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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)

Assessment Report of the Conference of the Parties to CETS no°198 [1]

REPUBLIC OF MOLDOVA

[1] Adopted at the 6th meeting of the Conference of the Parties to the CETS no°198 (Strasbourg, 29 September – 1 October 2014)

Republic of Moldova is a State Party to 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) since 1 May 2008. This assessment of the implementation of the Convention in Republic of Moldova followed the decision of the 5th meeting of the Conference of the Parties (C198-COP) in 2013. This Assessment Report was adopted at its 6th meeting (Strasbourg, 29 September – 2 October 2014).

ACRONYMS

AML/CFT – Anti Money Laundering/Countering Financing of Terrorism

CETS no°198 – The Council of Europe Convention on Laundering, Search, Seizure, Confiscation of the Proceeds from Crime and Financing of Terrorism

CC – Criminal Code

CCECC – Centre for Combating of Economic Crime and Corruption

CPC – Criminal Procedure Code

COP – Conference of the Parties

FATF – Financial Action Task Force

FIU – Financial Intelligence Unit

MER – Mutual Evaluation Report

MDL – Moldovan Leu (Moldovan currency)

ML – Money Laundering

MOU – Memorandum of Understanding

MLA – Mutual Legal Assistance

NAC – National Anticorruption Centre

OPFML – Office for Prevention and Fight against Money Laundering

STR – Suspicious Transaction Report

TF – Terrorist Financing

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A. BACKGROUND INFORMATION AND GENERAL INFORMATION ON THE IMPLEMENTATION OF THE CONVENTION

1. The Council of Europe Convention on Laundering, Search, Seizure, Confiscation of the Proceeds from Crime and Financing of Terrorism, which is the treaty number 198 in the Council of Europe Treaty Series (referred hereinafter as CETS no°198 or "the Convention") establishes under Article 48 a monitoring mechanism which is responsible for following the implementation of the Convention, the Conference of the Parties (COP).

2. The Convention came into force on 1 May 2008, when 6 instruments of ratification were deposited with the Secretary General of the Council of Europe, all of which were Member States of the Council of Europe.

3. The monitoring procedure under this Convention deals with areas covered by the Convention that are not covered by other relevant international standards on which mutual evaluations are carried out by MONEYVAL and the Financial Action Task Force (FATF). At its second meeting in April 2010, the COP adopted an evaluation questionnaire based on areas where the Convention "adds value" to the current international AML/CFT standards and agreed that the Conference would normally assess the countries in the order that they ratified the Convention[2].

4. The monitoring questionnaire was sent for completion to the Moldovan authorities in September 2013. The responses to the questionnaire were coordinated by the Office for Prevention and Fight against Money Laundering (OPFML) within the National Anti-Corruption Center (NAC) was received in January 2014. The draft report was prepared by the rapporteurs: Ms Antigoni Hadjixenophontos (Cyprus) on the issues of the functioning of FIU, Mr Katona Tibor (Hungary) on new legal aspects under the CETS no°198 and Mr Simon Luca Morsiani (San Marino) on international co-operation. This monitoring report by the COP is based primarily on a desk review of the replies by the Republic of Moldova to the monitoring questionnaire. Information available in MONEYVAL's evaluation reports of Moldova, which is public, has also been considered and taken into account. This report is not intended to duplicate but complement the work of other AML/CFT assessment bodies.

5. Moldova signed the Convention on 16 May 2005 and ratified it on 18 September 2007. It entered into force in respect of Moldova on 1 May 2008. Moldova has made five declarations (see annex IV)[3] and one reservation at the time of ratification. It has also entered a declaration in application of article 51, paragraph 1, of the Convention that until the full re-establishment of the territorial integrity of the Republic of Moldova, the provisions of the Convention shall be applied only on the territory effectively controlled by the authorities of the Republic of Moldova.

6. This draft report was discussed with the rapporteurs and the Moldovan authorities at a pre-meeting on 10 April 2014, in view of its discussion and adoption by the COP at its 6th Meeting in September 2014**.**

[2] Countries that ratified on the same day the Convention are in principle assessed in alphabetical order.
[3] A list of declarations and reservations to CETS 198 is kept up-to date on the website of the Treaty Office of the Council of Europe at http://www.conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=198&CM=8&DF=27/03/2012&CL=ENG&VL=1 .

7. Moldova is a member of MONEYVAL and has been the subject of four evaluations by MONEYVAL. The fourth round assessment was discussed and adopted by MONEYVAL in December 2012, as a result of which Moldova is expected to provide a follow-up report to MONEYVAL in December 2014. The last evaluation report is available on MONEYVAL's website[4]. The evaluation report contains information on developments which have occurred in Moldova since MONEYVAL's previous evaluation, some of which are relevant in the context of this report, namely:

- Moldova has amended its criminal legislation and brought its money laundering offence more in line with the international standards. The money laundering offence covers now the laundering by the author of the predicate offence and prosecutors have been undertaken in a number of criminal cases. However, the continued judicial practice requires a prior conviction for the predicate offence as a precondition of prosecuting stand-alone money laundering remained a major deficiency.
- The terrorism financing offence was considered to be largely in line with the FATF and TF Convention requirements, encompassing the financing of terrorists and terrorist organisations and covering all offences within the scope of the nine treaties listed in the annex to the TF Convention. There has not been any investigation or prosecution for TF offences.
- The general results of the confiscation regime were considered to be poor, even in the context of the economic situation in the Republic of Moldova. The legislation did not clearly provide for the confiscation of the property that has been laundered (the "corpus" of the ML offence) as recommended previously. It was also recommended that the confiscation mechanism should be extended to proceeds that the perpetrator or a mala fide third party has transferred to a bona fide third party without compensation. The legislation did not extend the scope of applicability of sequestration to clearly cover the property belonging to legal entities and third persons (mala fides third parties as a minimum). Further efforts were considered necessary in order to familiarise law enforcement and judiciary authorities with the provisional and confiscation measures so that they actually and regularly apply their powers to seize/sequester and confiscate proceeds and instrumentalities of crime.
- Law enforcement authorities may exercise all the investigative powers set out under the Criminal Procedure Code (CPC) for the purpose of a ML/FT investigation, including the interrogation of suspects, conducting on - site investigations, searches and seizing objects and documents in order to collect evidence and trace criminal assets. Nevertheless, as noted in the 3rd and 4th Mutual Evaluation Reports of MONEYVAL, the range of techniques available appeared to be fairly limited and the use of such techniques was restricted to serious crimes, especially serious crimes and exceptionally serious crimes.
- The report also underlined the progress made by Moldova in strengthening the institutional set-up of the financial intelligence unit through the amendments made in 2011 to the Anti-Money Laundering and Counter Terrorist Financing Law (Law 67 from 07.04.11, MO69/23.04.11[5]).
- Neither the Criminal Procedure Code nor the Mutual Legal Assistance Law permitted the refusal of MLA requests on the grounds of secrecy or confidentiality requirements. Financial secrecy does not appeared to inhibit the implementation of the FATF Recommendations Pursuant to the provisions of the AML/CFT Law,

[4] See www.coe.int/moneyval
[5] Hereafter the AML/CFT Law

the Moldovan FIU, out of its own initiative or on the basis of a request, could send, receive or exchange information and documents with foreign authorities having similar functions to the FIU. Such exchange of information remained subject to the conclusion of a memorandum of understanding (cooperation agreement).The law enforcement authorities use informal channels, such as Interpol and Europol, for the exchange of intelligence in the course of criminal investigations.

- In order to address the deficiencies identified in the MONEYVAL mutual evaluation report, the Office for Prevention and Fight against Money Laundering drafted a new AML/CFT Strategy for the period 2013-2017 and an Annual action plan, which were adopted in June 2013[6].

[6] Law nr. 130/06.06.2013

B. MEASURES TO BE TAKEN AT NATIONAL LEVEL

I. General provisions

1. Criminalisation of money laundering – Article 9 paragraphs 3, 4, 5, 6

The areas where it is considered that the Convention adds value on money laundering criminalisation are as follows:

- The predicate offences to money laundering have to, as a minimum, include the categories of offence in the Appendix to the Convention (which puts the FATF requirements on this issue into an international legal treaty [article 9(4)]).
- As to proof of predicate offence, paragraphs 5 and 6 establish new legally binding standards to better facilitate the prevention of money laundering: clarification that a prior or simultaneous conviction for the predicate offence is not required [article 9(5)], and to clarify that a prosecutor does not have to establish a particularised predicate offence on a particular date [article 9(6)].
- To allow for lesser mental elements for money laundering of suspicion (and negligence, the latter of which was to be found also in ETS141) [article 9(3)].

8. The relevant Convention provisions are set out in Annex I.

Description and analysis

9. The money laundering offence is criminalised under Article 243 of the Criminal Code[7], which reads as follows:

> **Article 243.** Money Laundering
>
> *(1) Money laundering committed by:*
>
> *a) the conversion or transfer of goods by a person who **knows or should have known** that these constitute illicit proceeds with a purpose to conceal or to disguise the illicit origin of goods or to help any person, involved in the commission of the main offence, to evade the legal consequences of these actions;*
>
> *b) the concealment or disguise of the nature, origin, location, disposal, transmission, movement of the ownership of the goods or related rights by a person **who knows or should have known** that these constitute illicit proceeds;*
>
> *c) the acquisition, possession or use of goods by a person who knew or **should have known** that these constitute illicit proceeds;*
>
> *d) the participation in any association, agreement, complicity by providing assistance, help or advice in order to commit the actions set forth in letters a)-c);*

[7] Criminal Code – Law no. 985 of 18.04.2002 entered into force on 12.06.2003, republished on 14.04.2009. The last amendments were adopted in April 2014.

is punished by a fine in the amount of 1000 to 2000 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, by a fine, applied to the legal entity in the amount of 7000 to 10,000 conventional units with the deprivation of the right to practice a certain activity or by the liquidation of the legal entity."

10. The 4th round MONEYVAL mutual evaluation report (MER) had concluded that the ML offence was largely in line with relevant international standards. It had also recommended that the Moldovan authorities should either modify the offence, namely in respect of the use of the term "*purchase*", by replacing it with the term "*acquirement*" or otherwise demonstrate through criminal jurisprudence that it is interpreted widely and covers the notion of "acquisition". Several issues of effectiveness were noted, including the low number of final ML convictions achieved (4 final convictions achieved in the period from 2009-2011, out of which three cases of autonomous ML) and the uneven understanding by the judiciary on whether there was a need for a prior conviction to achieve a ML conviction or not.

Article 9 (3)

11. Paragraph 3 of Article 9 of CETS no°198 enables Parties *to establish as an offence* ***all or some*** *of the acts referred to in paragraph 1 of the article 9*", and on the other hand "***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*".

12. Moldova indicated that, having considered the options given by the Convention in Article 9 paragraph 3 and they have decided to implement the situation envisaged under indent (b).

13. The offences set out in the Moldovan CC can be committed with one of the "*mens rea*" described in the general part of the CC. Articles 17 and 18 of the CC define the forms of guilt (as *mens rea*) and are relevant for the ML conducts and are relevant in this context:

Article 17. Crime committed **intentionally**
A crime shall be considered as being committed with intent if the person who committed it realized the prejudicial nature of his/her action or inaction, foresaw its prejudicial consequences, and wanted or consciously admitted the occurrence of such consequences.

Article 18. Crime committed **by negligence**
A crime is considered to be committed by negligence, if the person who has committed it realized the harmful nature of his action or failure to act, foresaw its harmful consequences, but superficially thought that they would be avoided, or did not realize the harmful nature of his action or failure to act, ***did not foresee the possibility for harmful consequences to derive from it, although the person had to and could foresee them.***

14. For the intentional form of the ML offence, it is important that the perpetrator realises the harmful nature of his action or of its failure to act. To realize that, it is essential for the perpetrator **to know** that the goods which are the subject matter of his/her actions are proceeds. This knowledge and the special purpose have to be proved as mental element of an intentional ML offence as long as the harmful nature of the acts to

convert, transfer, conceal, disguise, acquire, possess or use **proceeds** is presumed and should not be demonstrated.

15. For the form of negligence, according to Article 18 of the CC and considering the explanations above, the perpetrator of the acts should have known about the illicit origin of the goods without any relevance of other various purposes.

16. Article 243 (a) of the CC criminalising the acts of conversion and transfer of goods by a person who should have known that these constitute illicit proceeds does however include an explicit reference to a special purpose ("*conversion or transfer of goods by a person who **knows or should have known** that these constitute illicit proceeds with a purpose to conceal or to disguise the illicit origin of goods or to help any person, involved in the commission of the main offence, to evade the legal consequences of these actions").*

17. Acts referred to in article 243 b) and c) of the CC namely concealment, disguise, acquisition, possession and use, could be committed by negligence.

18. It is thus welcome that Moldova has taken implementing measures to transpose the requirement set out in Article 9(3) of the Convention and has provided for a lesser mental element in the form of negligence for several acts referred to in the ML offence.

Article 9(4)

19. Moldova has opted not to make a declaration to article 9(4) of the Convention. The criminalisation of the money laundering offence is based on an "all crimes approach", as it does not refer to specific offences but to "illicit proceeds". As shown in Annex V, all the categories of offences listed in the Appendix to the CETS no°198 are criminalised in the CC.

Article 9(5)

20. The Warsaw Convention requires Parties to ensure that a prior or simultaneous conviction for the predicate offence is not a prerequisite for a conviction for money laundering. This was considered by the drafters of the Convention to be important as the perceived need for such a conviction frequently inhibited the prosecution of money laundering as an autonomous offence - particularly laundering by third parties on behalf of others.

21. Moldova indicated that for securing a conviction for the money laundering offence, there is no need for a prior conviction. They consider that this issue has been demonstrated in 3 convictions achieved in 2010 and 2011 for third party money laundering offenses without a prior conviction for the predicate offence (in these cases the predicate offences were cybercrime and swindle).

22. It should be noted that the last evaluation report issued by MONEYVAL in 2012 had however concluded that this issue remained controversial[8], despite having considered the 3 convictions achieved in 3 third-party ML cases related to cyber fraud, where the underlying crime had been committed in a different country. This was based on discussions on this issue between the evaluation team and prosecutors, FIU representatives and judges of the first court instance met onsite. It is referred in this

[8] See paragraphs 122-131 of the report and conclusions in paragraph 160 of the MER.

context to the detailed description of the evolution of the wording, related to the subject matter of the ML offence. The public prosecutors met by the MONEYVAL team considered that it should be enough for the court if the prosecutor can prove the link between the proceeds and "some criminal action". This view was supported by representatives of the National Anticorruption Centre (NAC). On the contrary, judges of the first court instance indicated that achieving a conviction for the predicate offence must always be an indispensable condition of prosecuting anybody for the related ML offence (see paragraph 129 of the MER). The evaluators eventually concluded that the contradictorily signals from practitioners indicated that this issue was not convincingly clarified.

23. Moldova has considered that the decisions in the three cases mentioned above have been fully assimilated by the Moldovan judiciary, as demonstrated by an analysis of the Supreme Court of Justice of the jurisprudence in money laundering and financing of terrorism cases. This analysis was elaborated in the context of the Action Plan for the implementation the National Strategy of Preventing and Combating Money Laundering and Financing of Terrorism 2013-2017[9] and is due to be regularly updated to take note of the judicial practice in final ML/TF. The judges from the Supreme Court of Justice have also considered in their analysis, among others, the three cases above, and have not made any critical observations related to the legality of these convictions. This analysis does not conclude explicitly that to obtain a conviction for a money laundering offence it is not necessary to have a previous or simultaneous conviction for the predicate offence. The Moldovan authorities consider that this conclusion is implied.

24. The Supreme Court's regular analysis of the courts' judicial practice in respect of final ML/TF cases can certainly impact positively on the understanding of the judiciary of the issues at stake. This analysis includes a summary of deficiencies identified in the prosecutorial and court's practices when dealing with such cases and formulates corrective recommendations, which are of an orientate nature.

25. Moldova has not reported any other measures aimed at clarifying the principles set out in Art 9(5) and there have been no other court decisions addressing this issue since the last MONEYVAL evaluation. While the Supreme Court analysis might indeed have a positive impact, despite the fact that the issue was only implicitly considered, the understanding by prosecutors and judges of this principle remains yet to be demonstrated and confirmed by judicial practice.

Article 9(6)

26. According to Article 243, it appears that the burden of proof is related to the feature of the goods which are the subject matter of ML offence, of being "illicit proceeds". There is no explicit rule related to the level of proof required and that might be interpreted also in the way that the proof of the illicit origin of the goods could be gathered from any circumstances. The general principle of free assessment of evidence of Article 27 of the CPC sets out that evidence shall be assessed by the judge and person carrying out a criminal investigation according to their own convictions after examining all evidence managed. It can thus be considered that the constitutive elements of the ML offence, and also in particular the feature of "*illicit origin*" of goods, may be inferred from factual circumstances.

[9] approved by the Law No.130/13.06.2013

27. Considering the requirements of the legal framework, it should be a matter of uniform jurisprudence to convince that in practice the prosecutors do not have to prove all the elements of a particular offence. The absence of illustrative cases brought in the attention of the rapporteurs, other than those already considered previously does not enable to draw firm conclusions about the general practice in this respect. The assessment team has not been made aware about any guiding jurisprudence in this respect.

Effective implementation

28. Since the ratification of the Convention, Moldova has achieved 4 final convictions for ML (2009:1, 2010: 1, and 2011:2). There have been no other final convictions achieved since the last MONEYVAL evaluation in 2012. There is no relevant practice of Moldovan judicial institutions as regards convictions for money laundering without establishing precisely the predicate offence(s). The statistics provided by the Moldovan authorities point to a positive development at the investigative level, as in 2013 there were 3 autonomous ML prosecutions (out of 18 ML cases) and in 2014 respectively 4 autonomous ML prosecutions (out of 42 ML cases). It remains undoubtedly that more emphasis remains to be given to autonomous ML prosecutions and convictions. As noted above, the mental element of money laundering offence was extended and includes also the negligence which should assist the prosecution of money laundering cases. The information received does not clarify whether there were money laundering investigations, prosecutions or convictions in cases where the offence was committed by negligence.

29. The authorities have also referred in this context to a number of tools and measures which may impact positively on the judicial practice (i.e. guidance, trainings for the practitioners) and where the Convention issues are being addressed. The Moldovan authorities should consider issuing clear prosecutorial guidance on the level and types of evidence which are likely to be sufficient for the prosecutor to adduce in an autonomous ML prosecution in respect of the underlying predicate criminality. The following trainings were provided to judges and prosecutors on ML aspects as follows:

2012	Joint trainings: 6 seminars organised by the National Institute of Justice - 105 prosecutors/93 judges
2013	Joint training: 2 days seminar – National Institute of Justice and Aba Roli – 12 judges, 15 prosecutors, 5 criminal investigation officers.
2014	Joint training: 1 seminar – National Institute of Justice, 33 judges/10 prosecutors.

Recommendations and comments

30. Moldova has not yet taken full advantage of Article 9 of the Convention. In the light of the above, it is thus recommended:

- to issue guidance for the judiciary in respect of money laundering cases to familiarise in particular investigators, prosecutors with the mandatory requirements of article 9 paragraphs 5 and 6 of the Convention so that they can challenge the courts with such cases.
- to continue strengthening the understanding of practitioners on the mandatory provisions of the Convention under article 9 through on-going multidisciplinary training of judges and prosecutors on these aspects.

2. Corporate liability – Article 10 paragraphs 1 and 2

The areas where it is considered that the Convention adds value are as follows:

- Some form of liability by legal persons has become a mandatory legal requirement (criminal, administrative or civil liability possible) where a natural person commits a criminal offence of money laundering committed for the benefit of the legal person, acting individually who has a leading position within the legal person (to limit the potential scope of the liability). The leading position can be assumed to exist in the three situations described in the provisions (see Annex II).

- According to Article 10 paragraph 1:

  "*Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:*
  a. a power of representation of the legal person; or
  b. an authority to take decisions on behalf of the legal person; or
  c. an authority to exercise control within the legal person,
  as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences."

- The Convention expressly covers lack of supervision (article 10 paragraph 2 makes it a separate, additional requirement).

Description and analysis

31. The Convention envisages that measures shall be taken to ensure that legal persons can be held liable if three conditions are fulfilled. The first is that a money laundering or a financing of terrorism offence must have been committed. The second condition is that the offence must have been committed for the benefit. The third condition, which serves to limit the scope of this form of liability, requires the involvement of "any person who has a leading position". The leading position can be assumed to exist in the three situations described - a power of representation or an authority to take decisions or to exercise control - which demonstrates that such a physical person is legally able to engage the liability of the legal person.

32. Moldova has taken measures to ensure that legal persons can be held liable for money laundering offences. Corporate criminal liability measures were introduced in the CC since April 2002 and subsequently amended in June 2012[10]. The principles regarding criminal liability of legal entities are provided for under Article 21 of the CC as follows:

Article 21. Subject of the Crime

(3) A legal entity, except for public authorities, shall be subject to criminal liability for an act set forth in criminal law provided that one of the following conditions is applicable:
a) the legal entity is guilty of failure to comply or improper compliance with direct legal provisions defining obligations or prohibitions to perform a certain activity;
b) the legal entity is guilty of carrying out an activity that does not comply with its

[10] Criminal Code – Law no. 985 of 18.04.2002, in force on 12.06.2003, republished on 14.04.2009

founding documents or its declared goals;
c) the ***act causes or threatens to cause considerable damage*** *to a person to society, or to the state and was committed for the benefit of this legal entity or was allowed, sanctioned, approved, or used by the body or the person empowered with the legal entity's administrative functions.*
(4) Legal entities, except for public authorities, shall be criminally liable for crimes punishable in line with the special part of this Code applicable to legal entities.
(5) The criminal liability of a legal entity does not exclude the liability of the individual for the crime committed.

33. As set out above, legal person can be held liable only when this is explicitly provided for in the criminal code. Article 243 - ML offence- includes a specific provision regarding the liability of a legal entity, as follows:

"Money laundering committed by [...] shall be punished by a fine in the amount of 1000 to 2000 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 entity shall be punished by a fine in the amount of 7000 to 10,000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity."

34. When considering the above, article 21 c) includes an additional condition which should be met, namely that "*the act causes or threatens to cause considerable damage to a person, society, or to the state*". Thus the scope of the criminal liability of a legal person appears to be narrower than the Warsaw Convention standard.

It also remains to be clarified how the damages are considered when a ML offence is committed. According to article 126 (2) of the CC, the considerable or essential nature of damages is established "*considering the value, quantity, and significance of the goods to the victim, his/her financial condition and income, the existence of persons supported by the victim and other circumstances that essentially affect the material condition of the victim and in a case of the violation of rights and interests protected by law, the degree of violation of human rights and fundamental freedoms*."

35. However, when considering the elements set out in Article 126(2), this does not assist to clarify the circumstances in which the criminal liability of a legal person would be applicable for a ML offence as far as Article 126(2) is referring to victims and to situations in which the human rights and fundamental freedom are affected.

36. The Moldovan authorities have explained that the term "*the person empowered with the legal entity's administrative functions*", according to Article. 21 (3) CC encompasses all three situations set out in the Convention (a) power of representation of the legal person; or b) an authority to take decisions on behalf of the legal person; or c) an authority to exercise control within the legal person. They have said that these powers of "*the person empowered with the legal entity's administrative functions*" are also covered in Article 124 CC.[11]

[11] Article 124 of the CC "Person Administering a Commercial, Social, or Other Non-State Organization": A person administering a commercial, social, or other non-state organization is a person who within the above-indicated organizations or subdivisions thereof is granted, either permanently or temporarily, by appointment, election, or assignment, certain rights and obligations related to exercising administrative management or to economic/organizational functions or actions.

37. Article 21 letter c) and Article 124 of the CC in the original language do not use the same term when referring to "*the person empowered with the legal entity's administrative functions*". Article 21 is referring to "*persoana cu functii de conducere*" (person with leading functions) while Article 124 is referring to "*persoana care gestioneaza" (*person who manages). In this case is doubtful if Article 124, which defines a certain term, may be used to describe the scope of another term, even if the meaning of these two terms would in certain situations be approximately the same. Consequently, if Article 124 is not relevant in the context of Article 21, then there are doubts if Article 21 letter c) is applicable to all of the cases provided by the Convention.

38. The authorities have explained that, in their understanding, all three situations are covered. They have argued that in jurisprudence is of a common understanding that the persons empowered with administrative functions are part of the administrative bodies of the legal entity ("*organele de conducere*" in original). The Civil Code and special Laws on the shareholder companies and on the limited liability companies establish who the administrative bodies for each type of legal entity are. The administrative bodies are empowered, based on the legislation and based on the statutory documents of the legal entity to perform: a) the representation; b) the control of the activity and c) the decision-making process of the legal entity. No other bodies or persons are entitles to have these functions. The "leading position" of the persons mentioned in Article 10 of the Convention, has as an equivalent in Moldovan legislation the persons "*cu functii de raspundere*", who perform the management and the control of the company, having the power to represent the legal entity.

39. Moreover the authorities consider that Article 21(3) c of the CC is even broader as it is sufficient that the act is committed in the interest of the legal person in order to have a legal person criminal liable: "*was committed for the benefit of this legal entity" or was allowed, sanctioned, approved, or used by the body or the person empowered with the legal entity's administrative functions.*"

40. The rapporteurs agree with the authorities on this issue. In this case it is not necessary to establish "*the directing mind*" within the legal person as far as the condition is that ML offence has been committed for the benefit of this legal person although it should be observed that there is still a limit of the applicability of the liability of legal person related to the condition of producing or threatening to produce considerable damage to a person to society, or to the state.

41. The requirement of Article 10 (1) of the Convention covering the involvement of natural persons as an accessory or instigator is not directly covered in domestic law. In this situation, the general provisions of CC regarding the liability for participation to the commission of the crime would apply. Article 42 (6) CC is relevant in this context ("*Participants must meet the elements of the subject of a crime*.") and applies equally to natural and legal persons. It appears though to the assessor that such cases would relate only to those acts referred to in Article 21(3) c) that is acts "allowed, sanctioned, approved, or used by the body or the person empowered with the legal entity's administrative functions".

42. There are no explicit provisions dealing with situations where legal persons can be held liable as a result of lack of supervision. Moldova considers that the requirement set out in Article 10(2) of the Convention is covered by Article 21 (3) c) of the CC of the Republic of Moldova, pursuant to which, the condition for the criminal liability for legal entity is that the illegal act is committed for the benefit of the legal entity **or is admitted**, sanctioned, approved, or used by the body or the person empowered with

the legal entity's administrative functions. "**To admit**" the commission of an offence shall be understood also as a passive action of the responsible subject expressed through lack of control and supervision.

43. The rapporteurs agree that the intentional lack of supervision or control might be covered to some extent by **admitting** the illegal acts (e.g. conversion or transfer of proceeds) but this is just a partial fulfilment of the expected standards as long as the lack of supervision and control can occur and facilitate the illegal acts of money laundering also non-intentionally.

44. The authorities have also explained that the negligence element is covered by the provisions of Article 21 (a) and (b) which can be applied when there was an improper fulfilment of the obligations or when the activity simply does not correspond to the scope of constitutive acts of the legal person. No cases from the jurisprudence have been referred by the authorities to illustrate this interpretation of the criminal provisions.

45. The provision of the CC on the liability of legal persons would appear to attempt to implement at the same time both theories of the liability of legal person, known in doctrine , namely the " vicarious liability" (Article 21 (3) a, b and the first thesis of Article 21(3)c)[a corporate employer is vicariously liable for the acts of its employees and agents where a natural person would be similarly liable] and the "identification principle" trough Article 21 (3) c, the second thesis, of the CC [this is where 'the acts and state of mind' of those who represent the directing mind will be imputed to the company].

46. The manner in which these issues have been addressed raises a number of questions and a need for clarifications. For instance Article 21 (3) a, b are referring to the guilt of the legal entity though it is not clear how this should be established. If the rule to establish the guilt is that provided by Article 21(3) c, it becomes even more confusing considering the provision of the introductive part of Article 21, namely "*A legal entity…. shall be subject to criminal liability for an act set forth in criminal law provided* ***that one of the following conditions is applicable*****."**

47. Criminal proceedings against those natural persons who, de facto, committed the offence are not excluded by the liability of the legal person. As a result, measures being taken, for example against a company for whose benefit a money laundering was committed by the general manager, does not exclude criminal prosecution of the manager himself.

Effective implementation

48. The Moldovan authorities have indicated that they have achieved numerous convictions for legal persons for a number of offences.

	2010	**2011**	**2012**	**2013***
Nr. criminal cases	48	39	25	10
Nr. legal persons	49	44	34	17

* For the year of 2013 provided information is not complete due to the ongoing processing of the information.

49. Out of the cases mentioned above, there is one conviction achieved in a ML case. In that case, the legal entity was held liable for committing ML (Article 243 para.3 (b) of

the CC) and was sanctioned with a fine (i.e. 7000 conventional units – approx. 7400 Euros) and the liquidation of the legal entity. The predicate offences involved were tax evasion and smuggling. It remains unclear which aspects of Article 21 paragraph 3 of the CC were applied, as the decision does not make any reference to this provision of the CC nor does it elaborate on the reasoning in respect of the legal entity's liability. The very limited use of the criminal liability provisions in the context of ML cases, 12 years after their introduction, raises concerns, though these should be seen also in relation to the issue of the effective implementation of the ML offence itself and the limited number of convictions for ML achieved, as mentioned earlier in the text.

Recommendations and comments

50. In conclusion, Moldova has taken legislative measures to ensure that legal persons can be held liable for the criminal offences of ML established in accordance with the Convention and that those measures are broadly in line with the requirements of the Convention, though they may not address explicitly all its core elements.

51. It is recommended that Moldova

- takes further measures, as appropriate, to facilitate the understanding of the scope of liability of legal persons at domestic level, by clarifying, in a consistent manner, who is the natural person who has a leading position within the legal person with a view of establishing the liability of legal person, in order to cover all the hypothesis described by article 10 (1) of the Convention.

52. takes additional steps to facilitate the use of corporate liability mechanisms by judicial authorities (guidance documents, instructions etc.) in money laundering cases, in the various circumstances envisaged by Article 10 of the Convention (including in case of lack of supervision).

3. Previous decisions – Article 11

Article 11 is a new standard dealing with international recidivism. It recognises that money laundering and financing of terrorism are often carried out transnationally by criminal organisations whose members may have been tried and convicted in more than one country. Article 11 provides for a mandatory requirement for the State to take certain measures but does not place any positive obligation on courts or prosecution services to take steps to find out about the existence of final convictions pronounced in another State-Party; its wording is as follows:

"Each Party shall adopt such legislative and other measures as may be necessary to provide for the possibility of taking into account, when determining the penalty, final decisions against a natural or legal person taken in another Party in relation to offences established in accordance with this Convention."

Description and analysis

53. Article 11 of the Convention provides for the possibility to take into account final decisions taken by another Party in assessing a sentence. To comply with the provision, Parties may provide in their domestic law that previous convictions by foreign courts – like convictions by the domestic courts – will result in a harsher penalty. They may also provide that, under their general powers to assess the individual's circumstances in setting the sentence, courts should take convictions into account.

54. A reflection of these requirements in the normative provisions of the Republic of Moldova could be found reading in conjunction the provisions of Articles 32 to Article 34, Articles 82 to 87 and Article 558 of the CPC. Also, Articles 77 and 78 of the CC are also relevant in this context.

55. The authorities have explained that for taking into account final decisions issued in another state Party to CETS no°198, the decision needs to be acknowledged prior to applying the punishment in cases of cumulative sentences, of cumulative crimes or for recidivism. The acknowledgment of criminal judgments is foreseen in Article 558 of the CCP, which reads as follows:

"(1) The final criminal judgments pronounced by foreign courts and those of a nature to produce legal effects in line with the criminal law of the Republic of Moldova may be acknowledged by the national court upon a motion of the Minister of Justice or the Prosecutor General based on an international treaty or a reciprocity agreement.
(2) The criminal judgment of a foreign state may be acknowledged only if the following conditions are met:
1) the judgment was pronounced by a competent court;
2) the judgment does not contradict the public order of the Republic of Moldova;
3) the judgment can produce legal effects in the country in line with national criminal law."

56. The authorities have stated that if a criminal judgment issued in another state Party has not been acknowledged it may be taken into account only as aggravating

circumstances in application of Article 77 paragraph 1 a).[12] The rapporteurs question the latter, given that when the Moldovan legislator has intended to give domestic effects to a foreign criminal judgment, this effect has been explicitly provided for. For instance in the case of recidivism, paragraph 4 of Article 34 of the CC provides that "*Upon determination of recidivism as per paragraphs (1)-(3), the final conviction and sentences issued abroad and recognized by the court of the Republic of Moldova shall be considered".* There is no similar explicit provision in the context of aggravating circumstances.

57. In conclusion the possibility of taking into account, when determining the penalty, final decisions against a natural or legal person taken in another Party in relation to offences established in accordance with the Convention, is provided by the criminal legislation of the Republic of Moldova upon the acknowledgement procedure pursuant to the provision of Article 558 of the CPC.

58. The authorities have provided the statistics below about the practice of acknowledgement of a foreign decision but without details related to the nature of cases:

2012	22 requests for recognising criminal judgements, 8 out of the 22 requests are from foreign authorities.
2013	18 requests for recognising criminal judgements, 9 out of the 18 requests are from foreign authorities.
2014	10 requests for recognising criminal judgements, 1 out of the 10 requests are from foreign authorities.

Recommendations and comments

59. Moldova has adopted measures to enable its courts and prosecution services to take into account final decisions against persons taken in another Party in relation to offences established in accordance with CETS no°198 as set out above.

4. Confiscation - Article 3 paragraph 1, 2, 3, 4 of the CETS 198

The confiscation and provisional measures set out in the Convention which are considered to add value to the international standards are in the following areas:

- Article 3 paragraph 1 introduces a new notion to avoid any legal gaps between the definitions of proceeds and instrumentalities as, according to it, *"Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds* ***and laundered property****."*

- Confiscation has to be available for ML **and to the categories of offences in the Appendix** (and no reservation is possible) (Article 3 paragraph 2).

- Mandatory confiscation for some major proceeds-generating offences is contemplated under this Convention (Article 3 paragraph 3 [Annex III]). Though not

[12] 1. Article 77 Aggravating Circumstances
"(1) When determining punishment, the following shall be considered as aggravating circumstances:
a) the commission of a crime by a person who previously was convicted for a similar crime or of other acts relevant to the case;[…]".
2. According to Article 78 para (3), of the Criminal Code, "In the case of aggravating circumstances, the maximum punishment set in the corresponding article of the offense committed may be applied."

a mandatory provision, the drafters sent a signal that, given the essential discretionary character of criminal confiscation in some countries, it may be advisable for confiscation to be mandatory in particularly serious offences, and for offences where there is no victim claiming to be compensated.

- Reverse burdens are possible (after conviction for the criminal offence) to establish the lawful or other origin of alleged proceeds liable to confiscation – Article 3 paragraph 4 [subject to a declaration procedure in whole or in part].

Description and analysis
General

60. As it has been underlined in the reports of the third and fourth round of MONEYVAL evaluations, the main principles surrounding confiscation are laid down in Article 46 of the Constitution regarding the right to private property and its protection[13].

61. In Moldova, the measures ordered by a court following criminal proceedings in relation to a criminal offence or criminal offences and resulting in the final deprivation of property are set out in Chapter X of the CC – Security Measures, and are set out in the provisions covering "special confiscation" and "extended confiscation".

Chapter X
SECURITY MEASURES

Article 98 *Purpose and Types of Security Measures*

(1) Security measures are aimed at eliminating a danger and at preventing the commission of acts set forth in criminal law.
(2) Security measures are:
a) medically coercive measures;
b) coercive educational measures;
c) expulsion;
d) ***special confiscation.***
e) extended confiscation.

62. Article 106 of the CC which defines special confiscation was amended in August 2003 to include the possibility to confiscate equivalent values as well as proceeds transferred to a third party. It was amended after MONEYVAL's third round evaluation to implement the recommendations made in that context.

63. Article 106(1) of the CC provides for the confiscation of instrumentalities (goods used in the commission of a crime) and the proceeds of crime (goods resulted from crimes) and furthermore, it clearly provides, in its second sentence, for the possibility of value confiscation:

[13] Constitution (**article 46)** The Right of Private Property and Its Protection
(1) The right to possess private property and the debts incurred by the State are guaranteed.
(2) No one may be expropriated except for reasons dictated by public necessity, as established by law and against just and appropriate compensation made in advance.
(3) No assets legally acquired may be confiscated. The effective presumption is that of legal acquirement.
(4) Goods destined for, used or resulted from crimes or offenses may be confiscated only as established by law.
(5) The right of private property carries with it the duty to observe the roles regarding the protection of the environment, the maintenance of good neighbourly relations and the observance of all the other duties that have to be fulfilled by owners of private property under the law.
(6) The right to inherit private property is guaranteed.

(1) Special confiscation is the forced and free transfer to the state of goods used in the commission of a crime or that resulted from crimes. If the goods used in the commission of a crime or that resulted from crimes no longer exist or cannot be found, their equivalent is confiscated.

64. This generic provision is partly reiterated, partly broken down in details in Article 106(2) of the CC which defines the goods that can be subject to special confiscation, according to the Moldovan criminal substantive law:

(2) The following goods are subject to special confiscation:
a) goods resulting from an act set forth in this Code as well as any revenues from these goods, except for goods and revenues subject to return to their legal owners;
b) goods used or intended for use in the commission of a crime, if they belong to the perpetrator;
c) goods provided to determine the commission of a crime or to pay the perpetrator;
d) goods obtained through the commission of a crime, if they are not to be returned to the injured person or not intended for his/her compensation;
e) goods possessed contrary to legal provisions;
f) goods converted or transformed, partially or integrally, from goods resulting from crimes and from revenues accrued from such goods;
g) goods used or intended for financing terrorism.

65. Art. 106(3) of the CC provides explicitly that any kind of property specified under paragraph (2) can only be confiscated if it is owned by the offender or if it has been transferred to a *mala fide* third party:

"Special confiscation is applied to persons who committed the acts set forth in this Code. The goods mentioned in paragraph 2 can be subject to confiscation even if they belong to other persons, if these persons accepted them knowing about the illegal way of obtaining of these goods."

66. A very detailed analysis of the scope of the concept of "*goods*", as could be inferred from various legal provisions and jurisprudence, is provided in the 4th round MONEYVAL MER (see paragraphs 112 -121 of the report). The Moldovan authorities have also provided in this context two explanatory decisions of the Supreme Court of 2009 and 2010. The first one related to the application of the legislation regarding criminal liability for active and passive corruption, includes a reference to the meaning of the term "goods" to *lex generali* – Civil Code: "*According to article 285 of the Civil Code, "goods" are all the objects susceptible of individual or collective proximity and the patrimonial rights. Objects are corporeal objects in relation to which civil rights and obligations can exist"*[14]. The second, related to the judicial practice in the cases regarding smuggling, non-payment of the customs duties and customs contraventions, when addressing the issue of the term "goods" refers to *lex specialia* – Law No. 1569 and Regulation No.56.[15] of the Customs service.

67. The jurisprudence appears to be oriented to consider of uniform applicability of the definition of goods provided by the AML/CFT Law. It would nevertheless be advisable for the Moldovan authorities to provide for a general applicable definition of "goods" in the General Part of the CC or to clarify this issue, for the purpose of a uniform jurisprudence, through appropriate tools.

[14] Decision No.5/30.09.2009
[15] Decision No.5 of 24.10.2010

68. The confiscation regime has been recently significantly improved by the newly adopted Law 326 of 23.12. 2013 amending the Criminal Code, by introducing the extended confiscation for a list of serious crimes including ML offence. The new provisions (i.e. article 106/1 of the Criminal Code) are in force since February 2014 and represent an important step ahead of the Moldovan legal system within the efforts to combat criminal phenomenon in the country and to confiscate the proceeds of crime.

Instrumentalities

69. Assuming that the term "goods" equals "property", as the evaluators of the 4th round Moneyval evaluation explained, and reading in conjunction the provisions of Article 106(1) and (2), the rapporteurs conclude that the property used or intended to be used to commit a criminal offence or criminal offences is amenable to be confiscated in more limited circumstances than those envisaged by the Convention. While the Convention does not make any distinction between instrumentalities related to their owner, the Moldovan CC provides explicitly that only those belonging to the perpetrator may be confiscated. The Moldovan authorities referred to Article 106(3) of the CC in this respect. The rapporteurs consider that article 106(3) is not applicable to the instrumentalities used or intended to be used for the commission of an offence as far as these instrumentalities are not "*illegally obtained*" .

70. To be confiscated it is not of relevance if the instrumentalities have been used wholly or just in part to commit an offence, both of these situations being covered.

71. It is not clear from the legislation if it is possible to confiscate instrumentalities which belong just partially to the perpetrator. The Moldovan authorities have indicated that when the instrumentalities are owned by the perpetrator and other person/persons, the goods will be confiscated and the third party can claim his/her rights by means of a civil action. This is also contemplated in an example provided in the "Study of the special confiscations of infringer's property" issued by the General Prosecutor's Office in March 2009, which indicates that "*When a particular thing, for example, an automobile that is in the common property of several persons, is used for the commission of a crime, it is subject to complete confiscation, the co-proprietors being entitled to recourse in a separate civil procedure".* There were no examples provided which would illustrate how this has been dealt with in practice and whether such situations have been addressed in court decisions.

Proceeds or property the value of which corresponds to such proceeds

72. The coverage of proceeds of crime is provided by Article 106(1) of the CC in general terms and specifically in Article 106(2) as above. The scope of proceeds of crime subject to confiscation was enlarged by the 2008 amending legislation, as a result of which the confiscation regime (Art. 106(2) a CC) now clearly extends to indirect proceeds i.e. property representing revenue yielded or derived from proceeds of crime.

73. Article 106(3) of the CC explicitly provides that any kind of property specified in paragraph (2) can only be confiscated if it is owned by the offender or it has been transferred to a *mala fide* third party:

(3) Special confiscation is applied to persons who committed acts set forth in this Code. The goods mentioned in par. 2 can be subject to confiscation even if they belong to other persons, if these persons accepted them knowing about the illegal way of obtaining of these goods.

74. On the other hand, the property items possessed in breach of legal provisions (see paragraph 2(e) above), such as narcotics, firearms etc., must always be subject to confiscation, irrespective of their actual ownership status, even if this is not explicitly stipulated by law.

75. While the rapporteurs understand that the limitation provided by para 3 of Article 106 was necessary to protect the bona fide third parties, the clear reference to the receiving party's knowledge ("*knowing about the illegal way of obtaining of these goods*") raises doubts as to whether and how paragraph (3) can be applied in case the third party is not a natural person but a legal entity.

76. The confiscation of the equivalent value is provided for by article 106(1) of the CC in relation to "good use in a commission of crimes" (i.e. instrumentalities) and to "goods resulted from crimes" (i.e. proceeds) when these assets no longer exist or cannot be found.[16] Article 106(2) provides for a breakdown of the assets indicated above. Article 106(2/1) provides also for the confiscation of the equivalent value of the goods resulting or obtained from committing a crime and the revenues from these goods when they have been mixt with the legally obtained goods.

77. Given the different use in the terminology when referring to the different categories of "goods" in article 106(1) and 106(2) in relation to equivalent value confiscation, the rapporteurs consider that this may create confusion among practitioners as to the scope of goods that can be confiscated (i.e. "goods resulted from crimes" Article 106 (1) vs. "goods resulting from an act set forth in this Code"). (article 106(2)a).)

Laundered property

78. The 4th round Moneyval MER had reiterated that Moldovan authorities should clearly provide for the confiscation of the property that has been laundered (the "corpus" of the ML offence) as recommended in the 3rd round. In comparison with the 1990 Convention (CETS No. 141) the Warsaw Convention has added to the proceeds and instrumentalities the words "laundered property" for the avoidance of any doubt on the issue as to whether laundered property, can be confiscated, upon conviction for an autonomous money laundering offence, as an instrumentality or as proceeds (given that in some legal system it may be considered the object of such an offence).17 The Convention, using this explicit reference(i.e. to laundered property) , is trying to secure confiscation for the object of the ML offence in those systems in which "laundered properties "and "proceeds" are not identical.

79. Reading in conjunction paragraphs (1) and (2) of Article 106 it is to be observed that in the CC, to some extent, several categories of "laundered property" are comprised by the concept of "proceeds". Letter (f) of Article 106(2) covers an important part of property that might be considered as laundered property when it is referring to "*goods converted or transformed, partially or integrally, from goods resulting from crimes and from revenues accrued from such goods*". The same situation would be in the case of

[16] According to the explanations provided by the Moldovan authorities:
Goods obtained/acquired through the commission of crime- goods which existed before the commission of the crime, but resulted to be in the possession of the perpetrator through the commission of the crime. For example: stolen goods, goods obtained by physical or mental violence, obtained by fraud, received as bribe, money obtained by selling illegally obtained goods, etc.
Goods resulted from crimes – goods which did not exist before and came into existence through criminal acts. If the perpetrator changes the goods existing before through the commission of an offence, the goods will become goods resulted from crime.

[17] See the Explanatory report of the Convention, para 37.

goods covered by letter (e) which might be considered also as *corpus* of acquisition, possession and use as modalities of ML offence as long as all of these actions involve "*detinere*" (the original word translated as "possession" [18] in the text of letter e) of Article 106(2)). The judicial practice, as illustrated by examples of recent case law provided in the context of Moneyval evaluation, seeks to overcome the gaps (see paragraph 223-226 of the Moneyval report)[19].

Confiscation to apply to the offences in the appendix – Article 3(2)

80. Article 106 of the CC applies in respect of goods used in the commission or resulted from any offence provided under CC, and Moldova has made no declaration pursuant to paragraph 2 a) or 2b) of Article 3 of the Convention. All categories of offences included in the Appendix to the Convention are criminalised and may therefore result in special confiscation.

Mandatory Confiscation for Particular Offences – Article 3(3)

81. Parties may provide for mandatory confiscation in respect of offences which are subject to the confiscation regime and in particular the offences of ML, drug trafficking, trafficking in human beings and any other serious offences.

82. Moldova indicated that special confiscation must be applied in a mandatory way, as indicated also in Article 106 (1) of the CC. They have also indicated that these provisions are inspired from the Romanian legislation governing the confiscation regime. Article 106(1) details the effects of special confiscation without setting out in which cases this should be applied.

83. The MONEYVAL report of the 4th round, acknowledging that the evaluators of the 3rd round experienced some uncertainty about the mandatory or discretionary nature of the confiscation measure had concluded that this was no longer an issue as the examiners were convinced that special confiscation was mandatory in Moldova.

[18] A more accurate translation might be "holding"

[19] Excerpt from the 4th round Moneyval report: " 223. Third round evaluators expressed their concerns as the legislation then in force did not expressly cover the confiscation of the property that has been laundered, that is, the object or "corpus" of the offence as it is required by the first phrase of Criterion 3.1. Arguments such as the laundered assets become proceeds after laundering (and so they fall under [2]a) or that they constitute instruments (pursuant to [2]b) thus did not convince the previous evaluation team who recommended that the confiscation of the body ("corpus") of the offence should be unequivocally and unconditionally provided for (the bona fide third party exemption aside) both in stand-alone ML and in FT cases.
224. Examination of the current provisions under Art. 106 CC proves that this recommendation has only been partially implemented by the Moldovan legislators. On the one hand, the evaluators welcome the introduction of paragraph (2)g by which the "corpus" of the FT offence, that is, the property used or intended to use for financing of terrorism is explicitly covered by the confiscation regime. On the other, there is still no positive legislation to directly and clearly provide for the confiscation of property that has been laundered. This must be seen as a formal deficiency of the regime despite the fact that judicial practice, as it was illustrated by examples of recent case law, apparently seeks to overcome this gap as the Moldovan courts tend to apply the current legal framework to confiscate the "corpus" of the offence in ML cases so far ended with a conviction. 225. Among the case examples provided by the Moldovan authorities is Decision Nr.5 of 24.12.2010 in which the Supreme Court ruled that the goods and services, by which the offence of passive corruption (Art. 324 CC) had been committed, must be confiscated "according to Art. 106 CC as objects of the offence".
226.Since Art 324 CC does not contain any specific provision related to the confiscation of the "corpus" of the offence, this decision is a proof that court practice does actually enlarge the scope of Art. 106 so as to cover the object of the crime in a general sense (theoretically, the same approach could likely be applicable in a ML case too) – the only problem being that this interpretation appears entirely praeter legem provided that Art. 106 does not provide for confiscation in this respect."

84. The 2009 Study on special confiscation also considers this issue. It provides that through "the expression *are subject to confiscation* one shall understand the compulsory character of confiscation of any of the things mentioned in the clauses a-e of the paragraph 2, Article 106 of the CC". It also provides that according to this guiding document, for the practice of prosecutors, the special confiscation, as a security measure, unlike a criminal punishment, is not a consequence of criminal liability and at the same time it does not depend on the gravity of the committed crime, being applied even if no criminal punishment is applied to the perpetrator. It is meant to liquidate the state of jeopardy resulted from the commission of a crime and to prevent the commission of a new crime.

85. The Study on special confiscation appears to indicate that in order for these provisions to be applied, there are additional cumulative conditions which need to be met. The Guide states that "*In order to apply the special confiscation as security measure the following cumulative conditions shall be met: 1) the perpetrator has committed a crime provided in the criminal law; 2) the perpetrator has used things, objects, tools, mechanism, weapons, machines belonging to him or other persons in order to commit the crime; 3) by the commission of crime the perpetrator has created a dangerous situation that may serve in the future as a source of new crimes ; 4) the dangerous situation cannot be liquidated in another way than by application of special confiscation as security measure"*.

86. If this were to be the case in practice, then mandatory confiscation would be applied only when these 4 conditions are met. This would appear to set out additional requirements to what was contemplated under Article 3(3) of the Convention that is simply the commission of the criminal offence.

Burden of Proof – Article 3(4)

87. In accordance with Article 53, paragraph 4, of the Convention, Moldova declared that the provisions of Article 3, paragraph 4, shall apply only partially, in conformity with the principles of the domestic law (the ratification Law no 165-XVI of 13.07.2007). The Constitution of Republic of Moldova states that all the goods (property) should be considered legal if illicit origin is not demonstrated. So the burden of proofs is on law enforcement agencies.

88. It is to be noted that the issue of burden of proof was also examined by MONEYVAL in the context of both the 3rd and 4th evaluation. The third round evaluation indicated that the confiscation regime then in force did not allow, for constitutional reasons, for a reversal (or even a sharing) of the burden of proof for confiscation purposes following conviction and hence it was recommended that Moldovan authorities consider reducing this burden. Moldova amended its Criminal Code (Law 326/23.12.2013) and introduced as of February 2014 the possibility to apply extended confiscation, as a security measure. The latter is provided for by Article 106/1[20]. Given the limits posed

[20] "Article 106/1. Extended Confiscation

(1) Are subject to confiscation of other goods than those mentioned in art. 106, where a person is convicted for committing the offenses provided in the following articles: 158, 164, 165, 1851, 1852, 189, 190, 191, 196, 199, 206, 2081, 2082, 214, 2141, 2171-2174, 218, 219, 220, 236- 2462,248- 256, 2603, 2604, 279, 280, 283, 284, 290, 292, 302, 311 paragraph 2), 312 paragraph 2), letter b), 324-329, 3302, 332-3351, 3521, 359-361, 3621 and if the offense has been committed for pecuniary interests.

(2) Extended confiscation is ordered if the following requirements are cumulatively met:

a) the value of assets acquired by the convicted person, within a period of 5 years prior to and after the commission of crime, before issuing the judgment, obviously exceeds the income legally obtained by this person;

b) the court is convinced, under the provided evidence, that the respective assets have been generated from criminal activities referred to in par. (1).

by the Moldovan Constitution, this development is very much welcomed, considering that the application of the extended confiscation measures would allow an apportionment of the burden of proof (though not a reversal of the burden of proof).

Effective implementation

89. The Moldovan authorities have provided the following statistics on confiscation to illustrate the effectiveness of the implementation of the particular provisions of the Convention regarding the confiscation issues:

Statistics on confiscations in 2010

	Criminal Code offence	Number of convicted persons with the application of special confiscation	Total value of confiscated assets
1.	Theft, Robbery, Burglary	2	940,218 MDL 24,100 EUR 15,020 USD 2 cars Other assets
2.	Illegal trafficking in narcotics	4	
3.	Smuggling	9	
4.	Other offences	29	

Statistics on confiscations in 2011

		No of convicted persons with the application of special confiscation	Total value
1.	Theft, Robbery, Burglary	7	9.561.103 MDL 4050 EUR 2100 $ Assets in value of 1 mil 145800 MDL
2.	Illegal trafficking in narcotics	5	
3.	Smuggling	6	
4.	Other offences	47	

(3) In applying the provisions of par. (2) one must take into account the value of assets transferred by the convicted person or by a third party to a family member, to persons with whom the convicted person has established relations similar to those between spouses or between parents and children, in case they live with this person, to legal entities over which the convicted person has control or to other persons who knew or had to know about the illegal acquirement of assets.

(4) When establishing the difference between the legal incomes and the value of acquired assets, the value of assets at the date of their acquirement and the expenses made by the convicted person shall be taken into account, including the persons mentioned in paragraph 3).

(5) If the assets undergoing confiscation cannot be found or have been intermingled with the assets which have been legally acquired, money and assets shall be confiscated in order to cover their value.

(6) The assets and money obtained through operation and use of assets undergoing confiscation, including the assets which have been transformed or converted into assets derived from criminal activities as well as the incomes or profits obtained from these assets shall be confiscated.

(7) The confiscation cannot overcome the value of assets which have been obtained in the period mentioned in paragraph 2), which exceeds the level of legal incomes that a convicted person may own.

Statistics on confiscations in 2012

		No of convicted persons with the application of special confiscation	Total value
1.	Theft, Robbery, Burglary	3	1.090.466 MDL 8820 EUR 300 $ Assets in value of 165700 MDL
2.	Illegal trafficking in narcotics	5	
3.	Smuggling	4	
4.	Other offences	14	

Statistics on confiscations in 2013 (9 months)

		No of convicted persons with the application of special confiscation	Total value
1.	Theft, Robbery, Burglary	1	2.203.656 MDL 7400 EUR Assets in value of 385.000 MDL
2.	Illegal trafficking in narcotics	4	
3.	Smuggling	6	
4.	Other offences	10	

90. The rapporteurs have concerns about the effective implementation of the confiscation regime, when considering also the fact that the authorities have stressed the mandatory character of confiscation measures. The statistics above show that the sums confiscated annually are relatively small. More detailed statistics on provisional measures and confiscation in proceeds-generating predicate offences should be kept.

Recommendations and comments

91. The rapporteurs of the current assessment concur with the analysis of the 4th round MONEYVAL report to conclude that, despite the fact that jurisprudence seems to be oriented to consider of uniform applicability the definition of goods provided by the AML Law, it would be advisable that Moldova provides for a general applicable definition of "goods" in the General Part of the CC or clarifies this issue through appropriate tools, in order to ensure a uniform jurisprudence on the matter.

92. Moldova should take measures to extend the possibility to confiscate instrumentalities used and those intended to be used to commit a criminal offence also to those which do not belong to the perpetrator and are legally obtained.

93. Moldova should review Article 106 of the CC and take measures, as appropriate, to clarify that confiscation of property the value of which corresponds to all proceeds and laundered property is possible.

94. Moldova should also consider improving the quality and scope of statistics (so as to enable it to assess the actual effectiveness of confiscation measures in ML, TF and all predicate offences) and to ensure that the provisions on confiscation and provisional measures are properly and effectively applied.

5. Management of frozen and seized property – Article 6

The Convention introduces a new standard which relates to the requirement of proper management of the frozen and seized property enshrined in Article 6 which reads as follows:

"Each Party shall adopt such legislative or other measures as may be necessary to ensure proper management of frozen or seized property in accordance with Articles 4 and 5 of this Convention."

Description and analysis

95. The Moldovan authorities have reported that the implementing measures in relation to Article 6 of the Convention is the Government Decision nr.972 from 11.09.2001 on the approval of the *Regulation on the procedure of evidence, evaluation and selling of the confiscated, stray, sequestrated perishable or limited shelf goods, of the "corpus delicti", of the goods passed to the state with the right of possession and of the treasures (hereinafter* the Regulation*).* According to article 3 of this Regulation, the State Tax Inspectorate is in charge with the evidence, evaluation and sale of the assets indicated in article 1.

96. Article 1 of the Regulation determines the assets which are subject to its provisions, namely :
"- ***confiscated*** *goods in the favour of state on the basis of judgments and decisions of courts and other state authorities empowered to take such decisions;*
- ownerless goods;
- goods passed into the state property the with right of succession, hereinafter referred to as the inheritance property;
- perishable goods or limited shelf life, ***seized*** *by the empowered state authorities (excluding those seized under the Title V of the Tax Code);*
- ***corpus delicti,*** *attached to criminal cases;*
- treasures. "

97. It should be noted that the regulation covers explicitly only "*perishable or limited shelf life*" seized assets are considered.

98. When some categories of assets obtained in search and seizure are recognised as material evidence (article 158 (2),(3) CPC), these shall be transmitted to the Main State Tax Inspectorate, pursuant to article 159 (4) CPC, which reads as follows: "*Immediately upon their seizure and examination, precious items, precious stones and products thereof and national or foreign currency, credit cards, check books, securities, bonds acknowledged as material evidence shall be transmitted to the Main State Tax Inspectorate in line with the set procedure*."

99. The CPC contains also some provisions related to the storage and securing the storage of the objects seized. (i.e. Article 159 (6)) These provisions are related only to "*corpus delicti*" and consequently, considering the definition of "*corpus delicti*" in the Moldovan legislation, their scope is narrower than that envisaged by the Convention. These provisions do not contain also issues related to the management of this kind of assets.

100. On another hand, the provisions of the CPC are referring only to those assets acknowledged as material evidence. There are no procedural provisions related to the other categories of assets which could be seized.

Effective implementation

101. The Moldovan legal framework does not include implementing measures for the management of assets subject to temporary measures. The authorities have not provided any additional information on property frozen or seized in the context of criminal proceedings nor any contextual information which could support the conclusion that measures taken could be considered as ensuring the proper management of frozen or seized property, as contemplated under Article 6.

102. Beyond the fact that there are some provisions related to evidence, evaluation and sale of seized property and in the absence of a clear criminal procedural provisions related to such property, there is clearly room for more comprehensive steps to be taken in order to ensure the proper management of frozen and seized property, as envisaged by the Convention.

103. For instance, the information available does not enable to draw any conclusions on any specific measures taken, for instance, to ensure that a specialised asset management unit has been established within the competent entity/ authority, which would be responsible for the pre-restraint and seizure planning strategies as well as management of assets seized or restrained.

104. It remains unclear whether the system in place is able to face the important challenges that management of frozen or seized property poses in practice. While seized currency, funds on deposit and other financial instruments usually do not require a complex management and oversight, tangible property (boats, vehicles, real estate, etc.) can be more challenging. Specific issues arise also with perishable or rapidly depreciating assets. The seizure of business structures and activities may present serious risks and challenges, as difficult choices have to be made. In fact, the defendants who prevail in confiscation court proceedings may seek compensation for losses imputable to the asset manager in case of damage caused to the property, depreciation of its value, etc. The management of assets restrained or seized by a foreign jurisdiction following the execution of a mutual legal assistance request may also raise specific issues. While the foreign jurisdiction is responsible for enforcing the provisional orders, asset managers of both jurisdictions, the foreign one and the Moldova, would need to work closely with one another in order to ensure the proper and coordinated management of such assets.

105. The current structures in charge with the evidence, evaluation and sale of seized assets in the Republic of Moldova do not appear to implement strategic planning and development policies to anticipate risks and to maintain the value of seized assets subject to confiscation. There is no database of seized and confiscated assets which could give a general overview of the matter.

Recommendations and comments

106. It is recommended to Moldova to carry out a stock taking exercise of the current measures in place and take further legislative and institutional measures to address the issues mentioned above, so as to ensure an adequate implementation of Article 6 of the Convention.

107. It is also recommended to revisit procedures in place and ensure that a clear procedure for managing seized (and frozen) property is set out, in line with the requirements of Article 6.

108. Moldova should also consider developing its data and statistics maintained regarding the "chain" of identified proceeds of crime, instrumentalities and other categories of assets which may be confiscated, starting from identification during criminal investigation phase, seizures, and confiscation ordered by courts and last the effective valorisation of confiscated assets.

6. Investigative powers and techniques required at the national level – Article 7 paragraphs 1, 2a, 2b, 2c, 2d

The areas where the Convention is considered to add value are as follows:

- The provisions of article 7 introduce powers to make available or seize bank, financial or commercial records for assistance in actions for freezing, seizure or confiscation. In particular: Article 7 paragraph 1 provides that "Each Party shall adopt *such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in articles 3, 4 and 5. A Party shall not decline to act under the provisions of this article on grounds of bank secrecy*."

- Article 7 paragraph (2a) provides for power to determine who are account holders: "*To determine whether a natural or legal person is a holder or beneficial owner of one or more accounts, of whatever nature, in any bank located in its territory and, if so obtain all of the details of the identified accounts*;"

- Article 7 paragraph (2b) provides for the power to obtain "historic" banking information *"To obtain the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more specified accounts, including the particulars of any sending or recipient account*;"

- Article 7 paragraph (2c) [subject to declaration under article 53] provides for the power to conduct "prospective" monitoring of accounts as it provides for "*To monitor, during a specified period, the banking operations that are being carried out through one or more identified accounts*;"

- Article 7 paragraph (2d) provides for the power to ensure non-disclosure *"To ensure that banks do not disclose to the bank customer concerned or to other third persons that information has been sought or obtained in accordance with sub-paragraphs a, b, or c, or that an investigation is being carried out."*

- States should also consider extending these powers to non-banking financial institutions (article 7 paragraph (2d)).

Description and analysis

Article 7 paragraph 1

109. The requirements set out in Article 7 paragraph 1 of the Convention are implemented mainly through the provisions of the Criminal Procedure Code.

110. The Moldovan authorities have stated that the bank secrecy does not constitutes an obstacle to criminal investigations or the application of provisional measures, as Article 41 of the CPC sets out the competences of the instruction judge which include that of authorizing seizure of objects covered by bank secrecy. Article 126 of the CPC contains also explicit provisions related to the possibility to seize any objects or documents which are important for the criminal case, including those containing information that is governed by bank secrecy. [21]

111. According to Article 126 (2) of the CPC the instruction judge has the power to dispose within a criminal process, the seizure of objects containing state, commercial, bank secrecy, without any possibility to decline to act on the grounds of bank secrecy.

112. In the pre-investigative stage, Article 12(2) and (3) of the AML/CFT Law provide:
(2) The transmission by the reporting entities of information (documents, materials, other data) to the Office for Prevention and Fight against Money Laundering, to criminal investigation authorities, prosecutors' offices, courts and other competent authorities, in cases provided by this law, shall not be qualified as disclosure of the commercial, banking or professional secret.

(3) The legislative provisions on commercial, banking or professional secret, cannot impede the agencies mentioned under paragraph (2) of this article, with the scope to execute this law, from receiving or lifting the information (documents, materials, other data) about financial and economic activities and transactions of natural or legal persons.

113. The disseminated information cannot be used as evidence in a criminal case.

114. Article 22(5) of the Law on Financial Institutions (Law Nr. 550-XIII of 21 July 1995) also provides that information considered as banking secrecy (i.e. any information about the person, goods, activity, business, personal or business relations of the bank, customers' accounts, (balances, turnovers, performed operations), the customers transactions, and other information about the customers, which became known to the bank) shall only be provided by the bank to the extent that providing such information is justified by the purpose for which is requested such as:

- at the request of the criminal prosecution, authorised by the investigating judge, regarding the concrete criminal case (subpara c)
- at the request of the court, in order to solve a pending case (d)
- at the request of the Information and Security Service, in order to exercise the duties related to state security assurance (h)
- at the request of the, National Anticorruption Centre regarding the person who falls under the legislation on preventing and combating money laundering and terrorist financing (i).

115. Furthermore, Article 22 (7) subparagraph (g) of the same Law specifies that providing the information to the National Anticorruption Centre on any suspicious activity or transaction, in accordance with the law on preventing and combating money

[21] **Article 126**.CPC, **Grounds for Seizing Objects or Documents**
(1) The criminal investigative body shall have the right to seize any objects or documents important for the criminal case if the evidence obtained or the operative investigative materials refer precisely to the place and the person holding them.
(2) The seizure of documents containing information that is a state, trade, banking secret and the seizure of information on telephone conversations shall be allowed only upon the authorization of the investigative judge.

laundering and terrorist financing shall not be considered in breach of the obligation of banking secrecy.

116. On the basis of the above, the requirements of article 7 paragraph 1 of the Convention are fully implemented in the Republic of Moldova.

Article 7 paragraph 2 a)

117. The Moldovan authorities have indicated that the information (documents, materials, other data) about financial and economic activities and transactions of natural or legal entities can be requested on the basis of the same provisions as described supra in relation to Article 7 paragraph 1 of the Convention. They have also indicated that, according to the provision of Articles 5 and 7 of AML/CFT Law, the reporting entities, including banks, should apply identification measures to their clients and should keep and respond completely and promptly to the requests of the FIU and other empowered authorities, on the existence of business relations and their nature, between these entities and certain natural and legal persons.

118. The authorities have explained that according to Article 41 of the CPC, the instruction judge authorises the measures of obtaining the data that is considered to be a banking or commercial secrecy based on the prosecutor's request for such a measure, in the context of a criminal case procedure.

119. In accordance with the provisions of the CPC, when a criminal case has been initiated, the law enforcement authorities can ask the prosecutor that leads the criminal investigation to request an authorisation from the judge in order to obtain the financial data related to specified bank accounts and to banking operations which have been carried out. The provisions of Article 41 can be applied in respect of all offences contained in the Criminal Code, with adequate motivation established by the provision of the CPC.

120. The FIU is empowered to obtain information and details about a bank account in ML and TF cases related to its own disseminations, in the pre-investigative phase. In all other cases covered under the Convention, the authorities in charge would apply the national procedure of obtaining the protected banking information (within a criminal case based of the request of the prosecutor for an authorisation from the investigation judge).

121. The authorities have informed the rapporteurs that a centralized database on the accounts held by legal entities is kept by the State Tax Inspectorate to which the law enforcement authorities, prosecutors as well as FIU have on-line limited access. For cases in relation to natural persons, all the mentioned authorities should make a written request in accordance with the legal national provisions to the financial institutions (ie. FIU without the need for a judge authorisation, all the other law enforcement authorities within the criminal case with the authorisation of the investigative judge). It should be mentioned that according to national legislation, other type of accounts held by non-banking institutions are protected by commercial secrecy and this is also covered by Articles 41 and 126 of the CPC.

Article 7 paragraph 2 b)

122. As mentioned above (see Article 41 and 126 of the CPC) when a criminal case has been initiated the law enforcement authorities, may apply with the prosecutor that leads the criminal investigation to request an authorisation from the judge in order to

obtain the financial data related to specified bank accounts and to banking operations which have been carried out.

123. In the pre-investigative stage and also in relation to cases originated by the FIU, as the authorities sustained, according to the provisions of the AML/CFT Law (i.e. Article 13/1) the FIU has the power to request and receive information and necessary documents from the reporting entities and public authorities in order to assess whether the transaction is suspicious. In this context, it is noted that Article 12 of the AML/CFT Law provides that: "The information received from the reporting entities, in cases provided by this law, can be used only for the purpose of prevention and combating money laundering and terrorism financing."

124. The Moldovan authorities have indicated that this provision is not necessarily relevant considering the provisions of Article 13/1 paragraph 2, letter (b) according to which: the FIU (OPFML) has within its function "…..transmission of information and documents to criminal investigation authorities and to other competent authorities, when there are reasonable suspicions on money laundering and financing of terrorism or other crimes that generate illicit income."

125. It is considered nevertheless that the provisions of Article 12 and 13 of the AML/CFT Law should be harmonised.

Article 7 paragraph 2 c)

126. According to the Law No. 59 from 29.03.2012[22] on special investigation activity, monitoring of financial transactions represents a special investigative measure and can be performed on the basis of a decision of the instruction judge, upon the request of the prosecutor, after the initiation of a criminal investigation.[23]

127. The measure of monitoring financial transactions is authorised by the Judge for a term that cannot exceed 30 days and according to the structure of a decision of the instruction judge, it should contain the number of the account, name of the owner, name of the financial institution where it is detained or that is performing it or any other information that can help to identify the performed measure.

128. Moreover, art. 5 (2) (d) states:
"(2) The identification measures include:
d) on-going monitoring of the transaction or of the business relationship, including the examination of transactions concluded throughout the course of the respective relationship, to ensure that the transactions being conducted are complied with the information provided by the reporting entity on the legal or the natural persons, the business and type of risk, including, when necessary, the source of funds and ensuring that the documents, data or information held are updated."

129. The CPC was amended on 5th of April 2012 by the Law No. 66, which introduced a new section (Articles 132/1 – 138/3) – "The special investigative activity". The provisions came into force on 27 October 2012. According to article 132/2(f) the monitoring and control of the financial transactions and the access to the financial information are provided as special investigative techniques. Article 132/1 of the CPC

[22] This Law came into force on 8.12.2012
[23] **Article 18** of the Law No. 59 from 29.03.2012 on special investigation activity
Special investigation measures
(1) For the realization of the task provided by the present law can be performed following special investigation measures:
1) with authorization of the instruction Judge on the request of the prosecutor:
f) monitoring or control of the financial transactions and access to the financial information;

sets out the scope of the special investigative activity and establishes that the special measure enumerated in Article 132/2 could be undertaken only in cases of serious crimes, extremely serious crimes and exceptionally serious crimes[24] .

130. Not all the offences included in the annex of the Convention are provided in the criminal law of the Republic of Moldova with punishment by imprisonment for a term of up to 12 years inclusively. Considering that the provisions of the CPC shall prevail, it would appear that the special investigative measure of monitoring or control of financial transactions and the access to the financial information is not possible for several offences included in the annex of the Convention (counterfeiting and piracy of products, Forgery, Insider trading and market manipulation).

Article 7 paragraphe 2 d)

131. The authorities have indicated that according to the AML/CFT Law, reporting entities and their employees are obliged not to disclose to natural or legal entities performing the transactions or to third parties about transmission of the information to the Office for Prevention and Fight against Money Laundering.[25] They have also referred to several CC provisions, such as article 315 of the CC, which cover the disclosure of information related to criminal investigation. Article 291/6 of the Administrative Code[26] provides for administrative sanctions (i.e. fine of 100 to 150 of conventional units for natural person, fine of 150 to 300 of conventional units for the person in charge with leading position and fine of 150 to 300 for the legal person) for the reporting entities and their employees who disclose that information has been sent to the FIU. These provisions appear to be more limitative than the situations envisaged by the Convention as far as they cover only the situation in which information has been sent. Article 7 para 2 (d) of the Convention is referring to the situations in which information has been sought or obtained.

[24] Article 16.of the Penal Code Classification of Crimes
(1) Depending upon their prejudicial nature and degree, the crimes set forth herein are classified into the following categories: minor, less serious, serious, especially serious, and exceptionally serious.[...] (4) Serious crimes are considered acts for which criminal law provides for a maximum punishment by imprisonment for a term of up to 12 years inclusively. (5) Extremely serious crimes are considered crimes committed with intent for which criminal law provides for a maximum punishment by imprisonment for a term of more than 12 years. (6) Exceptionally serious crimes are considered crimes committed with intent for which criminal law provides for life imprisonment

[25] **Article 8.**
(6)The reporting entities and their employees are obliged to refrain themselves from communicating to natural and legal persons who carry out the activity or transaction, or to third parties about the transmission of the information to the Office for Prevention and Fight against Money Laundering.
(7) The reporting entities ensure the protection of their employees against any threats or hostile action regarding the reporting of suspect activities and other transactions.
Article 15.
The liability for violation the provisions of this law
(1)The violation of the provisions of this law refers to the disciplinary, administrative, civil or penal liability, in accordance with the legislation in force.
(2)Office for Prevention and Fight against Money Laundering, other public authorities empowered to ensure the execution of this law, as well as officials within these, are obliged to ensure the commercial, banking or professional secret. Its disclosure, in violation of the established provisions, is held liable, in accordance with the legislation in force, for the damage caused by the illegal disclosure of the data obtained while on duty. Submitting of the information to the similar foreign authorities in the established way cannot be considered disclosure of the secrets defended by the law.
(3)The reporting entities and their employees are exempted from disciplinary, administrative, civil and penal liability for submitting the information to the competent authorities for the purpose of executing the provisions of this law, even if this caused material or moral damages.

[26] Art.291/6 introduced by LP287 from 05.12.13, MO27-34/07.02.14 art.63

Effective implementation

132. The information provided by the authorities does not enable to draw any conclusions regarding the effective implementation of the provisions of the Convention.

Recommendations and comments

133. As noted above, Moldova should take additional measures in order to fully implement the relevant aspects under Article 7 of the Convention, and in particular to :
   a. ensure that monitoring of accounts is permissible in respect of all the relevant criminal offences in accordance with the Convention's provisions.
   b. review the legal framework so as to clearly prohibit any disclosures by banks to customers or third persons that information has been sought or obtains at pre-investigative stage;

134. Moldova should also consider any further practical measures to expedite the processes through which law enforcement authorities may determine whether a natural or legal person is a holder or beneficial owner of accounts in Moldova.

7. International co-operation

7.1. Confiscation – Articles 23 paragraph 5, Article 25 paragraphs 2 and 3

The Convention is considered to add value in the following areas:

The Convention introduces a new obligation to confiscate that extends to "*in rem*" procedures. Hence, Article 23 paragraph 5 reads as follows:

> "*The Parties shall co-operate to the widest extent possible under their domestic law with those Parties which request the execution of measures* ***equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions****, in so far as such measures are ordered by a judicial authority of the requesting Party in relation to a criminal offence, provided that it has been established that the property constitutes proceeds or other property in the meaning of Article 5 of this Convention*." (i.e. transformed or converted etc.)

Asset sharing (though Article 25(1) retains the basic concept that assets remain in the country where found, the new provisions in Article 25(2) and (3) require priority consideration to returning assets, where requested, and concluding agreements).

Description and analysis

Articles 23 paragraph 5

135. Article 23 of the Convention, as a whole, provides for the possibility of two forms of international cooperation with regard to the confiscation, whether the enforcement of an order made by a court of the requesting state, or the establishment of mechanisms compatible with the confiscation law which can be activated by the request of another party.

136. Pursuant to Article 540/1 of the CPC, foreign requests for search, seizure or return of objects or documents, sequestration or confiscation are executed pursuant to domestic law provisions. Foreign requests for confiscation may be executed in Moldova after

the obtainment of a confiscation order by the Moldovan competent authority in accordance with its domestic legislation. Confiscation in the meaning provided by the Moldovan domestic law is a final deprivation of assets (property, proceeds, instrumentalities) to the state property and sequestration is a temporary deprivation of the same assets in order to assure the compensation of the victims of the crime, the confiscation of these goods and/or payment of the fine.

137. Moldova cannot execute measures equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions.

Article 25 paragraph 2

138. Moldova can give consideration to returning confiscated property to the requesting Party so that it can give compensation to the victims of the crime or return it to its legitimate owners, as envisaged under Article 25(2).

139. The Moldovan authorities have indicated that in practice, money and other values obtained through criminal actions or that were the targets of criminal actions, that have been withdrawn, seized, confiscated are returned as a priority to the victims of the crime and after that to the legal owners, to the state (depending on the case). If the victim of the crime is located in another state (in the requesting state), the person benefits of this right, and at the request of the contracting state, Moldovan authorities shall give priority to returning the confiscated property to the requesting Party.

140. There are several provisions in the domestic legislation which clarify the priority given for compensation to the victims of the crime. Article 219 paragraph 8 of the CPC provides that any claims by individuals and legal entities which have been damaged by an act shall prevail over the claims of the state against the perpetrator of the offence. Also Article 162 (4) of the CPC establishes as a priority the restitution to the owner of money and other valuables obtained through criminal actions or that were the targets of criminal actions. The domestic legislation does not make any distinction between a domestic or a foreign owner thus it may be assumed that in the hypothesis described by Article 162 (i.e. at the termination of a criminal case or when the case is settled in essence) the priority is given to returning the property to their legitimate owners.

Article 25 paragraph 3

141. Moldova has not received to date any request from another Party to consider concluding an agreement or arrangement for the purpose of asset sharing.

142. Existing bilateral agreements concluded with other States do not give special consideration to sharing confiscated property; however some foresee a procedure for transferring to the requesting Party property, proceeds and instrumentalities of an illicit origin. Such provisions are in place in agreements with several three States, two of which are not parties to CETS no°198 (i.e. agreement between the Republic of Moldova and the Republic of Turkey (1996), between the Republic of Moldova and Ukraine (1993), between the Republic of Moldova and the Republic of Azerbaijan (2004)). 27

[27] **Agreement between the Republic of Moldova and the Republic of Turkey on legal assistance in civil, commercial and criminal matters**, signed on May 22, 1996:
Art. 38 - " Transfer of illicit property and money" – Any contracting party, on the request of the other party, will transfer to it illicit money and property, which have been obtained by the offender on its territory, during committing the offence and which have been discovered on its territory. Such a transfer will not violate legal rights of the requested Party or of a third party regarding these money and goods.

Effective implementation

143. Moldova has not received any requests for confiscation of property/instrumentalities in money laundering cases on the basis of CETS no°198. The authorities have indicated that there have been cases when Moldovan criminal investigation bodies have executed requests aimed at giving priority to a requesting Party, by transmitting goods aimed to compensate victims of the crime.

Recommendations and comments

144. Moldova should ensure that specific measures are in place in accordance with Article 23 paragraph 5 of the Convention and that it can co-operate to the widest extent possible under domestic law with Parties that seek assistance in the execution of measures equivalent to confiscation leading to the deprivation of property which are not criminal sanctions, within the meaning of the Convention's provisions.

145. Moldova should ensure that its domestic law or administrative procedures enable it to give special consideration to concluding agreements or arrangements on asset sharing with other Parties.

7.2. Investigative assistance – Article 17 paragraphs 1, 4, 6; Article 18 paragraphs 1 and 5; Monitoring of transactions – Article 19 paragraphs 1 and 5

The areas where the Convention is considered to add value here are the following:

- The Convention introduces the power to provide international assistance in respect of requests for information on whether subjects of criminal investigations abroad hold or control accounts in the requested State Party. Indeed, Article 17 paragraph 1 reads as follows: *"Each Party shall, under the conditions set out in this article, take the measures necessary to determine, in answer to a request sent by another Party, whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in its territory and, if so, provide the particulars of the identified accounts."* This provision may be extended to accounts held in non-bank financial institutions and such an extension may be subject to the principle of reciprocity.

Agreement between the Republic of Moldova and Ukraine on legal assistance in civil and criminal matters, signed on December 13, 1993:
Art. 4 - " Types of legal assistance" – the contracting parties will afford mutual legal assistance in executing of some procedural activities, specially service of writs, searches, confiscation, sequestration of goods, transmission of goods and documents, initiating a criminal proceeding and transfer of criminal proceedings, extradition, interview of defendants, witnesses, experts, parties and other persons, forensic reports, judicial hearing.
Art. 74 par. (1) - " Transmission of property" – goods obtained by the offender from a criminal offence or goods resulted from their change, also other goods that may be used as evidence in the criminal case to the requesting contracting Party, if so is necessary for the investigation of the case carried out on the territory of the requesting contracting Party.
Agreement between the Republic of Moldova and the Republic of Azerbaijan on legal assistance in civil, family and criminal matters, signed on October 26, 2004:
Art. 80 - " Transmission of property " – goods obtained by the offender from a criminal offence or goods resulted from their change, also other goods that may be used as evidence in the criminal case to the requesting contracting Party, if so is necessary for the investigation of the case carried out on the territory of the requesting contracting Party.

- The Convention also introduces power to provide international assistance in respect of requests for historic information on banking transactions in the requested Party (which may also be extended to non-bank financial institutions and such extension may also be subject to the principle of reciprocity). Article 18 paragraph 1 provides that *"On request by another Party, the requested Party shall provide the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account*."

- The Convention is considered to add also value as it establishes the power to provide international assistance on requests for prospective monitoring of banking transactions in the requested Party (and may be extended to non-bank financial institutions). Article 19 paragraph 1 reads as follows:

  "Each Party shall ensure that, at the request of another Party, it is able to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicate the results thereof to the requesting Party."

Description and analysis

146. Upon signature or ratification, Moldova has not made any declaration in respect of Article 17 and the manner in which it intends to apply this article.

Article 17 paragraphs 1, 4, 6

147. The identification of bank accounts of legal entities registered in Moldova is facilitated by the fact that the National Tax Inspectorate has a database (*on-line form of legal entities*) which registers information on legal entities, and to which prosecutors and criminal investigation officers have access. This database contains information about the directors of legal entities, numbers of accounts, name of banks where the account is held, address of the office etc. Moldova does not have a central record of bank accounts, thus any identification of bank accounts of a person would involve requesting all banks to verify whether a specific person holds accounts in their institution.

148. According to Article 22 paragraph 1 of the Law on financial institutions, banking secrecy is any information relating to the person, his assets, activity, business, personal or business relations of the bank's customers, customer's accounts (balance, transactions), the transactions concluded by customers as well as any information about customers which has become known to the bank. Information on bank accounts and particulars as provided for under Article 17 is covered by banking secrecy provisions.

149. Such information can be retrieved by criminal investigation bodies on the basis of Article 126 paragraph 2 of the CPC. The Moldovan criminal investigation bodies can require information from banks and retrieve any documentation related to bank accounts, subject to prior authorisation of the investigative judge to that effect (Article 126, paragraph .2 and Article 41 paragraph 3 of the CPC). It should be mentioned however Article 126 paragraph 1 enables the criminal investigation bodies to retrieve such information only if the evidence or documents which are the subject of the

investigation indicate specifically the place and the entity which holds that information. Therefore it is the view of the rapporteurs that this article can apply only once the criminal investigation bodies have already identified the bank where the accounts are being held, and that this would apply for the execution of MLA requests for banking evidence.

150. The authorities have also referred in this context to Article 533 paragraph 1 which sets out various forms of international legal assistance which can be requested or obtained from Moldova, based on the provisions of the domestic criminal procedure and criminal procedure of foreign states. These include in particular under paragraph (3) the "withdrawal of objects and documents" as well as any other actions for prosecution set out in the code and under paragraph 9 of Article 533 any other actions which are not in breach of Moldovan legislation. Article 25 para 1 of the Law on International Legal Assistance in Criminal Matters (Law n. 371 of 1.12.2006) sets out what can be provided in the context of a rogatory letter, and this includes the withdrawal of objects and documents and the transmission of information necessary for a proceeding.

151. The authorities have also explained that specific requests for identification of a person's bank accounts can be made through the FIU, which can require from obliged entities information to that effect, and that this would also fall within the co-operation between the FIU and the criminal investigation bodies.

152. The authorities indicated that the same procedure is applied also for any information on bank accounts and operations carried out through non-bank financial institutions.

153. It remains the view of the rapporteurs that the Moldovan legal framework and procedures in place for implementing Article 17(1) of the Convention need clarifying. Further clarifications and clear procedures should be available to give certainty to other Parties in respect of firstly, which Moldovan authority they should address to identify whether a financial institution in Moldova holds accounts of a natural or legal person under investigation and based on which procedure, and secondly then the aspects related to MLA requests and related conditions for executing a request for banking information and documentation.

Article 18 paragraphs 1 and 5

154. Moldova can provide particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient accounts, on the basis of the provisions relating to seizure of information from financial institutions, as explained above (Articles 533 paragraph 1 and 126 paragraph 2 of the CPC).

Article 19 paragraphs 1 and 5

155. Moldova is able to monitor during a specified period the banking operations that are being carried out through one or more accounts specified in a request and communicate the results to the requesting Party. Article 134 ^{2} of the CPC covers the monitoring or control of financial transactions and access to financial information", which are defined as the "operations which provide information on financial transactions carried out through financial institutions or other competent institutions or obtaining from financial institutions of the documents or information from their possession relating to deposits, accounts or transactions of a person." Such measures can be ordered in the context of criminal proceedings in respect of specific offences of

the CC of Moldova[28]. This constitutes a specific investigative measure (art 132 [2] f CPC), which can be initiated on the basis of a rogatory letter from foreign countries (Article 132 [3] paragraph 3 CPC). The prosecutor is in charge to coordinate, leading and control the execution of this investigative measure, and such measures can only be undertaken with the prior authorization of the investigative judge.

Effective implementation

156. The authorities have indicated that the General Prosecutor's Office has successfully executed 2 MLA requests in 2013 for the identification of accounts of several persons. Also, in 2012, two out of five requests received by the General Prosecutor's Office of the Republic of Moldova involved providing particulars of specified bank accounts and banking operations which have been carried out during the specified period and those have been executed. Moldova has never received nor requested assistance for monitoring bank operations.

Recommendations and comments

157. In conclusion, Moldova has several provisions in its CPC which enables authorities to provide assistance and execute requests related to banking information and documentation, as well as monitoring of accounts. As explained by the authorities these provisions have been applied in practice and several requests have been executed to that effect.

158. Nevertheless the Moldovan legal framework and procedures in place for implementing Article 17(1) of the Convention would need to be further expanded and clarified in order to ensure that they can be fully implemented. Further clarifications and clear procedures should be available to give certainty to other Parties in respect of firstly, which Moldovan authority they should address to identify whether a financial institution in Moldova holds accounts of a natural or legal person under investigation and based on which procedure, and secondly then the aspects related to MLA requests and related conditions for executing a request for banking information and documentation.

7.3. Procedural and other rules (Direct communication) – Article 34 paragraphs 2 and 6

The Convention is considered to add value in that it introduces the possibility for direct communication prior to formal requests. According to article 34 paragraph 6:

"Draft requests or communications under this chapter may be sent directly by the judicial authorities of the requesting Party to such authorities of the requested Party prior to a formal request to ensure that it can be dealt with efficiently upon receipt and contains sufficient information and supporting documentation for it to meet the requirements of the legislation of the requested Party."

[28] Articles. 158, 165, 165[1], 189-192, 196, 199, 206, 208, 209, 217–217[5], 220, 236, 237, 239–248, 251–253, 255, 256, 278, 279, 279[1], 283, 284, 290, 292, 301[1], 302, 324–327, 330[1], 333, 334, 343, 352, 361 and 362[1] of the CC

Description and analysis

159. The authorities of the Republic of Moldova have indicated that communications are handled pursuant to Article 532 of the CPC, which reads as follows:

> ***Article 532*** *Manner for Transmitting Requests for Legal Assistance*
> *Requests for international legal assistance on criminal matters shall be filed via the Ministry of Justice or the General Prosecutor's Office directly and/or via the Ministry of Foreign Affairs of the Republic of Moldova, unless a different manner of filing requests is provided based on reciprocity.*

160. The provisions of the MLA Law[29] regarding communications differ slightly, and foresee that in cases where there is a direct transmission of requests by foreign authorities to the prosecution or judicial authorities, the latter may execute them only after having been authorised by central authorities. Urgent requests may be transmitted electronically pending receipt of the official transmission.

161. The situation of transmission of draft requests of communications is not envisaged in the legislation. There are no provisions in force that would either allow or prohibit the Moldovan authorities to receive directly draft request prior to a formal request, to ensure that it can be dealt with efficiently upon receipt and that it contains sufficient information and supporting documentation. The authorities have indicated that though this has not occurred in the context of requests based on CETS a ° 198, draft requests or communications are often exchanged in the context of requests related to smuggling offences.

Effective implementation

162. Moldova has not received any requests on the basis of CETS no°198.

Recommendations and comments

163. Moldova has not made use of the option set out in Article 34(2) enabling that urgent requests could be sent directly by the judicial authorities of the requesting Party to the authorities of the requested Party, with a copy to central authorities. Moldova should consider this option as a means to facilitate co-operation under the Convention.

8. International co-operation – Financial Intelligence Units - Article 46 paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

[29] **Article 7** of the **Law No 371 on International Legal Assistance in Criminal Matters** (01.12.2006)
Mechanisms on Transferring Requests on Legal Assistance
1) The requests on legal assistance are addressed through the central authorities which are the Ministry of Justice and the Prosecutor General's Office. The requests on legal assistance formulated during judicial proceedings as well as during the execution of punishment are transmitted through the Ministry of Justice and the requests on legal assistance formulated during the prosecution stage, through the Prosecutor General's Office. The requests on legal assistance can be transmitted either directly by the authorities of the foreign state, or through diplomatic channels by the International Police Organization (Interpol).
2) In case when the requests on legal assistance are transmitted directly to the prosecution or judicial authorities of the Republic of Moldova, the latter shall have the right to execute them only after they obtain the authorization of execution from the central authorities.
3) In case of emergency the request on legal assistance can be transmitted by mail, including electronic, by telegraph, by telex, by fax or by any other adequate means of delivery which leaving a written track, further guaranteeing its official transmittal.

It is considered that the added value of the Convention in A.46 is that it sets out "detailed machinery The relevant provisions are set out in full.

Paragraph 1 *Parties shall ensure that FIUs, as defined in this Convention, shall cooperate for the purpose of combating money laundering, to assemble and analyse, or, if appropriate, investigate within the FIU relevant information on any fact which might be an indication of money laundering in accordance with their national powers.*

Paragraph 2 *For the purposes of paragraph 1, each Party shall ensure that FIUs exchange, spontaneously or on request and either in accordance with this Convention or in accordance with existing or future memoranda of understanding compatible with this Convention, any accessible information that may be relevant to the processing or analysis of information or, if appropriate, to investigation by the FIU regarding financial transactions related to money laundering and the natural or legal persons involved.*

Paragraph 3 *Each Party shall ensure that the performance of the functions of the FIUs under this article shall not be affected by their internal status, regardless of whether they are administrative, law enforcement or judicial authorities.*

Paragraph 4 *Each request made under this article shall be accompanied by a brief statement of the relevant facts known to the requesting FIU. The FIU shall specify in the request how the information sought will be used.*

Paragraph 5 *When a request is made in accordance with this article, the requested FIU shall provide all relevant information, including accessible financial information and requested law enforcement data, sought in the request, without the need for a formal letter of request under applicable conventions or agreements between the Parties.*

Paragraph 6 *An FIU may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Party or, in exceptional circumstances, where divulging the information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Party concerned or would otherwise not be in accordance with fundamental principles of national law of the requested Party. Any such refusal shall be appropriately explained to the FIU requesting the information.*

Paragraph 7 *Information or documents obtained under this article shall only be used for the purposes laid down in paragraph 1. Information supplied by a counterpart FIU shall not be disseminated to a third party, nor be used by the receiving FIU for purposes other than analysis, without prior consent of the supplying FIU.*

Paragraph 8 *When transmitting information or documents pursuant to this article, the transmitting FIU may impose restrictions and conditions on the use of information for purposes other than those stipulated in paragraph 7. The receiving FIU shall comply with any such restrictions and conditions.*

Paragraph 9 *Where a Party wishes to use transmitted information or documents for criminal investigations or prosecutions for the purposes laid down in paragraph 7, the transmitting FIU may not refuse its consent to such use, unless it does so, on the basis of restrictions under its national law or conditions referred to in paragraph 6. Any refusal to grant consent shall be appropriately explained.*

Paragraph 10 *FIUs shall undertake all necessary measures, including security measures, to ensure that information submitted under this article is not accessible*

by any other authorities, agencies or departments.

Paragraph 11 *The information submitted shall be protected, in conformity with the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and taking account of Recommendation No R(87)15 of 15 September 1987 of the Committee of Ministers of the Council of Europe Regulating the Use of Personal Data in the Police Sector, by at least the same rules of confidentiality and protection of personal data as those that apply under the national legislation applicable to the requesting FIU.*

Paragraph 12 *The transmitting FIU may make reasonable enquiries as to the use made of information provided and the receiving FIU shall, whenever practicable, provide such feedback.*

Description and analysis

164. It should be noted that Moldova has not indicated, in application of Article 46 paragraphs 13, which is the FIU within the meaning of this article. For the purpose of this analysis, it was considered that the Moldovan FIU is the Office for Prevention and Fight against Money Laundering (OPFML).

Article 46 paragraphs 1, 2 and 3

165. The AML/CFT Law (Law 190-XVI of 26.07.2007) sets out the powers, functions and structure of the Office for Prevention and Fight against Money Laundering (OPFML), which is designated as the FIU in the Republic of Moldova. The FIU was originally set up in 2001 as a special section within the Public Prosecutor's Office by virtue of Law No. 633-XV of the 15 November 2001. Following an amendment to Law No. 633-XV by Law No 197-XV of 15 May 2003, the functions of the FIU were transferred to a special subdivision within the Centre for the Combating of Economic Crime and Corruption ("CCECC"), the OPFML (office for prevention and combating money laundering) which was set up by Order No. 111 of 15 September 2003 issued by the Director of the CCECC (NAC – National Anti-Corruption Centre, since 2012).

166. Article 13¹(1) of AML/CFT Law states that the OPFML shall serve as a specialized, independent division within the CCECC. In addition, Article 13¹(3) states that the OPFML is responsible for coordinating the activities of the authorities involved in the fight against ML/FT in the Republic of Moldova.

167. The OPFML is a central, national agency responsible for receiving, requesting, analysing and disseminating to the competent authorities, disclosures of financial information.

168. Article 13¹ (2) of the AML/CFT Law sets out the functions of the OPFML in preventing and combating money laundering and terrorist financing, including:
receiving, analysing, processing and transmitting information on suspicious activities *and transactions submitted by reporting entities; transmitting information and documents to law enforcement and other competent authorities for investigation purposes when there are reasonable suspicions of ML/FT or other crimes generating illegal proceeds; requesting and receiving information and necessary documents from reporting entities and public authorities for the purpose of assessing the suspect nature of the transactions; issuing postponement orders to stop the execution of a suspicious activity or transaction; cooperating and exchanging information with similar foreign authorities and international organizations dealing with ML/FT issues.*

169. Pursuant to Article 13(2) of the AML/CFT Law, the OPFML, on its own initiative (spontaneously) or on the basis of a request, can send, receive or exchange information and documents with foreign authorities having similar functions to the OPFML, on a mutual basis and subject to the observance of similar requirements regarding confidentiality.

170. Additionally, Order 16 of 28.01.2013 (Chapter V) approved by the director of National Anticorruption Centre, directly states that the OPFML can exchange information with FIU's from other jurisdictions regardless of the type or organizational form of the FIU. This is in line with article 46 paragraph 3 of the Convention. Order 16 of 28.01.2013 is an internal act establishing the internal procedure of reception, analysing and dissemination of intelligence. The Reviewers had an opportunity to examine a copy of Order 16 in English.

171. On 27th May 2008, the Republic of Moldova has become a full member of the Egmont Group. This membership facilitates the operative exchange of data with other FIUs and confirms the acknowledgement of the OPFML as a Financial Intelligence Unit, in accordance with the international standards. The OPFML does not require the existence of a Memorandum of Understanding (MOUs) in order to exchange information with foreign FIUs, nor is there such a requirement in the Law. Nevertheless, for the purpose of strengthening bilateral cooperation with FIUs in other jurisdictions, the OPFML has signed 44 MOUs. Moreover, a review of the list of countries with which OPFML has signed MOUs reveals that no distinction is being made with regard to the type of the FIU. Thus no statistics are kept regarding the exchange of information that would be dependent on the type of requesting FIU.

Article 46 paragraph 4

172. Order 16 of 28.01.2013, clearly states that requests made to foreign FIUs should contain the identification data of the subject of inquiry, financial information including the number of the bank account, description of the financial investigation with specification of reasons for suspicion and data on the financial transactions with the involvement of the subject. Additionally, according to the provisions of the same internal act, in the request made to the foreign FIU it must be mentioned that the obtained information shall not be disseminated to third parties or used in any other way rather than for performing the financial investigation, without prior consent of the supplying FIU. This is in line with article 46 paragraph 4 of the Convention.

173. Moreover, pursuant to Order no.16 dated 28.01.2013, information received from another FIU cannot be disseminated to a 3rd party or used for any other purpose than financial investigations conducted by the OPFML without prior consent of the supplying FIU.

174. Furthermore, the Moldovan Authorities stated that they apply the Egmont Group principles and rules in exchanging information with other foreign FIUs. They use a standard form of exchange of information approved by Egmont Group available for all its members. Moreover, as stated in the provided draft of an MOU, any request for information will contain a brief statement of the underlying facts that justify the request and the purpose for which the information will be used.

175. According to the Moldovan Authorities, they did not have a case where a foreign FIU refused to provide information following a request for information made by the FIU-Moldova on the basis of insufficient information being provided by the FIU-Moldova on the relevant facts or on the manner in which the information sought would be used.

Article 46 paragraph 5

176. The FIU can, pursuant to Article 13(2) of the AML/CFT Law, send, receive or exchange information and documents with foreign authorities having similar functions to the OPFML, on a mutual basis and subject to the observance of similar requirements regarding confidentiality...

177. The FIU may request, on the basis of Article 13[1](2) (d), reporting entities and public authorities to provide any information and necessary documentation, for the purpose of assessing the suspect nature of the activities or transactions. This provision is used in practice for the purpose of conducting inquiries at the request of foreign counterparts. Such information can be shared with other FIUs on the basis of Articles 13 and 13[1] (2) (h) of the law.

178. Furthermore, pursuant to Article 7(2) of the AML/CFT Law, the reporting entities are obliged to respond completely and promptly to the requests of the OPFML and other empowered authorities, on the existence of business relations and their nature. Such disclosures shall not constitute a disclosure of a commercial, banking or professional secret (Article 12(2) of the AML/CFT Law). Article 12(3) further states that the legislative provisions on commercial, banking or professional secrets shall not impede the OPFML from receiving information on the financial and economic activities and transactions of natural or legal persons.

179. However, there is no legal provision in the AML/CFT Law requiring reporting entities, public authorities and other legal entities to provide information not directly accessible by the OPFML within a particular period of time or on a timely basis. This deficiency may restrict the timely availability of information to the OPFML and as a result, the timely exchange of information with foreign FIUs.

180. Moldova indicated that according to the Law on petition submission No.190/1994, there is a general requirement on any person to provide information to an official authority within 15 days for simple requests and 30 days for complex requests. Though this may be the case in practice, the rapporteurs have doubts as to whether this act would indeed apply to such, given the scope of this act. [30]

181. In practice, the OPFML indicates in its requests made the timeframe within which the information should be provided. Reporting entities which do not provide the information, upon the FIU's request and within the set timeframe can be sanctioned, pursuant to the Contraventions administrative code[31] with a fine from 100-150 conventional units for natural persons (20 lei is 1 conventional unit) and 300 conventional units for legal persons, with or without the right to effectuate any activity for a period from 3 months -1 year.

182. The OPFML has direct access to a large number of databases[32] which make accessible a wide range of information required for the adequate performance of the analytical

[30] Article 1 of the Law on petition submission No.190/1994 provides that "*This law determines the method of examining the petitions of the citizens of the Republic of Moldova, addressed to the state bodies, enterprises, institutions and organizations (hereinafter bodies), in order to insure the protection of their legitimate rights and interests*." According to Article 1/1 of the same law "*This law extends on the method of examining the petitions addressed by the legally constituted organizations on behalf of the associations they represent*."

[31] Article 291/7, introduced by Law No. 287/5.12.2013, in force since 7.02.2014

[32] The databases which the OPFML has direct access to are the following:

i. Financial Information– analytic database (SPCSB-MS) which contains data of all STRs, CTRs, threshold and cumulative transactions (which are no longer being reported);

function. Additionally, according to the provisions of Charter III, p9, (d,h,l,k,l) of the Regulation (statute) on OPFML activity adopted by the decision N 17 of the National Anticorruption Board on 17 of February 2013, the OPFML is empowered to access all the information resources available in the National Anticorruption Centre according to the tasks and duties conferred upon it.

183. According to Order no.16 of 28.01.2013 (Chapter V), the assigned employee, a financial investigator, will prepare the response using access to all available information resources. Furthermore, pursuant to the said Order, the term of examination of the received requests cannot overpass 30 days, but in case that this period is not sufficient, the OPFML should send an intermediary response to the authority from which it received the request, describing the circumstances causing the late final response.

184. The Moldovan Authorities explained that information requested by foreign FIUs is generally provided within 72 hours, via Egmont Secure Web. For complex cases replies are usually provided within a period of 5 working days.

185. The authorities have also provided the following statistical data :

Statistical data on the period of answer providing to the requests received from foreign FIU-s:

	during a period of 5 working days	till a period of 30 days and more	during 72 hours
2011	19	15	5 answers
2012	8	9	2 answers
2013	6	11	6 answers
By March 2014	6	2	2 answers

Article 46 paragraph 6

186. There is no legal basis in the domestic law regarding grounds for the refusal to provide information, although in principle the OPFML may refuse to provide information in the circumstances established by the Convention (in accordance with Law No. 165-XVI of 13.07.2007 ratifying the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism).

187. The Moldovan authorities indicated that the general approach is not to refuse to disseminate information. Being a member of the Egmont Group, the OPFML applies the principles of exchange of information agreed upon by member FIUs. According to the

ii. Criminal cases – database of all criminal cases opened by the Criminal Unit of the National Anticorruption Centre;
iii. Access-Web – Personal data of citizens and their relationships, ID documentation data, data on the registered transportation vehicles, data on the crossing of state border, data on the resident and non-resident economic agents registered in the country, data on the foreign persons;
iv. Fisc.md Infoview – data on the financial/economic activity of economic agents, accounting of fiscal bills of lading, accounting balance-sheets (interface adapted for OPFML);
v. Real Estate Database – data about real estate property;
vi. Custom Database – data on the customs declarations;
vii. Database on wanted persons, stolen vehicles, and other criminal records;
viii. Database of delinquent (shell) companies – data of all shell companies identified by law enforcement agencies;
ix. Archive of exchange rates;
x. Phone database – data on numbers of fix phone and its owners.

provisions of a draft MOU provided, assistance can be denied in cases where: 1) the provision of information would be likely to prejudice the sovereignty, national security or other essential interests of the Republic of Moldova and 2) the information or documents requested may unduly prejudice an investigation or proceedings in the Republic of Moldova. So far, the OPFML has never refused to provide information. Any refusals would however be explained but there are no practical examples.

Article 46 paragraph 7

188. Order 16 of 28.01.2013 (Chapter VI) clearly states that information received from another FIU cannot be disseminated to a 3rd party or used for any other purpose than financial investigations performed by the Office, without the prior consent of the supplying FIU. This is in line with article 46 paragraph 7 of the Convention. This requirement is also present in the template MoUs that the OPFML has signed with other FIUs.

189. No relevant statistics are maintained on responses received from other FIUs from States Parties to the Convention and of requests made by the OPFML for further use or dissemination of obtained information. Moldova indicated that during 2013, the OPFML had sent a few requests to foreign FIUs for further dissemination of obtained information and had also received such a request from a counterpart FIU.

Article 46 paragraph 8

190. When transmitting information or documents, the OPFML may impose restrictions and conditions on the use of provided information. This is clearly indicated in Order no.16 of 28.01.2013 (Chapter V), according to which if it is deemed necessary, restrictions or conditions for the use of the provided information may be imposed in order to avoid to prejudice the on-going investigation or due to other objective reasons. According to the Moldovan authorities, the other objective reasons would be a situation when dissemination of information could harm the sovereignty, national security or other essential interests of the Republic of Moldova.

191. Moldova has stated that when transmitting information to another FIU, the following text is included in their response: "*This information is delivered only for financial intelligence purposes related to money laundering. The sent or the received information should not be disseminated without prior consent of the Authority that provided the information*". So far, the OPFML has never refused to permit the dissemination of the information by the foreign FIU to a third party, for intelligence purposes.

Article 46 paragraph 9

192. As mentioned earlier, according to the provisions of Order 16 of 28.01.2013, if it is deemed necessary, restrictions or conditions for the use of provided information may be imposed in order to avoid to prejudice the on-going investigations or if the provision of such information would likely harm the sovereignty, national security or other essential interest of the Republic of Moldova. These are the conditions referred to in paragraph 6 of the Convention.

193. In practice, the OPFML provides consent for dissemination of provided information for criminal investigations or prosecutions but only for intelligence purposes. So far, they have never refused to provide such consent. The Moldovan authorities explained that in case they would refuse to provide consent they would provide reasons for refusal. However, if it is deemed necessary to use the provided information for evidentiary purposes, they need a rogatory letter to be submitted via official established channels.

Article 46 paragraph 10

194. Moldova has undertaken several measures to ensure that information submitted by the FIU is not accessible by any other authorities, agencies or departments.

195. Article 15 of the AML/CFT Law states that the FIU and its officials have a duty to maintain any commercial, banking or professional secret which they may have come in possession of, in the course of the performance of their functions. Any disclosure of such secret is held liable, in accordance with the relevant legislation, for the damage caused by the illegal disclosure of the data obtained while on duty. The Moldovan authorities stated that with the signing of the employment contract, employees who will be engaged in the OPFML must sign a Commitment on the protection of information considered as state secret and other sensitive information protected by laws. This was also established by the evaluators of the MONEYVAL 4th round of evaluation. The Commitment which is annexed to Order no. 105/2011 concerns all employees of the National Anticorruption Centre and not specifically the OPFML employees. According to the Commitment, the employees of the FIU are obliged during the exercising of their functions within the National Anticorruption Office (NAC), as well as after dismissal, to keep the state secret, other secrets protected by law, not to disclose the official information with limited access, the information on personal data and information that was identified during the activity within the NAC. They are also obliged not to use it with the goal of obtaining personal interest or in the interest of other persons. In case of non-observance of the provisions of the Commitment, the employee will be subject to penal, administrative and disciplinary sanctions.

196. Furthermore, article 33 of Law nr. 1104/06.06.2002 on National Anticorruption Centre, on the application of disciplinary sanctions for non-observance of the professional duties, of the professional discipline and of the professional behaviour by the employees of the Centre, provides different categories of sanctions including the dismissal of the employee. It should also be noted that all documents which are disseminated by the OPFCML contain a footnote which states that data presented includes trade, banking and professional secrets, data shown is the property of OPFML and may be used only for the purpose of preventing and combating ML/FT, data presented cannot be disclosed without the prior written consent of the OPFML, data presented cannot be admitted as evidence in court and cannot be used in a court judgment and the competent authority to which the case should be disseminated is established by the head of OPFML based on the investigation competence of predicate crime established by the provisions of articles 266 to 270 of the Criminal Procedure Code.

197. A detailed description of the physical and technical implemented measures has been provided in the answers to the questionnaire. The Moldovan authorities have confirmed that physical security measures are applied equally to both (i) information transmitted by exchange from counterpart FIUs and to (ii) information received from domestic sources as a number of security measures have been implemented by the OPFML to ensure that the information received and processed by the Office is adequately protected.

198. The Egmont Secure Web is used for sharing information with other FIUs.

Article 46 paragraph 11

199. Paragraph 11 of Article 46 of the Convention ensures that information submitted is duly protected in conformity with the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108). Moldova is a Party to this convention; it has signed it on the 4th of May 1998 and

ratified it on the 28th of February 2008. The Convention came into force in respect of Moldova on the 1st of June 2008.

200. Moldova has a specific law for data protection, Law No.133 of 8 July 2011 on Personal Data Protection. This Law establishes the legal framework necessary for the implementation of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. It should also be noted that confidentiality and protection of data requirements are also included in Articles 13(2) and 15 of the AML/CFT Law. Moldova has also enacted provisions to sanction any breaches to data protection provisions.

Article 46 paragraph 12

Provision of feedback to counterpart FIUs is not addressed in legislation. However, Moldova indicated that feedback is provided upon request and that the FIU has never refused to provide feedback to a foreign FIU. The authorities have provided the following statistics on foreign FIUs requests of feedback on how their information was used by the Moldovan FIU

2011	2012	2013
9 cases of feedback	6	12

201. The OPFML also requests feedback on a case by case basis, as a standard request in the text of the response provided to a foreign FIU. Moreover, usually to the end of the year, the OPFML prepares supplementary inquiries to foreign FIUs for feedback.

Effective implementation

202. The measures in place and the practice as explained by the authorities appear to indicate that Moldova has implemented to a large extent the various requirements of article 46 of the Convention.

Recommendations and comments

203. First of all, Moldova is invited to make a formal communication pursuant to Article 46 paragraph 13, indicating the unit which is the FIU within the meaning of this article.

204. The Moldovan authorities are also encouraged to consider further implementing steps to reflect the requirements of paragraphs 6 and 12 of Article 46 in the AML/CFT Law and implementing regulations.

9. Postponement of domestic suspicious transactions – Article 14

The Convention is considered to provide added value by requiring State 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.

Description and analysis

205. The AML/CFT Law empowers the OPFML to take urgent actions to suspend a suspicious transaction or activity for a period not exceeding 5 working days, in order to analyse the transaction and confirm the suspicion. If suspicions are confirmed, the Head of the FIU can address a motivated request to the Court in order to prolong the suspension for another 30 working days, within which period the competent authorities have the opportunity to initiate criminal proceedings.

206. Article 13[1](2) (e) of the AML/CFT Law provides for the power of the OPFML to issue postponement orders to stop suspicious activities or transactions. This term is defined in Article 3 of the AML/CFT Law which states that a suspicious activity or transaction arises when a reporting entity knows, suspects or has reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted. According to Article 8 (1) of the same Law, reporting entities are obliged to inform immediately the OPFML about any suspicious transaction or activities related to money laundering and financing of terrorism, which is being prepared, carried out or finalized. The STR must be submitted to the OPFML within 24 hours from the moment when the request for a transaction is made by the client of a reporting entity.

207. Pursuant to Article 14(1) of the AML/CFT Law, reporting entities at the decision of the OPFML are obliged to suspend the carrying out of a suspect transaction or activity for the period specified in the order, but for not more than 5 working days. If the mentioned period is not sufficient, the OPFML can request an instruction judge to extend such period of time for a maximum of 30 working days.

208. According to Article 14(1)[1] of the AML/CFT Law, the instruction judge by a resolution decides on the prolongation of the period of postponement, based on a motivated report received from the OPFML at least one day before the expiration of the period of postponement. The natural or legal person concerned is informed about the decision of the Judge to extend the period of postponement, in accordance with the legislation in force.

209. Pursuant to Article 14(1)[2] of the AML/CFT Law, the postponement decision of the OPFML and the decision of the judge for the prolongation of the term of postponement can be challenged by the affected person.

210. Moldova does not restrict the postponement of a transaction only to cases where a suspicious transaction report has been submitted. According to the Order no. 16 of 28.01.2013 of the director of National Anticorruption Centre, the decision of suspension of a transaction may be taken on the basis of motivated notices received from reporting entities with statements of specific suspicion signs, on the basis of motivated notices received from supervisory authority or public institution, on the basis of requests from other FIUs, on the basis of a request from a domestic law enforcement agency or based on the conclusions contained in the financial investigation report.

Effective implementation

211. According to the statistics provided by Moldova, during the year 2011, there were 36 postponement orders (16 of which were withdrawn and were not prolonged by the Judge) with total sums being suspended amounting to €17,626 $306,274 and 4,556,874 MDL. Furthermore, 12 cases were disseminated to Law Enforcement Authorities resulting in 6 criminal investigations, 2 prosecutions and 2 convictions. Provisional measures (sequestration) applied by the Moldovan Authorities relate to a total amount of €52,854.

212. During the year 2012, there were 48 postponement orders (13 of which were withdrawn and were not prolonged by the Judge), resulting in the total amount of 13 mln MDL being suspended. Furthermore, 24 cases were disseminated to Law Enforcement Authorities resulting in 19 criminal investigations, 1 prosecution and 1 conviction. Provisional measures (sequestration) applied related to a total amount of 11, 6 mln MDL.

213. In the year 2013, there were 91 postponement orders (24 of which were withdrawn and were not prolonged by the Judge), resulting in the total amount of 31, 1 mln MDL being suspended. Furthermore, 43 cases were disseminated to Law Enforcement Authorities resulting in 35 criminal investigations, 1 prosecution and 2 convictions. Provisional measures (sequestration) applied related to a total amount of 38,1mln MDL.

Recommendations and comments

214. The FIU of Moldova is in a position to order the postponement of a transaction, not restricting such a measure to cases where a suspicious transaction report has been submitted. The FIU has also the power to suspend transactions upon a request from a foreign FIU (see below) or based on a request from a domestic judicial authority or subsequent to reports from supervisory or public authorities. It appears on the basis of statistics provided by the authorities that the mechanism for the postponement of suspicious transactions is implemented effectively. Article 14 of the Convention appears to be adequately implemented.

10. Postponement of transactions on behalf of foreign FIUs – Article 47

Article 47 establishes a new international standard, namely:

"1 Each Party shall adopt such legislative or other measures as may be necessary to permit urgent action to be initiated by a FIU, at the request of a foreign FIU, to suspend or withhold consent to a transaction going ahead for such periods and depending on the same conditions as apply in its domestic law in respect of the postponement of transactions.

2 The action referred to in paragraph 1 shall be taken where the requested FIU is satisfied, upon justification by the requesting FIU, that:

a the transaction is related to money laundering; and

b the transaction would have been suspended, or consent to the transaction going ahead would have been withheld, if the transaction had been the subject of a domestic suspicious transaction report."

Description and analysis

215. The FIU can suspend or withhold consent to a transaction going ahead at the request of a foreign FIU for such periods and depending on the same conditions as they apply in its domestic law. Pursuant to Order no. 16 of 28.01.2013 of the director of the National Anticorruption Centre, a postponement order can be issued following a justified request received from a similar office (Financial Intelligence Unit) from another jurisdiction. Furthermore, Article 14(1) of the AML/CFT Law provides that the Office for Prevention and Fight against Money Laundering has the power to postpone the suspicious transaction or activity for a period not exceeding 5 working dates and if the mentioned period is not sufficient, it can request from a judge to prolong the suspension for another 30 days.

216. However, the postponement of a transaction on behalf of a foreign FIU is provided only in Order no. 16. According to the authorities, in order to implement the provisions of the AML/CFT Law, the Office for Prevention and Fight against Money Laundering can issue regulations, guidelines and normative acts to bring in line the national legislation with international legal acts in the field, pursuant to Article 13¹(2) (c) of the same Law. In this context and in order to enable the FIU to take action in the field of international co-operation, Order no.16 of 28.01.2013 was issued and approved by the Director of the NAC.

217. Moldova has never refused to postpone transactions requested by another FIU.

Effective implementation

218. Moldova has received to date only one request from a foreign FIU for postponement of transactions, which resulted in postponing a transaction of 1, 1 million MDL (approximately €60,000).

Recommendations and comments

219. As indicated above, Moldova has put in place measures which enable it to suspend or withhold consent to a transaction in cases of possible money laundering or terrorist financing related transactions, upon request from a foreign FIU.

220. It is nevertheless recommended that such measures should be introduced in the AML/CFT Law.

11. Refusal and postponement of co-operation – Article 28 paragraphs 1d, 1e, 8c.

The Convention is considered to add value here as, according to article 28 (i.e.) and article 28 (id), the political offence ground for refusal of judicial international cooperation can never be applied to financing of terrorism (it is the same in respect of the fiscal excuse).

Provision is made in article 28(8c) to prevent refusal of international cooperation by States (which do not recognise self-laundering domestically) on the grounds that, in the internal law of the requesting Party, the subject is the author of both the predicate offence and the ML offence.

Description and analysis

221. The general legal grounds for refusal applicable for requests for mutual legal assistance generally are set out in Article 534[33] of the CPC, as complemented by those set out in

[33] Assistance may be refused, based on a justified response to the requesting state, if:
1) the request refers to crimes considered in the Republic of Moldova political crimes or crimes related to such crimes (except if related to certain acts provided in the Rome Statute of the International Criminal Court)
2) the request refers to an act exclusively constituting a violation of military discipline;
3) the criminal investigative body or the court to which the request for legal assistance was addressed considers that its execution is of a nature to affect the sovereignty, security or public order of the state;
4) there are grounds for believing that the suspect is being criminally pursued or punished due to his/her race, religion, citizenship, association with a certain group or certain political beliefs, or if his/her situation will be exacerbated for the aforementioned reasons;
5) it is proven that the person will not have access to a fair trial in the requesting state;

Article 4(1)[34] of the Law on international legal assistance in criminal matters (Law no.371 of 1 December 2006). Both are applicable only if not otherwise provided in an international treaty to which Moldova is a Party which shall prevail, pursuant to Article 531 of the CPC.

222. Consequently, Moldova may not claim any other grounds for refusal than those set out in Article 28. Moldova has not integrated any of the grounds set out in Article 28 paragraphs 1d), 1e), 8c) as grounds which could be invoked to refuse co-operation. However it could be clarified whether the grounds set out in Article 534 (8) (i.e. in line with national legislation the person may not be subject to criminal liability) and Article 4(1) d) (the acceptance of the request on legal assistance may entail severe consequences for the person because of his age, health state ***or any other reason bearing a personal character***) may however pose potential obstacles for co-operation under the Convention.

223. Moldova indicated that in their view, there are no legal provisions in domestic legislation that would not allow international cooperation under Article 28 on the grounds that the request relates to a fiscal offence, where the offence also relates to financing of terrorism (1d); similarly in cases in which the request is related to political offence, when the offence also relates to financing of terrorism (1e), and also for the case of cooperation with respect to the fact that the person under investigation or subjected to a confiscation order by the Authorities of the Party are requesting is mentioned in the request both as the author of the underlying criminal offense and of the offense of money laundering (8c).

224. Mutual legal assistance is based on the principle of dual criminality by virtue of Article 534(1) subparagraph 7 of the CPC according to which international legal assistance may be rejected if, in line with the Criminal Code of the Republic of Moldova, the act or acts invoked in the request do not constitute a crime. The dual criminality requirement is applicable to all and not only coercive procedural actions, which is a substantial restriction to the effective cooperation with other states. It was clarified that the principle of dual criminality is interpreted broadly, even if the legal definition of the respective offence is not completely the same in both countries (provided the substance of the criminal behaviour is punishable in both jurisdictions).

Effective implementation

225. Moldova has not received to date any requests on the basis of CETS no°198.

Recommendation and comments

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6) the respective act is punished by death as per the legislation of the requesting state and the requesting state provides no guarantee in view of not applying or not executing capital punishment;
7) in line with the Criminal Code of the Republic of Moldova the act or acts invoked in the request do not constitute a crime;
8) in line with national legislation the person may not be subject to criminal liability.

[34] a) the criminal proceedings of the requesting state do not comply with or do not respect the conditions the European Convention on the Protection of the Human Rights and Fundamental Freedoms (Rome 1950) or any other international treaty ratified by the Republic of Moldova;
b) the request on legal assistance is made in a case pending before an "extraordinary" court i.e. a judicial forum other than those created on the basis of international treaties, or in order to execute a punishment imposed by such court
c) the action grounding the request on legal assistance is the object of an ongoing proceeding, or the given action has to or can also become the object of a criminal investigation which falls under the jurisdiction of the criminal authorities of the Republic of Moldova;
d) the acceptance of the request on legal assistance may entail severe consequences for the person because of his age, health state or any other reason bearing a personal character.

226. It is recommended that Moldova should consider developing a general reference material or practical guidelines with cover the practical aspects of mutual legal assistance which can be provided to State Parties to CETS no°198, with commentaries of relevant legal provisions and how these may be applied in the context of the grounds for refusal of requests. This would enable to clarify whether the two provisions set out above may impact on requests made on the basis of the Convention.

II. OVERALL CONCLUSIONS ON IMPLEMENTATION OF THE CONVENTION

227. Moldova has taken several important measures in order to implement the requirements of CETS 198 which are the subject of this desk-based assessment, as explained in detail in the report. There remain concerns as to how effectively these provisions are implemented in practice and if the Moldovan authorities make sufficient use of the powers and assistance which may be requested from other Parties based on the Convention. The following actions are thus recommended so that Moldova can implement further the requirements of the Convention and make full use of its provisions.

228. In respect of Article 9 of the Convention, Moldova should :

- issue guidance for the judiciary in respect of money laundering cases to familiarise in particular investigators, prosecutors with the mandatory requirements of Article 9 paragraphs 5 and 6 of the Convention so that they can challenge the courts with such cases.
- continue strengthening the understanding of practitioners on the mandatory provisions of the Convention under Article 9 through on-going multidisciplinary training of judges and prosecutors on these aspects.

229. In respect of Article 10 of the Convention, Moldova should take further measures, as appropriate, to facilitate the understanding of the scope of liability of legal persons at domestic level, by clarifying, in a consistent manner, who is the natural person who has a leading position within the legal person with a view of establishing the liability of legal person, in order to cover all the hypothesis described by Article 10 (1) of the Convention. It is also recommended to Moldova to take additional steps to facilitate the use of corporate liability mechanisms by judicial authorities (guidance documents, instructions etc.) in money laundering cases, in the various circumstances envisaged by Article 10 of the Convention (including in case of lack of supervision).

230. As regards Article 3 of the Convention, the following actions are recommended:

- to provide for a general applicable definition of “goods” in the General Part of the CC or clarifies this issue through appropriate tools, in order to ensure a uniform jurisprudence on the matter.
- to take measures to extend the possibility to confiscate instrumentalities used and those intended to be used to commit a criminal offence also to those which do not belong to the perpetrator and are legally obtained.
- Moldova should review article 106 and take measures, as appropriate, to clarify that confiscation of property the value of which corresponds to all proceeds and laundered property is possible. Moldova should also consider improving the quality and scope of statistics (so as to enable it to assess the actual effectiveness of confiscation measures in ML, TF and all predicate offences) and to ensure that the provisions on confiscation and provisional measures are properly and effectively applied.

231. As regards management of frozen and seized property, Moldova should carry out a stock taking exercise of the current measures in place and take further legislative and institutional measures to address the issues mentioned above, so as to ensure an adequate implementation of Article 6 of the Convention. It is also recommended to revisit procedures in place and ensure that a clear procedure for managing seized (and frozen) property is set out, in line with the requirements of Article 6. Finally, Moldova should also consider developing its data and statistics maintained regarding the “chain” of identified proceeds of crime, instrumentalities and other categories of assets which

may be confiscated, starting from identification during criminal investigation phase, seizures, and confiscation ordered by courts and last the effective valorisation of confiscated assets.

232. Additional measures should be taken in order to fully implement the relevant aspects under Article 7 of the Convention, and in particular to :
- ensure that monitoring of accounts is permissible in respect of all the relevant criminal offences in accordance with the Convention's provisions.
- review the legal framework so as to clearly prohibit any disclosures by banks to customers or third persons that information has been sought or obtains at pre-investigative stage.

233. Moldova should also consider any further practical measures to expedite the processes through which law enforcement authorities may determine whether a natural or legal person is a holder or beneficial owner of accounts in Moldova.

234. . Moldova should ensure that specific measures are in place in accordance with Article 23 paragraph 5 and that it can co-operate to the widest extent possible under domestic law with Parties that seek assistance in the execution of measures equivalent to confiscation leading to the deprivation of property which are not criminal sanctions, within the meaning of the Convention's provisions. Moldova should also ensure that its domestic law or administrative procedures enable it to give special consideration to concluding agreements or arrangements on asset sharing with other Parties.

235. Moldova has several provisions in its CPC which enables authorities to provide assistance and execute requests related to banking information and documentation, as well as monitoring of accounts and these provisions have been applied in practice successfully. Nevertheless the Moldovan legal framework and procedures in place for implementing Article 17(1) of the Convention would need to be further expanded and clarified in order to ensure that they can be fully implemented. Further clarifications and clear procedures should be available to give certainty to other Parties in respect of firstly, which Moldovan authority they should address to identify whether a financial institution in Moldova holds accounts of a natural or legal person under investigation and based on which procedure, and secondly then the aspects related to MLA requests and related conditions for executing a request for banking information and documentation.

236. Moldova has not made use of the option set out in Article 34(2) of the Convention enabling that urgent requests could be sent directly by the judicial authorities of the requesting Party to the authorities of the requested Party, with a copy to central authorities. Moldova should consider this option as a means to facilitate co-operation under the Convention.

237. As regards the implementation of Article 46, Moldova is invited to make a formal communication pursuant to Article 46 paragraph 13, indicating the unit which is the FIU within the meaning of this article.

238. Furthermore, Moldova is encouraged:
- to consider further implementing steps to reflect the requirements of paragraphs 6 and 12 of Article 46 of the Convention in the AML/CFT Law and implementing regulations.
- Moldova should also consider whether any further practical measures to expedite the processes through which law enforcement authorities may determine whether a natural or legal person is a holder or beneficial owner of accounts in Moldova.

239. Moldova has put in place measures which enable it to suspend or withhold consent to a transaction in cases of possible money laundering or terrorist financing related transactions, upon request from a foreign FIU as set out in Article 47 of the Convention. It is nevertheless recommended that such measures should be explicitly introduced in the AML/CFT Law.

240. Finally, in respect of Article 28 and more generally as regards the application of the Convention and any assistance which may be provided to Parties, it is recommended that Moldova should consider developing a general reference material or practical guidelines with cover the practical aspects of mutual legal assistance which can be provided to State Parties to CETS no°198 (with commentaries of relevant legal provisions and how these may be applied in the context of the grounds for refusal of requests).

III. ANNEXES

ANNEX I

Article 9 of the Convention – Laundering offences

3. 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.

4. Provided that paragraph 1 of this article applies to the categories of predicate offences in the appendix to the Convention, each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 1 of this article applies:

   a) only in so far as the predicate offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year, or for those Parties that have a minimum threshold for offences in their legal system, in so far as the offence is punishable by deprivation of liberty or a detention order for a minimum of more than six months; and/or

   b) only to a list of specified predicate offences; and/or

   c) to a category of serious offences in the national law of the Party.

5. Each Party shall ensure that a prior or simultaneous conviction for the predicate offence is not a prerequisite for a conviction for money laundering.

6. Each Party shall ensure that a conviction for money laundering under this Article is possible where it is proved that the property, the object of paragraph 1.a or b of this article, originated from a predicate offence, without it being necessary to establish precisely which offence.

ANNEX II

Article 10 of the Convention – Corporate liability

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

   a) a power of representation of the legal person; or

   b) an authority to take decisions on behalf of the legal person; or

   c) an authority to exercise control within the legal person, as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences.

2. Apart from the cases already provided for in paragraph 1, each Party shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of the criminal offences mentioned in paragraph 1 for the benefit of that legal person by a natural person under its authority.

ANNEX III

Article 3 of the Convention – Confiscation measures

3. Parties may provide for mandatory confiscation in respect of offences which are subject to the confiscation regime. Parties may in particular include in this provision the offences of money laundering, drug trafficking, trafficking in human beings and any other serious offence.

4. Each Party shall adopt such legislative or other measures as may be necessary to require that, in respect of a serious offence or offences as defined by national law, an offender demonstrates the origin of alleged proceeds or other property liable to confiscation to the extent that such a requirement is consistent with the principles of its domestic law.

ANNEX IV

Declarations and reservations deposited by Republic of Moldova – situation as of October 2014

Declaration contained in the instrument of ratification deposited on 18 September 2007 - Or. Engl.

In accordance with Article 24, paragraph 3, of the Convention, the Republic of Moldova declares that the provisions of Article 24, paragraph 2, shall apply only subject to the constitutional principles and the basic concepts of the Republic of Moldova's legal system.
Period covered: 1/5/2008 -
The preceding statement concerns Article(s): 24

Declaration contained in the instrument of ratification deposited on 18 September 2007 - Or. Engl.

In accordance with Article 35, paragraphs 1 and 3, of the Convention, the Republic of Moldova declares that acceptable languages for the requests for legal assistance and for the documents supporting such requests are: Moldavian, English or Russian.
Period covered: 1/5/2008 -
The preceding statement concerns Article(s): 35

Declaration contained in the instrument of ratification deposited on 18 September 2007 - Or. Engl.

In accordance with Article 42, paragraph 2, of the Convention, the Republic of Moldova declares that information and evidence provided under the provisions of Chapter IV of the Convention may not be used or transmitted without the Republic of Moldova's

consent, by the authorities of the requesting Party in investigations or proceedings other than those specified in the request.
Period covered: 1/5/2008 -
The preceding statement concerns Article(s): 42

Declaration contained in the instrument of ratification deposited on 18 September 2007 - Or. Engl.

In accordance with Article 51, paragraph 1, of the Convention, the Republic of Moldova declares that, until the full re-establishment of the territorial integrity of the Republic of Moldova, the provisions of the Convention shall be applied only on the territory effectively controlled by the authorities of the Republic of Moldova.
Period covered: 1/5/2008 -
The preceding statement concerns Article(s): 51

Reservation contained in the instrument of ratification deposited on 18 September 2007 - Or. Engl.

In accordance with Article 53, paragraph 4, of the Convention, the Republic of Moldova declares that the provisions of Article 3, paragraph 4, shall apply only partially, in conformity with the principles of the domestic law.
Period covered: 1/5/2008 -
The preceding statement concerns Article(s): 53

Declaration contained in the instrument of ratification deposited on 18 September 2007 - Or. Engl.

In accordance with Article 53 of the Convention, with reference to the provisions of Article 31, the Republic of Moldova declares that notification of judicial documents, as well as of those received by national authorities, shall effect through the:

a. Center for Combating Economic Crimes and Corruption – until the establishment of criminal prosecution;
b. General Prosecutor's Office – during the criminal prosecution;
c. Ministry of Justice – during the trial procedure and the execution of judgments.
Period covered: 1/5/2008 -
The preceding statement concerns Article(s): 31, 53

ANNEX V

Designated categories of predicate offences

Designated categories of offences based on the FATF Methodology	Offence in domestic legislation
Participation in an organised criminal group and racketeering;	Creation or leading of one of criminal organisation (Article 284 Criminal code) Illegal organisation of armed forces or participation in these forces (Article 282 Criminal code) Gangsterism (Article 283 Criminal code)

Terrorism, including terrorist financing	Terrorist act (Article 278 Criminal code) Delivery, placement, commissioning or detonation of an explosive device or any other device with lethal effect (Article 278[1] Criminal code) Financing terrorism (Article 279 Criminal code) Recruiting, instruction or according of another support in terrorist purpose (Article 279[1] Criminal code) Instigation in terrorist purpose or public justification of the terrorism (Article 279[2] Criminal code) False deliberate communication about terrorism act (Article 281 Criminal code)
Trafficking in human beings and migrant smuggling	Trafficking of human beings (Article 165 Criminal code) Slavery and similar to slavery conditions (Article 167 Criminal code) Forcing to labour (Article 168 Criminal code) Trafficking of children (Article 206 Criminal code) Organisation of illegal migration (Article 362[1] Criminal code) Attract of minors to the criminal activity or determination for committing the immoral acts (Article 208 Criminal code)
Sexual exploitation, including sexual exploitation of children;	Trafficking of children (Article 206 Criminal code) Children's pornography (Article 208[1] Criminal code) Recourse to children's prostitution (Article 208[2] Criminal code) Pimping (Article 220 Criminal code)
Illicit trafficking in narcotic drugs and psychotropic substances;	Illegal circulation of narcotic and psychotropic substances or their analogues without sale purpose (Article 217 Criminal code) Illegal circulation of narcotic and psychotropic substances or their analogues in sale purpose (Article 217[1] Criminal code) Illegal circulation of precursors in purpose of production or processing of the narcotic or psychotropic substances or their analogues (Article 217[2] Criminal code) Illegal circulation of materials or machinery for production or processing of the narcotic or psychotropic substances or their analogues (Article 217[3] Criminal code) Theft or extortion of narcotic or psychotropic substances (Article 217[4] Criminal code) Public illegal consuming or organisation of illegal consuming of the narcotic or psychotropic substances or their analogues (Article 217[5] Criminal code) Deliberate illegal introduction in body of another person, without he's/she's consent of the narcotic or psychotropic substances or their analogues (Article 217[6] Criminal code) The illegal prescription of narcotic or psychotropic substances (Article 218 Criminal code)
Illicit arms trafficking	Illegal carrying, storage, acquisition, manufacturing, repairing and sale of firearms and ammunition (Article 290 Criminal code)

	Manufacturing, purchase, processing, storage, shipment, usage or neutralization of the explosive and radioactive materials (Article 292 Criminal code)
Illicit trafficking in stolen and other goods	Attaining or commercialization of the goods that are known of being criminally obtained (Article 199 Criminal code)
Corruption and bribery	The embezzlement of other's property, committed by use of official responsibilities (Article 191 (2) d) Criminal code) Receiving of illicit remuneration from citizens for the performance of works related to providing services to people (Article 256 Criminal code) Passive Corruption (Article 324 Criminal code) Active corruption (Article 325 Criminal code) Traffic of influence (Article 326 Criminal code) Misuse of official powers or misuse of service (Article 327 Criminal code) Taking of the bribe (Article 333 Criminal code) Giving of the bribe (Article 334 Criminal code) Abuse of duties (service) (Article 335 Criminal code)
Fraud	Fraud (Article 190 Criminal code) Causing of material damage through by deception or misuse of trust (Article 196 Criminal code) Obtaining a credit by fraud (Article 238 Criminal code) Deceiving of customers (Article 255 Criminal code)
Counterfeiting currency	The manufacturing or bringing into circulation of counterfeited money and securities (Article 236 Criminal code) Fabrication or distribution of cards or other false pay checks (Article 237 Criminal code)
Counterfeiting and piracy of products	Production or commercialization of the counterfeiting medicaments (Article 214^1 Criminal code) Forging or counterfeiting of products (Article 246^2 Criminal code)
Environmental crime	Ecocide (Article 136 Criminal code) Violation of the environmental security requirements (Article 223 Criminal code) Violation of the rule of circulation of toxic, radioactive and bacteriological materials ((Article 224 Criminal code) Concealment or deliberate presentation of unauthentic data regarding pollution of the environment (Article 225 Criminal code) Non-fulfilment of obligations regarding elimination of consequences of environmental violations (Article 226 Criminal code) Soil pollution (Article 227 Criminal code) Violation of soil protection requirements (Article 228 Criminal code) Water pollution (Article 229 Criminal code) Air pollution (Article 230 Criminal code)

	Illegal clearing of forest vegetation (Article 231 Criminal code) The destruction of or damage to large forest tracts (Article 232 Criminal code) Illegal hunting (Article 233 Criminal code) Illegal fishing, hunting or other water exploitation (Article 234 Criminal code) Violation of the regime of protection and administration of natural areas protected by the state (Article 235 Criminal code)
Murder, grievous bodily injury	Deliberate murder (Article 145 Criminal code) Murder committed in a state of affect (Article 146 Criminal code) Murder of a new-born infant by the mother (Article 147 Criminal code) Manslaughter with the person's consent (euthanasia) (Article 148 Criminal code) Deliberate gross bodily or health harm (Article 151 Criminal code) Deliberate gross or medium bodily or health harm inflicted in state of affect (Article 156 Criminal code)
Kidnapping, illegal restraint and hostage-taking	Kidnapping Article 164 (Criminal code) Kidnapping of the minor by his close relatives (Article 164^1 Criminal code) Illegal deprivation of liberty Article 166 Criminal code Taking hostages (Article 280 Criminal code) Inhuman treating with taking hostages (Article 137 part.2 lett.b) Criminal code)
Robbery or theft;	Theft (Article 186 Criminal code) Robbery (Article 187 Criminal code) Burglary (Article 188 Criminal code)
Smuggling	Smuggling (Article 248 Criminal code) Evading customs payments (Article 249 Criminal code)
Extortion	Blackmail (Article 189 Criminal code)
Forgery	The forging or use of forged documents, stamps, seals or false blanks (Article 361 Criminal code) Falsification of public documents (Article 332 Criminal code)
Piracy	Piracy (Article 289 Criminal code)
Insider trading and market manipulation	Abuses in securities' emission (Article 245 Criminal code) Abuses in the activity of participants on the securities market (Article 245^1 Criminal code) Breaking the law when making entries in the register of securities holders (Article 245^2 Criminal code) Limitation of competition (Article 246 Criminal code) Unfair competition (Article 246^1 Criminal code)