

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 12 October 2016

C198-COP(2016)PROG1-HR

CONFERENCE OF THE PARTIES

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

FOLLOW UP REPORT: CROATIA¹

¹Adopted at the Conference of the Parties to CETS no.198 at its 8th meeting, Strasbourg, 25-26 October 2016

Introduction

This questionnaire has been drawn up by the Conference of the Parties to seek the progress made by the Party in meeting the deficiencies identified in the report adopted in the last meeting.

Note: where no recommendation or comment was formulated in the approved report, the relevant section of this template should be disregarded.

Please answer all the questions in the questionnaire and provide a succinct update describing the new measures that have been adopted and implemented to meet the **specific recommendations** formulated by the Conference of the Parties. In addition, provide, where possible, evidence which demonstrate that the recommendations have been adopted and have been effectively applied in practice.

Specific questions

A. Measures to be taken at national level

I. General provisions

Article 3 – Confiscation measures

Recommendations:

- As a general remark: to ensure that they can make full use of the existing legal framework to avoid any legal gaps as regards the possibility to confiscate instrumentalities and proceeds and laundered property within the full sense of article 3 of the Convention.
- To ensure the consistency between the definition of “pecuniary advantage” provided under the Criminal Code and the definition provided under the Act on Proceedings for the Confiscation of Pecuniary Benefit Resulting from Criminal Offences and Misdemeanors.
- To clearly specify the possibility for value confiscation this covers any other sort of property (e.g. real estate or property rights).
- To demonstrate the effective implementation of the Article 3 of the Convention.
- As regards the effectiveness: provide statistics to demonstrate the application of provisional measures and confiscation in general. Provide statistics concerning the corruption and organized crime cases, including details on the decisions taken by the courts to temporarily dispose and alienate property (e.g. real estate; movable property - such as paintings, vehicles etc.).

Measures adopted and implemented:

Please, provide a brief update on the legislation adopted to meet each of the recommendations above in relation to confiscation measures. Please provide statistics and any information which demonstrate effective implementation.

Regarding recommendations related to confiscation, freezing and seizing of proceeds of crime in our opinion CC, Criminal Procedure Code (CPC) and Act on Proceedings for the Confiscation of Pecuniary Advantage Resulting from Criminal Offences and Misdemeanours represent a high-quality normative framework for the implementation of effective measures of temporary confiscation (freezing) for securing confiscation of pecuniary gain, and also measures of confiscation of objects and means intended for, or used for committing criminal offence, or are product of committing a criminal offence, especially regarding a confiscation (including extended confiscation) of pecuniary gain.

The definition contained in the Article 87 par. 6 of the CC and Article 5 of the Act on responsibility of legal persons for criminal offences. Namely, the natural person to whom are entrusted /confided the affairs from the scope of legal person's sphere of activity as defined by the Art 5 of the Act includes persons to whom the affaires that have been expressly as well as persons to whom the affaires have been effectively confided. It is necessary that the CC criminalizes the commission of offence by omission (A criminal offense is committed by omission when the perpetrator, who is legally obligated to avert the consequence of a criminal offense defined by law, fails to do so, and such a failure to act is tantamount in its effect and significance to the perpetration of such an offense by an act.) So, in the concrete case the responsibility of natural person shall be established when he/ she failed to avert the consequences of an offence under the above described conditions.

Certain objections and recommendations by the MONEYVAL Committee regarding the systems of confiscation of pecuniary gain obtained through criminal offence have been adopted by the Act on Amendments to the Criminal Code (official gazette of the Republic of Croatia "Narodne novine" no. 56/15 and 61/15 – correction) which came into effect on 30 May 2015.

The objections and recommendations referred to the lack of (criminal) definition of property, especially considering that the definition of pecuniary gain obtained through criminal offence is partially based on an (undefined) concept of property, and to the fact that the items used to commit criminal offence or which came about by the commitment of the criminal offence shall not be confiscated in the same manner as the pecuniary gain obtained through commitment of criminal offence, that is, additional legal requirements exist (the danger that they will again be used to commit a criminal offence, or reasons pertaining to safety and ethics).

The relevant extract from the Act on Amendments to the Criminal Code (official gazette of the Republic of Croatia "Narodne novine" no. 56/15 and 61/15 – correction):

Article 21

Article 79 is amended and now reads:

"(1) Items and means which came about through the commitment of a criminal offence shall be confiscated.

(2) Items and means which were intended for the commitment of a criminal offence or which were used to commit a criminal offence shall be confiscated if the danger exists

that they will again be used to commit a criminal offence or if their confiscation is necessary in order to protect general safety, legal order or due to moral reasons.

(3) If the prerequisites from paragraph 1 or 2 of this Article are met, the court may confiscate the items and means even when the perpetrator of the illegal action is not at fault.

(4) The confiscated items and means shall become the property of the Republic of Croatia. This does not affect the rights of third persons to seek compensation of damages against the perpetrator due to the confiscation of the item or the means. The owner of the confiscated item or means who did not commit the offence shall be entitled to the return of the item or means or to reimbursement of their commercial value from the state budget unless the owner contributed to the item or means being used for the commitment of the criminal act through gross negligence or if it came to be through its commitment or if the owner obtained the item or means while being aware of the circumstances which made it possible for them to be confiscated.

(5) When the law prescribes that an item or means should be confiscated for a certain criminal offence, the owner is not entitled to reimbursement from the state budget, unless prescribed otherwise by a different law.

(6) The Court can order that the confiscated item or means be destroyed.”

Article 25

...

In Article 87, after paragraph 22 a new paragraph 23 is added, which reads:

“(23) Property of any type is considered to be property, regardless if it property is tangible or intangible, moveable or immovable i.e. legal documents or instruments which serve as proof to the right to the interest in such property or of an interest in such property.”

The Ministry of Justice has drafted amendments to the Criminal Procedure Code (CPC) with the view to collect all provisions on freezing and confiscation of assets of crime in one piece of legislation - CPC. Relevant provisions will be erased from other pieces of legislation. The amendments to the CPC are in course of legislative procedure. At the moment, the amendments are at the stage of advisory with the interested public and were also sent to the relevant ministries, courts and prosecutor’s office for examination. After the preliminary legislative procedure has been completed, the amendments will be sent to the Croatian Parliament for adoption. After adoption by the Parliament, they will come into force shortly afterwards.

As follows, we are providing State Attorney's Office of the Republic of Croatia data on the value of pecuniary gain in criminal proceedings, separately for freezing and confiscation of pecuniary gain and for extended freezing and confiscation of pecuniary gain in cases of corruption and organised crime from the competence of Office for Suppression of Organised Crime and Corruption (USKOK).

In 2012 there were 45 measures of freezing issued in regular criminal proceedings, value of frozen pecuniary gain was 8.615.416,22 HRK (app. 1.138.099,90 EUR) and in 1065 court verdicts pecuniary gain was confiscated in the total amount of 108.828.413,07 HRK (app. 14.376.276,50 EUR). In cases from the competence of USKOK in 2012 a pecuniary gain in total amount of 91.308.441,62 HRK (app. 12.061.881,32 EUR) was frozen, and in 143 court verdicts there were cases of extended confiscation of pecuniary gain in the total amount of 91.621.835,26 HRK (app. 12.103.280,75 EUR).

In 2013 in regular criminal proceedings a total amount of 70.067.015,08 HRK (app. 9.255.880,46 EUR) was frozen, and in 792 court verdicts a total amount of confiscation of pecuniary gain was 143.333.883,45 HRK (app. 18.934.462,81 EUR). In cases from the competence of USKOK in 2013 a pecuniary gain in total amount of 126.411.090,20 HRK (app. 16.698.955,10 EUR) was frozen, and in 142 court verdicts there were cases of extended confiscation of pecuniary gain in the total amount of 67.654.120,00 HRK (app. 8.937.136,10 EUR).

In 2014 regular State Attorney's Offices requested a freezing of pecuniary gain in the total amount of 63.074.727,00 HRK (app. 8.332.196,43 EUR), while courts in 826 verdicts confiscated pecuniary gain in the total amount of 133.567.191,66 HRK (app. 17.644.278,95 EUR). In cases from the competence of USKOK in 2014, a property was frozen in total value of 112.311.000,00 HRK (app. 14.836.327,61 EUR), and courts in cases from the competence of USKOK in 379 verdicts confiscated pecuniary gain in the total amount of 68.836.035,00 HRK (app. 9.093.267,50 EUR), from which it is visible that with security measures competent State Attorney's Offices secured confiscation of pecuniary gain in total amount of 202.403.226,66 HRK (app. 26.772.913,58 EUR).

After adoption of the Act on Proceedings for the Confiscation of Pecuniary Advantage Resulting from Criminal Offences and Misdemeanours (adopted on 17 December 2010 by the Croatian Parliament, published on 24 December 2010 in Official Gazette No 145/2010), and especially after latest amendments of the CPC, measures of freezing and confiscation of pecuniary gain have a special importance for the work of State Attorney's Offices, and to this matter they devote their special attention.

In the Second edition of the Manual for the state attorneys, separately are covered inquiries on property and temporary measures for securing the confiscation of pecuniary gain, related to determining pecuniary gain acquired through committing criminal offences, inquiries or investigations on determining money flows and finding the assets, manner of proceedings on temporary measures for securing the confiscation of pecuniary gain and for state attorneys the forms are produced in relation to inquiries on property (financial investigation). A General Instruction No O-6/11 dated 15th July 2011 on the implementation of Act on Proceedings for the Confiscation of Pecuniary Advantage Resulting from Criminal Offences and Misdemeanours is sent to all state attorneys. The General Instruction is also published on the Intranet with result of ensuring effectiveness and harmonisation of proceedings of State Attorney's Offices in financial investigations aiming to confiscate pecuniary gain.

After latest amendments of the CPC, and especially new provisions on financial inquiries in Art 206i of the CPC, State Attorney General of the Republic of Croatia, after the opinion of the Collegium of the State Attorney's Office of the Republic of Croatia, on 16th June 2014 issued a General Instruction on establishment and work of special departments for investigating pecuniary gain acquired through committing criminal offence and on the manner of proceedings of competent state attorney's offices in the departments for investigating pecuniary gain acquired through committing criminal offence in conducting financial investigations and urgent actions of temporary seizure of objects. Issuing this General Instruction was necessary because of new legislative framework and the obligation of the state attorney to immediately undertake and require undertaking of inquiries to determine the amount of pecuniary gain in cases with suspicion on commitment of criminal offence prosecuted ex offo. Especially we would like to indicate the new provision of Art 206i Para 4 of the CPC according to which all

state authorities and legal entities that in their scope of competence or in the course of conducting their activity gain knowledge on the circumstances and data that indicate that certain property is gained through criminal activity, especially if the proceedings with financial assets of other property indicate on ML or on concealment of the property gained through committing criminal offence, then all state authorities and legal entities are required immediately to inform state attorney on these circumstances and data. Effectiveness of prosecuting and sanctioning ML offence depends on this way of proceedings and timely detection and reporting from all state authorities, and especially authorities responsible for detection.

According to article 87 of the Law on police, (Official Gazette 34,11, 130/12, 89/14, 151/14 i 33/15) specialization, professional education, specialization and police training is carried out according to principles of lifetime education and carrier. A program of specialization, professional education, and police training is brought by the general director upon the proposal of the Police Academy. National Police Office for Suppression of Corruption and Organized Crime, Economic Crime and Corruption Department in cooperation with other competent institutions is carrying out internal education of police officers for criminal offences of money laundering and financial investigations. Also, police officers participate in adequate forms of foreign education, organized by other local and international institutions. Police officers participate yearly in several organized international educations, as well as in educations in the country which are carried out by local relevant institutions.

In order to implement Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States of the European Union in the field of tracing and identification of proceeds from, or other property related to, crime, in February 2015 the Criminal Police Directorate, National Police Office for Suppression of Corruption and Organized Crime (PNUSKOK), Department for Economic Crime and Corruption was designated as the Croatian Asset Recovery Office.

Departments for investigating pecuniary gain.

On the basis of the Art. 206i. Criminal Procedure Code (CPC / 08) on asset inquiries (financial investigations) and the provision of Art. 16 of the State Attorney's Law, the State Attorney General of the Republic of Croatia during 2015 and in January 2016 has adopted the following decisions on the establishment of Departments for investigating pecuniary gain in the District Attorney's Office in Zagreb, Rijeka, Osijek and Split, while on the basis of the Act on Office for Combating Corruption and Organized Crime the same department was established in the Office for combating corruption and organized crime.

Measures for freezing and confiscation of proceeds of crime.

In 2015, at the proposal of the competent State Attorney's Court has issued 26 security measures for freezing pecuniary gain, in the amount of 64.800.376,33 HRK (app. 8.526.365,31 EUR). In 941 verdicts the Courts have ordered confiscation of pecuniary gain in the amount of 169.325.688,75 HRK (app. 22.279.695,90 EUR).

Additionally, concerning the effectiveness, in the proceedings which was conducted by the Office for the Suppression of Corruption and Organized Crime the Court ordered the provisional measures regarding the money deposited on the bank accounts that belonged to defendant (the court ordered to bank to withhold the payment of money deposited on the bank account of defendant).The amount of money that was frozen exceeded the

amount of money that defendant obtained by the offence of corruption. In this type of cases (abuse of authority and power incriminated by the article 291 of the Criminal Code-corruptive offence), according to the Art 78 par. 2 of the CC if defendant's property is not proportionate to his lawful incomes it is assumed that it has been obtained unlawfully unless defendant proves lawful origin of property. In mentioned case the defendant did not prove the lawful origin of the property so the Court rendered mentioned ruling.

Statistics - Annual report, State Attorney Office of the Republic of Croatia for 2015:
Confiscation in [878 convictions - 160.381.355,32 kuna
Confiscation in Organized crime cases - 4.124.000,00 kuna
Confiscation in Corruption cases - 3.779.603,00 kuna
Total - 120 cases - 7.903.603,00 kuna

Article 6 – Management of frozen or seized property

Recommendation:

- To consider building upon existing regulations to establish efficient protocols and management mechanisms covering all types of assets under the responsibility of the Sector of the Confiscation of Pecuniary Gain, including any procedures for the estimation of value of seized assets and taking other relevant capacity building and training measures.
- To carry out an assessment of the adequacy of the current legal and practical arrangements in place for the management of the various types of movable and immovable property likely to be subject to temporary measures in the context of serious crime cases and to take any additional measures required in the light of such an assessment.
- To ensure that adequate premises and necessary means (including funding from the state for their maintenance are available) for the storage of specific good, as to effectively implement temporary measures pending the final confiscation.

Measures adopted and implemented:

Please provide a brief update on the measures taken to ensure proper management of frozen or seized property, according to article 6 of CETS No. 198. Please provide any relevant legal provisions, information and statistics which demonstrate effective implementation.

State Attorney's Office Statistics:

Value of seized assets - in 2015 - 29.936.000,00 kuna
Corruption cases - 19.300.000,00 kuna
Organized crimes cases - 10.636.000,00 kuna
Real estate's property rights vehicles etc. - 84.164.000,00 kuna

Article 7 – Investigative powers and techniques

Recommendation:

- To ensure, the effective application of the existing legal framework concerning the Article 7 of the Convention, most notably to allow for access to banking and other relevant information in the context of criminal proceedings for the various offences contemplated under the Convention.

Measures adopted and implemented:

Please provide a brief update on the relevant legislative and other measures adopted in relation to investigative powers and techniques. Please provide relevant legal provisions, information and statistics which demonstrate effective implementation.

State Attorney's Offices in practice apply the Article 265 para 1 of the Criminal Procedure Act for the purpose of obtaining information on holders/beneficial owners of bank accounts. According to the mentioned provision investigative judge on the proposal of state attorney orders to concrete bank to give state attorney information on owners/holders of bank accounts as well as documentation on financial transaction. The bank cannot inform the customer or third parties about court order. This provision of CPP is usually applied in the cases where the state attorney has to obtain the information that represent bank secret. These investigative actions are being applied during the financial investigation that have aim to trace, identify, freeze and confiscate the proceeds of crime.

Please note that described investigative actions can be applied in the pre-investigation phase of the proceedings and usually it is accompanied by the freezing of assets that are found on the bank accounts (Article 11 of the Act on the procedure of confiscation of proceeds of crime and misdemeanour).

Article 9 – Laundering offences

Recommendations:

- To make efforts to develop jurisprudence² on autonomous money laundering so as to give the courts the opportunity to clarify that money laundering can be sanctioned in the absence of a conviction for the predicate offence; and also to demonstrate, in

² In case such convictions are available, please provide them to the COP Secretariat.

cases involving autonomous ML, how specific evidence should be with respect to the predicate offence.

- To ensure, through multidisciplinary training of judges and prosecutors that they are familiarized with the mandatory provisions of Article 9 paragraphs 5 and 6 of the Convention.
- To criminalize the lesser subjective mental element provided under Article 9 paragraph 3(a) of CETS No. 198.

Measures adopted and implemented:

Please provide a brief update on the relevant legislative and other measures adopted in relation to money laundering offence. Please provide relevant legal provisions and examples, cases or statistics which demonstrate effective implementation.

Regarding recommendation on increasing the number of indictments and convictions for ML, and especially on the manner of establishing predicate criminal activity in the cases of autonomous ML, we indicate that all competent state attorney's offices, or state attorneys (93) which are in Office for Suppression of Organised Crime and Corruption (USKOK), County and Municipal State Attorney's Offices specialised for proceedings in ML cases, have adequate level of competence which relevant level of reasonable doubt, or evidence and factual circumstances on the commitment of predicate criminal offences, are sufficient for investigation and raising indictment in the cases of autonomous ML. In this regard, State Attorney General of the Republic of Croatia, even on 3rd June 2008. requested of all state attorney's offices steering, coordination and holding of consultative meetings with Police, Tax Administration, Customs Administration, Anti-Money Laundering Office (AMLO) in all cases where it is indicated on the existence of suspicion on ML offence, and for conducting financial investigations in order to establishing and increasing processing of ML cases and confiscation of proceeds of crime. Following the above-stated, competent state attorneys continuously maintain direct cooperation and consultative meetings with a goal to steer financial-property investigations, or inquiring aiming to determine a predicate criminal offence, and especially the way of determining the relevant level of reasonable doubt on the committing of predicate criminal offence.

Furthermore, State Attorney's Office of the Republic of Croatia, when receiving information on suspicious transactions from AMLO, in which there are indications that possible committing of criminal offence occurred abroad, the guidance is given that relevant data on committing the predicate offence abroad are requested and collected using mutual legal assistance, and using judicial cooperation with EU member states after 1st of July 2013 (date of entering to EU).

Croatian authorities continued their activities in detecting and prosecuting cases of autonomous ML. Croatian State Attorneys and courts determine existence of predicate criminal offence, according to the provisions of criminal procedure and material criminal legislation, with evaluation of all evidence and on the basis of that relevant factual circumstances, taking into consideration that it is not necessary to have a formal court decision on committing the predicate offence.

Above stated is visible from indictments raised by the Municipal State Attorney's Office in Zagreb in 2014, No K-DO-1032/2014 and No K-DO-1543/2014 in which the indictment was raised against 3 persons for ML offences in taking and transferring pecuniary gain realised through computer fraud, and for which cases did not exist a formal court decision, yet it was determined on the basis of evaluation of all available evidence. Following these indictments, a competent court convicted those persons, and one conviction is confirmed by the second degree court.

According to the records of the State Attorney's Office of the Republic of Croatia, in 2012 there were 4 indictments for ML offence, and court issued 2 non-final verdicts, and in 2013 there were 1 indictment and 1 non-final verdict. In 2014 competent state attorney's offices conducted investigations in 10 cases against 14 persons for ML offence, 3 indictments were raised for ML offence and the court issued 4 convictions. In 2015 there were 2 cases where after conducting investigations indictments were raised against 9 natural persons and 2 legal entities for ML offence.

We especially stress out that through Judicial Academy in 2013 a number of workshops were organised for judges and state attorneys on the implementation of the new CC, in Zagreb, Rijeka, Osijek and Varaždin.

Concerning the effectiveness in investigating, prosecuting and reaching convictions for ML offence, it is important to stress out that in 2015 there were 10 investigations (8 initiated by AMLO), 23 indictments (19 initiated by AMLO) and 3 convictions (1 initiated by AMLO).

On legislative level, concerning ML criminal offence as prescribed with Art 265 of Criminal Code (2011) relevant features of different methods of ML in incriminations prescribed in Art 265 of CC are harmonised with Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Convention No 198), while the incrimination of facilitating and counselling ML is completely covered with provisions on assistance and incitement from the General Part of the CC as with incriminated actions from Art 303 of CC.

Following the above-stated, Ministry of Justice, respectively Government of the Republic of Croatia, in Final Proposal of the Act on Amendments of CC from 26th March 2015. did not include amendments of ML criminal offence incriminations, and as regards Art 87 CC on definitions in CC prescribed a new definition of property with which are implemented international standards prescribed with conventions law, EU acquis and MONEYVAL recommendations.

The lesser subjective mental element is criminalised by Article 265 para 5 CC which criminalises the committing the MLA offence by negligence, while Article 29 para 2 CC criminalises "acting recklessly". It is necessary to emphasize that Article 32 of the CC regulates the mistake of fact (If the perpetrator's mistake regarding the material elements of the criminal offense is due to his negligence, he shall be culpable insofar as the statute prescribes punishment for such an offense also when committed by negligence.)

Article 10 – Corporate liability

Recommendations:

- To ensure that the provisions of the Act on Responsibility of Legal Persons for Criminal Offences are harmonized with the provisions of the new Criminal Code in particular as regards the definition of “responsible person” and use that opportunity to clarify that the term encompasses all the categories of persons set out under Article 10 paragraph 1 of the Convention;
- To conduct a review of the legal and procedural obstacles that may hinder law enforcement and prosecutors to successfully investigate and prosecute legal persons for money laundering and take steps, as appropriate, to eliminate them;
- To undertake, as appropriate, additional training activities and raising-awareness campaigns (additional guidance, documents, instructions, etc.) to familiarize the police and the judiciary with the practical implementation of the provisions of the Act on Responsibility of Legal Persons for Criminal Offences in relation to ML and other relevant criminal offences pertaining to the categories of offences listed in the Appendix to the CETS 198, clarifying also the circumstances envisaged by Article 10 of the Convention.
- Provide statistics of investigations, indictments and convictions regarding corporate criminal liability with the types of crime involving legal entities in Croatia.

Measures adopted and implemented:

Please provide a brief update on the relevant legislative and other measures adopted for the corporate liability of legal persons. Please provide relevant legal provisions and statistics or other relevant information which demonstrate effective implementation together with examples of criminal, administrative or civil sanctions imposed.

The definition contained in the Article 87 par. 6 of the CC and Article 5 of the Act on responsibility of legal persons for criminal offences. Namely, the natural person to whom are entrusted /confided the affairs from the scope of legal person’s sphere of activity as defined by the Art 5 of the Act includes persons to whom the affaires that have been expressly as well as persons to whom the affaires have been effectively confided. It is necessary that the CC criminalizes the commission of offence by omission (A criminal offense is committed by omission when the perpetrator, who is legally obligated to avert the consequence of a criminal offense defined by law, fails to do so, and such a failure to act is tantamount in its effect and significance to the perpetration of such an offense by an act.) So, in the concrete case the responsibility of natural person shall be established when he/ she failed to avert the consequences of an offence under the above described conditions.

During 2015 the competent state attorney’s offices submitted 2 (two) indictments against legal persons for the offence of money laundering. The proceedings are still being

conducted before the competent Court. So, we do not dispose with the judgments, only with the indictments.

Statistics data by State Attorney Office annual report for 2015 concerning criminal proceedings against legal persons:

Investigations - 97 (70% - fraud cases)

Indictments - 185

Convictions - 98

Article 11 – Previous decisions

Recommendation:

- To consider taking additional steps as may be required to ensure that prosecutors are familiar with the procedures to bring foreign convictions against both natural and legal persons taken in another Party in relation to offences established in accordance with CETS 198. Additionally, the Croatian authorities may consider incorporating measures implementing the international recidivism standard in the Act on Responsibility of Legal Persons for Criminal Offences.

Measures adopted and implemented:

Please, provide a brief update on the relevant legislative and other measures adopted.

-

II. Financial Intelligence Unit (FIU)

Article 14 – Postponement of domestic suspicious transactions

Comment: This provision appears to be implemented effectively.

B. International co-operation

I. Investigative assistance

Article 17 – Requests for information on bank accounts; Article 18 – Requests for information on banking transactions; Article 19 – Requests for the monitoring of banking transactions

Recommendation:

- To ensure that meaningful statistical information is available on the practice of international co-operation and in the context of follow up by the COP, to bring

forward elements demonstrating the effective application of the existing legal framework implementing the Article 17 paragraphs 1, 4, 6; the Article 18 paragraphs 1 and 5; Article 19 paragraphs 1 and 5.

Measures adopted and implemented:

Please, provide a brief update on the legislation, regulations or other measures adopted to meet the recommendations in relation to requests for information on bank accounts, for the information on banking transactions and for the monitoring of banking transactions. Please provide relevant legislative provisions or describe the process/procedure together with statistics which demonstrates effective implementation.

During 2015 the State Attorney's Offices issued:

- 10 requests for mutual legal assistance by provision of bank data
- 6 requests for mutual legal assistance by freezing of proceeds of crime

II. Confiscation

Article 23 – Obligation to confiscate; Article 25 – Confiscated property

Recommendations:

- To clarify the extent to which Croatia can cooperate with States Parties in the execution of foreign non-conviction based confiscation orders, in accordance with the Article 23 paragraph 5 of the Convention;
- To ensure, in respect of cooperation with non-EU countries, that Croatia is able to cooperate for the purposes of sharing or repatriating criminal assets so as to give full effect to Article 25 of the Convention, as it is intended.
- Provide statistics of cooperation with non-EU countries for the purposes of sharing or repatriating criminal assets and also provide statistics of execution of foreign non-conviction based confiscation orders.

Measures adopted and implemented:

Please, provide a brief update on the legislation or other measures adopted: (a) for the co-operation or assistance on the execution of measures equivalent to confiscation; (b) to meet the recommendations in relation to confiscated property. Please provide relevant legislative provisions or statistics which demonstrates effective implementation.

Recognition of confiscations orders issued by the Third countries is in the competence of the county courts.

III. Refusal and postponement of co-operation

Article 28 – Grounds for refusal

Recommendation:

- To ensure that meaningful statistical information is available concerning the practical implementation of the Article 28 paragraphs 1d, 1e, and 8c of the Convention.

No data available.

IV. Procedural and other general rules

Article 34 – Direct communication

Comment: This provision appears to be implemented effectively.

V. Co-operation between Financial Intelligence Units

Article 46 – Co-operation between FIUs

Comment: This provision appears to be implemented effectively.

Article 47 – Co-operation for postponement of transactions on behalf of foreign FIUs

Recommendation:

- Provide any statistics on the number of received requests from foreign FIUs for the suspension of transactions and explain the application of Article 71 in this context.

In 2015 Anti-Money Laundering Office (AMLO, Croatian FIU) received from the foreign FIU, from a State Party to the Convention 198, a request for the suspension of app 576.805,00 EUR. The request was executed in accordance with the Croatian AMLTF Law.

To date, according to the available AMLO statistics and apart from the mentioned case, Croatia has not received any more requests from foreign FIUs for the suspension of a transaction related to money laundering on the basis of Convention 198. It has however sent 9 requests to other Parties to the Convention, some of which are summarised below:

Case 1

AMLO received information from the Police that foreign legal entity V Ltd, registered in one financial center in Europe, on the basis of forged invoice initiated an execution procedure on the funds on the account of legal entity R d.o.o. from Croatia. In the information it is stated that on the basis of the order of notary public, the execution was done in the amount of 182.203,76 HRK and the funds were transferred from the bank in Croatia to the account of the legal entity V Ltd opened in a bank in one State Party to the Convention 198. Because of the suspicion on ML and since the transaction was conducted on the basis of forged documentation, Police requested from AMLO to, on the basis of its international cooperation, consider sending a request to FIU in the State Party to the Convention 198 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, in line with Article 47 (1) of the Convention 198. AMLO on the basis of received information conducted additional analysis of the transaction and established that on 25th October 2012 funds were transferred from the account of legal entity R d.o.o. to the account of legal entity V Ltd opened in a bank in one State Party to the Convention 198 in total amount of 23.942,68 EUR. In line with results of the analysis of initial information received from Police and additional information requested and received from reporting entity, and on the basis of Article 72 of AMLFT Law, and also on the basis of Article 47 (1) of the Convention 198, AMLO on 26th October 2012 sent a request to FIU in the State Party to the Convention 198 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. The FIU in the State Party to the Convention 198 issued an order to the bank to temporarily suspend transactions on the account of V. Ltd, on which there were total amount of funds 23.901,93 EUR. The order was valid until 2nd November 2012 until which date it was necessary to send/receive a request for MLA so the competent court could issue a freezing order.

Case 2

AMLO received from County State Attorney's Office in Zagreb information on criminal offence of fraud in conducting business operations (Article 293 CC) and ML (Article 279 CC). From the documentation received from County State Attorney's Office in Zagreb, it is evident that on the 7th December 2011 from the account of legal entity S d.o.o. from Croatia, on the basis of non-original bianco loan document, a funds in the amount of 1.000.000,00 HRK were transferred to the account of legal entity T. d.o.o. from the State Party to the Convention 198. On the basis of the initial information AMLO received from County State Attorney's Office, and on the basis of Article 72 of AMLFT Law, and also on the basis of Article 47 (1) of the Convention 198, AMLO on 8th December 2011 sent a request to FIU in the State Party to the Convention 198 to suspend or withhold consent to a transaction in amount of 1.000.000,00 HRK going ahead for such periods and depending on the same conditions as apply in its domestic law in respect of the postponement of transactions, and stated that possible predicate offence is criminal offence of fraud in conducting business operations (Article 293 CC). FIU from the State Party to the Convention 198 informed AMLO that from the documentation it received from bank it is evident that the company T. d.o.o. on its account opened in the bank in the State Party to the Convention 198 received funds from the company S. d.o.o. from Croatia in total amount of 995.214,39 HRK (from bank account opened with one bank in Croatia) and after that on 13th December 2011 funds in amount of 4.277,32 EUR (from bank account opened with another bank in Croatia). First amount was returned to

Croatian bank from the bank from the State Party to the Convention 198. Another amount was partially spent on payment services and partially withdrawn in cash.

Case 3

According to information received from the Croatian Police, there was an on-going investigation based on the reported criminal offence received from the natural person with suspicion of criminal offence of computer fraud.

AMLO on the basis of received information conducted additional analysis of the transaction and established that in April 2014 there was an unauthorized transaction performed from the account of the natural person's trade for the amount of 8.214,00 EUR in favour of the account of the natural person opened in a credit institution in a State Party to the Convention.

According to Article 72 of AMLTF Law the Croatian FIU AMLO submitted a written proposal to another Party's FIU for a temporary suspension of transaction execution, for the reason that there was a reasonable suspicion that above mentioned funds for the amount of 8.214,00 EUR are proceeds of computer fraud committed in Croatia.

Case 4

According to information received from the Croatian Police, there was an on-going investigation based on the reported criminal offence received from the natural person, employee of one company registered in Croatia, with suspicion of criminal offence of computer fraud.

AMLO on the basis of received information conducted additional analysis of the transaction and established that in March, 2014 there was an unauthorized transaction performed from the account of the company registered in Croatia for the amount of 74.318,00 GBP in favour of the account of the natural person opened in a credit institution in a State Party to the Convention.

According to Article 72 of AMLTF Law the Croatian FIU AMLO submitted a written proposal to another Party's FIU for a temporary suspension of transaction execution for the reason that there was a reasonable suspicion that above mentioned funds for the amount of 74.318,00 GBP are proceeds of computer fraud committed in Croatia.

Case 5

According to information received from the Croatian Police, there was an on-going investigation based on the reported criminal offence received from the natural person, employee of one company registered in Croatia, with suspicion of criminal offence of computer fraud.

AMLO on the basis of received information conducted additional analysis of the transaction and established that in March, 2014 there was an unauthorized transaction performed from the account of the company registered in Croatia for the amount of 68.932,00 EUR in favour of the account of the natural person opened in a credit institution in a State Party to the Convention.

According to Article 72 of AMLTF Law the Croatian FIU AMLO submitted a written proposal to another Party's FIU for a temporary suspension of transaction execution for the reason that there was a reasonable suspicion that above mentioned funds for the amount of 68.932,00 EUR are proceeds of criminal fraud committed in Croatia.

Case 6

According to information received from the Croatian Police, there was an on-going investigation in connection with computer fraud committed in favour of several natural persons in a number of States Parties to Convention.

AMLO on the basis of received information conducted additional analysis of the transaction and established that in April 2014 an unauthorized transaction-remittance was performed from the account of the Croatian legal person for the amount of EUR 78,318.00 in favour of the account of the natural person opened in a credit institution in a State Party to the Convention.

According to Article 72 of AMLTF Law the Croatian FIU AMLO submitted a written proposal to another Party's FIU for a temporary suspension of transaction execution for the reason that there was a reasonable suspicion that above mentioned funds for the amount of 78,318.00 EUR are proceeds of computer fraud committed in Croatia.