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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)

Follow-up analysis of the Thematic Monitoring Review of the Conference of the Parties to CETS No.198 on Article 3 (4) ("Confiscation measures")[1]

[1] Adopted by the Conference of the Parties to CETS No. 198 at their 17th meeting, Strasbourg, 4 – 5 November 2025.

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INTRODUCTION

1. The Conference of the Parties (hereinafter: "the COP"), at its 9th meeting held in Strasbourg from 21 to 22 November 2017, decided to initiate the application of a horizontal thematic monitoring mechanism for an initial period of two years. The 11th meeting of the COP (held in October 2019) decided to prolong the application of a horizontal monitoring for the next five years (i.e., until 2024). Subsequently, at its 16th meeting (held in October 2024), the COP decided to extend, for another five years (i.e. until 2029) the application of rule 19bis of the Rules of Procedure, which serves as a basis to conduct horizontal reviews. Such review looks at the manner in which all States Parties implement selected provisions of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS no. 198, hereinafter: "the Warsaw Convention"). To that effect, the COP adopted a new Rule 19bis of the Rules of Procedures.

2. Further to this, the COP amended its Rules of Procedure with regard to the application of the follow-up process. To that end, Rule 19bis(20) states that '*the Conference may decide that those Parties whose implementation of a certain provision of the Convention was not considered satisfactory report back on progress made within three years' time at the latest, taking into account the nature of the recommendations rendered in the thematic monitoring reports. State Parties which declared not to apply the Articles selected to be assessed through the thematic monitoring shall be exempted from the follow – up process on these Articles*.'

3. Consequently, at its 15th meeting held in Strasbourg in November 2023, the COP decided to launch a follow up process on Thematic Monitoring Report on the application of Article 3(4) of the Convention in 2025. The further outcomes of the follow up procedure are explained below.

METHODOLOGY

4. The Conference of the Parties, at its extraordinary meeting held in Strasbourg (12 May 2021), discussed and adopted the thematic monitoring report on Article 3(4) of the Convention. The report was further amended following the ratification by Lithuania (2021), the receipt of inputs from the UK (2021), the ratification by Estonia (2023) and Morocco (2024), and the extension of the Convention to Aruba (2024).

5. The thematic monitoring report on Article 3(4) established the extent to which States Parties have legislative or other measures in place to provide the possibility for the burden of proof to be reversed regarding the lawful origin of alleged proceeds or other property liable to confiscation in serious offences. The definition of the notion of serious offence for the purpose of the implementation of this provision is left to the domestic law of the Parties. In addition, the COP adopted Interpretative Note on Article 3(4) and was further revised by the scientific expert.

6. The Horizontal Review contains a number of general recommendations following the summary findings, as well as country-specific recommendations following the individual state's analysis.

7. This first follow-up report analyses the progress made by the following countries: the Republic of Moldova, Monaco, Spain and San Marino, in implementing Article 3 paragraph 4 ("confiscation measures"). These countries are being assessed in relation to the referred

article, reflecting ongoing efforts to ensure their compliance with these requirements of the Warsaw Convention.

8. This analysis, however, does not assess the implementation of 'soft recommendations' which aim at better implementation of the articles concerned (e.g. maintaining statistics), or enhanced application of the provisions concerned.

ARTICLE 3 (4)

9. The following general recommendations with regard to the implementation of Article 3(4) were made in the 2021 report:

"With the aim to promote a harmonised approach across the COP States Parties, it is recommended to consider the following actions depending on States Parties' level of application of Art.3(4):

a) States Parties that declared that they would not, in full or in part, apply Art.3(4), are invited to give proper consideration whether their declarations are still needed (Azerbaijan, Bulgaria, Estonia, Georgia, Germany, Greece, Italy, Poland, Republic of Moldova, Romania, Russian Federation, Slovak Republic, Slovenia, Sweden, Turkey, Ukraine and UK). In particular, the States Parties which, despite declarations made, apply Art. 4(3) either through the legislation or case law, are encouraged to consider withdrawing their declarations. In fact, these States Parties should not exclude such legislative measures to be established (by declarations made under Art. 53 (4) a, b or c) if the reversal of burden of proof has proven to be consistent with the principles of their domestic law (Georgia, Germany, Italy, Poland, Russian Federation, Slovenia and Ukraine).

b) States Parties that have not made declarations and which still do not have reversal burden of proof provided for in their legislation (including where the highest judicial authorities confirmed that this principle cannot be applied through the existing laws), are invited to adopt legislative or other measures to establish a reversal of burden of proof for serious offences in line with Art.3(4) of the Warsaw Convention and to the extent which is consistent with the principles of domestic law (Monaco, Morocco, San Marino and Spain).

c) States Parties which introduced Art.3(4) through their legislation/case law, but still impose certain limitations in its applications, are invited to implement the specific recommended actions provided in the 'Country Review' chapter (Denmark, the Netherlands, Albania, Georgia).

In addition, and with the aim to improve the application of Article 3(4), States Parties which introduced Article 3(4) in their domestic legal systems are invited to consider:

a) Developing case law and providing specific guidance to law enforcement/judiciary on national/international good practices in applying the principle of reversal of burden of proof; and

b) Raising awareness/tailoring and providing specific training to law enforcement and judiciary on implementation of reversal of burden of proof in practice."

10. The country specific analysis, which is provided below, aimed at assessing any progress made in implementing country specific recommendations from the 2021 Report and is largely based on the responses to the follow-up question provided by States Parties.

The Republic of Moldova

11. The country made a declaration in respect of Art.3(4) stating that the provisions of Article 3 paragraph (4) shall apply only partially, in accordance with the principles of the domestic law. In the 2021 horizontal review, it was concluded that the Rupublic of Moldova introduced the concept of extended confiscation aiming at increasing the effectiveness of the confiscation regime of the Convention. Nevertheless, the Constitutional Court interpreted relevant provisions dealing with the extended confiscation in the way that there is no possibility to apply the reversal of the burden of proof. The country was recommended to consider introducing the reversal of the burden of proof as required by the Article 3(4).
12. In their responses to the 2025 follow-up questionnaire, the authorities indicated that they have undertaken several steps in order to enable the application of the reversal of the burden of proof. Namely, the criminal procedure legislation was amended in 2022 to consolidate the legal framework on the extended confiscation. Following the legislative amendments, the Constitutional Court reviewed its earlier decision, particularly the section emphasising that the burden of proof must lie with the state authority. In March 2022 the Constitutional Court amended its position and stated that "the burden of proving the lawful origin of assets may legitimately be shifted to the defendants in non-criminal confiscation proceeding". It can be concluded that, following the change in the interpretation of the provisions dealing with the extended confiscation, the reversal of the burden of proof in Moldova could be applied in this proceeding in practice. In addition, the authorities further informed that in 2023 they have initiated the drafting process of the law enabling civil confiscation where the reversal of the burden of proof will be explicitly introduced.
13. It should be noted that these are positive developments undertaken by the authorities to implement the requirements of Article 3(4) of the Convention in the Republic of Moldova. It is therefore recommended to the country to consider whether the declaration made is still needed.

Monaco

14. In the context of the 2020 horizontal review, Monaco was recommended to introduce the reversal of burden of proof in its legislation, in accordance with Article 3(4) of the Convention.
15. In their responses to the 2025 follow-up questionnaire, the authorities indicated that in February 2022 Article 12(2) of the Criminal Code was amended by the Law n° 1.521 introducing a legal basis for the implementation of the extended confiscation of assets. According to the new provision the court can confiscate the assets whose lawful origin cannot be justified by convicted person or the owner of the assets. The prior requirement for the initiation of the extended confiscation proceeding is a conviction for any serious offence (punishable by at least 3 years of imprisonment). The assets shall be confiscated unless the defendant or the owner can prove that they originate from the legitimate sources.
16. The authorities provided several case examples where within the ML investigations/convictions assets were seized and confiscated. Nevertheless, based on the descriptions provided by the authorities, it cannot be concluded that these assets were confiscated within the extended confiscation procedure which would allow for the reversal of the burden of proof to be applied.
17. It can be concluded that Monegasques legislation provides for the reversal of the burden of proof to be applied in the extended confiscation proceedings. A convicted person may prevent confiscation by demonstrating that the proceeds and other property liable for confiscation have

legitimate origin. However, the effective implementation hasn't been demonstrated through case law. The authorities are encouraged to develop jurisprudence in this area.

Spain

18. In 2020 Horizontal Monitoring Review it was stated that Spanish Criminal Code (CC) provides for the possibility to apply extended confiscation. According to Article 127 bis of CC, in cases where, with well-founded objective indications, the goods shall be confiscated if they derive from previous criminal activity and if their specific lawful origin is not proven. The report further acknowledged that specific provisions of the Criminal Code ask for the proof of legal origin of the assets liable to confiscation, nevertheless, the burden of proof according to the general CC principles lies with LEA/prosecution. Therefore, it was concluded that the reversal of the burden of proof was not included in the Spanish legislation as required by Article 3(4) of Convention.
19. In their response to the 2025 follow-up questionnaire, the authorities reaffirmed legal provisions concerning extended confiscation. They also emphasised that it is the prosecutor's responsibility to establish the link between the evidence and the alleged offence, while the defendant is responsible for proving the lawful origin of the assets. The authorities presented a Supreme Court judgment, contending that the reversal of the burden of proof is applied in practice within the confiscation procedures. However, it was noted that the example did not unequivocally demonstrate that the requirements of Article 3(4) of the Convention have been met. Since no legislative changes have been proposed in Spain regarding the reversal of the burden of proof, since the adoption of the 2021 report, and presented case law did not sufficiently demonstrate the implementation, it cannot be concluded that the country has met the requirements of Article 3(4) of the Convention.

San Marino

20. In the response to the 2025 follow-up questionnaire, San Marino highlighted that in 2022 the criminal legislation was amended to implement the reversal of the burden of proof in confiscation matters. The amendments were introduced in the Code of Criminal Procedure (CCP) by Law No. 24 of 2022. According to the new legal provisions, the courts are empowered to confiscate money and other assets, whose lawful origin the defendant cannot prove. This confiscation procedure can be initiated in case of certain serious offences (article 58-sexies, par. 4 of the CCP). This applies even in instances where the criminal proceedings are dismissed or if the defendant is acquitted, provided that (i) the existence of the criminal act and the responsibility of the holder are established and (ii) the value of the assets is disproportionate to the legitimately received incomes. It can be therefore concluded that San Marino has taken necessary legislative amendments to transpose the requirements of Article 3 (4) of the Convention into the national legal system.

OVERALL CONCLUSION ON ARTICLE 3(4)

21. Following the adoption of the Thematic Monitoring Report on Article 3(4) of the Convention, several developments have taken place in the State Parties selected for the follow up procedure. The Republic of Moldova has undertaken measures to implement the reversal of the burden of proof in confiscation proceedings, despite the declaration concerning the application of Article 3(4) of the Convention. In addition, Monaco and San Marino have introduced legislative amendments to align with the requirements of the Convention in this

regard. However, one State Party (Spain) still needs to demonstrate further progress in implementing the standards set out in Article 3 (4) of the Convention.

22. The plenary is, therefore, invited to adopt this follow up report and proceed with further procedures in relation to the countries which have not demonstrated the sufficient progress with regard to the article concerned.