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CONFERENCE OF THE PARTIES

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

Thematic Monitoring Review of the Conference of the Parties to CETS No.198 on Article 9(3) ("Laundering offences")[1]

[1] As examined and adopted by the Conference of the Parties to CETS No. 198 at their 11th meeting, Strasbourg, 22-23 October 2019. Amended following the ratification of the Convention by of Monaco in 2020 and Lithuania in 2021, Estonia in 2023, inputs received from the Russian Federation and selected follow up procedure by Croatia (2020).

Contents

Introduction

1. The Conference of the Parties (hereinafter: "the COP"), at its 9th meeting held in Strasbourg from 21 to 22 November 2017, decided to initiate the application of a horizontal thematic monitoring mechanism for an initial period of two years. 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 Warsaw Convention"). To that effect, the COP adopted a new Rule 19*bis* of the Rules of Procedures, which is annexed to this report.

2. The COP Plenary at its 10th meeting examined and adopted the first thematic monitoring report, which dealt with Article 11 as well as with Article 25, paragraphs 2 and 3 of the Warsaw Convention. It decided that the second thematic monitoring would deal with Article 9, paragraph 3, and Article 14 of the Warsaw Convention. The present study deals exclusively with Article 9, paragraph 3.

3. Subsequently, in December 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 February 2019. The responses were subsequently analysed by the Rapporteur team, Ms Oxana Gisca (Republic of Moldova) and Ms Ani Goyunyan (Armenia), together with the Secretariat. A final draft analysis was circulated amongst the COP States Parties to provide comments and further information. The main findings drawn from these responses are set out in the summary section of the report.

4. This report seeks to establish the extent to which States Parties have adopted measures to establish a laundering offence in the case where the offender (a) suspected that the property was proceeds, and/or (b) ought to have assumed that the property was proceeds.

5. The report commences with laying out the scope of Article 9, paragraph 3 of the Warsaw Convention (hereinafter: "Article 9(3)") and the methodology applied for the review. It then draws conclusions on legislative provisions and their effective implementation and proposes recommendations. States Parties' submissions are individually analysed and recommendations are made for the respective state party when applicable. Their submissions are annexed to this report.

Scope of Article 9(3)

6. Article 9(3) addresses the *mens rea* of money laundering, in such cases where the offender acted negligently and/or when he/she suspected that property was proceeds. The paragraph reads as follows:

"*Each Party may adopt such legislative and other measures as may be necessary to establish as an offence under its domestic law all or some of the acts referred to in paragraph 1 of this article, in either or both of the following cases where the offender*

a) Suspected that the property was proceeds;
b) Ought to have assumed that the property was proceeds."

7. Proving the mental element of the money laundering offence can be challenging, as domestic courts often require a high level of knowledge as to the origin of the proceeds by the alleged

launderers. Article 9(3) therefore enables parties to establish a criminal offence, even when the highest level of knowledge of an offender is not proven. Paragraph 3(a) provides for a lesser subjective mental element. This element covers the situation where a person gives the origin of the proceeds some thought (in other words, where a person suspected that property was proceeds), while he/she does not have firm knowledge that these are proceeds from crime. Paragraph 3(b) criminalises negligent behaviour, for which a court will weigh the evidence and determine whether the offender should have assumed the property was proceeds. In this situation, it is not required that a person had a suspicion as to the illicit origin of the property.

8. Article 9(3) goes beyond the requirements of the ML offence as set out in both Article 3 of the Vienna Convention of 1988 and Article 6 of the Palermo Convention of 2000. As both conventions have informed the global AML/CFT standard, Article 9(3) also goes beyond Recommendation 3 of the 2012 FATF recommendation (which states that ML should be criminalised on the basis of these two conventions). As a consequence, Article 9(3) brings added-value to the global AML/CFT standards by facilitating the establishment of the criminal offence of ML. The practical implementation of this provision may increase the effectiveness with which states investigate and prosecute ML offences. Moreover, the added value of this provision is also underlined by a parallel provision in Art. 3(2) of the Directive (EU 2018/1673) of 23 October 2018 on combatting money laundering by criminal law.

9. In this respect, it should be noted that the overall performance of the global AML/CFT network in this area is currently not very satisfactory. In a recent internal study by the FATF, the respective Immediate Outcome 7 ("*Money laundering offences and activities are investigated and offenders are prosecuted and subject to effective, proportionate and dissuasive sanctions*") was at a global level achieved only to a rather modest level. 59% of the FATF-countries which had been evaluated by May 2019 achieved ratings of a "low" or "moderate" level of effectiveness, whereas countries evaluated by MONEYVAL or the other eight FATF-style regional bodies achieved to 98% a "low" or "moderate" level. While it is recognised that Immediate Outcome 7 contains many aspects beyond the criminalisation of the ML offence (and thus one should be careful to draw general conclusions), an overview of the COP States Parties which have so far been evaluated by either the FATF or MONEYVAL reveals that States Parties which had implemented both elements of Article 9(3), or at least one of the two elements of that provision, had overall performed better under this immediate outcome. Hence there appears to be an incentive for the adoption of Article 9(3) in national law for those States Parties which have not yet done so, in view of improving their overall performance on the effectiveness of investigating and prosecuting ML.

10. The language of Article 9(3) ("*may*") is not mandatory. As a consequence, States Parties which have not yet (fully) integrated this provision into their domestic law are not failing to implement the Convention in this respect. Nevertheless, the COP has established in the past decade clear practice in its assessment reports to evaluate its States Parties against Article 9(3). While the recommendations made by the COP on this provision in the past have at times slightly deviated from each other,[2] the present report has sought to propose recommendations which were consistent with the previous practice in the COP reports as far as possible.

[2] The assessors of one report (Croatia) recommended to criminalise the element of suspicion, while the element of negligence was already in place, to ensure that both paragraph 3(a) and 3(b) were implemented, while other reports (Albania, Poland, Romania) recommended to consider introducing either or both of the subparagraphs. Various reports (Armenia, Belgium) cited case law to demonstrate the effective application of the provision, while others (Bosnia and

11. This report looks into the domestic legislation as provided by the authorities, including the particular provision incriminating money laundering and general principles of law on the required level of knowledge or intent for establishing an offence. The effective implementation was also assessed by requesting case law which demonstrated the application of Article 9(3) in practice.

Methodology

12. The 'Questionnaire for the Transversal Monitoring of States Parties' Implementation of Article 9(3) and Article 14 of the CETS No. 198' requested information on the following two questions concerning Article 9(3):

"*Do your legislation and other measures allow for a money laundering offence to be established where the person* suspected *that the property was proceeds?*"

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

13. Delegations were asked to provide provisions of their domestic legislation dealing with these issues. In addition, they were encouraged to support their response with case studies or any other relevant information.

14. This horizontal review includes information on 38 COP States Parties[3]. Ten countries[4] have undergone a COP individual country assessment, the analyses of which have also been taken into account.

Summary

15. The assessment on the implementation and application of Article 9(3) reveals several general findings. State-specific conclusions are included in the respective analysis of each state party.

16. The questionnaire inquired whether or not the States Parties had adopted such legislative or other measures to allow for a ML offence to be established in case an offender suspected ("Alternative 1") or ought to have assumed ("Alternative 2") that property was proceeds. The following general observations can be made with regard to the 37 States Parties which have responded:
    - Seven States Parties (Bosnia and Herzegovina, Croatia, Denmark, Germany, Italy, the Slovak Republic and Slovenia) have criminalised both alternatives under Article 9(3);

Herzegovina) solely note that such practice is absent. A recommendation was made to one country (Malta), following the absence of relevant case law, to raise awareness among prosecutors and judges of the elements of the ML offence, as interpreted by the courts, while such recommendation was not made in a comparable situation to other countries (Albania, Republic of Moldova, Montenegro and Romania).

[3] The response from the Russian Federation was received in 2020 and the analysis was amended accordingly. Monaco, Lithuania and Estonia ratified the Warsaw Convention after the present thematic monitoring procedures had been initiated. The implementation of Article 9(3) by Monaco was therefore analysed in 2020, by Lithuania in 2021 and Estonia in 2023.

[4] Albania, Armenia, Belgium, Bosnia and Herzegovina, Croatia, Malta, Republic of Moldova, Montenegro, Poland and Romania.

- Fifteen States Parties have at least criminalised one of the two alternatives under Article 9(3) (with six States Parties having criminalised Alternative 1, and ten States Parties having criminalised Alternative 2), bringing the total number of States Parties having implemented the minimum requirement of this provision to twenty-two.
- The remaining sixteen States Parties have not implemented either of the two alternatives under Article 9(3), bearing in mind the non-mandatory language of the provision. The exclusion of this provision from the scope of their ML offences had their origin either in the wording of the applicable legislation, and/or was confirmed by domestic courts through jurisprudence. Applicable case law was submitted to that effect.

Effective implementation

17. Of those twenty-two States Parties which have implemented Article 9(3), only ten states (Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, Malta, Republic of Moldova, Romania, Slovak Republic and Sweden) included information on existing case law on Article 9(3) which confirmed the application of this provision in practice. Three countries (the Netherlands, Slovenia and Spain) provided statistics on the number of cases to demonstrate the application of Article 9(3) in practice. Several States Parties indicated that they had no cases at hand relating to Article 9(3).

Recommendations and follow-up

18. 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 Warsaw 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.

19. As explained above under the section 'Scope of Article 9(3)', the COP assessment reports have adopted a differing approach towards the conclusion and recommendations on Article 9(3). The present study opted for making recommendations in case both elements of negligence and suspicion were absent, thus not requiring States Parties to have both elements in place but at least one (in line with the provision's wording 'either or both'), and in case no case law or data were presented to demonstrate the application of Article 9(3) in practice.[5]

20. With the aim to promote a harmonised approach across COP States Parties, bearing in mind the non-mandatory character of Article 9(3), States Parties are recommended, if they have not yet done so, to consider:

[5] In this regard, it should be noted that Recommendation 33 ("Statistics") of the 2012 FATF recommendations requires countries to maintain comprehensive statistics on, *inter alia*, money-laundering investigations, prosecutions and convictions. The wording is broad enough to also cover investigations, prosecutions and convictions for negligent money-laundering, even though Recommendation 3 of the FATF recommendation does not require the criminalisation of money laundering to the same extent as Article 9(3) of the Warsaw Convention.

- Adopting legislative or other measures to incriminate acts referred to in Article 9(1) of the Warsaw Convention, in either or both of the cases referred to in Article 9(3) where the offender suspected or ought to have assumed that property was proceeds;

21. For the purposes of successful application of Article 9(3), States Parties which have adopted measures of Article 9(3) are invited to consider to:

    - Raise awareness among law enforcement authorities and the judiciary on the lesser subjective mental element and/or on negligence in relation to the ML offence.

22. States Parties are strongly encouraged to implement both the above-mentioned general recommendations and the country-specific recommendations. Respective legislative measures could be adopted by amending the criminal code and/or AML/CFT laws (the latter where the definition of the money laundering offence is contained in these laws, as opposed to the criminal code). Non-legislative measures may focus on awareness-raising, trainings or publication of guidance for the judiciary on the *mens rea* of the ML offence.

23. Bearing in mind the non-mandatory language of the provision of Article 9(3) on the one hand, but also its long-standing practice to provide recommendations for States Parties which have not yet implemented this provision, the COP may decide to follow-up on the recommendations following from this analysis.

Country review

Albania

1. The COP Assessment report on Albania in 2011 noted that the language of Article 287 of the Criminal Code did not "require for the criminal to know that the property is proceeds in order to establish *corpus delicti* for the deeds envisaged through paragraphs 1(b)-1(e)".
2. The Albanian authorities, in their response to the questionnaire, indicated that the previous Article 287, applicable at the time of the 2011 Assessment Report, was in the meantime amended by Law no. 23/2012.
3. Although the authorities state that no obstacle on the application of Article 9(3) is imposed, the exact provision is not included in domestic legislation. The wording of Article 287(1) on the ML offence only refers to the knowledge of a person regarding the property being proceeds of a criminal offence or criminal activity: "*a) exchange or transfer of the property, for purposes of concealing or disguising its illicit origin knowing that such property is a proceed of criminal offense or criminal activity* […]" [emphasis added]. The phrase referring to knowledge (i.e. "knowing that such property is a proceed of a criminal offence or activity", as underlined) was not included in the previous Article 287 as in place during the 2011 COP assessment. The current wording of Article 287 excludes either or both of the cases where the offender suspected or ought to have assumed that the property was proceeds, instead limiting the scope of the article to the aspect of knowledge.
4. In the case of absence of direct evidence to prove knowledge of the origin of property, the proceeding body will rely on indirect evidence or other important, accurate and consistent indications (Art. 152/2 Criminal Procedure Code).
5. No case was provided through which it was demonstrated that Article 9(3) has been applied in practice.

Conclusion/Recommendation

6. As a result of the recent amendments to the Criminal Code, the Albanian legislation does not anymore include any of the measures proposed in Article 9(3). The authorities are therefore recommended to consider adopting legislative or other measures to explicitly provide for a notion of suspicion or negligence or both that property is proceeds of crime in the context of the ML offence.

Armenia

1. The Armenian legislation establishes the ML offence only in cases where knowledge and direct intention are ascertained, as a mandatory part of the subjective element. Indeed, Article 190, part 1, of the Criminal Code defines the subjective element of the ML offence as follows: *"the conversion or transfer of property (knowing that such property is the proceeds of criminal activity) for the purpose of concealing or disguising the illicit origin of the property of or helping any person to evade the responsibility for the crime committed by him; or the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to or ownership of property (knowing that such property is the proceeds of criminal activity); or the acquisition or possession or use or disposition of property (knowing, at the time of receipt, that such property is the proceeds of criminal activity)…"* [emphasis added]

2. Moreover, the Court of Cassation[6] on 24 February 2011 ruled that "*the practical application of Article 190 of the Criminal Code should be based on a conclusion that the mandatory element of the subjective side of the offence in question contains a specific intention to conceal or disguise the true origin of the illicit proceeds, and to integrate these funds into legitimate businesses. The absence of such intention excludes the possibility of the offence in question …*"
3. The 2016 COP Assessment report also concluded that ML in Armenia cannot be committed with a lesser subjective mental element or negligence.

Conclusion/Recommendation

4. Armenia has not adopted measures as proposed in Article 9(3) in its domestic legislation, which was also confirmed by jurisprudence. The Armenian authorities are therefore recommended to consider providing for a notion of suspicion, negligence or both that property is proceeds of crime in the context of the offence of ML.

Austria

1. The Austrian authorities have advised that the ML offence is set out in §165 of the Austrian Criminal Code. The authorities advised that only paragraph 1 can be committed with dolus eventualis, whereas the offences according to paragraphs 2 and 3 require knowledge of the criminal origin of the property. However, this article was not provided thus making any further analysis impossible.
2. As regards the intent the Austrian legislation defines it in Article 5 of the CC. It states that 'a person acts with intention if the persons means to complete the elements of an offence which wants to produce the facts constituting an offence under the law; to prove intention, it is enough to show that the person is aware of a substantial risk that the offence will occur and, having regard to the circumstances, takes the risk.'
3. With regard to negligent behavior, it is not criminalized in any case of offences against property. Paragraph 3(b) of the Convention was therefore not implemented in Austria.
4. On the other hand, the Austrian Supreme Court ruled that "the offences of money laundering according to §165 paragraph 1 of the Criminal Code demands for all elements of the offence (different from paragraph 2). According to the Austrian authorities, the subjective elements is therefore met if the perpetrator seriously suspects that the money is criminally contaminated" (14 Os 181/95 or 14 Os 150/02 of 9.9.2003). No further explanation was provided.
5. Moreover, no cases have been provided to demonstrate the application of the afore-mentioned jurisprudence set up by the Supreme Court.

Conclusions/Recommendations

6. Given the lack of information provided, it is not clear whether Austrian legislation clearly foresees that ML can be committed if an offender suspected or ought to have known of the illicit origin of the proceeds. The authorities are therefore recommended to consider, if this has not yet been the case, adopting legal measures and developing case law thus providing for a comprehensive framework in which ML could be committed in case the perpetrator suspected or ought to have assumed that the property, subject to laundering, is proceeds of crime.

[6] The Court of Cassation in Armenia is the highest judicial instance of the Republic of Armenia, which is called to provide the uniform application of law, except on constitutional justice issues (Art. 92(2), Constitution of the Republic of Armenia).

Azerbaijan

1. Currently no legislation provides for the measures proposed in Article 9(3). The authorities informed that a draft legislation is under preparation which will refer to *"legalisation of criminally obtained funds or other property, as well as acquisition, possession, use or disposition of such funds or other property committed by negligence"* [emphasis added]. The new legislation is expected to enter into force by October 2019.
2. In the absence of domestic legislation, no case law exists on the matter.

Conclusion/Recommendation

3. Azerbaijan has not yet adopted measures as proposed in Article 9(3) in its domestic legislation. A draft legislation is envisaged to include the element of negligence. The Azeri authorities should be invited to report to the COP about the latest stage of this legislative procedure. Once this draft legislation has entered into force, it is recommended to consider ensuring its effective implementation by raising awareness of law enforcement authorities and the judiciary on the matter.

Belgium

1. The legislation in Belgium provides for a wording similar to Article 9(3)(b): the ML offence applies to situations where the offender "*was aware or should have been aware*" of the origin of the goods in question.
2. An example of application of this article was provided in the COP 2016 assessment report on Belgium (Cass., 21 June 2000, Pas., 2000, n.387; Ghent CA, 9 February 2012). The COP report concluded that Belgium had demonstrated, to a satisfactory extent, the implementation of Article 9(3).

Conclusion

3. Belgium has adopted measures as proposed in Article 9(3) in domestic legislation. A case example confirms that an act of negligence regarding the unlawful origin of property is sufficient ground for the prosecution of a ML offence.

Bosnia and Herzegovina

1. The 2015 COP Assessment report on Bosnia and Herzegovina concluded that measures to establish a ML offence in both alternatives stipulated in Article 9(3) were provided for in the legislation, but that no practical cases were indicated to demonstrate the application of the relevant provisions. Moreover, the authorities were recommended to consider harmonising the sanctioning regime with the state level and various districts. This recommendation has been implemented, as all criminal codes meanwhile stipulate a fine or term of imprisonment not exceeding three years.
2. The Criminal Code of Bosnia and Herzegovina in Article 209(4) indeed establishes the offence of acting negligently with respect to the money laundering offence. The same is applies for the Criminal Codes of the Brčko District (Art. 265(5)), the Republic of Srpska (Art. 263(5)) and the Federation of Bosnia and Herzegovina (Art. 272(5)).These offences are all punishable with a fine or a term of custody not exceeding three years.
3. The authorities provided a case example in which the Court of Bosnia and Herzegovina handed down a conviction on 1 December 2017 on a person who had acted "in [a] negligent manner" in relation to the circumstance that money of significant value had been acquired through the commission of a criminal offence. The person was thus in breach of Article 209(4) in conjunction with Article 209(1) (money laundering offence) of the Criminal Code. The person was sentenced for a term of one year imprisonment and a fine of 30.000 BAM (which equals 15,000 EUR).

Conclusion

4. The legislation of Bosnia and Herzegovina and its districts include both alternatives stipulated under Article 9(3). Existing case law confirms the application of the article by prosecutors and judges.

Bulgaria

1. According to Bulgarian legislation, the ML offence is an intentionally committed crime. There are two types of 'intent', namely where the offender knows or suspects the illegal origin of the property. In the latter case, the suspicion may be proven when, from the circumstances known to the perpetrator, it can only be concluded that the object of the crime was acquired illegally. Even if the perpetrator did not have any direct indicators that the property was proceeds, the ML offence may have been committed. Indeed, Article 253 of the Criminal Code provides that "*the one who concludes a financial operation or property transaction or conceals the origin, location, movement or the actual rights in the property, knowing or suspecting that the property is acquired through crime or another act that is dangerous for the public, shall be punished for money laundering* […]" [emphasis added]. It also applies to anyone who acquires, receives, holds, uses, transforms or assists, in any way whatsoever, the transformation of property, knowing or suspecting that it was property, as well as to anyone who uses the funds or property which he/she knew or suspected to have been proceeds (Articles 253(2) and 253(4)).
2. The authorities further explained that 'suspicion' would also cover the case where the perpetrator 'ought to have assumed' that the property was proceeds. This would derive from the circumstances where a perpetrator used the property, while "a normally reasoning person" would make a reasonable assumption that the property had been acquired in an illegal way.
3. The authorities submitted two case examples of the Supreme Court of Cassation in which a conviction was reached for the ML offence and in which the perpetrators suspected the illegal origin of money. These examples prove the effective application of Article 9(3).

Conclusion

4. Bulgaria has put in place the measures proposed in Article 9(3) into domestic legislation and case-law has confirmed the successful application of the article.

Croatia

1. The 2016 COP follow-up analysis on Croatia notes that the Criminal Code criminalised the ML offence with regard to negligence, but not the situation where a person suspected that the property was proceeds. It concluded that authorities should consider introducing the element of suspicion in its legal framework.
2. Amendments to the Criminal Code of Croatia, including to the criminal offence of money laundering (Article 265), were adopted on 14 December 2018 and entered into force on 3 January 2019. The new Article 265(5) provides for the offence of "*negligence with respect to the circumstance that the pecuniary advantage is derived from criminal activity*" [emphasis added], which is punishable by a maximum imprisonment of three years.
3. The Croatian Criminal Code knows two types of negligence, through which a criminal offence may be committed: reckless conduct and unconscious negligence (Art. 29 (1 and 2)). In terms of Croatian legal terminology provisions of Article 29 (1 and 2) cover both - where the person suspected that the property was proceeds and where the person ought to have assumed that the property was proceeds. Article 265 para 6 of the Criminal Code incriminates the money laundering committed by negligence.

4. One case example was provided to demonstrate the application of the provision of Article 265(5) of the Criminal Code.

Conclusion

5. Legislation of Croatia contains an explicit reference to an act of negligence regarding the illegal source of goods. It was demonstrated that the article has been applied.

Cyprus

1. The Cypriot AML/CFT Law in Article 4(1) describes that the ML offence is committed if a person knows or, at the material time, ought to have known that any property constitutes proceeds from the commission of illegal activities.
2. The knowledge, intention or purpose may be inferred from objective and factual circumstances.
3. No cases have been provided to demonstrate practice.

Conclusion/Recommendation

4. The legislation of Cyprus includes the element of negligence for establishing the ML offence, but no cases have been provided to demonstrate the application of the legal provision. The authorities are therefore recommended to consider raising awareness among law enforcement authorities and the judiciary on this element of the ML offence.

Denmark

1. Danish legislation requires that the perpetrator at the time of the ML crime had the intention to commit the crime (Section 290A of the Criminal Code, adopted in June 2018). 'Intention' occurs, *inter alia*, when the perpetrator considers the existence of certain circumstances as possible, and decides to act in a certain manner anyway. 'Intention' is a legal principle and confirmed by case law.
2. The authorities therefore argued that knowledge or suspicion upon the specific circumstances of the case may be sufficient to establish a guilty mind. Further knowledge about previous criminal offences is not necessary.
3. Moreover, according to Section 303 of the Criminal Code, any person who, in gross negligence, buys or receives property which are proceeds of a crime, is liable to a fine or imprisonment not exceeding one year. This offence is restricted to a limited set of predicate offences, namely fraud and property offences. It should be emphasised that 'buying or receiving' does not cover the wide array of ML techniques as put forward in the Vienna Convention and reiterated in Article 9(1) of the Warsaw Convention (e.g. concealing, possessing, using of illegally acquired property). The FATF mutual evaluation report of Denmark of 2017[7] notes that this offence is used where it is not possible to prove intentional ML under Section 290 of the Criminal Code. Thus, if the perpetrator should have known (but did not know) that the property obtained was the proceeds of a criminal offence, charges will be brought under Section 303 of the Criminal Code. Nevertheless, as a result of the limited applicability of this offence in view of the wide definition of the ML offence, it cannot be concluded that ML by negligence is entirely criminalised in Denmark.
4. Due to the recent adoption of Section 290A of the Criminal Code, no case law was yet available to demonstrate the interpretation of intention in light of the ML offence. The authorities were however in a position to provide one case example of a conviction for 'gross negligence' under Section 303 of the Criminal Code (High Court ruling, U.2013.42.Ø).

[7] See page 144, http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Denmark-2017.pdf.

Conclusion/Recommendation

5. The ML offence of Section 290A of the Criminal Code does not refer explicitly to a situation of 'suspicion', although the authorities informed that the element of suspicion would be covered by the widely-interpreted notion of "intention". Danish legislation criminalises a situation of gross negligence under Section 303 of the Criminal Code, although the acts (buying and receiving) only partly cover the activities encompassed by the international requirements for the ML offence. One case was provided to demonstrate the application of the concept of 'gross negligence'. The authorities are recommended to consider expanding the scope of application of gross negligence to the entire range of activities of the ML offence.

Estonia

1. The Estonian legislation does not provide for the measures proposed under Article 9(3) of the Convention. More precisely, the Estonian Penal Code provides for the ML offence only in cases where the perpetrator acted with "knowledge, intent or purpose", which may also be "inferred from objective facts" (Article 394 of the Penal Code). Nonetheless, the references to inference from objective factual circumstances cannot be interpreted as a "lesser mental element", given it still requires the awareness of the perpetrator with regard to the origin of the assets to be proven (see also Interpretative Note on Article 9(3) of the Convention https://rm.coe.int/c198-cop-2021-4-interprnoteart-9-3-en/1680a2d66d).

Conclusion/ Recommendation

2. Estonia has not adopted measures as proposed under Article 9(3). The authorities are thus recommended to consider providing for a lesser mental element of suspicion or negligence, or both with regard to property being proceeds of crime in the context of ML offences.

France

1. France has criminalised, as part of the ML offence, the "presumption" that property in result of proceeds. The article reads as follows: "*For the purposes of Article 324-1 (money laundering by the false justification of the origin of property or by concealment of conversion of the proceeds of any crime or offence), property or income is presumed to be the direct product or indirect of a crime or offence where the material, legal or financial conditions of the placement, concealment or conversion transaction can have no other justification than to conceal the origin or the beneficial owner of these goods or revenues*"[8] [emphasis added] (Art. 324-1-1 Penal Code).
2. However, this article does not refer to the level of knowledge of the offender, but rather concentrates on the requirement to proof the predicate offence or the illicit origin of money. The Penal Code instead establishes that an offence or crime is not committed without an aspect of intention (Art. 121-3).
3. It appears from jurisprudence that employees of financial institutions may be subject to some kind of aspect of negligence (in the case in which they "*could not have ignored the fraudulent character of funds*"), but this does not appear to apply generally to all offenders which would be necessary to cover the scope of Article 9(3) of the Warsaw Convention.

[8] Unofficial translation. The official text reads: "*pour l'application de l'article 324-1, les biens ou les revenus sont présumés être le produit direct ou indirect d'un crime ou d'un délit dès lors que les conditions matérielles, juridiques ou financières de l'opération de placement, de dissimulation ou de conversion ne peuvent avoir d'autre justification que de dissimuler l'origine ou le bénéficiaire effectif de ces biens ou revenus.*"

4. In the absence of the criminalisation of ML on the basis of Article 9(3), no case law exists which would demonstrate the application of that provision.

Conclusion/Recommendation

5. Legislation of France does not contain a notion of suspicion or negligence for establishing the ML offence. No cases were provided to demonstrate practice. The authorities are recommended to consider taking legislative or other measures to explicitly provide for a lesser mental element and/or negligence for the ML offence.

Georgia

1. Georgian legislation provides that ML falls under the category of 'intentional crimes'. An offence is only constituted if the following elements are present: a person's knowledge that the property is proceeds from illegal activity, and a person's purpose to legalise it. These elements are established by factual and objective circumstances.
2. It is therefore impossible to qualify an action as ML when a person suspected or ought to have assumed that the property was proceeds from illegal activity.
3. As a consequence, no case law exists which would demonstrate the application of Art. 9(3).

Conclusion/Recommendation

4. Georgia has not adopted measures as proposed in Article 9(3) in its domestic legislation. Georgia is therefore recommended to consider providing for a lesser mental element of either suspicion, negligence or both that property is proceeds of crime in the context of the offence of ML.

Germany

1. The offence of ML is set out in section 261 of the German Criminal Code. The statutory definitions include acting with intent, but they make no specific subjective requirements as to the knowledge on the origin of the property. A general principle of German law is *dolus eventualis*, i.e. conditional intent or 'awareness of the likely outcome of an action', which makes it sufficient to establish the ML offence if the perpetrator could believe that it was possible that property originated from a predicate offence and nevertheless accepted that possibility.
2. Besides, section 261(5) of the German Criminal Code provides that it is sufficient for a perpetrator to be 'recklessly unaware that property represents the proceeds of one of the listed unlawful acts'. Recklessness, in this sense, refers to a serious form of conscious or unconscious negligence. According to the authorities, 'conduct is deemed reckless where it practically suggests itself that property represents the proceeds of one of the unlawful acts listed in section 261(1) of the German Criminal Code but the perpetrator nevertheless acts and ignores this out of gross carelessness or indifference'.
3. The principle of *dolus eventualis* and notion of recklessness apply to all professional groups and activities, except for the criminal defence lawyer. For the origin of the lawyer's fee, reliable knowledge is required and may not be established by suspicion or negligence. This is confirmed by case law.
4. No cases have been provided to demonstrate the application of *dolus eventualis* or recklessness with regard to the ML offence, except for in the case of a criminal defence lawyer's fee.

Conclusion/Recommendation

5. The general part of the Criminal Code, which applies to the ML offence, contains concepts which can be considered similar to a lesser subjective mental element and to negligence. Hence Germany has implemented both alternatives under Article 9(3). However, no cases were provided to demonstrate the implementation of the provision in practice. Therefore, the authorities are recommended to consider raising awareness among law enforcement authorities and the judiciary on the notions of *dolus eventualis* and recklessness in relation to the ML offence.

Greece

1. Greek legislation does not establish the suspicion or negligence on the origin of property in regard to the ML offence. The condition that the perpetrator must have acted with the knowledge that the property was proceeds excludes cases where he/she suspected such fact and accepted it as an eventuality, or was indifferent towards it, as well as cases where the perpetrator ought to have assumed that the property was proceeds, but failed to do so.
2. As a consequence, no case law exists which would demonstrate the application of Art. 9(3).

Conclusion/Recommendation

3. Greece has not adopted the measures proposed in Article 9(3) in its domestic legislation. The Greek authorities are therefore recommended to consider the possibility of providing for a lesser mental element of suspicion or for negligence or both with regard to property being proceeds of crime in the context of the offence of ML.

Hungary

1. Hungary has criminalised ML committed by negligence, through the following wording "*[when] the perpetrator uses an object, or performs or receives any financial service in connection with an object that originates from a punishable act committed by another person, and by negligence is unaware of the origin of the object*" [emphasis added] (Article 400 of the Criminal Code). Pursuant to Article 8 of the Criminal Code, negligence is established if the perpetrator foresees the possible consequences of his/her act, yet recklessly trusts that they would not take place, or if he/she cannot foresee possible consequences because he/she fails to exercise the care or circumspection expected of him/her.
2. Hungary provided case examples beyond the deadline, therefore it was not possible for the rapporteurs to analyse these cases in due time.

Conclusion/Recommendation

3. Hungarian legislation includes the notion of negligence to establish the ML offence. The authorities are recommended to consider raising awareness among law enforcement authorities and the judiciary on the negligent aspect of the ML offence.

Italy

1. The ML offence as established in the Criminal Code of Italy does not contain a provision related to negligence or the lesser subjective mental element of the offence. However, the authorities argue that Article 712 of the CC establishes criminal liability for negligence and suspicion. According to this provision, a person who suspected that property was proceeds from crime, without having verified beforehand its legitimate origin and due to the quality or price or conditions of the people offering it, may be convicted for the offence

"*acquisto di cose di sospetta provenienza*" ("purchase of goods of suspected origin" [unofficial translation]).

2. This offence is punishable with custody up to six months or with a fine of not less than ten euros. No case law was provided on the application of this article.
3. However, this article makes no reference to the ML offence, and the scope of activities ('buying or receiving') does not cover the entire range of activities of ML as established in Article 9(1) of the Warsaw Convention. The offence is included in the Criminal Code under contraventions, in particular under 'violations concerning public safety and concerning the prevention of crimes against property'; whereas ML is a crime, covered as a 'crime against property through fraud'. Besides, as no case was provided to demonstrate the application of Article 712 of the Criminal Code within the scope of the ML offence, it cannot be concluded that the Italian legislation has criminalised negligent ML.

Conclusion/Recommendation

4. Italian legislation does not contain a clear criminalisation of any of the measures as provided for in Article 9(3) of the Warsaw Convention in relation to the ML offence. The Italian authorities are therefore recommended to consider the possibility of providing for a lesser mental element of suspicion or for negligence or both with regard to property being proceeds of crime in the context of the offence of ML.

Latvia

1. Latvia has amended its AML/CFT Law, which entered into force on 1 August 2017. The definition of ML contained therein serves as the definition for the ML offence in section 195 of the Criminal Code, which makes direct reference to this provision. The new Section 5(1) provides for a lesser subjective mental element of the ML offence and considers that ML may be committed where a perpetrator 'was aware' that funds are proceeds of crime. Notably, the actions considered as ML set out in Section 5(1), paragraphs 1-3, are also committed "*when a person deliberately assumed the funds to be proceeds of crime*" [emphasis added] (Section $5(1^1$ AML/CFT Law).
2. The amendments to the AML/CFT Law have been made too recently for the courts to have established case law on the matter.

Conclusion/Recommendation

3. Latvian legislation provides for the notion of suspicion, but there are no cases yet on the application thereof. The authorities are recommended to consider raising awareness among law enforcement authorities and the judiciary on the lesser mental element of the ML offence.

Lithuania

1. Lithuanian legislation does not provide for the measures proposed in the Article 9(3) of the Warsaw Convention. Criminal Code establishes the ML offence only in cases when the perpetrator acted with intent. Indeed, Article 189 and 216 of the Criminal Code defines the subjective element of the ML offence as perpetrator *being aware that the property obtained derives from a criminal activity.*

2. The authorities stated that intent and knowledge may be inferred from objective factual circumstances. However, this cannot be interpreted as "lesser mental element" since it still requires the awareness of the perpetrator with regard to the origin of assets to be

proven (see also Interpretative Note on Article 9(3) https://rm.coe.int/c198-cop-2021-4-interprnoteart-9-3-en/1680a2d66d).

Conclusion/Recommendation

3. Lithuania has not adopted measures as proposed in Article 9(3). The authorities are therefore recommended to consider providing for a lesser mental element of suspicion or negligence, or both with regard to property being proceeds of crime in the context of ML offence.

Malta

1. The Maltese definition of ML (Chapter 373 Laws of Malta) provides for the element of 'suspicion' that proceeds are illicit: *"money laundering" means –*
   the conversion or transfer of property knowing or suspecting that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity […]" [emphasis added].
2. Besides, the Court of Appeal on 19 January 2012 in the case of *Police vs. Carlos Frias Matteo* held that "the shifting of the burden of proof, with respect to the origin of the alleged proceeds of crime, is subjected to the condition that the prosecution merely proves on a *prima facie* level, even though circumstantial evidence, the link between the funds held and licit activity (in general) and that he knew, or at least suspected, that the alleged proceeds were the proceeds of crime".
3. The 2014 COP Assessment report took note of the same case, while also stating that no other relevant practice seemed to be in place. It was therefore concluded that further measures needed to be taken in order to raise the awareness among prosecutors and judges of the elements of the ML offence. The 2018 follow-up report on Malta consequently noted that the authorities have supported a number of trainings for prosecutors and judges to raise awareness on the nature and elements of the ML offence. It considered that the relevant recommendation was implemented.

Conclusion

4. Malta has included the notion of suspicion in domestic legislation, with a case confirming that suspicion of the unlawful origin of property as sufficient ground for prosecution. Members of the judiciary and officers of the Office of the Attorney General have participated in workshops and a seminar on the matter.

Republic of Moldova

4. The Republic of Moldova has criminalised the ML offence including the element of negligence: the offence is committed by a "*person who knew or should have known*" that property was proceeds from crime (Article 243(1) of the Criminal Code).
5. The authorities consider that "*should have known*", as used in Article 243(1) of the Criminal Code covers "*ought to have assumed*" as phrased in the provision of the Warsaw Convention. The authorities submitted one relevant case study related to a conviction for ML, in which the perpetrator was not aware, but "should have known" that he owned and used funds of criminal origin (Case No. 1354/17, decision of the Chisinau District Court of 04.04.2018, under appeal at the time of assessment).
6. The 2014 COP Assessment report on the Republic of Moldova also concluded that the notion of negligence was present for the ML offence. The information provided for this report did not include cases where the ML offence was committed in case of suspicion.

Conclusion

7. The Moldovan legislation explicitly includes a provision relating to negligence for committing the ML offence. The application of the provision was demonstrated with a case example.

Monaco

1. Article 218 of the Monegasque Penal Code criminalises money laundering. The article states that money laundering is an intentional offense, therefore the perpetrator must have acted with the knowledge that the proceeds were of a criminal origin.
   The mental element of the offense "may be inferred from objective factual circumstances" (Art.218-4 of the Penal Code).

2. The authorities argued that Article 218-2 of the Penal Code introduces the offense of "negligent laundering". This Article provides that "anyone who, by disregarding his/her professional obligations, has assisted in any transaction of transfer, placement, concealment or conversion of goods and funds of illicit origin, should be punished by one to five years of imprisonment and a fine as provided for in article 26". Whilst the word 'assisted' indicates that the ML offence can also be committed by adding or abetting, this provision rather reflects the requirement of Art. 9(1d) of the Convention than of Art.9(3).
3. No case law was provided.

Conclusion/Recommendation

4. In Monegasque law, whereas a lesser mental element may be inferred in a number of cases, especially for those who 'by disregarding their professional duties' assist in committing the ML offence, the Monegasque law does not clearly foresee that ML can be committed if an offender suspected or ought to have known of the illicit origin of the proceeds. The Monegasque authorities are therefore recommended to provide for a more precise framework or supporting case law of either suspicion, negligence or both, that property is proceeds of crime in the context of the offence of ML.

Montenegro

1. The Montenegrin Criminal Code in Article 268 (Money Laundering) criminalises suspicion and negligence with regard to the ML offence: "*whoever commits the offence set forth in paragraphs 1 and 2 of this Article and could have known or should have known that the money or property are derived from criminal activity, shall be punished by a prison term* […]" [emphasis added] (Article 268(5)).
2. There is no case law established on this matter.

Conclusion/Recommendation

3. Legislation of Montenegro provides for the element of suspicion and negligence for the ML offence, but no case law has yet been established on the application thereof. The authorities are recommended to consider raising awareness among law enforcement authorities and the judiciary on the lesser subjective mental element and negligence in light of the ML offence.

Netherlands

1. Dutch legislation (Article 420 quater of the Criminal Code) provides for a maximum sentence of two years imprisonment, in case of a reasonable suspicion that the property originates from an offence: *"any person who:*
   a) *Hides or conceals the real nature, the source, the location, the transfer or the moving of an object, or hides or conceals the identity of the person entitled to an object or has it in his possession, while he has reasonable cause to suspect that the object derives – directly or indirectly – from any serious offence;*
   b) *Obtains an object, has an object in his possession, transfers or converts an object or makes use of an object while he has reasonable cause to suspect that the object derives – directly or indirectly – from any serious offence;*

   Shall be guilty of negligent laundering and shall be liable to a term of imprisonment not exceeding two years or a fine of the fifth category." [Emphasis added]
2. Between 2010 and 2016, about 5% of all ML cases were prosecuted under Art. 420quater.This demonstrates the application of the provision in practice.

Conclusion

3. Legislation of the Netherlands provides for an element of suspicion within the ML offence. It was demonstrated that the relevant legislative provision is applied in practice.

North Macedonia

1. North Macedonian legislation incriminates actions of a person who knows or ought to have known that money, property and other incomes were obtained through crime (Article 273, paragraphs 1-4 and 9 of the Criminal Code[9]). Indeed, paragraph 4 states that *"whosoever performs the crime stipulated in paragraphs 1, 2 and 3, yet he was obligated and in position to know that the money, the property and the other incomes from a punishable act were obtained through a crime, shall be fined or sentenced to imprisonment of up to three years"* [emphasis added]. Paragraph 9 provides that *"if the crime referred to in paragraph 7 of this Article is committed out of negligence, the offender shall be fined or sentenced to imprisonment of up to three years"* [emphasis added].
2. The acting by negligence of a person is assessed according to the particular circumstances of the case, i.e. the (official) position or professional obligations of the perpetrator, the amount of money involved or the value of the property being placed on the market). The awareness of the offender (i.e. the duty and the possibility to know) can thus be established based on objective factual circumstances of the case, included well-founded suspicion that the property had been obtained through crime.
3. There are no cases available which would demonstrate the application of Article 9(3).

Conclusion/Recommendation

4. The North Macedonian legislation provides for the notion of negligence of the ML offence. No cases are available to demonstrate practice. The authorities are therefore recommended to consider raising awareness among law enforcement authorities and the judiciary on the *mens rea* of the ML offence.

[9] See for the full text of the article the Annex III with state submissions.

Poland

1. The 2013 COP Assessment report on Poland found that there was no formal requirement regarding the intentional element in the ML legal definition. The only reference to the knowledge that property was proceeds was implicit. The assessors therefore concluded that negligence did not constitute a criminal offence, and suspicion was not a mental element that was provided for in legislation. To the recommendation to 'consider introducing' a provision related to Article 9(3) of the Warsaw Convention, the authorities argued that they 'considered' yet decided not to introduce such reference.
2. The Polish legislation only foresees a lesser subjective mental element of the ML offence for some obliged entities and their employees: "*anyone who, as an employee of a bank, financial or credit institution, or any other entity legally obliged to register transactions and the people performing them*" (Article 299(2) of the Criminal Code). The article introduces reduced requirements of evidence of committing the ML offence by referring to 'a justified suspicion' as to the illicit origin from money. The authorities consider that the listed persons or entities should know what type of transaction they are dealing with as a result of their professional experience. However, it is important to note that targeting solely this group of offenders does not cover the entire scope of Article 9(3) of the Warsaw Convention.
3. As a result of the absence of relevant legislative measures, no judgments were handed down in Polish common courts (between 2017 and 2018) or by the Supreme Court, which would demonstrate application of Article 9(3).
4. The Polish authorities indicated that a draft law was under preparation, but had not yet been fully adopted, which would criminalise negligence of legal entities in the context of ML.

Conclusion/Recommendation

5. Poland has not introduced a lesser subjective mental element of the ML offence in line with the measures proposed in Article 9(3), and as a result no case law exists on the matter. The authorities are therefore recommended to re-consider implementing, a notion of suspicion and/or negligence in light of the ML offence, as this would extend the scope of the ML offence to the widest extent legitimately possible.

Portugal

1. The Portuguese authorities indicated that the Criminal Code in Article 368-A foresees the ML offence as an intentional offence. However, a lesser subjective mental element applicable to the ML offence is found in the Criminal Code (Article 14). This provision foresees three different types of dolus (*direct dolus*, *necessary dolus* and *dolus eventualis*). *Dolus eventualis* as set forth in Article 14(3) of the Criminal Code makes it sufficient to establish the ML offence if the offender considered it possible that property is originated from a predicate offence, and nevertheless accepted that possibility and committed the offence.
2. The concept of *dolus eventualis* needs to be distinguished from the legal concept of gross negligence. The authorities indicated that, in some concrete situations, it could be particularly difficult to distinguish between these two legal concepts.
3. No cases have been found to demonstrate the application of *dolus eventualis* with regard to the ML offence.

Conclusion/Recommendation

4. Portuguese legislation recognises the concept of *dolus eventualis* with regard to the ML offence which implements the first alternative under Article 9(3) of the Warsaw Convention. No cases have been provided in order to demonstrate application of the

concept of *dolus eventualis* in case of a ML offence. The Portuguese authorities are therefore recommended to consider raising awareness among law enforcement authorities and the judiciary on the notion of *dolus eventualis* in the ML offence.

Romania

1. According to Romanian legislation, ML committed by suspicion or negligence does not constitute a criminal offence. Knowledge that property was proceeds from crime is an element needed in order to constitute a criminal offence.
2. The Romanian authorities argue that judicial practice and specialised literature may be interpreted as providing that guilt may be expressed through direct and indirect intention. Indirect intention occurs if one can predict the results of a deed and accepting the possibility of its occurrence, even without intending so. In one case, a person knew, judging from her attitude, the risks of her actions and accepted the illicit activity of another person. The offender was convicted to imprisonment. This decision was upheld in appeal. The High Court reaffirmed that "doctrine and jurisprudence sustain the autonomy of money laundering, which means that it is not necessary that the author of money laundering knew the exact nature, temporal circumstances, place or identity of the person, victim or author of the principal offence". Neither was it necessary to know the predicate offence as regards the origin of money (Decision no. 454/2015 of the Criminal Section from the High Court of Cassation and Justice).
3. The 2012 COP Assessment report found that there was no explicit reference to negligence in Romanian legislation, but that there was "probably room for practitioners to develop new case law on the basis of the general rule applicable to intent". It was nevertheless recommended to consider introducing in legislation the notion of suspicion or negligence in accordance with Article 9(3) of the Warsaw Convention.

Conclusion

4. Although the Romanian legislation does not contain an explicit reference to the lesser mental element or negligence of the ML offence, it is argued that the principle of 'indirect intention' may form sufficient ground for establishing the ML offence. This is indeed supported with a case, which demonstrates that a lesser subjective mental element of the ML offence may be inferred from objective factual circumstances.

Russian Federation

1. The Russian Federation provides for the ML offense only in cases where knowledge is ascertained. Indeed, part One of Article 174 of the Criminal Code of the Russian Federation establishes a ML offense as for financial transactions and other deals with money and other property <u>which are knowingly acquired by other persons in a criminal way for the purpose of bringing the appearance of legality</u> to the possession, use and disposal of the said amounts of money and other property. [emphasis added]. Thus, this article implies precise, reliable rather than presumptive knowledge by the person that the property involved in the transaction was acquired by criminal means.
2. Moreover, the Plenum of the Supreme Court of the Russian Federation on 7 July 2015 ruled that for qualifying an act under Article 174 of the Criminal Code of the Russian Federation, the court must establish that the perpetrator was aware of the criminal origin of the property involved in financial transactions and other deals conducted by him/her, as well as in the acts of acquisition or sale (paragraph 19 of Decision No. 32).
   At the same time, the law implies that the person may not be aware of the specific circumstances of the principal offence.

Conclusion/Recommendation

3. The Russian Federation does not specifically provide for measures as proposed in Article 9(3) in it domestic criminal legislation, which was also confirmed by jurisprudence. The Russian authorities are therefore recommended to (re-) consider providing for the element of either suspicion, negligence or both (as set out under Article 9(3)(a) and (b) of the Convention) that property is proceeds of crime in the context of the offence of ML.

San Marino

1. San Marino has not explicitly provided for legislative or other measures in relation to suspicion or negligence for the ML offence. The offender must know that assets were obtained from a criminal offence. Wilful intent is necessary to establish the ML offence, and this may not be easily derived from the eventual intent of a person participating in the offence.
2. The perspective of the authorities has been confirmed by case law that "the money launderer must be certain that the sums he transfers are of illicit origin […]" (Judge of Appeal in criminal matters[10], Judgment of 3 February 2015 in criminal proceedings no. 204/09 RNR).

Conclusion/Recommendation

3. San Marino has not adopted measures relating to Article 9(3) in its domestic legislation which is confirmed in case law. The Sammarinese authorities are therefore recommended to (re-)consider providing for a lesser mental element of either suspicion, negligence or both that property is proceeds of crime in the context of the offence of ML.

Serbia

1. Serbian legislation on the ML offence (Article 245 Criminal Code) includes a reference to the case where an offender "*could have been aware and was obliged to know that the money or assets are proceeds acquired through a criminal activity*" (Article 245(5) of the Criminal Code) [emphasis added]. The offence is punishable with imprisonment up to three years. Negligent behaviour is thus criminalised.
2. No case law was provided to demonstrate the application of Article 9(3).

Conclusion/Recommendation

3. The Serbian legislation has criminalised negligent behaviour in light of the ML offence, but no jurisprudence has been provided in relation to the application of this offence in practice. It is therefore recommended to consider raising awareness among law enforcement authorities and the judiciary on the aspect of negligence in light of the ML offence.

Slovak Republic

1. The Slovak authorities argued that the offence of 'suspicion' in relation to ML can be derived from the provisions on the ML offence, because the ML offence does not include reference to the knowledge of the criminal origin of assets: "*any person who performs any of the following with regard to income or other property obtained by crime with the intention to conceal such income or thing […]*" (Art. 233(1) of the Criminal Code, 'Legalisation of the Proceeds of Crime'). The 'intention' is established when the offender commits the offence and a) obtains larger benefit for himself or another through its commission, or b) by reason of specific motivation, or c) if he uses such thing for his own business purposes. This would include a case of 'suspicion'.

[10] Note that this is not the highest appellate court in San Marino.

2. The specific circumstances of the case should be taken into account when considering whether the property was proceeds and whether the person was aware thereof. Intention and knowledge can be inferred from objective, factual circumstances, including the disproportionate value of the property or the occurrence of the criminal activity and acquisition of property.
3. Article 232 of the Criminal Code (complicity) criminalises the negligible conduct of ML offence, which reads as "*any person who, by negligence, conceals or transfers to himself or another a thing of considerable value obtained through a criminal offence committed by another person […]*" [emphasis added]. For legal persons, criminality is limited to negligible acts (Art.4 (2) Act No. 92/2016 Coll. on Criminal liability of legal persons).
4. Article 234(1) of the Criminal Code further establishes that any person eligible for the ML offence is one who fails to inform or report about a) the facts that another person was committing the ML offence, or b) about an unusual business transactions which he/she is obliged to report by virtue of his/her employment, profession, position or function. The authorities consider part a) to cover the situation where a person who had suspicion but did not report on the suspicious situation was acting negligently.
5. Three examples of cases were provided, in which persons were convicted of the criminal offence of Complicity (according to Arts. 231 (linked to the intention of a person) and Arts. 232 (linked to negligible conduct) of the Criminal Code).

Conclusion

6. The Slovak Republic criminalised negligence in relation to the ML offence through the offence of 'complicity'. Case law was provided in which persons were convicted for the offences of negligence or suspicion under the relevant articles relating to complicity.

Slovenia

1. The Slovenian authorities explained that 'suspicion' is covered in the sense of *dolus eventualis*, which is, in legal theory, an intent present when the perpetrator objectively foresees the possibility of his/her act causing prohibited/illegal consequences.
2. *Dolus eventualis* is a specific form of intent with which a criminal offence can be committed (Article 25 of the Criminal Code); the intention can be both direct and indirect.
3. Negligence is understood in Slovenian legal terms as the situation when the perpetrator was not aware that he/she can commit an offence but should and could be aware of it, in view of the circumstances and his/her personal attributes (Article 26 of the Criminal Code); the negligence can be both conscious and unconscious.
4. Besides, Article 245(5) of the Criminal Code on the ML offence also criminalises negligence: "*anyone who should or may have known that the money or property was acquired through a criminal offence* […]" [emphasis added].
5. The following statistics were provided to demonstrate the application of the legal principles or Article 245(5):

Year	Code of criminal offence*	Conviction	Acquittal	Dismissal
2012	245051	2		
2013	245051	4		
2014	245051	4	1	
2015	245051 245053	2 1	1	
2016	245051	1		1
2017	245051 245053	2	1 1	
2018	245051	1		
2019 -	245051	1		2

Total	*18*	*4*	*3*

* The data is divided into code 245051 (criminal offence of negligent money laundering), and code 245053 (criminal offence of negligent money laundering with regard to high value, i.e. over EUR 50).

Conclusion

6. Slovenian legislation recognises the concept of *dolus eventualis,* which can be considered as a lesser mental element of suspicion. Slovenia has explicitly adopted legislative measures regarding negligence in light of the ML offence into domestic legislation. It was demonstrated that the offence of negligent ML has been established in practice.

Spain

1. The Spanish Criminal Code in Article 301.3 criminalises ML perpetrated by 'gross negligence', which is sanctioned by a punishment of imprisonment for a term between six months and two years as well as a fine. It includes those cases where the perpetrator could have easily known that the property were proceeds if he had acted with due diligence.
2. The Spanish Supreme Court's case law on the ML offence (Article 301.1 of the Criminal Code) establishes that the offence may be committed if the circumstances of the case had allowed a perpetrator to know the (illicit) origin of the goods only by observing the normal diligence standards. It is therefore not a firm requirement that a person knew the origin of the goods.
3. According to the authorities, 133 judicial judgments have passed between 1 January 2016 and 20 March 2019, which demonstrates the application in practice of Article 301.3 on gross negligence.

Conclusion

4. The Spanish law provides for an act of gross negligence in light of the ML offence, and the practical application of this provision was demonstrated.

Sweden

1. Swedish legislation allows for a situation where a person ought to have assumed that property was proceeds. A person is guilty of ML misdemeanour if he/she did not realise but had reasonable cause to assume that the property derived from an offence or criminal activities (Section 6(2) Money Laundering Offences Act). Sweden has not directly adopted in law a provision relating to the situation where a person suspected that property was proceeds.
2. The intent and knowledge required to prove the ML offence may be derived from objective factual circumstances.
3. One case example was provided to demonstrate the application of Section 6(2) in practice.

Conclusion/Recommendation

4. Legislation of Sweden contains a reference to the act of carelessness in light of the ML offence. It was demonstrated that the article has been applied in practice.

Türkiye

1. The ML offence is stipulated in Article 282 of the Criminal Code, and entails two scenarios: the conduct of a) transferring abroad proceeds obtained from an offence; and b) processing such proceeds in various ways in order to conceal the illicit source of such proceeds, or to give the impression that they have been legitimately acquired.

2. The Criminal Code further includes the notions of direct intent and possible intent (Art. 21), the latter existing "*where a person commits an offence knowing the fact that the components defined in the statute might emerge*" [emphasis added]. The ML offence can be committed directly or by possible intention, which may be inferred from objective factual circumstances. It should be noted that there is no requirement in the Turkish legislation of the existence of knowledge regarding the illicit source of proceeds for establishing the ML offence.
3. However, possible intent of ML (which is somewhat similar to the notion of a lesser subjective mental element of ML) can occur only where a person transfers abroad illicit money. As a result of doctrine, it is considered that the offence of processing proceeds to conceal the source, or to give the impression that they have been legitimately acquired, can only be committed by direct intention. Thus, the possible intention will not be sufficient to demonstrate that a ML offence is committed in cases other than when a person transferred illicit money abroad.
4. No case law was provided to demonstrate the application of the notion of possible intent. Provided case law only demonstrated that courts had not required firm knowledge, but it left open the question to what extent the lesser subjective mental element of the ML offence or possible intent could be ground for conviction.
5. According to the Criminal Code, the ML offence cannot be committed by negligence.

Conclusion/Recommendation

6. Turkish legislation does not explicitly provide for a situation where an offender suspected or neglected that property was proceeds, and no case was provided to demonstrate the application of Art.9(3). The authorities are therefore recommended to consider to specifically provide, through legislative or other measures, for a notion of 'suspicion' and/or 'negligence' in relation to the ML offence.

Ukraine

1. The Ukrainian authorities argued that the ML offence as set out in Article 209 of the Criminal Code does not distinguish between an offender's knowledge, suspicion or negligence. This is not explicitly stipulated in this particular provision as the ML offence does not include reference to the knowledge of the criminal origin of assets.
2. Instead, the authorities argued that the offence of ML may be established on the basis of objective factual circumstances. In their view, for committing the ML offence, it would be sufficient that that the person assumed or suspected that property is proceeds. As a result, the court establishes the level of awareness of a person regarding the source of proceeds in every case individually.[11]
3. However, no relevant case law was provided to demonstrate that the ML offence may be interpreted without the element of knowledge of the illicit origin of property present. The approach that Article 9(3) may be inferred from objective, factual circumstances is thus not confirmed by practice.

[11] Note that the MONEYVAL mutual evaluation report on Ukraine discusses the criminalisation of ML in light of Articles 9(5) of the Warsaw Convention. The authorities' approach with regard to the implementation of Art. 9(3) Warsaw Convention appears comparable to the one for Art. 9(5) Warsaw Convention (see page 143, paragraphs 28-29, https://rm.coe.int/fifth-round-mutual-evaluation-report-on-ukraine/1680782396). The report indicates that "*despite the authorities' attempts to place Art. 9(5) Warsaw Convention clearly into domestic law, Art. 216-8 CPC [which would be relevant for Art. 9(5) Warsaw Convention, red.] does not directly cover the issue of whether a conviction for the predicate offence is a prerequisite for ML criminal court proceedings*". With regard to the practical implementation, the report found that "*ML criminal proceedings were almost exclusively considered only when a predicate offence […] was identified, or after a conviction for the predicate offence*", which suggests that a predicate offence is a prerequisite for a ML case being transferred to court (see page 55, par. 209).

Conclusion/Recommendations

4. The lesser mental element of the ML offence or negligence are not explicitly included in Ukrainian legislation, and no case law was submitted to confirm that objective, factual circumstances may establish such elements as provided for in Article 9(3). The authorities are therefore recommended to consider adopting such explicit legislative or other measures to establish suspicion and/or negligence as sufficient ground for committing the ML offence. Moreover, as no relevant case law was demonstrated, the authorities are also recommended to consider raising awareness among law enforcement authorities and the judiciary on the possibility to establish a ML offence with the element(s) of suspicion and/or negligence through objective, factual circumstances.

United Kingdom

1. The ML offence, according to Sections 327-329 of the Proceeds of Crime Act 2002, is committed in case an offender handling the property knows or suspects that property was proceeds.
2. Negligent behaviour is not included as *mens rea* of the ML offence. Only in the regulated sector, liability is imposed negligence to encourage diligent reporting, but this is not the intended purpose of Article 9(3)(b).
3. No case law was provided to demonstrate the practical application of Article 9(3)(a) through Sections 327-329 of the Proceeds of Crime Act.

Conclusion/Recommendation

4. The UK law provides for a situation where an offender 'suspected' that property was proceeds in relation to the ML offence. No practical application was demonstrated. The authorities are therefore recommended to consider raising awareness among law enforcement authorities and the judiciary on the lesser mental element of the ML offence.

Annex I. Tabular overview of States Parties' responses

Country	In law	Either or both?	Comments	Effectiveness
Albania	No			No information
Armenia	No		Case law excludes suspicion/negligence	N/A
Azerbaijan	No		Amendments underway criminalising negligence	N/A
Belgium	Yes	Negligence		Yes
Bosnia and Herzegovina	Yes	Both		Yes
Bulgaria	Yes	Suspicion		Yes
Croatia	Yes	Both		Yes
Cyprus	Yes	Negligence		No information
Denmark	Yes	Both	Suspicion based on intention, negligence explicitly provided, very low sanction	Yes
Estonia	No		Knowledge is required	N/A
France	No		Negligence for employees of financial institutions	N/A
Georgia	No		Intent is required	N/A
Germany	Yes	Both	Dolus eventualis and 'recklessness'. Exception for lawyers' fees.	No
Greece	No		Knowledge is required	N/A
Hungary	Yes	Negligence		Yes
Italy	Yes	Both	(general) criminal liability for suspicion and negligence, low sanction	No information
Latvia	Yes	Suspicion		No
Lithuania	No		Knowledge is required	N/A
Malta	Yes	Suspicion		Yes
Republic of Moldova	Yes	Negligence		Yes
Monaco	No		Intention to commit ML is required	N/A
Montenegro	Yes	Negligence		No
Netherlands	Yes	Suspicion		Yes
North Macedonia	Yes	Negligence		No
Poland	No		Suspicion is known only for obliged entities and their employees	N/A

Russian Federation	No		Knowledge is required	N/A
Portugal	Yes	Suspicion	Dolus eventualis	No
Romania	No		Judicial practice confirms that indirect intention may establish the ML offence	Yes
San Marino	No		Case law excludes suspicion/negligence	N/A
Serbia	Yes	Negligence		No information
Slovak Republic	Yes	Both	Negligence explicitly provided, suspicion inexplicitly	Yes
Slovenia	Yes	Both	Dolus eventualis inexplicitly, negligence explicitly provided	Yes
Spain	Yes	Negligence		Yes
Sweden	Yes	Negligence		Yes
Türkiye	No		Possible intent is restricted to transferring money abroad	N/A
Ukraine	No		No obstacles to apply 9(3), objective factual circumstances	No
United Kingdom	Yes	Suspicion		No information

Annex II – Rules of Procedure: 19*bis*

Rule 19[2] - 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).

[2] At its 9th 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 11th Plenary in 2019. The follow up process under Rule 19 will continue at least until further discussion in 2018.

Annex III. Questionnaire

Introduction

At its 9th 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 looks at the manner in which all States Parties implement selected provisions of the Convention which is then documented in a thematic monitoring report (Rule 19*bis*, Rules of Procedure).

At its 10th meeting, held in Strasbourg from 30 to 31 October 2018, the Conference of the Parties decided that the second thematic monitoring report should deal with Article 9(3) as well as with Article 14 of the Convention.

Parties are therefore invited to submit information on the implementation of these provisions on the basis of the questionnaire provided below. The Parties are also invited to consider the Guidance for the preparation of replies, added to this questionnaire.

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[12].

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 prefer so.

Parties are invited to send replies to the Secretariat, no later than **28 February 2019**, 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 replies to the questionnaire.

Name and surname	
Job title	
Institution	
e-mail:	

[12] The document can be found on the Council of Europe website under: https://rm.coe.int/16800d3813.

QUESTIONNAIRE

Article 9 – Laundering offences

(3) Do your legislation and other measures allow for a money laundering offence to be established where the person *suspected* that the property was proceeds?[13]

Answer

Do your legislation and other measures allow a money laundering offence to be established where the person *ought to have assumed* that the property was proceeds?[14]

Answer

Information to support the answer

Article 14 requires Parties to take measures to permit urgent action to be taken by FIUs or, as appropriate, other competent authorities or bodies, in order to postpone a domestic suspicious transaction.

The Convention is considered to provide added value by requiring States Parties to take measures to permit urgent action in appropriate cases to suspend or withhold consent to a transaction going ahead, in order to analyse the transaction and confirm the suspicion.

Each Party may restrict such measures to cases where a suspicious transaction report has been submitted. The maximum duration of any suspension or withholding of consent to a transaction shall be subject to any relevant provisions in national law.

Parties are expected at a minimum to provide the relevant **articles of the domestic legislation, regulations or other documents** dealing with this issue, with **case examples** and/or **statistical data** and any **other measures** to demonstrate application of this provision. In addition, Parties are encouraged to support their response with any other relevant information demonstrating implementation of this provision of the Convention.

[13] "Proceeds" means any economic advantage, derived from or obtained, directly or indirectly, from criminal offences. It may consist of any property. "Property" includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property (Art. 1, CETS No. 198).

[14] See footnote 2.

Annex IV. State submissions

Note: the information provided hereinafter is limited to what States Parties submitted as their response to the questionnaire. Additional information which the rapporteurs/Secretariat subsequently requested and which were sent in different formats (emails, scanned documents, excel sheets, etc.) were not included in this annex.

Albania	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds?[15] There is no any obstacle on application of this article. But this paragraph is not imposed specifically in domestic legislation Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds[16]? There is no any obstacle on application of this article. But this paragraph is not imposed specifically in domestic legislation. The Assembly of the Republic of Albania upon law no. 9646 dated 27.11.2006 has ratified without legal reserve the Council of Europe Convention "On Laundering, Search, Seizure and Confiscation of the Crime Products and on the Financing of Terrorism". This Convention, after its publication in the Official Journal no.134, dated December 22, 2006, based on article 122[17] of the Constitution of the Republic of Albania, has been part of the domestic legal system and has superiority over the laws of the country that disagree with it. ii) This Convention, in article 9, the third paragraph, provides: "3. Each Party may take those legislative and other measures necessary to classify as a criminal offense under its domestic legislation, all or some of acts referred to in paragraph 1 of this Article, in one or both following cases when the author; a) suspected that property was a product of crime; b) should have assumed that the property was a product of crime." 2. The Albanian Criminal Code in Article 287 "Laundering the Proceeds of Criminal Offence or Criminal Activities" provides: "Laundering the Proceeds of Criminal Offence or Criminal Activities, through: a) exchange or transfer of the property, for purposes of concealing or disguising its illicit origin knowing that such property is a proceed of criminal offense or criminal activity; b) Concealing or disguising the real nature, source, location, disposition, relocation, ownership or rights in relation to the property, knowing that such property is a proceed of a criminal offence or activity; c) Obtaining ownership, possession or use of property, knowing at the time of its acquisition, that such property is a proceed of a criminal offence or activity;

[15] "Proceeds" means any economic advantage, derived from or obtained, directly or indirectly, from criminal offences. It may consist of any property. "Property" includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property (Art. 1, CETS No. 198).

[16] See footnote 2.

[17] See article 122 of the Constitution, which in paragraphs 1 e 2 provides:

"1. Any international ratified agreement is part of the domestic legal system after being published in the Official Journal of the Republic of Albania. It applies directly, unless when it is not self-enforceable and its implementation requires issuance of a law. Amendments, supplements and abrogation of laws adopted by the majority of all members of the Assembly for the purpose of ratifying international agreements are made by the same majority.
2. An international agreement ratified by law has precedence over the laws of the country that disagree with it. "

	ç) Conducting financial operations or fragmented transactions to avoid reporting, according to the legislation on the prevention of money laundering; d) Investing money or items in economic or financial activities, knowing that they are proceeds of a criminal offence or activity; dh) Advising, assisting, inciting or making a public call for the commission of any of the offences defined above; -shall be punished by imprisonment of five to ten years. Where that offence has been committed in the exercise of a professional activity, in complicity, or more than once, it shall be punished by imprisonment of seven to fifteen years. Where that offence has caused grave consequences, it shall be punished by imprisonment of no less than fifteen years. The provisions of this Article shall apply where: a) The criminal offence, the proceeds of which are laundered, has been committed by a person who cannot be prosecuted as a defendant or who cannot be punished; b) Criminal prosecution for the offence the proceeds of which are laundered, has reached the statute of limitations or has been amnestied; c) The person who performs laundering of the proceeds is the same person who committed the offence, from which the proceeds have derived; ç) No criminal prosecution has been initiated, or no punishment has been imposed by a final criminal decision in relation to the criminal offence, from which the proceeds have derived; d) The offence, the proceeds of which are laundered, has been committed by a person, regardless of his citizenship, outside of the territory of the Republic of Albania, and is also punishable both in the foreign country and Republic of Albania. Knowledge and intent, under the first paragraph of this Article, shall be derived from objective factual circumstances". - Amendments made to Article 287 with Law No.23 / 2012 are in line with the provisions of the CoE Convention "On Laundering, Search, Seizure and Confiscation of the Crime Products and on the Financing of Terrorism", concerning the manner and forms of objectively conducting the actions that are considered the Laundering of the proceeds of the offense or the criminal activity, as well as the subjective side, by providing that knowledge and purpose as elements of the subjective side are extracted from the totality of factual circumstances of the objective side that prove that property was the product of the crime. - Knowing that property was the product of crime is an essential element to bring the criminal responsibility of the author of this work. Moreover, this knowledge can be derived by carefully analyzing the elements and the objective side of the offense. "Knowledge" is easier to prove when the author of the main work launders the product money of this work. In case other persons are involved in money laundering then the proceeding body in the absence of direct evidence to prove knowledge of the origin of the property relies on indirect evidence or in some important, accurate and consistent indications.[18] iii) For committing the offense "Laundering the Proceeds of Criminal Offence or Criminal Activities", in addition to the main punishments stipulated by Article 287 above, the Criminal Code in Article 36[19] "Confiscation of instruments for committing the criminal offence and criminal offence proceeds" provides: 1. Confiscation is mandatorily imposed by the court and pertains to obtaining and transferring to the benefit of the state:

[18] Article 152/2 of the Code of Criminal Procedure.

[19] See also Article 36 "Confiscation of instruments for committing the criminal offence and criminal offence proceeds".

	a) assets that have been used or specified as instruments for committing the criminal offence; b) the criminal offence proceeds, including any kind of assets, as well as legal documents or instruments establishing other titles or interests in the assets stemming from or obtained directly or indirectly from the commission of the criminal offence; c) the promised or given remuneration for committing the criminal offence; ç) any other assets, the value of which corresponds to the criminal offence proceeds; d) the assets, the production, use, possession or alienation of which consist a criminal offence, even if no conviction decision was entered. 2. If the criminal offence proceeds have been transformed or partly or fully converted into other assets, the latter shall be subject to confiscation; 3. If criminal offence proceeds are merged with assets gained legally, the latter shall be confiscated up to the value of the criminal offence proceeds; 4. Subject to confiscation shall also be other income or proceeds out of the criminal offence, out of assets that criminal offence proceeds have been transformed or altered to, or out of assets with which these proceeds have been merged, to the same amount and manner as the criminal offence proceeds. -The provisions of Article 36 of the Criminal Code above are in line with the provisions of Article 3 of this Convention as legal measures enabling the confiscation of instruments and products or assets the value of which corresponds to these products. iv) Criminal Procedure Code in Article 274[20] provides “Object of preventive seizure” as a property security measure that may be decided by the court on the prosecutor's request for objects, criminal offenses products and any other property that is allowed to be confiscated under Article 36 of the Criminal Code above, where there is a risk that the free disposition of an object that is linked to a criminal offense may aggravate or prolong its consequences or facilitate the commission of other criminal offenses. The provisions of this Article of the Criminal Procedure Code are in line with the provisions of Article 4 of this Convention as a temporary investigative measure enabling the immediate freezing / blocking of assets subject to confiscation under Article 36 of the Criminal Procedure Code above. v) For the criminal offense provided by Article 287 of the Criminal Code, the statistical data from 2015 to 9-month period of 2018[21] (attached table) are presented where there is evidence that there has been an increasing trend in the number of registered proceedings, as well as in the number of defendants sent for trial and convicted. vi. Study Case on Criminal Case No. 2/2015 against M.F. The citizen M.F. has been proclaimed in international search, based on the International Arrest Order No. BII07 Of'C, issued on 03.12.2014, by the Prosecutor's Office at the Brussels Court of Appeal, Belgium, for the criminal offense of "Intentional Murder" to the detriment of citizen A.K provided by articles 66 and 394 of the Belgian Penal Code carried out in cooperation between citizens M.F, B.V, K.M and L.Xh. The District Crimes Court in Brussels, Belgium, with its decision dated 15.01.2010 sentenced in absentia to 10 years imprisonment, the citizens M.F, alias B.M, B.V, A.B. and B.D. The citizens B.V. and L.D, result to be sentenced in absentia with 10 years of imprisonment upon the decision dated January 15, 2010 cited above.

[20] Shih, neni 274 “Objekti i sekuestros preventive” i Kodit të Procedurës Penale, i cili parashikon:
“1. Kur ka rrezik që disponimi i lirë i një sendi që lidhet me veprën penale mund të rëndojë ose të zgjasë pasojat e saj ose të lehtësojë kryerjen e veprave penale të tjera, me kërkesën e prokurorit, gjykata kompetente urdhëron sekuestrimin e tij me vendim të arsyetuar.
2. Sekuestroja mund të vendoset edhe për sendet, produktet e veprës penale dhe çdo lloj pasurie tjetër që lejohet të konfiskohet, sipas nenit 36 të Kodit Penal.”
[21] Të dhënat vjetore do t’u vihen në dispozicion sapo të jenë përpunuar.

	The citizens M.F, alias B.M and K.M, alias A.B, have appealed the penalty decision given for the period of 10 years of imprisonment and the judicial case against them is still being examined by the Serious Crimes Court, Brussels, Belgium. Referring to Article 7 of the Code of Criminal Procedure, which stipulates that: " No one may be tried again for the same criminal offence, for which one has been tried by a final decision ", according to the data sent by the Belgian Judicial Authorities, sent through the National Interpol Office Tirana and the Ministry of Justice, based on Article 6[22] of the Criminal Code, Article 287 of the Code of Criminal Procedure, and paragraph 7[23] of Article 38 of Law no.10193, dated 03.12.2009 " On Juridical Relations with Foreign Authorities in Criminal Matters ", The General Prosecution of the Republic of Albania has registered, - criminal proceeding No. 2, 2015 for the criminal offense "Intentional Murder" committed in cooperation, provided by articles 78/1 and 25 of the Criminal Code in charge of citizens M.F e K.M; - criminal proceeding No. 3, 2015 for criminal offense " Refusal for declaration, non-declaration, concealment or false declaration of assets of elected persons and public employees, ", provided by Article 257 / a / 2 "of the Criminal Code and for the criminal offense " Laundering the Proceeds of Criminal Offence or Criminal Activities ", provided by article 287/b of the criminal code in charge of the citizen M.F; as well as the criminal proceeding no.8, year 2015 for the criminal offence " Illegal construction", provided by article 199/a/2 of the criminal code, in charge of the citizen M.F., a proceeding added to the criminal proceeding no.2 and no.3 of the year 2015. Regarding the charge, for the criminal offense of " Refusal for declaration, non-declaration, concealment or false declaration of assets of elected persons and public employees ", provided by article 257/a/2 of the criminal code in charge of the citizen M.F, it has been proved that in the quality of the declarant subject (MP of the Assembly of the Republic of Albania) according to the law no.9049, dated 10.4.2003 " On the declaration and control of assets, financial obligations of the elected persons and some public employees " (amended), has not declared the source of assets declared by him, has made a false declaration of private interests, has concealed assets, liquidities, bank transfers in and out of the country, private interests and the source of their creation. Regarding the charge, for the criminal offense of "Illegal construction", provided by article 199 / a / 2 of the Criminal Code, it has been proven that the defendant M.F in the building "ish Hotel Pensioni", has made a one-storey annexe without a construction permit for which he applied for legalization of this construction in the office of ALUIZNI (The Agency for Legalisation, Urbanisation and Integration of Informal Areas and Buildings) in Tirana on 24.11.2014. Regarding the charge of the criminal offense of " Laundering the Proceeds of Criminal Offence or Criminal Activities ", provided by article287/b of the Criminal code it has been proven that, the defendant M.F, upon the Decision No.13/l29123-02, dated 04.12.2002 of the Court of Amsterdam/ the Netherlands, was sentenced to three years imprisonment for the criminal activity of narcotics trafficking, using there the name P.S, born in Korça (Albania) on July 2, 1969. During the period of 2008 - 2013 the defendant M.F. created a wealth of 209.627.218 ALL, which is not justified by legitimate financial resources, being

[22] See, article 6 of the Albanian Criminal Code, which in the second paragraph provides: "*The criminal law of the Republic of Albania shall also be applicable to the Albanian citizen committing a crime within the territory of another country, as long as that crime is concurrently punishable, unless a foreign court has rendered a final decision. The condition of concurrent punishment in the territory of the other state shall not apply in the cases of corruption-related crimes in public or private sectors and illicit trading in influence.*"

[23] See, article 38 "International Order of Arrest of Albanian Citizens "of Law No. 0193/2009, which provides in paragraph 7: "*7. The prosecutor in the competent court for the criminal proceeding of an Albanian citizen, if he does not proceed according to paragraph 3 of this article, records in the notification records of the criminal offenses the data of the international arrest warrant, in order to carry out the procedural verifying actions for the commencement of criminal proceedings. If the prosecutor decides not to initiate the criminal proceeding, he or she shall notify this decision to the Ministry of Justice through the General Prosecutor within 5 days of his receipt.* "

	proved in the trial that the property in question is a product of the illegal activity of exploitation of prostitution and narcotics trafficking during the years 1999-2002. Through the establishment of commercial companies the defendant M.F. has covered and concealed the money secured by the above-mentioned illegal criminal activity. Upon the Decision no.1184, dated 21.04.2017 pf the Judicial District Court of Tirana, left in force with decision no.1798, dated 20.12.2017 of the Court of Appeal in Tirana, the defendant M.F. was found guilty and finally sentenced to 6 years imprisonment for the criminal offenses "Refusal for declaration, non-declaration, concealment or false declaration of assets of elected persons and public employees", "Laundering the Proceeds of Criminal Offence or Criminal Activities", and "Illegal construction", provided by article 257/a/2, 287 letter (b) and 199/a/2 of the Criminal Code. Upon the Decision no.5, dated 16.03.2018 of the Court of first Instance for the Serious Crime in Tirana , pursuant to Law No. 10192, dated 03.12.2009 "On preventing and hitting the organized crime, trafficking and corruption through preventive measures against property", the seizure of the property of the citizen M.F. is set, which according to the evaluation expertise conducted during the trial, in the free market have a total value of 158.534.730 ALL.
Armenia	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Please refer to: • Part 1, Article 190 of the CC. The subjective element of the ML offence is defined under Armenian legislation as follows: "The conversion or transfer of property (knowing that such property is the proceeds of criminal activity) for the purpose of concealing or disguising the illicit origin of the property or of helping any person to evade the responsibility for the crime committed by him; or the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to or ownership of property (knowing that such property is the proceeds of criminal activity); or the acquisition or possession or use or disposition of property (knowing, at the time of receipt, that such property is the proceeds of criminal activity)…" Moreover, according to Court of Cassation Ruling from February 24, 2011 (para. 16, page 20), the practical application of Article 190 of the CC should be based on a conclusion that the mandatory element of the subjective side of the offence in question contains a specific intention to conceal or disguise the true origin of the illicit proceeds, and to integrate these funds into legitimate businesses. The absence of such intention excludes the possibility of the offence in question. Thus, Armenian legislation establishes ML offence only in cases, where knowledge and direct intention are present as a mandatory part of subjective element. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? Please refer to the response above.

Austria	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person *suspected* that the property was proceeds[24]? *Yes. Austrian Criminal Law defines intention in § 5 (1) of the Criminal Code:* *"(1) A Person acts with intention if the person means to complete the elements of an offence who wants to produce the facts constituting an offence under the law; to prove intention, it is enough to show that the person is aware of a substantial risk that the offence will occur and, having regard to the circumstances, takes the risk."* *In general dolus eventualis is therefore always sufficient unless a criminal offence calls for a higher level of intent.* *For the offence of money laundering according to § 165 of the Criminal Code this means that the offences according to § 165 paragraph 1 can be committed with dolus eventualis whereas the offences according to paragraphs 2 and 3 require knowledge of the criminal origin of the property.* *The Austrian Supreme Court rules (e.g.14 Os 181/95 of 5.12.1995 or 14 Os 150/02 of 9.9.2003) that "the offence of money laundering according to § 165 paragraph 1 of the Criminal Code demands for all elements of the offence (different from paragraph 2 leg cit) dolus eventualis. The subjective element is therefore already met, if the perpetrator seriously suspects that the money is criminally contaminated".* Do your legislation and other measures allow a money laundering offence to be established where the person *ought to have assumed* that the property was proceeds[25]? *No. The Austrian Legislator has chosen not to criminalize negligent behaviour in any case of offences against property. Paragraph 3.b was therefore not implemented into Austria law.*
Azerbaijan	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Please kindly note that currently there is no applicable legislation on implementation of Article 9(3) of the Convention. However, this question was a subject of analysis and discussions by the state authorities. As a result, the draft Law has been prepared to implement the respective provisions into national legislation. Please see below the text of the prepared draft Law on amendments to the Criminal Code of the Republic of Azerbaijan: "194-1. Legalization of criminally obtained funds or other property, as well as acquisition, possession, use or disposition of such funds or other property committed by negligence 194-1.1. Legalization of criminally obtained funds or other property committed by negligence, i.e.: 194-1.1.1. conversion or transfer of funds or other property, execution of financial transactions or other deals with funds or other property, when a person should and could have known that such funds or other property are the proceeds of crime;

[24] "Proceeds" means any economic advantage, derived from or obtained, directly or indirectly, from criminal offences. It may consist of any property. "Property" includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property (Art. 1, CETS No. 198).

[25] See footnote 2.

	194-1.1.2. creating conditions to conceal or disguise the true nature, source, location, disposition, movement, rights with respect to, or ownership of, funds or other property, when a person should and could have known that such funds or other property are the proceeds of crime – shall be punished by corrective works for the term up to two years; or penalty from two thousands up to five thousands manats or restriction of liberty for the term up to two years with or without deprivation of the right to hold certain positions or to engage in certain activities up to two years. 194-1.2. Acquisition, possession or use of funds or other property, as well as disposition of such funds or other property with no purpose to conceal its origin, when a person should and could have known that such funds or other property are proceeds of crime – shall be punished by the penalty from one thousand to two thousands manats or restriction of liberty for the term up to one year. 194-1.3. The acts stipulated by Articles 194-1.1 and 194-1.2 committed in a significant amount – shall be punished by the penalty from five thousands up to seven thousands manats or restriction of liberty for the term of two to three years with or without deprivation of the right to hold certain positions or to engage in certain activities up to two years. 194-1.4. The acts stipulated by Articles 194-1.1 and 194-1.2 committed in a large scale – shall be punished by the penalty from seven thousands up to ten thousands manats, or restriction of liberty for the term of three to five years, or imprisonment for the term of one to two years with or without deprivation of the right to hold certain positions or to engage in certain activities up to three years. Note: the term “significant amount” stipulated in Article 194-1.3 means the amount from twenty thousands to one hundred thousand manats, the term “large scale” stipulated in Article 194-1.4 means the amount above one hundred thousand manats.”. Please kindly note that it is expected that the draft Law will be in force at the time the COP considers the report. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? Please refer to answer of question 1 of Article 9(3) above. The above indicated draft Law is also intended to address this part.
Belgium	(3) Est-ce que la législation et d’autres mesures permettent de conférer le caractère d’infraction pénale à l’acte de blanchiment lorsque l’auteur soupçonnait que le bien constituait un produit ? Existe-t-il des dispositions législatives et autres permettant de conférer le caractère d’infraction pénale à l’acte de blanchiment lorsque l’auteur aurait dû être conscient que le bien constituait un produit du crime ? Réponse Oui pour les deux questions. Oui. La législation belge a opté pour l’adoption d’un élément moral plus faible que celui de l’infraction de blanchiment correspondant à l’article 9 paragraphe 3(b). L’infraction de blanchiment, par conséquent, s’applique aux situations où l’auteur « savait ou aurait dû savoir» l’origine des biens en questions. Un exemple d’une telle possibilité a été présenté au travers d’une affaire soumise aux

	autorités belges dans le rapport de 2016 (Cass., 21 juin 2000, Pas., 2000, n°387; CA de Gand, 9 février 2012). Le blanchiment d'argent est une infraction qui est incriminée à l'Article 505 du Code pénal : Article 505 du Code pénal « Seront punis d'un emprisonnement de quinze jours à cinq ans et d'une amende de vingt-six francs à cent mille francs 4 ou d'une de ces peines seulement: 1° ceux qui auront recelé, en tout ou en partie, les choses enlevées, détournées ou obtenues à l'aide d'un crime ou d'un délit; 2° ceux qui auront acheté, reçu en échange ou à titre gratuit, possédé, gardé ou géré des choses visées à l'article 42, 3°, alors qu'ils connaissaient ou devaient connaître l'origine de ces choses au début de ces opérations; 3° ceux qui auront converti ou transféré des choses visées à l'article 42, 3°, dans le but de dissimuler ou de déguiser leur origine illicite ou d'aider toute personne qui est impliquée dans la réalisation de l'infraction d'où proviennent ces choses, à échapper aux conséquences juridiques de ses actes; 4° ceux qui auront dissimulé ou déguisé la nature, l'origine, l'emplacement, la disposition, le mouvement ou la propriété des choses visées à l'article 42, 3°, alors qu'ils connaissaient ou devaient connaître l'origine de, ces choses au début de ces opérations. Les infractions visées à l'alinéa 1er, 3° et 4°, existent même si leur auteur est également auteur, coauteur ou complice de l'infraction d'où proviennent les choses visées à l'article 42, 3 Les infractions visées à l'alinéa 1er, 1° et 2° existent même si leur auteur est également auteur, coauteur ou complice de l'infraction d'où proviennent les choses visées à l'article 42, 3°, lorsque cette infraction a été commise à l'étranger et ne peut pas être poursuivie en Belgique. Sauf à l'égard de l'auteur, du coauteur ou du complice de l'infraction d'où proviennent les choses visées à l'article 42, 3°, les infractions visées à l'alinéa 1er, 2° et 4°, ont trait exclusivement, en matière fiscale, à des faits commis dans le cadre de la fraude fiscale grave, organisé ou non. Les organismes et les personnes visés aux articles 2, 2bis et 2ter de la loi du 11 janvier 1993 relative à la prévention de l'utilisation du système financier aux fins du blanchiment de capitaux et du financement du terrorisme, peuvent se prévaloir de l'alinéa précédent dans la mesure où, à l'égard des faits y visés, ils se sont conformés à l'obligation prévue à l'article 28 de la loi du 11 janvier 1993 qui règle les modalités de la communication d'informations à la Cellule de traitement des Informations financières. Les choses visées à l'alinéa 1er, 1° du présent article constituent l'objet de l'infraction couverte par cette disposition, au sens de l'article 42, 1°, et seront confisquées, même si la propriété n'en appartient pas au condamné, sans que cette peine puisse cependant porter préjudice aux droits des tiers sur les biens susceptibles de faire l'objet de la confiscation. Les choses visées à l'alinéa 1er, 3° et 4°, constituent l'objet des infractions couvertes par ces dispositions, au sens de l'article 42, 1°, et seront confisquées, s'agissant de chacun des auteurs, coauteurs ou complices de ces infractions, même si la propriété n'en appartient pas au condamné, sans que cette peine puisse cependant porter préjudice aux droits des tiers sur les biens susceptibles de faire l'objet de la confiscation. Si ces choses ne peuvent être trouvées dans le patrimoine du condamné, le juge procédera à leur évaluation monétaire et la confiscation portera sur une somme d'argent qui lui sera équivalente. Dans ce cas, le juge pourra toutefois réduire cette somme en vue de ne pas soumettre le condamné à une peine déraisonnablement lourde. Les choses visées à l'alinéa 1er, 2°, du présent article constituent l'objet de l'infraction couverte par cette disposition, au sens de l'article 42, 1°, et seront confisquées, dans

	le chef de chacun des auteurs, coauteurs ou complices de ces infractions, même si la propriété n'en appartient pas au condamné, sans que cette peine puisse cependant porter préjudice aux droits des tiers sur les biens susceptibles de faire l'objet de la confiscation. Si ses choses ne peuvent être trouvées dans le patrimoine du condamné, le juge procédera à leur évaluation monétaire et la confiscation portera sur une somme d'argent qui sera proportionnelle à la participation du condamné à l'infraction. La tentative des délits visés aux 2°, 3° et 4° du présent article sera punie d'un emprisonnement de huit jours à trois ans et d'une amende de vingt-six francs à cinquante mille francs ou d'une de ces peines seulement. Les personnes punies en vertu des présentes dispositions pourront, de plus, être condamnées à l'interdiction, conformément à l'article 33. » Le quatrième cycle d'évaluations mutuelles du GAFI a donné lieu à l'adoption du rapport d'évaluation de Belgique en avril 2015. Celui-ci conclut que l'incrimination du blanchiment d'argent est conforme avec les standards internationaux (Conventions de Viennes et de Palerme). Le rapport de la CoP198 en 2016 a également considéré que l'infraction comprend tous les éléments matériels qui constituent l'infraction telle que définie par la convention de Varsovie. La législation belge dispose que tous les crimes et délits peuvent constituer l'infraction préalable. La définition de la propriété est large, tandis que l'article 42 du Code Pénal rend aussi possible la confiscation des instruments et produits du (des) crime(s). La confiscation peut être ordonnée à l'égard de « chacun des auteurs, coauteurs ou complices de ces infractions, même si la propriété n'en appartient pas au condamné ». L'article 9 paragraphe 3 de la Convention prévoit que « Chaque Partie peut adopter les mesures législatives et autres qui se révèlent nécessaires pour conférer le caractère d'infraction pénale, conformément à son droit interne, à certains ou à l'ensemble des actes évoqués au paragraphe 1 du présent article, dans l'un et/ou l'autre des cas suivants: a) lorsque l'auteur a soupçonné que le bien constituait un produit, b) lorsque l'auteur aurait dû être conscient que le bien constituait un produit ». La législation belge a opté pour l'adoption d'un élément moral plus faible que celui de l'infraction de blanchiment correspondant à l'article 9 paragraphe 3(b). L'infraction de blanchiment, par conséquent, s'applique aux situations où l'auteur « savait ou aurait dû savoir» l'origine des biens en questions. Un exemple d'une telle possibilité a été présenté au travers d'une affaire soumise aux autorités belges dans le rapport de 2016 5. La Belgique n'a pas adressé de déclaration telle que prévue par l'article 9(4) de la Convention. La qualification de l'infraction de blanchiment, comme déjà établie plus haut, est basée sur une « approche globale des infractions » conformément à l'article 505 du Code Pénal en conjonction avec l'article 42 alinéa 3 du même code. Toutes les catégories d'infraction principales prévues dans l'annexe de la Convention ont été prévues dans la législation belge et peuvent, par conséquent, être considérées comme une infraction préalable à celle de blanchiment de capitaux. Le paragraphe 5 de l'article 9 de la Convention traite du problème majeur en ce qui concerne les poursuites pour blanchiment d'argent. C'est la nécessité d'une condamnation de l'infraction préalable comme prérequis d'une poursuite pour blanchiment. La Convention prévoit que chaque Partie doit s'assurer qu'une condamnation pour blanchiment est possible en l'absence de condamnation préalable ou concomitante au titre de l'infraction principale. En Belgique, une condamnation du seul chef de blanchiment était possible, même en l'absence de condamnations antérieures ou simultanées de l'infraction principale. Comme indiqué dans le rapport du GAFI en 2015 et le rapport CoP198 de 2016, les poursuites de l'infraction de blanchiment d'argent en Belgique ne sont pas dépendantes de condamnations de l'infraction préalable, mais aussi elles ne dépendent pas de la preuve de l'infraction préalable dans tous ses éléments constitutifs. Cependant, il doit être prouvé que les produits avaient une origine illégale ou qu'ils ne pouvaient pas avoir d'origine légale. La Cour de Cassation belge a confirmé l'application pratique de cette disposition6. La

	jurisprudence est bien établie et que les interprétations de la Cour de cassation sont contraignantes en pratique. Le paragraphe 6 de l'article 9 exige des Etats d'assurer la possibilité de prononcer une condamnation pour blanchiment d'argent dans tous les cas où il est prouvé que la propriété a une origine illicite, sans le besoin de prouver une infraction préalable précise. Comme le précise le rapport explicatif de la Convention, dans le but de faciliter la conduite du procès, les rédacteurs de la Convention ont mis en avant l'importance pour les procureurs de ne pas avoir à prouver, dans le cadre d'une poursuite pour blanchiment, tous les éléments factuels de l'infraction préalable, si la preuve de l'origine illicite des fonds peut être rapportée de toute autre circonstance. En Belgique, la jurisprudence soumise en 2016 à la CoP198 a bien démontré comme l'indique le rapport de la CoP198 en 2016 que la condamnation du chef de blanchiment d'argent est possible, si la preuve de l'origine illicite des biens peut être déduite de toute circonstance ou à tout le moins que les biens ne peuvent provenir des revenus officiels du prévenu. Ainsi, l'origine illicite des biens peut être déduite de la circonstance qu'il ne ressort d'aucune donnée crédible que cette origine peut être licite Un projet de nouveau code pénal a été rédigé et va être déposé au Parlement. Le nouvel article du Code pénal belge en projet introduira les circonstances aggravantes prévues dans la directive UE 2018/1673 du Parlement et du Conseil européen du 23 octobre 2018 visant à lutter contre le blanchiment d'argent au moyens du droit pénal.
Bosnia and Herzegovina	CRIMINAL CODE OF BOSNIA AND HERZEGOVINA Money Laundering Article 209 (1) Whoever accepts, exchanges, keeps, disposes of, uses in commercial or other business operations, the money or some other property he knows was acquired through the perpetration of a criminal offence, or performs its conversion or transfer or otherwise conceals or attempts to conceal its nature, origin, location, disposal, movement, ownership or another right, and such money or assets representing the proceeds of crime were acquired by the perpetration of a criminal offence: a) abroad or throughout the territory of Bosnia and Herzegovina or in the territory of the two Entities or in the territory of one Entity and the Brčko District of Bosnia and Herzegovina or b) which is prescribed by the Criminal Code of Bosnia and Herzegovina or other state level legislation, shall be punished by imprisonment for a term of between one and eight years. (2) The perpetrator of the offence referred to in paragraph (1) of this Article who is at the same time a perpetrator or an accomplice in the perpetration of a criminal offence whereby the money or assets representing the proceeds of crime referred to in paragraph (1) of this Article were acquired, shall be punished by imprisonment for a term of between one and ten years. (3) If the money or assets representing the proceeds of crime referred to in paragraph (1) of this Article exceed the amount of BAM 200,000, the perpetrator shall be punished by imprisonment for a term of not less than three years. (4) If the perpetrator, during the perpetration of the criminal offence referred to in paragraphs (1) and (2) of this Article, acted negligently with respect to the fact that the money or assets represent the proceeds of crime, he shall be fined or punished by imprisonment for a term not exceeding three years. (5) The money, material gain, income, profit or other gain representing the proceeds of crime referred to in paragraphs (1) through (4) of this Article shall be confiscated.

	(6) The knowledge, intention or purpose as elements of the criminal offence referred to in paragraph (1) of this Article may be evaluated on the grounds of objective factual circumstances. CRIMINAL CODE OF THE BRČKO DISTRICT OF BOSNIA AND HERZEGOVINA Money Laundering Article 265 (1) Whoever directly or indirectly accepts, exchanges, keeps, disposes of, uses in commercial or other business operations, the money or some other property he knows was acquired through the perpetration of a criminal offence, or performs its conversion or transfer or otherwise conceals or attempts to conceal its nature, origin, location, disposal, movement, ownership or another right, shall be punished by imprisonment for a term of between six months and five years. (2) The perpetrator of the offence referred to in paragraph (1) of this Article who is at the same time a perpetrator or an accomplice in the perpetration of a criminal offence whereby the money or assets representing the proceeds of crime referred to in paragraph (1) of this Article were acquired, shall be punished by imprisonment for a term of between one and eight years. (3) If the money or assets representing the proceeds of crime referred to in paragraphs (1) and (2) of this Article is of great value, the perpetrator shall be punished by imprisonment for a term of between one and ten years. (4) If the offences referred to in the preceding paragraphs are perpetrated by several persons who have joined for the commission of such offences, the perpetrator shall be punished by imprisonment for a term of between two and twelve years. (5) If the perpetrator, during the perpetration of the criminal offence referred to in paragraphs (1) and (2) of this Article, acted negligently with respect to the fact that the money or assets represent the proceeds of crime, he shall be fined or punished by imprisonment for a term not exceeding three years (6) The money, material gain, income, profit or other gain representing the proceeds of crime referred to in paragraphs (1) through (4) of this Article shall be confiscated. CRIMINAL CODE OF THE REPUBLIC OF SRPSKA Money Laundering Article 263 (1) Whoever accepts, exchanges, keeps, disposes of, uses in commercial or other business operations, the money or some other property he knows was acquired through the perpetration of a criminal offence prescribed by the legislation of the Republic of Srpska, or performs its conversion or transfer or otherwise conceals or attempts to conceal its nature, origin, location, disposal, movement, ownership or another right, shall be punished by imprisonment for a term of between one and five years and a fine. (2) The perpetrator of the offence referred to in paragraph (1) of this Article who is at the same time a perpetrator or an accomplice in the perpetration of a criminal offence whereby the money or assets referred to in paragraph (1) of this Article were acquired, shall be punished by imprisonment for a term of between one and eight years and a fine.

	(3) If the value of money or assets representing the proceeds of crime referred to in paragraphs (1) and (2) of this Article exceed the amount of BAM 200,000, the perpetrator shall be punished by imprisonment for a term of between two and ten years and a fine. (4) If the offences referred to in paragraphs (1), (2) and (3) of this Article are perpetrated by several persons who have joined for the commission of money laundering or the money laundering is committed for the purpose of financing terrorism, the perpetrator shall be punished by imprisonment for a term of between three and fifteen years and a fine. (5) If the perpetrator, during the perpetration of the criminal offence referred to in paragraphs (1) and (2) of this Article, acted negligently with respect to the fact that the money or assets represent the proceeds of crime, he shall be fined or punished by imprisonment for a term not exceeding three years. (6) The money, material gain, income, profit or other gain representing the proceeds of crime referred to in paragraphs (1) through (4) of this Article shall be confiscated. CRIMINAL CODE OF THE FEDERATION OF BIH Article 272 Money Laundering (1) Whoever directly or indirectly accepts, exchanges, keeps, disposes of, uses in commercial or other business operations, the money or some other property he knows was acquired through the perpetration of a criminal offence, or performs its conversion or transfer or otherwise conceals or attempts to conceal its nature, origin, location, disposal, movement, ownership or another right, and such money or assets are acquired through the perpetration of a criminal offence prescribed by the legislation of the Federation of BiH, shall be punished by imprisonment for a term of between six months and five years. (2) The perpetrator of the offence referred to in paragraph (1) of this Article who is at the same time a perpetrator or an accomplice in the perpetration of a criminal offence whereby the money or assets representing the proceeds of crime referred to in the preceding paragraph were acquired, shall be punished by imprisonment for a term of between one and eight years. (3) If the money or assets representing the proceeds of crime referred to in paragraph (1) of this Article is of great value, the perpetrator shall be punished by imprisonment for a term of between one and ten years. (4) If the offences referred to in paragraphs (1), (2) and (3) of this Article are perpetrated by several persons who have joined for the commission of such offences, the perpetrator shall be punished by imprisonment for a term of between two and twelve years. (5) If the perpetrator, during the perpetration of the criminal offence referred to in paragraphs (1) and (2) of this Article, acted negligently with respect to the fact that the money or assets represent the proceeds of crime, he shall be fined or punished by imprisonment for a term not exceeding three years. (6) The money, material gain, income, profit or other gain representing the proceeds of crime referred to in paragraphs (1) through (4) of this Article shall be confiscated.

	Final and binding Judgment of the Court of Bosnia and Herzegovina, reference number: S1 2 K 020583 17 Kžk dated 1 December 2017, criminal offense of Money Laundering, negligence Article 209 (4) in conjunction with (1) of the Criminal Code of BiH / Article 9 (3) of the Warsaw Convention/ The Convicted S.V. has, during the time period from 17 September 2008 to the end of May 2013, received to his foreign currency accounts opened with *Pavlović International Bank a.d. Bijeljina*, *Hypo Alpe Adria Bank a.d. Banja Luka* and *Sberbank a.d. Banja Luka*, without a legitimate legal basis, money in the total amount of USD 650,400.33 USD and EUR 512,958.00 acquired through commission of the criminal offense of Trafficking in Persons under Article 186 of the Criminal Code of Bosnia and Herzegovina; the money was paid into the accounts, in the aim of hiding its real origin, by his brothers , against whom a criminal proceeding was initiated, pursuant to the indictment of the Prosecutor's Office of BiH reference no. T20 0 KTO 0001099 09 dated 27 June 2014, before the Court of BiH for the criminal offense of Organized Crime under Article 250 (3) in conjunction with the criminal offense of Trafficking in Persons under Article 186 (1) of the Criminal Code of BiH and criminal offense of Money Laundering under Article 209 (3) in conjunction with (1) and (2) of the Criminal Code of BiH against and the criminal offense of Money laundering under Article 209 (3) in conjunction with (1) of the Criminal Code of Bosnia and Herzegovina against , ; and has as well received money paid by persons known to them through offshore companies from New Zealand, Panama and Great Britain, as well as from natural persons known to them from Azerbaijan as follows: 1.1. In the period from 11 June 2009 to 22 December 2010 he has received to his account number 5542030001440430 opened with *Pavlović International Bank a.d. Slobomir Bijeljina* the money in the total amount of USD 404,603.33, which was paid to him successively by the following offshore companies: offshore company AZT LIMITED 2 / LEVEL 5, 369 QUEEN STREET 3 / NZ / AUCKLAND in the total amount of USD 269,794.4; offshore company "OKRA ENTERPRISES LIMITED 2 / LEVEL 5 369 QUENN STREET 3 / NZ / AUCKLAND in the total amount of USD 89,940.50; offshore company" FIRMWIDE LIMITED 1734 17 / F STAR HSE 3 SALISBURY RD TSIMSHATSUI KLN " in the total amount of USD 19,921.07 USD; offshore company "EXPERT PRECISION LIMITED 1734 17 / F STAR HSE 3 SALISBURY RD TSIMSHATSUI KLN" in the amount of USD 14,957.87; offshore company "CEDALE HOLDING CO SA 2 / RICARDO J. ALFARO AVENUE, THE CENT 2 / URY TOWER FOURTH FLOOR NO401 3 / PA / PANAMA" in the amount of USD 9,989.47 and has, in the period from 4 August 2009 to 15 May 2013 received, to the same account; the money in the total amount of EUR 512,958.00 which was paid to him successively by the following persons/entities: a natural person from Azerbaijan, HAJIYEV RAHIM 241 TAGISHAHBAZI STR. APT.31 BAKU in the total amount of EUR 339,966.00; his brother in the total amount of EUR 52,892.00; offshore company ZENITH ACTIVITY LIMITED RM 1734 17 / F STAR HOUSE 3 SALISBURY ROAD TSIMSHATSUI KLN " in the amount of EUR 10,020.00; offshore company "PACIFIC COSMO LIMITED RM 1734 STAR HOUSE 3 SALISBURY RD TSIMSHATSUI KLN" in the amount of EUR 20,040.00; offshore company "HIGH FLY INVESTMENTS LIMITED RM 1734 17 F STAR HOUSE 3 SALISBURY RD TSIMSHATSUI KLN" in the amount of EUR 20,040.00, his brother in the amount of EUR 20,000.00 and offshore company" CEDALE HOLDING CO SA2 / RICARDO J. ALFARO AVENUE, THE CENT 2 / URY TOWER FOURTH FLOOR NO401 3/ PA / PANAMA" in the amount of EUR 50,000.00 with the purpose listed as "transfer"; "payment per invoice for electronic

	equipment", "financial support" or payments were made without specifying the legal basis, 1.2. has received, in the time period from 10 November 2008 to 27 February 2009, to his account number 5673215410272696 opened with *Sberbank a.d. Banja Luka* money in the total amount of USD 99,957.00 USD, which was paid to him by the following persons: a natural person NAGIYEV KAMILA R BEHBUDOVA 44 BAKU AZERBAIJAN in the total amount of USD 19,979.00, a natural person CAMILOV PARVIZ U. HAGIBAYOV STR.27 BAKU AZERBAIJAN in the total amount of USD 79,978.00, without specifying the basis of payment, 1.3. has received, in the period from 17 September 2008 to 20 April 2009 to the account number 1233549427, opened with *Hypo Alpe Adria Bank a.d. Banja Luka* money in the total amount of USD 145,840.00, which was paid successively by the following: offshore company ACORA BUSINESS LTD.C / O GLOBAL CORP. CONSULTANSRIA HOUSE in the total amount of USD 75,840.00, a natural person JAMILOV PARVIZ YASAMAL in the total amount of USD 70,000.00 with the purpose of remittance listed as "foreign currency remittances from abroad" or without specifying the basis of payment, Eventhough, on the basis of the following circumstances: purpose of payment; the amounts of payment; the payers themselves among whom, apart from were also unknown persons from Azerbaijan; payments made through offshore companies; instructions received from his brother regarding the manner of spending the funds received; and his personal qualifications i.e. the fact that he is a graduate economist and that due to his professional title he is well aware of what the basis of legal payments or transactions through the account are and that each payment must have its legal basis and purpose and that there has to be a legitimate legal basis between the payer and the recipient of money; the characteristics of close family relations with payers , he could have known that the received money was acquired through commission of a criminal offense. He successively withdrew the entire amount of money received and purchased, as instructed by xxxxxxxxxxxxxxxxx immovable property (sale contracts with following numbers: OPU-528/09 dated 27 August 2009; OPU-850/08 dated 26 December 2008; OPU-117/09 dated 10 March 2009; OPU-164/09 dated 25 March 2009; OPU-326/09 dated 11 June 2009; OPU-146/10 dated 23 March 2010; OPU-167/10 dated 1 April 2010; OPU-256/10 dated 6 May 2010; OPU-483/10 dated 23 August 2010; OPU-487/10 dated 25 August 2010; OPU-493/10 dated 27 August 2010; OPU-602/10 dated 28 September 2010; OPU-653/10 dated 22 October 2010; OPU-433/09 dated 21 July 2009) machinery and equipment (sale contract on movable items number OPU-529/09 dated 27 August 2009). Therefore, the money of significant value acquired through commission of a criminal offense was received, exchanged, kept, disposed with and otherwise concealed by him acting in negligent manner in relation to the circumstance that the money was acquired through commission of a criminal offense, By doing so he committed the criminal offense of Money Laundering under Article 209 (4) in conjunction with (1) of the Criminal Code of Bosnia and Herzegovina[26]. The Court therefore, pursuant to the aforementioned legislation, and on the basis of the provisions of Articles 41, 42 and 48 of the Criminal Code of BiH renders a

[26] Law on Amendments to the Criminal Code of BiH ("Official Gazette of BiH", no.8/10).

SENTENCE
OF IMPRISONMENT FOR A TERM OF 1 (ONE) YEAR

Pursuant to Articles 41 and 46 of the Criminal Code of BiH the defendant is also rendered an accessory punishment

OF A FINE IN AN AMOUNT OF
BAM 30,000 (thirty thousand Bosnian Convertible Marks)

which the accused is obliged to pay within one month from the day the judgment becomes effective. Should the defendant fail to pay the fine within the time limit, pursuant to the provisions of Article 47 (3) of the CC BiH, it will be replaced by imprisonment, whereby each BAM 100.00 (hundred) of the fine is determined as one day of imprisonment, however it cannot exceed the prescribed sentence for this criminal offense.

Pursuant to Article 209 (5) of the CC BiH and Articles 110 and 110a of the Criminal Code of BiH, the property gain acquired through commission of a criminal offense shall be confiscated from the persons to whom it was transferred: , as follows:

- from ,
real estate:

- cadaster particle no.2/9, *"Potkućnica"* comprises of a yard of 500 m², 1st class arable land of 374 m², 198 m² factory, house and buildings of 50 m², registered in the title deed of the Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 30 July 2009 under number 21.18-952.1-1-5199/ 2009, number 715/3, cadaster municipality Nova Topola, (sale contract number OPU-528/09 dated 27 August 2009);
- cadaster particle.br.665/2, *"Njiva"* comprises of a yard of 500 m², 1st class arable land of 1999 m², house and buildings of 124 m², registered in title deed of Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 24 December 2008 under number 21.18-952.1-1-8400 / 2008, number 383/0, cadaster municipality Rovine, (sale contract number OPU-850/08 dated 26 December 2008);
- cadaster particle no.323/5, *"Majdan šljunka"* comprising of a yard of 1000 m², 4th class arable land of 575 m², house and buildings of 81 m², registered in the title deed of the Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 2 March 2009 under number 21.18-952.1-1-1489 / 2009, number 519/1, cadaster municipality Nova Topola, (sale contract number OPU-117/09 dated 10 March 2009);
- cadaster particle no.615/9, *"Rovine",* comprising of a 2nd class arable land of 1227 m², registered in the title deed of the Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 24 March 2009 under number 21.18-952.1-1-2127 / 2009, number 327/1, cadaster municipality Rovine, (sale contract number OPU-164/09 dated 25 March 2009);
- cadaster particle. no.629/1, *"Njiva"* comprising of a 1st class arable land of 5880 m², 2nd class arable land of 3000 m², registered in the title deed of the Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 27 May 2009 under the number 21.18-952.1-1-3473 / 2009, number 272/5, cadaster municipality Rovine, (sale contract number OPU-326/09 dated 11 June 2009);
- cadaster particle no.195/3, *"Plac"* comprising of a yard area of 68 m², house and buildings of 31 m²; and cadaster particle no. 195/6, *"Plac"* comprising of a yard of 83 m², house and buildings of 36 m², registered in the title deed of the

	Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 22 March 2010 under number 21.18-952.1-1-2588 / 2010, number 943/5, cadaster municipality Nova Topola, (sale contract number OPU-146/10 dated 23 March 2010); – cadaster particle no.50/10, *"Okućnica"* comprising of a 2nd class arable land of 2045 m², registered in the title deed of Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 31 March 2010 under number 21.18-952.1-1-2925 / 2010, number 44/5, cadaster municipality Rovine, (sale contract number OPU-167/10 of 1 April 2010); – cadaster particle no.2554/4, "Staro kućište", comprising of a yard of 500 m², field of 691 m², a commercial building of 294 m², entered in the land register excerpt no. 174, cadaster municipality Gradiška - village, on 26 April 2010, number listed in the register for requested excerpts, transcripts and certificates and number listed in the register for various land registry writs: 431/10, which corresponds to the situation recorded in title deed no. 784/17, cadaster municipality Gradiška - village, (sale contract number OPU-256/10 dated 6 May 2010); – cadaster particle no.442, *"Golubuša",* comprising of a 6th class arable land of 7097 m², registered in the title deed of the Republic Administration for Geodetic and Real Estate Affairs of RS Banja Luka, Regional Unit Gradiška on 16 August 2010 under number 21.18-952.1-1-6606 / 2010, number 474/1, cadaster municipality Bistrica, (sale contract number OPU-483/10 dated 23 August 2010); – cadaster particle no.1738, *"Trešnjevac",* comprising of a 6th class arable land of 4822 m²; and cadaster particle no. 1739, *"Trešnjevac"* comprising of 4th class forest of 920 m², registered in the title deed of the Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 4 August 2010 under number 21.18-952.1-1-6249 / 2010, number 661/5, cadaster municipality Bistrica, (sale contract number OPU-487/10 dated 25 August 2010); – cadaster particle no.1736, *"Trešnjevac*", comprising of a 6th class arable land of 4042 m²; and cadaster particle no. 1737, "*Trešnjevac",* comprising of a 4th class forest of 1141 m², registered in the title deed of the Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 26 August 2010 under the number 21.18-952.1-1-6930 / 2010, number 382/2, cadaster municipality Bistrica, (sale contract number OPU-493/10 dated 27 August 2010); – cadaster particle no.1746/3, *"Okućnica"* comprising of a 3rd class orchard of 714 m²; and cadaster particle no. 1747/3, *"Okućnica",* comprising of a 6th class arable land of 5042 m², registered in the title deed of the Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 27 September 2010 under number 21.18-952.1-1-7574 / 2010, number 413/1, cadaster particle Bistrica, (sale contract number OPU-602/10 dated 28 September 2010); – cadaster particle. no.1745, *"Okućnica",* comprising of a yard of 128 m², house and buildings of 32 m²; cadaster particle. no. 1746/1, *"Okućnica*", comprising of a 3rd class orchard of 958 m²; and cadaster particle no. 1747/1*, "Okućnica*", comprising of a 6th class arable land of 1701 m², registered in the title deed of the Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 22 October .2010 under number 21.18-952.1-1-8152 / 2010, number 412/1, cadaster municipality Bistrica, (sale contract number OPU-653/10 dated 22 October 2010), <u>and movable property (machines and equipment):</u> – machinery and equipment for stone processing and manipulation, such as: bridge milling machine ZAMBON, mower BANDIERI with table, CANANDA

	COMANDULI polisher, pantograph INCIMAR 1000 with letters, compressor with two pistons, self-propelled forklift POBEDA Novi Sad, bridge crane with crane track, (sale contract for movable property number OPU-529/09 dated 27.08. 2009); *- from* , real estate: - *cadaster particle no.323/3, "Majdan šljunka",* comprising of a yard of 500 m², 4th class arable land of 1045 m², house and buildings of 123 m², registered in the title deed of the Republic Administration for Geodetic and Property Affairs of RS Banja Luka, Regional Unit Gradiška on 6 July 2009 under the number 21.18-952.1-1-4369 / 2009, number 549/1, cadaster municipality Nova Topola, (sale contract number OPU-433/09 dated 21 July, 2009). Pursuant to Article 188 (1) of the Criminal Procedure Code of BiH, the defendant is obliged to pay a lump sum in the amount of BAM 200,00 for court expenses which he is obliged to pay within 15 days from the day the judgement becomes effective.
Bulgaria	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Answer According to the Bulgarian Criminal code the offence of money laundering is a crime committed intentionally. There are two types of intent in the case of money laundering: where the perpetrator knows or suspects the illegal origin of the property. The first case is where the offender knew that the property subject of the crime is derived from a criminal activity or another act which is dangerous for the public. The second case is where the offender suspected that the property had been acquired through crime or another act that is dangerous for the public. In this case the suspicion or assumption is proven when from the circumstances known to the perpetrator can be made only the conclusion that the object of the crime was acquired illegally or through an activity which is dangerous for the public, even though the perpetrator did not have any direct indications that the property was proceeds. The relevant provisions from the Bulgarian Criminal code are stated here below: “Criminal Code /Promulgated, State Gazette No. 26/2.04.1968, effective 1.05.1968, last amended and supplemented, SG No. 101/19.12.2017, amended, SG No. 55/3.07.2018/ Article 253 (Amended, SG No. 28/1982, repealed, SG No. 10/1993, new, SG No. 62/1997) (1) (Amended, SG No. 85/1998, SG No. 26/2004, supplemented, SG No. 75/2006) The one who concludes a financial operation or property transaction or conceals the origin, location, movement or the actual rights in the property, knowing or suspecting that the property is acquired through crime or another act that is dangerous for the public, shall be punished for money laundering by imprisonment from one to six years and a fine from BGN three thousand to five thousand. (2) (New, SG No. 26/2004, supplemented, SG No. 75/2006) The punishment under paragraph 1 shall also be imposed on the one who acquires, receives, holds, uses, transforms or assists, in any way whatsoever, the transformation of property, knowing or suspecting as of the receipt of the property that it has been acquired through crime or another act that is dangerous for the public. ….

(4) (New, SG No. 21/2000, renumbered from Paragraph 3, supplemented, SG No. 26/2004, amended, SG No. 75/2006) The punishment shall be deprivation of liberty from three to twelve years and a fine from BGN 20,000 to BGN 200,000 where the act under Paragraphs (1) and (2) has been committed by the use of funds or property which the perpetrator knew or suspected to have been acquired through a serious crime of intent.

…"

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

Answer

The hypothesis where the offender suspects that the property is derived from a criminal activity or another act which is dangerous for the public comprises also the case where he/she ought to have assumed that the property was proceeds. There is 'suspicion' of the illegal origin of the proceeds where the evidences show that from the circumstances known to the perpetrator at the moment of receipt of the property, a normally reasoning person would make a reasonable assumption that the property has been acquired in an illegal way.

The relevant provisions from the Bulgarian Criminal code are stated here below:

"Criminal Code /Promulgated, State Gazette No. 26/2.04.1968, effective 1.05.1968, last amended and supplemented, SG No. 101/19.12.2017, amended, SG No. 55/3.07.2018/

Article 253 (Amended, SG No. 28/1982, repealed, SG No. 10/1993, new, SG No. 62/1997)

(1) (Amended, SG No. 85/1998, SG No. 26/2004, supplemented, SG No. 75/2006) The one who concludes a financial operation or property transaction or conceals the origin, location, movement or the actual rights in the property, knowing or suspecting that the property is acquired through crime or another act that is dangerous for the public, shall be punished for money laundering by imprisonment from one to six years and a fine from BGN three thousand to five thousand.

(2) (New, SG No. 26/2004, supplemented, SG No. 75/2006) The punishment under paragraph 1 shall also be imposed on the one who acquires, receives, holds, uses, transforms or assists, in any way whatsoever, the transformation of property, knowing or suspecting as of the receipt of the property that it has been acquired through crime or another act that is dangerous for the public.

(3) (Renumbered from Paragraph 2, supplemented, SG No. 26/2004) The punishment shall be imprisonment for one to eight years and a fine from BGN five thousand to twenty thousand, if the act under paras 1 and 2 has been committed:

3. by an official within the sphere of his office;

(4) (New, SG No. 21/2000, renumbered from Paragraph 3, supplemented, SG No. 26/2004, amended, SG No. 75/2006) The punishment shall be deprivation of liberty from three to twelve years and a fine from BGN 20,000 to BGN 200,000 where the act under Paragraphs (1) and (2) has been committed by the use of funds or property which the perpetrator knew or suspected to have been acquired through a serious crime of intent.

…

Article 253b (New, SG No. 85/1998, renumbered from Article 253a, amended, SG No. 26/2004) Any official who violates or fails to comply with the provisions of the Law on measures against money laundering (LMML) shall be punished, in cases of significant impact, with imprisonment for up to three year and a

	fine from BGN one thousand to three thousand, unless the deed does not constitute a more serious crime.” Case examples: - In its decision No. 334 dated 11/07/2011 on criminal case No. 1668/2011, the Supreme Court of cassation found guilty a person (K.) who made a deal with property - ceded/ transferred to "M. Ltd" in Varna his claim of 100 000 leva from another person (the victim) suspecting that this claim of 100 000 leva was obtained through blackmailing. It was proven that the offender assumed that the claim of money was acquired for his benefit by two other persons through a serious intentional crime – blackmailing under Art. 213a of the Criminal Code. The victim was blackmailed and compelled by force by two other offenders to take on a property obligation of the amount of 100 000 BGN for the benefit of K. Therefore K. was found guilty on the grounds of Art. 253, para 4 in the connection with para 1, item 2 of the same Art. 253 of the Criminal Code. - In another more recent case, the Supreme Court of cassation (decision No. 242/21.11.2017 on criminal case No. 837/2017 on the inventory of the same court) confirmed a decision of the Appellate court in Varna which imposed a sanction of two years of imprisonment on a person who was found guilty for opening and maintaining a bank account in Bulgaria with the amount of 18 400 euros, suspecting that the sum of money was acquired illegally in Romania. At the time of receipt of the money the perpetrator suspected that the money was acquired through criminal activity by an organised criminal group in Romania. The organized criminal group was dealing with illegal access to information, illegal transfer of information, falsification of information and realization of financial operations through unauthorized access to bank accounts. The suspicion of the illegal origin of the property was proven by the fact that at the time of the opening of the bank account in Bulgaria the accused person made false declaration about the origin of the money stating that the sum of money was acquired in a sale of real estate. There was evidence from the registries of the Bulgarian Registry agency within the Ministry of justice showing that there is no data about any property transaction in the name of the accused person. Moreover, it was proven that the accused had no income from other legal sources such as labour income, real estate, vehicles or money on his name. At the same time, the Bulgarian authorities had received information from the Central directorate for investigation of organized crime and terrorism in Romania about illegal financial transactions realized by the criminal group whose activity consisted in bank transfers through unauthorized e-banking access to accounts. There was evidence that the Romanian company, which was investigated for the illegal transactions, made the transfer of the sum of money on the account of the accused person. The Supreme Court of the Republic of Bulgaria ruled that the fact that the accused person opened a bank account prior to the transfer of the sum of money, made a false declaration about the origin of the money (committing another crime under Art. 313 of the CC) and after receiving the money withdrew them in cash in a short period of time show knowledge or at least suspicion of the illegal origin of the money.
Croatia	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Answer Law on Amendments to the Criminal Code was adopted on the 14th December 2018, published in the Official Gazette on 27th December 2018 and entered into force on 3rd January 2019. The criminal offence of money laundering, as prescribed by Article 265 was also amended. The Article 265 paragraph 6 of the Criminal Code of the Republic of Croatia reads as follows:

"(6) Whoever commits the offence referred to in paragraph 1, 2 or 5 of this Article through negligence with respect to the circumstance that the pecuniary advantage is derived from criminal activity shall be sentenced to imprisonment for a term of up to three years."
The whole amended Article 265 reads as follows:

Money Laundering

Article 265

(1) Whoever invests, takes over, converts, transfers or replaces a pecuniary advantage derived from criminal offence for the purpose of concealing or disguising its illicit origin, or helps to the perpetrator or accomplice of the criminal offence by which pecuniary advantage was acquired to evade prosecution or confiscation of pecuniary advantage derived from criminal offence

shall be sentenced to imprisonment for a term of between six months and five years.

(2) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever conceals or disguises the true nature, source, location, disposition, movement, rights with respect to, or ownership of a pecuniary advantage derived from criminal activity.

(3) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever acquires, possesses or uses the pecuniary advantage derived by another from criminal activity.

(4) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever intentionally provides instructions or counselling or removes obstacles or in another manner facilitates the commission of the offence referred to in paragraph 1, 2 or 3 of this article

(5) Whoever commits the offence referred to in paragraph 1 or 2 of this Article in financial or other dealings or where the perpetrator engages professionally in money laundering or the pecuniary advantage referred to in paragraph 1, 2 or 3 of this Article is of considerable value,

shall be sentenced to imprisonment for a term of between one and eight years.

(6) Whoever commits the offence referred to in paragraph 1, 2 or 5 of this Article through negligence with respect to the circumstance that the pecuniary advantage is derived from criminal activity

shall be sentenced to imprisonment for a term of up to three years.

(7) If the pecuniary advantage referred to in paragraphs 1 through 6 of this Article is derived from criminal activity carried out in a foreign country, the perpetrator shall be punished when the activity is a criminal offence also under the domestic law of the country where it is committed.

(8) The perpetrator referred to in paragraphs 1 through 6 of this Article who significantly contributes of his/her own free will to the discovery of the criminal activity from which a pecuniary advantage has been derived may have his/her punishment remitted.

	(9) The pecuniary advantage, instrumentalities and items that were produced by the commission of the offence referred to in paragraph 1 through 5 of this article or intended for use or used in the commission of the offence referred to in paragraph 1 through 5 of this article shall be forfeited while the rights shall be pronounced void. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? Answer The amended Article 265 paragraph 6 of the Criminal Code of the Republic of Croatia reads as follows: "(6) Whoever commits the offence referred to in paragraph 1, 2 or 5 of this Article through negligence with respect to the circumstance that the pecuniary advantage is derived from criminal activity shall be sentenced to imprisonment for a term of up to three years."
Cyprus	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? The Prevention and Suppression of Money Laundering Activities and Terrorist Financing Laws of 2007-2018 (188(I)/2007) (AML/CFT Law) applies to prescribed offences, namely money laundering offences and predicate offences. Article 4(1) of the Law states that every person who (a) knows or (b) at the material time ought to have known that any kind of property constitutes proceeds from the commission of illegal activities, carries out the following activities: (i) converts or transfers or removes such property, for the purpose of concealing or disguising its illicit origin or of assisting in any way any person who is involved in the commission of the predicate offence to carry out any of the above actions or acts in any other way in order to evade the legal consequences of his actions; (ii) conceals or disguises the true nature, the source, location, disposition, movement of and rights in relation to, property or ownership of this property; (iii) acquires, possesses or uses such property; (iv) participates in, associates, co-operates, conspires to commit, or attempts to commit and aids and abets and provides counselling or advice for the commission of any of the offences referred to above; (v) provides information in relation to investigations that are carried out for laundering offences for the purpose of enabling the person who acquired a benefit from the commission of a predicate offence to retain the proceeds or the control of the proceeds from the commission of the said offence, commits an offence punishable by fourteen years' imprisonment or by a pecuniary penalty of up to Euro 500.000 or by both of these penalties in the case of (a) above and by five years' imprisonment or by a pecuniary penalty of up to Euro 50.000 or by both in the case of (b) above.

	Furthermore, article 4(2)(c) provides that the knowledge, intention or purpose which are required as elements of the offences referred to in subsection (1) may be inferred from objective and factual circumstances; According to Section 2-(1) of the AML/CFT Law, “proceeds” means any economic advantage derived directly or indirectly from a criminal offence; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds and any valuable benefits; “Property” means assets of any kind, whether corporeal or incorporeal, movable assets including cash, immovable assets, tangible or intangible, and legal documents or instruments in any form including electronic or digital, evidencing title to or an interest in such asset. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? As already mentioned above, according to Article 4(1) of the AML/CFT Law, the money laundering offence applies to every person who (a) knows or (b) at the material time ought to have known that any kind of property constitutes proceeds from the commission of illegal activities. The offence is punishable by five years’ imprisonment or by a pecuniary penalty of up to Euro 50.000 or by both in the case the person ought to have known.
Denmark	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Answer The Danish Criminal Code section 290 A prohibits money laundering. The offence requires that is it proven that the perpetrator at the time of the crime had the intention to commit the crime. According to Danish legal principles and established case law, ‘intention’ is either when 1) the perpetrator has spcific knowledge/positively intents to commit the crime, 2) the perpetrator considers certain circumstances as predominantly probable to exist or 3) the perpetrator considers the existence of certain circumstances as possible, and decides to act in a certain manner anyway. Knowledge or suspicion based upon the specific circumstances of the case may be enough in order to establish a guilty mind, and further knowledge about further details with regard to the previous criminal offences is not necessary. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? Answer According to section 303 of the Danish Criminal Code any person, who, in gross negligence, buys or in similar manner receives property, which are proceeds of a crime against property, is sentenced to a fine or imprisonment for a term not exceeding one year.

Estonia	Money laundering offence has been provided by the Penal Code § 394. Full text of Penal Code available in English: https://www.riigiteataja.ee/en/eli/520032023010/consolide The § 394 of the Penal Code does not define money laundering. There are almost no definitions in the part 2 of the Penal Code called Special Part. The Special Part of the Penal Code relies on the definitions in other acts.The definition for money laundering is included in the Money Laundering and Terrorist Financing Prevention Act (MLTFPA) § 4. "§ 4. Money laundering (1) 'Money laundering' means: 1) the conversion or transfer of property derived from criminal activity or property obtained instead of such property for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person's actions; 2) the acquisition, possession or use of property derived from criminal activity or property obtained instead of such property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation therein; 3) the concealment of the true nature, origin, location, manner of disposal, relocation or right of ownership of property acquired as a result of a criminal activity or property acquired instead of such property or the concealment of other rights related to such property. (2) Money laundering also means participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the activities referred to in subsection 1 of this section. (3) Money laundering is regarded as such also where a criminal activity which generated the property to be laundered was carried out in the territory of another country. (4) Knowledge, intent or purpose required as an element of the activities referred to in subsections 1–3 of this section may be inferred from objective facts. (5) Money laundering is regarded as such also where the details of a criminal activity which generated the property to be laundered have not been identified." Full text of MLTFPA available in English: https://www.riigiteataja.ee/en/eli/521022023001/consolide As the subsection 4 states: "Knowledge, intent or purpose required as an element of the activities referred to in subsections 1–3 of this section may be inferred from objective facts.", for the establishing of money laundering offence, the court does not need to establish for certainty that the accused knew that the proceeds were of criminal origin. This allows to establish liability when the person suspected or should have suspected the illegal origin of the funds.
France	(3) Est-ce que la législation et d'autres mesures permettent de conférer le caractère d'infraction pénale à l'acte de blanchiment lorsque l'auteur soupçonnait que le bien constituait un produit ?
	La loi du 6 décembre 2013 a introduit, après l'incrimination de blanchiment, un article 324-1-1, qui dispose : « Pour l'application de l'article 324-1 (blanchiment par justification mensongère de l'origine d'un bien ou par placement dissimulation conversion du produit de tout crime ou délit), les biens ou les revenus sont présumés être le produit direct ou indirect d'un crime ou d'un délit dès lors que les conditions matérielles, juridiques ou financières de l'opération de placement, de dissimulation ou de conversion ne peuvent avoir d'autre justification que de dissimuler l'origine ou le bénéficiaire effectif de ces biens ou revenus. »

	Existe-t-il des dispositions législatives et autres permettant de conférer le caractère d'infraction pénale à l'acte de blanchiment lorsque l'auteur aurait dû être conscient que le bien constituait un produit du crime ?
	Même réponse
Georgia	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? According to Georgian legislation, money laundering means giving legal form to illicit and/or undocumented property (use, purchase, possession, conversion, transfer or other actions in connection with property) in order to conceal its illegal and/or undocumented origin or to assist another person in evading liability, as well as concealment or disguising of its genuine nature, source of origin, location, dislocation, movement, its title and/or of other rights related to it (Article 194, Criminal Code of Georgia). To give the offence this qualification it is not important whether the predicate offence is committed by the same person who is accused for money laundering or not, also it does not matter if the predicate crime is not the subject of Georgian criminal jurisdiction. According to Georgian legislation, money laundering falls under the category of intentional crimes and its constituent elements are – person's knowledge that the property is proceeds from illegal activity, and person's purpose to legalize it. In other words the person makes any acts prescribed in the article 194 (money laundering, Criminal Code of Georgia), with the knowledge that the property represents proceeds from illegal activity. Constituent elements of the crime (knowledge and purpose) are established by factual and objective circumstances. According to Georgian legislation, it's impossible to qualify action as money laundering, when the person suspected that the property was proceeds from illegal activity. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? As we mentioned above, under Georgian money laundering represents intentional offence and its constituent elements are person's knowledge that the property is proceeds from illegal activity, and person's purpose to legalize it. Thus person commits any action prescribed in the article 194 (money laundering, Criminal Code of Georgia) with the knowledge that the property represents proceeds from illegal activity. Constituent elements of the crime (knowledge and purpose) are established by factual and objective circumstances. According to Georgian legislation, it's impossible to qualify action as money laundering, when the person ought to have assumed that the property was proceeds from illegal activity.
Germany	Question 1 – (3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? The requirements of Article 9 paragraph 1 are satisfied in the provisions of section 261 of the German Criminal Code, that is to the extent possible given Germany's constitutional principles and the main features of its legal system. Under section 261 (1)

	of the German Criminal Code, hiding objects which are the proceeds of a predicate offence, concealing their origin, as well as obstructing or endangering their being found, confiscated or secured are punishable offences. Section 261 (2) of the German Criminal Code covers the procurement and use of the proceeds of unlawful acts. The statutory definitions of the offences laid down in section 261 (1) and (2) of the German Criminal Code include acting with intent, but they make no specific subjective requirements as to knowing the origin of the property obtained. The term “suspected” as used in Article 9 paragraph 3 point a) corresponds, in German law, to the principle of dolus eventualis, i.e. conditional intent. It is, thus, sufficient for the perpetrator to believe that it is possible that property originates from a predicate offence and to have tacitly accepted that possibility. By way of derogation, an assumption as to the origin of a criminal defence lawyer’s fee is not sufficient: reliable knowledge thereof is required. This restriction is based on the rulings of the Federal Constitutional Court (judgment of 30 March 2004 – case no. 2 BvR 1520/01; order of 28 July 2015 – case nos 2 BvR 2558/14, 2 BvR 2571/14, 2 BvR 2573/14). However, the restriction does not apply to other professional groups, even if they advise clients in the fields of law, taxation and finances, so long as their activity does not simultaneously involve criminal defence work. Question 2 – Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? The phrase “ought to have assumed” in Article 9 paragraph 3 point b) means that reasonably weighing up all the circumstances suggests that the property in question represents the proceeds of criminal offences. This corresponds to the concept of negligence in German law. In accordance with section 261 (5) of the German Criminal Code, it is sufficient for a perpetrator to be recklessly unaware that property represents the proceeds of one of the listed unlawful acts. The punishment is imprisonment for up to two years or a fine. The term “reckless” refers to a serious form of conscious or unconscious negligence. Conduct is deemed reckless where it practically suggests itself that property represents the proceeds of one of the unlawful acts listed in section 261 (1) of the German Criminal Code but the perpetrator nevertheless acts and ignores this out of gross carelessness or indifference. Examples include an especially large sum of money, considering the property and its holder, unusual types of transactions and knowing about the extent and degree of organisation of the predicate offences. By way of derogation, reckless conduct in relation to the origin of a criminal defence lawyer’s fee is not sufficient: reliable knowledge thereof is required. This restriction is based on the rulings of the Federal Constitutional Court (judgment of 30 March 2004 – case no. 2 BvR 1520/01; order of 28 July 2015 – case nos 2 BvR 2558/14, 2 BvR 2571/14, 2 BvR 2573/14). However, the restriction does not apply to other professional groups, even if they advise clients in the fields of law, taxation and finances, so long as their activity does not simultaneously involve criminal defence work.
Greece	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds?

	The answer is negative. According to the definition of money laundering contained in Art. 2 par. 2 of the AML-Law (Law 4557/2018), "Legalisation of proceeds of crime (money laundering) shall mean the following acts: a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action, b) the concealment or disguise of the true nature, source, location, disposition, use, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, c) the acquisition, possession or use of property, knowing, at the time of receipt or administration, that such property was derived from criminal activity or from an act of participation in such activity, d) the utilisation of the financial sector by placing therein or moving through it proceeds from criminal activities for the purpose of lending false legitimacy to such proceeds, e) the setting up of an organisation or group comprising two persons at least, for committing one or more of the acts described in cases a) through d), and the participation in such an organisation or group, f) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in cases a) through d)." The condition that the perpetrator must have acted "knowing" that the property was proceeds, excludes cases where he/she suspected such fact and accepted it as an eventuality, or was indifferent towards it or believed at the end that the opposite would be true. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? The answer is again negative. Money laundering committed by negligence is not criminalized.
Hungary	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Firstly, it has to be underlined, that the wording of ML offence [(Article 399-402 of the Act C of 2012 on the Criminal Code (hereinafter: CC)] in Hungary follows the so called "all-crime approach", which means that every criminal offence which is punishable and generates "proceeds" can be considered as a predicate offence. According to Article 400 of CC, Hungary criminalises ML committed by negligence in the following way: 1. If the perpetrator • in his/her business activities uses an object, • performs any financial activity in connection with an object, or • receives any financial service in connection with an object, that originates from a punishable act committed by another person and by negligence is unaware of the origin of the object, this is a criminal offence which is punishable by imprisonment for up to two years.

	2. Qualified cases: if the criminal offence specified above is committed: • for particularly considerable or larger value (particularly considerable and larger value: 50.000.001 and more HUF); • by an officer or an employee of a financial institution, an investment firm, commodities brokers, an investment fund management company, a venture capital fund management company, a stock market, a central depository or a body acting as a central counterparty, an insurance company, a reinsurance company or an independent insurance intermediary, a voluntary mutual insurance fund, a private pension fund or an institution for occupational pension providers, an organization engaged in the operation of gambling activities or a regulated real-estate investment company in such a capacity; • by a public official. In this case, the punishment shall be imprisonment for up to three years. 3. CC excludes the punishability of the perpetrator if he/she voluntarily reports to the authorities and reveals the circumstances of the commission, provided that the criminal offence has not yet been revealed, or it has been revealed only partially. Pursuant to Article 8 of CC, the criminal offence shall be considered negligent if the perpetrator foresees the possible consequences of his act but recklessly trusts that they would not take place, or if he cannot foresee the possible consequences of his act because he fails to exercise the care or circumspection expected of him. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? Please see the answer above.
Italy	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? According to the Article 712 of the Italian Criminal Code, a person who – without having verified beforehand its legitimate provenance – suspected that – due to its quality or price or due to the conditions of the people offering it – the property was proceeds from crime may be convicted on a charge of a special offence “Acquisto di cose di sospetta provenienza”, which is not, however, a money laundering offence. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? A review of the decisions taken in the judicial cases referring to the above indicated Article 712 allows to state that a person may be convicted on a charge thereof – not only when actually suspecting that the property was proceeds from crime – also when he/she ought to have assumed – given the mentioned quality, price and conditions – that the property was proceeds from crime.
Latvia	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? On 1 August 2017 the amendments to Section 5 of the Law on the Prevention of Money Laundering and Terrorism Financing (AML/CFT Law) entered into force. The

amendments provide for a lesser subjective mental element of an offence and were based on the provisions of Article 9 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198). The previous wording of Section 5 (1) of the AML/CFT Law required a high level of knowledge as to the origin of the proceeds:

"(1) The following actions are money laundering:

1) the conversion of proceeds of crime into other valuables, transfer of their location or ownership, knowing that that these funds are proceeds of crime and if such actions are carried out for the purpose of concealing or disguising the illicit origin of funds or assisting any person who is involved in committing of a criminal offence in evading the legal liability;
2) the concealment or disguise of the true nature, origin, location, disposition, movement, ownership of proceeds of crime, knowing that these funds are proceeds of crime;
3) the acquisition, possession or use of proceeds of crime, if at the time of acquisition of such rights it is known that these are proceeds of crime; or
4) the participation in any of the activities specified in Paragraph one, Clauses 1, 2 and 3 of this Section. "knowing"."

The amended Section 5 (1) of the AML/CFT Law since 1 August 2017 stipulates:

"(1) The following actions are money laundering:

1) the conversion of proceeds of crime into other valuables, transfer of their location or ownership, being aware that that these funds are proceeds of crime and if such actions are carried out for the purpose of concealing or disguising the illicit origin of funds or assisting any person who is involved in committing of a criminal offence in evading the legal liability;
2) the concealment or disguise of the true nature, origin, location, disposition, movement, ownership of proceeds of crime, being aware that these funds are proceeds of crime;
3) the acquisition, possession, use or disposal of the proceeds of crime of another person, while being aware that these funds are the proceeds of crime.

(1^1) The actions referred to in Paragraph one, Clauses 1, 2, and 3 of this Section, when a person deliberately assumed the funds to be proceeds of crime, shall also be regarded as money laundering."

As the amendments apply to those money laundering cases which took place after the amendments entered into force there are no yet case law developed.

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

On 1 August 2017 the amendments to Section 5 of the AML/CFT Law entered into force. The amendments provide for a lesser subjective mental element of an offence and were based on the provisions of Article 9 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198). The previous wording of Section 5 (1) of the AML/CFT Law required a high level of knowledge as to the origin of the proceeds:

"(1) The following actions are money laundering:

1) the conversion of proceeds of crime into other valuables, transfer of their location or ownership, knowing that that these funds are proceeds of crime and if such actions are carried out for the purpose of concealing or disguising the illicit origin of funds or

	assisting any person who is involved in committing of a criminal offence in evading the legal liability; 2) the concealment or disguise of the true nature, origin, location, disposition, movement, ownership of proceeds of crime, knowing that these funds are proceeds of crime; 3) the acquisition, possession or use of proceeds of crime, if at the time of acquisition of such rights it is known that these are proceeds of crime; or 4) the participation in any of the activities specified in Paragraph one, Clauses 1, 2 and 3 of this Section. "knowing"." The amended Section 5 (1) of the AML/CFT Law since 1 August 2017 stipulates: "(1) The following actions are money laundering: 1) the conversion of proceeds of crime into other valuables, transfer of their location or ownership, being aware that that these funds are proceeds of crime and if such actions are carried out for the purpose of concealing or disguising the illicit origin of funds or assisting any person who is involved in committing of a criminal offence in evading the legal liability; 2) the concealment or disguise of the true nature, origin, location, disposition, movement, ownership of proceeds of crime, being aware that these funds are proceeds of crime; 3) the acquisition, possession, use or disposal of the proceeds of crime of another person, while being aware that these funds are the proceeds of crime. (1^1) The actions referred to in Paragraph one, Clauses 1, 2, and 3 of this Section, when a person deliberately assumed the funds to be proceeds of crime, shall also be regarded as money laundering." As the amendments apply to those money laundering cases which took place after the amendments entered into force there are no yet case law developed.
Lithuania	3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Laundering offences are criminalised by Art. 216 and Art. 189 of the Criminal Code of the Republic of Lithuania: ***Article 216. Laundering of Property as Proceeds from Crime*** *1. A person who, with a view to concealing or legitimising his own or another person's property, while being aware that it has been obtained as proceeds from crime, acquires, manages, uses, transfers the property to other persons, performs financial operations related to this property, enters into transactions, uses it in economic and commercial activities, otherwise transforms it or falsely indicates that it has been obtained from lawful activities, also a person who conceals the actual nature of his own or another person's property, its source, location, disposal and movement or ownership thereof or other rights related to the property, while being aware that the property has been obtained as proceeds from crime,* *shall be punished by a fine or a custodial sentence for a term of up to seven years.* *2. A legal entity shall also be held liable for the acts provided for in this Article*. ***Article 189. Acquisition or Handling of Property Obtained by Criminal Means*** *1. A person who acquires, uses or handles property while being aware that the property has been obtained by criminal means*

shall be punished by a fine or by restriction of liberty or by arrest or by a custodial sentence for a term of up to two years.

2. A person who acquires, uses or handles property of a high value or the valuables of a considerable scientific, historical or cultural significance while being aware that the property or the valuable properties have been obtained by criminal means

shall be punished by a fine or by arrest or by a custodial sentence for a term of up to four years.

3. A person who acquires, uses or handles property of a low value while being aware that the property has been obtained by criminal means shall be considered to have committed a misdemeanour and

shall be punished by community service or by a fine or by arrest.

4. A legal entity shall also be held liable for an act provided for in paragraphs 1 and 2 of this Article.

Besides, the ML offences are elaborated in Prosecutor General's Recommendations on Pre-trial Investigation into Criminal Offences of Money Laundering (Articles 189, 216 of the Criminal Code), approved by the Order No. I-358 of 16 November 2020.

Section 4.1. of these Recommendations state that:

4.1. Money laundering activities include:

4.1.1. alteration of the legal status of property or transfer of property knowing that such property is derived from or participating in a criminal offense, in order to conceal or disguise the illicit origin of the property or to assist any person involved in the criminal offense in avoiding legal consequences;

4.1.2. concealment or disguise of the true nature, true origin, source, location, disposition, movement, ownership or other rights with respect to property, knowing that such property is derived from criminal activity or from an act of participation in such activity;

4.1.3 acquisition, management or use of property, knowing at the time of acquisition (transfer) that the property was obtained from a criminal offense or by participating in such an offense;

4.1.4. preparation for, attempt to commit, complicity in committing any of the acts specified in sub-paragraphs 4.1.1, 4.1.2 and 4.1.3 of the Recommendations.

And they also specify that:

4.2. Primary (predicate) money laundering crime is any criminal act provided for in the Criminal Code of the Republic of Lithuania.

Section 16 of the Recommendations state that: "*Where it is established that the assets have been obtained from a criminal offence committed in the Republic of Lithuania or any other foreign state, where such offence is considered a crime or misdemeanour under the Criminal Code, it shall not be necessary to establish all factual elements or circumstances relating to that criminal offence, including the person(s) who have committed the criminal offence or their identities. In the course of investigation of such criminal offences concerning the laundering of money or property derived from a*

	crime, the authorities must collect the data confirming that the money or other property has been derived from a criminal offence (but it is not necessary to establish all the factual elements or all circumstances relating to that criminal offence) and confirming that the person was aware of this and carried out one of the alternative actions provided for in Article 189 or Article 216 of the Criminal Code while laundering money or other assets." Thus, Lithuania applies an all-crimes approach. The ML offence refers to any property obtained by criminal means. The ML offence does not require a conviction for the predicate offence. It simply refers to property obtained by criminal means. As long as the property is obtained by criminal means, whether within or outside Lithuania, a person may be found guilty of the ML offence. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? The criminal offenses specified in Articles 189 and 216 of the CC are committed with direct intent, i. e. the perpetrator, in committing these offenses, realizes that by his actions he was laundering the money or other property obtained by the crime (acquires, uses, realizes, legalizes or conceals the true origin) and wishes to do so. In other words, according to Art. 216(1) of the Criminal Code, a person shall commit ML if s/he conceals, transfers, uses, etc., his/her own property while being aware that it has been obtained by criminal means. The Criminal Code does not regulate the conditions for proving the intent, which is left in the hands of the courts. There is case law, which indicates that intent and knowledge may be inferred from objective factual circumstances, meaning that case law permits the mental element of the ML offence to be inferred from objective factual circumstances.
Malta	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Yes. In terms of Maltese law the money laundering offence specifically includes as one of its elements "suspicion" that the proceeds are illicit. Please kindly refer to the definition of Money Laundering as provided in terms of Chapter 373 of the Laws of Malta. "money laundering" means - (i) the conversion or transfer of property knowing or suspecting that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity; (ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity; (iii) the acquisition, possession or use of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity; (iv) retention without reasonable excuse of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

	(v) attempting any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii) and (iv) within the meaning of article 41 of the Criminal Code; (vi) acting as an accomplice within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub- paragraphs (i), (ii), (iii), (iv) and (v). In so far as judicial pronouncements on this aspect are concerned, it should be noted that in the case Police vs Carlos Frias Matteo the Court of Appeal held, on the 19th of January 2012, that the shifting of the burden of proof, with respect to the origin of the alleged proceeds of crime, is subjected to the condition that the prosecution merely proves on a prima facie level, even though circumstantial evidence, the link between the funds held and licit activity (in general) and that he knew, or at least suspected, that the alleged proceeds were the proceeds of crime. Hence in this case the Court held that money laundering charge can be successful even in those cases in which the accused's standard of living is not commensurate with his legitimate income with no legitimate justification from his part. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? The money laundering offence in terms of Maltese Law does not specifically include: 'ought to have assumed' as it specifically includes "knowledge and suspicion" that the proceeds are illicit. Please kindly refer to the definition of Money Laundering as provided in terms of Chapter 373 of the Laws of Malta which was cited in the previous answer.
Monaco	(3) Est-ce que la législation et d'autres mesures permettent de conférer le caractère d'infraction pénale à l'acte de blanchiment lorsque l'auteur *soupçonnait* que le bien constituait un produit? ***Réponse*** Aux termes de l'article 218 du Code Pénal, le blanchiment est une infraction intentionnelle, son auteur doit ainsi avoir agi *«sciemment ».* Toutefois, aux termes du dernier alinéa du même article, l'élément intentionnel du délit de blanchiment *« peut être déduit de circonstances factuelles objectives".* Ces circonstances factuelles objectives sont constituées, notamment aux termes de l'article 218-4 du Code penal, par des opérations qui "*ne peuvent manifestement avoir d'autre justification que de dissimuler l'origine ou le bénéficiaire effectif de ces biens, capitaux ou revenus aux fins de blanchiment de capitaux ou de financement du terrorisme".* Au surplus, le législateur a également introduit un délit de «blanchiment par négligence». L'article 218-2 du Code pénal prévoit en effet que *«Sera puni d'un emprisonnement de un à cinq ans et de l'amende prévue au chiffre 4 de l'article 26 dont le maximum pourra être porté au décuple ou de l'une de ces deux peines seulement quiconque aura, par méconnaissance de ses obligations professionnelles, apporté son concours à toute opération de transfert, de placement, de dissimulation ou de conversion de biens et capitaux d'origine illicite".* La loi N°1.462 du 28 juin 2018 renforçant le dispositif de lutte contre le blanchiment de capitaux, le financement du terrorisme et la corruption, a en effet instauré une obligation, et des mesures de vigilance à l'égard de leur clientèle, à l'encontre, notamment : - des personnes qui effectuent à titre habituel des opérations de banque ou d'intermédiation bancaire ; - des établissements de paiement et les établissements de monnaie électronique ;

	- des personnes exerçant les activités visées à l'article premier de la loi n° 1.338 du 7 septembre 2007 sur les activités financières; - des enterprises d'assurance; - des personnes effectuant, à titre habituel, des opérations de création, de gestion et d'administration de personnes morales, d'entités juridiques ou de trusts, en faveur de tiers… **En conclusion, l'élément moral de l'infraction du blanchiment est constitué dès lors que son auteur, connaissait, ne pouvait ignorer, ou soupçonnait, l'origine illicite d'un produit, dont le caractère illicite, et sa connaissance, peuvent se déduire de circonstances factuelles objectives, telles que des opérations n'ayant pour unique but que de dissimuler l'origine ou le bénéficiaire effectif de ces produits.** **De même, un auteur pourra être reconnu coupable de blanchiment, par simple négligence, et manquement à ses obligations professionnelles de vigilance à l'égard de sa clientèle**.
	Existe-t-il des dispositions législatives et autres permettant de conférer le caractère d'infraction pénale à l'acte de blanchiment lorsque l'auteur *aurait dû être conscient* que le bien constituait un produit du crime?
	Réponse Comme indiqué supra, l'article 218-2 du Code pénal a introduit un délit de « blanchiment par négligence » à l'encontre de celui qui aura apporté son concours à toute opération de transfert, de placement, de dissimulation ou de conversion de biens et capitaux d'origine illicite, par méconnaissance de ses obligations professionnelles. **Ainsi, celui qui aurait du être conscient que le bien constituait un produit du crime par le simple respect de ses obligations de vigilance à l'égard de sa clientèle imposées par la loi N°1.462 du 28 juin 2018 évoquée ci-dessus, mais qui les aura méconnues, et ainsi apporté son concours à une opération de blanchiment, sera reconnu coupable du délit de blanchiment**.
Montenegro	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Answer Criminal Code of Montenegro stipulates in article 268 money laundering as a criminal offence: "1) Whoever converts or transfers money or other property knowing them to be derived from criminal activity, for the purpose of concealing or disguising the origin of money or other property or who acquires, possesses or uses money or other property knowing at the time of receipt that they are derived from criminal activity, or who conceals or disguises facts on the nature, source, place of deposit, movement, disposal or ownership of money or of other property knowing they are derived from criminal activity shall be punished by a prison sentence for a term from six months to five years. (2) The penalty set out in paragraph 1 of this Article shall be imposed on the perpetrator of the offence set forth in paragraph 1 of this Article who is at the same time the perpetrator or the accomplice in the criminal offence resulting in acquisition of the money or property set out in paragraph 1 of this Article or on whomever assists a perpetrator in view of avoiding his accountability for the offence committed, or undertakes actions, with the same objective, to conceal the origin of money or property set out in paragraph 1 of this Article. (3) Where the amount of money or value of the property set out in paragraphs 1 and 2 of this Article exceeds forty thousand euro, the

	perpetrator shall be punished by a prison sentence for a term from one to ten years. (4) Where the offence set forth in paragraphs 1 and 2 of this Article is committed by several persons who associated for the purpose of committing such offences, they shall be punished by a prison sentence for a term from three to twelve years. (5) Whoever commits the offence set forth in paragraphs 1 and 2 of this Article and could have known or should have known that the money or property are derived from criminal activity shall be punished by a prison sentence for a term not exceeding three years. (6) The money and property set out in paragraphs 1, 2 and 3 of this Article shall be confiscated. (7) Property, within the meaning of this Article, shall imply property, rights of every kind, whether tangible or intangible assets, movable or immovable things, securities or other documents evidencing title to or interest in such assets." Ratifying 198 Convenction, Montenegro has decided to implement Article 9(3) of the Convention which introduces lesser mental element for the criminal offence of money laundering. Thus, when the perpetrator has suspected that the property was proceed is criminalized whitin the criminal offence of money laundering. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? Money laundering offence in Montenegro is established when the person ought to have assumed that the property was proceeds. It is prescribed in the article 268 paragraph 5 where it is stated that (5) Whoever commits the offence set forth in paragraphs 1 and 2 of this Article and could have known or should have known that the money or property are derived from criminal activity shall be punished by a prison sentence for a term not exceeding three years. There is no case law.
Netherlands	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Yes, Article 420quater of the Criminal Code: maximum of two years prison in case of reasonable suspicion that the object originates from an offence. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? Yes, Article 420quater of the Criminal Code: maximum of two years prison in case of reasonable suspicion that the object originates from an offence.

North Macedonia	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Answer Yes, taking into account explanation provided with footnote 2, incrimination of "Money laundering and other income from crimes" in article 273 of the Criminal Code of Macedonia covers and person whosoever is aware that the property is proceeds, ie. has been obtained through a crime. Namely, Macedonian legislation incriminates actions of person who knows, as well as, actions of person who ought to know (obligated and in position to know) that the money, the property and the other incomes were obtained through a crime. This is stipulated with article 273 para.1, para.2, para.3, para.4 and para.9 of the Criminal Code, as follows: "Money laundering and other income from crimes Article 273 (1) Whosoever brings into circulation or trade, receives, takes over, exchanges or changes money or other property being obtained through a punishable crime or whosoever is aware it has been obtained through a crime, or whosoever by conversion, exchange, transfer or in any other manner covers up their origin from such source or its location, movement or ownership, shall be sentenced to imprisonment of one to ten years. (2) The sentence stipulated in paragraph (1) of this Article shall be imposed to whosoever holds or uses property of object being aware to have been obtained by commission of a punishable crime or by forging documents, by not reporting facts or to whosoever in any other manner covers up their origin from such source, or covers up their location, movement and ownership. (3) If the crime stipulated in paragraphs 1 and 2 is performed in banking, financial or other type of business activity or if he, by splitting of the transaction, avoids the obligation for reporting in the cases determined by law, the offender shall be sentenced to imprisonment of at least three years. (4) Whosoever performs the crime stipulated in paragraphs 1, 2 and 3, yet he was obligated and in position to know that the money, the property and the other incomes from a punishable act were obtained through a crime, shall be fined or sentenced to imprisonment of up to three years. (5) Whosoever commits the crime stipulated in paragraphs 1, 2 and 3 as a member of a group or other association that is dealing with money laundering, illegal obtaining of property or other incomes from a punishable act, or with the assistance of foreign banks, financial institutions or persons, shall be sentenced to imprisonment of at least five years. (6) Official person, responsible person in a bank, insurance company, company for organization of games of chance, exchange office, stock exchange or other financial institution, attorney-at-law, except when in role of an attorney, notary or other person performing public authorizations or activities of public interest, who shall enable or allow transaction or business relation against his legal obligation or who shall perform transaction against a prohibition pronounced by a competent body or a temporary measure appointed in court or who shall fail to report laundering money, property or property benefit, for which he became aware during the performance of his function or duty, shall be sentenced to imprisonment of at least five years. (7) Official person, responsible person in a bank or other financial institution, or a person performing activities of public interest, who according to law is an authorized

entity for applying measures and activities for prevention of money laundering and other incomes from a punishable act, who shall without authorization reveal to a client or to an uninvited person data referring to the procedure for examining suspicious transactions or to applying other measures and activities for prevention of money laundering, shall be sentenced to imprisonment of three months to five years.

(8) If the crime is committed out of covetousness or for the purpose of using data abroad, the offender shall be sentenced to at least one year imprisonment.

(9) If the crime referred to in paragraph (7) of this Article is committed out of negligence, the offender shall be fined or sentenced to imprisonment of up to three years.

(10) If there are factual or legal obstacles for confirming a previously punishable act and prosecuting its offender, the existence of such act shall be confirmed based on the factual circumstances of the case and the existence of well-founded suspicion that the property has been obtained through such crime.

(11) The awareness of the offender, i.e. the duty and possibility to know that the property has been obtained through a punishable act can be confirmed based on the objective factual circumstances of the case.

(12) If the crime referred to in this Article is committed by a legal entity, it shall be fined.

(13) The income from a punishable crime shall be seized, and if seizing it it from the offender is not possible, other property corresponding to its value shall be seized.

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

Answer

Yes. In our laws, the criminal act "money laundering" also applies to a person who should assume that the property is a proceeds of a criminal act, which means that in addition to the intentional execution of this criminal act, the criminal act can be done by negligence. The duty and the possibility for the awareness that the property is a proceeds of crime is assessed according to the particular circumstances of the case, such as the official or other position and the professional obligations of the perpetrator, the amount of money or the value of the property being placed on the market (eg If an authorized person in a bank without a higher control receives a deposit from a person who knows that he has been in insolvency for a long time, is in bankruptcy, etc.). This is especially regulated by the provisions of Article 273 paragraph 4, Article 9, paragraph 10 and Article 11 of the Criminal Code, as follows:

“(4) Whosoever performs the crime stipulated in paragraphs 1, 2 and 3, yet he was obligated and in position to know that the money, the property and the other incomes from a punishable act were obtained through a crime, shall be fined or sentenced to imprisonment of up to three years.

(9) If the crime referred to in paragraph (7) of this Article is committed out of negligence, the offender shall be fined or sentenced to imprisonment of up to three years.

(10) If there are factual or legal obstacles for confirming a previously punishable act and prosecuting its offender, the existence of such act shall be confirmed based on the factual circumstances of the case and the existence of well-founded suspicion that the property has been obtained through such crime.

		(11) The awareness of the offender, i.e. the duty and possibility to know that the property has been obtained through a punishable act can be confirmed based on the objective factual circumstances of the case." In pervious reply please find full text of the article 273 of the Criminal Code.
Poland	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds?	Answer Polish Criminal Code of 1997 provides for the types of intent of a criminal offense. According to Art. 8 an indictable offence must involve intent; a summary offence may be committed without intent, where stated by the law. The question makes a reference to that particular situation where the law has to provide explicitly such possibility for the offense to be committed with no intent. The Art. 9 §2 of the Criminal Code states that a prohibited act is committed without intent where the offender does not intend to commit it, but does so out of a failure to exercise due care under the circumstances, even though the possibility of committing the prohibited act was foreseen, or could have been foreseen. The lawmaker foresaw in the art. 299§2 of the Criminal Code a responsibility of the bank employee in case of "circumstances raising a justified suspicion of an employee of a bank". In this particular situation the criminal responsibility is based on the fact of a failure to exercise due care. The issue requires to be elaborated further down. The entire provision says as follows: Art. 299 of Criminal Code. Money laundering. § 1. Anyone who receives, transfers or transports abroad, or assists in the transfer of title or possession of legal tender, securities or other foreign currency values, property rights or real or movable property obtained from the profits of offences committed by other people, or takes any other action that may prevent or significantly hinder the determination of their criminal origin or place of location, their detection or forfeiture, is liable to imprisonment for between six months and eight years. § 2. Anyone who, as an employee of a bank, financial or credit institution, or any other entity legally obliged to register transactions and the people performing them, unlawfully receives a cash amount of money or foreign currency, or who transfers or converts it, or receives it under other circumstances raising a justified suspicion as to its origin from the offences specified in § 1, or who provides services aimed at concealing its criminal origin or in securing it against forfeiture, is liable to the Criminality specified in § 1. To give more explanation to the grounds of subject side of liability we explain it, as follows: the reception of cash amount or foreign currency/proceeds provided by the Article 299.2 of the Criminal Code takes place in circumstances that raise a reasonable suspicion that they (the proceeds) are subject to the crime of money laundering. The expression introduced in the art.299 §2 of the Criminal Code indicates primarily the reduced requirements of evidence and affects the requirements set for the obliged entities and their employees. It is sufficient for an employee of an institution responsible for criminal liability to have an awareness of the social assessment of these circumstances. Employee's personal, subjective belief about the origin of the financial means/proceeds may be completely different. The legislator refers in this way to the professional experience of bank employees, financial institutions and credit institutions that should know what type of transaction they are dealing with. Experienced employees have higher requirements in terms of "vigilance" against the so-called money laundering.

	Negligence in this respect determines responsibility for the offense under art. 299 § 2 CC. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? Answer Different standards of legal responsibility for money laundering are to be created by the new Polish Law on Criminal Responsibility of Collective Entities. As for now the government adopted the draft law. There is no concept of classic intent like it was in the case of natural persons' criminal responsibility (art.8 of Polish CC quoted above). In order to describe the principles and circumstances of this type of responsibility we explain as follows. Inter alia, a condition of liability of the collective entity is the exhaustion of the elements of a prohibited act in case of: 1) at least the lack of due diligence in the selection of the person responsible in the supervision over them by a collective entity; 2) such an irregularity in the organization of the activities of a collective entity that facilitated or enabled the commission of a prohibited act, although another organization of activities could prevent the commission of that act. The irregularity may consists in: 1) the rules of conduct in the event of the threat of committing a prohibited act or the consequences of non-observance of the prudence rules were not specified, 2) the scope of responsibility of the bodies of the collective entity, other organizational units, its employees or persons authorized to act on its behalf or interest is not specified, 3) a person or an organizational unit supervising compliance with regulations and rules regulating the activity of an entity that is at least a medium-sized entrepreneur 4) the authority of the collective entity or natural person authorized to represent it, take decisions on its behalf or exercise supervision in connection with its activities in the interest or on behalf of that entity, knew of an irregularity in the organization that facilitated or enabled the commission of an offense. The above gives you in brief a view on how the responsibility of the collective entities will work in the context of money laundering. Of course, it requires the adoption of the law and first indictments to learn the court practice related to the law due to the fact that the solutions adopted in the law are innovative. In fact, it is the only possibility in which the legislation may allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds. In other words, if there had been no irregularity in the organization neither due diligence in selection of the person responsible – that person if properly selected would have assumed "that the property was proceeds" and consequently would not have committed a criminal offense.
Portugal	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds?

NO.

According to Article 9 (1) of the Convention, Each Party shall adopt such legislative and other measures as may be necessary to establish the offence of money laundering when the conducts foreseen in paragraphs a) to c) are committed intentionally.

Article 9 (3) states that each Party may adopt such legislative and other measures as may be necessary to establish as an offence under its domestic law all or some of the acts referred to in paragraph 1 of this article, in either or both of the following cases where the offender:

a) Suspected that the property was proceeds;
b) Ought to have assumed that the property was proceeds.

Money laundering is foreseen in Article 368-A of the Criminal Code as an intentional offence, meaning that negligent money laundering was not established in the Portuguese criminal law.

Article 368-A
Laundering

1 – For the purposes of the following paragraphs, advantages are assets derived from the commission, through any type of participation, of typical unlawful acts of sexual exploitation, sexual abuse of children or dependent minors, extortion, traffic in narcotic drugs and psychotropic substances, arms trafficking, trafficking in human organs and tissues, trafficking of protected species, tax fraud, influence peddling, corruption and other breaches set out in Article 1 (1) of Law no. 36/94, of 29 September, and Article 324 of the Industrial Property Code, and of typical unlawful acts punishable by a minimum penalty of more than six months' imprisonment and a maximum penalty of more than five years' imprisonment, as well as the assets obtained from these acts.

2 - Any person who converts, transfers, assists or facilitates, whether directly or indirectly, any operation of conversion or transfer of proceeds, obtained by himself or by a third party, for the purpose of disguising the illicit origin of the property or of assisting any person who commits or is involved in the commission of such an offence or offences to evade the legal consequences of his/her actions is punished by imprisonment for a term between two and twelve years.

3 - The same penalty applies when the person conceals or disguises the true nature, origin, location, disposal, movement or rights with respect to, or ownership, of the proceeds.

4 – The offences laid down in paragraphs 2 and 3 are punished even if the acts which constitute the predicate offence have been committed outside the national territory, or if the place where the offence was committed or the identity of the offenders remain unknown, except where these are lawful activities under the law of the place where they were committed and to which Portuguese law pursuant to Article 5 [of the Criminal Code] does not apply.

5 - The fact is punishable even if the criminal proceeding concerning the typical illicit acts from which the advantages come depends on the complaint and it has not been presented.

6 – The penalty provided for in paragraphs 2 and 3 is increased by one third if the offender commits the unlawful acts regularly.

	7 – Where the offender fully compensates the victim for the damage caused by the unlawful conduct whose practice derives the advantages, without causing illicit damage to a third person, until the beginning of the hearing in first instance court, the penalty is especially mitigated. 8 - Once the requirements set forth in the previous paragraph have been verified, the penalty may be especially mitigated if the compensation is partial. 9 – The penalty may be especially mitigated if the offender assists in the gathering of evidence that is essential for the identification and arrest of those who are responsible for committing the unlawful typical acts from which the advantages derive. 10 – The penalty applied in accordance under the terms of the preceding paragraphs may not exceed the maximum length of the highest penalty prescribed for the unlawful typical acts from which the advantages derive. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? NO. As referred to in the previous answer, negligent money laundering was not established in the Portuguese criminal law.
Republic of Moldova	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Answer The ML offence is criminalised under art.243 para (1) of the Criminal Code (CC) of the Republic of Moldova, as following: "(1) Money laundering committed by: a) the conversion or transfer of goods by a person who knew or should have known that such goods were illegal incomes in order to conceal or to disguise the illegal origin of goods or to help any person involved in the commission of the main offence to avoid the legal consequences of these actions; b) the concealment or disguise of the nature, origin, location, disposal, transmission, or movement of the real property of the goods or related rights by a person who knew or should have known that such were illegal incomes; c) the acquirement, possession or use of goods by a person who knew or should have known that such were illegal incomes; d) the participation in any association, agreement, complicity through assistance, help or advice on the commission of actions set forth in letters a)-c); shall be punished by a fine in the amount of 1350 to 2350 conventional units or by imprisonment for up to 5 years, in both cases with (or without) the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years, whereas a legal person shall be punished by a fine in the amount of 8000 to 11,000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal person." Paragraphs (2) and (3) of the art.243 of the CC set out the aggravated forms of the ML offence: "(2) The same actions committed:

[Letter a) excluded by Law No. 277-XVI of 18.12.2008, in force as of 24.05.2009]
b) by two or more persons;
c) by using of an official position,
shall be punished by a fine in the amount of 2350 to 5350 conventional units or by imprisonment for 4 to 7 years, with a fine imposed on the legal person, from 10000 to 13000 conventional units, with the deprivation of the right to exercise certain activities or with the liquidation of the legal person;
(3) The actions set forth in par. (1) or (2) committed:
a) by an organized criminal group or a criminal organization;
b) in extremely large proportions;
shall be punished by imprisonment for 5 to 10 years, with a fine imposed on the legal person, from 13000 to 16000 conventional units or with the liquidation of the legal person."

Para (4) of the art.243 of the CC provides that "(4) Illegal actions shall also be acts committed beyond the territory of the country provided that such acts include the constitutive elements of an offence in the state where they were committed and may be the constitutive elements of an offence committed on the territory of the Republic of Moldova."

The transposition of the art.9 para 3 letter a) of the CETS No. 198 in the domestic legislation of the RM could be supported by the following case studies.

Case of C.D. (investigated by National Anticorruption Center):
The case against the natural person C.D. was referred to court in July 2018.
C.D. was accused of committing ML offence in agreement with persons established abroad, who obtained criminal financial means from cyber fraud.
According to their agreement, in the period 2013-2015, aiming to disguise the nature and origin of the criminal money, C.D. received the total amount of 179.071 USD on different bank accounts and through Western Union system.
Knowing that received money were proceeds of crime, C.D. withdrew them in cash from the accounts periodically and transferred a part of them, 107.080 USD, through the Western Union system to several beneficiaries from the Republic Federal Republic of Nigeria, the United Kingdom and Benin, disguising the nature of these funds by declaring them in the banking forms under the heading "purpose of transactions / transactions" as material aid, free aid, financial aid, donations and gifts. According to prior agreements, C.D. acquired the difference of 71.991 USD and used them for his own needs.
C.D. pleaded guilty, requested a simplified procedure before the court.
By the sentence of the Chisinau District Court of 17.12.2018, C.D. was found guilty of committing the ML offense under art.243 par.(3) letter b) of the Criminal Code of the Republic of Moldova and convicted for 4 years of imprisonment, which was suspended for a probationary period of 4 years. By the same sentence the confiscation of the equivalent in MDL of the amount of 179.071 USD was disposed by the Court.

The case of B.A. (investigated by Prosecutor's Office for Combating Organised Crime and Special Cases):
A natural person B.A., between January and February 2018, realizing that money from illegal drug trafficking will be transferred to his bank account, via the "telegram" application, has transferred pictures of his bank card, opened on his name in a resident bank, to the author of the predicate offense.
As a result, between February 13, 2018 and July 11, 2018, money resulting from the drug trafficking was transferred to the account of the named person in the amount of 513.802 MDL.

During criminal prosecution, prosecutors interacted with FIU and, through international legal assistance, with the criminal investigating bodies in the Russian Federation, in order to pursue the transferred funds.
On August 9, 2018, the criminal case was referred to court, the physical person being charged with the money laundering offense, the money was placed under sequester.
B.A. pleaded guilty, requested a simplified procedure before the court.
By the sentence of the Chisinau District Court of 15.12.2018, B.A. was found guilty of committing the ML offense under articles 42 par.(5), 46, 243 par.(3) letters a) and b) of the Criminal Code of the Republic of Moldova and convicted for 3 years and 4 months of imprisonment, which was suspended for a probationary period of 1 year. By the same sentence the confiscation of the equivalent of the amount of 513.802 MDL was disposed by the Court.

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

Answer

The Moldovan CC allows a money laundering offence to be established where the person ought to have assumed that the property was proceeds of crime.

The relevant provisions are set out in the same article 243 para (1) letters a), b), c) and d) of the CC of the RM (see the previous box).

The transposition of the art.9 para 3 letter b) of the CETS No. 198 in the domestic legislation of the RM could be supported by the following case study.

Case of L.C. . (investigated by Anticorruption Prosecutor's Office):
The case against the natural person L.C. and the legal persons C.C. and B.E.I. was referred to court at 01.08.2017.
In the period 28.11.2012 – 23.10.2014, the non-resident company I.P.A., based in the Principality of Liechtenstein, received 440,100 USD on its bank accounts opened in the country of residence, as a result of 14 transfers from the companies T.T.C., P.I. and H.
The effective beneficiary and the manager, through intermediaries, of the non-resident company I.P.A. was the citizen of the Republic of Moldova L.C., ex-member of the Parliament of the Republic of Moldova.
Transfers have been made on the basis of fictitious contracts of providing consulting services, and the companies T.T.C., P.I. and H. were affiliated with a person involved in the so-called "fraud of the banking system" of the Republic of Moldova.
Thus, the effective beneficiary of company I.P.A. owned and used funds for a total amount of 440,100 USD of criminal origin, which he should have known about.
The conduct of L.C. has been qualified as money laundering in extremely large proportions.

On 27.03.2013, the resident company T.D.L. received a loan of 5,000,000 MDL, converted to 401,650 USD and transferred for purchasing of equipment to the bank accounts of the offshore company Z.P.L..
The effective beneficiary and the manager, through intermediaries, of the resident company T.D.L. was the same citizen of the Republic of Moldova L.C., ex-member of the Parliament of the Republic of Moldova.
On 27.12.2013, under a claim assignment contract, T.D.L. received 278,242 EUR from the non-resident company T.U., affiliated to the same person involved in the so-called "fraud of the banking system" of the Republic of Moldova. The money originated from a 3,886,730 USD credit granted by a Moldovan commercial bank to the resident company D.M.C., affiliated to the same person involved in the bank fraud.

	L.C., the effective beneficiary of the resident company T.D.L. used the amount of 278,242 EUR to reimburse the 5,000,000 MDL loan, although he should have known about the criminal origin of the funds. The conduct of L.C. has been qualified as money laundering in extremely large proportions. By decision of the Chisinau District Court of 04.04.2018, the defendant L.C. was found guilty of committing two ML offenses under art.243 par.(3) letter b) of the Criminal Code of the Republic of Moldova and convicted for 5 years 6 months of imprisonment, with the deprivation of the right to hold public positions for 4 years. The countervalues of 440,100 USD and 278,242 EUR were confiscated from the convicted person L.C.
Romania	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Article 9(3) of the Convention provides a possibility for the State Parties to adopt such legislative and other measures as may be necessary to establish as an offence under its domestic law all or some of the acts referred to in paragraph 1 of this article, in either or both of the following cases where the offender a. suspected that the property was proceeds, b. ought to have assumed that the property was proceeds. At points 97 and 98 from the Explanatory report of the Convention, it is underlined that "Paragraph 3.a provides for a lesser subjective mental element and could cover a person who gives the origin of the proceeds some thought (it is sufficient that he/she suspects the property was proceeds) but hasn't the firm knowledge that the property is proceeds. Paragraph 3.b suggests the criminalisation of negligent behaviour where the court objectively weights the evidence and determines whether the offender should have assumed the property was proceeds, whether or not he/she gave any thought to the matter. 98. Paragraph 3 criminalises acts other than those designated in the 1988 United Nations Convention. Paragraph 3 is optional. It follows that the fact that a Party decides not to adopt it in its internal law cannot be raised or criticised during the monitoring process envisaged by the Convention." 5. Also, the Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law provides, in art. 3 para 2, similarly with the Convention, the possibility for the Member States to take necessary measures to ensure that the ML activities are punished as offences when the perpetrator suspected or should have suspecting that the assets derived from the committing of offences. In RO, money laundering (ML) is criminalised under Article 29 of Law No. 656/2002 on the prevention and sanctioning of money laundering and on setting up of certain measures for the prevention and combating terrorism financing, as completed and amended, which makes liable to imprisonment from 3 to 10 years, the following criminal acts: (1) a) the conversion or transfer of assets, knowing that such assets are derived from the committing of offences, for the purpose of concealing or disguising the illicit origin of assets or of assisting any person who is involved in the committing of the offence from which the assets are deriving, to evade the prosecution, trial or punishment execution;

b) the concealment or disguise of the true nature of the origin, location, disposition, movement, rights with respect to, or ownership of assets, knowing that such assets are derived from the committing of offences;

c) the acquisition, possession or use of assets, knowing, that such assets are derived from the committing of offences.

(2) The attempt is punishable.

(3) If the offence was committed by a legal person, one or more of the complementary penalties referred to in article 136 para (3) (a) –(c) of the Criminal Code is applied, by case, in addition to the fine penalty.

(4) Knowledge of the assets origin or the purpose required as an element of the activities mentioned in the paragraph (1) may be inferred from objective factual circumstances.

(5) Provisions of para (1) – (4) shall be applied, irrespective of the facts that the predicate offence was committed on Romanian territory of abroad.

According to the Romanian legislation, the ML committed by negligence does not constitute a criminal offence. The various criminal actions provided under the money laundering incrimination (conversion or transfer; concealment or disguise, acquisition, possession or use [of assets]) must be accomplished with the mental element of "knowledge" of the illicit origin of assets in order to constitute a criminal offence (in accordance with article 9 paragraph 1 of CETS N° 198).

According to article 16 from the Romanian Criminal Code there is a distinction between intentional and negligent offences. The same article expressly provides that the offences committed with negligence are punishable only when expressly provided by the law, which is not the case for article 29 from Law No. 656/2002 – the AML Law.

Analysing the mental element of the ML offence provided by art. 29 para. (1) a) from Low no. 656/2002, the specialized literature as well as the judicial practice have interpreted that in the Romanian law the guilt is expressed through direct intention, qualified by purpose (the perpetrator predicts the socially dangerous result of his act and intents it):

- concealing or disguising the illicit origin of the assets, or
- assisting any person who is involved in the committing of the offence from which the assets are deriving, to evade the prosecution, trial or punishment execution.

6. With regard to art. 29 para. (1), b) and c) from Low no. 656/2002, republished, the guilt is expressed through direct intention, not qualified by purpose in this case, and indirect intention (predicts the result of his deed and even if he doesn't intend it, accepts the possibility of its occurrence).

As an example of jurisprudence, we would like to make reference to the Decision no. 454/2015 of the Criminal Section of the High Court of Cassation and Justice, presented below.

<u>* Short presentation of Decision no. 454/2015 of the Criminal Section from the High Court of Cassation and Justice</u>

Through Criminal Sentence no. 75 from 13 June 2014, pronounced by the Court of Appeal Bacau, the defendant was convicted for committing money laundering according to art. 29 para. (1) a) from Law nr. 656/2002, republished.

The Court noted that, considering the objective element for committing this offence, the following two conditions must be accomplished: the concealment or disguise of the true nature of the origin, location, disposition, movement, rights with respect to, or

	ownership of assets, knowing that such assets are derived from the committing of offences and the origin of the money to be the result of an offence incriminated by the criminal law. In this case the conditions were accomplished. The Court mentioned that the indirect intention was indicated by the defendant's attitude which knew the risks of her actions and accepted the illicit activity developed by another defendant, indicted in the same case. For individualizing the penalty, the Court took into consideration the degree of concrete social danger of the committed offences, the defendant's participation to the illicit activity and her attitude during the trial and convicted her to imprisonment, suspending the execution of the punishment according to the criminal law. The defendant appealed the Court decision to the High Court of Cassation and Justice and claimed acquittal for money laundering offence because she didn't try to conceal the origin of the money and moreover, she returned some of the money, giving to the criminal investigation bodies all the evidences that she possessed (e-mails between her and the other defendant, bank statements). She also said that she didn't know that the money were the result of a criminal offence. Moreover, money laundering is an offence committed with intent and not by negligence and considering this the money transfer between two bank accounts can't be interpreted as concealment. Analysing the appealed decision, the defendant's statements and taking into consideration the legislative provision for money laundering offence, the High Court of Cassation and Justice found that the defendant's activity of transferring the money from an account to another represent exactly the activity mentioned in art. 29 para. (1) a) from Law 656/2002. The defendant's affirmation of not knowing about the origin of the money was unfounded because she participated as an accomplice for committing abuse in office which was the predicate offence for money laundering in this case. For sustaining the idea of intentional behaviour, the High Court underlined the fact that the defendants' statements expressed to one of the witnesses and to the investigative bodies were contradictory. The High Court stated that doctrine and jurisprudence sustain the autonomy of money laundering, which means that is not necessary that the author of money laundering to have known the exactly nature, temporal circumstances, place or identity of the person, victim or author of the principal offence. Also, it's not necessary for the offender to know exactly the principal offence as origin of the money, the author of the principal offence or if this person is criminal liable or not. If the defendant knows, in the moment of his action, that the money is resulting from an offence, than he is considered the author of money laundering offence. The defendant's behaviour of cooperating with the investigative bodies reflected her attitude after committing the offence and was took into consideration by the Court of Appeal as mitigating circumstances. Taking into consideration all the evidences, the High Court considered that the Court of Appeal has pronounced the right decision and maintained it. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? Please see the previous answer.
Russian Federation	The responsibility for financial transactions and other deals with money and other property knowingly acquired by other persons in a criminal way for the purpose of bringing the appearance of legality to the possession, use and disposal of the said amounts of money and other property is stipulated in Part One of Article 174 of the Criminal Code of the Russian Federation.

	In accordance with paragraph 19 of Decision No. 32 of the Plenum of the Supreme Court of the Russian Federation of 7 July 2015 *On Judicial Practice in Cases Concerning the Legalization (Laundering) of Money and Other Property Acquired by Criminal Means and the Acquisition or Sale of Property Knowingly Obtained by Criminal Means*, when qualifying an act under Article 174 of the Criminal Code of the Russian Federation the court must establish that the perpetrator was aware of the criminal origin of the property involved in financial transactions and other deals conducted by him/her, as well as in the acts of acquisition or sale. At the same time, the law implies that the person may not be aware of the specific circumstances of the principal offence. Thus, the criminalization criterion of "knowingly" used in the disposition of Part One of Article 174 of the Criminal Code of the Russian Federation implies precise, reliable rather than presumptive knowledge by the person that the property involved in the transaction was acquired by criminal means. Accordingly, in cases where the person suspected or should have suspected that the property was criminal proceeds criminal liability does not arise under this Article.
San Marino	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds2? No. Please see, however, the attached supplementary document containing excerpts of the most relevant appeal judgements in this context. (3) Do your legislation and other measures allow for a money laundering offence to be established where the person ought to have assumed that the property was proceeds2? No. Please see, however, the attached supplementary document containing excerpts of the most relevant appeal judgements in this context.
Serbia	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Article 245, paragraph 1 of the Criminal Code reads as follows: Whoever converts or transfers assets knowing that such assets originate from a criminal activity, with the intention of concealing or misrepresenting the unlawful origin of the assets, or conceals and misrepresents facts on the assets knowing that such assets originated from a criminal activity, or obtains, keeps or uses assets with foreknowledge, at the moment of receiving, that such assets originated from a criminal activity shall be punished with imprisonment of six months to five years and fined. According to the above quoted provision, money laundering offence cannot be established in cases where the offender suspects that the property was proceeds. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? As per Article 245, paragraph 6 of the Criminal Code reads as follows: Responsible person with the legal entity who commits the ML offence shall be punished with the punishment prescribed for such an offence if he/she was aware, i.e. could know and was obliged to know that the money or assets were proceeds from a criminal activity.
Slovak Republic	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds?

		Articles 233 (Legalisation of the Proceeds of Crime) and 231 (Complicity) of Criminal code of the Slovak Republic can be applicable to intentional money laundering offences. Article 233 para 1 states the following: Any person who performs any of the following with regard to income or other property obtained by crime with the intention to conceal such income or thing, disguise their criminal origin, conceal their intended or actual use for committing a criminal offence, frustrate their seizure for the purposes of criminal proceedings or forfeiture or confiscation: a) transfers to himself or another, lends, borrows, transfers in a bank or a subsidiary of a foreign bank, imports, transits, delivers, transfers, leases or otherwise procures for himself or another, or b) holds, hides, conceals, uses, consumes, destroys, alters or damages, shall be liable to a term of imprisonment of two to five years. Also Articles 231 (Complicity) can be applied as answer to this question. Article 231 criminalise the intentional conduct as follows: Any person who conceals, transfers to himself or another, leases or accepts as a deposit a) a thing obtained through a criminal offence committed by another person, or b) anything procured in exchange for such a thing, shall be liable to a term of imprisonment of up to three years. (2) The offender shall be liable to a term of imprisonment of three to eight years if he commits the offence referred to in paragraph 1, a) and obtains larger benefit for himself or another through its commission, b) by reason of specific motivation, or c) uses such thing for his own business purposes. (3) The offender shall be liable to a term of imprisonment of seven to twelve years if he commits the offence referred to in paragraph 1, a) and obtains substantial benefit for himself or another through its commission, or b) acting in a more serious manner. (4) The offender shall be liable to a term of imprisonment of twelve to twenty years if he commits the offence referred to in paragraph 1, a) and obtains large-scale benefit for himself or another through its commission, or b) as a member of a dangerous grouping. The offence of Legalisation of the Proceeds of Crime according to article 233 and Article 231 of Criminal code of the Slovak Republic is connected to the intention of person as for examples the specific intention to conceal the criminal origin of property. The term “suspected” as stated in question suggest that the conduct of person to commit such offence is intentional therefore such action is punishable according to the Slovak law. When considering whether the property is derived from criminal activity and whether the person was aware of it, the specific circumstances of the case should be taken into account, such as the fact that the value of the property is disproportionate to the lawful income of the accused person and that the criminal activity and acquisition of

property occurred within the same time frame. Intention and knowledge can be inferred from objective, factual circumstances.

Legal persons are also criminally liable for such conduct according to same articles of Criminal code of Slovak Republic, however criminal liability is extended to negligible acts in accordance to article 4 para. 1 and para 2 of Act No. 92/2016 Coll. on Criminal liability of legal persons. The aforementioned article 4 para 1 and para 2 states the following:

(1) A legal person is considered to have committed a criminal offence under Section3(list of criminal offences liable for legal persons) if the criminal offence was committed for its benefit, on its behalf, as part of or through its activities by

(a) its statutory body or a member of its statutory body,

(b) a person performing control or supervision within the legal person, or

(c) another person authorised to represent the legal person or make decisions on its behalf.

(2) A legal person is considered to have committed a criminal offence under Section 3 also if a person referred to in paragraph 1 fails, even if by negligence, to properly perform its control and supervision duties, thus allowing a criminal offence being committed by a person acting within the scope of authority conferred by the legal person.

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

Article 234, para. 1 together with Article 232 of Criminal Code of the Slovak Republic regulates this unlawful conduct.

Articles 232 (Complicity) criminalise the negligible conduct as follows:

(1) Any person who, by negligence, conceals or transfers to himself or another a thing of considerable value obtained through a criminal offence committed by another person, shall be liable to a term of imprisonment of up to one year.

(2) The offender shall be liable to a term of imprisonment of between six months and three years if he commits the offence referred to in paragraph 1, and enables another to disguise the origin or disclosure of a thing obtained through a criminal offence committed in the territory of the Slovak Republic or abroad.

(3) The offender shall be liable to a term of imprisonment of one to five years if he commits the offence referred to in paragraph 1,
a) and obtains substantial benefit for himself or another,
b) acting in a more serious manner, or
c) with respect to things originated from the trafficking in narcotics, psychotropic, nuclear or high risk chemical substances, or from another particularly serious felony.

(4) The offender shall be liable to a term of imprisonment of three to eight years if he commits the offence referred to in paragraph 1,and obtains large-scale benefit for himself of another through its commission.

	Legal persons are held responsible in accordance with article 4 para. 1 and para 2 of Act No. 92/2016 Z.z. of Criminal liability of legal persons (see the text of this article in previous question). Article 234, para. 1 of Criminal Code of the Slovak Republic reads as follows: Any person who fails to inform or report a) the facts indicating that other person has committed the criminal offence of laundering the proceeds of crime pursuant to Section 233, or b) an unusual business transaction, although he has such obligation by virtue of his employment, profession, position or function, shall be liable to a term of imprisonment of two to eight years. According to Article 234, the persons who are eligible for such offence are persons which have duty to report such unlawful conduct and fail to do so. Although this offence is considered as intentional offence, we assume it can be partly fit into scope of this question. The definition of Article 234 of Criminal Code of Slovak republic, mainly the first part, i.e. “Any person who fails to inform or report” is covered by definition of article 9 para 3 letter b) of this convention, i.e. “ought to have assumed”. According to our understanding, if the person ought to have assumed something, this can be interpreted as person who had the obligation or duty to assume or know that the property was proceeds, therefore failure of these obligation can be criminal conduct as stated in Article 234 para. 1 of Criminal Code of the Slovak Republic.
Slovenia	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? We understand the term “suspected” in a sense of dolus eventualis which is in legal theory an intent present when the perpetrator objectively foresees the possibility of his act causing prohibited/illegal consequences. Slovenian criminal code provides this form of intent as a specific form of intent with which a criminal offence can be committed. See Art. 25 of the Criminal Code: http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5050 Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? The type of criminal liability you refer to in your question is consistent with a type of negligence that occurs, when the perpetrator was not aware that he can commit an offence but should and could be aware of it with in view of the circumstances and his personal attributes. This is a concept analogous to the German “unbewusster Fahrlässigkeit”. Article 26 of the Criminal Code provides for the incrimination of this type of negligence. Money laundering offence can be committed also with negligence, see Art. 245, para. 5 of the Criminal Code: http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5050

Spain	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Yes. Article 301.3 of the Spanish Criminal Code criminalizes money laundering perpetrated due to gross negligence. Even if this provision does not expressly define the actions which constitute “gross negligence”, it shall be considered that it includes those cases where the person could have easily known that the property came from a criminal origin if he had acted with due diligence. In this sense, Spanish Supreme Court´s case law states that although the application of Article 301.1 does not require that the person knew the origin of the goods, it is necessary that the circumstances of the case had allowed him to know it only by observing the normal diligence standards. Article 301 of the Criminal Code: 1. Whoever acquires, possesses, uses, converts or conveys assets, knowing they originate from a criminal activity, committed by himself or by any third party, or who perpetrates any other deed to hide or conceal their unlawful origin, or to aid the person who participated in the criminal offence or criminal offences to avoid the legal consequences of his deeds, shall be punished with a sentence of imprisonment of six months to six years and a fine from one to three times the value of the goods. In these cases, the Judges or Courts of Law, in view of the severity of the deed and the personal circumstances of the offender, may also sentence him to the punishment of special barring from exercise of his profession or industry for a term from one to three years, and order the measure of temporary or definitive closing of the establishment or premises. If the closing is temporary, its duration may not exceed five years. The punishment shall be imposed in its upper half when the assets have their origin in any of the criminal offences related to trafficking of toxic drugs, narcotics or psychotropic substances described in Articles 368 to 372 of this Code. In these cases, the provisions set forth in Article 374 of this Code shall be applied. The punishment shall also be imposed in its upper half when the assets originate from any of the criminal offences included in Chapters V, VI, VII, VIII, IX and X of Title XIX or in any of the criminal offences of Chapter I of Title XVI. 2. The same penalties shall be used to punish, as appropriate, hiding or concealment of the true nature, origin, location, destination, movement or rights of the assets, or their ownerships, knowing that the originate from any of the criminal offences described in the preceding Section or a deed of participation therein. 3. Should the deeds be perpetrated due to gross negligence, the punishment shall be imprisonment from six months to two years and a fine of one to three times thereof. 4. The offender shall also be punished even though the criminal offence from which the assets, of the deeds punishable pursuant to the preceding Sections may have been committed, full or partially, abroad. 5. Should the offender have obtained gains, these shall be confiscated pursuant to the rules of Article 127 of this Code.

	Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? See the previous answer.
Sweden	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Article 9.3 a, which is optional, has not been adopted in Swedish law. However, under Section 6, second paragraph of the Money Laundering Offences Act (Annex A), a money laundering offence can be established where the person ought to have assumed that the property was proceeds. In other words, in situations where the person suspected that the property was proceeds a money laundry offence can be established under section 6, second paragraph of the Money Laundering Offences Act. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? Yes, the Swedish legislation do allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds. Money laundering misdemeanour A person is guilty of a money laundering misdemeanour if he or she did not realise but had reasonable cause to assume that the property derived from an offence or criminal activities. These acts of carelessness under Section 6, second paragraph refer to money laundering offences under Sections 3 and 4 (Annex A). It is possible for the intent and knowledge required to prove the money laundering offence to be inferred from objective factual circumstances. According to the Swedish Code of Judicial Procedure, the court, after evaluating everything that has occurred in accordance with the dictates of its conscience, shall determine what has been proved in the case (Chapter 35, section 1 [Annex B]). Section 3 of the Act on Penalties for Money Laundering Offences establishes that a person is guilty of a money laundering offence if he or she - transfers, acquires, converts, stores or takes another such measure with the property - or supplies, acquires or draws up a document that can provide a seeming explanation for the possession of the property, participates in transactions that are carried out for the sake of appearances, acts as a front or takes another such measure. A person is also guilty of a money laundering offence if he or she, without the measure having a purpose such as is indicated in above, improperly promotes the possibility of someone converting money or other property deriving from an offence or criminal activities (section 4). Sweden has an “all crimes” approach which means that all criminal offences which generate proceeds can be predicate offences to money laundry. The Swedish criminal legislation covers all categories of offences. No limitation or threshold is placed on the predicate crime. This means that not only offences involving alienation or acquisition

		can constitute a valid predicate offence to money laundering; offences by which someone is enriched as a result of a tax/customs offence or other evasion offence are encompassed by the term “property deriving from an offence or criminal activities” and can thus be a predicate offence to money laundering. Through the broad requisite of “criminal activities”, the preparatory works make clear that it is not necessary to be able to demonstrate that the property derives from a particular concrete offence. A prosecutor is to be able to point to concrete circumstances indicating criminal activities of a particular type, such as economic crime or narcotics crime. Details on their extent and focus do not need to be supported. The requisite is satisfied even if it cannot be demonstrated that any more specified acts have taken place (Government Bill 2013/14:121, p. 109). To summarize, where the person ought to have assumed that the property was proceeds a money laundering offence can be established under section 6, second paragraph of the Money Laundering Offences Act.
Türkiye	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds?	Yes Conceptually, intention is described as the commission of actions given place in the legal definition of an offense willingly and knowingly in Turkish criminal system [Article 21(1) of the Turkish Criminal Law-TCL]. In this regard, the perpetrator shall be culpable if he/she is aware of the actions given place in the legal definition of the offense and he/she wants the result. In regard to “negligence”, acts conducted with negligence shall be subject to a penalty only where explicitly prescribed by law according to article 22(1) of the TCL. Accordingly, offences which can be committed by negligence are restricted and they shall be notified in the legal definition of offences. The relevant Article of the Turkish Criminal Code reads: Article 21 titled "Intent" – (1)) The existence of a criminal offence depends upon the presence of intent. Intent is defined as knowingly and willingly conducting the elements in the legal definition of an offence. (2) There is probable intent when the individual conducts an act while foreseeing that the elements in the legal definition of an offence may occur. Accordingly, for offences that require a penalty of aggravated life imprisonment, life imprisonment shall be imposed; for those offences that require a penalty of life imprisonment, a term of twenty to twenty-five years of imprisonment shall be imposed; otherwise the penalty shall be reduced by one-third to one-half. When it comes to money laundering (ML) offence, the legal definition is set out in the Article 282 of the TCL as below: Article 282 Laundering of Assets Acquired from an Offence (1) A person who transfers abroad the proceeds obtained from an offence requiring a minimum penalty of six months or more imprisonment, or processes such proceeds in various ways in order to conceal the illicit source of such proceeds or to give the impression that they have been legitimately acquired shall be sentenced to imprisonment from three years up to seven years and a judicial fine up to twenty thousand days

(2) A person who, without participating in the commitment of the offence mentioned in paragraph (1), purchases, acquires, possesses or uses the proceeds which is the subject of that offence knowing the nature of the proceeds shall be sentenced to imprisonment from two years up to five years."

In this regard, the definition of ML offence in Article 282(1)of the TCL clearly points out that ML offence can be committed intentionally which is the mental element (mens rea) of the offence.

In Turkish Criminal Law, the intention is divided into two groups:

(i) The "direct intention" is laid down in Article 21(1) of the TCL. It means the commitment of an offence knowingly, willingly and being aware of the components defined in the statute.

(ii) The "possible intention" is established in Article 21(2) of the TCL. Where a person commits an offence knowing the fact that the components defined in the statute might emerge, possible intention is supposed to exist.

In regard to ML offence, it is sufficient for the perpetrator to presume the fact that the proceeds he laundered derive from a predicate offence. Laundering offence can be committed directly or by possible intention (Article 21/2 of the TCL),which implies that intent and knowledge can be understood from objective factual circumstances. Additionally, it should be noted that there is not any restriction in the wording of ML offence set forth in Article 282(1) with regard to the fact that ML offence can only be committed with direct intention.

For this reason, the offence of laundering, regulated in Article 282(1) of the Turkish Criminal Code, can be committed through probable intent in terms of certain criminal conducts. As is seen, the first paragraph of the aforementioned Article includes alternative criminal conducts regarding how the offence of laundering can be committed. These conducts are listed as:

A- Transferring abroad;

B- Processing such asset to conceal its source or give the impression that it has been legitimately acquired

Through the act of "transferring abroad", the offence of laundering can be committed by probable intent. For example, if a delivery person receives a bag filled with money acquired as a result of drug trafficking and transfers it abroad for his own personal gain, despite predicting that the money could not have been acquired through legal ways, he should be punished in accordance with the provisions relating to probable intent.

Different opinions exist in the Turkish academic world regarding whether the act specified in B can be committed by probable intent. However, it is generally accepted that it cannot be committed by probable intent as the lawmaker has consciously preferred to use the term "... to give the impression that..." when defining the act of "processing". In other words, the intent through which the act should be committed is clearly emphasized in the Article. Therefore, it is not possible for an act to be committed through both a specific intent and "probable intent". As a result, its application is limited to the act of "transferring abroad" in terms of the first paragraph of Article 282.

On the other hand, it is considered that the offense prescribed in the second paragraph of the Article 282 of TCL can only be committed by direct intention. Briefly, it is necessary for the perpetrator to know that the proceeds he purchases, accepts, possesses or uses is the laundered proceeds of offense in Article 282(2). This

	inference stems from the term "...by being aware of its such nature..." used in the second paragraph of Article 282. Furthermore, it is also stated in the grounds of the relevant Article that this offence can only be committed by direct intent. The grounds of the Article refer to the document indicating the reasons for passing the law or amending the Articles, which should be included in draft laws and bills of law. This document is not binding for judicial authorities when they apply the law; however, it should be taken into consideration as it specifies the reason for the adoption of the law. In conclusion, the offence stated in the second paragraph of Article 282 of the Turkish Criminal Code can only be committed by direct intent. Do your legislation and other measures allow a money laundering offence to be established where the person ought to have assumed that the property was proceeds? No As it is pointed out in paragraph 97 of the Explanatory Report of CETS 198, Article 9(3)(b) refers to the fact that negligent behaviours may give rise to the criminalization of ML offence. In this regard and as it is explained in detail above, ML offence cannot be committed by negligence according to TCL. Furthermore, paragraph 98 of the Explanatory Report indicates that this standard, which goes beyond the requirements set out in 1988 UN Vienna Convention, is optional and countries cannot be criticized in case of non compliance with this article.
Ukraine	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? Article 209 of the Criminal Code of Ukraine envisages criminal responsibility for «Legalization (laundering) of proceeds from crime», i.e.: 1. Conducting financial transaction or concluding an agreement involving money or other property obtained as a result of committing a socially dangerous unlawful action which preceded legalization (laundering) of proceeds, as well as carrying out actions aimed at concealing or disguise of illegal origin of such money or other property or possession thereof, rights to such money or property, source of their origin, location, displacement, changing of form (conversion), as well as acquiring, owing, or disposing of money or other property obtained as a result of committing socially dangerous unlawful action which preceded legalization (laundering) of proceeds, - shall be punished by imprisonment for a term of from three to six years, with deprivation of right to hold certain positions or carry out certain activities for a term of up to two years, with confiscation of property. 2. Actions as referred to in paragraph 1 of this Article, if committed repeatedly or by a group of persons upon prior conspiracy, or if committed in large amounts, - shall be punished by imprisonment for a term of from seven to twelve years, with deprivation of right to hold certain positions or carry out certain activities for a term of up to three years, with confiscation of property. 3. Actions as referred to in paragraph 1 or 2 of this Article, if committed by an organized group or if committed in especially large amounts, - shall be punished by imprisonment for a term of eight to fifteen years, with deprivation of right to hold certain positions or engage in certain activities for a term up to three years, with forfeiture of money or other property obtained as proceeds from crime, and with confiscation of property.

Note. 1. A socially dangerous unlawful action which preceded legalization (laundering) of proceeds Under this Article, is considered an action, for which the Criminal Code of Ukraine envisages the main punishment of imprisonment or a fine of more than three thousand of non-taxable minimum incomes of citizens, or an action committed abroad, in case it is considered as a socially dangerous unlawful action which preceded legalization (laundering) of proceeds according to the law of State, where the action was committed, and is a crime under the Criminal Code of Ukraine, and as result of which illegal proceeds were obtained.

2. Legalization (laundering) of proceeds from crime is considered to be committed in large amounts if the value of money or other property involved in crime concerned exceeds six thousand of non-taxable minimum incomes of citizens.

3. Legalization (laundering) of proceeds from crime is considered to be committed in especially large amounts if the value of money or other property involved in crime concerned exceeds eighteen thousand of non-taxable minimum incomes of citizens.

Article 9 of the CETS.198 distinguishes cases where the offender carried actions concerning property, knowing that such property is proceeds (Para 1), and cases where the offender suspected that the property was proceeds and/or ought to have assumed that the property was proceeds (Para 3).

Article 209 of the Criminal Code of Ukraine does not provide such distinction and for the qualification of actions according to Art. 209 of the Criminal Code of Ukraine the exact knowledge of person about character and particular circumstances of committing predicate offence is not required. It is sufficient that the person assumed or suspected, that property is proceeds.

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

Article 209 of the Criminal Code of Ukraine envisages criminal responsibility for «Legalization (laundering) of proceeds from crime», i.e. for conducting financial transaction or concluding an agreement involving money or other property obtained as a result of committing a socially dangerous unlawful action which preceded legalization (laundering) of proceeds, as well as carrying out actions aimed at concealing or disguise of illegal origin of such money or other property or possession thereof, rights to such money or property, source of their origin, location, displacement, changing of form (conversion), as well as acquiring, owing, or disposing of money or other property obtained as a result of committing socially dangerous unlawful action which preceded legalization (laundering) of proceeds.

Under the Note to Art. 209 of the CC of Ukraine a socially dangerous unlawful action which preceded legalization (laundering) of proceeds Under this Article, is considered an action, for which the Criminal Code of Ukraine envisages the main punishment of imprisonment or a fine of more than three thousand of non-taxable minimum incomes of citizens, or an action committed abroad, in case it is considered as a socially dangerous unlawful action which preceded legalization (laundering) of proceeds according to the law of State, where the action was committed, and is a crime under the Criminal Code of Ukraine, and as result of which illegal proceeds were obtained.

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	exact knowledge of person about character and particular circumstances of committing predicate offence is not required. It is sufficient that the person assumed or suspected, that property is proceeds.
United Kingdom	(3) Do your legislation and other measures allow for a money laundering offence to be established where the person suspected that the property was proceeds? S.327-329 Proceeds of Crime Act 2002 (POCA) provide for the principal money laundering offences. Each of the offences criminalises involvement with criminal property. Under s.340(3) of POCA property is criminal property if (a) it constitutes a person's benefit from criminal conduct or it represents such a benefit, and (b) the alleged offender knows or suspects that it constitutes or represents such a benefit. As such, each of the offences can be committed where the person suspected the property was the proceeds of crime. s327: An offence is committed if a person conceals, disguises, converts, transfers or removes from the jurisdiction property which is, or represents, the benefit of criminal conduct (i.e. the proceeds of crime) and the person knows or suspects represents such a benefit. s328: An offence is committed when a person enters into or becomes concerned in an arrangement which he knows or suspects will facilitate another person to acquire, retain, use or control benefit from criminal conduct and the person knows or suspects that the property is benefit from criminal conduct. s329: An offence is committed when a person acquires, uses or has possession of property which he knows or suspects represents benefit from criminal conduct. In addition to the money laundering offences set out in Sections 327 – 329 of the Proceeds of Crime Act 2002 (POCA), Section 330 of POCA provides that it is an offence for a person acting in the course of business in the regulated sector to fail to report, either to a nominated officer or to the National Crime Agency (NCA), that they know or suspect, or have reasonable grounds for knowing or suspecting, that another person is engaged in money laundering. The suspicious activity report (SAR) must contain relevant information, if available, such as the name of the person, the whereabouts of the laundered property and any information on which the suspicion is based. The offence is committed if the "required disclosure" is not made. The "required disclosure" is defined at Section 330(4) as being a disclosure to a nominated officer, or to a person authorised by the Director General of the NCA, which has been made in the form and manner (if any) prescribed under the order making power at Section 339. No offence is committed where a person has a reasonable excuse for not making the required disclosure. Neither is an offence committed if the person is a professional legal adviser or relevant professional adviser and he received the information in privileged circumstances. No offence will be committed by staff who have not been provided by their employer with the training specified by the Secretary of State concerning the identification of transactions which may be indicative of money laundering, as long as the staff member does not actually know or suspect money laundering. No offence is committed where a person knows or believes on reasonable grounds that the money laundering is occurring outside the UK and the money laundering is not unlawful under the criminal law applying in that place, and it is not of a description prescribed by the Secretary of State. The scope of Section 330 extends to inchoate offences such as conspiracy by reason of the definition of money laundering in Section 340(11).

Section 331 creates an offence where a nominated officer who receives a report under Section 330 (the failure to disclose offence) which causes him to know or suspect or gives reasonable grounds for knowledge or suspicion, that money laundering is taking place, does not disclose that report as soon as practicable after the information comes to him. Subsection (4) specifies that the "required disclosure" which a nominated officer must make, has to be made to the National Crime Agency, in the form and manner (if any) prescribed by the order making power at Section 339.

Section 332 creates an offence where a nominated officer who receives a report under Section 337 or 338 (in other words, a disclosure in relation to one of the principal money laundering offences or a voluntary disclosure) which causes him to know or suspect that money laundering is taking place does not disclose that report as soon as practicable after the information comes to him. The nominated officer is required to disclose to the National Criminal Agency in the form and manner (if any) prescribed by Section 339. This clause applies to nominated officers both in the regulated sector and outside the regulated sector.

The penalty for these offences is up to a maximum of five years in prison.

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

No, the s.327-329 POCA principal money laundering offences can only be committed where a person “knows or suspects” property constitutes a criminal penalty and not where they ought to have assumed.

However, the failure by someone in the regulated sector to report a suspicion of money laundering offences under s.331 and s.332 of POCA can be committed where the person had “reasonable grounds for knowing or suspecting, that another person is engaged in money laundering”. This is an objective test, where the person in the regulated sector ought to have assumed money laundering. This obligation to report is in addition to where they “know or suspect” money laundering.
Imposing liability for negligence on those in the regulated sector is justified to encourage diligent reporting from those best placed to spot money laundering. Given that the principle money laundering offences can be committed by those outside the regulated sector including non-professionals, in addition to those in it, a negligence element would be too onerous. As such, we have not taken up the invitation in Article 9(3)(b) of the Convention in relation to the principle offences.