of 10 mln. Euro.

With the quality of accused persons were identified

Cet. Ermacov Alexandru Iuri, for the offence committed foreseen by the provision of the art. 243 para. (3) lit. b) Criminal code of Moldova.

The company „Euro Capital Invest Plus” SRL, IDNO 1015605001184, for the offence committed foreseen by the provision of the art. 243 alin. (1) lit. a), b) and c) Criminal Code.

On 09 th of August 2016 the criminal investigation in relation to the cet. Ermacov Alexandru was finalized, the criminal case being sent to court.

On 26 of August 2016 the authorities within teh criminal case, give priority consideration to returning the confiscated property to the requesting Party so it was return to the victims of the crime the property to their legitimate owners, companies Bonar Geosynthetics Kft (Ungaria) – 977.000 Euro and "Mehler x" s.r.o. (Cehia) – 225.000 Euro based on the judicial decision.

#### Romania

There is no such legal provision in this matter. The confiscated property/sums of money are turned into private property of the state. Also victims can be compensated individually in the criminal trial or the victim can introduce a civil action according to civil proceedings In addition it has to be mentioned that until now we did not have requests for confiscation based on the provisions of CETS no. 198 and therefore we are unable to provide any feedback on the concrete application of Art. 25 of the afore-mentioned Convention, including on possible scenarios when the Requesting State would specifically request the returning the confiscated property to the requesting Party so it can give compensation to the victims.

However, Law no, 302/2004 on international judicial cooperation in criminal matters allows for concluding sharing agreements between the two states which can defer from the general provisions stating different arrangements (according to the general provisions both in the cases of third countries and EU countries-if the value is below 10 000 EUROS the money became part of the State budget, if it is above the money will be share on 50%-50% percent basis-please see in this sense Ar. 140 paragraph 9) of Law no. 302/2004 and Art. 265 of Law no. 302/2004). (Art 140 para 9 of Law no. 302/2004: Provisions of art. 248 para 2-4, art. 260, 267 and 268 will apply if they are not contrary to the present section. Provisions of art. 265 para 1-3 will apply if it is not provided otherwise by the treaty between Romania and the issuer state or when the treaty does not provide, if it is not agreed otherwise by the by the Romanian and foreign authorities. For Romania, the competent authority is the Ministry of Justice.) (Art. 265 of of Law no. 302/2004: (1) The Romanian State, through its competent authorities, shall dispose of the amounts of money resulted from the execution of a confiscation order, as follows:

a) if the amount obtained from the execution of the confiscation order is below EUR 10 000, or the equivalent in lei to that amount, the amount shall accrue to the state budget;

- b) in all other cases, 50 % of the amount which has been obtained from the execution of the confiscation order shall be transferred by the executing State to the issuing State;
- (2) Property other than money, which has been obtained from the execution of the confiscation order, shall be disposed of in one of the following ways:
- a) the property may be sold under the law. In that case, the proceeds of the sale shall be disposed of in accordance with paragraph 1;
- b) the property may be transferred to the issuing State. If the confiscation order covers an amount of money, the property may only be transferred to the issuing State when that State has given its consent;
- c) when it is not possible to apply (a) or (b), the property may be disposed of in another way in accordance with the national law.
- (3) Items which constitute cultural objects forming part of the national heritage of that State shall not be sold or transferred.
- (4) Paragraphs 1, 2 and 3 apply unless otherwise agreed between the issuing State and the executing State.)

According to art. 249, para.1 of the Criminal Procedure Code, asset freezing can be disposed in order to avoid concealment, destruction, disposal or dissipation of the assets that may be subject to special or extended confiscation or that may serve to secure the penalty by fine enforcement or to pay court fees or to compensate damages caused by the committed offence.

The follow up report of the Conference of the Parties to CETS no. 198 on Romania from 2014 stated regarding art. 25 of CETS no. 198 that: "Nevertheless, in order to follow the lines of the recommendations brought by the experts during the evaluation process and bearing in mind the fact that some international treaties do not stipulate in details such aspects, through art. 140 paragraph 9), a new legal text has been introduced. This paragraph is sending to art. 265 of Law 302/2004, including the thresholds stipulated there. The afore-mentioned article regulates the sharing of assets as a transposition of the 2006 FD on Confiscation. According to art. 140 paragraph 9 second thesis, the provisions of art. 265 paragraphs 1-3 are applied if there is not stipulated otherwise through the Treaty between Romania and the issuing State or, when the treaty does not comprise provisions in this respect, if there is no other agreement between the competent Romanian and foreign authorities. As regards Romania, the competent authority is the Romanian Ministry of Justice."

The afore-mentioned law, in the same line as Art. 25 of the Convention refers to asset sharing in the context of confiscation procedures without differentiating on the rationale behind the confiscation procedure-victim compensation, revenue for state budget of the Issuing State, returning the confiscated assets to the victim (which is as a matter of fact an issue arising in the Issuing State-RO has only to recognize the confiscation order but the reasons for issuing such an order pertain to the domestic law of the Issuing State).

Therefore, in the case when RO courts confiscate the assets, the next step is to deal with the asset sharing agreement based on the specific understanding with the Issuing State. Of course that when victims are concerned or assets need to be returned, such aspects would have to be considered on a priority basis when establishing the concrete details of the sharing agreement, this being dealt on a case by case basis.



**Art. 25 para (2), (3)**

As regards the assessment on Art. 25 paragraph 2) it seems to be a misunderstanding in the interpretation of the answer given by RO and we believe more clarification is needed in this sense and we will try to provide it below.

We did mention that in the framework of international cooperation in criminal matters legislation in Romania there is **no specific provisions that gives special consideration to returning the confiscated property to the requesting Party for victims compensation** and there are mechanisms of compensation in both criminal and civil proceedings, but separate from the international judicial cooperation. The absence of specific provisions in this sense does not mean that returning the assets, or most of them, to the Requesting Party, is not possible, under the Romanian law.

On the contrary, we believe, that the law allows for it, even though there is so specific reference as requested in the Convention as we will show later on.

On the other hand, it is not correct in our view to state as the thematic report does *Apart from EU countries, the Romanian legal system does not provide specific regulations concerning the returning or sharing of confiscated property to/with the requesting Party.* As a matter of fact, such provisions exist at least in respect of sharing of confiscated property. In this context, we would like to remind the fact that we have mentioned the provisions of Art.140 paragraph (9) of Law no. 302/2004 regarding international judicial cooperation which establishes **rules for third countries in respect of sharing of assets**. These provisions have to be read **in conjunction** with Art. 265 of Law no. 302/2004 regarding international judicial cooperation (practically there are the same rules as those applied in relation with EU, **unless the parties decide to agree otherwise or unless the treaty states otherwise**). Both provisions have been reproduced in the body of the answer provided by RO. But for convenience sake, we would like to reproduce here the afore-mentioned provisions.<sup>13</sup>

<sup>1</sup> Art 140 para 9 of Law no. 302/2004: “Provisions of art. 248 para 2-4, art. 260, 267 and 268 will apply if they are not contrary to the present section. Provisions of art. 265 para 1-3 will apply if it is not provided otherwise by the treaty between Romania and the issuing state or when the treaty does not provide, **if it is not agreed otherwise by the Romanian and foreign authorities. For Romania, the competent authority is the Ministry of Justice.**”

Art. 265 of Law no. 302/2004: „(1) The Romanian State, through its competent authorities, shall dispose of the amounts of money resulted from the execution of a confiscation order, as follows:

- a) if the amount obtained from the execution of the confiscation order is below EUR 10 000, or the equivalent in lei to that amount, the amount shall accrue to the state budget;
- b) in all other cases, 50 % of the amount which has been obtained from the execution of the confiscation order shall be transferred by the executing State to the issuing State;
- (2) Property other than money, which has been obtained from the execution of the confiscation order, shall be disposed of in one of the following ways:
  - a) the property may be sold under the law. In that case, the proceeds of the sale shall be disposed of in accordance with paragraph 1;
  - b) the property may be transferred to the issuing State. If the confiscation order covers an amount of money, the property may only be transferred to the issuing State when that State has given its consent;
  - c) when it is not possible to apply (a) or (b), the property may be disposed of in another way in accordance with the national law.

As one can see from the provisions of both Art. 140 para 9 and Art. 265 mentioned before, **property other than money may be transferred to the Issuing State**(please

note Art. 265 paragraph 2 letter b) from Law no. 302/2004-which is referring to property other than money that has not been sold under the law and proceeds disposed in accordance with Law 302/2004.It is not stated in the law that the transfer is done for the purpose of victims compensation and this is why we mentioned that there is no such specific provisions, because from a literal point of view, it is not. On the other hand, as previously mentioned, it does not mean it is not possible, if we observe the provisions of Law 302/2004.

In addition, it is important to notice the phrase **if it is not agreed otherwise by the Romanian and foreign authorities**. Therefore, bearing in mind these provisions and the provisions of the Convention, RO and the issuing State can conclude sharing agreements in confiscation cases that would allow for the return of the money **in a different percentage than the one established by default by the law or for the property to be disposed of in a different manner than as established in Art. 265 paragraphs 1) and 2)**. So although there is no specific provisions on returning the whole confiscation assets to the Issuing State (**unless we are in the situation mentioned in Art. 265 paragraph 2) letter b)**, such a situation cannot be excluded into practice, as long as the states can agree on a case by case basis otherwise than the percentages pre-established through the law.

It is also not entirely accurate the assertion from the report *yet up to now the authorities have not received a request for confiscation sharing*.

The correct assertion is that the Romanian authorities have not received a request for confiscation sharing based on the present convention. There is other Council of Europe Convention (European Convention on Laundering, Search, Seizure and Confiscation of the Proceedings of the Offences of 08.11.1990 - *Strasbourg 1990 Convention*) though that has been invoked and we are currently into negotiating stage of sharing agreements on the basis of this convention.

Regarding art. 25 para. (3) it is correct that no confiscated asset sharing has been concluded based on the CETS 198 or other Council of Europe Instrument but there are negotiations taking place based on other instrument of the Council of Europe (please see above).

We believe that the recommendation mentioned at page 28, namely *Given the absence of a specific provisions transposing Art. 25(2) into domestic law.....*, is not entirely accurate, as we have demonstrated above, that such a possibility exists, as long as it is requested by the Requesting Party(Art. 25 paragraph 2) of the Convention-if so requested), and the two Parties manage to conclude a sharing agreement that would correspond to such a requirement.

In order to demonstrate such a de facto preference, there has to be a specific request from the Issuing State based on the CETS 198. No such request has been received until now based on CETS 198 in order to assess if the current legal framework is sufficient in order to demonstrate such the priority consideration of asset sharing for the purposes of victims compensation, or on the contrary, the very general framework existing until now is not complete or clear enough, and specific regulations need to be imposed.

In addition, while referring to the same recommendation under Art. 25 paragraph 3, we would like to mention that the authority competent to conclude asset sharing agreements is according to Law no. 302/2004 regarding international judicial cooperation, the Ministry of Justice, therefore the judicial authorities are not competent in negotiating and concluding sharing agreements.

- (3) Items which constitute cultural objects forming part of the national heritage of that State shall not be sold or transferred.  
(4) Paragraphs 1, 2 and 3 apply unless otherwise agreed between the issuing State and the executing State.”

Russian  
Federation

*Letter received:*

In accordance with Article 11 of the Legalisation Countering Act, confiscated proceeds of crime or equivalent property may be transferred in whole or in part to a foreign state whose court has ordered a confiscation on the basis of a relevant international treaty of the Russian Federation.

The Code of Criminal Procedure of the Russian Federation (“the CCrP”) and, in particular, its Article 457 allows to execute requests received from the relevant competent authorities and officials of foreign states to conduct (in accordance with international treaties of the Russian Federation, international agreements or on the basis of the principle of reciprocity) procedural actions, which include such actions as attachment of property, including attachment of securities, to ensure compliance with a judgment in terms of a civil claim, other property penalties or possible confiscation of property (Articles 115 and 116 of the CCrP). Searches and seizures may be conducted to locate the property to be attached (Articles 182 and 183 of the CCrP).

Federal Law no. 387-FZ of 5 December 2017 supplemented the CCrP with new Chapter 551 whose provisions allow to recognise and enforce in the Russian Federation foreign court judgments and decisions relating to confiscation of proceeds from crime in the Russian Federation.

For the purpose of this Chapter, proceeds from crime mean the property specified in Article 104<sup>1</sup> of the Criminal Code.

The Chapter also defines the competence of Russian courts to examine requests filed by foreign competent authorities to recognise and enforce foreign court judgments and decisions as well as the authorities and persons who may participate in such examination (Articles 473<sup>3</sup> – 473<sup>4</sup> of the CCrP).

The list of grounds for refusing to recognise and enforce a foreign court judgment decision in terms of confiscation of proceeds from crime located in the Russian Federation is set out in Article 473<sup>5</sup> of the CCrP.

A second letter was received on 22 August 2018 with additional answers:

Legal basis allowing for the effective execution of the aforementioned provisions of the Convention have been elaborated in the Russian Federation.

A new Chapter 55.1 “Procedure of consideration of issues related to recognition and enforcement of foreign Court judgments and decisions relating to confiscation of proceeds from crime” has been included into the Code of Criminal Procedure (CCrP) of the Russian Federation (amending Federal Law No. 387-FZ of 05.12.2017).

Furthermore, amendments (Federal Law No. 382-FZ of 05.12.2017) were made to the Federal Law “On Enforcement Proceedings” (Article 11 – “Execution of decisions of foreign Courts and Arbitrations”; Article 87 “Sale of the debtor’s property”; Article 104 “Procedure of the execution of the executive act on confiscation of assets”).

The aforementioned amendments pursue the purpose of improving the legal framework of international co-operation in the field of search, freezing, arrest and return of criminal proceeds.

The aforementioned legal acts are implemented in conjunction with Article 6 of the CCrP that provides that criminal proceedings are aimed at protecting the rights and lawful interests of the persons and organisations, which have suffered from crime.

An exhaustive list of confiscation-entailing offences is provided in Article 104.1 of the Criminal Code. In light of Article 104.3 of the Criminal Code, a decision on confiscation of property in accordance with Articles 104.1 and 104.2 of the Criminal Code, the problem of redress to the lawful owner should be resolved.

The execution of judgments of foreign Courts is also possible within the framework of civil proceedings. In accordance with article 409 of the Code of Civil Procedure of the Russian Federation the decisions of foreign Courts, including the decisions of the approval of amicable settlements, are accepted and

---

executed in the Russian Federation if such possibility is provided by the international treaty of the Russian Federation. In this context, the term “judgments of foreign Courts” is understood as decisions of civil cases, excluding disputes of economic character, and other cases arising from entrepreneurial and other economic activities, as well as sentences related to redress of damage caused by criminal activities.

San  
Marino

See Art. 25(3)

Serbia

According to the Law on Recovery of the Proceeds of Crime International cooperation with the aim of confiscation of the property derived from a criminal activity shall be realised on the basis of an international agreement. Where there is no international agreement, or where certain issues have not been regulated by an international agreement, the international cooperation shall additionally be realised on the basis of the principle of reciprocity and the provisions of the Law on Recovery of the Proceeds of Crime.

The Law on Recovery of the Proceeds of Crime prescribes that upon deduction of managing costs incurred by administration of the recovered assets, pecuniary funds obtained from selling of the confiscated assets shall be used for fulfilment of the indemnification claim of the injured party. Accordingly, right to compensation of the injured party would be satisfied. After giving compensation to the injured party, remaining pecuniary funds, if any, would be divided between the Republic of Serbia and the requesting country.

Slovak  
Republic

There are two mechanisms applicable depending whether there is cooperation between EU member state or non-EU member states Party to the Warsaw Convention.

1. For the EU Member States following mechanism applies:

There is a scheme set out in Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders which was implemented to Slovak law by law No. 316/2016 in its article 15 and the scheme is as follows:

Assets which has been obtained from the execution of the confiscation order shall be disposed of by the executing State as follows:

- (a) if the amount obtained from the execution of the confiscation order is below EUR 10 000, or the equivalent to that amount, the amount shall accrue to the executing State;
- (b) in all other cases, 50 % of the amount which has been obtained from the execution of the confiscation order shall be transferred by the executing State to the issuing State.

If the Slovak Republic is issuing property decision and wants to recognize and execute it in other member state of the EU, the certificate together with property judgment is sent via the Ministry of Justice of the Slovak Republic. The issuing Court also has a possibility to propose the agreement on assets sharing derived from execution of property decision in other EU member state. If there is no such agreement on sharing assets, the confiscated assets are shared on basis of scheme of executing state.

If the Slovak Republic is an executing state of property decision issued by other EU member state, the similar agreement on asset sharing as mentioned above is possible. According to the article 15 para 5 of law 316/2016 the Ministry of Justice of the Slovak

Republic is competent authority for proposing and negotiating of such agreement. The court which is competent for recognition and execution of such property decision can also propose such an agreement to the Ministry of Justice of the Slovak Republic which shall handle the negotiations. If such agreement does not exist, a procedure according to article 15 should apply.

This procedure applies for both natural and legal persons.

2. For the State Parties outside of the EU following mechanism applies.

For non- EU members and other states such sharing of assets is possible, but for such a procedure to happen treaty basis is required according to the article 516 para 1 letter a) of Code of Criminal Procedure of the Slovak Republic.

Ministry of Justice of the Slovak Republic is competent authority for receiving the request for recognition and execution of property decision from other states. After such request is received, the Ministry of Justice of the Slovak Republic shall present a motion to the competent judicial authority which is according to the article 518 para 2 of Code of Criminal Procedure of the Slovak Republic the Regional Court in whose territory the property for which the forfeiture or confiscation was requested is located.

Now according to the Article 517 para 3 of Code of Criminal Procedure of the Slovak Republic the competent Regional Court has an obligation to decide about the sharing of assets when taking the decision in such a proceeding. If there is no other scheme, the assets obtained from execution of such recognized decision shall become the property of the executing state – the Slovak Republic in this case. However the Code of Criminal Procedure of Slovak Republic does not forbid an agreement on sharing assets which can be proposed either by issuing state or possibly by the Ministry of Justice of the Slovak Republic.

Comment 1: The court decision is done upon motion of the Ministry of Justice. If a requesting state indicates the intention to share, the court will have to decide in every case on the basis of the Ministry's motion. The requesting state can only request returning of property to that State, but for a specific purposes outlined in Article 25 (2).

Comment 2: In line with the comments above comments the courts decide upon motion of the Ministry based on the request of the requesting state. So far we have no received such requests. **The court has legal basis to consider and decide on assets sharing in a particular case.**

Slovenia Yes, cooperation between countries with international agreements and bilateral treaties is provided in art. 514 of the Criminal Procedure Act. In those cases, cooperation is conducted in a way foreseen in an international agreement in this case in an C198.

#### Art 514 of the Criminal Procedural Act

International assistance in criminal matters shall be administered pursuant to the provisions of this Act unless provided otherwise by international agreements.

Regarding the cooperation between countries in order to return assets to the person, who has suffered damages, we can provide the following case as an example:

In this case LEAs had identified the crime – an internet fraud (BEC-Business Email Corrupted). Assets had been generated through the above-mentioned crime which had been committed abroad against two companies. In consultation with LEAs, the Slovenian

FIU postponed all transactions on the account of the suspects without stating the upper limit of the assets. At that time, the balance on the bank account was 741,000 EUR. While the postponement order was still in force, the OMLP was made aware of other transactions that concerned the afore-mentioned bank account. The transactions appeared to be related to the same criminal activity. The prosecutor filed a motion to obtain a court order to freeze the assets, which was approved soon after by the judge. Three months after the freezing order was issued, the perpetrator of the crime had not yet been identified; the court decided to confiscate the assets and return them to the victims. The perpetrators of these internet frauds remained unknown.

## **2) Analysis concerning implementation of Art. 25 of the CETS 198**

The report states there is no explicit legal provision or jurisprudence transposing Article 25 into Slovenian domestic law. The report strongly recommends to Slovenia to introduce within the national legal framework the principle of asset sharing for the purposes of victim compensation and returning goods to the legitimate owner, as well as to empower its authorities to negotiate and conclude agreements giving special consideration to asset sharing.

As reports itself states, according to Art 25 of the C 198 the proceeds of the confiscation of illegally obtained profits or assets in a criminal case in the requesting State remain in the hands of a State Party to the extent that those proceeds are found in that State Party. It is up to that State Party to decide whether it is willing to transfer (all or part of) those proceeds to another Party.

We reiterate that according to the Article 514 of the Criminal Procedural Act international assistance in criminal matters is administered pursuant to the provisions of CPA, unless provided otherwise by international agreements in criminal matters. This provision is based on more general Constitutional provision of the Art. 8 of the Constitution, by which ratified and published treaties are applied directly. We note therefore, that the established system of international legal assistance in criminal matters is that of subsidiary validity of Criminal Procedure Act in which international agreements in criminal matters are applicable directly in the absence of relevant provisions in the CPA.

**Art. 25 of the C 198 is therefore directly applicable in its entirety, including the possibility of asset sharing in accordance and to the extent of its provisions.** We are of the view that our legal framework enables sharing of confiscated assets on an ad-hoc basis, should the need arise.

We therefore propose the recommendations referring to implementation of Art. 25 be removed or that they are revised according to the above explication.

Additionally, we would like to point out that Slovenia concluded **two bilateral treaties**, which regulate mutual cooperation in the field of seizure and confiscation of proceeds of crime and one of them explicitly enables the principle of asset sharing (Article 14 of the Bilateral agreement on mutual legal assistance between Slovenia and Kosovo).

### **Treaty between the Republic of Slovenia and the Republic of Kosovo on legal assistance in criminal matters**

#### **Search, Seizure and Confiscation of Items and Proceeds Article 14**

(1) The Parties shall afford each other, upon request, the widest possible measure of assistance in the identification and tracing of items, proceeds and other property liable to confiscation.

(2) Once the proceeds from crime or items related to the criminal offence have been traced, pursuant to paragraph 1 of this Article, the Requested State, at the request of the Requesting State, shall adopt any measure provided for by its

national legislation in order to freeze and confiscate such proceeds from crime or items related to the criminal offence.

(3) Property confiscated by a requested State in accordance with the previous paragraph of this Article shall be disposed of by that state in accordance with its national legislation.

(4) When acting on the request made by requesting State in accordance with paragraph 3 of this Article, requested State shall, to the extent permitted by its national legislation and if so requested by the requesting State, give priority consideration to returning the confiscated property to the requesting State so that it can give compensation to the victims of the crime or return such property to their legitimate owners.

(5) The Parties shall afford each other, upon request, the widest possible measure of assistance under their national legislation in the execution of measures equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions, in so far as such measures are ordered by a judicial authority of the requesting State in relation to a criminal offence, provided that it has been established that the property constitutes proceeds from crime.

Spain Article 168 of Law 23/2014 on mutual recognition of judicial decisions in criminal matters in the European Union regulates the execution of a confiscation order submitted by an EU Member State. In the case of a confiscation application affecting a specific item of property and if due to any circumstance it were not possible to confiscate it, the competent Judge of Criminal Matters shall order that the confiscation be adopted in the form of the obligation to pay a sum of money corresponding to the value of the property concerned. In the event of a confiscation order concerning a sum of money, the competent Judge of Criminal Matters, if payment is not obtained, shall execute the confiscation order on any item of property available for that purpose. In the event of a confiscation order referring to a sum of money, where necessary, the competent Judge of Criminal Matters shall convert the amount that must be confiscated to the currency of the executing State, applying the exchange rate in force at the moment of handing down the confiscation order.

That said, Article 803.b.i. of Law on Criminal Procedure also foresees the intervention in the criminal proceedings of such persons that may be affected by confiscation where there is a record of facts from which the following can be ensue that the asset whose confiscation is sought belongs to a third party other than the accused or that there are third parties holders of rights over the asset whose confiscation is sought who may be affected by it.

Additional provision 4<sup>th</sup> of Law 23/2014 on mutual recognition of judicial decisions in criminal matters in the European Union establishes that the same rules are applicable to non-EU Member States in the absence of an agreement between Spain and the requesting State.

Sweden Money or other assets which have been confiscated shall accrue to the Swedish state (Section 36 of the Act (1972:260) on international executions). However, the government may decide that confiscated property shall be transferred to the other (requesting) state. Hence, Swedish law follows the main principle set forth in Article 25.



One decision has been identified where the Government decided to share confiscated assets with a state requesting execution (JuBC2013/1759/BIRS).

Regarding articles 25 (2) and (3), the exact legislative provision transposing these articles was attached to our initial response (Section 36 of the Act (1972:260) on international executions). The provision reads as follows.

Section 36 of the Act (1972:260) on international executions

Property or its value, which is forfeited based on this act accrue to the state. The government may at the request of the state which has requested execution of a decision to forfeit the property or value, decide that the property or its value in whole or partially shall be transferred to that state.

A fine which have been determined based on this act may not be transformed. <sup>14</sup>

“The former Yugoslav Republic of Macedonia”  
If the criminal procedure involves a part of the joint investigation teams and the consequences of the crimes, it extends to the foreign state, then the confiscated objects that are connected or arise from the crimes, and do not fall into the category of objects that must be permanently indefinite in the benefit of the state conducting the procedure, then they are returned to their owners upon completion of the procedure.

Regarding confiscation following articles from the Criminal Procedure Code (CPC) or Criminal Code (CC) are relevant:

- CC Art 97 - No one may retain indirect or direct benefit from a crime (it is mandatory/ Confiscation decision part of main trial)
- CC Art 97(3) – ‘Special procedure’ for confiscation if perpetrator cannot be prosecuted
- CC Art 97(4) – Return of confiscated property to another country
- CC Art 97-a ‘Indirect benefit’
- CC Art 98(1) - Value substitution from perpetrator
- CC Art 98(2) – Confiscation of crime proceeds from third party
- CC Art 98(3) – Confiscation from family
- CC Art 98(3) – Confiscation from non-family member
- CC Art 98(4) – Confiscation from third party even if market value paid
- CC Art 98(5) – Return of property to damaged person
- CC Art 98(6) – Property legal claim and confiscation
- CC Art 100 – General principle: Legal entity gains property from another offender’s crime, it shall be confiscated
- CC Art 96-m(1) – Confiscation of material benefit from legal entities who commit crime
- CC Art 96-m (2) - Legal entity no longer exists at time of confiscation?
- CC Art 100-a (1) – Confiscation of instrumentality and objects
- CC Art 98-a Extended confiscation
- CPL Art 530 Confiscation of crime proceeds (direct and indirect) during the criminal procedure, prosecutor must obtain relevant evidence, prosecutor must consider measures under Art 202 (application to court for temporary seizure) and injured party legal claim and confiscation
- CPL Art 531 - Right of Defendant and third party to attend hearing and give evidence

---

<sup>14</sup> SWE has provided additional information in the selected follow-up procedure as shown in the contribution for Art. 25 (2) and (3) above.

- CPL Art 532 Establishing value of property and issues related to property abroad – Court must issue international warrant
- CPL Art 536 – Contents of decision for forfeiture of assets and crime proceeds
- CPL Art 537 – Motion to overturn the decision to forfeit assets and crime proceeds
- CPL Art 538 – Appeal against forfeiture of assets and crime proceeds
- CPL Art 541 – Enforcement of decision to forfeit assets and crime proceeds
- CPL Art 542 – Forfeiture and probation judgement
- CPL Art 529 – Automatic seizure and third party rights
- CPL Art 540 - If factual/legal impediments for conducting criminal procedure, then court shall conduct a special procedure for forfeiture of assets/crime proceeds and for seizure of objects

In one case when a person was charged for article 333 “Abuse of Official Position and Authority” and article 273 “Money laundering and other proceeds of crime” by means of international legal co-operation public prosecutor office of “the former Yugoslav Republic of Macedonia” requested Germany’ authorities to freeze assets. Accused person was convicted and previously frozen assets were confiscated. Confiscated assets is expected to be returned to the state.

#### Türkiye

An evaluation of the application of paragraph 2 of Article 25 of the Convention in Türkiye reveals the following:

It is necessary to state at the outset that the use of the goods confiscated due to commission of crime for the purpose of compensating the loss of the victims of such crime is not an established method in the criminal law system in Türkiye.

Confiscation, as applied in Türkiye’s criminal procedure law, is the transfer of the ownership of certain items related to or proceeds of crime to the State.

On the other hand, it is possible to return the confiscated goods to its legitimate owner, as is provided for in the last section of Article 25/2. It is not possible to confiscate the said goods, provided that the legitimate owner of the goods to be confiscated is a third party acting in good faith.

The basic article of law relating to confiscation is Article 54 entitled “*Confiscation of Goods*” of the Türkiye’s Criminal Code. Paragraph 1 of the said article is of importance on the matter, which reads as follows:

“On the condition that the goods do not belong to any third party acting in good faith, goods that are used for committing an intentional offence or are allocated for the purpose of committing an offence, or goods that have emerged as a result of an offence shall be confiscated. Goods that are prepared for the purpose of committing a crime shall be confiscated, if they present a danger to public security, public health or public morality. Where a third party acting in good faith is entitled to any limited real right, confiscation order shall be rendered without any prejudice to such right.”

Where it is established that the goods confiscated and placed in judicial deposit under Articles 123 and onwards of the Code of Criminal Procedure on account of having allegedly been used for committing an intentional offence or allocated for the purpose of committing an offence or emerged as a result of an offence under the aforementioned provision on confiscation of the Law No. 5237 belongs to a third party acting in good faith, and its return is ordered by the Court or the Public Prosecutor; and such goods belong to a foreign national; evidential goods the return of which are ordered under paragraph 1(ç) of Article 18 of the Regulation on Goods Derived from Crime shall be sent, upon his/her application, to the foreign national concerned or the embassies or consulates of the country of his/her nationality.

Paragraph 1(ç) of Article 18 of the Regulation on Goods Derived from Crime reads as follows:

“ARTICLE 18 – (1) Confiscation and return orders issued with respect to the non-circulating currency, goods used in crime and assets derived from crime shall be executed as follows:

...

ç) Where an goods used in crime and ordered to be returned belongs to a foreign national, such goods shall be sent, upon his/her application, to the foreign national concerned or the embassies or consulates of the country of his/her nationality. Relevant document shall be kept in its dossier.

...”

It is also possible to return the goods, subjected to a seizure measure before issuance of a confiscation order, to the suspect, accused person or third party where it has been established that such goods belong to the aforementioned persons, it is no longer necessary to be kept for investigation and prosecution purposes, or it will not be subjected to confiscation. Besides, where seized goods or other assets belong to the victim affected by the crime and they are no longer required as evidence, it will also be possible to return them to their owner. Article 131 of the Code of Criminal Procedure, which addresses these points, reads as follows:

“Returning the seized goods

Article 131 – (1) If it is understood that the seized goods belonging to the accused, suspect or third persons are no more needed to be kept for the purpose of the investigation or trial or are understood to be not to be subject to confiscation, the public prosecutor, judge or court shall decide their returning ex officio or upon request. It is possible to object to the decision on rejection of request.

(2) The goods or other assets seized in accordance with the provisions of Article 128 shall be returned to the owner if they belong to the victims of the crime and if they are not needed as evidence anymore”.

According to the information received from 13<sup>th</sup> Criminal Chamber of the Court of Cassation; under Article 54 of the Türkiye’s Criminal Code, for confiscation, the goods in question shall not belong to a third party acting in good faith. Therefore, it has been clearly noted that the goods shall not be confiscated when they belong to a third party acting in good faith.

Likewise, according to the information received from 15<sup>th</sup> Criminal Chamber of the Court of Cassation; pursuant to our legislation, there is not any distinction between foreign nationals and Türkiye’s citizens in returning of goods, which are the subject of seizure and confiscation decision, to foreign nationals acting in good faith or victims or to legal owners with Türkiye’s nationality residing abroad, and acting in good faith.

Furthermore, in the judgment docket numbered 2007/2463 and decision numbered 2007/3583 of the 5<sup>th</sup> Criminal Chamber of the Court of Cassation, it is considered that confiscation of the instrument used in the commission of a crime may be ordered provided that it not belong to any third party acting in good faith. For this reason, it is necessary to hear its owner on the matter and the decision of the first instance court was overturned.

The records included in the dossier of a mutual legal assistance request transmitted to our Ministry will be shared as good practice on this matter. In the letter received from Türkiye’s National Police, it was stated that one of the mobile phones stolen during the armed robbery which took place in France on 01/12/2014 might be in Türkiye. Upon this, Birecik Chief Public Prosecutor’s Office initiated an investigation, and the mobile phone located to

be in Türkiye was submitted on 18/11/2015 to the official of the Embassy of France in Türkiye, to be returned to its legitimate owners.

An evaluation of the application of paragraph 3 of Article 25 of the Convention in Türkiye reveals the following:

Under paragraph 3 of Article 25 of the Convention, when acting on the request made by another Party in accordance with Articles 23 and 24 of this Convention, a Party may give special consideration to conclude agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such goods, in accordance with its domestic law or administrative procedures.

Under Articles 23 and 24 of the Convention, enforcement of foreign country confiscation requests in Türkiye requires, as is stated with the method in paragraph 1(b) of Article 23 of the Convention, an order of confiscation issued by Türkiye's judicial authorities.

Pursuant to article 1/3 of The Law No. 6706 on International Judicial Cooperation in criminal Matters, provisions of conventions on judicial cooperation to which Türkiye is a party are a part of our domestic law. Thus, according to Article 25/3 of the Convention and article 3/1 of the Law No.6706 which regulates the powers of Central Authority, arrangements of sharing are within the powers of Central Authority and this Authority may determine the conditions for sharing.

The said method is compatible with paragraph 1 of Article 24 of the Convention, which reads as "The procedures for obtaining and enforcing the confiscation under Article 23 shall be governed by the law of the requested Party".

As we have pointed out in our previous responses concerning asset sharing, using a forfeited asset, confiscated for a committed crime, to compensate the loss of the victim of a crime, is not a method that has been adopted in the criminal law system of our country. On the other hand, in case a forfeited object is owned by a third person, who is acting in good faith, the Criminal Code of Türkiye allows that object to be returned to its legal owner. Pursuant to paragraph 1, Article 54 titled "*Confiscation of Property*" of the Türkiye's Criminal Code No 5237;

"On the condition that the property does not belong to any third party acting in good faith, property that is used for committing an intentional offence or is allocated for the purpose of committing an offence, or property that has emerged as a result of an offence shall be confiscated. Property that is prepared for the purpose of committing a crime shall be confiscated, if it presents a danger to public security, public health or public morality. Where there are limited property rights on the property established in favor of a third party, confiscation decision shall be rendered by reserving this right."

There is a provision of law, which is being progressively applied in the decisions of higher judicial bodies, which provides that objects, owned by such individuals, should be returned to them, instead of confiscating or forfeiting such objects, regardless if these *good-faith* third persons are foreigners. Indeed, according to the views of various chambers of the Court of Cassation and those of higher courts, which we have shared with you in our previous replies, and pursuant to Art. 54 of the Code of Criminal Procedure of Türkiye, an object in order to be confiscated, must not be owned by a *good-faith* third person.

Apart from this, objects, which are seized/forfeited prior to rendering a confiscation decision on them, are returned to their owners, provided that they are owned by *good-faith* persons and they are no longer needed as evidence.

This has been regulated under Article 131 of the Criminal Procedure Code No 5271:

"Seized items to be returned

Article 131 – (1) The items that were taken from the suspect, accused or the third parties, that are no longer needed with regard to the investigation and prosecution, or items of which it became clear that those are not subject to confiscation, shall be returned with the decision of the Public prosecutor, judge or the court on its own motion or upon a motion. The decision on denial may be subject to a motion of opposition.

(2) Items or other assets which have been seized under the provisions of Article 128 shall be returned to the owner, if they belong to the victim who is the injured party and they are no longer needed as pieces of evidence..

As an example of such practice, we have information registered at a legal assistance file submitted to our Ministry. In the said file, it was stated in the letter from the Türkiye's national Police that one of the mobile phones stolen during an armed robbery in France on 01/12/2014 might be located in Türkiye. Thereupon, an investigation was initiated by Birecik Chief Public Prosecutor's Office and the telephone, established to have been located in Türkiye was handed over to an official from the Embassy of France in Türkiye on 18/11/2015 to be returned to its legal owners.

As for Article 25 para (2), we kindly ask for a clarification for the explanation on page 33. In the first paragraph of analysis made for Türkiye on page 33, it was stated that "*It is however possible to return the confiscated goods to its legitimate owners...*", whereas in the following paragraph the flow of the sentence indicates as if Türkiye's Law does not provide for the return of property to the legitimate owner.

However, as was explained in the previous para of analysis on page 33, the provisions of Article 54 Türkiye's Penal Code allow for the return of confiscated property to its legitimate owners. Moreover, paragraph 2 of Article 131 of Criminal Procedure Code goes a step further to disallow the confiscation of such property and require the return of that property to its legitimate owners after it had been seized no matter if the owner is a national or a foreigner.

On the other hand, we would like to further state that compensation of victims are not regulated under criminal law but it is available under civil law. Those who are the victims of any crime, whether he/she is a national or a foreigner, might bring their compensation claims to the attention of courts of civil jurisdiction.

Besides, the explanation made in the first para of the analysis demonstrates what Türkiye have in place and what is absent as far as legislation is concerned. Therefore, we believe that it may clear up the confusion if the second paragraph of the analysis which goes as "Yet from the responses...." is removed. A correction is also needed under *the recommendations to Türkiye* which suggests taking necessary steps in ensuring *returning of property to the legitimate owner*.

Ukraine

Upon the request of a requesting Party, the property detected may be confiscated if this is provided for by judgment or other decision of a court of the requesting party, which entered into force (Art.568 (3) CPC).

Confiscated property shall be transferred into the income of the State Budget of Ukraine, except for the following cases (Clause 2 of Part 5 of Article 568 of the CPC of Ukraine). Upon a petition from a central authority of Ukraine, a court may adopt a decision to transfer the property:

- 1) to the requesting Party that adopt a decision to confiscate the property as a compensation for damage inflicted on the victims by the crime;
- 2) in accordance with the international treaties of Ukraine that regulate on the distribution of confiscated property or, its monetary equivalent (Part 6 of Article 568 of the CPC of Ukraine).

Transferring of the property and confiscated assets may be postponed, if it is necessary for pre-trial investigation and trial in Ukraine or litigation in respect of rights of other persons (Part 7 of Article 568 of the CPC of Ukraine).

Requests from any foreign counterparts according to the Article 25(2) of CETS no.198 have not been provided to Ministry of Justice of Ukraine (as a relevant state authority).

United Kingdom

The general principle (as is usual under mutual legal assistance) is that the requested state that carries out the recovery of the proceeds will retain those proceeds. However, the UK can agree, on a case by case basis, that the funds are shared, usually on a 50-50 basis. This may be adjusted according to whether there are identifiable victims, in which case the UK is happy to negotiate a larger share to be returned to the requesting state for onward sharing with those victims.

This position is obviously different to that under UNCAC where the entirety of the funds are usually returned (minus a deduction for reasonable costs).

The current EU Framework Decisions on mutual recognition indicate a 50/50 split for all assets over 10,000 Euros, and that split may be maintained in the new draft regulation.

If this is done under mutual legal assistance, the legal basis is in the Criminal Justice and Data Protection (Protocol No 36) Regulations 2014. This is available on [legislation.gov.uk](http://legislation.gov.uk). We do not keep statistics on the use of this legislation.

## Annex IV.b – State submissions: Article 25(3)

Albania	No
Armenia	<p>There are no agreements or arrangements in place that give special consideration to sharing confiscated property with other Parties. The sharing of confiscated property with other Parties or application of priority consideration to returning the confiscated property to the requesting Party is done on an ad hoc basis and under the consideration of the Prosecutor General's Office of the Republic of Armenia.</p>
Azerbaijan	<p>Currently there are no there agreements or arrangements in place giving special consideration to sharing confiscated property with other Parties, on a regular or case-by-case basis.</p> <p>This matter is expected to be addressed by 2019 in the framework of implementation of item 2.6 "Taking measures to improve legislation on forfeiture and recovery of criminally obtained funds or other property" of the "National Action Plan on combating legalization of criminally obtained funds or other property and financing of terrorism for 2017-2019" adopted in November 2016.</p>
Belgium	<p>La base légale pour le partage des biens confisqués <i>en dehors de l'Union européenne</i> est l'article 8 de la Loi 20 mai 1997 sur la coopération internationale en ce qui concerne l'exécution de saisies et de confiscations.</p> <p>Il n'existe pas des accords internationaux spécifiques sur le partage en dehors des provisions « générales » qui porte sur la saisie, la confiscation et le partage des produits des délits contenues dans les conventions CETS n° 141, 198 et des conventions d'entraide, par exemple avec les Etats-Unis (1988) et avec le Canada (1996) ou avec la Chine (2016).</p> <p>En principe, le partage dépend d'une demande explicite de la Partie requérante.</p> <p><i>« Art. 8. La confiscation qui a été rendue exécutoire en Belgique selon la procédure prévue à l'article 7 est assimilée à la confiscation prononcée conformément aux articles 42, 43 et 43bis du Code pénal.</i></p> <p><i>Cependant, dans sa décision, le tribunal correctionnel détermine la destination des biens confisqués selon les modalités suivantes.</i></p> <p><i>Le tribunal peut disposer que les biens confisqués seront, entièrement ou en partie, attribués à l'Etat requérant.</i></p> <p><i>Le tribunal peut également disposer que les biens, autres que des sommes d'argent, seront vendus et que le produit de la vente sera, en tout ou en partie, attribué à l'Etat requérant.</i></p> <p><i>Dans les cas visés aux alinéas précédents, le tribunal prend en compte les frais de saisie, de conservation, d'aliénation, de confiscation et de transfert.</i></p> <p><i>A défaut de pouvoir arrêter l'attribution des biens confisqués, ils sont affectés au Trésor belge. »</i></p>
Bosnia & Herzegovina	See 25.2.

Bulgaria

As mentioned above, the possibilities for sharing of assets under Art. 25, para. 3 of the Convention can be discussed in every particular case with the requesting country as prescribed by the abovementioned provision of the Convention.

In addition, it should be noted that in case cooperation between EU Member States is concerned, the provisions of the **Recognition, Execution and Transmission of Confiscation and Seizure Orders and Decisions Imposing Financial Penalties Act** shall be applied. The said Law introduces into the Bulgarian legislation the requirements of Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties and Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders. The Law provides for a particular procedure concerning the sharing of assets. Please see below a relevant extract from the Law:

**„Article 1.**

This Act regulates the conditions and procedures for recognition, enforcement and transmission of confiscation and seizure orders and decisions imposing financial penalties, issued in a Member State of the European Union.

.....

**Disposal of the Subject of the Order**

**Article 28.** (1) Unless otherwise agreed between the issuing State and the Republic of Bulgaria as an executing State, the subject of the confiscation or seizure order shall be disposed of as follows:

1. disposal of a sum of money which has been obtained from the execution of the order in the Republic of Bulgaria:
    - a) if the amount obtained from the execution of the order is below EUR 10,000, or the equivalent to that amount, the amount shall remain in the Republic of Bulgaria;
    - b) in all other cases, 50 percent of the amount shall be transferred by the Republic of Bulgaria to the issuing State;
  2. Property other than money shall be disposed of in one of the following ways, to be decided by the competent Bulgarian authority:
    - a) the property may be sold. In that case, the proceeds of the sale shall be disposed of in accordance with paragraph 1;
    - b) the property may be transferred to the issuing State; if the confiscation or seizure order covers an amount of money, the property, obtained from its execution, may only be transferred to the issuing State when that State has given its consent;
    - c) in another way in accordance with the Bulgarian legislation.
- (2) The Republic of Bulgaria shall not be required to sell or return specific items which constitute cultural objects forming part of its national heritage.
- (3) In the events where the Republic of Bulgaria is the issuing State, the manner in which the subject of the confiscation or seizure order is disposed of shall be agreed with the executing State.
- (4) Competent authorities for concluding agreements under paragraphs 1 and 3 on behalf of the Republic of Bulgaria shall be the authorities referred to in Articles 6 and 7.“

Please note that so far the cases that Bulgaria has already had concerning sharing of confiscated property were only with EU Member States. We have not received so far such requests by a non EU Member State country.



Croatia There are no arrangements in place giving special consideration to sharing confiscated property with other Parties.  
There are no legislative provisions in domestic Law transposing this provision of the Convention.  
But it also should be noted that this provision of the Convention, as in fact hole Convention, following the provisions of the Constitution of Republic of Croatia on the validity of international treaties, after the ratification of the Convention, shall apply to all other Contracting Parties to the treaty of the Convention.”

Cyprus The legislative provisions dealing with this issue, are mentioned above in the reply of question 2.

Indeed, in many instances, Cyprus Authorities proceeded with the sharing of confiscated assets. E.g. with Belgium, the UK , the U.S.A. Such a sharing, when it is not on the basis of the FD 2006/783/JHA, which provides for a 50%-50% sharing, it takes place on a case by case basis on agreements entered into by the countries involved.

Denmark Denmark has not entered into any agreements or arrangements giving special consideration to sharing confiscated property on regular or case-by-case basis with other Parties to the Convention.

France Les accords de partage sont établis au cas par cas.

La liste fournie n’était pas relative à la conclusion d’accords en vertu de l’article 25(3). Si une possibilité de partage avec des tiers semble envisageable à la demande de l’Etat requérant, aucune situation de ce type ne s’est pour lors jamais posée dans le cas d’avoirs confisqués en France.

<b>SYNTHESE DES CONVENTIONS DE PARTAGE ETABLIES PAR LA FRANCE DEPUIS LA CREATION DE L'AGRASC (07/2010)</b>				
<b>Etat</b>	<b>Date</b>	<b>Juridiction française</b>	<b>Juridiction étrangère</b>	<b>Qualification</b>
<b>Italie</b>	21/12/2015	CA Aix en Provence	Tribunal correctionnel de Milan	Escroquerie
<b>Italie</b>	16/01/2018	TGI Nice	CA de Palerme	Association de malfaiteurs
<b>Danemark</b>	15/06/2015	TGI Paris	Parquet de Copenhague	Association de malfaiteurs, blanchiment aggravé, escroquerie en BO
<b>Espagne</b>	2015	TGI Marseille	Tribunal de Sabadell	ILS
<b>Royaume-Uni</b>	13/01/2014	TGI Grasse	Tribunal de Warrington	Association de malfaiteurs, blanchiment

				aggravé, escroquerie en BO
<b>Suisse</b>	06/02/2018	TGI Lyon	Ministère public du canton de Vaud	Concurrence déloyale
<b>Etats-Unis</b>	31/10/2017	TGI Paris	Tribunal fédéral première instance de New York	Infractions boursières, blanchiment

Georgia

The legislation of Georgia does not contain specific asset sharing procedures. However, the Law of Georgia on International Cooperation in Criminal Matters provides for the possibility of sharing the confiscated assets with foreign country based on the *ad hoc* agreement, concluded between the competent authorities of the both countries. No asset sharing agreements have been concluded by Georgia yet.

With regard to Article 25 of the Convention of the Council of Europe, the content of this article is adapted in the Article 52 of the Law of Georgia on International Cooperation in the Criminal Law (21 July 2010). In particular, the procedure for execution of a judgment of a foreign state court on the territory of Georgia related to deprivation of property and the property deprived in accordance with the procedure prescribed by this article may, in case of demand, be transferred to a foreign state, if it has a special interest in this property.

Germany

The Federal Republic of Germany is able to take advantage of the possibility provided by Article 25 (3) of the Convention to release the assets or to share their value. If the preconditions imposed by section 56 IRG have been met, return of assets confiscated within the framework of mutual legal assistance to the requesting party is possible.

die ersuchende Vertragspartei ist unter den Voraussetzungen des § 56b IRG möglich. In that process, distributed asset items may be deducted in calculating the amount of compensation due to injured persons pursuant to section 56a IRG (Bundestag printed paper 16/12320, p. 24).

The authority responsible for granting may make *ad hoc* agreements about the disposal, return or distribution of the assets (section 56b IRG; no. 74b (1), first sentence of the Guidelines on Relations with Foreign Countries in Criminal Matters (*Richtlinien für den Verkehr mit dem Ausland in strafrechtlichen Angelegenheiten – RiVASSt*)). Reciprocity must be assured in such agreements pursuant to section 56b (1) IRG.

For requests made by the Federal Republic of Germany for enforcement of an order of confiscation in another State, comparable agreements may be entered into pursuant to section 71a IRG in conjunction with section 56b IRG.

Unfortunately we are not able to provide you with statistics or case examples which support or demonstrate our implementation of Article 25(2) and (3) CETS no. 198. The German responsible authorities do not collect or store statistical data concerning the cases related to these provisions.

Greece

Greece has ratified the European Convention on Mutual Assistance in Criminal Matters and the Additional Protocol thereto, in addition to being able to apply the self-executing provisions of CETS No. 198. Greece is also a member of the Egmont Group and the

CARIN Network, and has established (by L. 3842/2010) an Asset Recovery Office (ARO) as part of the Central Service of the Financial Crime Unit of the Ministry of Finance (SDOE). The Greek ARO is the designated National Office for the Recovery of Capital and Assets according to Article 1 of EU Council Decision 2007/845/JHA, as well as the contact point with the corresponding departments of other EU States.

Hungary

**Ministry of Justice:**

Until now, no agreements or arrangements have been concluded between Hungary and other States on sharing the confiscated property with other Parties (nor on a regular or a case-by-case basis).

**Prosecutor General's Office:**

Please see the answer for the previous question. We do not have agreements or arrangements to deal with asset sharing, and in victim-crime cases we do repatriation for compensation on a case-by-case basis. We do have multiple internal guidelines however on how this procedure should be carried out, and under what circumstances it is possible.

Unfortunately, no official translation is available for the appropriate legal provisions, so the Prosecutor General's Office hereby gives the unofficial version of the Hungarian laws corresponding to Article 25/3.

According to Article 60/C Subparagraphs (1), (4) and (6) of the Act 38 of 1996 on the Legal Assistance in International Criminal Matters, in the event of a transmitted confiscation order, the court shall examine whether the conditions set forth in this act and in international treaties for implement (or to transfer) the confiscation order are met, and shall decide accordingly upon recognising and executing the foreign authorities confiscation order.

In case the amount acquired from the execution shall not exceed EUR 10.000 (or equivalent), it shall belong to Hungary, as executing party. If the amount obtained from execution shall exceed the aforementioned threshold, the court may decide upon the request by splitting the confiscated property equally between the requesting and the executing parties, thus 50% of the confiscated money shall be the property of Hungary.

The foreign state and Hungary may establish an agreement on a case-by-case basis for sharing the amount received from confiscation, and might alter from the model of 50-50% asset sharing set forth in this Act. On the part of Hungary, such agreement shall be signed by the competent minister. In the event of a letter of agreement, the minister may ask the foreign authority to apply the principle of reciprocity in similar cases, and may as well guarantee reciprocity on the part of Hungary.

These articles are identical to the ones implementing Council FWD 2006/783/JHA on the mutual recognition of confiscation orders, mirroring the same provisions for a non-EU international co-operation.

The main rules are [Article 60/C (4) of the Act XXXVIII of 1996 and Article 145/C (1) of the Act CLXXX of 2012]: When the amount collected from the execution of forfeiture of assets or confiscation is not greater than the HUF equivalent of EUR ten thousand, the amount shall be due to the Hungarian State. When the amount collected from the

execution of forfeiture of assets or confiscation is greater than the HUF equivalent of EUR ten thousand, based on a request of the foreign state, the court may order that the amount be shared between the Hungarian State and the foreign state in 50-50%.

However, **there is a possibility to deviate from the main rules** [Article 60/C (6) of the Act XXXVIII of 1996]: The Hungarian State and the foreign state may enter into an ad hoc agreement on the division of the amount collected from the forfeiture of assets or confiscation. In that case, the states entering into the agreement may depart from the provisions of Paragraph (4). On behalf of the Hungarian State, the ad hoc agreement shall be signed by the minister. When an ad hoc agreement is concluded, the minister shall request a reciprocity declaration from the foreign state or shall issue a reciprocity declaration on the basis of foreign state's request

This above provision applies both EU Member States and non-EU State Parties as well since the background of the Act CLXXX of 2012 is the Act XXXVIII of 1996.

The legislative measures that solve the asset sharing in the framework of MLA are in place in the Act XXXVIII of 1996 and the Act CLXXX of 2012. They have to be applied unless otherwise provided by an international treaty.

Pursuant to Article 60/C (6) of the Act XXXVIII of 1996, the Hungarian State and the foreign state may enter into an ad hoc agreement on the division of the amount collected from the forfeiture of assets or confiscation. In that case, the states entering into the agreement may depart from the provisions of Paragraph (4). On behalf of the Hungarian State, the ad hoc agreement shall be signed by the minister. When an ad hoc agreement is concluded, the minister shall request a reciprocity declaration from the foreign state or shall issue a reciprocity declaration on the basis of foreign state's request.

According to Article 210/G of the Act LIII of 1994, if the Hungarian State and a foreign State concluded an ad hoc agreement on the sharing of the amount of money received from a forfeiture of assets ordered in a foreign state and remained after the deduction of the amount recovered the costs of the enforcement procedure, the court financial administration office shall transfer the amount specified in the ad hoc agreement to the foreign state concerned.

We believe that Hungary fulfils by these rules the provision mentioned in Article 25 (3) of Warsaw Convention.

Italy

- A. As mentioned in the *Interpretative Notes*, at EU level rules for dividing confiscated property are set out in Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders, which has been implemented in Italy by Legislative decree n. 137 of August 7<sup>th</sup>, 2015.
- B. It comes out from the rules provided for in Articles 740 bis and 740 ter that confiscated asset sharing is considered on a case-by-case basis.
- C. Indeed, our national system does not provide for specific rules for agreement with a foreign State for distributing the sums and/or confiscated assets. At national level, neither specific rules on deduction of expenses are provided for.

It is nonetheless possible that the latter be considered when the transfer of confiscated assets is reached with the foreign State. Another important element is the significance of the activities carried out by the Italian judicial authorities when executing confiscation. In any case, in the absence of specific provisions, the principle of reciprocity shall apply. As mentioned before, the complete safeguard of victims and legitimate owners is nonetheless without prejudice.

- D. Only in a recent treaty, which has been initialled but not signed yet, specific rules are set out for asset sharing, essentially based on extent of the cooperation afforded by the cooperating State.

In several cases Italy has entered into specific asset sharing agreements, but only when acting as requesting party and never on the basis of Article 25(3) of the Convention.

Some case examples not immediately related to Article 25(3) of the Convention, but equally significant considering the identity of the national legal basis, have already been provided in the answers to the Questionnaire. No more cases are available at the moment.

Latvia

The general provision for sharing the confiscated property with other parties is stipulated in Section 792 of the Criminal Procedure Law. The detailed arrangements are provided for in the Cabinet Regulation No 431 of 19 June 2012 (attached to the reply). In some cases a case-by-case basis can be applied, depending on property to be shared.

If the request for sharing of confiscated property (money) is issued by EU Member State and the sum is greater than 10000 EUR, issuing Member State can receive 50% of confiscated property or greater sum.

If the request for sharing of confiscated property (money) is issued by non-EU state and the sum is greater than 10000 EUR, issuing Member State can receive up to 50% of confiscated property or amount stated in the request.

If the value of confiscated property is not greater than 10000 EUR, issuing state can receive the property, if agrees to reimburse the value of the property valuation. In some cases the sharing of the confiscated property can be refused.

If the value of confiscated property is greater than 10000 EUR, issuing state can receive the property, if agrees to reimburse 50% or more of the value of the property valuation. On the other hand there can be a refusal for sharing of confiscated property, reimbursing the issuing state 50% of assets gained after enforced realisation of the property.

If the value of confiscated property stated in the request differs from the property valuation made in Latvia, and:

- the value mentioned is less than in a property valuation made in Latvia, parties can agree that confiscated property is to be returned to the issuing state, receiving affirmation, that issuing state is ready to reimburse 50% or more of the value of the property valuation or 50% of assets gained after enforced realisation of the property; or the sharing of property can be refused, reimbursing partly the value of the confiscated property mentioned in the request,
- is greater than in a property valuation made in Latvia, parties can agree that the confiscated property is to be returned to the issuing

state, receiving affirmation, that issuing state is ready to reimburse 50% or more of the value of the property valuation or 50% of assets gained after enforced realisation of the property; or the sharing of property can be refused, reimbursing partly the value of the property valuation made in Latvia.

Case examples:

On 15 April, 2016 a request from the United Kingdom (Serious Fraud Office) was received and implemented on 20 May, 2016.

On 12 January, 2017 the Ministry of Justice of the Republic of Latvia received a request from the United States and the amount of money that was returned to the victim was in full amount.

In regard to implementation of Article 25(3) Ministry of Justice would like to draw attention that MLA requests for confiscation from EU countries are governed by the Criminal Procedure Law (CPL) Chapter 75. CPL Section 791 ensures implementation of foreign requests of confiscation. Additionally the Cabinet of Ministers Regulations of 19 June 2012 No 431 sets procedures for implementation of the said provisions. Extracts from CPL as well as translation of the said Regulation was provided with the initial reply. Also two case examples were included in the reply.

At this point Ministry of Justice does not have at its disposal additional statistics or case examples which could be shared with the Secretariat.

Lithuania

The general rule is that confiscation of property shall be the compulsory uncompensated taking into the ownership of a state of any form of property subject to confiscation and held by the offender or other persons (Art. 72 of the Criminal Code of the Republic of Lithuania). The sharing of confiscated property is explicitly described in cases when Lithuania executes the court decision on confiscation rendered by the court of another Member State of the European Union.

Art 75 of the Law of the Republic of Lithuania on Mutual Recognition and Enforcement of Decisions of the EU Member States in Criminal Matters foresees sharing of confiscated property.

Article 75. Transfer of funds having executed the judgment to confiscate property rendered another Member State of the European Union

Having executed in the Republic of Lithuania the judgment on confiscation rendered by the court of another member state of the European Union and which was recognized in accordance with Article 3655 of the Criminal Procedure Code of the Republic of Lithuania, the funds received for the confiscation of property (except for enforcement and other related costs) are shared in the following way:

1) an amount not exceeding EUR 10,000, shall be transferred to the budget revenue collection account of the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania;

2) in excess of EUR 10,000, the funds shall distributed as follows: within 10 working days of the receipt of funds received from the realization of confiscated property the State Tax Inspectorate transfers half of these funds to the account specified by the competent authority of the European Union Member State, whose court rendered a decision to confiscate the property, and another half to the budget income collection account of the State Tax Inspectorate.

Thus in cases related with the execution of the court decisions on property confiscation rendered by the courts of non-EU countries, the decision on sharing is left in the hands

of the court on case-by-case basis. Moreover, Lithuania is a party to Conventions that provide for the sharing of confiscated property - e.g. United Nations Convention against Corruption. And it should be noted that ratified international treaties have supremacy over national acts in Lithuania.

Malta

The legal provisions which provide for the recognition and enforcement of foreign confiscation orders also allow Malta to enter into asset sharing agreements on a case by case basis. Article 24D(7) of the Dangerous Drugs Ordinance, which through article 435D of the Criminal Code is rendered generally applicable, provides that *'the decision by the court ordering the enforcement of a foreign confiscation order shall have the effect of forfeiting in favour of the Government of Malta all things and property whatsoever situated in Malta the confiscation of which had been ordered in the foreign confiscation order subject to any directions which the Government of Malta may give providing for the further disposal of the same things and property so forfeited*.

Depending on the value of assets seized, Malta usually retains a small percentage thereof to cover the expenses incurred in the process. No reservation is made as to whether the returned assets go to the requesting party or to the victim.

It is to be noted that as an EU Member State, Malta has also adopted subsidiary legislation to implement Council Framework Decision 2006/783/JHA as amended by Council Framework Decision 2009/299/JHA in the form of the Confiscation Order (Execution in the European Union) Regulations. These regulations provide for the recognition and enforcement of confiscation orders issued with respect of specific offences by the authorities of a number of Member States, all but one of which are parties to the Convention.

Regulation 14 sets out specifically how any confiscated property is to be disposed of depending upon whether money or property has been confiscated. In respect of any sum of money equal or in excess of €10,000, or equivalent thereto, half of the money is to be returned to the issuing Member State. In respect of any other form of property, Malta retains discretion as to whether to return the property to the issuing Member State or otherwise sell the property and then dispose of the money as already indicated hereabove.

However, where the confiscation order has been issued with respect to specific items which constitute cultural objects forming part of the national heritage of Malta, the items are neither to be sold nor returned. Moreover, it is to be noted that these regulations do not make reference to the victim but neither do they exclude the possibility of property being returned directly to victim if so stated in the confiscation order.

Monaco

Des accords ou dispositifs accordant une attention particulière au partage des biens confisqués avec d'autres Parties, sur une base systématique ou au cas par cas, sont-ils en place ?

**Réponse**

Le partage des biens confisqués avec l'autorité requérante se fait au cas par cas. Conformément aux dispositions de l'article 8 de l'Ordonnance n° 15.457 du 9 août 2002 évoquées ci-dessus, une fois l'exécution de la décision de confiscation étrangère autorisée par le Tribunal correctionnel de Monaco, les autorités monégasques transmettent à l'autorité requérante une offre de partage desdits actifs.

	<p>Un simple échange de lettres entre Ministères de la Justice suffit à conclure un accord de partage.</p> <p>Cette offre de partage varie au cas par cas, en fonction de la valeur des montants confisqués, ainsi que des éventuels frais engagés par les autorités judiciaires monégasques dans le cadre de l'exécution de la demande d'entraide judiciaire.</p> <p>Ainsi depuis 2014, les autorités monégasques ont procédé à la confiscation à la demande des autorités judiciaires étrangères, d'avoirs détenus à Monaco pour un montant total de 6.286.651,67 euros.</p> <p>5.860.182,41 d'euros ont été restitués aux autorités requérantes, soit plus de 93% des avoirs confisqués à Monaco.</p>
Montenegro	There is no such practice.
Netherlands	See article 13c of the 'Wet overdracht tenuitvoerlegging strafvonnis' (WOTS - Law on the transfer of the enforcement of judgements in a criminal case). Confiscated objects may, if requested, be handed over to a requesting member state in the context of a confiscation procedure.
Poland	<p>No</p> <p>Art. 611fu. § 5. Of The Criminal Procedure Code.</p> <p>The Minister of Justice may conclude an agreement with the relevant authority of the issuing State (EU Member) on the manner of enforcement of the forfeiture, in particular by stipulating in it a different division of the amounts obtained from the execution of the ruling.</p>
Portugal	<p>Portugal celebrated an <i>ad-hoc</i> Agreement for the sharing of confiscated property with Switzerland and the negotiation of a formal agreement on this issue with the United States is ongoing.</p> <p>However, according to Article 3 (Primacy of international treaties, conventions and agreements) of Law 144/99, of 31 of August, international cooperation shall be carried out in accordance with the provisions of the international treaties, conventions and agreements that bind the Portuguese State and, where such provisions are non-existent or do not suffice the provisions <u>of this law</u>.</p> <p>Therefore, Portugal does not need a bilateral agreement for the sharing or returning of confiscated assets, as results from Article 160 (3) of mentioned law, which states that the Portuguese judicial authority shall take such steps as are necessary in order to enforce any decision of a foreign court imposing the confiscation of proceeds from an offence and return such proceeds to the requesting court.</p> <p>Therefore we consider that Article 25 (3) of the Convention is met.</p>
Republic of Moldova	<p>The agreements that Republic of Moldova have concluded with other states do not give special consideration to sharing confiscated property, but foresee the procedure for transferring to the requesting Party property, proceeds and instrumentalities of a illicit origin. These previsions are the following:</p> <p><b>Agreement between the Republic of Moldova and the Republic of Türkiye on legal assistance in civil, commercial and criminal matters, signed on May 22, 1996:</b></p> <p><b>Art. 38 - " Transfer of illicit property and money" –</b> Any contracting party, on the request of the other party, will transfer to it illicit money and property, which have been</p>



obtained by the offender on its territory, during committing the offence and which have been discovered on its territory. Such a transfer will not violate legal rights of the requested Party or of a third party regarding these money and goods.

**Agreement between the Republic of Moldova and Ukraine on legal assistance in civil and criminal matters, signed on December 13, 1993:**

**Art. 4 - " Types of legal assistance"** – the contracting parties will afford mutual legal assistance in executing of some procedural activities, specially service of writs, searches, confiscation, sequestration of goods, transmission of goods and documents, initiating a criminal proceeding and transfer of criminal proceedings, extradition, interview of defendants, witnesses, experts, parties and other persons, forensic reports, judicial hearing.

**Art. 74 par. (1) - " Transmission of property"** – goods obtained by the offender from a criminal offence or goods resulted from their change, also other goods that may be used as evidence in the criminal case to the requesting contracting Party, if so is necessary for the investigation of the case carried out on the territory of the requesting contracting Party.

**Agreement between the Republic of Moldova and the Republic of Moldova Azerbaidjan on legal assistance in civil, family and criminal matters, signed on October 26, 2004:**

**Art. 80 - " Transmission of property "** – goods obtained by the offender from a criminal offence or goods resulted from their change, also other goods that may be used as evidence in the criminal case to the requesting contracting Party, if so is necessary for the investigation of the case carried out on the territory of the requesting contracting Party.

In practice of international legal assistance we did not have requests for confiscation of property/instrumentalities in money laundering cases, but there are cases when Moldavian criminal investigation bodies have executed such request and did give priority to the requesting Party, by transmission of the goods to so it can give compensation to the victims of the crime. But Republic of Moldova has not received such request in money laundering cases.

It should mention that according to the art. 13 para. 2 of the law nr. 48 from 30.03.2017 on the Asset Recovery Office

(2) The Agency for Criminal Assets Recovery shall communicate with foreign competent authorities regarding the value of the criminal assets repatriated to the Republic of Moldova or, where appropriate, to other states, taking into account the contribution and expenses incurred in connection with tracing the criminal assets, collecting evidence, making them temporarily unavailable, managing and capitalizing of the temporarily made unavailable or confiscated criminal assets, on reciprocal basis or in accordance with international agreements.

*According to the provision of the art. 4 of the Criminal procedure Code ) Criminal procedural law covers the entire Republic of Moldova and is compulsory for all criminal investigative bodies and the courts irrespective of the place where the crime was*

committed. (2) Other aspects of criminal procedural law may be set by international treaties to which the Republic of Moldova is a party.

In the same time the provision of the art. 5 of the Criminal Code “on the territory of the Republic of Moldova, criminal case proceedings involving foreign and stateless citizens shall be conducted in line with this Code”.

In this context, a possible share of assets with foreign states of the confiscated goods can take place during the process of examination of cases with international elements and confiscation of the property. Thus during the process of examination of the criminal case the judicial authority may decide on the share of confiscation of goods in accordance with the international agreements provisions.

Romania

In general, up to now, there has been no sharing agreement concluded based on the CETS 198 or on other Council of Europe or UE instruments. There are several discussions taking place and since the procedures are not finalized we cannot provide concrete details. We can specify though that none of the negotiations currently taking place on sharing of assets are based on the CETS no. 198 (there were other instruments used UE instruments or Council of Europe instruments). The approach is to negotiate sharing agreements on case by case basis.

According to art. 42, para. 2 of Law no. 318/2018 regarding the foundation and functioning of the National Agency for Administering Seized Assets: “The Agency is authorized to negotiate and facilitate the concluding of bilateral or multilateral agreements for sharing confiscated assets.”

See also the response for Art. 25(2)

The issues of confiscation are governed by the Civil Code of the Russian Federation (“the Civil Code”).

According to Article 235 § 2 (6) of the Civil Code, forcible withdrawal of property from its owner shall be prohibited, save for cases where a confiscation is conducted on the grounds provided for by law.

Article 243 of the Civil Code provides that, in cases provided for by law, property may be seized from the owner without compensation by a court judgment in the form of a sanction for committing a crime or another offence (confiscation).

In cases provided for by law, confiscation may be effected under the administrative procedure.

A confiscation decision taken under the administrative procedure may be appealed against in court.

One of the administrative penalties provided for by the Code of Administrative Offences of the Russian Federation (“the CAO”) is confiscation of the instrument or object of the administrative offence (Article 3.2 § 4). The issues of confiscation of the instrument or object of the administrative offence are governed by Article 3.7 of the CAO.

Chapter 15.1 of the Criminal Code deals with property confiscation.

In accordance with Article 104.1 of the Criminal Code, confiscation of property shall mean the state’s compulsory uncompensated seizure and appropriation, based on judgment of conviction, of, in particular, money, valuables and other property obtained as a result of the commission of offences provided for, e.g., by Articles 174.1 (legalisation (laundering) of money or other property acquired by a person as a result of committing an offence); 205 (terrorist act); 205.1 (assistance to terrorist activities); 205.2 (public appeal to carry out terrorist activities, public justification of terrorism or propaganda of terrorism); 205.3 (training for the purpose of carrying out terrorist activities); 205.4 (organisation of a terrorist community and participation therein); 205.5 (organisation of activities of a terrorist organisation and participation in the activities of such an organisation); 206 (hostage taking); 355 (development, production, accumulation, acquisition or sale of weapons of mass destruction); 361 (act of international terrorism) of the Criminal Code; or illegally transferred across the customs border of the Customs Union within the EurAsEC or across the State Border of the Russian Federation with the Customs Union Member States within the EurAsEC the liability for which is established by Articles 200.1, 200.2, 226.1 and 229.1 of the Criminal Code and any income derived

therefrom, with the exception of property and income derived therefrom to be returned to the rightful owner.

Also, please be informed that, by its Ruling no. 26-P of 29 November 2016, the Constitutional Court of the Russian Federation found that the provisions of Article 235 § 2 (8) of the Civil Code and Article 17 of the Federal Law on Monitoring Consistency of Expenses of Public Officials and Other Persons with their Income, do not contradict the Constitution of the Russian Federation insofar as they allow for the state's appropriation within civil proceedings of land plots, other real estate, vehicles, securities, shares (participatory interest, equity units in the authorised (joint-stock) capitals of organisations) owned by a public (municipal) officer or his/her spouse and minor children in respect of which such person failed to provide information proving that they have been purchased for his/her lawful earnings as well as money received from the sale of such property.

A second letter was received on 22 August 2018 with additional answers:

The office of the Prosecutor General of the Russian Federation is not a party to any permanent or *ad-hoc* agreements or arrangements concerning special procedures of sharing of confiscated property.

A number of international agreements of the Russian Federation contain provisions relating to search, freezing, arrest and return of criminal proceeds, which, *inter alia*, provide that the requested party, in accordance with its legislation, shall enforce the decision of a competent authority of the requesting state on seizure or confiscation of proceeds of crime or means of committing of crime. It is also provided that the rights of third-party *bona fide* purchasers must be ensured in accordance with the laws of the requested state.

Presently, negotiations on the conclusion of bilateral agreements on partition and return of assets are underway with a number of states.

San Marino

The Republic of San Marino attaches great importance to the sharing of confiscated assets and it relies on regulatory instruments for its implementation. On the basis of the Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime, made in Strasbourg on 8 November 1990, and of the Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds of crime and on the financing of terrorism, adopted in Warsaw on 16 May 2005, of which San Marino became a party, respectively, in 2001 and 2010, as well as on the basis of the recommendations of the Financial Action Task Force (FATF), to which San Marino conforms, the Republic of San Marino favours the sharing of the assets confiscated on its territory following an order of a judicial Authority of another State in the context of criminal proceedings.

In particular, Article 15 of Law no.100 of 29 July 2013 provides that, unless otherwise established in international agreements or conventions, the assets, funds and securities confiscated on the basis of a legal assistance request made by another State shall be allocated to the requested State if their value is lower than EUR 10,000.00. If their value exceeds the above-mentioned amount, half of the value exceeding said amount shall be transferred to the requesting State. The provision on the above mentioned sharing may be derogated from, wholly or partly, subject to reciprocity, in accordance with agreements concluded following the execution of the legal assistance request, on the basis of the type of offence for which confiscation was ordered, as well as of the relevant legal interests and degree of involvement of each State in the investigation.

The Court of the Republic of San Marino, which was asked to provide additional information, said that some requests for mutual assistance relative to confiscations of proceeds of crime involving the Judicial Authority of the Italian Republic are pending. In particular, measures of precautionary seizure have been adopted. However, no final judgment has yet been issued and consequently no confiscation has yet been ordered. If a judgment is given, the value of the property will be shared based on the provisions of the Convention. Currently, no requests for legal assistance relative to confiscation of proceeds of crime have been made to countries other than Italy.

Serbia Republic of Serbia doesn't have any bilateral agreements concluded on asset sharing with other countries.

In the case of confiscation of the proceeds derived from a criminal offence, on the request of a foreign state, the issue of asset sharing is solved in each individual case, and in accordance with multilateral agreements and conventions ratified by the Republic of Serbia (UN Conventions and Council of Europe Conventions).

Having in mind there weren't any cases of asset sharing with other countries in practice, we cannot provide any statistics in that regard.

Slovak Republic For the time being the Ministry of Justice of the Slovak Republic has no knowledge of such agreement in place.

Comment 1: The Slovak Republic has not authority for making such agreements with other States. This authority is in competence of the EU.

Comment 2: The implementation of this recommendation is really challenging!

**Competence of the EU member states to proceeds as recommended should be analyzed before any recommendation of this kind could be proposed (shared/exclusive power).**

Slovenia Relevant provisions of the C198 are directly applicable (see Article 25(2)).

Unfortunately we are not able to provide you with statistics or case example, which would demonstrate a special consideration regarding sharing confiscated property with other Parties.

See also the response to Art. 25(2) by the Slovenian authorities.

Spain	<p>Article 172 of Law 23/2014 on mutual recognition of judicial decisions in criminal matters in the European Union establishes the rules regarding the disposal of confiscated property between Spain and other EU Member State. If the amount obtained from enforcement of the confiscation order is lower than 10,000 euros or the equivalent to that amount, it shall be deposited in the judicial deposits and consignments account. In all other cases, the issuing State shall be transferred 50 per cent of the amount obtained from execution of the confiscation order. The remaining 50 per cent shall be deposited in the judicial deposits and consignments account.</p> <p>Additional provision 4<sup>th</sup> establishes that the same rules are applicable to non EU Member States in the absence of an agreement between Spain and the requesting State.</p> <p>Eg. Spain has signed two agreements with Switzerland so far (2011 and 2014). Currently, a new agreement is being elaborated. The three of them foresee the sharing of 50 per cent of the amount confiscated.</p>
Sweden <sup>15</sup>	<p>There are not statistics available. No.</p> <p>Regarding articles 25 (2) and (3), the exact legislative provision transposing these articles was attached to our initial response (Section 36 of the Act (1972:260) on international executions). The provision reads as follows.</p> <p><b><i>Section 36 of the Act (1972:260) on international executions</i></b></p> <p><i>Property or its value, which is forfeited based on this act accrue to the state. The government may at the request of the state which has requested execution of a decision to forfeit the property or value, decide that the property or its value in whole or partially shall be transferred to that state.</i></p> <p><i>A fine which have been determined based on this act may not be transformed.</i></p>
“The former Yugoslav Republic of Macedonia”	<p>In each specific criminal legal case involving several States Parties in the procedure as part of a joint investigation team, the provisions of the contract for the formation of the team shall state the reasons and the consequences for the contracting parties arising from the provisions of the same. There is no norm in the positive legislation that regulates this matter.</p> <p>In accordance with the Vienna Convention, the rights and obligations of each of the contracting parties are determined when establishing the JIT. At the same time, given that this convention is part of our national legislation, it is the basis on which this matter is regulated without additional material and procedural laws related to this issue / Law on International Cooperation in Criminal Matters. V. 130/10 does not define this issue as the LCP. At the same time, the European Convention on Extradition and Mutual Recognition and Enforcement of Foreign Enforced Judgments.</p>

---

<sup>15</sup> See footnote 14 above.

Türkiye

See Art. 25(2).

As we have pointed out in our previous responses concerning this article, pursuant to Articles 23 and 24 of the Convention, executing other states' confiscation requests from Türkiye, requires the availability of an order, rendered by a judicial body of Türkiye, and allowing the confiscation request to be fulfilled.

Along with this, pursuant to Art.1/3 of Law No.6706 on International Judicial Cooperation in Criminal Matters, provisions of conventions, which Türkiye is a party to, are considered a part of the domestic law of Türkiye.

Said article reads as follows:

*“(1) The purpose of the Law, shall be to regulate the procedures and principles of international judicial cooperation in criminal matters.*

*(2) This Law shall cover the judicial cooperation to be conducted with foreign States in criminal matters.*

*(3) The international agreements on judicial cooperation to which Türkiye is a party and the provisions of the other Laws shall be reserved.”*

Therefore, pursuant to Art. 3 of Law No.6706, the competent authority, with regards to fulfilling request, made by foreign states according to Articles 23 and 24 of the Convention, concerning sharing of assets, is the Ministry of Justice and it is also entitled to determine the condition of the asset sharing.

The above stated method, used by our country in asset sharing, is in conformity with the rule in Art. 24/1 of the Convention, providing that the method of applying confiscation, shall be subject to the legislation of the Requested Party.

In respect to your request for statistics on the application of Art.25/3 and a sample case,

Law No.6706 entered into force in 2016 and there is no sample case available on asset sharing as yet.

Further, we would like to elaborate on our explanations made for para 3, Article 25 of the Convention. In terms of asset sharing, it is true that the legal ground providing such assistance is Article 3 of Law on International Judicial Cooperation In Criminal Matters (Law No 6706) from which it can be inferred that the Ministry of Justice, as central authority in MLA requests, is the competent authority to enter into agreements on asset sharing with foreign countries and as such able to share assets. In addition to that, since, as of now, no such agreement has been signed, there might be a need of secondary legislation in order to facilitate asset sharing and to highlight the details of terms&conditions of such assistance.

Ukraine

According to the international cooperation practice during criminal proceedings, states generally do not conclude framework agreements on the coordination of measures in order to seize, confiscate of incomes and their distribution.

Coordination of measures on confiscation of property is carried out by holding bilateral consultations between the central authorities of states with the fixing of agreements in writing for each specific request.

*Example:*

In 2014, under the CETS 198 a request from the Ministry of Justice and Security of the Kingdom of the Netherlands for the recognition and enforcement in Ukraine the sentence of the Dutch court on the imposition of additional punishment in the form of confiscation of proceeds from crime was received (totaling EUR 82,517).

Upon the additional request of the Ministry of Justice of Ukraine, the Dutch side proposed to transfer 50% of the confiscated proceeds to the budget of the Kingdom of the Netherlands, and 50% - to the budget of Ukraine.

By the Ukrainian court determination, based on Art. 568, 603 of the CPC of Ukraine and CETS 198, the judgment of the court of the Kingdom of the Netherlands was found to be enforceable on the territory of Ukraine in terms of confiscation of proceeds from crime through the transfer of 50% of the confiscated property or its monetary equivalent in to the budget of the Kingdom of the Netherlands and 50% of the confiscated property or its monetary equivalent - to the budget of Ukraine. The court enforcement action against assets recovery according to the above-mentioned decision of the Ukrainian court is on-going.

United Kingdom

The UK cannot demand where a state puts their returned funds. However, if the UK seeks to negotiate a higher percentage return because of victims, we would expect that those funds would be returned to those victims accordingly.

-Could you provide us with the exact legislative provision transposing Article 25(3) CETS no. 198 into domestic law?

This would depend on the case, but the UK is able to return funds to Parties.

-Could you provide us with statistics or case examples which support your answer provided, or demonstrate the implementation of Article 25(3) CETS no. 198 in any other manner?

We do not keep statistics on this.