

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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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)

Comments of Poland on the First Assessment Report of the Conference of the Parties to CETS no 198

INTRODUCTION

The first assessment of Poland's implementation 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) has been adopted by the Conference of the Parties at its 5th meeting in June 2013. In line with the procedures of the Conference, the final report is sent to the Party being assessed to check its accuracy with decisions taken by the Conference and to provide comments on the report for publication. Poland has provided the set out below comments on 4 July 2013. These are published together with the report.

COMMENTS WITH REGARD TO SECTIONS 15, 37 AND 57 OF THE REPORT

Section 15

As it is provided in the Report, mental element of the crime has been set out in General Part of the Criminal Code which is applicable to the offences specified in the Special Part of the Code as well as in other pieces of law.

Article 8 of the Criminal Code provides for only a crime may be committed intentionally but the misdemeanour may also be committed without intent, if the law so stipulates.

Pursuant to Article 9 § 1 of the Criminal Code a prohibited act is committed intentionally when the perpetrator intends to commit it, in the meaning of she/he is willing to commit it or predicts about the possibility of perpetrating it, she/he accepts it.

The money laundering offence cannot be committed negligently but "prediction about the possibility" to perpetrate the offence can be understood as "suspicion" in line with Article 9 (3) of the Warsaw Convention.

Section 37

Article 114 § 2 of the Criminal Code fulfills the criteria set out in the Article 11 of the Warsaw Convention which does not rule out the possibility of conducting an investigation or a trial against a person already convicted in another State Party to the Convention, however, the requirement is to take into account the final decision issued against such person, when determining the penalty.

As it is provided for in Article 114 § 2 of the Criminal Code, a competent Polish court shall credit the period of deprivation of liberty and sentence already served abroad to the penalty imposed on a perpetrator with respect to differences between these penalties.

Section 57

There are not any specific regulations concerning management of bank accounts belonging to suspects. Cash money seized during an investigation must be kept on bank accounts of the competent prosecution offices or courts until the final conviction is pronounced.

SPECIFIC COMMENTS WITH REGARD TO PART 5, ARTICLE 6

Management of seized property - Criminal Procedure Code (CPC) – Article 228 and the further

The material objects surrendered or discovered during a search, after being viewed and recorded, shall be seized or deposited with a trustworthy person who shall be notified of his duty to present them whenever so required, by the agency conducting the proceedings. Similar action should be taken concerning objects discovered during a search which may constitute evidence of some other offence, or are subject to forfeiture, or the possession of which is prohibited by law. The objects in question, as soon as they are deemed unnecessary for the purposes of the criminal proceedings, shall be returned to the authorised person. If there is a dispute as to the right of the possession of

the objects, and no grounds for immediate solution can be found, the interested parties shall be referred to the process under civil law.

The objects whose possession is prohibited should be transmitted to the appropriate office or institution. If the person to whom a given material object seized should be released cannot be ascertained, the court or the state prosecutor shall deposit such an object with the court or with a trustworthy person until the right to the possession thereof has been clarified.

Material objects of artistic or historic value shall be deposited with an appropriate institution. Material objects which are perishable or the storage of which would entail unreasonable expense or excessive hardship or would significantly impair the value of the object, may be sold without an auction. The proceeds of such a sale shall be deposited with the court.

Material objects and substances posing a hazard to life or health shall be stored in a place and in a manner assuring their proper protection. If the storage of such objects or substances were to entail unreasonable expense or were a source of threat to the security of the general public, the court having jurisdiction upon a motion of the state prosecutor may decide on their destroying in their entirety or in part. The detailed principles of storage of such objects and substances are set forth in the Minister of Justice's ordinance (Official Journal of 2012, No. 108, page 1025).

Dispositions of the material object after it has been seized or secured shall be without effect on the State Treasury. Orders regard search, seizure and concerning material evidence and other actions shall be subject to interlocutory appeal by persons whose rights have been violated; interlocutory appeal to an issued order or action performed in the preparatory proceedings shall be examined by the district court where the proceedings are pending.

Management of secured (frozen) property – Article 291 CPC and the further

In the event of the commission of an offence subject to a fine or forfeiture of material objects, or supplementary payment to the injured or pecuniary consideration for a public purpose, or to imposition of the obligation to redress damage or compensate for the injury sustained, the execution of this decision may be secured *ex officio* on the property of the accused. Also if an offence is committed against property, or if it causes damage to property, the claims for the reparation of damages may be secured *ex officio* on the property of the accused. Security (freezing) shall be obtained as provided for in the Code of Civil Procedure.

The securing of the penalty of the forfeiture of material objects shall consist in the seizure of movables, liabilities and other property rights, and in the prohibition of selling and encumbering the real estate. This prohibition shall be disclosed in the land and mortgage register or, in its absence, in the set of documents filed. If necessary, the court may provide for the administration of the real estate and/or of the firm owned by the accused.

The security shall be cancelled if no valid and final decision is issued imposing: a fine, forfeiture, supplementary payment to the injured, pecuniary consideration for a public purpose or obligation to redress damage or to compensate for wrongdoing, or when the accused is not sentenced to pay the claims for reparation of damage, and where no suit for those claims has been filed within three months from the day on which the decision has become valid and final. If such a suit is brought within the time-limit mentioned before, the security remains valid, unless the civil court decides otherwise in civil proceedings.

The Police may also conduct a provisional seizure of the chattels of the suspected person, if there are grounds for concerns that they might be removed. A provisional seizure shall be cancelled if within seven days of the day on which it was conducted, an order on the securing of claims has not been issued.