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CONFERENCE OF THE PARTIES

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

FOLLOW UP REPORT OF THE CONFERENCE OF THE PARTIES TO CETS NO°198 ON CROATIA¹

Memorandum prepared
by the Secretariat

¹Adopted by the Conference of the Parties to CETS 198 at their 8th meeting, Strasbourg, 25 – 26 October 2016

I. Introduction

1. Article 48 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS no. 198) establishes a Conference of the Parties with the mandate to, inter alia; monitor the proper implementation of the Convention.
2. The Conference of the Parties adopted the assessment report on Croatia at its fifth meeting (Strasbourg, 12-14 June 2013). In application of the Conference of the Parties' rules of procedure, the report and subsequent comments made by Croatia to the report were made public within four weeks of adoption.
3. At its fourth meeting, held in Strasbourg in June 2012, the Conference of the Parties decided to include in its Rules of Procedure a follow-up mechanism (Rule 19, paragraphs 30-36), based on a questionnaire completed by the assessed Party, assisted by a rapporteur country and a draft analysis prepared by the Secretariat of the Conference of the Parties. As a result of this process, Croatia submitted an update of its progress on 23 September 2016. The scope of the review is focused on the implementation of the recommendations formulated by the Conference of the Parties in the assessment report of Croatia.
4. Spain was appointed as Rapporteur Country, being responsible for reviewing the replies to the questionnaire and for raising any questions to assist the Conference of the Parties in assessing whether the information supplied is sufficient to demonstrate satisfactory progress by the Party assessed.
5. The Conference of the Parties was satisfied with the information provided in the draft follow-up report and the overall progress made by Croatia in meeting the COP recommendations. Pursuant the Rule No. 19 (35), the Conference of the Parties adopted the replies to the questionnaire and the analysis prepared by the Secretariat.

II. Review of implementation of selected articles of CETS no. 198 by Croatia and progress made since June 2013

6. The following review of Croatia's implementation of the CETS no.198 has been prepared by the Secretariat pursuant to Rule 19 (33) of the Rules of Procedure, based on the information and statistics provided by the Party, the additional information and clarifications received from the Croatian authorities and a review of other relevant evaluation reports of Croatia, including the 2013 MONEYVAL 4th round mutual evaluation report on Croatia².
7. This report analyses the progress made by Croatia to meet the deficiencies and to implement the recommendations and/or issues identified for follow-up by the Conference of the Parties. When assessing progress made, effectiveness was taken into account to the extent possible in a paper based desk review, on the basis of the information and

²[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/CRO4-MERMONEYVAL\(2013\)15_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/CRO4-MERMONEYVAL(2013)15_en.pdf)

statistics provided by the Party. The report also sets out an appraisal of the level of progress in meeting the recommendations and/or issues identified in the adopted report, in order to assist the Conference of the Parties in its analysis and decision-making process.

8. The sections below set out the main findings on issues pertaining to the implementation of selected provisions of CETS no. 198. They reflect the detailed article by article findings covering provisions of the Convention and recommendations for improvement made in the assessment report.

1. Laundering offences - Article 9 paragraphs 3, 4, 5, 6

9. The Conference of the Parties, in its assessment report, addressed 3 recommendations to Croatia regarding the implementation of Article 9 of the Convention.

It was recommended that the authorities make efforts to develop jurisprudence 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 in cases involving autonomous ML, how specific evidence should be with respect to the predicate offence.

10. Since the assessment, Croatia reported one case in 2014 where 3 persons were convicted for ML offences. In this case, the predicate offence (computer fraud) was not yet the subject of a formal court decision, but was considered on the basis of evaluation of all available evidences. This case demonstrates that positive efforts have been made by the authorities to develop jurisprudence on autonomous money laundering.

To ensure that the lesser subjective mental element provided under Article 9 paragraph 3(a) of CETS No. 198, namely the case where a person suspected that the property was proceeds, is fully covered.

11. As concerns the *mens rea* for the offence of money laundering, Croatian law criminalises negligent behaviour and is therefore in line with A.9 par. 3(b) – where the person ought to have assumed that the property was proceeds. Nonetheless, the Conference of the Parties noted that the lesser subjective mental element provided under A.9 par. 3(a) of CETS no. 198 – suspected that the property was proceeds – is not criminalised under the Croatian Law.
12. Croatia reiterated that article 265 par. 5 of the CC criminalises the ML offence committed by negligence, while article 29 par. 2 of the CC criminalises the ML offence committed by acting recklessly. Croatia also emphasized that article 32 of the Criminal Code regulates *the mistake of fact (if the perpetrator's mistake regarding the material elements of the offence is due to his negligence)* claiming that in such situation *the perpetrator shall be culpable*. The authorities, however, did not include in the follow up report, the situation where a person suspected that the property was proceeds.

13. Therefore, the lesser subjective element provided under Article 9 par. 3(a) of the CETS No. 198 - the case where a person suspected that the property was proceeds - is still not fully and explicitly covered. Although it is clearly left to the discretion of the country whether or not to establish such element in its legal framework, possibility of introducing it shall be taken into consideration³.

To ensure that judges and prosecutors are familiarised with the mandatory provisions of Article 9 paragraphs 5 and 6 of the Convention, in particular through further trainings or other means.

14. In 2013, Judicial Academy held a number of workshops for judges and prosecutors on the implementation of the new CC.
15. Concerning the effectiveness in investigating, prosecuting and adjudicating the ML offence, the Croatian authorities provided statistics covering the period from 2012 to 2015. According to the records of the State Attorney's Office of the Republic of Croatia, in 2014 competent prosecutors in charge carried out investigations in 10 cases against 14 persons for ML offence. 3 indictments were raised and the courts brought 4 convictions. In 2015 there were 10 investigations, 23 indictments and 3 convictions for this same offence.
16. Therefore, it appears that Croatian authorities have taken necessary steps to increase awareness amongst judges and prosecutors about the mandatory provisions of Article 9 paragraphs 5 and 6 of the Convention.
17. It could be concluded that the first and the third recommendations, have been partially implemented.

2. Corporate liability - Article 10 paragraphs 1 and 2

Considering the results achieved in criminal proceedings against legal persons, the Croatian authorities, were advised to ensure that the provisions of the Act on Responsibility of Legal Persons for Criminal Offences are harmonised 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;

18. Croatia reported that article 4 of the Act on Responsibility of Legal Persons for Criminal Offences, which defines the "responsible person", includes in practice any "natural person [expressly or effectively] entrusted with the tasks from the scope of operation of the legal person". Therefore it seems that in practice this provision is as comprehensive as the article 87 par. 7 of the Criminal Code. However, from the desk based review it cannot be concluded if this is the case since no examples of implementation of such principle in practice was offered in the follow up report.

³ See points 97 and 98 of the Explanatory Report 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;

19. Croatia did not provide any example of such review.

To undertake, as appropriate, additional training activities and raising-awareness measures (additional guidance, documents, instructions, etc.) to familiarise the police and the judiciary on the 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 No. 198, clarifying also the circumstances envisaged by Article 10 of the Convention

20. Concerning the effectiveness in investigating, prosecuting and adjudicating legal entities, Croatia provided statistical data. In 2015 the competent state attorney's offices submitted two indictments against legal entities for the offence of ML. The proceedings are still on-going.

21. It needs to be noted that the assessment report mentions only one indictment against a legal person for the offence of ML for a period of four years.

22. The Conference of the Parties notes these efforts made by the Croatian authorities. However, it concludes that the elements provided were still not sufficient to demonstrate the full implementation of this recommendation.

23. In this context and given the information provided the desk based review cannot reach the conclusion if the recommendation was fully met.

3. Previous decisions - Article 11

Croatia should 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 No. 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.

24. The Conference of the Parties, in its assessment report, recognised that Croatia had taken several measures which aim at implementing Article 11 of the Convention. It remains, however, unclear whether the measures recommended by COP were applied in the ML convictions that have been achieved so far.

25. No update on the relevant legislative and other measures adopted have been provided.

26. The Conference of the Parties concludes that this recommendation has not been fully implemented.

4. Confiscation measures – Article 3 paragraphs 1, 2, 3, 4

27. The Conference of the Parties concluded in its assessment report that the Croatian legal framework on confiscation is broadly in line with the requirements of Article 3 of the Convention. It addressed 4 specific recommendations to Croatia regarding the extension of confiscation and the effective implementation of the respective article, as set out below.

As a general remark, it was advised to ensure that all relevant authorities 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.

28. Croatia reported the adoption of the Act on Amendments to the Criminal Code, which came into force on the 30th May 2015. Article 79 is amended and now defines “instrumentalities” which shall be confiscated as follows: “(1) items and means which came about through the commitment of a criminal offence; (2) items and means which were intended for the commitment of a criminal offence or which were used to commit a criminal offence 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”.

29. It is to be noted that in this provision the possibility to confiscate instrumentalities which were used to commit a criminal offence is restricted to the case where they present a risk as set out above.

30. Therefore, it can be concluded that this recommendation has been partially implemented.

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

31. None of the information submitted in the follow-up report addresses the issue of consistency between the definition of “pecuniary advantage” under the Criminal Code and the definition provided under the Act on Proceedings for the Confiscation of Pecuniary Benefit Resulting from Criminal Offences and Misdemeanours.

32. Accordingly, it remains unknown whether these definitions are fully harmonised in the Croatian legislative framework and in light of COP recommendation.

To clearly specify that the possibility for value confiscation covers any other sort of property such as real estate or property rights.

33. The same Law amended the article 87 which refers to the term “property”. In this article, one paragraph was added in order to cover any sort of property. It states that “property of any type is consider to be property, regardless if it property is tangible or intangible, moveable or immoveable 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”.
34. Using the terminology of the article 1(b) of the Convention, the new Croatian legal framework specifies that the possibility for value confiscation covers any other sort of property. Therefore, it can be concluded that this recommendation has been implemented.

To demonstrate the effective implementation of the Article 3 of the Convention and to bring forward elements demonstrating this effective application of the existing legal framework by all relevant authorities

35. Statistical data provided cover the value of frozen and confiscated pecuniary gain in 2012, 2013, 2014 and 2015.
36. Additionally, Croatia indicated that one guidance manual and general instructions have been provided to the state attorneys in order to ensure effectiveness and harmonisation of proceedings in financial investigations aiming to confiscate assets and proceeds from crime.
37. A program of specialisation and professional training is also provided to police officers for criminal offences of money laundering and financial investigations.
38. Furthermore, in accordance with the Council Decision 2007/845/JHA of 6 December 2007, Croatia has designated its Asset Recovery Office, namely the Criminal Police Directorate, National Police Office for Suppression of Corruption and Organised Crime (PNUSKOK).
39. Given the efforts undertaken by the authorities, it can be concluded that this recommendation has been implemented.
40. In conclusion, the Conference of the Parties notes that, based on information submitted in the follow up report, it cannot be assessed whether these recommendations have been fully implemented, with the exception of the last two recommendations.

5. Management of frozen or seized property – Article 6

41. The Conference of the Parties concluded in its assessment report, that Croatia should take some measure in order to strengthen the reliability and efficiency of the

Government asset management agency (GAMA). But it was also stated that GAMA is a recent agency and that the measures taken appeared to have enabled it to undertake its functions.

It was recommended:

To consider building upon existing regulations and 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 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.

42. State Attorney's office provided statistical data on the value of seized assets in 2015, detailing the value of seized assets in corruption and organised crimes cases and the value of seized real estate's property rights vehicles.

43. However, no update on measures recommended by COP has been provided.

44. The Conference of the Parties concludes that Croatia has not taken yet any additional measures to implement these recommendations.

6. Investigative powers and techniques - Article 7 paragraphs 1, 2a, 2b, 2c, 2d

45. The Croatian legislation appeared to have implemented broadly the requirements set out in article 7 paragraphs 1, 2a, 2b, 2c, 2d.

However it was recommended to Croatia 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.

46. The information provided by Croatian authorities does not refer to additional measures taken since the adoption of the assessment report while no information is available to substantiate the effective implementation of this Article of the Convention hence the analysis in the assessment report remains valid.

47. The Conference of the Parties thus concludes that this recommendation has not been implemented.

7. International co-operation - Obligation to confiscate - Article 23 paragraph 5; Confiscated property - Article 25 paragraphs 2 and 3

48. The Conference of the Parties, in its assessment report, addressed 3 recommendations in respect of Article 23 paragraph 5 and the implementation of Article 25.

It was recommended:

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.

To 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.

49. Croatia only indicated that recognition of confiscations orders issued by States Parties is in the competence of the county courts, which does not prevent the authorities to take all relevant measures to enhance international cooperation in that matter.

50. The Conference of the Parties concludes that these recommendations have not been implemented.

8. Requests for information on bank accounts – Article 17 paragraphs 1, 4, 6; Requests for information on banking transactions - Article 18; Requests for the monitoring of banking transactions - Article 19

51. The Conference of the Parties, in its assessment report, was concerned about the fact that Croatia did not keep detailed statistics which would enable to have a clear picture on the extent to which MLA provisions are implemented. The statistics provided related to MLA based on both CETS No. 141 and 198.

It was advised 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 par. 1, 4, 6; Article 18 par. 1 and 5; Article 19 par. 1 and 5.

52. Croatia provided statistical data on the number of MLA. During 2015, the State Attorney's Offices issued 10 requests for MLA by provision of bank data and 6 requests for MLA by freezing of proceeds of crime. These figures demonstrate the effective application of the existing legal framework but it remains unknown whether these MLA requests were based on CETS No. 198 or other legal instruments.
53. The Conference of the Parties thus cannot conclude if this recommendation has been fully implemented.

III. Procedural and other general rules

1. Direct Communication - Article 34

54. This provision appears to be implemented effectively.

IV. Co-operation between Financial Intelligence Units

1. Co-operations between FIUs - Article 46

55. This provision appears to be implemented effectively.

2. Postponement of domestic suspicious transactions - Article 14

56. This provision appears to be implemented effectively.

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

57. The Conference of the Parties, in its assessment report, was pleased to see that legislative measures adopted by the Croatian authorities in respect to the postponement of transactions at the request of foreign FIUs, are in line with CETS No. 198.

Nonetheless, it was advised to Croatia to 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.

58. Croatia reported that in 2015 the Croatian FIU (AMLO) received only one request for the suspension of a transaction from the FIU of a State Party to the Convention. This request was executed in accordance with the Croatian AML/CFT Law.

59. Additionally, Croatia pointed out that 9 requests for the suspension of transactions were sent from the AMLO to other Parties to the Convention and summarised 6 of these cases. Most of these requests were sent on the basis of the Article 72 of the AML/CFT Law but also on the basis of the Article 47(1) of the CETS No 198.

60. The Conference of the Parties concludes that this recommendation has been implemented.

V. Refusal and postponement of co-operation

1. Grounds for refusal - Article 28

61. Although the Conference of the Parties, in its assessment report, concluded that the legal framework was in place, no information had been provided as to whether any

cooperation had been granted in cases of political/fiscal offence or self-laundering offence.

In this respect, it was recommended to ensure that meaningful statistical information is available concerning the practical implementation of the Article 28 par. 1d, 1e and 8c of the Convention.

62. No data have been provided with regard to this recommendation.

63. Therefore, the Conference of the Parties cannot conclude if this recommendation has been implemented.

VI. Conclusions

64. Croatia has ratified 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) in October 2008 and the Convention entered into force in respect of Croatia in February 2009.

65. More than three years after the adoption of its first assessment report on Croatia, the Conference of the Parties notes that Croatia has taken some measures to adapt its national legal framework and implement the recommendations set out in the assessment report in order to meet the Convention's requirements. However, based on the information received and as provided above, there are still a number of issues to be considered and gaps that need to be addressed.

66. In order for Croatia to make full use of the Convention's provisions and adequately implement its obligations under the Convention, the Conference of the Parties reiterates a number of its recommendations previously formulated in the assessment report. The Conference of the Parties invites Croatia to fasten its internal process aimed at adapting the domestic legal framework to the convention's requirements and also to consider additional measures, as appropriate, in order to support the implementation of the adopted provisions.

Adaptation of the national legislation to the Convention's requirements and implementation aspects

Implementation of Article 9 of the Convention:

- a. As previously recommended, the Croatian authorities are encouraged to consider the full criminalization of the lesser subjective mental element provided under Article 9 paragraph 3(a) of CETS No. 198, namely the case where a person suspected that the property was proceeds.

Implementation of Article 11 of the Convention:

- b. The Croatian authorities may consider incorporating measures implementing the international recidivism standard in the Act on Responsibility of Legal Persons for Criminal Offences

Implementation of Article 3 of the Convention:

- c. The Croatian authorities are advised: :
- to ensure that all relevant authorities can make full use of the existing legal framework to avoid any legal gaps as regards the possibility to confiscate instrumentalities, proceeds and laundered property within the full sense of article 3 of the Convention,
 - and 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;

Development of tools and procedures at national level top assist in the implementation of the Convention

Implementation of Article 10 of the Convention:

- d. As previously recommended, Croatia should:
- 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
 - and undertake, as appropriate, additional training activities and raising-awareness measures to familiarise the police and the judiciary on the implementation of the provisions of the Act on Responsibility of Legal Persons for Criminal Offences in relation to ML and other relevant criminal offences.

Implementation of Article 11 of the Convention:

- e. Croatia should 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 No. 198.

Implementation of Article 6 of the Convention:

- f. As previously recommended, Croatia should:
- consider building upon existing regulations and 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 other relevant capacity building and training measures;
 - 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;

- 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.

Implementation of Article 7 of the Convention:

- g. Croatia should 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.

International co-operation on the basis of the provisions of CETS no. 198:

Implementation of Article 23 of the Convention:

- h. As previously advised, the authorities should 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;

Implementation of Article 25 of the Convention:

- i. As previously recommended, the authorities should 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.

Data collection/statistics

Implementation of Article 23 and 25 of the Convention:

- j. The Croatian authorities should be able to 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.

Implementation of Articles 17, 18 and 19 of the Convention:

- k. Croatia is encouraged to continue developing and maintaining statistics regarding the practice of international co-operation.

Implementation of Article 28 of the Convention:

- l. Croatia is encouraged to develop meaningful statistical information concerning the practical implementation of the Article 28 par. 1d, 1e and 8c of the Convention.

The Secretariat